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FRANK P. BARBARO & ASSOCIATES
Frank P. Barbaro (California Bar No. 44417)
Corey C. Higgins (California Bar No. 261332)
1111 N. Broadway
Santa Ana, California 92701
Telephone: (714) 835-2122
Facsimile: (714) 973-4892

Attorneys for PLAINTIFFS

FILED
Superior Court of California
County of Los Angeles

MAY 18 2012

John A. Clarke, Executive Officer/Clerk
By Moses Soto Deputy
MOSES SOTO

D-68 Mark V. MOONEY
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SAM "BAM" CUNNINGHAM; DANNY
REECE and KIMBERLY REECE, his
wife; BOOKER BROWN and
JACQUELINE BROWN, his wife;
GEORGE RAGSDALE; CECIL
JOHNSON and OCTAVIA LITTLE, his
wife; ALVIN GARRETT; MARK
COTNEY and CAROL COTNEY, his wife;
MICHAEL DENNIS and TONI DENNIS,
his wife; CHARLIE PHILLIPS; PARNELL
DICKINSON and ERNESTINE
DICKINSON, his wife; JIM WILKS;
WILLIAM CESARE and LISA BECKER
CESARE, his wife,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE; NFL
PROPERTIES LLC; RIDDELL, INC. d/b/a
RIDDELL SPORTS GROUP, INC., ALL
AMERICAN SPORTS CORPORATION,
d/b/a RIDDELL/ALL AMERICAN;
RIDDELL SPORTS GROUP, INC.,
EASTON-BELL SPORTS, INC.;
EASTON-BELL SPORTS, LLC; EB
SPORTS CORP.; and RBG HOLDINGS
CORP.; and JOHN DOES 1 through 100,
Inclusive,

Defendants.

CASE NO. **BC484813**
COMPLAINT FOR DAMAGES

1. Negligence – Monopolist
2. Negligence
3. Fraud
4. Fraudulent Concealment
5. Negligent Misrepresentation
6. Conspiracy
7. Strict Liability – Design Defect
8. Strict Liability – Manufacturing Defect
9. Negligence
10. Failure to Warn
11. Negligence
12. Loss of Consortium

CIT/CASE: BC484813 LEA/DEFH:
RECEIPT #: CHS24880029
DATE PAID: 05/18/12 02:17:52 PM
PAYMENT: \$395.00 0310
RECEIVED:
CHECK: 395.00
CASH:
CHANGE:
CARD:

1 The Plaintiffs, all individuals, hereby complain of Defendants listed above and hereby
2 allege as follows:

3 **PARTIES**

4 **Plaintiffs:**

5 1. Mr. Sam "Bam" Cunningham is a resident of and domiciled in the State of
6 California, County of Los Angeles.

7 2. Mr. Danny Reece and his wife, Kimberly Reece, are residents of and
8 domiciled in the State of California, County of Los Angeles.

9 3. Mr. Booker Brown and his wife, Jacqueline Brown, are residents of and
10 domiciled in the State of California, County of Kern.

11 4. Mr. George Ragsdale is a resident of and domiciled in the State of North
12 Carolina, County of Guilford.

13 5. Mr. Cecil Johnson and his wife, Octavia Little, are residents of and domiciled
14 in the State of Florida, County of Miami-Dade.

15 6. Mr. Alvin Garrett is a resident of and domiciled in the State of Alabama,
16 County of Jefferson.

17 7. Mr. Mark Cotney and his wife, Carol Cotney, are residents of and domiciled
18 in the State of Florida, County of Hillsborough.

19 8. Mr. Michael Dennis and his wife, Toni Dennis, are residents of and domiciled
20 in the State of California, County of Los Angeles.

21 9. Mr. Charlie Phillips is a resident of and domiciled in the State of California,
22 County of Los Angeles.

23 10. Mr. Parnell Dickinson and his wife, Ernestine Dickinson, are residents of and
24 domiciled in the State of Florida, County of Hillsborough.

25 11. Mr. Jim Wilks is a resident of and domiciled in the State of Texas, County of
26 Harris.

27 12. Mr. William Cesare and his wife, Lisa Becker Cesare, are residents of and
28 domiciled in the State of Tennessee, County of Williamson.

1 ///

2
3 **Defendants:**

4 13. Defendant National Football League ("the NFL") is an unincorporated
5 association with its headquarters located in the State of New York. The NFL regularly
6 conducts business in California.

7 14. Defendant NFL Properties, LLC as the successor-in-interest to National
8 Football League Properties Inc. ("NFL Properties") is a limited liability company
9 organized and existing under the laws of the State of Delaware with its headquarters in the
10 State of New York. NFL Properties is engaged, among other activities, approving
11 licensing and promoting equipment used by all the NFL teams. NFL Properties regularly
12 conducts business in California.

13 15. Defendant Riddell, Inc. (d/b/a Riddell Sports Group, Inc.) is a corporation
14 organized and existing under the laws of the State of Illinois, and is engaged in the
15 business of designing, manufacturing, selling and distributing football equipment,
16 including helmets, to the NFL and since 1989 has been the official helmet of the NFL.
17 Riddell, Inc. regularly conducts business in California.

18 16. Defendant All American Sports Corporation, d/b/a Riddell/All American, is a
19 corporation organized and existing under the laws of the State of Delaware and is engaged
20 in the business of designing, manufacturing, selling and distributing football equipment,
21 including helmets, to the NFL and since 1989 has been the official helmet of the NFL. All
22 American Sports regularly conducts business in California.

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

26 18. Defendant Easton-Bell Sports, Inc. is a California corporation, incorporated in
27 Delaware with a principal place of business at 7855 Haskell Avenue, Suite 200, Van Nuys,
28 California 91406 and is a parent corporation of Riddell Sports Group Inc. Easton-Bell

1 Sports, Inc. designs, develops, and markets branded athletic equipment and accessories,
2 including marketing and licensing products under the Riddell brand.

3 19. Defendant Easton-Bell Sports, LLC is the parent corporation of Easton-Bell
4 Sports, Inc. and is incorporated in Delaware, with a principal place of business at 152 West
5 57th Street, New York, New York 10019. Easton-Bell Sports, LLC regularly conducts
6 business in California.

7 20. Defendant EB Sports Corp. is a Delaware corporation with its principal place
8 of business at 7855 Haskell Avenue, Van Nuys, California 91406.

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

11 22. Defendants Riddell, Inc., Riddell Sports Group Inc., All American Sports
12 Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG
13 Holdings Corp., shall hereinafter be referred to collectively as "Riddell" or the "Riddell
14 Defendants."

15 16 JURISDICTION

17 23. This Court has personal jurisdiction over Defendants because they engage in
18 business in California and derive substantial revenue from their contacts with this State.

19 20 INTRODUCTION

21 The NFL:

22 24. The National Football League was founded as the American Professional
23 Football Association in 1920.

24 25. The American Professional Football Association changed its name to the
25 National Football League in 1922. By 1924, there were 23 franchises or teams that
26 comprised the NFL.

27 26. The American Football League operated from 1960 to 1969. In 1970, it
28 merged with the National Football League to create the American Football Conference.

1 27. Today, the National Football League consists of two structured conferences,
2 the AFC and the NFC, with 32 team members.

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

5 29. The Supreme Court of the United States of America in *American Needle, Inc.*
6 *v. NFL, et al.*, 130 S.Ct. 2201 (U.S. 2010), ruled that the NFL is a separate entity from each
7 of its teams.

8 30. The NFL is by far the most attended domestic sports league in the world by
9 average attendance per game with 67,509 fans per game in the regular season (2009).

10 31. The NFL is a 9 billion dollar-a-year business.

11 **Riddell:**

12 32. The Riddell Defendants have operated through designing, developing,
13 manufacturing, selling and distributing football equipment, including helmets, in one form
14 or another, since 1922.

15 33. As early as the 1930's, players began using helmets during football games.
16 These early helmets were constructed from pieces of cobbled leather.

17 34. In the early 1940's, John T. Riddell, who later formed John T. Riddell
18 Incorporated, invented the first plastic suspension helmet. In 1949, plastic helmets became
19 legalized.

20 35. Throughout the latter half of the 20th century and continuing to present day,
21 Riddell has designed, developed, manufactured, sold, and distributed equipment used in the
22 NFL, including equipment used by Plaintiffs, including, but not limited to, the following:

23 (a) In the 1950's, Riddell manufactured a face mask component for its helmets,
24 which was eventually patented.

25 (b) In 1962, Riddell used a "U" shaped nose protector with a shell (known as the
26 TK2) molded out of polycarbonate. Riddell also designed an open/closed cell
27 foam and composite liner system for this model to increase the efficiency of
28 the webbed suspension.

- 1 (c) In 1963, Riddell developed the TAK-29 helmet, which was the first to use air
2 inflation for fitting the helmet snug to the head. The TAK-29 shell, like the
3 TK2, displayed the protective polycarbonate plastic, in addition to including
4 tough shock and cut-resistant face mask attachment straps.
- 5 (d) In 1969, recognizing that head protection was a key factor in helmet design
6 requiring durable head protection, Riddell constructed a micro-fit helmet
7 model with injection molding technology to create a one-piece shell to
8 improve the structural integrity of the entire helmet.
- 9 (e) In 1973, Riddell developed, designed, manufactured, sold, and/or distributed
10 an air cushion helmet whose interior system consisted of individual vinyl air
11 cushions with layers of fitting and energy absorbing foam. When a blow was
12 struck, the air in the cushion was expelled through a single vent, greatly
13 reducing the initial impact. With the exhausting of the air cushion, the
14 compressed fitting foam was further compressed, reducing impact.
- 15 (f) In 1977, Riddell developed, designed, manufactured, sold, and/or distributed a
16 stainless steel face mask which offered greater bend resistance that prevented
17 helmet breakage at the drill holes.
- 18 (g) In 1981, Riddell developed, designed, manufactured, sold, and/or distributed
19 an Air Cushion Engineered helmet.
- 20 (h) In 1982, Riddell developed, designed, manufactured, sold, and/or distributed a
21 M155 helmet model with a combination of foam and liquid-filled cells used
22 for padding. On impact, the liquid would be throttled from one cell to the
23 next, resulting in energy attenuation. The M155 helmet model included one-
24 piece injection-molded face masks which were mar and rust-resistant, in
25 addition to polyurethane face mask straps and universal jaw pads.
- 26 (i) In 2002, Riddell developed, designed, manufactured, sold, and/or distributed
27 the Riddell Revolution helmet designed with the intent of reducing the risk of
28 concussion.

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

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

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

16 (m) In 2007, Riddell developed, designed, manufactured, sold, and/or distributed
17 the 360 helmet which uses energy-managing materials and a face mask
18 attachment system to disperse the energy of frontal impacts. According to
19 Riddell, it developed this helmet using over 1.4 million impacts collected
20 through Riddell's HITS technology.

21 36. Riddell is currently the official helmet of the NFL. Upon information and
22 belief, Plaintiffs wore Riddell helmets at times while playing and/or practicing during their
23 NFL careers.

24 37. The Riddell Defendants are and were at all times herein mentioned engaged in
25 the business of selling, manufacturing, designing, testing, engineering, marketing,
26 modifying, assembling, inspecting, distributing, and controlling the helmets and other
27 similar equipment for use by Plaintiffs and within the NFL.
28

1 **NFL AND THE CBA**

2 38. Until March of 2011, NFL players were all members of a union called the
3 National Football League Players Association ("NFLPA"). The NFLPA negotiates the
4 general minimum contract for all players in the league with the National Football League
5 Management Council ("NFLMC"). This contract is called the Collective Bargaining
6 Agreement ("CBA") and it is the central document that governs the negotiation of
7 individual player contracts for all of the league's players. However, historically, the NFL
8 retired players have never been the subject of or a party to Collective Bargaining.

9 39. The CBA had been in place since 1993 and was amended in 1998 and again in
10 2006. The CBA was originally scheduled to expire at the end of the 2012 season but in
11 2008 the owners exercised their right to opt-out of the agreement two years earlier. In
12 2011, the parties in trying to negotiate a new CBA reached an impasse and the NFL owners
13 locked the players out. Subsequently, the NFLPA decertified itself as the players'
14 representative for bargaining.

15 40. The plaintiffs herein are all retirees and not covered by the CBA nor are they a
16 subject of or parties to bargaining between the NFL and the NFLPA. Thus, the plaintiffs'
17 claims are not preempted by federal labor law since the CBA does not apply to their
18 present claims and, additionally, it does not currently exist.

19
20 **CTE AND CONCUSSION INJURY**

21 41. In 2002, Dr. Bennet Omalu, a forensic pathologist and neuropathologist found
22 Chronic Traumatic Encephalopathy (CTE) in the brain of Hall of Famer, Mike Webster.

23 42. By 2007, Dr. Omalu found a fourth case linking the death of a former NFL
24 player to CTE brain damage from his football career.

25 43. Dr. Omalu says that the brain damage he found in four ex-players who died is
26 the same condition found in punch-drunk boxers.

1 44. Around the same time, researchers without NFL ties surveyed retired football
2 players and their findings showed that players who had multiple concussions were more
3 likely to report being diagnosed with depression.

4 45. Dr. Omalu questioned "Where was the NFL when we found this disease?"

5 46. In 2005-2007, the University of North Carolina's Center for the Study of
6 Retired Athletes published survey-based papers that found a clear correlation between NFL
7 football and depression, dementia and other cognitive impairment.

8 47. To date, neuroanatomists have performed autopsies on 13 former NFL players
9 who died after exhibiting signs of degenerative brain disease. Twelve of these players
10 were found to have suffered from CTE.

11 48. The NFL undertook the responsibility of studying concussion research in 1994
12 through funding a Committee known as the "NFL Committee on Mild Traumatic Brain
13 Injury".

14 49. The NFL affirmatively assumed a duty to use reasonable care in the study of
15 post concussion syndrome, and to use reasonable care in the publication of data from the
16 MTBI Committee's work.

17 50. Rather than exercising reasonable care in these duties, the NFL immediately
18 engaged in a long-running course of negligent and fraudulent conduct.

19 51. The NFL Committee on Mild Traumatic Brain Injury published their findings
20 in 2004 showing "no evidence of worsening injury or chronic cumulative effects" from
21 multiple concussions. In a related study, this Committee found "many NFL players can be
22 safely allowed to return to play" on the day of a concussion if they are without symptoms
23 and cleared by a physician.

24 52. Players who suffered concussions were told by the NFL and its agents not to
25 be overly concerned, and were regularly returned to game action mere minutes after
26 sustaining them.

1 53. As further evidence, Commissioner Roger Goodell in June of 2007 admitted
2 publicly that the NFL has been studying the effects of traumatic brain injury for "close to
3 14 years . . ."

4 54. It was not until June of 2010 that the NFL acknowledged that concussions can
5 lead to dementia, memory loss, CTE and related symptoms by publishing warning to every
6 player and team.

7 **NFL'S DUTY TO PLAYERS AND THE PUBLIC**

8 55. The NFL overtly undertook a duty to study concussions on behalf of all
9 American Rules Football leagues and players.

10 56. As the industry icon, all American Rules Football leagues modeled their
11 programs after the NFL.

12 57. In turn, the NFL possesses monopoly power over American Football. As
13 such, it also possesses monopoly power over the research and education of football injuries
14 to physicians, trainers, coaches and individuals with brain damage such as Plaintiffs who
15 played in the NFL, as well as the public at large. As a result, it owed a duty to everyone
16 including individuals such as Plaintiffs in the following respects:

- 17 (a) It owed a duty to protect Plaintiffs on the playing field;
18 (b) It owed a duty to Plaintiffs to educate them and other players in the NFL
19 about CTE and/or concussion injury;
20 (c) It owed a duty to Plaintiffs to educate trainers, physicians, and coaches about
21 CTE and/or concussion injury;
22 (d) It owed a duty to Plaintiffs to have in place strict return-to-play guidelines to
23 prevent CTE and/or concussion injury;
24 (e) It owed a duty to Plaintiffs to promote a "whistleblower" system where
25 teammates would bring to the attention of a trainer, physician or coach that
26 another player had sustained concussion injury;
27 (f) It owed a duty to Plaintiffs to design rules and penalties for players who use
28 their head or upper body to hit or tackle;

- 1 (g) It owed a duty to Plaintiffs to design rules to eliminate the risk of concussion
2 during games and/or practices;
- 3 (h) It owed a duty to Plaintiffs to promote research into and cure for CTE and the
4 effects of concussion injury over a period of time; and
- 5 (i) It owed a duty to State governments, local sports organizations, all American
6 Rules Football leagues and players, and the public at large to protect against
7 the long-term effects of CTE and/or concussion injury.

8 58. The NFL knew as early as the 1920's of the harmful effects on a player's
9 brain of concussions; however, until June of 2010 they concealed these facts from coaches,
10 trainers, players, and the public.

11 59. Plaintiffs did not know the long-term effects of concussions and relied on the
12 NFL and the Riddell Defendants to protect them.

13
14 **NFL'S KNOWLEDGE OF THE RISK OF CONCUSSIONS**

15 60. For decades, Defendants have known that multiple blows to the head can lead
16 to long-term brain injury, including memory loss, dementia, depression and CTE and its
17 related symptoms.

18 61. This action arises from the Defendants' failure to warn and protect NFL
19 players, such as Plaintiffs against the long-term brain injury risks associated with football-
20 related concussions.

21 62. This action arises because the NFL Defendants committed negligence by
22 failing to exercise its duty to enact league-wide guidelines and mandatory rules regulating
23 post-concussion medical treatment and return-to-play standards for players who suffer a
24 concussion and/or multiple concussions.

25 63. By failing to exercise its duty to enact reasonable and prudent rules to protect
26 players against the risks associated with repeated brain trauma, the NFL's failure to
27 exercise its independent duty has led to the deaths of some, and brain injuries of many
28 other former players, including Plaintiffs.

1 64. The following information, which is by no means comprehensive, was
2 available and easily accessible to Defendants:

- 3 (a) In the 1890's, Admiral Joseph Mason "Bull" Reeves, who is more known as
4 the father of carrier aviation, played American football in the 1890's for the
5 Naval Academy. He had suffered so many blows to his head that a navy
6 doctor advised him that he could risk death or insanity if he received another
7 kick to his head.
- 8 (b) In 1913, Glenn "Pop" Warner, commented that he had "many times seen cases
9 when hard bumps on the head so dazed the player receiving them that he lost
10 his memory for a time and had to be removed from the game.";
- 11 (c) In 1928, the first case of "Punch Drunk" in boxers was published in the
12 *American Association Journal* by HS Martland;
- 13 (d) A 1937 article on "Dementia pugilistica" was published in the *US Navy*
14 *Medical Bulletin*;
- 15 (e) A 1952 article on "Electroencephalographic changes in professional boxers
16 was published in the *American Medical Association Journal*;
- 17 (f) A 1952 New England Journal of Medicine Article Vol. 246, pp. 554-556
18 talked about a three strike rule for concussions in 1945 – three concussions
19 and you should retire from football;
- 20 (g) A 1954 article on "Observations on the clinical and brain wave patterns of
21 professional boxers" was published in the *American Medical Association*
22 *Journal*;
- 23 (h) A 1956 article on "Diffuse degeneration of the cerebral white matter in severe
24 dementia following head injury" was published in the *Neurological,*
25 *Neurosurgery and Psychiatry Journal*;
- 26 (i) A 1957 article on the "Medical aspects of boxing, particularly from a
27 neurological standpoint" was published in the *British Medical Journal*;
28

- 1 (j) A 1959 article on the "Observations of the pathology of insidious dementia
2 following head injury" was published in the *Journal of Mental Science*;
- 3 (k) A 1966 article on "Concussion amnesia" in *Neurology*;
- 4 (l) A 1968 article on "brains of boxers" published in *Neurochirurgia*;
- 5 (m) A 1969 report by the Royal College of Physicians of London confirmed the
6 danger of chronic brain damage occurring in boxers as a result of their
7 careers;
- 8 (n) A 1969 article on "Organic psychosyndromes due boxing" in the *British*
9 *Journal of Psychiatry*;
- 10 (o) A 1969 book on "Brain damage in boxers – A study of the prevalence of
11 traumatic encephalopathy among ex-professional boxers" by AH Roberts;
- 12 (p) A 1970 article on "retrograde memory immediately after concussion"
13 published in the *Lancet*;
- 14 (q) In 1973, a disabling and sometimes deadly condition involving the second
15 impact concussion occurring before symptoms of a first concussion was
16 described by R.C. Schneider. This later was coined the Second Impact
17 Syndrome in 1984;
- 18 (r) A 1973 article on "the aftermath of boxing" published in *Psychology*
19 *Medicine*;
- 20 (s) JA Corsellis, CJ Bruton, D Freeman-Browne, *The Aftermath of Boxing*,
21 3 Psych. Med. 270-303 (1973);
- 22 (t) A 1974 article on "Cerebral concussion and traumatic unconsciousness,
23 Correlation of experimental and clinical observations of blunt head injuries"
24 published in *Brain*;
- 25 (u) A 1974 article on "Traumatic encephalopathy in a young boxer" published in
26 the *Lancet*;
- 27 (v) A 1974 article on "Delayed recovery after mild head injury" was published in
28 the *Lancet*;

- 1 (w) A 1975 article on "cumulative effect of concussion" was published in the
2 *Lancet*;
- 3 (x) J. A. Corsellis, *Brain Damage in Sport*, 1 LANCET 401, 401 (1976) (finding
4 that the brain tissue of fifteen former boxers who sustained multiple head
5 trauma evidenced neuropathological signs of CTE);
- 6 (y) A 1978 article on "Posttraumatic dementia" published in *Aging*;
- 7 (z) J.C. Maroon, P.B. Steele, R. Berlin, *Football Head & Neck Injuries An*
8 *Update*, 27 Clin. Neurosurg. 414-29 (1980);
- 9 (aa) A 1981 article on "Association football injuries to the brain: a preliminary
10 report" published in the *British Journal of Sports Medicine*;
- 11 (bb) H Hugenholtz, MT Richard, *Return to Athletic Competition Following*
12 *Concussion*, 127(9) Can. Med. Assoc. J. 827-29 (1982);
- 13 (cc) RC Cantu, *Guidelines to Return to Contact After Cerebral Concussion*,
14 *The Physician and Sports Medicine* 75-83 (1986);
- 15 (dd) Daniel N. Kulund, *The Injured Athlete* 269 (1988). A boxer may be knocked
16 unconscious by the pain of a shot to the eye or neck during a match. *See id.*
17 Furthermore, a blow to the heart or solar plexus may block the flow of blood
18 and render the fighter unconscious. Any punches to the temporal region may
19 lead to a loss of balance or dizziness;
- 20 (ee) JA Corsellis, *Boxing and the Brain*, 298 BMJ 105-109 (1989);
- 21 (ff) James P. Kelly et al., *Concussion in Sports, Guidelines for the Prevention of*
22 *Catastrophic Outcome*, 266 JAMA 2868 (1991);
- 23 (gg) B.E. Leininger & J.S. Kreutzer, *Neuropsychological Outcome of Adults with*
24 *Mild Traumatic Brain Injury: Implications for Clinical Practice and*
25 *Research*, in REHABILITATION OF POST-CONCUSSIVE DISORDERS
26 (L.J. Horn & N.D. Zasler eds., State of the Art Reviews, Physical Medicine
27 and Rehabilitation, Hanley & Belfus, Inc. 1992);
- 28 (hh) RC Cantu, *Cerebral Concussion in Sports*, 14(1) Sports Med. 64-74 (1992);

- 1 (ii) RC Cantu, FO Mueller, *Catastrophic Football Injuries in the USA*, 2(3) Clin.
2 J. Sports Med. 180-85 (1992); and
3 (jj) Mild Traumatic Brain Injury Committee of the Head Injury Interdisciplinary
4 Special Interest Group of the American Congress of Rehabilitation Medicine,
5 *Definition of Mild Traumatic Injury*, 8 J. HEAD TRAUMA REHABIL. 86-87
6 (1993).

7 65. In addition, the NFL's duty to protect the health and safety of its players is
8 further underscored by the irrefutable evidence that the NFL has previously enacted the
9 following non-exhaustive list of rules pertaining to players' health and safety:

- 10 (a) In 1956, the NFL enacted a rule that prohibited the grabbing of any player's
11 facemask, other than the ball carrier;
12 (b) In 1962, the NFL enacted a rule that prohibited players from grabbing any
13 player's facemask;
14 (c) In 1976, the NFL enacted a rule that prohibited players from grabbing the
15 facemask of an opponent. The penalty for an incidental grasp of the facemask
16 was 5 yards. The penalty for twisting, turning, or pulling the facemask was 15
17 yards. A player could be ejected from the game if the foul is judged to be
18 vicious and/or flagrant;
19 (d) In 1977, the NFL enacted a rule that prohibited players from slapping the head
20 of another player during play. This rule was referred to as the "Deacon Jones
21 Rule", named after the Rams' defensive end who frequently used this
22 technique;
23 (e) In 1977, the NFL enacted a rule that prohibited Offensive Linemen from
24 thrusting their hands into a defender's neck, face, or head;
25 (f) In 1979, the NFL enacted a rule that prohibited players from using their
26 helmets to butt, spear, or ram an opponent. Pursuant to this rule, any player
27 who used the crown or the top of his helmet unnecessarily will be called for
28 unnecessary roughness;

- 1 (g) In 1980, the NFL enacted rule changes that provided greater restrictions on
2 contact in the area of the head, neck, and face;
- 3 (h) In 1980, the NFL enacted rule changes that prohibited players from directly
4 striking, swinging, or clubbing the head, neck, or face ("personal foul").
5 Beginning in 1980, a penalty could be called for such contact whether or not
6 the initial contact was made below the neck area;
- 7 (i) In 1982, the NFL enacted a rule change by which the penalty for incidental
8 grabbing of a facemask by a defensive team was changed from 5 yards to an
9 automatic first down plus a 5 yard penalty;
- 10 (j) In 1983, the NFL enacted a rule that prohibited players from using a helmet as
11 a weapon to strike or hit an opponent;
- 12 (k) In 1988, the NFL enacted a rule that prohibited defensive players from hitting
13 quarterbacks below the waist while they are still in the pocket. (The rule was
14 unofficially called the "Andre Waters Rule" based upon a hit that Waters
15 placed on Los Angeles Rams quarterback Jim Everett in 1988); and
- 16 (l) Following the 2004-2005 season, the NFL's Competition Committee
17 reviewed video of the entire season and concluded that the horse-collar tackle
18 resulted in six serious injuries. On May 23, 2005, the NFL owners voted 27-5
19 to ban the tackle. The ban states that a horse-collar tackle is an open-field
20 tackle in which a defender uses the shoulder pads to immediately bring a ball
21 carrier down.

22 NFL FRAUDUENTLY CONCEALED

23 THE LONG-TERM EFFECTS OF CONCUSSIONS

24 66. Instead of taking measures to actually protect its players from suffering long-
25 term brain injuries, the NFL created the "Mild Traumatic Brain Injury Committee" in 1994
26 to purportedly study the effects of concussions on NFL players.

27 67. The Mild Traumatic Brain Injury Committee was chaired by Dr. Elliot
28 Pellman, a rheumatologist who is not certified as to brain injuries and/or concussions.

1 68. After 14 years of purported studies, and after numerous medical journal
2 articles were written by the NFL's Mild Traumatic Brain Injury Committee (the "NFL's
3 Brain Injury Committee"), concluded that "[b]ecause a significant percentage of players
4 returned to play in the same game [as they suffered a mild traumatic brain injury] and the
5 overwhelming majority of players with concussions were kept out of football-related
6 activities for less than 1 week, it can be concluded that mild TBI's in professional football
7 are not serious injuries." See "Concussion in professional football: Summary of the
8 research conducted by the National Football League's Committee on Mild Traumatic Brain
9 Injury," *Neurosurg Focus* 21 (4):E12, 2006, E.J. Pellman and D.C. Viano.

10 69. According to the NFL's own committee, the speedy return to play after
11 suffering a concussion demonstrates that such players were not at a greater risk of suffering
12 long-term brain injury.

13 70. The MTBI Committee has published multiple research articles since its
14 inception. The findings of the MTBI Committee have regularly contradicted the research
15 and experiences of neurologists who treat sports concussions, and to players who endured
16 them.

17 71. For example, in the October 2004 edition of *Neurosurgery*, the MTBI
18 Committee published a paper in which it asserted that the Committee's research found no
19 risk of repeated concussions in players with previous concussions and that there was no "7-
20 to 10-day window of increased susceptibility to sustaining another concussion."

21 72. In a comment to the study published in *Neurosurgery*, one doctor wrote that
22 "[t]he article sends a message that it is acceptable to return players while still symptomatic,
23 which contradicts literature published over the past twenty years suggesting that athletes be
24 returned to play only after they are asymptomatic, and in some cases for seven days."

25 73. As a further example, in January 2005, the Committee wrote that returning to
26 play after a concussion "does not involve significant risk of a second injury either in the
27 same game or during the season." However, a 2003 NCAA study of 2,905 college football
28

1 players found just the opposite: "Those who have suffered concussions are more
2 susceptible to further head trauma for seven to 10 days after the injury."

3 74. The NFL-funded study is completely devoid of logic and science. More
4 importantly, it is contrary to their Health and Safety Rules as well as 75 years of published
5 medical literature on concussions.

6 75. Between 2002 and 2005, a series of clinical and neuropathological studies
7 performed by independent scientists and physicians demonstrated that multiple NFL
8 induced-concussions cause cognitive problems such as depression, early on-set dementia
9 and CTE and its related symptoms.

10 76. In response to these studies, the NFL, to further a scheme of fraud and deceit,
11 had members of the NFL's Brain Injury Committee deny knowledge of a link between
12 concussion and cognitive decline and claim that more time was needed to reach a definitive
13 conclusion on the issue.

14 77. When the NFL's Brain Injury Committee anticipated studies that would
15 implicate causal links between concussion and cognitive degeneration it promptly
16 published articles producing contrary findings, although false, distorted and deceiving as
17 part of the NFL's scheme to deceive Congress, the players and the public at large.

18 78. Between 2002 and 2007, Dr. Bennet Omalu examined the brain tissue of
19 deceased NFL players including Mike Webster, Terry Long, Andrew Waters, and Justin
20 Strzelczyk. Dr. Omalu in an article in *Neurosurgery* concluded that chronic traumatic
21 encephalopathy ("CTE") triggered by multiple NFL concussions represented a partial
22 cause of their deaths.

23 79. In response to Dr. Omalu's article, the NFL acting thru the NFL's Brain
24 Injury Committee, Drs. Ira Casson, Elliott Pellman and David Viano wrote a letter to the
25 editor of *Neurosurgery* asking that Dr. Omalu's article be retracted.

26 80. Dr. Julian Bailes, a neurosurgeon from West Virginia University, briefed the
27 NFL Committee on the findings of Dr. Omalu and other independent studies linking
28 multiple NFL head injuries with cognitive decline. Dr. Bailes recalled the MTBI

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

5 81. In 2005, a clinical study performed by Dr. Kevin Guskiewicz found that
6 retired players who sustained three or more concussions in the NFL had a five-fold
7 prevalence of mild cognitive impairment. The NFL's Brain Injury Committee, Dr. Mark
8 Lowell, promptly attacked the article by refusing to accept a survey of 2,400 former NFL
9 players.

10 82. A November 2006 *ESPN The Magazine* article described how the MTBI
11 Committee failed to include hundreds of neuropsychological tests done on NFL players
12 when studying the effects of concussions on the results of such tests. The article further
13 revealed that Dr. Pellman had fired a neuropsychologist for the New York Jets, Dr.
14 William Barr, after Dr. Barr voiced concern that Dr. Pellman might be picking and
15 choosing what data to include in the Committee's research to get results that would
16 downplay the effects of concussions.

17 83. Dr. Pellman stepped down as the head of the MTBI Committee in February
18 2007. Dr. Kevin Guskiewicz, research director of UNC's Center for the Study of Retired
19 Athletes, said at the time that Dr. Pellman was "the wrong person to chair the committee
20 from a scientific perspective and the right person from the league's perspective."

21 84. Regarding the work of Dr. Pellman, Dr. Guskiewicz stated, "[w]e found this at
22 the high school level, the college level and the professional level, that once you had a
23 concussion or two you are at increased risk for future concussions;" but "[Dr. Pellman]
24 continued to say on the record that's not what they find and there's no truth to it."

25 85. Dr. Pellman was replaced by Doctors Ira Casson and David Vaino. Dr. Casson
26 continued to dismiss outside studies and overwhelming evidence linking dementia and
27 other cognitive decline to brain injuries. When asked in 2007 whether concussions could
28

1 lead to brain damage, dementia or depression, Dr. Casson denied the linkage six separate
2 times.

3 86. Because of Congressional scrutiny and media pressure, the NFL scheduled a
4 league-wide Concussion Summit for June 2007. At the summit, the co-chair of the MTBI
5 Committee, Dr. Ira Casson, told team doctors and trainers that CTE has never been
6 scientifically documented in football players. Unfortunately, the NFL in keeping with its
7 scheme of fraud and deceit issued a pamphlet to players in August 2007, which stated:
8 "there is no magic number for how many concussions is too many." The pamphlet created
9 player reliance insofar as it also stated ""We want to make sure all NFL players. . .are fully
10 informed and take advantage of the *most up to date information* and resources as we
11 continue to study the long-term impact on concussions." (emphasis added).

12 87. In 2008, the University of Michigan's Institute for Social Research conducted
13 a study on the health of retired players, with over 1,000 former NFL players taking part.
14 The results of the study, which were released in 2009, reported that "Alzheimer's disease
15 or similar memory-related diseases appear to have been diagnosed in the league's former
16 players vastly more often than in the national population – including a rate of 19 times the
17 normal rate for men ages 30 through 49."

18 88. The NFL, which had commissioned the study, responded to its results by
19 claiming that the study was incomplete. Further findings, it said, would be needed. Several
20 experts in the field found the NFL's reaction to be "bizarre," noting that "they paid for the
21 study, yet they tried to distance themselves from it."

22 89. When Boston University's Dr. Ann McKee found CTE in the brains of two
23 more deceased NFL players in 2008, Dr. Ira Casson characterized each study as an
24 "isolated incident" from which no conclusion could be drawn.

25 90. At the October 2009 Congressional hearings of the House Judiciary
26 Committee, committee member Linda Sanchez analogized the NFL's denial of a causal
27 link between NFL concussion and cognitive decline to the Tobacco industry's denial of the
28 link between cigarette consumption and ill health effects.

1 91. Also at the October 2009 hearing, Rep. Maxine Waters stated, "I believe you
2 are an \$8 billion organization that has failed in your responsibility to the players. We all
3 know it's a dangerous sport. Players are always going to get injured. The only question is,
4 are you going to pay for it? I know that you dearly want to hold on to your profits. I think
5 it's the responsibility of Congress to look at your antitrust exemption and take it away."

6 92. NFL Commissioner Roger Goodell testified at the hearing that "[i]n the past
7 15 years, the N.F.L. has made significant investments in medical and biomechanical
8 research. All of that information has been made public, subjected to thorough and on-
9 going peer review, published in leading journals, and distributed to the N.F.L.P.A. and
10 their medical consultants. We have been open and transparent, and have invited dialogue
11 throughout the medical community."

12 93. In January 2010, the House Judiciary Committee held further hearings on
13 Football Player Head Injuries. The committee chairman, Rep. John Conyers, Jr., noted that
14 "until recently, the NFL had minimized and disputed evidence linking head injuries to
15 mental impairment in the future."

16 94. Dr. Casson provided oral and written testimony at the January 2010 hearings.
17 He continued to deny the validity of other studies, stating that "[t]here is not enough valid,
18 reliable or objective scientific evidence at present to determine whether or not repeat head
19 impacts in professional football result in long term brain damage."

20 95. Defendants had concealed for decades the serious risks of long-term effects of
21 traumatic brain injury. It was not until Defendants had to testify before Congress that these
22 eventual admissions were ultimately conceded. Further, Plaintiffs could not have known
23 or discovered with reasonable certainty that the cause of their injuries were due to
24 Defendants' fraudulent concealment of this information.

25 96. Since at least 2002, the NFL Committee has been on direct notice of multiple
26 NFL head injuries contributing to cognitive decline in later life, yet it has never amended
27 the 2007 NFL's Brain Injury Committee statement: "Current research with professional
28 athletes has not shown that having more than one or two concussions leads to permanent

1 problems. . . It is important to understand that there is no magic number for how many
2 concussions is too many.”

3 97. As of June 2010, the NFL had yet to amend these inaccurate and
4 misrepresentative statements to any Plaintiff or retiree.

5 **NFL ACKNOWLEDGES ITS DUTY TO**
6 **PROTECT AGAINST THE LONG-TERM RISK OF CONCUSSIONS**

7 98. On August 14, 2007, the NFL acknowledged its duty to players by enacting
8 rules to protect them against the risks associated with repeated brain trauma.

9 99. The NFL’s 2007 concussion guidelines, many of which stemmed from an
10 NFL conference in June of 2007 involving team trainers and doctors, were sent to all
11 current players and other team personnel.

12 100. The NFL’s 2007 guidelines on concussion management include a whistle-
13 blower provision for individuals to report concussions with the league so that a player with
14 a head injury is not forced to practice or play against medical advice.

15 101. The NFL’s 2007 concussion guidelines also include an informational
16 pamphlet provided to all current NFL players to aid in identifying symptoms of a
17 concussion. This information was later withdrawn by one of the outside counsel of the
18 NFL in a separate letter to its disability plan, as well as the NFL’s August 14, 2007 press
19 release denying that “more than one or two concussions leads to permanent problems”.

20 102. In a statement issued by the NFL on August 14, 2007, Roger Goodell, the
21 Commissioner of the NFL, introduced the NFL’s 2007 concussion guidelines by saying,
22 “We want to make sure all NFL players, coaches and staff members are fully informed and
23 take advantage of the most up-to-date information and resources as we continue to study
24 the long-term impact of concussions.”

25 103. The NFL’s Commissioner also stated, “[b]ecause of the unique and complex
26 nature of the brain, our goal is to continue to have concussions managed conservatively by
27 outstanding medical personnel in a way that clearly emphasizes player safety over
28 competitive concerns.”

1 104. The NFL's 2007 concussion guidelines provide when a player with a
2 concussion can return to a game or practice.

3 105. The NFL's 2007 concussion guidelines specifically mandate that a player
4 should have no concussion symptoms and normal neurological test results before returning
5 to play.

6 106. For the past many decades until August 14, 2007, the NFL's duty to protect its
7 players has never changed and has never waned. The only change that occurred is that on
8 August 14, 2007, the NFL finally and unequivocally acted upon its longstanding duty to
9 protect its member players by implementing league-wide concussion guidelines.

10 107. Importantly, the NFL themselves acknowledged that the 2007 guidelines were
11 inadequate and insufficient. As a result, the NFL enacted more strict regulations to handle
12 concussions starting in the 2009 season. Specifically, the NFL announced new rules on
13 managing concussions requiring players who exhibit any significant concussion signs to be
14 removed from a game or practice and be barred from returning the same day.

15 108. Nevertheless, it was not until June of 2010 that the NFL warned any player of
16 the long-term risks associated with multiple concussions, including dementia, memory
17 loss, CTE and its related symptoms. The Riddell Defendants also failed to so warn active
18 players until approximately the same time frame.

19 109. As of today, the NFL Defendants and the Riddell Defendants have never
20 warned any Plaintiff or retired player of the long-term health effects of concussions.

21
22 **THE DEFENDANTS' CONDUCT RISES BEYOND MERE NEGLIGENCE**

23 110. The aforementioned acts and omissions of the Defendants demonstrate that
24 the Defendants acted with callous indifference to the rights and duties owed to Plaintiffs,
25 all American Rules Football leagues and players and the public at large.

26 111. The Defendants acted willfully, wantonly, egregiously, with reckless abandon,
27 and with a high degree of moral culpability.
28

1 112. The conduct of the Defendants was despicable, oppressive, malicious,
2 fraudulent and in conscious disregard of the Plaintiffs' rights, for which the Defendants
3 should be assessed exemplary damages in an appropriate amount to punish and make an
4 example of the Defendants.

5 **PLAINTIFFS**

6 **SAM "BAM" CUNNINGHAM**

7 113. Plaintiff Sam "Bam" Cunningham was born on August 15, 1950 in Santa
8 Barbara, California. He lives in Inglewood, California.

9 114. Plaintiff Sam "Bam" Cunningham was drafted out of the University of
10 Southern California and played Fullback for the New England Patriots from 1973 to 1982.
11 In 1978, while playing for the New England Patriots, he was selected for the Pro Bowl. In
12 2010, Cunningham was inducted into the Patriots Hall of Fame.

13 115. Plaintiff Sam "Bam" Cunningham suffered multiple concussions in the NFL
14 that were improperly diagnosed and improperly treated throughout his career as a
15 professional football player in the NFL.

16 116. Plaintiff Sam "Bam" Cunningham was not warned by the NFL, NFL
17 Properties, Inc., or Riddell Defendants of the risk of long-term injury due to football-
18 related concussions or that the league-mandated equipment did not protect him from such
19 injury. This was a substantial factor in causing his current injury.

20 117. Plaintiff Sam "Bam" Cunningham suffered multiple concussion injuries which
21 now affect multiple areas of his brain causing various symptoms including, but not limited
22 to, short-term memory loss.

23 118. Plaintiff Sam "Bam" Cunningham suffered multiple concussion injuries which
24 led to various problems including short-term memory loss, headaches, depression,
25 confusion, dementia and ringing in his ears.

26 **DANNY REECE**

27 119. Plaintiff Danny Reece was born on January 28, 1955 in San Pedro, California.
28 He lives in Los Angeles, California.

1 120. Plaintiff Danny Reece was drafted out of University of Southern California as
2 a Cornerback. He played for the Tampa Bay Buccaneers during the 1976 - 1980 seasons.
3 During the 1979 and 1980 seasons, he led the NFL in punt returns.

4 121. Plaintiff Danny Reece suffered multiple concussions that were improperly
5 diagnosed and improperly treated throughout his career as a professional football player in
6 the NFL.

7 122. Plaintiff Danny Reece was not warned by the NFL, NFL Properties, Inc., or
8 Riddell Defendants of the risk of long-term injury due to football-related concussions or
9 that the league-mandated equipment did not protect him from such injury. This was a
10 substantial factor in causing his current injury.

11 123. Plaintiff Danny Reece suffered multiple concussion injuries which resulted in
12 various symptoms including, but not limited to, memory loss, dementia and headaches.

13
14 **BOOKER BROWN**

15 124. Plaintiff Booker Brown was born on September 25, 1952 in Desson, Missouri.
16 He lives in Mojave, California.

17 125. Plaintiff Booker Brown was drafted out of University of Southern California
18 as a Tackle and Guard. He played for the San Diego Chargers during the 1975 - 1977
19 seasons.

20 126. Plaintiff Booker Brown suffered multiple concussions that were improperly
21 diagnosed and improperly treated throughout his career as a professional football player in
22 the NFL.

23 127. Plaintiff Booker Brown was not warned by the NFL, NFL Properties, Inc., or
24 Riddell Defendants of the risk of long-term injury due to football-related concussions or
25 that the league-mandated equipment did not protect him from such injury. This was a
26 substantial factor in causing his current injury.

27 128. Plaintiff Booker Brown suffered multiple concussion injuries which led to
28 various symptoms including, but not limited to, memory loss, headaches, and dementia.

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130. Plaintiff George Ragsdale was drafted out of North Carolina Agricultural and Technical State University as a Running back. He played for the Tampa Bay Buccaneers during the 1977 - 1979 seasons.

132. Plaintiff George Ragsdale was not warned by the NFL, NFL Properties, Inc., or Riddell Defendants of the risk of long-term injury due to football-related concussions or that the league-mandated equipment did not protect him from such injury. This was a substantial factor in causing his current injury.

134. Plaintiff Cecil Johnson was born on August 19, 1955 in Miami, Florida. He lives in Miami, Florida.

135. Plaintiff Cecil Johnson was drafted out of University of Pittsburgh as a Linebacker. He played for the Tampa Bay Buccaneers during the 1977 - 1985 seasons.

136. Plaintiff Cecil Johnson suffered multiple concussions that were improperly diagnosed and improperly treated throughout his career as a professional football player in the NFL.

137. Plaintiff Cecil Johnson was not warned by the NFL, NFL Properties, Inc., or Riddell Defendants of the risk of long-term injury due to football-related concussions or

1 that the league-mandated equipment did not protect him from such injury. This was a
2 substantial factor in causing his current injury.

3 138. Plaintiff Cecil Johnson suffered multiple concussion injuries which led to
4 various symptoms including, but not limited to, memory loss, headaches, and dementia.

5
6 **ALVIN GARRETT**

7 139. Plaintiff Alvin Garrett was born on October 1, 1956 in Mineral Wells, Texas.
8 He lives in Birmingham, Alabama.

9 140. Plaintiff Alvin Garrett was drafted out of Angelo State as a Wide Receiver.
10 He played for the New York Giants during the 1980 - 1981 seasons. He then played for the
11 Washington Redskins during the 1981 - 1984 seasons. In Super Bowl XVII, he caught two
12 passes for 13 yards and one touchdown in a Washington Redskin victory.

13 141. Plaintiff Alvin Garrett suffered multiple concussions that were improperly
14 diagnosed and improperly treated throughout his career as a professional football player in
15 the NFL.

16 142. Plaintiff Alvin Garrett was not warned by the NFL, NFL Properties, Inc., or
17 Riddell Defendants of the risk of long-term injury due to football-related concussions or
18 that the league-mandated equipment did not protect him from such injury. This was a
19 substantial factor in causing his current injury.

20 143. Plaintiff Alvin Garrett suffered multiple concussion injuries which led to
21 various symptoms including, but not limited to, memory loss, headaches, and dementia.

22
23 **MARK COTNEY**

24 144. Plaintiff Mark Cotney was born on June 26, 1952 in Altus, Oklahoma. He
25 lives in Lutz, Florida.

26 145. Plaintiff Mark Cotney was drafted out of Cameron College as a Safety. He
27 played for the Houston Oilers during the 1975 season. He then played for the Tampa Bay
28 Buccaneers during the 1976 - 1984 seasons.

1 146. Plaintiff Mark Cotney suffered multiple concussions that were improperly
2 diagnosed and improperly treated throughout his career as a professional football player in
3 the NFL.

4 147. Plaintiff Mark Cotney was not warned by the NFL, NFL Properties, Inc., or
5 Riddell Defendants of the risk of long-term injury due to football-related concussions or
6 that the league-mandated equipment did not protect him from such injury. This was a
7 substantial factor in causing his current injury.

8 148. Plaintiff Mark Cotney suffered multiple concussion injuries which led to
9 various symptoms including, but not limited to, memory loss, headaches, ringing in his
10 ears, and dementia.

11
12 **MICHAEL DENNIS**

13 149. Plaintiff Michael Dennis was born on July 22, 1944 in Philadelphia,
14 Mississippi. He lives in Pasadena, California.

15 150. Plaintiff Michael Dennis was drafted out of University of Mississippi as a
16 Running back. He played for the Los Angeles Rams during the 1968 - 1969 seasons.

17 151. Plaintiff Michael Dennis suffered multiple concussions that were improperly
18 diagnosed and improperly treated throughout his career as a professional football player in
19 the NFL.

20 152. Plaintiff Michael Dennis was not warned by the NFL, NFL Properties, Inc., or
21 Riddell Defendants of the risk of long-term injury due to football-related concussions or
22 that the league-mandated equipment did not protect him from such injury. This was a
23 substantial factor in causing his current injury.

24 153. Plaintiff Michael Dennis suffered multiple concussion injuries which led to
25 various symptoms including, but not limited to, memory loss, headaches, and dementia.

26 **CHARLIE PHILLIPS**

27 154. Plaintiff Charlie Phillips was born on December 22, 1952 in Greenville,
28 Mississippi. He lives in Pasadena, California.

1 155. Plaintiff Charlie Phillips was drafted out of University of Southern California
2 as a Safety. He played for the Oakland Raiders during the 1975 - 1979 seasons. In 1978,
3 he led the NFL in non-offensive touchdowns with 3, fumble return touchdowns with 2 and
4 he also led the NFL in fumble return yards with 127 yards.

5 156. Plaintiff Charlie Phillips suffered multiple concussions that were improperly
6 diagnosed and improperly treated throughout his career as a professional football player in
7 the NFL.

8 157. Plaintiff Charlie Phillips was not warned by the NFL, NFL Properties, Inc., or
9 Riddell Defendants of the risk of long-term injury due to football-related concussions or
10 that the league-mandated equipment did not protect him from such injury. This was a
11 substantial factor in causing his current injury.

12 158. Plaintiff Charlie Phillips suffered multiple concussion injuries which led to
13 various symptoms including, but not limited to, memory loss, headaches, dementia and
14 ringing in his ears.

15
16 **PARNELL DICKINSON**

17 159. Plaintiff Parnell Dickinson was born on March 14, 1953 in Brighton,
18 Alabama. He lives in Lutz, Florida.

19 160. Plaintiff Parnell Dickinson was drafted out of Mississippi Valley State
20 University as a Quarterback. He played for the Tampa Bay Buccaneers during the 1976
21 season.

22 161. Plaintiff Parnell Dickinson suffered multiple concussions that were
23 improperly diagnosed and improperly treated throughout his career as a professional
24 football player in the NFL.

25 162. Plaintiff Parnell Dickinson was not warned by the NFL, NFL Properties, Inc.,
26 or Riddell Defendants of the risk of long-term injury due to football-related concussions or
27 that the league-mandated equipment did not protect him from such injury. This was a
28 substantial factor in causing his current injury.

1 163. Plaintiff Parnell Dickinson suffered multiple concussion injuries which led to
2 various symptoms including, but not limited to, memory loss, headaches, and dementia.
3

4 **JIM WILKS**

5 164. Plaintiff Jim Wilks was born on March 12, 1958 in Los Angeles, California.
6 He lives in Katy, Texas.

7 165. Plaintiff Jim Wilks was drafted out of San Diego State University as a
8 Defensive Lineman. He played for the New Orleans Saints during the 1981 - 1993
9 seasons.

10 166. Plaintiff Jim Wilks suffered multiple concussions that were improperly
11 diagnosed and improperly treated throughout his career as a professional football player in
12 the NFL.

13 167. Plaintiff Jim Wilks was not warned by the NFL, NFL Properties, Inc., or
14 Riddell Defendants of the risk of long-term injury due to football-related concussions or
15 that the league-mandated equipment did not protect him from such injury. This was a
16 substantial factor in causing his current injury.

17 168. Plaintiff Jim Wilks suffered multiple concussion injuries which led to various
18 symptoms including, but not limited to, memory loss, headaches, and dementia.

19 **WILLIAM CESARE**

20 169. Plaintiff William Cesare was born on June 2, 1955 in Brooklyn, New York.
21 He lives in Thompson Station, Tennessee.

22 170. Plaintiff William Cesare was drafted out of the University of Miami as a
23 Defensive back. He played for the Tampa Bay Buccaneers during the 1978 - 1979 seasons.
24 He then played for the Miami Dolphins during the 1980 season. He then returned to Tampa
25 Bay for his 1981 season. He finished his NFL career with the Detroit Lions in the 1981
26 season.

1 171. Plaintiff William Cesare suffered multiple concussions that were improperly
2 diagnosed and improperly treated throughout his career as a professional football player in
3 the NFL.

4 172. Plaintiff William Cesare was not warned by the NFL, NFL Properties, Inc., or
5 Riddell Defendants of the risk of long-term injury due to football-related concussions or
6 that the league-mandated equipment did not protect him from such injury. This was a
7 substantial factor in causing his current injury.

8 173. Plaintiff William Cesare suffered multiple concussion injuries which led to
9 various symptoms including, but not limited to, memory loss, headaches, nerve damage in
10 his neck and slight dementia.

11
12 **FIRST CAUSE OF ACTION**

13 **NEGLIGENCE - Monopolist**

14 **(As Against the NFL)**

15 174. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set
16 forth herein at length.

17 175. The NFL, by and through its monopoly power, has historically had a duty to
18 invoke rules that protect the health and safety of its players, including Plaintiffs, and the
19 public, including but not limited to, a duty to use reasonable care in researching, studying
20 and/or examining the dangers and risks of head injuries and/or concussions to NFL players,
21 to inform and warn their players of such risks and to effectuate reasonable league policies
22 and/or take other reasonable action to minimize the risks of head injuries.

23 176. The NFL affirmatively and voluntarily established the MTBI Committee to
24 examine the dangers and consequences of head injuries to NFL players, to report on its
25 findings, to provide information and guidance from its research and studies concerning
26 concussions to teams and players, and to make recommendations to lessen the risks of
27 concussions. The NFL is responsible for the staffing and conduct of the MTBI Committee
28

1 177. As a monopoly, the NFL has a duty to protect the health and safety of its
2 players, as well as the public at large.

3 178. Throughout the history of the NFL, the NFL organization has consistently
4 breached its duty to protect the health and safety of its players by failing to enact rules,
5 policies and regulations to best protect its players.

6 179. The NFL breached its duty to its players, including Plaintiffs, to use ordinary
7 care to protect the physical and mental health of players by failing to implement
8 standardized post-concussion guidelines by failing to enact rules to decrease the risk of
9 concussions during games or practices, and by failing to implement mandatory rules that
10 would prevent a player who suffered a mild traumatic brain injury from re-entering a
11 football game and being placed at further risk of injury.

12 180. Throughout its many years, the NFL has repeatedly established its duty to
13 protect the health and safety of its players when known and foreseeable risk exists. Until
14 August 14, 2007, the NFL failed to create and implement league-wide guidelines
15 concerning the treatment and monitoring of players who suffer concussive brain injuries.

16 181. It has been well established since 1928 that repeated blows to the head can
17 lead to CTE, commonly known as "punch drunk syndrome." Punch Drunk Syndrome has
18 been prevalent in boxers who have repeatedly suffered concussions.

19 182. Despite the fact that other sporting associations exist, such as the National
20 Hockey League and the World Boxing Association, which have decades ago established
21 standardized association-wide concussion management rules, until August 14, 2007, the
22 NFL failed to establish any guidelines or policies to protect the mental health and safety of
23 its players.

24 183. Nonetheless, it took the NFL until June of 2010 to finally acknowledge the
25 long-term risks associated with concussions, including dementia, memory loss, CTE and
26 its related symptoms. At that time, the NFL warned active players of those risks. To date,
27 the NFL has never warned any past players, including Plaintiffs, or the public of the long-
28 term brain injury caused from concussions.

1 184. The NFL's failure to fulfill its duty to protect its players, the plaintiffs and the
2 public, include, but are not limited to, the following failures:

- 3 (a) Failure to use reasonable care in the manner in which it created the MTBI
4 Committee and in the appointment of physicians to head the Committee who
5 were not qualified;
- 6 (b) Failure to use reasonable care in researching, studying and/or examining the
7 risks of head injuries and/or concussions in professional football and in
8 downplaying and in many cases denying both the severity of such injuries and
9 the clear link between concussions and brain damage, thereby breaching its
10 duty to their players, including the Plaintiffs;
- 11 (c) Failure to institute acclimation requirements or procedures to ensure proper
12 acclimation of the NFL players before they participate in practices or games;
- 13 (d) Failure to regulate and monitor practices, games, equipment, and medical care
14 so as to minimize the long-term risks associated with concussive brain injuries
15 suffered by the NFL players, including Plaintiffs;
- 16 (e) Failure to require that an adequate concussive brain injury history be taken of
17 NFL players;
- 18 (f) Failure to ensure accurate diagnosis and recording of concussive brain injury
19 so the condition can be treated in an adequate and timely manner;
- 20 (g) Failure to invoke league-wide guidelines, policies, and procedures regarding
21 the identification and treatment of concussive brain injury, and the return to
22 play insofar as such matters pertain to concussive brain injury;
- 23 (h) Failure to properly inform the public and other American Rules Football
24 leagues and players of the health risks associated with concussive injury;
- 25 (i) Failure to license and approve the best equipment available that will reduce
26 the risk of concussive brain injury; and
- 27 (j) Failure to warn of the harm of repetitive concussion injuries.

1 185. The NFL breached its duty to protect the health and safety of its players by
2 subjecting NFL players to an increased risk of concussive brain injury.

3 186. The NFL failed to provide complete, current, and competent information and
4 directions to NFL athletic trainers, physicians, and coaches regarding concussive brain
5 injuries and its prevention, symptoms, and treatment.

6 187. If the NFL would have taken the necessary steps to oversee and protect the
7 NFL players, including Plaintiffs, by developing and implementing necessary guidelines,
8 policies, and procedures; providing reasonably safe helmets; and educating and training all
9 persons involved with the NFL Teams in the recognition, prevention, and treatment of
10 concussive brain injuries, then NFL players, such as Plaintiffs, would not have suffered
11 from the subject condition or the effects of that condition, would have recovered more
12 rapidly, or would not have suffered long-term brain injuries.

13 188. Under all of the above circumstances, it was foreseeable that the NFL's
14 violating its duties would cause or substantially contribute to the personal injuries suffered
15 by Plaintiffs.

16 189. The NFL committed acts of omission and commission, which collectively and
17 severally, constituted negligence. The NFL's negligence was a proximate and producing
18 cause of the personal injuries and other damages suffered by Plaintiffs.

19 190. As a result of the personal injuries, Plaintiffs are entitled to damages, as
20 alleged herein or allowed by law, from the NFL in an amount reasonably anticipated to
21 exceed the jurisdictional minimum of \$25,000.

22
23 **SECOND CAUSE OF ACTION**

24 **NEGLIGENCE**

25 **(As Against the NFL)**

26 191. Plaintiffs incorporate by reference paragraphs 1 through 263 of this Complaint
27 as if fully set forth herein at length.
28

1 192. The NFL has historically assumed an independent tort duty to invoke rules
2 that protect the health and safety of its players, but it has violated Section 323 of the
3 Restatement (Second) of Torts as adopted by the Courts in California.

4 193. Throughout the history of the NFL, the NFL organization has consistently
5 exercised its duty to protect the health and safety of its players by implementing rules,
6 policies and regulations in an attempt to best protect its players.

7 194. By enacting rules to protect the health and safety of its players, the NFL has
8 repeatedly confirmed its duty to take reasonable and prudent actions to protect the health
9 and safety of its players when known and foreseeable risks exist.

10 195. The NFL breached its duty to its players, including Plaintiffs, to use ordinary
11 care to protect the physical and mental health of players by implementing standardized
12 post-concussion guidelines and by failing to implement mandatory rules that would prevent
13 a player who suffered a mild traumatic brain injury from re-entering a football game or
14 practice.

15 196. Throughout the many years that the NFL has repeatedly established its duty to
16 protect the health and safety of its players when known and foreseeable risks exist, until
17 August 14, 2007, the NFL failed to create and implement league-wide guidelines
18 concerning the treatment and monitoring of players who suffer a concussive brain injury
19 during a game.

20 197. It has been well established since 1928 that repeated blows to the head can
21 lead to CTE, commonly known as "punch drunk syndrome." Punch Drunk Syndrome has
22 been prevalent in boxers who have repeatedly suffered concussions.

23 198. Despite the fact that other sporting associations exist, such as the World
24 Boxing Association, which have decades ago established standardized association-wide
25 concussion management rules, until August 14, 2007, the NFL failed to establish any
26 guidelines or policies to protect the mental health and safety of its players.

27 199. The NFL's failure to fulfill its assumed duty to protect its players includes but
28 is not limited to the following failures:

- 1 (a) Failure to institute acclimation requirements or procedures to ensure proper
2 acclimation of the NFL players before they participate in practices or games;
3 (b) Failure to regulate and monitor practices, games, rules, equipment, and
4 medical care so as to minimize the long-term risks associated with concussive
5 brain injuries suffered by the NFL players, including Plaintiffs;
6 (c) Failure to require that an adequate concussive brain injury history be taken of
7 NFL players;
8 (d) Failure to ensure accurate diagnosis and recording of concussive brain injury
9 so the condition can be treated in an adequate and timely manner;
10 (e) Failure to invoke league-wide guidelines, policies, and procedures regarding
11 the identification and treatment of concussive brain injury, and the return to
12 play insofar as such matters pertain to concussive brain injury; and,
13 (f) Failure to license and approve the best equipment available that will reduce
14 the risk of concussive brain injury.

15 200. The NFL breached its assumed duty to protect the health and safety of its
16 players by subjecting NFL players to an increased risk of concussive brain injury.

17 201. The NFL failed to provide complete, current, and competent information and
18 directions to NFL athletic trainers, physicians, and coaches regarding concussive brain
19 injuries and its prevention, symptoms, and treatment.

20 202. If the NFL would have taken the necessary steps to oversee and protect the
21 NFL players, including Plaintiffs, by developing and implementing necessary guidelines,
22 policies, and procedures; providing reasonably safe helmets; and educating and training all
23 persons involved with the NFL Teams in the recognition, prevention, and treatment of
24 concussive brain injuries, then NFL players, such as Plaintiffs, would not have suffered
25 from the subject condition or the effects of that condition, would have recovered more
26 rapidly, or would not have suffered long-term brain damage, dementia, and depression
27 related to dementia and CTE.
28

203. Under all of the above circumstances, it was foreseeable that the NFL's violations of its duties would cause or substantially contribute to the personal injuries suffered by the Plaintiffs.

204. The NFL committed acts of omission and commission, which collectively and severally, constituted negligence. The NFL's negligence was a proximate and producing cause of the personal injuries and other damages suffered by Plaintiff.

205. As a result of the personal injuries of Plaintiffs, they are entitled to damages, as alleged herein or allowed by law, from the NFL in an amount reasonably anticipated to exceed \$25,000.

THIRD CAUSE OF ACTION

FRAUD

(As Against the NFL)

206. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein at length.

207. From 2005 through June of 2010, the NFL made through its "Mild Traumatic Brain Injury Committee" and others, its agents, material misrepresentations to its players, former players, the Congress and the public at large that there was no link between concussions and later life cognitive/brain injury, including CTE and its related symptoms.

208. Material misrepresentations were made by members of the NFL's committee on multiple occasions, including but not limited to testimony given at congressional hearings and the "informational" pamphlet which they issued to the players.

209. The material misrepresentations include the NFL's remarks that the Plaintiffs 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.

210. The material misrepresentations include NFL's remarks that Plaintiffs 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.

1 211. The persons who made the misrepresentations as agents of the NFL and the
2 NFL knew they were false when they were made.

3 212. The persons who made the misrepresentations as agents of the NFL and the
4 NFL intended to defraud, among others, the Plaintiffs in this action.

5 213. The Plaintiffs, among others, justifiably relied on these misrepresentations to
6 their detriment in getting care for their injuries.

7 214. The NFL knew, or should have known, that the Plaintiffs would rely on the
8 NFL's misrepresentations.

9 215. The Plaintiffs, among others, were damaged by these misrepresentations.
10 Among other things, they require increased home care, loss of consortium, loss of
11 employment, medical costs and pain and suffering.

12 216. As a result of the personal injuries of Plaintiffs, they are entitled to damages,
13 as alleged herein or allowed by law, from the NFL in an amount reasonably anticipated to
14 exceed \$25,000.

15
16 **FOURTH CAUSE OF ACTION**
17 **FRAUDULENT CONCEALMENT**

18 **(As Against the NFL)**

19 217. Plaintiffs incorporate by reference the foregoing paragraphs as if set fully
20 herein at length.

21 218. The NFL's MTBI Committee concealed the risks of head injuries to Plaintiffs,
22 and the risk to Plaintiffs if they returned to the playing field before making a proper
23 recovery from their injuries.

24 219. The NFL's MTBI Committee, through misleading public statements,
25 published articles and the concussion pamphlet issued to players, concealed and
26 downplayed known long-term risks of concussions to NFL players.

27 220. The concussion pamphlet clearly created player reliance. The NFL stated that
28 "[w]e want to make sure all N.F.L. players . . . are fully informed and take advantage of the

1 most up to date information and resources as we continue to study the long-term impact on
2 concussions.”

3 221. Further concealment of material information occurred in January 2010.
4 Dr. Casson provided oral and written testimony at the January 2010 congressional
5 hearings. He continued to deny the validity of other studies.

6 222. The NFL failed to acknowledge, either publicly or to its players, the clear link
7 between concussions and brain injuries beings suffered by NFL players.

8 223. The NFL failed to acknowledge, either publicly or to its players, the linkage
9 between playing football and long-term brain injuries.

10 224. The NFL willfully concealed this information from Plaintiffs in order to
11 prevent negative publicity and increased scrutiny of its medical practices.

12 225. The NFL knew that Plaintiffs would rely on the inaccurate information
13 provided by The NFL.

14 226. Plaintiffs relied on this inaccurate information during their NFL careers.

15 227. As a direct and proximate result of The NFL’s fraudulent conduct, Plaintiffs
16 have suffered physical injury, including, but not limited to, memory and cognitive
17 problems, and multiple economic losses.

18
19 **FIFTH CAUSE OF ACTION**
20 **NEGLIGENT MISREPRESENTATION**
21 **(As Against the NFL)**

22 228. Plaintiffs incorporate by reference the foregoing paragraphs as if set fully
23 herein at length.

24 229. The NFL misrepresented the dangers that NFL players faced in returning to
25 action too quickly after sustaining a head injury. The NFL’s MTBI Committee, through
26 public statements which it knew or should have known were misleading, published articles
27 and issued the concussion pamphlet to its players, and downplayed and the long-term risks
28 of concussions to NFL players.

1 230. Material misrepresentations were made by members of The NFL's committee
2 on multiple occasions, including but not limited to testimony at congressional hearings and
3 the "informational" pamphlet issued to players.

4 231. The misrepresentations included The NFL's remarks that Plaintiffs were not at
5 an increased risk of head injury if they returned too soon to an NFL game or training
6 session after suffering a head injury.

7 232. The NFL's material misrepresentations also included The NFL's criticism of
8 legitimate scientific studies that illustrated the dangers and risks of head injuries.

9 233. The NFL made these misrepresentations and actively concealed adverse
10 information at a time when they knew, or should have known, because of their superior
11 position of knowledge, that Plaintiffs faced health problems if he were to return to a game
12 too soon.

13 234. The NFL knew or should have known the misleading nature of these
14 statements when they were made.

15 235. The NFL made misrepresentations and actively concealed information with
16 the intention that Plaintiffs would rely on the misrepresentations or omissions in selecting
17 their course of action.

18 236. As a direct and proximate result of The NFL's fraudulent conduct, Plaintiffs
19 have suffered physical injury, including, but not limited to, memory and cognitive
20 problems, and have suffered multiple economic losses.

21
22 **SIXTH CAUSE OF ACTION**

23 **CONSPIRACY**

24 **(As Against the NFL)**

25 237. Plaintiffs incorporate by reference the foregoing paragraphs as if set fully
26 herein at length.

1 238. The NFL actively and deliberately conspired with its team members and/or
2 independent contractors, who were directed to continuously discount and reject the causal
3 connection between multiple concussions suffered while playing in the NFL.

4 239. This conduct between the NFL and others was a proximate cause of the
5 chronic injuries and damages suffered by the Plaintiffs.

6
7 **SEVENTH CAUSE OF ACTION**
8 **STRICT LIABILITY FOR DESIGN DEFECT**
9 **(As Against Riddell Defendants)**

10 240. Plaintiffs incorporate by reference the foregoing paragraphs as if set fully
11 herein at length.

12 241. At the time the helmets were designed, manufactured, sold, and distributed by
13 the Riddell Defendants, the helmets were defective in design, unreasonably dangerous, and
14 unsafe for their intended purpose because they did not provide adequate protection against
15 the foreseeable risk of concussive brain injury. The design defect includes, but is not
16 limited to the following:

- 17 (a) Negligently failing to design the subject helmet with a safe means of
18 attenuating and absorbing the foreseeable forces of impact in order to
19 minimize and/or reduce the forces and energy directed to the player's head;
20 (a) Negligently designing the subject helmet with a shock attenuating system
21 which was not safely configured;
22 (b) Negligently failing to properly and adequately test the helmet model;
23 (c) Other acts of negligence that may be discovered during the course of this
24 matter; and
25 (d) Failing to warn Plaintiffs that their helmets would not protect against the long-
26 term health consequences of concussive brain injury.

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

4 243. At all times, the helmets were being used for the purpose for which they were
5 intended.

6 244. The Riddell Defendants are strictly liable for designing a defective and
7 unreasonably dangerous product and for failing to warn which were proximate and
8 producing causes of the personal injuries and other damages including, but not limited to,
9 economic damage as alleged herein. A safer alternative design was economically and
10 technologically feasible at the time the product left the control of the Riddell Defendants.

11 245. As a result of the personal injuries of Plaintiffs, Plaintiffs are entitled to
12 damages from Riddell Defendants in an amount reasonably anticipated to exceed
13 \$25,000.00.

14 **EIGHTH CAUSE OF ACTION**

15 **STRICT LIABILITY FOR MANUFACTURING DEFECT**

16 **(As Against Riddell Defendants)**

17 246. Plaintiffs incorporate by reference the foregoing paragraphs as if set forth
18 herein at length.

19 247. At the time the helmets were designed, manufactured, sold and distributed by
20 the Riddell Defendants, the helmets were defective in their manufacturing and
21 unreasonably dangerous and unsafe for their intended purpose because they did not provide
22 adequate protection against the foreseeable risk of concussive brain injury. The Riddell
23 Defendants' failure to design the helmets to design and manufacturing specifications
24 resulted in, among other things, the following:

- 25 (a) Negligently failing to manufacture the subject helmet with a safe means of
26 attenuating and absorbing the foreseeable forces of impact in order to
27 minimize and/or reduce the forces and energy directed to the player's head;
28

- 1 (b) Negligently manufacturing the subject helmet with a shock attenuating system
2 which was not safely configured;
3 (c) Negligently failing to properly and adequately inspect and/or test the helmet
4 model;
5 (d) Other acts of negligence that may be discovered during the course of this
6 matter; and
7 (e) Failure to warn Plaintiffs that its helmets wouldn't protect against concussive
8 brain injury.

9 248. The manufacturing defect was a proximate and producing cause of the
10 personal injuries suffered by Plaintiffs and other damages, including but not limited to,
11 economic damages and non-economic damages.

12 249. The Riddell Defendants are strictly liable for manufacturing and placing in the
13 stream of commerce a defective and unreasonably dangerous product which was a
14 proximate and producing cause of the personal injuries and other damages, including but
15 not limited to, economic damages and non-economic damages. A safe alternative design
16 was economically and technologically feasible at the time the product left the control of the
17 Riddell Defendants.

18 250. As a result of the personal injuries of Plaintiffs, Plaintiffs are entitled to
19 damages from Riddell Defendants in an amount reasonably anticipated to exceed
20 \$25,000.00.

21
22 **NINTH CAUSE OF ACTION**

23 **NEGLIGENCE**

24 **(As Against NFL Properties)**

25 251. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set
26 forth herein at length.

1 252. NFL Properties breached its duty to ensure that the equipment it licensed and
2 approved were of the highest possible quality and sufficient to protect the NFL players,
3 including Plaintiffs, from the risk of concussive brain injuries.

4 253. NFL Properties breached its duty by licensing the Riddell Defendants'
5 helmets, and approving and/or requiring the use of the helmets for the NFL players,
6 knowing or having reason to know that the helmets were negligently and defectively
7 designed and/or manufactured.

8 254. As a result of these breaches by NFL Properties, Plaintiffs suffer personal
9 injuries as a result the long-term health effects of concussive brain injuries.

10 255. As a result of the personal injuries of Plaintiffs, Plaintiffs are entitled to
11 damages from NFL Properties, LLC in an amount reasonably anticipated to exceed
12 \$25,000.00.

13
14 **TENTH CAUSE OF ACTION**

15 **FAILURE TO WARN**

16 **(As Against Riddell Defendants)**

17 256. Plaintiffs incorporate by reference the foregoing paragraphs as if set forth
18 herein at length.

19 257. The Riddell Defendants knew or should have known of the substantial
20 dangers involved in the reasonably foreseeable use of the helmets.

21 258. The Riddell Defendants failed to provide necessary and adequate safety and
22 instructional materials and warnings of the risk and means available to reduce and/or
23 minimize the risk of concussive brain injuries while playing football.

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

1 260. 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
3 products without inspection for defects.

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

6 262. Plaintiffs were using the helmets in a reasonably foreseeable manner at all
7 times.

8 263. Plaintiffs' damages were the legal and proximate result of the actions of the
9 Riddell Defendants who owed a duty to warn Plaintiffs of the risks of substantial harm
10 associated with the foreseeable use of their products.

11 264. The Riddell Defendants' failure to warn caused the Plaintiffs' personal
12 injuries.

13 265. As a result of the personal injuries of Plaintiffs, Plaintiffs are entitled to
14 damages from the Riddell Defendants, in an amount reasonably anticipated to exceed
15 \$25,000.00.

16 **ELEVENTH CAUSE OF ACTION**

17 **NEGLIGENCE**

18 **(As Against Riddell Defendants)**

19 266. Plaintiffs incorporate by reference the foregoing paragraphs as if set forth
20 herein at length.

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

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

26 269. The Riddell Defendants should have been well aware that since 1928 repeated
27 blows to the head can lead to CTE, commonly known as "punch-drunk syndrome".
28

1 270. The Riddell Defendants breached their duty of reasonable care by failing to
2 provide necessary and adequate safety and instructional materials and warnings of the risk
3 and means available to reduce and/or minimize the risk of concussive brain injuries while
4 playing football using their helmets.

5 271. As a result of the Riddell Defendants' breach of duty, Plaintiffs have sustained
6 permanent injury.

7 272. For the personal injuries of Plaintiffs, Plaintiffs are entitled to damages from
8 the Riddell Defendants in an amount reasonably anticipated to exceed \$25,000.00.

9
10 **TWELFTH CAUSE OF ACTION**

11 **LOSS OF CONSORTIUM**

12 **(As Against All Defendants)**

13 273. Plaintiffs incorporate by reference the foregoing paragraphs as if set forth
14 herein at length.

15 274. As a direct and proximate result of the carelessness, negligence and
16 recklessness of all Defendants and of the aforesaid injuries to their husbands, the wife
17 Plaintiffs have been damaged as follows:

- 18 (a) They have been and will continue to be deprived of the services, society and
19 companionship of their husbands;
20 (b) They have been and will continue to be required to spend money for medical
21 care and household care for the treatment of their husbands; and
22 (c) They have been and will continue to be deprived of the earnings of their
23 husbands.

24 275. As a result of the injuries to Plaintiffs, wife Plaintiffs are entitled to damages
25 from the Defendants, in an amount reasonably anticipated to exceed \$25,000.00.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE,** Plaintiffs pray for judgment against Defendants, and each of them,
28 as follows:

1. For compensatory and general damages according to proof;
2. For special and incidental damages according to proof;
3. For punitive damages according to proof;
4. For costs of the proceedings herein; and
5. For all such other and further relief as the Court deems just.

Dated: May 7, 2012

**FRANK P. BARBARO &
ASSOCIATES**

By: 

**FRANK P. BARBARO
COREY C. HIGGINS
Attorneys for Plaintiffs**

JURY DEMAND

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

Dated: May 7, 2012

**FRANK P. BARBARO &
ASSOCIATES**

By: 

**FRANK P. BARBARO
COREY C. HIGGINS
Attorneys for Plaintiffs**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Frank P. Barbaro/ SBN 44417 Frank P. Barbaro & Associates 1111 N. Broadway Santa Ana, CA 92701 TELEPHONE NO.: 714-835-2122 FAX NO.: ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles MAY 18 2012 John A. Clarke, Executive Officer/Clerk By <u>Moses Soto</u> Deputy MOSES SOTO
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill St. MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse	
CASE NAME: Sam "Bam" Cunningham, et al. v. NFL and Riddell	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: BC484813	
JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input checked="" type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 12

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 17, 2012
 Frank P. Barbaro

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE:

Cunningham, Sam, et al v. NFL, et al

NUMBER:

BC484813

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 10-15 ☐ HOURS/ ☒ DAYS.

Item II. Select the correct district and courthouse location (4 steps - If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- Class Actions must be filed in the County Courthouse, Central District.
- May be filed in Central (Other county, or no Bodily Injury/Property Damage).
- Location where cause of action arose.
- Location where bodily injury, death or damage occurred.
- Location where performance required or defendant resides.
- Location of property or permanently garaged vehicle.
- Location where petitioner resides.
- Location wherein defendant/respondent functions wholly.
- Location where one or more of the parties reside.
- Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
	<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
	<input checked="" type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

SHORT TITLE:

NUMBER

Cunningham, Sam, et al v. NFL, et al

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach-Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE:

NUMBER

Cunningham, Sam, et al v. NFL, et al

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ/Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

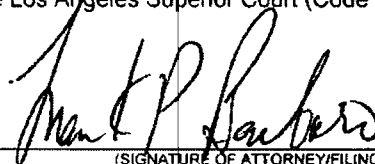
SHORT TITLE: Cunningham, Sam, et al v NFL, et al	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 3556 Van Ness Avenue
<input checked="" type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input checked="" type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		
CITY: Los Angeles	STATE: CA 90018	ZIP CODE:

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Los Angeles Superior courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: May 17, 2012


(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.