

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 21 2012

CLERK OF THE SUPERIOR COURT  
By Gina Baker Deputy

KREINDLER & KREINDLER LLP  
STUART R. FRAENKEL, ESQ. (173991)  
NICOLE C. ANDERSEN, ESQ.  
707 Wilshire Boulevard, Suite 4100  
Los Angeles, CA 90017-3613  
Telephone: (213) 622-6469  
Facsimile: (213) 622-6019  
Email: [sfraenkel@kreindler.com](mailto:sfraenkel@kreindler.com)

KREINDLER & KREINDLER LLP  
ANTHONY TARRICONE, ESQ.  
(*pro hac vice pending*)  
277 Dartmouth Street  
Boston, MA 02116  
Telephone: (617) 424-9100  
Facsimile: (617) 424-9120  
Email: [atarricone@kreindler.com](mailto:atarricone@kreindler.com)

KREINDLER & KREINDLER LLP  
JAMES P. KREINDLER  
NOAH H. KUSHLEFSKY  
(*pro hac vice pending*)  
750 Third Avenue  
New York, New York 10017-2703  
Telephone: (212) 687-8181  
Facsimile: (212) 972-9432  
Email: [jkreindler@kreindler.com](mailto:jkreindler@kreindler.com)

*Attorneys for Plaintiff*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ALFRED R. CAMARENA, as guardian ad  
litem for Hannah Jane Whitley and Curtis  
Wayne Whitley Jr., minors, individually, as  
successors in interest, and as heirs to the  
Estate of Curtis Wayne Whitley, deceased;  
and as Personal Representative of the Estate  
of Curtis Wayne Whitley, deceased,

Plaintiff,

vs.

NATIONAL FOOTBALL LEAGUE; and  
DOES 1 through 100

Defendants.

Case No.: 19 12022202

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

(Negligence, Negligent Misrepresentation, Fraud,  
Actual Fraud, Wrongful Death, and Survival)

COPY

FAXED

**KREINDLER & KREINDLER LLP**  
STUART R. FRAENKEL, ESQ. (173991)  
NICOLE C. ANDERSEN, ESQ.  
707 Wilshire Boulevard, Suite 4100  
Los Angeles, CA 90017-3613  
Telephone: (213) 622-6469  
Facsimile: (213) 622-6019  
Email: [sfraenkel@kreindler.com](mailto:sfraenkel@kreindler.com)

**KREINDLER & KREINDLER LLP**  
ANTHONY TARRICONE, ESQ.  
(*pro hac vice pending*)  
277 Dartmouth Street  
Boston, MA 02116  
Telephone: (617) 424-9100  
Facsimile: (617) 424-9120  
Email: [atarricone@kreindler.com](mailto:atarricone@kreindler.com)

**KREINDLER & KREINDLER LLP**  
JAMES P. KREINDLER  
NOAH H. KUSHLEFSKY  
(*pro hac vice pending*)  
750 Third Avenue  
New York, New York 10017-2703  
Telephone: (212) 687-8181  
Facsimile: (212) 972-9432  
Email: [jkreindler@kreindler.com](mailto:jkreindler@kreindler.com)

***Attorneys for Plaintiff***

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

ALFRED R. CAMARENA, as guardian ad  
litem for Hannah Jane Whitley and Curtis  
Wayne Whitley Jr., minors, individually, as  
successors in interest, and as heirs to the  
Estate of Curtis Wayne Whitley, deceased;  
and as Personal Representative of the Estate  
of Curtis Wayne Whitley, deceased,

Plaintiff,

vs.

NATIONAL FOOTBALL LEAGUE; and  
DOES 1 through 100

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES**

**DEMAND FOR JURY TRIAL**

(Negligence, Negligent Misrepresentation, Fraud,  
Actual Fraud, Wrongful Death, and Survival)

ALFRED R. CAMARENA, as guardian ad litem for Hannah Jane Whitley and Curtis Wayne Whitley Jr., minors,. individually, as successors in interest, and as heirs to the Estate of Curtis Wayne Whitley; and as Personal Representative of the Estate of Curtis Wayne Whitley, deceased, ("Plaintiff") hereby complains of Defendant NATIONAL FOOTBALL LEAGUE, ("NFL" or "Defendant"), listed above, and hereby alleges as follows:

## INTRODUCTION

1. Plaintiff brings this wrongful death and survival action predicated on the NFL's wrongful conduct arising from the long-term consequences of multiple concussions suffered during Plaintiff's decedent's NFL career. Plaintiff is the guardian ad litem of Hannah Jane Whitley and Curtis Wayne Whitley Jr., minors, and personal representative of the Estate of Curtis Wayne Whitley, who died on May 11, 2008 as a result of the injuries he sustained as a result of the NFL. Medical evidence has linked concussions with long-term neurological problems, and specialists in brain trauma have been warning about the risks of permanent brain damage from repetitive concussive events. The NFL, as the organizer and purveyor of a professional sport in which head trauma is a regular and repeated occurrence, had a duty to take measures to protect its players. The NFL was aware of the risks of repeated head trauma and multiple concussive events, but nevertheless chose to deliberately ignore and conceal from the players and their families the risks of serious long-term health effects. The NFL chose to actively deceive the players and encourage return-to-play prematurely after a concussive event, thereby creating further risk of harm. Plaintiff's decedent, in turn, relied on the league's deceptive statements and efforts to conceal medical evidence, resulting in the belief that concussive events did not present serious life-altering risks, and thereby returning to play prematurely.

2. The NFL's active and purposeful concealment and misrepresentation of the severe neurological risks of multiple concussive events exposed players, including Plaintiff's decedent, to dangers they could have avoided had the League provided them with truthful and accurate information. Plaintiff's decedent suffered symptoms of severe and permanent brain damage, including, but not limited to, Chronic Traumatic Encephalopathy (CTE), which

1 eventually led to his injuries, death, and damages to self and property, as a result of the NFL's  
2 wrongful acts and omissions. The NFL concealed important medical information from players  
3 and deceived them concerning the effects of multiple head trauma and premature return-to-  
4 play, with the result that players, including Plaintiff's decedent, suffered serious permanent  
5 and debilitating injuries, damages and in the case of Plaintiff's decedent, death.

6 **PARTIES**

7 **Decedent:**

8 3. CURTIS WAYNE WHITLEY ("Curtis Whitley"), deceased, was a former  
9 retired NFL player who sustained injuries leading to his death on May 11, 2008.

10 **Plaintiff:**

11 4. ALFRED R. CAMARENA, as guardian ad litem for Hannah Jane Whitley and  
12 Curtis Wayne Whitley Jr., minors, individually, as successors in interest, and as heirs to the  
13 Estate of Curtis Wayne Whitley; and as Personal Representative of the Estate of Curtis Wayne  
14 Whitley, deceased. Alfred R. Camarena is an individual, a resident of Riverside County,  
15 California and the legal guardian of Hannah Jane Whitley and Curtis Wayne Whitley Jr., minor  
16 children of Curtis Whitley.

17 5. Hannah Jane Whitley, a minor, and Curtis Wayne Whitley Jr., a minor, are the  
18 natural born children of Curtis Wayne Whitley, deceased.

19 6. Alfred R. Camarena, as the guardian of Hannah Jane Whitley, minor, and Curtis  
20 Wayne Whitley Jr., minor, will move the Court to be appointed guardian ad litem of Hannah  
21 Jane Whitley, a minor, and Curtis Wayne Whitley Jr., a minor, and Personal Representative of  
22 the Estate of Curtis Wayne Whitley, deceased, a legal estate to be formed in Alameda County,  
23 California.

24 **Defendants:**

25 7. Defendant NFL is an unincorporated entity with its principal place of business  
26 located at 280 Park Avenue, New York, NY, 10017. The NFL regularly conducts business in  
27 California, including Alameda County, and receives substantial revenues from its business  
28

1 activities in Alameda County. The headquarters for the NFL team, the Oakland Raiders, are  
2 located at 1220 Harbor Bay Parkway, Alameda, CA, 94502.

3 8. The true names and capacities of defendants DOES 1 through 100, inclusive,  
4 whether individual, corporate, or otherwise, are unknown at the present time. When Plaintiff  
5 ascertains such true names and capacities of said defendants, he will ask leave of the court to  
6 amend this Complaint by setting forth the same.

7 9. Plaintiff is informed, believes, and thereon alleges that the following is true of  
8 each defendant, i.e. each named defendants and each Doe defendant: (a) each is part of a joint  
9 enterprise for profit; (b) each is under common control and management; (c) each is  
10 responsible in some manner, either by act or omission, strict liability, fraud, deceit, fraudulent  
11 concealment, negligence, respondeat superior, breach of contract or otherwise, for the  
12 occurrences and damages herein alleged, and Plaintiff's decedent's injuries and death were  
13 proximately caused by the conduct of each; (d) each was the agent, servant, employer, joint  
14 venturer, partner, division, owner, subsidiary, alias, aider and abettor, assignee and/or alter-ego  
15 of each of the others and was at all times acting within the purpose and scope of such agency,  
16 servitude, joint venture, division, ownership, subsidiary, alias, assignment, alter-ego,  
17 partnership or employment, with the authority, consent, approval and ratification of each of the  
18 other defendants.

### 19 JURISDICTION AND VENUE

20 10. Jurisdiction is based upon the California Constitution Article 6, Section 10.

21 11. Venue is proper in this Court pursuant to Cal. Code Civ. P. § 395(a), as part or  
22 all of the events leading to Plaintiff's injuries occurred in Alameda County, CA.

23 12. This is an action for damages which exceeds the sum of twenty five thousand  
24 dollars (\$25,000).

### 25 GENERAL ALLEGATIONS

#### 26 THE NFL

27 13. At all relevant times, the NFL, which is also the successor of the American  
28 Football League ("AFL") with which it merged in 1970, was a trade association of franchise

1 owners, currently numbering thirty-two (32), within two structured conferences, the AFC and  
2 the NFC.

3 14. The NFL is a separate entity from each of its teams.

4 15. Each team functions as a separate business but operates under shared revenue  
5 generated through broadcasting, merchandising and licensing.

6 16. The NFL is not, and has never been, the employer of Plaintiff's decedent, Curtis  
7 Whitley, deceased, who, as a player, was employed directly by independent franchise teams,  
8 such as the San Diego Charger, the Carolina Panthers and the Oakland Raiders, during his  
9 career in professional football.

10 17. The NFL governs and promotes the game of American football, sets and  
11 enforces rules and league policies, and regulates team ownership and revenue-sharing. It  
12 generates revenue mostly through marketing sponsorships, licensing merchandise and by  
13 selling national broadcasting rights to the games. The teams share a percentage of the League's  
14 overall revenue.

15 18. Owing in part to its immense financial power and status in American football,  
16 the NFL has assumed enormous influence over the research and education of physicians,  
17 trainers, coaches, and amateur football players at all levels of the game regarding football  
18 injuries.

### 19 CONCUSSIONS AND CTE

20 19. The American Association of Neurological Surgeons defines a concussion as "a  
21 clinical syndrome characterized by an immediate and transient alteration in brain function,  
22 including an alteration of mental status and level of consciousness, resulting from mechanical  
23 force or trauma." The injury generally occurs when the head either accelerates rapidly and  
24 then is stopped, or is spun suddenly. The results frequently include confusion, blurred vision,  
25 memory loss, nausea and, sometimes, unconsciousness.

26 20. A hit to the head may result in smashing, jiggling and torquing of the brain  
27 while causing strains and tears, snapping blood vessels, killing brain cells (neurons) and  
28 shearing the delicate connections (axons) that link this incredibly complex organ.

1           21. Medical evidence has shown that symptoms of a concussion can reappear hours  
2 or days after a concussive event, indicating that the injury has not healed.

3           22. According to neurologists, once a person suffers a concussion, he is as much as  
4 four times more likely to sustain a second concussion. Additionally, after several concussions,  
5 a lesser impact may cause significant injury, and the injured player requires more time to  
6 recover.

7           23. Clinical and neuro-pathological studies by some of the nation's foremost experts  
8 demonstrate that multiple concussions sustained during an NFL player's career may cause  
9 severe cognitive problems such as depression and early-onset dementia.

10          24. Chronic Traumatic Encephalopathy ("CTE") is, a progressive degenerative  
11 disease of the brain found in athletes (and others) with a history of repetitive head trauma and  
12 concussive events. Conclusive studies have shown this condition to be prevalent in retired  
13 professional football players who have a history of head trauma.

14          25. Head trauma, which includes multiple concussions, triggers progressive  
15 degeneration of brain tissue. These changes in the brain can begin months, years, or even  
16 decades after the last concussion or end of active athletic involvement. The brain degeneration  
17 is associated with memory loss, confusion, impaired judgment, paranoia, impulse control  
18 problems, aggression, depression, and eventually, progressive dementia.

19          26. To date, neuro-anatomists have performed autopsies on 13 former NFL players  
20 who died after exhibiting signs of degenerative brain disease. Twelve of these players were  
21 found to have suffered from CTE. Plaintiff is informed and believes that Curtis Whitley,  
22 deceased, also suffered from CTE.

23       **THE NFL'S DUTY TO ITS PLAYERS**

24          27. The NFL, as the body responsible for rule-making and safety regulation in  
25 professional football, owed a duty reasonable care to players, including Curtis Whitley, in the  
26 following respects:

- 27               a. To protect players on the playing field;  
28               b. To educate players about CTE and/or concussion injury;

- c. To educate trainers, physicians, and coaches about CTE and/or concussion injury;
- d. To have in place strict return-to-play guidelines to prevent CTE and/or concussion injury;
- e. To promote a “whistleblower” system where teammates would bring to the attention of a trainer, physician or coach that another player had sustained concussion injury;
- f. To design and implement rules and penalties for players who use their head or upper body to hit or tackle;
- g. To design and implement rules to eliminate the risk of concussion during games and/or practices;
- h. To require players to use the best available equipment to reduce or eliminate the risk of concussion during the games and/or practices.
- i. To promote meaningful and reliable research into and cure for CTE and the effects of concussion injury over a period of time; and
- j. To State governments, local sports organizations, all American Rules Football leagues and players, and the public at large to protect against the long-term effects of CTE and/or concussion injury.

**MISREPRESENTATIONS AND ATTEMPTS TO CONCEAL EVIDENCE OF THE RISKS OF CONCUSSIONS REGARDING CONCUSSIONS**

28. Studies have been published in medical journals, including the *Journal of the American Medical Association*, *Neurology*, and the *New England Journal of Medicine*, warning of the dangers of single concussions, multiple concussions and football-related head trauma from multiple concussive events. These studies report that:

- a. repetitive head trauma in contact sports has dangerous long-term effects on the brain;
- b. post-mortem evidence of CTE was present in numerous cases of boxers and contact sport athletes;



- c. there is a relation between neurologic pathology and length of career in athletes who play contact sports;
- d. immediate retrograde memory problems occur following concussions;
- e. mild head injury requires recovery time without risk of subjection to further injury;
- f. head trauma is linked to dementia; and
- g. football players who suffer concussions require significant rest before being subjected to further contact.

29. The NFL has long known or should have known of the rate and seriousness of concussions in the sport of football. In the 1960s, the NFL learned that the American National Standards Institute had developed a standard applicable to football helmets to minimize the risk of head injury. Nevertheless, the NFL did not—at that time or for the next decade—establish or adopt a policy providing that helmets be manufactured to any safety standard.

30. NFL rule-makers knew or should have known that in the mid- to late-1960s, that the advent and use of the helmet-face mask combination was contributing to the use of the helmeted-head as an offensive weapon, which in turn was increasing the rate of concussions.

31. The NFL knew or should have known that various safety organizations had developed or were developing helmet standards for football, and that recommendations to adopt these standards and only allow players to wear approved helmets were being planned.

32. The NFL knew or should have known that various medical professionals and other head injury researchers had published and/or finalized football helmet standards to reduce the risk of head trauma.

33. Despite knowing of these helmet standards, the NFL chose to ignore the importance of requiring improved safety helmets for players.

34. In the late 1960s and early 1970s, the NFL was aware of studies revealing the increased risk of concussions, head trauma and brain injury to players as a direct result of the tackling techniques that were then in vogue in the NFL.

1           35. In the early 1970s, high school and college football organizations began to  
2 change the rules of the game to minimize the risk of head injury. The NFL was aware of these  
3 changes but chose to do nothing.

4           36. In approximately 1976, high school and college football organizations initiated  
5 changes which prohibited initial contact of the head in blocking and tackling. While the NFL  
6 was aware of these changes in the rules and this risk of harm, they failed to take similar action.

7           37. In 1979, the NFL promulgated a rule, with an associated (albeit inadequate)  
8 penalty, for players found to have used their helmets to butt, spear or ram an opponent with the  
9 crown or top of the helmet. This undertaking by the NFL, based upon the duty of care it owed  
10 the NFL players, fell far short of the important safety and injury prevention action that should  
11 have been taken. This rule, adopted by the NFL came several years after a similar rule was  
12 adopted by college and high school football organizations, related to a recognized risk of  
13 spinal cord injury in football. This rule ignored the more prevalent practices in the NFL that  
14 were directly causing a substantial and high rate of concussions amongst NFL players.

15           38. Throughout the 1960s, 1970s, 1980s and 1990s, players in the NFL were being  
16 coached, trained and motivated to use all portions of their helmets to block, tackle, butt, spear,  
17 ram and/or injure opposing players by hitting with their helmeted heads. These techniques  
18 were condoned by the NFL and/or not appropriately condemned by the NFL, despite the NFL's  
19 awareness that this practice was causing an increased risk of concussions among players.  
20 Further, even after the NFL approved a rule change in 1989 to provide referees with the  
21 authority to eject a player observed using his helmet in this fashion, the NFL did not mandate  
22 strict enforcement of this rule.

23           39. Despite its awareness of the aforementioned dangerous practices and increased  
24 risk of head injury to players, the NFL turned a blind eye to the players being coached, trained  
25 and/or motivated to use all portions of their helmet to block, tackle, butt, spear, ram and/or  
26 injure opposing players by hitting with their helmeted heads—because of the NFL's interest in  
27 keeping its fan base excited and interested in the violence of this sport—all for commercial  
28 gain and profit. Even when, in 1996, the NFL undertook to promulgate a rule making it a

1 personal foul with potential associated fines to hit with the helmet, its purpose was not to  
2 protect the player using the helmet but rather to protect quarterbacks, evidencing a complete  
3 disregard for the risk of harm and safety of players encouraged to use this tackling technique.

4 40. Since the 1960s, the high incidence of concussion among NFL players has been  
5 well known to the NFL. Further, the NFL has been well aware—from its supervisory and  
6 management role—that a history of multiple concussions has been associated with a  
7 substantially increased risk of future brain deficits.

8 41. Since the 1960s, the NFL has known or has had reason to know, from its  
9 supervisory and management role, that NFL players suffering repeated concussions were more  
10 likely to experience evolving symptoms of post-traumatic brain injury including headaches,  
11 dizziness, loss of memory, and other symptoms. Despite this knowledge, until at least 2010,  
12 the NFL continued to deny any connection or correlation between players suffering  
13 concussions and long-term chronic brain injury or illness. Further, the NFL has taken an active  
14 role in concealing and actively disputing any causative connection between concussions in  
15 football in the NFL and brain injury/illness.

16 42. During the decades of the 1960s, 1970s, 1980s, 1990s and 2000s, while the NFL  
17 was well aware, from its supervisory and management role, that NFL players suffering  
18 repeated concussions were more likely to experience evolving symptoms of post-traumatic  
19 brain injury—including headaches, dizziness, loss of memory, impulse control problems,  
20 Chronic Traumatic Encephalopathy, Dementia, Alzheimer's disease, and other diseases or  
21 disorders—the NFL failed to act reasonably by developing appropriate means to identify at-  
22 risk players and guidelines or rules regarding return-to-play criteria. The NFL's breach of  
23 duty in this respect increased the risk of long term injury and illness as referenced above.

24 43. By 1991, three distinct medical professionals/entities, all independent from the  
25 NFL—Dr. Robert Cantu of the American College of Sports Medicine, the American Academy  
26 of Neurology and the Colorado Medical Society—developed return-to-play criteria for  
27 football players suspected of having sustained head injuries, but the NFL failed to adopt any  
28 of the three sets of criteria.

1           44. In 1994, the NFL affirmatively assumed a duty to use reasonable care in  
2 studying concussions on behalf of NFL players, and a duty to use reasonable care in keeping  
3 players informed of the risks associated with concussions and repeated head trauma, when it  
4 created the Mild Traumatic Brain Injury ("MTBI") Committee.

5           45. The MTBI Committee's stated goal was to present objective findings on the  
6 extent to which a concussion problem existed in the NFL, and to outline solutions. The MTBI  
7 Committee's studies were purportedly geared toward "improv[ing] player safety" and  
8 instituting "rule changes aimed at reducing head injuries."

9           46. However, since 1994, the NFL's MTBI Committee has negligently pursued its  
10 stated goals and deliberately concealed and misrepresented the existing medical evidence to  
11 NFL players experiencing concussive events, thereby permitting and encouraging players to  
12 return-to-play prematurely.

13           47. The MTBI Committee was intended to be independent from the NFL, consisting  
14 of a combination of doctors and researchers.

15           48. In actuality, however, the MTBI Committee was not independent and consisted  
16 of five (5) members already affiliated with the NFL.

17           49. The MTBI Committee was headed by Dr. Elliot Pellman, a rheumatologist who  
18 lacked any specialized training or education relating to concussions, brain injury or neurology,  
19 and who reportedly had previously been fired by Major League Baseball for lying about his  
20 background. Despite frequent and harsh outside criticism related to his deficient medical  
21 training, background, and experience, Dr. Pellman was permitted to chair the MTBI  
22 Committee from 1994 to 2007.

23           50. The NFL failed to appoint any neuro-pathologist, neurologist, or any other  
24 doctor specializing in brain research to the MTBI Committee.

25           51. Beginning in 2003, the NFL's MTBI Committee published a series of articles in  
26 medical journals with numerous conclusions at odds with years of existing medical research,  
27 including that:  
28

- 1 a. “[b]ecause a significant percentage of players returned to play in the same  
2 game [after suffering a concussion] and the overwhelming majority of  
3 players with concussions were kept out of football-related activities for less  
4 than 1 week, it can be concluded that mild [traumatic brain injuries] in  
5 professional football are not serious injuries.” See “Concussions in  
6 professional football: Summary of the research conducted by the National  
7 Football League's Committee on Mild Traumatic Brain Injury.” *Neurosurg.*  
8 *Focus* 21 (4):E12; 2006, Rl. Pellman and D.C. Viano.
- 9 b. NFL players did not show a decline in brain function after a concussion;  
10 c. there were no ill effects among those who had three or more concussions or  
11 who took hits to the head that sidelined them for a week or more;  
12 d. “no NFL player experienced the second-impact syndrome or cumulative  
13 encephalopathy from repeat concussions”; and  
14 e. NFL players’ brains responded and healed faster than those of high school or  
15 college athletes with the same injuries.

16 52. The NFL-funded studies are completely devoid of logic and science and contrary  
17 to Committee’s Health and Safety Rules as well as published medical literature on concussions  
18 and traumatic head injury.

19 53. The MTBI Committee’s methodology and the conclusions reached in their  
20 research were criticized by independent experts due to numerous conclusions at odds with  
21 common medical knowledge and basic scientific protocol.

22 54. For example, in 2004 the MTBI Committee published a conclusion in which it  
23 claimed that the Committee’s research found no risk of harm or injury from repeated  
24 concussions in players with previous concussions, and that there was no “7- to 10-day window  
25 of increased susceptibility to sustaining another concussion.”

26 55. In a comment to this publication, one independent doctor wrote that “[t]he  
27 article sends a message that it is acceptable to return players while still symptomatic, *which*  
28

1 *contradicts literature published over the past twenty years* suggesting that athletes be returned  
2 to play only after they are asymptomatic, and in some cases for seven days.” (emphasis added).

3 56. An ESPN article also described how the Committee failed to include hundreds of  
4 neuropsychological tests done on players in the results of the Committee's studies on the  
5 effects of concussions. The article further revealed that Dr. Pellman had fired a  
6 neuropsychologist for the New York Jets, Dr. William Barr, after Dr. Barr voiced a concern  
7 that Dr. Pellman might be inappropriately selective in choosing what data to include in the  
8 Committee’s research to get results that would downplay the negative effects of concussions.

9 57. In contrast to the research conducted by the NFL’s MTBI Committee, clinical  
10 and neuro-pathological studies performed by independent scientists and physicians  
11 demonstrated that multiple NFL-induced concussions cause cognitive problems such as  
12 depression, early on-set dementia and CTE.

13 58. In response to these studies, to further the NFL’s scheme of fraud and deceit,  
14 members of the NFL’s MTBI Committee denied knowledge of a link between concussions and  
15 cognitive decline.

16 59. When the NFL’s MTBI Committee anticipated studies that would show causal  
17 links between concussions and cognitive degeneration, the Committee promptly published  
18 articles producing contrary findings, as part of Defendant’s scheme to deceive the players and  
19 the public at large.

20 60. Dr. Bennet Omalu examined the brain tissue of deceased NFL players, including  
21 Mike Webster, Terry Long, Andrew Waters and Justin Strzelczyk. Dr. Omalu concluded, in an  
22 article in Neurosurgery, that CTE triggered by multiple NFL concussions was a partial cause  
23 of their death.

24 61. In response to Dr. Omalu’s, article, the NFL’s MTBI Committee (Drs. Ira  
25 Casson, Eliot Pellman and David Viano) wrote a letter to the editor of Neurosurgery asking  
26 that Dr. Omalu’s article be retracted.

27 62. Dr. Julian Bailes, from West Virginia University, briefed the NFL’s MTBI  
28 Committee on the findings of Dr. Omalu and other independent studies linking multiple NFL

1 head injuries with cognitive decline. Dr. Bailes recalled the MTBI Committee's reaction to his  
2 presentation: "the Committee got mad ... we got into it. And I'm thinking, 'This is a ... disease  
3 in America's most popular sport and how are its leaders responding? Alienate the scientist who  
4 found it? Refuse to accept the science coming from him?'"

5 63. A clinical study performed by Dr. Kevin Guskiewicz found that retired players  
6 who sustained three or more concussions in the NFL had a fivefold prevalence of mild  
7 cognitive impairment. In response, the NFL's MTBI Committee, (Dr. Mark Lowell), promptly  
8 attacked the article by refusing to accept a survey of 2,400 former NFL players.

9 64. Due to Congressional scrutiny and media pressure, the NFL scheduled a league-  
10 wide Concussion Summit for June 2007. The NFL, in furtherance of its scheme of deceit,  
11 issued a pamphlet to players in August 2007, which stated: "Current research with professional  
12 athletes has not shown that having more than one or two concussions leads to permanent  
13 problems... It is important to understand that there is no magic number for how many  
14 concussions is too many."

15 65. In 2008, the NFL commissioned a study of over 1,000 former players by the  
16 University of Michigan's Institute for Social Research, which concluded that "Alzheimer's  
17 disease or similar memory-related diseases appear to have been diagnosed in the league's  
18 former players vastly more often than in the national population—including a rate of 19 times  
19 the normal rate for men ages 30 through 49."

20 66. Despite commissioning the study, the NFL responded to the study's results by  
21 claiming it was incomplete and that further findings would be needed. Several experts in the  
22 field found the NFL's reaction to be "bizarre," noting that "they paid for the study, yet they  
23 tried to distance themselves from it."

24 67. At a series of Congressional hearings in 2009 and 2010 on the issue of head  
25 injuries in the NFL, the Defendant and the members of its MTBI Committee continued to deny  
26 links between football-related head injuries and heightened rates of dementia, and faced strong  
27 criticism from members of Congress.  
28

1       68. In particular, at a Congressional hearing in January 2010, Dr. Casson of the  
2 MTBI Committee provided written and oral testimony where he stated, “there is not enough  
3 valid, reliable or objective scientific evidence at present to determine whether or not, repeat  
4 head impacts in professional football result in long-term brain damage.”

5       69. In 2010, the NFL re-named the MTBI Committee the Head, Neck and Spine  
6 Medical Committee and replaced all of its members. The members of the new Committee  
7 called the data collected by the MTBI Committee “infected”, stating, “[w]e all had issues with  
8 some of the methodologies described; the inherent conflict of interest that was there in many  
9 areas, that was not acceptable by any modern standards or not acceptable to us. I wouldn’t put  
10 up with that, our universities wouldn’t put up with that, and we don’t want our professional  
11 reputations damaged by conflicts that were put upon us.”

12       70. For many years, the NFL and its MTBI Committee have been on direct notice of  
13 multiple NFL head injuries contributing to cognitive decline in later life, yet Defendant has  
14 never amended any of its inaccurate and misleading statements.

15 **NFL HAS ACKNOWLEDGED ITS DUTY TO PROTECT PLAYERS FROM THE LONG-**  
16 **TERM RISKS OF CONCUSSIONS**

17       71. Since the 1950s, the NFL has acknowledged its ongoing duty to protect the  
18 health and safety of players by enacting at least the following non-exhaustive list of rules  
19 pertaining to players’ health and safety, particularly relating to blows to the head:

- 20       (a) In 1956, the NFL enacted a rule that prohibited the grabbing of any player’s  
21 facemask, other than the ball carrier;
- 22       (b) In 1962, the NFL enacted a rule that prohibited players from grabbing any  
23 player’s facemask;
- 24       (c) In 1976, the NFL enacted a rule that prohibited players from grabbing the  
25 facemask of an opponent. The penalty for an incidental grasp of the facemask  
26 was 5 yards. The penalty for twisting, turning, or pulling the facemask was 15  
27 yards. A player could be ejected from the game if the foul is found to be vicious  
28 and/or flagrant;



- 1 (d) In 1977, the NFL enacted a rule that prohibited players from slapping the head  
2 of another playing during play. This rule was referred to as the “Deacon Jones  
3 Rule,” named after the Rams’ defensive end who frequently used this technique;
- 4 (e) In 1977, the NFL enacted a rule that prohibited offensive lineman from thrusting  
5 their hands into a defender’s neck, face, or head;
- 6 (f) In 1979, the NFL enacted a rule that prohibited players from using their helmets  
7 to butt, spear, or ram an opponent. Pursuant to this rule, any player who used  
8 the crown or top of his helmet unnecessarily was to called for unnecessary  
9 roughness;
- 10 (g) In 1980, the NFL enacted rule changes that provided greater restrictions on  
11 contact in the area of the head, neck, and face;
- 12 (h) In 1980, the NFL enacted rule changes that prohibited players from directly  
13 striking, swinging, or clubbing the head, neck, or face (“personal foul”).  
14 Beginning in 1980, a penalty could be called for such contact whether or not the  
15 initial contact was made below the neck area;
- 16 (i) In 1982, the NFL enacted a rule change by which the penalty for incidental  
17 grabbing of a facemask by a defensive team was changed from 5 yards to an  
18 automatic first down plus a 5 yard penalty;
- 19 (j) In 1983, the NFL enacted a rule that prohibited players from using a helmet as a  
20 weapon to strike or hit an opponent;
- 21 (k) In 1988, the NFL enacted a rule that prohibited defensive players from hitting  
22 quarterbacks below the waist while they are still in the pocket. (The rule was  
23 unofficially called the “Andre Waters Rule” based upon a hit that Waters placed  
24 on Los Angeles Rams quarterback Jim Everett in 1988); and
- 25 (l) Following the 2004-2005 season, the NFL’s Competition Committee reviewed  
26 video of the entire season and concluded that the horse-collar tackle resulted in  
27 six serious injuries. On May 23, 2005, the NFL owners voted 27-5 to ban such  
28 tackles. The ban states that a horse-collar tackle is an open-field tackle in which

1 a defender uses the shoulder pads to immediately bring a ball carrier down.

2 72. On August 14, 2007, the NFL further acknowledged its duty to protect players  
3 by enacting rules to protect them against the risk associated with repeated brain trauma.

4 73. The NFL's 2007 concussion guidelines, many of which stemmed from the  
5 NFL's Concussion Summit involving team trainers and doctors, were sent to all current players  
6 and other team personnel.

7 74. The NFL's 2007 guidelines on concussion management include a whistleblower  
8 provision for individuals to report concussions with the League so that a player with a head  
9 injury is not forced to practice or play against medical advice.

10 75. The NFL's 2007 concussion guidelines also include an informational pamphlet  
11 provided to all current NFL players to aid in identifying symptoms of a concussion. This  
12 information was later withdrawn by outside counsel of the NFL in a separate letter to its  
13 disability plan, as well as the NFL's August 14, 2007 press release denying that "more than  
14 one or two concussions lead to permanent problems."

15 76. In a statement issued by the NFL on August 14, 2007, Roger Goodell, the  
16 Commissioner of the NFL, introduced the NFL's 2007 concussion guidelines by saying, "we  
17 want to make sure all NFL players, coaches and staff members are fully informed and take  
18 advantage of the most up-to-date information and resources as we continue to study the long-  
19 term impact of concussions."

20 77. The NFL's Commissioner also stated, "[b]ecause of the unique and complex  
21 nature of the brain, our goal is to continue to have concussions managed conservatively by  
22 outstanding medical personnel in a way that clearly emphasized player safety over competitive  
23 concerns."

24 78. The NFL's 2007 concussion guidelines indicate when a player with a concussion  
25 can return to a game or practice.

26 79. The NFL's 2007 concussion guidelines specifically mandate that a player should  
27 have normal neurological test results and no concussion symptoms before returning to play.  
28

1           80. Defendant acknowledged that its guidelines were inadequate and insufficient.  
2 As a result, the NFL enacted more strict regulations to handle concussions starting in the 2009  
3 season. Specifically, the NFL announced new rules requiring players who exhibit any  
4 significant signs of concussion to be removed from a game or practice and be barred from  
5 returning the same day.

6           81. Nevertheless, it was not until June 2010 that the NFL finally issued a warning  
7 poster and related pamphlet to its players regarding identification of concussions. This was the  
8 first time the NFL attempted to acknowledge the truth to its active players regarding  
9 concussions.

10          82. The June 2010 poster and pamphlet warned active players of the long-term risks  
11 associated with multiple concussions, including dementia, memory loss, CTE and its related  
12 symptoms. Unlike its previous messages to players, including the 2007 pamphlet, the NFL  
13 instructed players regarding reporting possible concussions, treating concussions, and the long-  
14 term risk of concussions. The NFL quoted the Center for Disease Control's conclusions that,  
15 "traumatic brain injury can cause a wide range of short—or long term changes affecting  
16 thinking, sensation, language or emotions." The NFL further informed players, "[t]hese  
17 changes may lead to problems with memory or communication, personality changes, as well as  
18 depression and early onset dementia. Concussions and conditions resulting from repeated  
19 brain injury can change your life and your family's life forever."

20          83. As of today, the NFL has not warned retired players of the long-term health  
21 effects of concussions.

22          84. Due to the statements and actions of the NFL and the MTBI Committee, Curtis  
23 Whitley and Plaintiff did not know, nor did they have reason to know, the long-term effects of  
24 concussions and relied on the NFL to provide reasonable warnings, rules, regulations and  
25 studies.

26          85. The NFL failed to exercise its duty to act reasonably in researching the risks and  
27 effects of multiple concussions, failed to implement appropriate return-to-play rules, and failed  
28

1 to warn players, including Curtis Whitley, of the risks associated with repeated head trauma  
2 that were widely accepted in the medical field but denied and concealed by the NFL.

3 86. The aforementioned acts and omissions of the NFL and its MTBI Committee  
4 demonstrate that the League acted deliberately, willfully, and wantonly with indifference to the  
5 rights and duties owed and consequences to Curtis Whitley.

6 87. The NFL knew that a substantial risk of physical and mental harm to players  
7 existed in connection with repeated concussive blows to the head, to wit: the danger of  
8 irreversible brain-damage and/or dementia. The NFL willfully and deliberately disregarded the  
9 safety of others in continually undertaking to establish and promulgate safety rules for the NFL  
10 that failed to reasonably address or disclose substantial risk of head injury.

11 **DEFENDANT'S CONDUCT RISES BEYOND MERE NEGLIGENCE**

12 88. The aforementioned acts and omissions of the Defendant demonstrate that it  
13 acted with callous indifference to the rights and duties owed to Curtis Whitley, all American  
14 Rules Football leagues and players.

15 89. The Defendant acted willfully, wantonly, egregiously, with reckless  
16 abandonment, and with a high degree of moral culpability. The NFL knew that a substantial  
17 risk of physical and mental harm to NFL players existed in connection with repeated  
18 concussive blows to the head, to wit: the danger of irreversible brain-damage and/or dementia.  
19 The NFL consciously, willfully, and deliberately disregarded the safety of others in continually  
20 undertaking to establish and promulgate safety rules, but failing to address or disclose the risk  
21 of severe and permanent brain injury from repeated head trauma, and further by actively  
22 concealing such information from Curtis Whitley and other NFL players.

23 **PLAINTIFF'S DECEDENT-CURTIS WHITLEY**

24 90. Plaintiff's decedent, Curtis Whitley was born on May 10, 1969 in Johnston  
25 County, North Carolina.

26 91. Curtis Whitley played six seasons in the NFL as a center from 1992 to 1997.  
27 From 1992 through 1994, Curtis Whitley played for the San Diego Chargers. From 1995  
28

1 through 1996 he played for the Carolina Panthers. And during the 1997 season he played for  
2 the Oakland Raiders.

3 92. Throughout his career as a professional football player, Curtis Whitley suffered  
4 multiple concussive hits and blows to the head that were improperly diagnosed and treated.

5 93. After having suffered concussions, Curtis Whitley was returned to play before it  
6 was medically appropriate, and subsequently suffered further head injuries and/or blows to the  
7 head.

8 94. At no time after suffering a concussion was Curtis Whitley warned about the  
9 dangers of returning to play too quickly or the risk of long-term injury due to football-related  
10 concussions; he was not restricted from returning to play for a medically-appropriate period of  
11 time due to the lack of NFL rules concerning head trauma; and he was encouraged to return to  
12 play prematurely, which was standard due to the NFL's failure to enact appropriate rules and  
13 failure to protect players from the risk of repetitive head trauma. This lack of warnings and  
14 other acts and omissions were substantial factors in causing Curtis Whitley's death.

15 95. As a result of the numerous concussions suffered during his playing career  
16 Curtis Whitley suffered from symptomology associated with multiple traumatic brain injury  
17 and CTE, including headaches, severe migraine headaches, loss of memory, memory lapses  
18 and deficiency, sleeping problems, cervical spine arthritis, dizziness, impulse control  
19 problems, suicidal thoughts, depression, bi-polar mood symptoms, anxiety and panic disorder,  
20 extreme fatigue and apathy, blurred vision, slurred speech, extreme sensitivity to light and/or  
21 irritability—all of which caused and/or contributed to his untimely death in 2008.

22 **FIRST CAUSE OF ACTION—NEGLIGENCE**

23 **AGAINST ALL DEFENDANTS**

24 96. Plaintiff incorporates by reference all facts set forth in the preceding paragraphs  
25 as if set forth at length and further alleges on information and belief as follows.

26 97. Defendants, as the purveyor of safety rules for the League, owed Curtis Whitley  
27 a duty to use reasonable care in researching, studying and/or examining the dangers and risks  
28 of head injuries and/or concussions to players; to inform and warn players of such risks and to

1 effectuate reasonable league policies; and/or take other reasonable action to minimize the risks  
2 of head injuries.

3 98. At all times relevant hereto, Defendants negligently performed such duties by  
4 failing to adequately study, warn and/or implement reasonable rules and regulations to  
5 minimize traumatic brain injuries to its players, including Curtis Whitley.

6 99. Defendants knew or should have known that their policies, rules and regulations  
7 were not reasonably sufficient to minimize traumatic brain injuries and that Curtis Whitley's  
8 injuries and death were foreseeable.

9 100. Defendants affirmatively and voluntarily established the MTBI Committee,  
10 ostensibly to examine the dangers and consequences of head injuries to NFL players, to report  
11 on its findings, to provide information and guidance from its research and studies concerning  
12 concussions to teams and players, and to make recommendations to lessen the risks of  
13 concussions. Defendants are responsible for the staffing and conduct of the MTBI Committee.

14 101. Defendants failed to use reasonable care in the manner in which they created the  
15 MTBI Committee and failed to act reasonably by not appointing qualified physicians to head  
16 the Committee and failing to act to remove unqualified physicians from the Committee after  
17 being informed that members of the Committee lacked the necessary qualifications to conduct  
18 a proper and thorough analysis.

19 102. Defendants failed to use reasonable care in researching, studying and/or  
20 examining the risks of head injuries and concussions in professional football. Defendants  
21 downplayed and, in many cases, denied and even concealed both the severity of head injuries  
22 and the clear link between concussions and brain damage, thereby breaching its duty to its  
23 players, including Curtis Whitley.

24 103. Defendants failed to inform, warn and/or advise players, and/or misinformed  
25 them of the risks and complications inherent in sustaining concussions, thereby breaching its  
26 duty to its players, including Curtis Whitley.

27 104. Defendants were further negligent in the following respects:  
28

- a. Failing to use reasonable care in overseeing, controlling and/or regulating policies and procedure of the League so as to minimize the risk of head injuries and/or concussions;
- b. Failing to use reasonable care in researching and requiring helmets and other equipment that would best minimize the risk of head injuries and/or concussions and best protect players;
- c. Failing to use reasonable care in the research and/or investigation of the concussion issue;
- d. Failing to appoint a qualified physician or panel of physicians to head Defendant's MTBI Committee;
- e. Placing a physician in charge of the committee whose primary motive was to appease the NFL rather than to report accurately;
- f. Disregarding independent scientific studies which showed the severe health risks associated with head injuries and/or concussions to NFL players;
- g. Failing to acknowledge, either publicly or to NFL players, the clear link between concussions and brain injuries being suffered by its players;
- h. Failing to acknowledge, either publically or to its players, the linkage between playing football and long-term brain injuries;
- i. Failing to make and/or timely make necessary league policy changes as it pertains to intentional hits to the head, hits to the head of a defenseless player, helmet to helmet hits, and concussions in general;
- j. Publishing misleading and erroneous findings regarding hits to the head and NFL head injuries;
- k. Failing to issue a timely warning, through a concussion pamphlet or other means, to the players concerning the causal link between concussions and later life cognitive decline;

- 1           l.       Issuing misinformation and purposefully attempting to mislead NFL
- 2                    players through the concussion pamphlet which was issued in August
- 3                    2007;
- 4           m.       Collecting and reporting data that was cherry-picked and/or not reliable;
- 5           n.       Causing, by and through its negligent conduct and omissions, an
- 6                    increased risk of harm to NFL players;
- 7           o.       Failing to provide competent information to teams, players, coaches,
- 8                    trainers and medical personnel with respect to the significance of head
- 9                    injuries and/or concussions, their symptoms and the necessary and/or
- 10                  proper treatment of the same; and
- 11           p.       Creating a “culture” within the NFL in which concussions and their
- 12                    devastating effects would run rampant.

13           105.   As a direct and proximate result of the Defendants’ negligent acts and omissions  
14 as aforesaid, Curtis Whitley experienced pain and suffering in that he suffered serious injury,  
15 including but not limited to brain damage and CTE, which resulted in his untimely death.

16           106.   As a direct and proximate result of Defendants’ conduct, Plaintiff incurred  
17 expenses for funeral, burial, medical treatment, and other related costs in an amount to be  
18 determined by proof at trial.

19           107.   As a direct and proximate result of Defendants’ negligent acts and omissions,  
20 Plaintiff suffered and will continue to suffer in the future the loss of Curtis Whitley’s love,  
21 companionship, comfort, affection, society, moral support, and solace related to Curtis  
22 Whitley’s untimely death.

23           108.   As a direct and proximate result of Defendants’ conduct, Plaintiff will in the  
24 future incur loss of financial support of Curtis Whitley’s earning capacity in an amount to be  
25 determined according to proof at trial.

26           109.   By reason thereof, Curtis Whitley’s minor children and his Estate are entitled to  
27 recover damages from Defendants in an amount to be proven at trial.



**SECOND CAUSE OF ACTION—NEGLIGENT MISREPRESENTATION**  
**AGAINST ALL DEFENDANTS**

110. Plaintiff incorporates by reference paragraphs 1 through 109 of this Complaint as if fully set forth herein at length.

111. Defendants materially misrepresented the risks faced by Curtis Whitley related to head injuries. The MTBI Committee, through misleading public statements, published articles, and the concussion pamphlet issued to the players, downplayed known long-term health risks of concussions to NFL players.

112. Material misrepresentations were made by members of the MTBI Committee on multiple occasions, including but not limited to testimony given at congressional hearings and the “informational” pamphlet issued to NFL players.

113. The material misrepresentations include remarks that players were not at an increased risk of head injury if they returned too soon to an NFL game or training session after suffering a head injury.

114. Defendants’ material misrepresentations included the criticism of legitimate scientific studies which illustrated the dangers and risks of head injuries and the long-term effects of concussions.

115. Defendants’ material misrepresentations, through the MTBI Committee, denied a link between concussions and CTE.

116. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known, because of their superior position of knowledge, that Plaintiff’s decedent faced health problems if he were to return to a game too soon after suffering brain trauma.

117. The persons who made the misrepresentations as agents of the NFL and its MTBI Committee had no reasonable ground for believing them to be true.

118. Defendants intended to induce Curtis Whitley’s reliance on the misrepresentations.

1           119. Curtis Whitley justifiably and reasonably relied on these misrepresentations  
2 when playing in the NFL. Had Curtis Whitley known the true risks to his health, he would not  
3 have agreed to jeopardize his health.

4           120. As a direct and proximate result of the Defendants' misrepresentations, Curtis  
5 Whitley experienced pain and suffering and suffered serious permanent and debilitating  
6 injuries, including but not limited to brain damage and CTE, which resulted in his untimely  
7 death.

8           121. Defendants' misrepresentations proximately caused Curtis Whitley's death.

9           122. As a direct and proximate result of Defendants' misrepresentations, Plaintiff  
10 incurred expenses for funeral, burial, medical treatment, and other related costs in an amount  
11 to be determined by proof at trial.

12           123. As a direct and proximate result of Defendants' misrepresentations, Curtis  
13 Whitley's minor children will continue to suffer in the future the loss of Curtis Whitley's love,  
14 companionship, comfort, affection, society, moral support, and solace related to Curtis  
15 Whitley's untimely death.

16           124. As a direct and proximate result of Defendants' misrepresentations, Curtis  
17 Whitley's minor children will in the future incur loss of financial support of Curtis Whitley's  
18 earning capacity in an amount to be determined according to proof at trial.

19           125. By reason thereof, Plaintiff, as guardian ad litem and personal representative of  
20 the Estate of Curtis Whitley, seeks and is entitled to recover damages from Defendants on  
21 behalf of and for Curtis Whitley's minor children and Estate in an amount to be proven at trial.

22           **THIRD CAUSE OF ACTION—FRAUD (FRAUDULENT DECEIT)**

23           **AGAINST ALL DEFENDANTS**

24           126. Plaintiff incorporates by reference paragraphs 1 through 125 of this Complaint  
25 as if fully set forth herein at length.

26           127. Defendants materially misrepresented the risks faced by Curtis Whitley related to  
27 head injuries. Defendants' MTBI Committee, through misleading and deceptive public statements,  
28

1 published articles, and the concussion pamphlet issued to the players that falsely , downplayed  
2 known long-term health risks of concussions to NFL players.

3 128. Material misrepresentations were made by members of Defendants' MTBI  
4 Committee on multiple occasions, including but not limited to testimony given at congressional  
5 hearings and the "informational" pamphlet which the NFL issued to players.

6 129. The material misrepresentations include but are not limited to remarks that players  
7 were not at an increased risk of head injury if they returned too soon to an NFL game or training  
8 session after suffering a head injury.

9 130. Defendants' material misrepresentations included criticism of legitimate scientific  
10 studies which illustrated the dangers and risks of head injuries and the long-term effects of  
11 concussions.

12 131. Defendants' material misrepresentations, through among other things, the MTBI  
13 Committee, denied a link between concussions and CTE.

14 132. Defendants made these misrepresentations and actively concealed adverse  
15 information at a time when they knew, or should have known, that Plaintiff's decedent faced serious  
16 health problems if he were returned to play too soon after suffering brain trauma.

17 133. The persons who made the misrepresentations as agents of the NFL and its  
18 MTBI Committee had knowledge of their falsity and knowledge of the detrimental effect of  
19 concealment of material facts.

20 134. Defendants intended to induce Curtis Whitley's reliance on the  
21 misrepresentations and to induce him to alter his position to his injury and risk.

22 135. Curtis Whitley justifiably and reasonably relied on these misrepresentations  
23 when playing in the NFL. Had he known the true risks to his health, he would not have agreed  
24 to jeopardize his health.

25 136. Defendants' misrepresentations proximately caused and/or contributed to Curtis  
26 Whitley's death.  
27  
28

1           137. As a direct and proximate result of the Defendants' misrepresentations, Curtis  
2 Whitley experienced pain and suffering and suffered serious permanent and debilitating  
3 injuries, including but not limited to brain damage and CTE, which caused and/or contributed  
4 to his untimely death.

5           138. As a direct and proximate result of Defendants' misrepresentations, Plaintiff  
6 incurred expenses for funeral, burial, medical treatment, and other related costs in an amount  
7 to be determined by proof at trial.

8           139. As a direct and proximate result of Defendant's misrepresentations, Curtis  
9 Whitley's minor children suffered and will continue to suffer in the future the loss of Curtis  
10 Whitley's love, companionship, comfort, affection, society, moral support, and solace related  
11 to Curtis Whitley's untimely death.

12           140. As a direct and proximate result of Defendant's misrepresentations, Curtis  
13 Whitley's minor children will in the future incur loss of financial support of Curtis Whitley's  
14 earning capacity in an amount to be determined according to proof at trial.

15           141. By reason thereof, Plaintiff, as guardian ad litem and personal representative of  
16 the Estate of Curtis Whitley, seeks and is entitled to recover damages from Defendants on  
17 behalf of and for Curtis Whitley's minor children and Estate in an amount to be proven at trial.

18                   **FOURTH CAUSE OF ACTION—ACTUAL FRAUD**

19           142. Plaintiff incorporates by reference paragraphs 1 through 141 of this Complaint  
20 as if fully set forth herein at length.

21           143. From 2005 through June of 2010, Defendants falsely promoted, as fact—  
22 through their MTBI Committee and others, material misrepresentations to their players, former  
23 players, Congress and the public at large—that there was no link between concussions and  
24 later life cognitive/brain injury, including CTE and its related symptoms.

25           144. Defendants suppressed information they knew to be true regarding the link  
26 between football-related head injuries and heightened risks of brain damage, among other  
27 things, and withheld this information from Curtis Whitley to his detriment.  
28

1           145. Defendants and the individuals who made the misrepresentations as agents of the  
2 Defendants did not believe these statements to be true.

3           146. Defendants and the individuals who made the misrepresentations as agents of the  
4 Defendants intended to deceive Curtis Whitley, as a party to his NFL contract.

5           147. As a direct and proximate result of the Defendant's misrepresentations, Curtis  
6 Whitley experienced pain and suffering and suffered serious permanent and debilitating  
7 injuries, including but not limited to brain damage and CTE, which resulted in his untimely  
8 death.

9           148. As a direct and proximate result of Defendants' misrepresentations, Plaintiff  
10 incurred expenses for funeral, burial, medical treatment, and other related costs in an amount  
11 to be determined by proof at trial.

12           149. As a direct and proximate result of Defendant's misrepresentations, Curtis  
13 Whitley's minor children suffered and will continue to suffer in the future the loss of Curtis  
14 Whitley's love, companionship, comfort, affection, society, moral support, and solace related  
15 to Curtis Whitley's untimely death.

16           150. As a direct and proximate result of Defendant's misrepresentations, Curtis  
17 Whitley's minor children will in the future incur loss of financial support of Curtis Whitley's  
18 earning capacity in an amount to be determined according to proof at trial.

19           151. By reason thereof, Plaintiff, as guardian ad litem and personal representative of  
20 the Estate of Curtis Whitley, seeks and is entitled to recover damages from Defendants on  
21 behalf of and for Curtis Whitley's minor children and Estate in an amount to be proven at trial.

22                           **FIFTH CAUSE OF ACTION--WRONGFUL DEATH**

23           152. Plaintiff incorporates by reference paragraphs 1 through 151 of this Complaint  
24 as if fully set forth herein.

25           153. The following are those presently known to be children of Curtis Whitley and  
26 their relationships to him:

27                           **NAME**

27                           **RELATIONSHIP**

28                           Hannah Jane Whitley

28                           minor daughter

Curtis Wayne Whitley                      minor son

154. As the representative of Curtis Whitley's heirs, Plaintiff is entitled to bring this action pursuant to applicable law.

155. Curtis Whitley's untimely death on or about May 11, 2008 was a direct and proximate result of having suffered multiple past traumatic brain injuries while playing professional football for the San Diego Chargers, Carolina Panthers, and Oakland Raiders during the 1990s.

156. Defendants knew for decades of the potential harmful effects on a player's brain of multiple concussions and head trauma; however until June of 2010 it concealed these facts from coaches, trainers, players, including but not limited to Curtis Whitley, and the public with negligent disregard for Curtis Whitley's safety and life. Defendants; negligence was a direct and proximate cause of Curtis Whitley's death.

157. As a further direct and proximate result of the Defendants' actions, Curtis Whitley's minor children suffered and will continue to suffer in the future the loss of Curtis Whitley's love, companionship, comfort, affection, society, moral support, and solace related to Curtis Whitley's untimely death.

158. Plaintiff seeks prejudgment interest as prescribed by applicable law on any and all damages to have been suffered herein.

159. By reason thereof, Plaintiff, as the legal guardian of the heirs and successors in interest to Curtis Whitley, is entitled to recover damages from Defendants under applicable in an amount to be proven at trial and reasonably anticipated to exceed \$25,000.

**SIXTH CAUSE OF ACTION—SURVIVAL AND PAIN AND SUFFERING**

160. Plaintiff incorporates by reference paragraphs 1 through 159 of this Complaint as if fully set forth herein.

161. As the representative of Curtis Whitley's estate, Plaintiff is entitled to bring this action pursuant to applicable law.

162. Prior to his death, Curtis Whitley experienced years of headaches, severe migraine headaches, loss of memory, memory lapses and deficiency, sleeping problems,

1 cervical spine arthritis, dizziness, impulse control problems, suicidal thoughts, depression, bi-  
2 polar mood symptoms, anxiety and panic disorder, extreme fatigue and apathy, blurred vision,  
3 slurred speech, extreme sensitivity to light and/or irritability.

4 163. Defendants' conduct evidences a willful, wanton and reckless disregard for  
5 safety in order to profit from the entertainment value of their business.

6 164. Defendants' callous disregard for safety resulted in the serious, permanent,  
7 physical and emotional injuries and Curtis Whitley's death and has put other players at great  
8 risk.

9 165. Under the law applicable to this claim, and by reason of the foregoing, Curtis  
10 Whitley's estate is entitled to recover survival damages, including damages for pain and  
11 suffering, loss of earnings and earnings capacity, emotional distress, punitive damages and  
12 other damages allowable by law, in an amount to be determined by a jury including, but not  
13 limited to, pain and suffering, medical expenses, loss of earnings and earnings capacity,  
14 punitive damages and other damages allowable by law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 17 1. For compensatory and general damages according to proof;  
18 2. For special and incidental damages according to proof;  
19 3. For punitive damages according to proof;  
20 4. For costs of the proceedings herein;  
21 5. For all such other and further relief as the court deems just.

22  
23 DATED: March 20, 2012

KREINDLER & KREINDLER, LLP

24  
25 By: 

26 STUART R. FRAENKEL  
27 *Attorneys for Plaintiff*  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

DATED: March 20, 2012

By: 

30  
 INT FOR DAMAGES