

1 COOLEY LLP
STEVEN M. STRAUSS (99153) (SMS@COOLEY.COM)
2 4401 Eastgate Mall
San Diego, CA 92121
3 Telephone: (858) 550-6000
Facsimile: (858) 550-6420

4 CASEY GERRY SCHENK FRANCAVILLA BLATT &
PENFIELD, LLP
5 DAVID S. CASEY, JR. (060768) (dcasey@cglaw.com)
6 FREDERICK SCHENK (086392) (fschenk@cglaw.com)
110 Laurel Street
7 San Diego, CA 92101
Telephone: (619) 238-1811
8 Facsimile: (619) 544-9232

9 Attorneys for Plaintiffs

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO

12 CENTRAL DIVISION

13 TYLER SEAU, an individual; SYDNEY
SEAU, an individual; JAKE SEAU, a minor,
14 and HUNTER SEAU, a minor, by and
through their Guardian ad Litem Gina Seau;
15 and BETTE HOFFMAN as trustee of the
Tiaina B. Seau, Jr. 2002 Trust.

16 Plaintiffs,

17 v.

18 NATIONAL FOOTBALL LEAGUE; NFL
19 PROPERTIES LLC; RIDDELL, INC.; ALL
AMERICAN SPORTS CORP.; RIDDELL
20 SPORTS GROUP, INC.; EASTON-BELL
SPORTS, INC.; EASTON-BELL SPORTS,
21 LLC; EB SPORTS CORP.; AND RBG
HOLDINGS CORP.

22 Defendants.
23

Case No.

Plaintiffs' Complaint For Damages and
Demand For Jury Trial

1. Fraudulent Concealment
2. Fraud
3. Negligent Misrepresentation
4. Negligence
5. Negligent Hiring
6. Negligent Retention
7. Wrongful Death – NFL Defendants
8. Wrongful Death – Riddell Defendants

24
25 TYLER SEAU, an individual; SYDNEY SEAU, an individual; JAKE SEAU, a minor,
26 and HUNTER SEAU, a minor, by and through their Guardian ad Litem Gina Seau; and BETTE
27 HOFFMAN, trustee of the Tiaina B. Seau Jr. 2002 Trust hereby file this Complaint for Damages
28 against Defendants, the National Football League (“NFL”) and NFL Properties LLC (“NFL

1 Properties”) (collectively “NFL Defendants”), Riddell, Inc. (d/b/a Riddell Sports Group, Inc.), All
2 American Sports Corporation, (d/b/a Riddell/All American), Riddell Sports Group, Inc., Easton-
3 Bell Sports, Inc., Easton-Bell Sports, LLC, EB Sports Corp., and RBG Holdings Corp.
4 (collectively “Riddell Defendants”), and allege as follows:

5 INTRODUCTION

6 1. The NFL is America’s most successful sports organization, generating multi-
7 billion dollar profits and legions of devoted fans. On average, the NFL generates approximately
8 \$9,300,000,000.00 per year. As the organizer, marketer and face of professional football, the
9 NFL zealously protects these profits and the game that produces them.

10 2. This success comes at a price for the players who make the game great. For many
11 decades, evidence has linked repetitive mild traumatic brain injury (“MTBI”) to long-term
12 neurological problems. The NFL was aware of the evidence and the risks associated with
13 repetitive traumatic brain injuries for many decades, but deliberately ignored and actively
14 concealed the information from the players, including the late Junior Seau.

15 3. Since its inception, the NFL has controlled and regulated every aspect of the game
16 of professional football, particularly with respect to player safety and health. The NFL has used
17 this authority to compel all NFL players and participants to follow the policies, rules, and
18 regulations the NFL has enacted and imposed. As the governing body of professional football,
19 the NFL has held itself out as the guardian and authority on the issue of player safety and has
20 unilaterally shouldered for itself a duty to provide players with rules and information that protect
21 players as much as possible from short-term and long-term health risks.

22 4. The NFL’s role as the guardian of player health and safety began in the 1930s and
23 continues up through the present day. The NFL has exercised its supervisory role through its
24 unilateral decisions to issue rules to improve upon NFL football’s public acceptance, to make a
25 profit, and to address issues of player safety. The NFL has also unilaterally and voluntarily
26 chosen how to spend its funds to investigate and regulate many different circumstances affecting
27 player health and safety, including, but not limited to, requiring players to wear certain
28 equipment, designating some player gear as illegal, and ultimately deciding what helmet brand

1 should be recognized as the official equipment of the NFL. During these decades, the NFL
2 voluntarily provided teams and players with information and regulations that directly affected the
3 short and long term health of NFL players, including Junior Seau.

4 5. NFL players and their families, including Junior Seau, looked to the NFL for
5 guidance on player safety issues.

6 6. Although the NFL voluntarily assumed its role as the unilateral guardian of player
7 safety, the NFL has exacerbated the health risk to players by promoting the game's violence and
8 lauding players for returning to play despite being rendered unconscious and/or disoriented due to
9 their exposure to sub-concussive and concussive forces. Today, the NFL and its agents continue
10 to market the ferocity and brutality of the sport.

11 7. The NFL has long been aware that violent on-field collisions can lead to latent
12 head injuries which may have debilitating long-term effects on players. Since the 1950s and
13 1960s, a substantial body of medical and scientific evidence has demonstrated neuro-cognitive
14 injuries in the sport of football as a result of MBTI. During these decades, the NFL voluntarily
15 participated in the work of various entities studying the performance and effectiveness of safety
16 gear to reduce the risk of neurological injury. The NFL's participation was a voluntary
17 continuance of the historic duty it had assumed in the first half of the twentieth century. Despite
18 this awareness, the NFL ignored, minimized, disputed, and actively suppressed broader awareness
19 of the link between sub-concussive and concussive injuries in football and the chronic neuro-
20 cognitive damage, illnesses, and decline suffered by former players.

21 8. By the early 1990s, the consensus among experts in the scientific community was
22 that many football players had developed brain injuries as a consequence of multiple "dings,"
23 sub-concussive injuries, and concussions.

24 9. In 1994, the NFL created and/or decided to fund the NFL's so-called Mild
25 Traumatic Brain Injury Committee (the "MTBI Committee") ostensibly to research and study
26 MTBI affecting NFL players.

27 10. Through its MTBI Committee, the NFL voluntarily inserted itself into the
28 scientific research and discussion concerning the link between sub-concussive and concussive

1 impacts sustained by NFL players and short-term and long-term impairment of the brain. By
2 voluntarily inserting itself into the MTBI research and public discourse, the NFL gratuitously
3 undertook a responsibility (a) to make truthful statements; (b) not to wrongfully advance
4 improper, biased, and falsified industry-generated studies; (c) not to discredit well-researched and
5 credible studies that came to a conclusion that did not comport with the NFL's financial and
6 political interests; and, (d) to inform all former players, all current players, and the football-
7 playing public, including young people and their families, regarding the risks of MTBI in
8 football.

9 11. Instead of adhering to these duties, the NFL produced industry-funded, biased, and
10 falsified research that claimed that concussive and sub-concussive head impacts in football do not
11 present serious, life-altering risks. The NFL also actively sought to suppress the findings of other
12 members of the medical community that showed the link between on-field sub-concussive and
13 concussive head impacts and post-career neuro-cognitive damage, illness and decline.

14 12. For sixteen years, the NFL actively and continuously denied any link between
15 MTBI sustained by former NFL players in NFL games and practices and the neurological
16 symptoms and problems (such as headaches, dizziness, loss of memory, dementia and ALS) from
17 which they now suffer. The NFL made its biased and falsified position known by way of
18 gratuitous press releases, publications in scientific literature, and other communications.

19 13. The NFL intended for the general public, NFL players, the late Junior Seau, his
20 family and participants at every level of the game to rely on the misinformation it propagated.

21 14. The NFL's active and purposeful concealment and misrepresentation of the severe
22 neurological risks of repetitive MTBI exposed players to dangers they could have avoided had the
23 NFL provided them with truthful and accurate information. Junior Seau sustained numerous and
24 repetitive injuries over his career while in the NFL and has been diagnosed by the National
25 Institutes of Health to have been suffering from Chronic Traumatic Encephalopathy ("CTE") and
26 related neurodegenerative disorders and diseases which were caused by the NFL's acts and/or
27 omissions.

28 15. The NFL concealed and misrepresented these risks by: (a) historically ignoring the

1 true risks of MTBI in NFL football; (b) failing to disclose the true risks of repetitive MTBI to
2 NFL players; and (c) since 1994, deliberately spreading misinformation concerning the cause and
3 effect relationship between MTBI in NFL football and latent neurodegenerative disorders and
4 diseases.

5 16. These acts and omissions caused the neurodegenerative diseases, including, the
6 debilitating and latent disease known as CTE, which caused Junior Seau's tragic death.

7 17. On information and belief, the NFL's motive to ignore and misrepresent the link
8 between MTBI sustained in NFL play and neuro-cognitive injury and decline was economic. The
9 NFL knew or suspected that any rule changes that sought to recognize that link and the health risk
10 to NFL players would impose an economic cost that would significantly and adversely change the
11 profit margins enjoyed by the NFL and its teams.

12 18. On information and belief, all NFL policies and decisions relevant to the conduct
13 alleged herein occurred primarily in the NFL corporate offices in New York.

14 **JURISDICTION AND VENUE**

15 19. Jurisdiction is based upon the California Constitution Article 6, Section I 0.

16 20. Venue is proper in this Court pursuant to Section 395(A) of the California Code of
17 Civil Procedure.

18 **IDENTIFICATION OF THE PARTIES**

19 **PLAINTIFFS**

20 21. Tiaina B. Seau, Jr., ("Junior Seau") deceased, was a player in the NFL for 20
21 consecutive seasons, where he sustained injuries leading to his death on May 2, 2012. Junior
22 Seau played for the San Diego Chargers (1990-2002), the Miami Dolphins (2003-2005), and the
23 New England Patriots (2006-2009). At all times decedent was a resident in the State of
24 California.

25 22. Tyler Seau is the son of Junior Seau, and is a resident of and domiciled in the State
26 of California.

27 23. Sydney Seau is the daughter of Junior Seau, and is a resident of and domiciled in
28 the State of California.

1 existing under the laws of the state of Delaware with its headquarters in the state of New York.
2 NFL Properties is engaged in, among other activities, approving, licensing, and promoting
3 equipment used by all the NFL teams. NFL Properties regularly conducts business in California.
4 Together with the NFL, Defendant NFL Properties is referred to herein as the “NFL Defendants.”

5 31. Defendant Riddell, Inc. (d/b/a Riddell Sports Group, Inc.) is a corporation
6 organized and existing under the laws of the state of Illinois and whose principal place of
7 business is in the State of Illinois. Riddell is engaged in the business of designing,
8 manufacturing, selling and distributing football equipment, including helmets, to the NFL and
9 since 1989 has been the official helmet of the NFL. Riddell, Inc., regularly conducts business in
10 the state of California.

11 32. Defendant All American Sports Corporation, (d/b/a Riddell/All American), is a
12 corporation organized and existing under the laws of the State of Delaware and is engaged in the
13 business of designing, manufacturing, selling and distributing football equipment including
14 helmets, to the NFL and since 1989 has been the official helmet of the NFL. All American Sports
15 Corporation regularly conducts business in the state of California.

16 33. Defendant Riddell Sports Group, Inc. is a Delaware corporation with its principal
17 place of business at 6255 N. State Highway, #300, Irving, Texas 76038. Riddell Sports Group,
18 Inc., regularly conducts business in the state of California.

19 34. Defendant Easton-Bell Sports, Inc. is a Delaware corporation with a principal
20 place of business at 7855 Haskell Avenue, Suite 200, Van Nuys, California 91406 and is a parent
21 corporation of Riddell Sports Group, Inc. Easton-Bell Sports, Inc. designs, develops, and markets
22 branded athletic equipment and accessories, including marketing and licensing products, under
23 the Riddell brand. Easton-Bell Sports regularly conducts business in the state of California.

24 35. Defendant Easton-Bell Sports, LLC is the parent corporation of Easton-Bell
25 Sports, Inc. and is incorporated in Delaware, with a principal place of business at 152 West 57th
26 Street, New York, New York 10019. Easton-Bell Sports, LLC regularly conducts business in the
27 state of California.

28 36. Defendant EB Sports Corp. is a Delaware corporation with its principal place of

1 business at 7855 Haskell Avenue, Van Nuys, California 91406.

2 37. Defendant RBG Holdings Corp. is a Delaware corporation with its principal place
3 of business at 7855 Haskell Avenue, Suite 350, Van Nuys, California 91406.

4 38. Defendants Riddell, Inc., Riddell Sports Group Inc., All American Sports
5 Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG
6 Holdings Corp., shall hereinafter be referred to collectively as the “Riddell Defendants.”

7 **GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS**
8 **AGAINST THE NFL DEFENDANTS**

9 39. The NFL oversees America’s most popular spectator sport, acting as a trade
10 association for the benefit of the thirty-two independently operated Teams.

11 40. The NFL has, since its inception in the first half of the twentieth century, governed
12 and promoted the game of football, by acting as the governing body, establishing rules related to
13 player health and safety, League policies, and Team ownership.

14 41. The NFL generates revenue mostly through marketing sponsorships, licensing
15 merchandise, and by selling national broadcasting rights to the games. The Teams share a
16 percentage of the League’s overall revenue.

17 42. Annually, the NFL redistributes approximately \$4 billion in radio, television, and
18 digital earnings to the Teams or approximately \$125 million per Team. Those revenue numbers
19 have increased since 2009.

20 43. The NFL enjoys partial monopoly power through an anti-trust exemption granted
21 via the Federal Sports Broadcasting Act that allows the NFL to sell television rights for all 32
22 Teams as a single unit.

23 **The NFL Uses Its Influence To Encourage Violent Play**

24 44. The NFL Defendants have had enormous influence over the game of football at all
25 levels of the game because of their financial power, monopoly status, and high visibility.

26 45. This influence has been expanded over many decades through their use of the
27 media. Through NFL films, the NFL Network, and www.NFL.com, the NFL Defendants have
28 promoted NFL football via every mass communication medium available.

1 46. Part of the NFL Defendants’ strategy to promote NFL football is to glorify the
2 brutality and ferocity of NFL football, in part by lauding and mythologizing the most brutal and
3 ferocious players and collisions, and simultaneously propagating the fraudulent representation
4 that “getting your bell rung,” “being dinged,” and putting big hits on others is a badge of courage
5 which does not seriously threaten one’s health.

6 47. As a result of this strategy, the NFL Defendants have propagated the false myth
7 that collisions of all kinds, including brutal and ferocious collisions, many of which lead to short-
8 term and long-term neurological damage to players, are an acceptable, desired, and natural
9 consequence of the game, and a measure of the courage and heroism of players involved at every
10 level of the game.

11 48. As a result of this strategy, and the overwhelming influence of the NFL
12 Defendants at every level of the game, the NFL Defendants have also generated for themselves
13 and others billions of dollars every year by promoting a product of brutality and ferocity and
14 inculcating in players at every level of the game the false and life-threatening ideas that (a) brutal,
15 ferocious, and debilitating collisions are a required and desired outcome in the game of football;
16 and (b) playing despite repetitive head impacts is a laudable and desirable goal.

17 49. NFL Films is an agent and instrumentality of the NFL Defendants devoted to
18 producing promotional films for the NFL. To propagate the NFL’s image of the game as brutal
19 and violent, NFL Films has created numerous highlight features that focus solely on the hardest-
20 hits in pro football. These featured videos are marketed and sold to advance the NFL’s culture of
21 violence as entertainment.

22 50. The list of videos created by NFL Films glorifying violent plays includes, but is
23 not limited to, the following titles: “*NFL: Moment of Impact*” (2007); “*NFL’s 100 Greatest*
24 *Tackles*” (1995); “*Big Blocks and King Size Hits*” (1990); “*The Best of Thunder and Destruction*
25 *– NFL’s Hardest Hits*”; “*NFL Films Video: Strike Force*” (1989); “*The NFL’s Greatest Hits*”
26 (1989); “*Crunch Course*”; “*Crunch Course II*” (1988); “*Crunch Masters*”; “*In the Crunch*”
27 (1987); “*NFL Rocks*”; “*NFL Rocks: Extreme Football*” (1993).

28 51. These videos contain numerous explicit examples of how the NFL Defendants

1 market and glorify the violent nature of the NFL. For instance, the back cover of 2007 film
2 “*Moment of Impact*” advertises the film as follows: “First you hear the breathing, then you feel
3 the wind coming through your helmet’s ear hole. Suddenly you’re down, and you’re looking
4 through your helmet’s ear hole. Pain? That’s for tomorrow morning. Right now you’ve gotta
5 focus – focus on the play and try not to focus on the next moment of impact.”

6 52. These films deemphasize the acute and chronic risks associated with head impacts.
7 Moreover, they utilize players, including Junior Seau, to spread the fraudulent message that brutal
8 violence is a necessary part of the sport. In 1993’s “*NFL Rocks*,” Junior Seau offered his opinion
9 on the measure of a punishing hit: “If I can feel some dizziness, I know that guy is feeling double
10 [that].” In a segment of the same film, former Houston Oilers receiver Ernest Givens is quoted as
11 saying: “I get knocked out a lot, I get concussions, I get broken noses, that is part of being a
12 receiver, that’s what separates you from being a typical receiver than a great receiver.” Former
13 Dallas Cowboys receiver Michael Irvin recites a similar unawareness of the risks of concussions:
14 “Before the game, I go to the [defensive backs] and tell them, ‘Hey, you know I’ll trade a
15 concussion for a reception!’”

16 53. NFL Films, therefore, advances the NFL Defendants’ agenda to promote the most
17 violent aspects of NFL football and to urge players at every level of the game to disregard the
18 results of violent head impacts. This promotes a culture in which playing hurt or with an injury,
19 including MTBI, is both expected and acclaimed. Moreover, failure to play through such an
20 injury creates the risk that the NFL player will lose playing time, a starting position, and possibly
21 a career.

22 54. This attitude within the League and its players continued in the decades of the
23 1980s, 1990s and 2000s, with players lauded for their “head hunting” skills. As recently as
24 October 2010, the NFL fined some players for what it characterized as “illegal and dangerous
25 hits”, and yet the NFL Defendants sought to profit by selling photos of the illegal hits on its
26 website for between \$54.95 and \$249.95.

27 55. Within this culture, the NFL Defendants purposefully profit from the violence they
28 promote.

Injuries Resulting From This Violence

1
2 56. Medical science has known for many decades that repetitive and violent jarring of
3 the head or impact to the head can cause MTBI with a heightened risk of long term, chronic
4 neuro-cognitive injury.

5 57. The American Association of Neurological Surgeons (the “AANS”) has defined a
6 concussion as “a clinical syndrome characterized by an immediate and transient alteration in brain
7 function, including an alteration of mental status and level of consciousness, resulting from
8 mechanical force or trauma.” The AANS defines traumatic brain injury (“TBI”) as:

9 a blow or jolt to the head, or a penetrating head injury that disrupts
10 the normal function of the brain. TBI can result when the head
11 suddenly and violently hits an object, or when an object pierces the
12 skull and enters brain tissue. Symptoms of a TBI can be mild,
13 moderate or severe, depending on the extent of damage to the brain.
14 Mild cases may result in a brief change in mental state or
15 consciousness, while severe cases may result in extended periods of
16 unconsciousness, coma or even death.

17 58. MTBI generally occurs when the head either accelerates rapidly and then is
18 stopped, or is rotated rapidly. The results frequently include, among other things, confusion,
19 blurred vision, memory loss, nausea, and sometimes unconsciousness.

20 59. Medical evidence has shown that symptoms of MTBI can appear hours or days
21 after the injury.

22 60. Once a person suffers an MTBI, he is up to four times more likely to sustain a
23 second one. Additionally, after suffering even a single sub-concussive or concussive blow, a
24 lesser blow may cause MTBI, and the injured person requires more time to recover.

25 61. Clinical and neuro-pathological studies by some of the nation’s foremost experts
26 demonstrate that multiple head injuries, concussions, or repeated traumatic head impacts
27 (including sub-concussive and concussive blows) sustained during an NFL player’s career can
28 cause severe neuro-cognitive problems such as depression and early-onset of dementia.

 62. Studies on many former football players, including former NFL players, have
established that football players who sustain repetitive head impacts while playing the game have
suffered and continue to suffer brain injuries that result in any one or more of the following

1 conditions: early-onset of Alzheimer’s Disease, dementia, depression, deficits in cognitive
2 functioning, reduced processing speed, attention and reasoning, loss of memory, sleeplessness,
3 mood swings, personality changes, neurological deficits impacting judgment, and the debilitating
4 and latent disease known as CTE. The latter condition involves the slow build-up of the Tau
5 protein within the brain tissue that causes diminished brain function, progressive cognitive
6 decline, and many of the symptoms listed above. CTE is also is associated with an increased risk
7 of suicide.

8 63. CTE is found in athletes, including football players and boxers, with a history of
9 repetitive head trauma. The changes in the brain caused by repetitive trauma are thought to begin
10 when the brain is subjected to that repetitive trauma, but symptoms may not appear until months,
11 years, or even decades after the last traumatic impact or the end of active athletic involvement.

12 64. Papers and studies documenting autopsies on over thirty former NFL players show
13 that over ninety percent of the players suffered from CTE.

14 65. As a result, published peer reviewed scientific studies have shown that concussive
15 and sub-concussive head impacts while playing professional football are linked to a significant
16 risk of permanent brain injury.

17 66. Published peer reviewed scientific studies have shown that 28% of the NFL
18 retirees studied suffered from depression, whereas the prevalence of depression in the general
19 population is 9.5%.

20 67. Published peer reviewed scientific studies have shown that 36% of NFL retirees,
21 age 65-75, who were studied suffered from dementia, whereas the prevalence of dementia in the
22 general population for the same age group is merely 2.2-6.5%.

23 68. Published peer reviewed scientific studies have shown that retired players with
24 three or more reported concussions had a fivefold prevalence of mild cognitive impairment (MCI)
25 and a threefold prevalence of significant memory problems, compared to other retirees.

26 69. In a study of NFL retirees, 11.1% of all respondents reported having a diagnosis of
27 clinical depression.

28 70. At all times, the NFL’s unique position afforded it unparalleled access to the

1 readily accessible data above relating the effect of head impacts on football players. The NFL
2 Defendants have know or should have known about the risks for MTBI, the scientific studies
3 linking repeated concussive and sub-concussive head impacts with a significant risk for
4 permanent brain injury, including CTE, and about the increased incidence of depression,
5 dementia, and cognitive impairment and memory problems in retired NFL players.

6 **The NFL Was in a Superior Position of Knowledge**
7 **and Authority and Owed a Duty to Players Like Junior Seau**

8 71. At all times, the NFL's unique historical vantage point at the apex of the sport of
9 football, paired with its unmatched resources as the most well-funded organization devoted to the
10 business of the game, has afforded it unparalleled access to data relating to the effect of head
11 impacts on football players and made it an institutional repository of accumulated knowledge
12 about head injuries to players.

13 72. The NFL is the organizer, marketer and public face of professional football in the
14 United States. The NFL governs each of the individual teams, collects and distributes revenue
15 among the teams, and authorizes the sport's rules.

16 73. From its inception, the NFL adopted the role of protecting players, informing
17 players of safety concerns, and imposing unilaterally a wide variety of rules to protect players
18 from injuries that were costly to the player, the game, and profits. For instance, the NFL recently
19 stated that "[s]ince its earliest days, the league has continuously taken steps to ensure that the
20 game is played as fairly as possible without unnecessary risk to its participants, including making
21 changes and enhancements to game safety rules."
22 (www.nflhealthsasfety.com/commitment/regulations) (2011-2012).

23 74. On information and belief, the NFL has continuously received and paid for
24 professional advice regarding health risks associated with playing football. This advice and
25 knowledge placed the NFL in a position of ongoing superior knowledge to the players regarding
26 the health risks associated with concussive and sub-concussive injuries. Combined with the
27 NFL's unilateral power to set rules and policies, the NFL at all relevant times was in a position to
28 dictate how the game would be played and to define the risks to players.

1 75. For these reasons, players and their families have relied on the NFL to: 1)
2 intervene in matters of player safety, 2) to recognize issues of player safety, and 3) to be truthful
3 on the issue of player safety.

4 76. By its position, representations and actions to set rules and policies, the NFL
5 assumed a duty to adhere to these goals.

6 77. The NFL's historical actions in connection with an assumed common law duty to
7 make the game safer and inform players of necessary safety information include, but are not
8 limited to, the following: adding a field judge (1929); establishing hash-marks at 10 yards from
9 the sidelines (1933); establishing the penalty of unnecessary roughness for a deliberate rough
10 contact on the passer after the pass is made (1938); making helmets mandatory (1943); adding a
11 back field judge (1947); establishing a rule that the ball is dead when a runner touches the ground
12 with any part of his body except his hands while in the grasp of an opponent (1955); establishing
13 a rule that the ball is dead immediately if the runner touches the ground with any part of his body
14 except his hands after being contacted by a defensive player (1956); establishing a penalty for
15 grabbing the face mask of any opponent except a runner (1956); establishing a penalty of
16 grabbing the face mask of any opponent (1962); requiring that goal posts be offset from the goal
17 line (1966); establishing a rule that a player who signals for a fair catch cannot block or initiate
18 contact with one of the kicking team's players until the ball touches a player (1967); establishing
19 a rule that a defensive player who jumps or stands on a teammate or who is picked up by a
20 teammate cannot attempt to block an opponent's kick (1973); establishing a rule that no receiver
21 can be blocked below the waist after moving beyond the line of scrimmage (1974); establishing a
22 rule that eligible receivers who take a position more than two yards from the tackle cannot be
23 blocked below the waist (1974); establishing a rule that a defender is not permitted to run or dive
24 into a ball carrier who has fallen to the ground untouched (1976); establishing a rule that it is
25 illegal for a defensive lineman to strike an opponent above the shoulders during his initial charge
26 (1977) (previously the NFL made this illegal only during the first step); establishing that it is
27 illegal for a wide receiver to clip an opponent anywhere (1977); establishing rules as to
28 mandatory equipment (1979); establishing that it is illegal for a player in the backfield to chop an

1 outside rusher on a pass play (1979); establishing that it is illegal to throw a punch or forearm or
2 to kick an opponent (1979); and establishing that it is illegal to strike, swing, or club an opponent
3 in the head, neck or face (1980).

4 78. As the sport's governing entity (with monopolistic power), the NFL has made it
5 known to players and teams alike that the NFL actively and pervasively governs player conduct
6 and health and safety both on and off the field. In public statements since its inception, the NFL
7 has stated that its goals include taking necessary steps for the safety, health and well-being of
8 players and their families.

9 79. Thus, since its inception, and continuing into the present, the NFL has been in a
10 position that affords it a special relationship to NFL players as the guardian of their health and
11 safety. For that reason, from its inception and continuing into the present, the NFL owed a duty
12 of reasonable care to keep NFL players informed of safety risks, to inform NFL players truthfully,
13 and not to mislead NFL players about the risks of permanent neurological damage that can occur
14 from MTBI incurred while playing football.

15 80. On information and belief, over the past two decades, the NFL continued to
16 exercise this common law duty and its unilateral authority to investigate and advise NFL players
17 on many diverse and important topics, and that should have included the recognition of
18 circumstances that can precipitate MTBI, the long-term potential consequences of MTBI to NFL
19 players, and solutions for players who have sustained MTBI.

20 81. Moreover, from 1994 until 2010, the NFL publicly conducted head injury research
21 and openly disputed that any short-term or long-term harmful effects arose from football-related
22 sub-concussive and concussive injuries. The NFL propagated its own falsified research to
23 support its position, despite its historic role as the guardian of player safety, and despite the fact
24 that independent medical scientists had already come to the opposite conclusion.

25 82. As such, the NFL continued its existing common law duty to provide truthful
26 scientific research and information about the risks of concussive and sub-concussive injuries to
27 NFL players, including Junior Seau, who relied on the NFL's research and pronouncements on
28 that subject.

**The NFL Knew the Dangers and Risks Associated with
Repetitive Head Impacts and Concussions**

83. For decades, the NFL has been aware that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

84. For instance, between 1952 and 1994, numerous studies were published in medical journals including the *Journal of the American Medical Association*, *Neurology*, the *New England Journal of Medicine*, and *Lancet* warning of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. These studies collectively established that:

- repetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;
- encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;
- acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;
- with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career; immediate retrograde memory issues occur following concussions; mild head injury requires recovery time without risk of subjection to further injury;
- head trauma is linked to dementia;
- a football player who suffers a concussion requires significant rest before being subjected to further contact; and,
- minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

85. In fact, as early as 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities found in “almost 50 percent of fighters [boxers] . . . if they ke[pt] at the game long enough” (the “Martland study”). The article was published in the *Journal of the American Medical Association*. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease.

1 86. In 1937, the American Football Coaches Association published a report warning
2 that players who suffer a concussion should be removed from sports demanding personal contact.

3 87. In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic
4 encephalopathy in boxers and characterized the disease as a “Parkinsonian” pattern of progressive
5 decline.

6 88. A 1963 study by Drs. Mawdsley & Ferguson published in *Lancet* found that some
7 boxers sustain chronic neurological damages as a result of repeated head injuries. This damage
8 manifested in the form of dementia and impairment of motor function.

9 89. In the 1960s and 70s, the development of the protective face mask in football
10 allowed the helmeted head to be used as a battering ram. By 1975 the number of head and neck
11 injuries from football that resulted in permanent quadriplegias in Pennsylvania and New Jersey
12 lead to the creation of the National Football Head and Neck Registry, which was sponsored by the
13 National Athletic Trainers Association and the Sports Medicine Center at the University of
14 Pennsylvania.

15 90. In the early 1980s, the Department of Neurosurgery at the University of Virginia
16 published studies on patients who sustained MTBI and observed long-term damage in the form of
17 unexpected cognitive impairment. The studies were published in neurological journals and
18 treatises within the United States.

19 91. In 1982, the University of Virginia and other institutions conducted studies on
20 college football teams that showed that football players who suffered MTBI suffered pathological
21 short-term and long-term damage. With respect to concussions, the same studies showed that a
22 person who sustained one concussion was more likely to sustain a second, particularly if that
23 person was not properly treated and removed from activity so that the concussion symptoms were
24 allowed to resolve.

25 92. The same studies showed that two or more concussions close in time could have
26 serious short-term and long-term consequences in both football players and other victims of brain
27 trauma.

28 93. By 1991, three distinct medical professionals/entities, all independent from the

1 NFL—Dr. Robert Cantu of the American College of Sports Medicine, the American Academy of
2 Neurology, and the Colorado Medical Society—developed return-to-play criteria for football
3 players suspected of having sustained head injuries.

4 94. On information and belief, by 1991, the NCAA football conferences and
5 individual college teams’ medical staffs, along with many lower-level football groups had
6 disseminated information and adopted criteria to protect football players even remotely suspected
7 of having sustained concussions.

8 95. In 1999, the National Center for Catastrophic Sport Injury Research at the
9 University of North Carolina conducted a study involving eighteen thousand (18,000) collegiate
10 and high school football players. The research showed that once a player suffered one
11 concussion, he was three times more likely to sustain a second in the same season.

12 96. In 1999, former Pittsburgh Steeler and Hall of Fame inductee Mike Webster filed
13 with the NFL a request that he receive complete disability benefits based on the fact that he had
14 sustained repeated and disabling head impacts while a player for the Steelers. In 1999, Webster
15 submitted extensive medical reports and testimony that stated that Webster suffered from
16 “traumatic or punch drunk encephalopathy [brain disease]” sustained from playing football that
17 left Webster totally and permanently disabled as of 1991.

18 97. The NFL’s own physician independently examined Webster and concluded that
19 Webster was mentally “completely and totally disabled as of the date of his retirement and was
20 certainly disabled when he stopped playing football sometime in 1990.”

21 98. Webster died in 2002 at the age of fifty. In December 2006, his estate received an
22 unpublished opinion from the United States Court of Appeals for the Fourth Circuit which stated
23 that the NFL Plan had acknowledged that the multiple head injuries Webster sustained during his
24 playing career (1974-1990) “. . . had caused Webster eventually to suffer total and permanent
25 mental disability”

26 99. Thus, the NFL, through its own expert medical testimony and the expert testimony
27 submitted by Webster knew and accepted that repetitive traumatic brain injuries sustained by a
28 Hall of Fame player led to long-term encephalopathy and permanent mental disability.

1 100. A 2000 study, which surveyed 1,090 former NFL players, found that more than
2 sixty (60) percent had suffered at least one concussion, and twenty-six (26) percent had suffered
3 three (3) or more, during their careers. Those who had sustained concussions reported more
4 problems with memory, concentration, speech impediments, headaches, and other neurological
5 problems than those who had not been concussed.

6 101. Also in 2000, a study presented at the American Academy of Neurology's 52nd
7 Annual Meeting and authored by Dr. Barry Jordan, Director of the Brain Injury Program at Burke
8 Rehabilitation Hospital in White Plains, New York, and Dr. Julian Bailes, surveyed 1,094 former
9 NFL players between the ages of 27 and 86 and found that: (a) more than 60% had suffered at
10 least one concussion in their careers, with 26% of the players having three or more and 15%
11 having five or more; (b) 51% had been knocked unconscious more than once; (c) 73% of those
12 injured said they were not required to sit on the sidelines after their head trauma; (d) 49% of the
13 former players had numbness or tingling; 28% had neck or cervical spine arthritis; 31% had
14 difficulty with memory; 16% were unable to dress themselves; 11% were unable to feed
15 themselves; and (3) eight suffered from Alzheimer's disease.

16 102. In 2004, a convention of neurological experts in Prague met with the aim of
17 providing recommendations for the improvement of safety and health of athletes who suffer
18 concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-date
19 research. These experts recommended that a player never be returned to play while symptomatic,
20 and coined the phrase, "when in doubt, sit them out."

21 103. This echoed similar medical protocol established at a Vienna conference in 2001.

22 104. These two conventions were attended by predominately American doctors who
23 were experts and leaders in the neurological field.

24 105. The University of North Carolina's Center for the Study of Retired Athletes
25 published survey-based papers in 2005 through 2007 that found a strong correlation between
26 depression, dementia, and other cognitive impairment in NFL players and the number of
27 concussions those players had received.

28 106. An article in 2010 in the *New England Journal of Medicine* entitled "Traumatic

1 Brain Injury—Football, Warfare, and Long-Term Effects,” demonstrated that even mild
2 “traumatic brain injury” (“TBI”) can have lasting consequences that are manifest later in the
3 football player’s life.

4 107. Indeed, while the NFL knew for decades of the harmful effects of sub-concussive
5 and concussive injuries on a player’s brain, it actively concealed these facts from players and the
6 public.

7 108. While other sports were making changes to play safer, the NFL consistently and
8 publicly denied that football-related impacts had any connection to long-term brain injury. As
9 recently as 2009, the league’s medical committee continued to assert that there were no long-term
10 negative health risks associated with concussions or other football-related head impacts.

11 109. The NFL deliberately concealed the fact that playing in the NFL could lead to
12 permanent irreversible brain damage from players. Instead of being honest about the dangers and
13 working with both players and the medical community to minimize them, the league repeatedly
14 asserted that professional football players were at no greater risk of brain or neurological injury
15 than the public at large.

16 110. On information and belief during every decade referenced above, the NFL was
17 advised by physicians of all kinds regarding the risks associated with playing the game of
18 football, including the risks associated with head impacts and MTBI.

19 111. As described above, the NFL has known for decades that MTBI can and does lead
20 to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and
21 CTE and its related symptoms.

22 112. Rather than take immediate measures to protect NFL players from these known
23 dangers, between the 1950s and 1994, the NFL failed to disseminate to then-current and former
24 NFL players relevant health information it possessed regarding the significant risks associated
25 with MTBI.

26 **The NFL Voluntarily Undertook the Responsibility of Studying Head Impacts In Football,**
27 **Yet Fraudulently Concealed Their Long-Term Effects.**

28 113. In 1994, then NFL commissioner Paul Tagliabue agreed to fund a committee to

1 study the issue of head injury in the NFL. The NFL voluntarily and unilaterally formed the MTBI
2 Committee to study the effects of concussions and sub-concussive injury on NFL players.

3 114. By the time of the MTBI Committee's formation in 1994 independent scientists
4 and neurologists alike were already convinced that all concussions—even seemingly mild ones—
5 were serious injuries that can permanently damage the brain, impair thinking ability and memory,
6 and hasten the onset of mental decay and senility, especially when they are inflicted frequently
7 and without time to properly heal.

8 115. With the MTBI Committee, the NFL voluntarily inserted itself into the private and
9 public discussion and research on the effects of repetitive head impacts in football. Through its
10 voluntary creation of the MTBI Committee, the NFL affirmatively assumed a duty to use
11 reasonable care in the study of concussions and post-concussion syndrome in NFL players; the
12 study of any kind of brain trauma relevant to the sport of football; the use of information
13 developed; and the publication of data and/or pronouncements from the MTBI Committee.

14 116. Rather than exercising reasonable care in these duties, the NFL immediately
15 engaged in a course of fraudulent and negligent conduct, which included dissemination of
16 disinformation designed to (a) dispute accepted and valid neuroscience regarding the connection
17 between repetitive traumatic brain injuries and concussions and degenerative brain disease such
18 as CTE; and (b) to create a falsified body of research which the NFL could cite as proof that
19 truthful and accepted neuroscience on the subject was inconclusive and subject to doubt.

20 117. The NFL's status in football gave the MTBI Committee's pronouncements on
21 concussions authority and validity. The MTBI Committee was purportedly geared toward
22 "improv[ing] player safety" and for the purpose of instituting "rule changes aimed at reducing
23 head injuries." Players like Junior Seau, therefore, reasonably relied on the NFL's
24 pronouncements and/or silence on this vital health issue.

25 118. The NFL did not appoint any neuropathologist to the MTBI Committee.

26 119. The MTBI Committee was publicized by the NFL as independent from the NFL,
27 consisting of a combination of doctors and researchers.

28 120. The MTBI Committee, however, was not independent. It consisted of at least five

1 (5) persons who were already affiliated with the NFL.

2 121. Instead of naming a noted neurologist or a physician trained to treat head injuries
3 to chair the MTBI Committee, Commissioner Tagliabue appointed Dr. Elliot Pellman, a
4 rheumatologist who lacked any specialized training or education relating to concussions, and who
5 was a paid physician and trainer for the New York Jets. Dr. Pellman had reportedly been fired by
6 Major League Baseball for lying to Congress regarding his resume. At no time was Dr. Pellman
7 independent of the NFL, because he was paid on an ongoing basis by an NFL Team.

8 122. Dr. Pellman would chair the MTBI Committee from 1994-2007, and his leadership
9 of the Committee came under frequent and harsh criticism related to his deficient medical
10 training, background, and experience.

11 123. Dr. Pellman and two other MTBI Committee members, Dr. Ira Casson, a
12 neurologist, and Dr. David Viano, a biomedical engineer, worked to discredit scientific studies
13 that linked head impacts and concussions received by NFL players to neuro-cognitive disorders
14 and disabilities.

15 124. The MTBI Committee did not publish its first findings on active players until
16 2003. In that publication, the MTBI Committee stated, contrary to years of (independent)
17 findings, that there was no long term negative health consequence associated with concussions.

18 125. The MTBI Committee published its subsequent findings in a series of sixteen (16)
19 papers between 2003 and 2009. According to the MTBI Committee, all of their findings
20 supported a conclusion that there was no long term negative health consequence associated with
21 concussions or sub-concussive injuries sustained by NFL players. These findings regularly
22 contradicted the research and experiences of neurologists who treat sports concussions and the
23 players who endured them.

24 126. For example, in 2004 the MTBI Committee published a conclusion in which it
25 claimed that its research found no risk of repeated concussions in players with previous
26 concussions and that there was no “7-to-10 day window of increased susceptibility to sustaining
27 another concussion.”

28 127. In a comment to this publication, one independent doctor wrote that “[t]he article

1 sends a message that it is acceptable to return players while still symptomatic, which contradicts
2 literature published over the past twenty years suggesting that athletes be returned to play only
3 after they are asymptomatic, and in some cases for seven days.”

4 128. As a further example, an MTBI Committee conclusion in 2005 stated that
5 “[p]layers who are concussed and return to the same game have fewer initial signs and symptoms
6 than those removed from play. Return to play does not involve a significant risk of a second
7 injury either in the same game or during the season.” “These data suggest,” the MTBI Committee
8 reported, “that these players were at no increased risk” of subsequent concussions or prolonged
9 symptoms such as memory loss, headaches, and disorientation.

10 129. Yet, a 2003 NCAA study of 2,905 college football players found just the opposite:
11 “Those who have suffered concussions are more susceptible to further head trauma for seven to
12 10 days after the injury.”

13 130. Support for this same conclusion was developed as early as 1982 in studies
14 conducted at the University of Virginia.

15 131. Dr. Pellman and his group stated repeatedly that the NFL study showed “no
16 evidence of worsening injury or chronic cumulative effects of multiple [MTBI] in NFL players.”

17 132. Yet, the 2003 report by the Center for the Study of Retired Athletes at the
18 University of North Carolina found a link between multiple concussions and depression among
19 former professional players with histories of concussions. A 2005 follow-up study by the Center
20 showed a connection between concussions and both brain impairment and Alzheimer’s disease
21 among retired NFL players.

22 133. Other contrary conclusions that the MTBI Committee published at the behest,
23 urging, and sponsorship of NFL over several years include, but are not limited to, the following:
24 Drs. Pellman and Viano stated that because a “significant percentage of players returned to play
25 in the same game [as they suffered a concussion] and the overwhelming majority of players with
26 concussions were kept out of football-related activities for less than 1 week, it can be concluded
27 that mild [TBIs] in professional football are not serious injuries”; that NFL players did not show a
28 decline in brain function after a concussion; that there were no ill effects among those who had

1 three (3) or more concussions or who took hits to the head that sidelined them for a week or more;
2 that “no NFL player experienced the second-impact syndrome or cumulative encephalopathy
3 from repeat concussions”; and that NFL players’ brains responded and healed faster than those of
4 high school or college athletes with the same injuries.

5 134. The MTBI Committee’s papers and conclusions were against the weight of the
6 scientific evidence and based on biased data-collection techniques. They received significant
7 criticism in the scientific and medical media from independent doctors and researchers and were
8 met with skepticism in peer review segments following each article’s publication.

9 135. Moreover, the conclusions of the MTBI Committee completely contradicted the
10 testimony of the NFL’s own paid expert submitted in connection with Mike Webster’s permanent
11 disability application.

12 136. Renowned experts Dr. Robert Cantu and Dr. Julian Bailes wrote harshly critical
13 reviews of the studies’ conclusions.

14 137. Dr. Cantu observed that the extremely small sample size and voluntary
15 participation in the MTBI Committee’s study suggested there was bias in choosing the sample.
16 According to Dr. Cantu, no conclusions should be drawn from the NFL study.

17 138. A different scientist who reviewed the MTBI Committee’s work further stated that
18 the NFL appeared to be primarily preparing a defense for when injured players eventually sued,
19 and that it seemed to be promoting a flawed scientific study to justify its conclusion that
20 concussions do not have adverse effects on players.

21 139. Also, the MTBI Committee failed to include hundreds of neuropsychological tests
22 done on NFL players in the results of the Committee’s studies on the effects of concussions and
23 was selective in its use of injury reports.

24 140. For instance, the results reported by Dr. Pellman and the MTBI Committee
25 selectively excluded at least 850 baseline tests. In a paper published in Neurosurgery in
26 December 2004, Dr. Pellman and the other MTBI Committee members reported on the baseline
27 data for 655 players and the results for 95 players who had undergone both baseline testing and
28 post-concussion testing. They concluded that NFL players did not show a decline in brain

1 function after suffering concussions. Their further analysis purportedly found no ill effects
2 among those who had three or more concussions or who took hits to the head that kept them out
3 for a week or more. The paper did not explain where the players in the study groups came from
4 specifically or why certain player data was included and that data from hundreds of other players
5 was not.

6 141. Dr. Kevin Guskiewicz has stated that the “data that hasn’t shown up makes their
7 work questionable industry-funded research.”

8 142. Pellman subsequently fired William Barr, a neuropsychologist for the New York
9 Jets, after Dr. Barr presented at a conference some NCAA study findings that contradicted NFL
10 practices.

11 143. As described in the following paragraphs, when faced with studies which tended to
12 show a causal link between MTBI and cognitive degeneration, the NFL, through the MTBI
13 Committee, produced contrary findings that were false, distorted, and deceptive to NFL players,
14 participants in football nationwide, and the public at large.

15 144. Between 2002 and 2007, Dr. Bennet Omalu examined the brain tissue of deceased
16 NFL players, including Mike Webster, Terry Long, Andre Waters, and Justin Strzelczyk. Dr.
17 Omalu concluded that the players suffered from CTE. These individuals suffered multiple
18 concussions during their NFL careers, and later in life exhibited symptoms of deteriorated
19 cognitive functions, paranoia, panic attacks, and depression. Dr. Omalu’s findings were
20 published in *Neurosurgery*, where he concluded that Webster’s and Long’s respective deaths
21 were partially caused by CTE and were related to multiple concussions suffered during their
22 activity in the NFL.

23 145. In response to Dr. Omalu’s articles, the MTBI Committee wrote a letter to the
24 editor of *Neurosurgery* asking that Dr. Omalu’s article be retracted.

25 146. In another *Neurosurgery* article published in 2007, Dr. Cantu reached a similar
26 conclusion regarding Andre Waters as Dr. Omalu had reached regarding Mike Webster and Terry
27 Long.

28 147. A 2003 study, partially authored by Dr. Kevin Guskiewicz, analyzed data from

1 almost 2,500 retired NFL players and found that 263 of the retired players suffered from
2 depression. The study found that having three or four concussions meant twice the risk of
3 depression and five or more concussions meant a nearly three-fold risk.

4 148. The NFL's MTBI Committee attacked these studies.

5 149. In November 2003, Dr. Guskiewicz was scheduled to appear on HBO's "Inside the
6 NFL" to discuss his research. Dr. Pellman called Dr. Guskiewicz in advance and questioned
7 whether it was in the best interest of Dr. Guskiewicz to appear on the program. On the program,
8 Dr. Pellman stated unequivocally that he did not believe the results of the study led by Dr.
9 Guskiewicz.

10 150. In 2005, Dr. Guskiewicz performed a clinical follow-up study, and found that
11 retired players who sustained three or more concussions in the NFL had a five-fold prevalence of
12 mild cognitive impairment in comparison to NFL retirees without a history of concussions. In
13 doing this research, Dr. Guskiewicz conducted a survey of over 2,550 former NFL athletes.

14 151. The MTBI Committee attacked and sought to undermine the study, stating: "We
15 want to apply scientific rigor to this issue to make sure that we're really getting at the underlying
16 cause of what's happening. . . . You cannot tell that from a survey."

17 152. In August 2007, the NFL issued a concussion pamphlet to players which stated:
18 Current research with professional athletes has not shown that having more than one or two
19 concussions leads to permanent problems if each injury is managed properly. It is important to
20 understand that there is no magic number for how many concussions is too many. Research is
21 currently underway to determine if there are any long-term effects of concussion[s] in NFL
22 athletes.

23 153. At the same time, NFL Commissioner Roger Goodell said, "We want to make sure
24 all NFL players . . . are fully informed and take advantage of the most up to date information
25 and resources as we continue to study the long-term impact of concussions." Yet, the "most up to
26 date information" included the various independent studies indicating a causal link between
27 multiple concussions and cognitive decline in later life, information which the NFL did not share
28 with players.

1 154. Goodell also stated, “[b]ecause of the unique and complex nature of the brain, our
2 goal is to continue to have concussions managed conservatively by outstanding medical personnel
3 in a way that clearly emphasizes player safety over competitive concerns.”

4 155. Players like Junior Seau relied to their detriment on the NFL’s disinformation, all
5 of which was contrary to the findings of the independent scientists who had studied the issue,
6 including Drs. Guskiewicz, Cantu, Omalu, and Bailes, regarding the causal link between multiple
7 head injuries and concussions and cognitive decline.

8 156. In February 2007, Dr. Pellman resigned as chair of the Committee, following
9 increasing media scrutiny over the MTBI Committee’s studies. He was replaced as chair by Dr.
10 Ira Casson and Dr. David Viano, but remained a member of the Committee.

11 157. Dr. Guskiewicz, research director of the University of North Carolina’s Center for
12 the Study of Retired Athletes, said at the time that Dr. Pellman was “the wrong person to chair the
13 committee from a scientific perspective and the right person from the league’s perspective.”

14 158. Regarding Dr. Pellman’s work, Dr. Guskiewicz stated, “[w]e found this at the high
15 school level, the college level and the professional level, that once you had a concussion or two
16 you are at increased risk for future concussions,” but “[Dr. Pellman] continued to say on the
17 record that’s not what they find and there’s no truth to it.”

18 159. Drs. Casson and Viano continued to dismiss outside studies and overwhelming
19 evidence linking dementia and other cognitive decline to brain injuries. In 2007, in a televised
20 interview on HBO’s Real Sports, Dr. Casson unequivocally stated that there was no link between
21 concussions and depression, dementia, Alzheimer’s disease, or “anything like [that] whatsoever.”

22 160. In June 2007, the NFL convened a concussion summit for team doctors and
23 trainers. Independent scientists, including Drs. Cantu, and Guskiewicz, presented their research
24 to the NFL.

25 161. Dr. Julian Bailes, a neurosurgeon from West Virginia University, briefed the
26 MTBI Committee on the findings of Dr. Omalu and other independent studies linking multiple
27 NFL head injuries with cognitive decline. Dr. Bailes recalled that the MTBI’s Committee’s
28 reaction to his presentation was adversarial: “The Committee got mad . . . we got into it. And

1 I'm thinking, 'This is a . . . disease in America's most popular sport and how are its leaders
2 responding? Alienate the scientist who found it? Refuse to accept the science coming from
3 him?'"

4 162. At the summit, Dr. Casson told team doctors and trainers that CTE has never been
5 scientifically documented in football players.

6 163. In 2008, Boston University's Dr. Ann McKee found CTE in the brains of two
7 more deceased NFL players, John Grimsley and Tom McHale. Dr. McKee stated, "the easiest
8 way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of
9 concussions." Dr. McKee further noted that "[t]here is overwhelming evidence that [CTE] is the
10 result of repeated sublethal brain trauma."

11 164. A MTBI Committee representative characterized each study as an "isolated
12 incident" from which no conclusion could be drawn, and said he would wait to comment further
13 until Dr. McKee's research was published in a peer-reviewed journal. When Dr. McKee's
14 research was published in 2009, Dr. Casson asserted that "there is not enough valid, reliable or
15 objective scientific evidence at present to determine whether . . . repeat head impacts in
16 professional football result in long[-]term brain damage."

17 165. In 2008, under increasing pressure, the NFL commissioned the University of
18 Michigan's Institute for Social Research to conduct a study on the health of retired players. Over
19 1,000 former NFL players took part in the study. The results of the study, released in 2009,
20 reported that "Alzheimer's disease or similar memory-related diseases appear to have been
21 diagnosed in the league's former players vastly more often than in the national population--
22 including a rate of 19 times the normal rate for men ages 30 through 49."

23 166. The NFL responded to these results by claiming that the study was incomplete,
24 and that further findings would be needed. NFL spokesperson Greg Aiello stated that the study
25 was subject to shortcomings and did not formally diagnose dementia. Dr. Casson implied that the
26 Michigan study was inconclusive and stated that further work was required. Other experts in the
27 field found the NFL's reaction to be "bizarre," noting that "they paid for the study, yet they tried
28 to distance themselves from it."

1 167. At a Congressional hearing in October 2009, NFL Commissioner Roger Goodell
2 acknowledged that the NFL owes a duty to the public at large to educate them as to the risks of
3 concussions due to the League’s unique position of influence: “In addition to our millions of fans,
4 more than three million youngsters aged 6-14 play tackle football each year; more than one
5 million high school players also do so and nearly seventy five thousand collegiate players as well.
6 We must act in their best interests even if these young men never play professional football.”

7 168. In January 2010, the House Judiciary Committee held further hearings on football
8 player head injuries. Representative Conyers observed that “until recently, the NFL had
9 minimized and disputed evidence linking head injuries to mental impairment in the future.”

10 169. In the 2010 Congressional hearings, Dr. Casson gave testimony that denied the
11 validity of other non-NFL studies and stated that “[t]here is not enough valid, reliable or objective
12 scientific evidence at present to determine whether or not repeat head impacts in professional
13 football result in long term brain damage.”

14 170. The members of the MTBI Committee, however, knew of the decades-old studies
15 linking MTBI to long-term neurological problems. Casson, a MTBI Committee member since its
16 inception, stated before Congress on January 4, 2010, that he was “the lead author of a landmark
17 paper on brain damage in modern boxers that was published in the [Journal of the American
18 Medical Association] in 1984.” That paper, which referenced the many studies documenting
19 CTE in boxers, studied eighteen former and active boxers and found that eighty-seven percent of
20 the professional boxers had definite evidence of brain damage. Specifically, the study determined
21 that the subjects performed particularly poorly on neuropsychological tests measuring short-term
22 memory.

23 171. In his written statement to Congress, Casson stated that he has “been concerned
24 about the possibility of long term effects on the brain related to football for close to thirty years.”
25 Dr. Casson offered that one of the reasons he “was asked to be on the NFL MTBI committee was
26 because of [his] knowledge of and experience treating boxers with chronic traumatic
27 encephalopathy (CTE).”

28 172. This testimony contradicted Casson’s testimony that “there is not enough valid,

1 reliable or objective scientific evidence at present to determine whether or not repeat head
2 impacts in professional football result in long term brain damage.”

3 The NFL's New Committee

4 173. In 2010, the NFL re-named the MTBI Committee the “Head, Neck, and Spine
5 Medical Committee” (the “Medical Committee”) and announced that Dr. Pellman would no
6 longer be a member of the panel. Drs. H. Hunt Batjer and Richard G. Ellenbogen were selected
7 to replace Casson and Viano. The two new co-chairmen selected Dr. Mitchel S. Berger to serve
8 on the new Medical Committee.

9 174. The new Committee admitted that the data collected by the NFL's former
10 appointed brain-injury leadership was “infected,” and that there was an “inherent conflict of
11 interest that was there in many areas, that was not acceptable by any modern standards or not
12 acceptable to us.”

13 175. In June 2010, scientific evidence linked multiple concussions to yet another
14 degenerative brain disease—Amyotrophic Lateral Sclerosis (“ALS”), commonly referred to as
15 “Lou Gehrig’s Disease.”

16 176. In June 2010 the NFL finally informed players about the risk of repeated brain
17 injury. It issued a warning poster and pamphlet, which warned active players of the long term
18 risks associated with multiple concussions, including dementia, memory loss, and CTE. It quoted
19 the Center for Disease Control’s conclusions that, “traumatic brain injury can cause a wide range
20 of short or long term changes affecting thinking, sensation, language or emotions.” The NFL also
21 informed players, “[t]hese changes may lead to problems with memory or communication,
22 personality changes, as well as depression and early onset dementia. Concussions and conditions
23 resulting from repeated brain injury can change your life and your family’s life forever.”

24 177. On February 17, 2011, former Chicago Bears and New York Giants player Dave
25 Duerson committed suicide at age 50. Duerson had suffered months of headaches, blurred vision,
26 and faltering memory. After his death, Dr. Cantu determined that Duerson was suffering from
27 CTE.

28 178. In October 2011, Dr. Mitchel Berger of the NFL’s new Head, Neck, and Spine

1 Medical Committee announced that a new study was in the planning process. He admitted that
2 the MTBI Committee's previous long-range study was useless because "[t]here was no science in
3 that." Dr. Berger further stated that data from the previous study would not be used. "We're
4 really moving on from that data. There's really nothing we can do with that data in terms of how
5 it was collected and assessed."

6 179. Why in 1994 (and far earlier) the NFL (and its MTBI Committee) failed to share
7 accurate information and take appropriate actions is difficult to comprehend in light of the fact
8 that the NFL has known for decades that multiple blows to the head can lead to long-term brain
9 injury, including memory loss, dementia, depression, and CTE and its related symptoms. Instead,
10 the NFL misled players, coaches, trainers, and the public, and actively spread disinformation.

11 180. It took decades for the NFL to admit that there was a problem and sixteen years to
12 admit that its information was false and inaccurate. The NFL's conduct in this regard is willful
13 and wanton and exhibits a reckless disregard for the safety of its players and the public at large.
14 At a minimum, the NFL acted with callous indifference to the duty it voluntarily assumed to
15 Junior Seau and players at every level of the game.

16 181. As a direct result of the fraudulent concealment and misrepresentations by the
17 NFL, former players, including Junior Seau, had for many decades been led to believe that the
18 symptoms of early-onset dementia, loss of memory, headaches, confusion, insomnia, depression
19 and the inability to function were not caused by their play in the NFL. And, as a result of this
20 willful and malicious conduct, these former players were deprived of medical treatment, incurred
21 expenses, lost employment, suffered humiliation, and sustained other damages to be specified.

22 **GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS AGAINST THE**
23 **RIDDELL DEFENDANTS**

24 182. The Riddell Defendants have operated as a business through designing,
25 developing, manufacturing, selling, and distributing football equipment, including helmets, in one
26 form or another, since 1922.

27 183. As early as the 1930s, players began using helmets during football games. These
28 early helmets were constructed from pieces of cobbled leather.

1 184. In the early 1940s, John T. Riddell, who later formed John T. Riddell
2 Incorporated, invented the first plastic suspension helmet. In 1949, plastic helmets became
3 legalized.

4 185. Throughout the latter half of the 20th century and continuing to present day, the
5 Riddell Defendants have designed, developed, manufactured, sold, and distributed equipment
6 used in the NFL, including equipment used by Junior Seau, including, but not limited to, the
7 following:

8 (a) In the 1950s, the Riddell Defendants manufactured a face-mask component for its
9 helmets, which was eventually patented.

10 (b) In 1962, the Riddell Defendants used a “U” shaped nose protector with a shell
11 (known as the TK2) molded out of polycarbonate. The Riddell Defendants also designed an
12 open/closed cell foam and composite liner system for this model to increase the efficiency of the
13 webbed suspension.

14 (c) In 1963, the Riddell Defendants developed the TAK-29 helmet, which was the
15 first to use air inflation for fitting the helmet snug to the head. The TAK-29 shell, like the TK2,
16 displayed the protective polycarbonate plastic, in addition to including tough shock and cut-
17 resistant face-mask attachment straps.

18 (d) In 1969, recognizing that head protection was a key factor in helmet design
19 requiring durable head protection, the Riddell Defendants constructed a micro-fit helmet model
20 with injection molding technology to create a one piece shell to improve the structural integrity of
21 the entire helmet.

22 (e) In 1973, the Riddell Defendants developed, designed, manufactured, sold, and/or
23 distributed an air cushion helmet whose interior system consisted of individual vinyl air cushions
24 with layers of fitting and energy absorbing foam. When a blow was struck, the air in the cushion
25 was expelled through a single vent, greatly reducing the initial impact. With the exhausting of the
26 air cushion, the compressed fitting foam was further compressed, reducing impact.

27 (f) In 1977, the Riddell Defendants developed, designed, manufactured, sold, and/or
28 distributed a stainless steel face-mask which offered greater bend resistance that prevented helmet

1 breakage at the drill holes.

2 (g) In 1981, the Riddell Defendants developed, designed, manufactured, sold, and/or
3 distributed an Air Cushion Engineered helmet.

4 (h) In 1982, the Riddell Defendants developed, designed, manufactured, sold, and/or
5 distributed a M155 helmet model with a combination of foam and liquid-filled cells used for
6 padding. On impact, the liquid would be throttled from one cell to the next, resulting in energy
7 attenuation. The M155 helmet model included one-piece injection-molded face-masks which
8 were mar and rust-resistant, in addition to polyurethane face mask straps and universal jaw pads.

9 (i) In 2002, the Riddell Defendants developed, designed, manufactured, sold, and/or
10 distributed the Riddell Revolution helmet designed with the intent of reducing the risk of
11 concussion.

12 (j) In 2003, the Riddell Defendants developed, designed, manufactured, sold, and/or
13 distributed a real-time, Head Impact Telemetry System (HITS) to monitor and record significant
14 incidences of head impact sustained during a football game or practice. The system measured the
15 location, magnitude, duration, and direction of head acceleration and transmitted that information
16 wirelessly to the sideline.

17 (k) In 2006, the Riddell Defendants provided a research grant to the University of
18 Pittsburgh Medical Center for head injury research. The study compared rates of high school
19 athletes who wore the Riddell Revolution helmet with those who wore traditional helmets.

20 (l) In 2007, the Riddell Defendants developed, designed, manufactured, sold, and/or
21 distributed an individual helmet system, Revolution IQ Hits™, allowing players to monitor the
22 number and severity of impacts received during games and practices. On-board electronics
23 record every impact, allowing players to upload and evaluate each occurrence on their home
24 computers.

25 (m) In 2011, the Riddell Defendants developed, designed, manufactured, sold, and/or
26 distributed the 360 helmet which uses energy-managing materials and a face mask attachment
27 system to disperse the energy of frontal impacts. According to Riddell, it developed this helmet
28 using over 1.4 million impacts collected through Riddell's HITS technology.

1 186. The Riddell Defendants' helmets are currently the official helmets of the NFL. As
2 the official helmets for the NFL, the Riddell logo is the only helmet logo the NFL allows to be
3 displayed on helmets worn by players during NFL games. Upon information and belief, Junior
4 Seau wore Riddell helmets at times while playing and/or practicing during his NFL career.

5 187. The Riddell Defendants at all times herein mentioned engaged in the business of
6 selling, manufacturing, designing, testing, engineering, marketing, modifying, assembling,
7 inspecting, distributing, and controlling the helmets and other similar equipment for use by Junior
8 Seau and within the NFL.

9 188. Players did not know the long-term effects of concussions and relied on the NFL
10 and Riddell to protect them.

11 **The Riddell Defendants' Duty to Protect**
12 **Against the Long-Term Risk of Concussions**

13 189. Despite years of science and medicine linking the risk of long term brain injury
14 from repeat concussions, it was not until the release of the Revolution Helmet wherein a
15 notification reminding players to "sit out" if they suffer a concussion was placed on the
16 Revolution helmet.

17 190. Around the same time period, the Riddell Defendants developed the HITS system
18 to monitor the severity and incident of impacts that a player receives.

19 191. Based on a 2003 University of Pittsburgh Medical Center study funded by a grant
20 from the Riddell Defendants, the Riddell Defendants began to market the Revolution helmet as
21 reducing concussions by 31%.

22 192. However, both the HITS system and the Revolution helmet, both created by the
23 Riddell Defendants and their employees have been criticized by experts for their inaccurate
24 marketing as being safer in reducing the risk of concussion.

25 193. A study published in the Journal of Neurosurgery showed that the study by UPMC
26 was flawed in that it discounted low impact hits and in turn proved that the Revolution did not
27 reduce the risk of concussions.

28 194. Even to this day the Riddell Defendants do not acknowledge a link between repeat

1 concussions and later life cognitive problems.

2 195. In fact, the Riddell Defendants have never warned any player or retired player of
3 the long-term health effects of concussions.

4 **ALLEGATIONS REGARDING JUNIOR SEAU**

5 **Junior Seau's Rise as an NFL Superstar**

6 196. Junior Seau joined the NFL in 1990 as a member of the San Diego Chargers.

7 197. For the next twenty seasons, he was one of the league's best linebackers, a position
8 which caused him to suffer repeated subconcussions and concussions.

9 198. Recognized as a powerful, positive, and versatile force on the football field, Junior
10 Seau was named to the Pro Football Hall of Fame's All-Decade Team of the 1990s and for 12
11 consecutive years was selected to play in the NFL's all-star Pro Bowl. In 2000, he became the
12 highest paid linebacker in the NFL.

13 199. Junior Seau was also known for his work off of the field improving the lives of
14 others. In 1992, he founded the Junior Seau Foundation. The Foundation provided more than \$4
15 million of funding for San Diego community services for children and young adults, including
16 hundreds of scholarships to college-bound students through the Scholars of Excellence program.

17 200. From his own childhood, Junior Seau knew how the holidays could be particularly
18 painful for low-income families. He annually played Santa Claus, taking 250 children to buy
19 gifts for friends and family through his Shop with a Jock Program and funded Thanksgiving
20 dinner in his restaurant for 700 homeless shelter residents, victims of domestic violence, and
21 military families.

22 201. During his life, Junior Seau's years of philanthropic spirit and work were
23 celebrated both by the San Diego community and nationally. His charisma as a celebrity player
24 inspired his fellow athletes to make contributions to their own communities. As a result of these
25 efforts, he was selected as the NFL's Man of the Year in 1994 and honored by President George
26 W. Bush with the Volunteer Service Award in 2005.

27 202. The Junior Seau revered by his fans and community also had a family. Seau's
28 family life was a loving and warm haven. Junior Seau had four children whom he loved and

1 adored, sons Tyler, Jake, and Hunter and a daughter Sydney. At the beginning of his career, Seau
2 was a loving parent and husband, regarded as a “teddy bear” by his children.

3 **The NFL’s Failures and Misrepresentations Expose Junior Seau to Long-Term Brain**
4 **Injury**

5 203. During his professional career, Junior Seau led his teams to two Super Bowls and
6 was known by teammates for his focus, discipline, and intensity as a teammate and a player.

7 204. Nicknamed the “Tasmanian Devil”, Seau was extolled by the NFL, the fans, and
8 his peers for his on-field aggression and zeal. He was known as a warrior, the invincible patriarch
9 who could be depended on to play through injuries.

10 205. His body received countless blows which caused injuries over the years. The
11 impacts that his body routinely absorbed caused subconcussions and concussions due to the
12 significant force of the impacts.

13 206. Junior Seau suffered from extensive injuries throughout his NFL career, including,
14 among many others, a chronic torn rotator cuff, shattered bones in his forearm, chronic ankle,
15 knee, shoulder, toe injuries, back pain, and severe bruising all over his body on a regular basis.
16 Yet he rarely missed games for these injuries or even complained about pain or injuries. Instead,
17 he received injections for pain and inflammation to play through his ever-present injuries.

18 207. As alleged above, the NFL engaged in a deliberate and systematic campaign to
19 ignore, conceal and fraudulently misrepresent the facts about football-related impacts and long-
20 term brain injury. As a result, Junior Seau was not armed with critical information necessary for
21 his own safety.

22 208. He suffered innumerable blows directly to his head during his NFL career, both
23 sub-concussive and concussive. Several times he was hit in the head so hard that he sustained
24 facial lacerations.

25 209. Seau also suffered from and reported symptoms of head injuries from playing in
26 NFL games, including dizziness during and after playing, dizziness when he turned his head, and
27 becoming dazed after being hit during games.

28 210. On numerous occasions, Seau left the field because he was dazed. He would sit on

1 the sidelines until he regained his bearings and he would then return to the games.

2 211. Seau often related that he had suffered concussions from playing and had
3 headaches from those concussions. He would regularly ask for pain medications, such as aspirin,
4 Motrin, Tylenol, Excedrin, from his family and friends and took them in to help ease the
5 headache pain.

6 212. By returning to games while he was still suffering the symptoms of
7 subconcussions or concussions, Junior Seau was exposed to the risk of greater trauma to his brain.
8 As shown by a recent study by the National Institutes of Health, Junior Seau suffered significant
9 long term brain damage, including CTE. Junior Seau reasonably relied on the NFL's fraudulent
10 concealment and affirmative misrepresentations regarding the danger of subconcussions and
11 concussions and related symptoms and the danger of returning to play, which proximately caused
12 his injuries, including CTE.

13 **Junior Seau Shows Symptoms of Injury**

14 213. During the mid-1990's, around the time of Junior Seau's reports of dizziness and
15 other symptoms of concussion and secondary to repetitive hits, there was a noted change in his
16 behavior and functioning.

17 214. Junior Seau's behavior became erratic. The man who was once the cornerstone of
18 his team and his family began exhibiting emotional instability.

19 215. During this time, Seau developed severe insomnia which plagued him until his
20 death. He would awake at 1:00-2:00 a.m. and not be able to return to sleep.

21 216. Seau always dreaded the "dumb jock" stereotype and cultivated his mind in
22 addition to his body. Always striving to improve his memory, concentration, problem-solving
23 skills, logical thinking and forethought, he was an avid student of chess. Those around him were
24 used to him being sharp, disciplined, ready to pounce not only physically but cognitively. But as
25 the seasons of abuse to his brain set in, others found that he became forgetful and unable to
26 concentrate or focus. Both at work and at home, people noticed that he could not remember their
27 discussions, he misplaced things and forgot appointments.

28 217. Unfortunately, Junior Seau's spiral extended far beyond forgetfulness. His

1 increasing emotional instability resulted in uncharacteristically self-destructive, aggressive and
2 violent behavior. He began to suffer extreme depression and became withdrawn from his family,
3 including his children. The changes in his behavior impacted his ability to relate to others. He
4 became unable to maintain meaningful relationships with those whom he loved or to form any
5 new meaningful relationships with others.

6 218. His children had to adapt to a new version of their father. When he was lost in
7 periods of depression he became irrational and unreachable. They would look into his eyes and
8 not recognize the person with whom they were now dealing.

9 219. In his business ventures, for many years, Junior Seau was responsible and
10 thorough. In the areas where he lacked experience or knowledge, he educated himself. He was
11 involved in his businesses, and the success of his businesses reflected such involvement.

12 220. As his brain disintegrated from repeated trauma, tasks and decisions that Seau
13 previously undertook became impossible for him. He made impulsive, ill-advised business
14 decisions that he formerly had been too savvy and thoughtful to make. He no longer listened to
15 his qualified advisors, could no longer discuss business figures and no longer possessed reasoned
16 business judgment.

17 **Junior Seau Spirals Downward, Culminating In His Tragic Suicide**

18 221. The once warm and gentle Junior became extremely irritable and short tempered.
19 He lashed out both verbally and physically at his staff, friends, and family. As a result, his
20 businesses and investments began to deteriorate and lose value.

21 222. The disciplined, health conscious Junior Seau also disappeared. He previously had
22 been known for preaching good health through healthy eating and exercise. He had always been
23 careful about drinking in moderation and rarely drank during the football season. As his life
24 began to spiral and he became unable to cope, alcohol became a method of self-medicating for
25 Seau. He entered a devastating cycle of depression and alcohol abuse.

26 223. This cycle of depression magnified other vices which Seau had previously enjoyed
27 in moderation. He became a compulsive, manic gambler. Seau's impulsivity and inability to
28 soundly reason threw him into gambling binges, where against the pleading of those close to him,

1 he lost significant amounts of money in an attempt to make back business losses.

2 224. The above mentioned problems, including insomnia, depression, alcohol abuse,
3 inability to relate to friends and family, irrational decisions, diminished cognitive function, and
4 gambling problems are all well established effects of neuro-degenerative injuries, including CTE.
5 Tragically, on May 2, 2012, these injuries and the problems which were proximately caused by
6 them, caused Junior Seau to take a gun and shoot himself in the chest, committing suicide. The
7 circumstances under which he committed suicide allowed his brain to be preserved and tested by
8 the National Institutes of Health. As part of the National Institutes of Health study, three different
9 doctors in a triple blind study concluded that Junior Seau's brain evidenced "multi-focal
10 tauopathy consistent with a diagnosis of chronic traumatic encepholapathy."

11 **FIRST CAUSE OF ACTION**

12 **FRAUDULENT CONCEALMENT**

13 **(Against the NFL)**

14 225. Plaintiffs incorporate by reference all of the preceding allegations set forth above
15 as if fully set forth herein.

16 226. Plaintiff Bette Hoffman brings this survival cause of action on behalf of the estate
17 of decedent and all successors-in-interest therein pursuant to Code of Civil Procedure section
18 377.30.

19 227. The NFL has been aware of and understood the significance of the published
20 medical literature dating from as early as the 1950s that there is a serious risk of short-term and
21 long-term brain injury associated with repetitive traumatic impacts to the head to which NFL
22 players are exposed.

23 228. During that time period, the NFL knowingly and fraudulently concealed from
24 then-current NFL players and former NFL players the risks of head injuries in NFL games and
25 practices, including the risks associated with returning to physical activity too soon after
26 sustaining a sub-concussive or concussive injury.

27 229. From 1994 through June of 2010, the NFL's fraudulent concealment continued.
28 During that time period, the NFL voluntarily funded and produced its own purported scientific

1 research and through that research repeatedly misrepresented to then-current and former NFL
2 players, the United States Congress, and the general public that there is no link (or an insufficient
3 scientific link) between MTBI in NFL activities and later-in-life cognitive/brain injury, including
4 CTE and its related symptoms.

5 230. Given the NFL's superior and unique vantage point, Junior Seau reasonably
6 looked to the NFL for guidance on head injuries and concussions.

7 231. The NFL's MTBI Committee published articles and the August 2007 concussion
8 pamphlet referenced above, all of which concealed and minimized the risks of repetitive brain
9 impacts the NFL knew existed for its then-current players and for its former players, who
10 reasonably relied on the NFL's pronouncements and/or silence on this health issue.

11 232. The NFL's concussion pamphlet created an atmosphere of trust that the NFL had
12 carefully undertaken its voluntary responsibility to research, test, study, and report accurate
13 findings to the players and former players. The NFL stated that "[w]e want to make sure all NFL
14 players ... are fully informed and take advantage of the most up to date information and resources
15 as we continue to study the long-term impact of concussions."

16 233. The concealment was ongoing. Dr. Casson provided oral and written testimony at
17 the 2010 congressional hearings in which he continued to deny the validity of other studies. Dr.
18 Casson also denied the link between repetitive brain impacts and short- and long-term brain
19 damage in public interviews.

20 234. The NFL, therefore, concealed material facts and information with the intent to
21 deceive and defraud, which caused Junior Seau to suffer the harm referenced above. Further, for
22 the time period prior to August 2007, the NFL's concerted concealment of the risks to which
23 players had been exposed delayed Junior Seau's ability to plan for the future and to seek
24 appropriate treatment of latent neurodegenerative conditions.

25 235. The NFL knew and expected that Junior Seau would rely on the inaccurate
26 information provided by the NFL, and Junior Seau did in fact reasonably rely on the inaccurate
27 information provided by the NFL during and after his NFL career.

28 236. As a direct and proximate result of the NFL's fraudulent conduct, Junior Seau

1 suffered physical injury, including, but not limited to, existing and latent cognitive conditions that
2 created diminished cognitive function, non-economic losses, and economic losses including but
3 not limited to lost and/or reduced income during his life.

4 237. The despicable conduct of the NFL outlined above was fraudulent, malicious, and
5 oppressive and was done with the intent to defraud team coaches past and present NFL players,
6 and the general public. In addition, the despicable conduct of the NFL outlined above was done
7 with a conscious disregard for the rights and safety of Junior Seau and other NFL players.
8 Accordingly, Plaintiffs seek punitive damages as allowed under Civil Code section 3294 and any
9 other applicable provisions of law.

10 238. As a result of the NFL's misconduct as alleged herein, the NFL is liable to
11 Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

12 **SECOND CAUSE OF ACTION**

13 **FRAUD**

14 **(Against the NFL)**

15 239. Plaintiffs incorporate by reference all of the preceding allegations set forth above
16 as if fully set forth herein.

17 240. Plaintiff Bette Hoffman brings this survival cause of action on behalf of the estate
18 of decedent and all successors-in-interest therein pursuant to Code of Civil Procedure section
19 377.30.

20 241. At least since the early 1950s the NFL knew that repetitive head impacts in
21 football games and full-contact practices created a risk of harm to NFL players that was similar or
22 identical to the risk of harm to boxers who receive the same or similar repetitive impacts to the
23 head during boxing practices and matches.

24 242. The NFL knew that the risks of brain injury could be reduced by implementing
25 changes to the game, akin to the ones the NFL belatedly adopted in 2011, such as (1) the baseline
26 cognitive testing of players for comparison purposes during and after contact play, (2) the active
27 monitoring of players for signs of MTBI, (3) the employment of a neurologist on the sidelines,
28 and (4) return-to-play rules consistent with proper medical management of MTBI.

1 243. The NFL, however, withheld the information it knew about the risks of head
2 injuries in the game from then-current NFL players and former NFL players and ignored the
3 known risks to all NFL players.

4 244. On information and belief, the NFL deliberately delayed implementing the
5 changes to the game it knew could reduce players' exposure to the risk of life-altering head
6 injuries because those changes would be expensive and would reduce the profitability of the
7 League.

8 245. The NFL has been aware of and understood the significance of the published
9 medical literature dating from as early as the 1950s that there is a serious risk of short-term and
10 long-term brain injury associated with repetitive traumatic impacts to the head to which NFL
11 players are exposed.

12 246. The NFL and its agents -- employed to formulate the MTBI committee and
13 populate the published scientific literature with "studies" intent on disputing the conclusions of
14 independent researchers regarding the long-term chronic disabilities and injuries associated with
15 head injury -- made these material misrepresentations with the intent to defraud players like
16 Junior Seau.

17 247. Given the NFL's superior and unique vantage point, Junior Seau reasonably
18 looked to the NFL for guidance on head injuries and concussions.

19 248. During that time period, the NFL knowingly and fraudulently concealed from then
20 current NFL players of the risks of head injuries in NFL games and practices, including the risks
21 associated with returning to physical activity too soon after sustaining a sub-concussive or
22 concussive injury.

23 249. Beginning in 1994, the NFL and its agents funded and created a falsified body of
24 purported scientific research that misrepresented to then-current NFL players, all former NFL
25 players, the United States Congress, and the general public that there was no scientifically proven
26 link between repetitive sub-concussive and concussive injuries sustained during football and brain
27 injury, including but not limited to CTE and its related symptoms.

28 250. The NFL and its agents -- employed to populate the published scientific literature

1 with “studies” intent on disputing the conclusions of independent researchers regarding the long-
2 term chronic disabilities and injuries associated with head injury -- made these material
3 misrepresentations with the intent to defraud the decedent Junior Seau.

4 251. During his career and after retirement from the NFL, Junior Seau justifiably and
5 reasonably relied on the NFL’s omissions and misrepresentations to his detriment.

6 252. As a direct and proximate result of the NFL’s fraudulent conduct, Junior Seau
7 suffered physical injury, including, but not limited to, existing and latent cognitive conditions that
8 created diminished cognitive function, non-economic losses, and economic losses including but
9 not limited to lost and/or reduced income during his life.

10 253. The despicable conduct of the NFL outlined above was fraudulent, malicious, and
11 oppressive and was done with the intent to defraud team coaches past and present NFL players,
12 and the general public. In addition, the despicable conduct of the NFL outlined above was done
13 with a conscious disregard for the rights and safety of Junior Seau and other NFL players.
14 Accordingly, Plaintiffs seek punitive damages as allowed under Civil Code section 3294 and any
15 other applicable provisions of law.

16 254. As a result of the NFL’s misconduct as alleged herein, the NFL is liable to
17 Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

18 **THIRD CAUSE OF ACTION**

19 **NEGLIGENT MISREPRESENTATION**

20 **(Against the NFL)**

21 255. Plaintiffs incorporate by reference all of the preceding allegations set forth above
22 as if fully set forth herein.

23 256. Plaintiff Bette Hoffman brings this survival cause of action on behalf of the estate
24 of decedent and all successors-in-interest therein pursuant to Code of Civil Procedure section
25 377.30.

26 257. A special relationship exists between the NFL and players like Junior Seau
27 sufficient to impose a duty on the NFL to disclose accurate information to the players.

28 258. Prior to 1994, the NFL knew that repetitive head impacts in football games and

1 practices created a risk of harm to NFL players that was similar or identical to the risk of harm to
2 boxers who receive repetitive impacts to the head during boxing practices and matches.

3 259. Prior to 1994, the NFL was aware of and understood the significance of the
4 published medical literature demonstrating the serious risk of both short-term and long-term
5 adverse consequences from the kind of repetitive traumatic impacts to the head to which NFL
6 players were exposed.

7 260. The NFL, however, withheld this information from team coaches, physicians,
8 trainers, and other personnel, and NFL players and ignored the risks to NFL players.

9 261. Before June of 2010, the NFL made material misrepresentations to its players,
10 former players, the United States Congress, and the public at large that there was no scientifically
11 proven link between repetitive traumatic head impacts and later-in-life cognitive/brain injury,
12 including CTE and its related symptoms.

13 262. Defendant NFL, therefore, misrepresented the dangers players faced in returning
14 to action after sustaining a head injury and the long-term effects of continuing to play football
15 after a head injury.

16 263. The NFL's MTBI Committee made public statements, published articles, and
17 issued the concussion pamphlet to its players, which the NFL knew or should have known were
18 misleading, downplaying and obfuscating to NFL players the true and serious risks of repetitive
19 traumatic head impacts.

20 264. The MTBI Committee made material misrepresentations on multiple occasions,
21 including but not limited to testimony at congressional hearings and other information issued to
22 current and former NFL Players.

23 265. Junior Seau's reliance on the NFL's misrepresentations was reasonable, given the
24 NFL's superior and unique vantage point on these issues.

25 266. The Defendant's misrepresentations included the false statement that present NFL
26 players were not at an increased risk of short-term and long-term adverse consequences if they
27 returned too soon to an NFL games or practices after suffering head trauma and, therefore, that
28 former players had not been exposed to such increased risk during their time in the NFL.

1 of decedent and all successors-in-interest therein pursuant to Code of Civil Procedure section
2 377.30.

3 275. Between 1933 and 1968, the NFL assumed and carried out a duty to inform and
4 advise players and teams of the foreseeable harm that can arise from such things as the use of
5 leather helmets, the need to wear hard plastic helmets to reduce head wounds and internal injury
6 and the grabbing of an opponent's facemask—to minimize or avoid head and neck injuries.
7 These warnings and imposed safety rules were furnished by the NFL because it had assumed a
8 duty to provide a safe environment for players and because of its superior knowledge of the risks
9 of injury to players.

10 276. Based on information and belief, the NFL voluntarily inserted itself into the tasks
11 assumed by others to develop helmet safety standards and to reduce the risk of head injury while
12 playing football. Despite its voluntary participation in these activities, the NFL negligently failed
13 to adopt these standards for a considerable period of time after others had done so.

14 277. During this time period, the NFL knew or should have known of medical or
15 scientific literature regarding the risks of short- and long-term neuro-cognitive disabilities and
16 deficits to athletes exposed to MTBI.

17 278. During this time period, the NFL knew or should have known that it was the
18 practice in the NFL to compel or cajole players to play with injuries, including sub-concussive
19 injuries, concussive injuries and injuries involving a loss of consciousness.

20 279. During this time period, the NFL had superior knowledge (as compared to the
21 NFL players themselves) that athletic sporting events causing sub-concussive and concussive
22 injuries posed a serious risk of short-term and long-term cognitive disabilities.

23 280. Increasingly, during the 1970s, 1980s and 1990s, the NFL (and the marketing arm
24 of the NFL) marketed the game of football as acceptably violent, and it rewarded its most violent
25 players. This marketing technique was directed to the general public and organized football
26 players everywhere. In pursuing these concerted marketing techniques, the NFL knew or should
27 have known that its conflation of concussive-inducing violence with heroism would induce NFL
28 players and those who aspired to play in the NFL to play with reckless violence.

1 281. In its marketing scheme, the defendant NFL developed print and film packages
2 that were widely distributed throughout the United States to media outlets and organized football
3 programs as a powerful method to convince current players and those in college and high school
4 football that the greater the hit the bigger the accolades.

5 282. During this time period, the failure of the NFL to publicize within the League, and
6 to the public at large, the mounting evidence in the scientific literature of the evolving and
7 chronic neuro-cognitive problems amongst former players caused then-current players and retired
8 players to believe that their physical and psychological problems (as described herein) were
9 neither serious nor related to football. Instead, the NFL increasingly promoted the brutality and
10 ferocity of NFL play. These commissions or omissions caused players to ignore the need for
11 necessary treatment. Likewise, these omissions and commissions had the institutional effect of
12 reducing the interest in helmet safety research, avoiding changes in rule-playing to minimize head
13 injury, avoiding the need to promulgate rules affecting the return-to-play rules when concussive
14 events are detected, and avoiding establishing programs to educate players about the long-term
15 health risks of sub-concussive and concussive impacts.

16 283. In the early 1990s, the NFL voluntarily undertook to study the issue of neuro-
17 cognitive injuries in former NFL players.

18 284. In 1994, in connection with that voluntary undertaking, the NFL created the
19 aforementioned MTBI Committee.

20 285. By voluntarily undertaking to study and report on the issue of the neuro-cognitive
21 effects of head impacts in professional football, the NFL assumed a duty to exercise reasonable
22 care in the MTBI Committee's work and the NFL and its agents' public statements about the
23 substance of the Committee's work.

24 286. However, the MTBI Committee negligently performed the NFL's voluntarily
25 undertaken research mission.

26 287. In addition, from 1994 through June of 2010, the NFL and its MTBI Committee
27 made material misrepresentations to players, former players, the United States Congress, and the
28 public at large that there was no scientifically valid link between repetitive traumatic head

1 impacts and later-in-life cognitive/brain injury, including CTE and its related symptoms.

2 288. Given the NFL's superior and unique vantage point on the issue of head injuries
3 and concussions, the Plaintiffs reasonably relied to their detriment on the NFL's actions and
4 omissions on the subject.

5 289. Junior Seau reasonably relied to his detriment on the NFL's actions and omissions
6 on the subject.

7 290. The NFL's failure to exercise reasonable care in its voluntarily assumed duty
8 increased the risk that players like Junior Seau would suffer long-term neuro-cognitive injuries.

9 291. Under all of the above circumstances, it was foreseeable that the NFL's failure to
10 exercise reasonable care in the execution of its voluntarily undertaken duties would cause or
11 substantially contribute to the personal injuries suffered by Junior Seau.

12 292. The NFL's failure to exercise reasonable care in the execution of its voluntarily
13 undertaken duties proximately caused or contributed to Junior Seau's injuries, and ultimately his
14 death.

15 293. As a direct and proximate result of the NFL's negligence, Junior Seau suffered
16 physical injury, including, but not limited to, existing and latent cognitive conditions that created
17 diminished cognitive function, non-economic losses, and economic losses including but not
18 limited to lost and/or reduced income during his life.

19 294. As a result of the NFL's misconduct as alleged herein, the NFL is liable to
20 Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

21 **FIFTH CAUSE OF ACTION**

22 **NEGLIGENT HIRING**

23 **(Against the NFL)**

24 295. Plaintiffs incorporate by reference all of the preceding allegations set forth above
25 as if fully set forth herein.

26 296. Plaintiff Bette Hoffman brings this survival cause of action on behalf of the estate
27 of decedent and all successors-in-interest therein pursuant to Code of Civil Procedure section
28 377.30.

1 297. The NFL voluntarily and gratuitously inserted itself into the business of studying
2 (and subsequently rendering expert opinions about) the relationship between repetitive head
3 impacts in football and brain injury.

4 298. In doing so, the NFL assumed a duty to players like Junior Seau to retain and
5 employ persons within the MTBI Committee who were professionally competent to study and
6 render opinions on the relationship between repetitive head impacts in football and brain injury
7 and to ensure that those whom it hired had no conflict of interest and that each had the
8 professional and personal qualifications to conduct those studies and render opinions that were
9 scientifically rigorous, valid, defensible, and honest.

10 299. The NFL breached its duty to Junior Seau by hiring persons who:
11 a. were unqualified;
12 b. were not competent to engage in rigorous and defensible scientific
13 research;
14 c. were not competent to render valid and defensible opinions;
15 d. created fraudulent industry-funded research; and/or
16 e. attacked as not credible the valid and defensible research and opinions
17 generated by neuro-scientists who were unconnected to and not paid by the NFL.

18 300. The NFL's negligence in this regard resulted in a body of falsified industry-funded
19 research that purposefully and/or negligently contested and suppressed valid and truthful
20 biomedical science. The NFL's negligence allowed the MTBI Committee to use falsified
21 industry-funded research to mislead Junior Seau, other former NFL players, and the general
22 public regarding the risks associated with repetitive head impacts in the game of football.

23 301. As a result of the NFL's negligence, Junior Seau sustained brain injuries that were
24 progressive and latent and did not take protective measures or seek the diagnosis and treatment he
25 would have sought had he been told the truth.

26 302. As a direct and proximate result of the NFL's negligent hiring, Junior Seau
27 suffered physical injury, including, but not limited to, existing and latent cognitive conditions that
28 created diminished cognitive function, non-economic losses, and economic losses including but

1 not limited to lost and/or reduced income during his life.

2 303. As a result of the NFL's misconduct as alleged herein, the NFL is liable to
3 Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

4 **SIXTH CAUSE OF ACTION**

5 **NEGLIGENT RETENTION**

6 **(Against the NFL)**

7 304. Plaintiffs incorporate by reference all of the preceding allegations set forth above
8 as if fully set forth herein.

9 305. Plaintiff Bette Hoffman brings this survival cause of action on behalf of the estate
10 of decedent and all successors-in-interest therein pursuant to Code of Civil Procedure section
11 377.30.

12 306. The NFL knew or should have known that the controlling members of the MTBI
13 Committee demonstrated an ongoing lack of competence, objectivity and inadequate judgment to
14 study and render expert opinions on the issue of the relationship between repetitive head impacts
15 in football and brain injury.

16 307. The NFL voluntarily assumed a duty to Junior Seau not to allow those
17 incompetent persons it had hired within the MTBI Committee to continue to conduct incompetent
18 and falsified studies and render incompetent opinions on the relationship between repetitive head
19 impacts in football and brain injury.

20 308. During the time period when the MTBI Committee was conducting its purported
21 research and rendering its purported opinions, the NFL knew or should have known that the
22 purported research and opinions of the MTBI Committee were false and indefensible.

23 309. The NFL breached its duty to Junior Seau by allowing these incompetent and
24 unqualified persons, under the auspices and with the imprimatur of the NFL:

- 25 a. to continue to create incompetent and indefensible research,
26 b. to continue to render invalid and indefensible opinions, and
27 c. to continue to attack the credible and defensible research and opinions of
28 neuro-scientists not connected to or paid by the NFL.

1 having suffered multiple past traumatic brain injuries while playing professional football for the
2 NFL from 1990-2009.

3 319. As a direct and proximate result of the untimely death of Junior Seau, his
4 respective survivors have been deprived of the earnings, maintenance, guidance, support and
5 comfort that they would have received for the rest of their natural lives, and have suffered
6 commensurate pecuniary and non-pecuniary losses because of Junior Seau's wrongful death.

7 320. As a result of the NFL Defendants' misconduct as alleged herein, Defendants are
8 liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable
9 law.

10 **EIGHTH CAUSE OF ACTION**

11 **WRONGFUL DEATH**

12 **(AGAINST THE RIDDELL DEFENDANTS)**

13
14 321. Plaintiffs incorporate by reference all of the preceding allegations set forth above
15 as if fully set forth herein.

16 322. Plaintiffs Tyler Seau, Sydney Seau, Jake Seau and Hunter Seau are Junior Seau's
17 natural children and therefore are entitled to bring this wrongful death action pursuant to
18 California Code of Civil Procedure section 377.60.

19 **Negligence Supporting Wrongful Death**

20 323. The Riddell Defendants were negligent in their design, testing, assembly,
21 manufacture, marketing, and engineering of the helmets as described herein.

22 324. The Riddell Defendants owed a duty of care to the players in their design, testing,
23 manufacture, assembly, marketing and sale of the helmets and all components and sub-assemblies
24 of the helmets.

25 325. The Riddell Defendants should have been well aware that since 1928 repeated
26 blows to the head can lead to CTE, commonly known as "punch-drunk syndrome".

27 326. The Riddell Defendants breached their duty of reasonable care by failing to
28 provide necessary and adequate safety and instructional materials and warnings of the risk and

1 means available to reduce and/or minimize the risk of concussive brain injuries while playing
2 football using their helmets.

3 327. At the time the helmets were designed, manufactured, sold and distributed by the
4 Riddell Defendants, the helmets were defective in their manufacturing and unreasonably
5 dangerous and unsafe for their intended purpose because they did not provide adequate protection
6 against the foreseeable risk of concussive brain injury. The Riddell Defendants' failure to design
7 the helmets to design and manufacturing specifications resulted in, among other things, the
8 following:

9 (a) Negligently failing to manufacture the subject helmet with a safe means of
10 attenuating and absorbing the foreseeable forces of impact in order to minimize and/or reduce the
11 forces and energy directed to the player's head;

12 (b) Negligently manufacturing the subject helmet with a shock attenuating system
13 which was not safely configured;

14 (c) Negligently failing to properly and adequately inspect and/or test the helmet
15 model;

16 (d) Other acts of negligence that may be discovered during the course of this matter;
17 and

18 (e) Failure to warn players that its helmets wouldn't protect against concussive brain
19 injury.

20 Design Defect Supporting Wrongful Death

21 328. Also, at the time the helmets used by Junior Seau were designed, manufactured,
22 sold, and distributed by the Riddell Defendants, the helmets were defective in design,
23 unreasonably dangerous, and unsafe for their intended purpose because they did not provide
24 adequate protection against the foreseeable risk of concussive brain injury. The design defects
25 include, but are not limited to the following:

26 (a) The lack of a safe means of attenuating and absorbing the foreseeable forces of
27 impact in order to minimize and/or reduce the forces and energy directed to the player's head;

28 (b) An unsafe shock attenuating system; and

1 (c) Insufficient protection against concussive injuries.

2 329. The defective design and unreasonably dangerous condition were a proximate and
3 producing cause of the personal injuries suffered by Junior Seau and other damages, including but
4 not limited to, economic damages and non-economic damages.

5 330. The Riddell helmets did not perform in the manner that would be expected by a
6 reasonable consumer in that they did not adequately protect players from the risks of concussive
7 and sub-concussive injuries.

8 331. Additionally, the benefits, if any, of the design of the Riddell helmets were
9 outweighed by the risks to players using those helmets as the helmets did not adequately protect
10 players from the risks of concussive and sub-concussive injuries.

11 332. A safer alternative design was economically and technologically feasible at the
12 time the product left the control of the Riddell Defendants.

13 333. At all times, the helmets were being used for the purpose for which they were
14 intended or in a manner that was reasonably foreseeable to the Riddell Defendants.

15 Failure to Warn Supporting Wrongful Death

16 334. Also, the Riddell Defendants knew or should have known of the substantial
17 dangers involved in the reasonably foreseeable use of the helmets.

18 335. The Riddell Defendants failed to provide necessary and adequate safety and
19 instructional materials and warnings of the risk and means available to reduce and/or minimize
20 the risk of concussive brain injuries while playing football.

21 336. The Riddell Defendants failed to provide necessary and adequate information,
22 warnings, and/or instructional materials regarding the fact that other model helmets provided
23 greater shock attenuation from blows to the head area.

24 337. The Riddell Defendants ignored 18 years of published literature, read by their
25 general counsel Richard Lester, warning of the dangers of concussive injuries until 2002, when a
26 warning involving return to play after a concussion was placed on all Riddell helmets. The
27 warning was still defective and inadequate and remains today defective and inadequate because it
28 does not warn about the later life cognitive effects of concussive injury.

1 338. The Riddell Defendants knew that these substantial dangers were not readily
2 recognizable to an ordinary consumer or user and that such person would use these products
3 without inspection for defects.

4 339. Junior Seau neither knew, nor had reason to know of the existence of the
5 aforementioned defects, or increased risks of harm.

6 340. Junior Seau was using the helmets in a reasonably foreseeable manner at all times.

7 341. Riddell Defendants failure to warn players of the risks of substantial harm
8 associated with the foreseeable use of their products was a substantial factor in causing Junior
9 Seau's harm.

10 Riddell's Wrongful Death Liability

11 342. Riddell Defendant's negligence, design defect and failure to warn were a
12 proximate and legal cause of the wrongful death of Junior Seau as alleged herein.

13 343. As a direct and proximate cause of the conduct alleged herein, the Riddell
14 Defendants caused Junior Seau to develop neuro-cognitive brain diseases, including CTE.

15 344. As a result of these neuro-cognitive brain diseases, Junior Seau suffered from
16 insomnia, depression, anxiety, and other injuries.

17 345. Junior Seau's untimely death on May 2, 2012 was a direct and proximate result of
18 having suffered multiple past traumatic brain injuries while using equipment designed, developed,
19 manufactured, sold and distributed by the Riddell Defendants.

20 346. As a direct and proximate result of the untimely death of Junior Seau, his
21 respective survivors have been deprived of the earnings, maintenance, guidance, support and
22 comfort that they would have received for the rest of their natural lives, and have suffered
23 commensurate pecuniary and non-pecuniary losses because of Junior Seau's wrongful death.

24 As a result of the Riddell Defendants' misconduct as alleged herein, Defendants are liable to
25 Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment as follows:

- A. Against the NFL Defendants as follows:
 - As to the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action an award of all compensatory damages allowed under law against the NFL Defendants;
 - As to the First and Second Causes of Action an award of punitive damages as to the NFL defendants;
- B. Against the Riddell Defendants as follows:
 - As to the Eighth Cause of Action an award of all compensatory damages allowed under law against the Riddell Defendants;
- C. An award of prejudgment interest, costs and attorneys fees; and
- D. An award of such other and further relief as may be appropriate; and

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all matters so triable.

Dated: January 23, 2013

COOLEY LLP
STEVEN M. STRAUSS (99153)

By: _____
Steven M. Strauss

Attorney for Plaintiffs