

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**FULTON KUYKENDALL and SHERRY )  
KUYKENDALL, )**

**Plaintiffs, )**

**v. )**

**NATIONAL FOOTBALL LEAGUE; )  
And NFL PROPERTIES, LLC, )**

**Defendants. )**

**Civil Action No.:**

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DAMAGES**

Plaintiffs FULTON KUYKENDALL and SHERRY KUYKENDALL (“Plaintiffs”) hereby file this Complaint for Damages and Jury Trial Demand against the above named Defendants, respectfully showing the Court the following:

**INTRODUCTION**

1. The National Football League (“NFL” or “the League”) is America’s most successful and popular sports league. With 32 member teams, the League is a multi-billion dollar business. The NFL is and has always been eager to avoid negative publicity and protect the product on the field. As a result, the NFL regulates just about everything as it pertains to their teams, including League policies, player appearances, marketing, and safety, among other items.

2. As recognized by the League, professional football is unquestionably a tough, aggressive, and physically demanding sport. Injuries are common. As such, it is vital to the safety of the players that the NFL act reasonably, through research studies and other means, to identify the risks of serious injury associated with playing professional football, to keep the teams and players informed of the risks that they identify, and to take reasonable steps based upon their findings from appropriate and adequate studies to protect players. Aware of this responsibility, the NFL, through its own initiative, created the Mild Traumatic Brain Injury (“MTBI”) Committee in 1994 to research, and presumably look to ameliorate, what was already a tremendous problem in the League – concussions.

3. The rash of head injuries has been noted in a wide variety of news articles and television segments, and was addressed recently by the League in an announcement that it would penalize illegal blows to the head. But, as noted, this spate of head injuries is not a new problem. For decades, the League’s players have been plagued by the devastating effects of concussions.

4. Despite overwhelming medical evidence that on-field concussions lead directly to brain injuries and frequent tragic repercussions for retired players, the NFL not only failed to take effective action in an attempt to protect players from suffering, but failed to inform players of the true risks associated with

concussions. Instead, the NFL chose to misrepresent and/or conceal medical evidence on the issue through its “hand-picked” committee of physicians who were researching same. While athletes in other professional sports who had suffered concussions were being effectively “shut down” for long periods of time or full seasons, NFL protocol was to return players who had suffered concussions to the very game in which the injury occurred.

5. The NFL has purposefully attempted to obfuscate the issue and has repeatedly refuted the connection between concussions and brain injury. Congress has vehemently objected to the NFL’s handling of the issue on multiple occasions. Expert neurologists know the true score. The reality is that in the 17 years since its formation, the MTBI has served as nothing short of a roadblock to any genuine attempt to appropriately inform and protect teams and NFL players regarding concussions and resultant brain injury. The Committee’s misrepresentation and concealment of relevant medical information over the years has caused an increased risk of debilitating and/or life-threatening injury to players who were purposefully not being apprised of the findings.

6. The NFL has failed to satisfy its duty to take reasonable steps necessary to protect players from devastating head injuries. Moreover, the NFL

has done everything in its power to hide the issue and mislead players concerning the risks associated with concussions.

### **THE PARTIES**

7. Plaintiffs Fulton Kuykendall and Sherry Kuykendall are residents and citizens of the State of Georgia, residing in Fulton County, Roswell, Georgia.

8. All Defendants, and each of them, were in some fashion legally responsible for the injuries and damages complained of herein.

9. At all times herein mentioned, Defendants, and each of them, were the agents, servants, and employees of each of the other, acting within the course and scope of said agency and employment.

10. Defendant NFL is a nonprofit, non-incorporated entity organized and existing under the laws of the State of New York, with its principal place of business at 280 Park Ave., 15th Fl., New York, NY 10017. The NFL is not, and has not been, the employer of Plaintiff Fulton Kuykendall, who was employed by independent club(s) during his career in professional football. The NFL regularly conducts business in Georgia.

11. Defendant NFL Properties, LLC, as the successor-in-interest to National Football League Properties, Inc. (“NFL Properties”) is a limited liability company organized under the laws of the State of Delaware with its headquarters

in the State of New York. NFL Properties is engaged in, among other activities, approving, licensing and promoting equipment by all the NFL teams. NFL Properties regularly conducts business in Georgia.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as there is diversity of citizenship and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

13. This Court has personal jurisdiction over Defendants as it does business in Georgia, has a franchise which plays in Georgia, and derives substantial revenue from its contacts with Georgia.

14. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(a)(2) and 1391(b)(2) as a substantial part of the events and/or omissions giving rise to the claims emanated from activities within this jurisdiction and the Defendants conduct substantial business in this jurisdiction.

### **ALLEGATIONS APPLICABLE TO ALL COUNTS** **THE NATIONAL FOOTBALL LEAGUE**

15. The NFL acts as a trade association for 32 franchise owners, and consists of two structured conferences, the AFC and the NFC comprised of 32 teams.

16. The NFL is a separate entity from each of its teams. *American Needle, Inc. v. NFL, et al.*, 130 S. Ct. 2201 (U.S. 2010).

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

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

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

20. The website [www.nflhealthandsafety.com](http://www.nflhealthandsafety.com) states that USA Football, the sport's national governing body, "is the Official Youth Football Development Partner of the NFL and the NFL Players Association. The independent non-profit organization leads the development of youth, high school and international amateur football. In addition, USA Football operates programs and builds resources to address key health and safety issues in partnership with leading medical

organizations. The organization was endowed by the NFL and NFLPA through the NFL Youth Football Fund in 2002. USA Football stands among the leaders in youth sports concussion education, particularly for football.”

### **THE NFL AND THE CBA**

21. Until March of 2011, all NFL players were members of a union called the National Football League Players Association (“NFLPA”). The NFLPA is a union that negotiates the general minimum contract for all players in the League with the National Football League Management Council (“NFLMC”). This contract is called the Collective Bargaining Agreement (“CBA”) and it is the central document that governs the negotiation of individual player contracts for all of the League’s players. However, the NFL retired players have not been the subject of or a party to Collective Bargaining.

22. Plaintiff Fulton Kuykendall is a retiree and not a signatory to the CBA, nor is he a subject of or a party to the bargaining between the NFL and the NFLPA. Plaintiff’s claims are not preempted by federal labor law since the CBA does not apply to his claims.

### **THE NATURE OF HEAD INJURIES SUFFERED BY NFL PLAYERS**

23. The American Association of Neurological Surgeons defines a concussion as “a clinical syndrome characterized by an immediate and transient

alteration in brain function, including an alteration of mental status and level of consciousness, resulting from mechanical force or trauma.” The injury generally occurs when the head either accelerates rapidly and then is stopped, or is spun rapidly. The results frequently include confusion, blurred vision, memory loss, nausea and, sometimes, unconsciousness.

24. A hit to the head may result in smashing, jiggling and torquing of the brain while causing strains and tears, snapping blood vessels, killing brain cells (neurons) and shearing the delicate connections (axons) that link this incredibly complex “cerebral telephone system.”

25. Medical evidence has shown that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party had not healed from the injury.

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

27. Clinical and neuropathological studies by some of the nation’s foremost experts demonstrate that multiple concussions sustained during an NFL



player's career may cause severe cognitive problems such as depression and early-onset dementia.

28. Chronic Traumatic Encephalopathy ("CTE") is a progressive degenerative disease of the brain found in athletes (and others) with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in retired professional football players who have a history of head injury.

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

30. In 2002, Dr. Bennet Omalu, a forensic pathologist and neuropathologist, found CTE in the brain of NFL Hall of Famer Mike Webster.

31. By 2007, Dr. Omalu found a fourth case linking the death of a former NFL player to CTE brain damage from his football career. CTE manifests similarly as "punch drunk" boxers.

32. Around the same time period, the University of North Carolina's Center for the Study of Retired Athletes published survey-based papers in 2005

through 2007 that found a clear correlation between NFL football and depression, dementia, and other cognitive impairment.

33. In 1994, the NFL undertook the responsibility of studying concussion research through funding the MTBI Committee.”

34. The NFL MTBI Committee published its findings in 2004 showing “no evidence of worsening injury or chronic cumulative effects” from multiple concussions. In a related study, the Committee found “many NFL players can be safely allowed to return to play” on the day of a concussion if they are without symptoms and cleared by a physician.

35. Commissioner Roger Goodell in June of 2007 admitted publicly that the NFL has been studying the effects of traumatic brain injury for “close to 14 years...”.

36. It was not until June of 2010 that the NFL publicly acknowledged that concussions can lead to dementia, memory loss, CTE and related symptoms by publishing warnings to every player and team.

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

38. Until very recently, CTE could only be diagnosed by autopsy.

## NFL'S DUTY TO PLAYERS AND THE PUBLIC

39. The NFL overtly undertook a duty to study concussions on behalf of NFL players.

40. The NFL owed a duty to players including Plaintiff Fulton Kuykendall in the following respects:

- (a) It owed a duty of reasonable care to protect Plaintiff on the playing field;
- (b) It owed a duty of reasonable care to Plaintiff to educate him and other players in the NFL about CTE and/or concussion injury;
- (c) It owed a duty of reasonable care to Plaintiff to educate trainers, physicians, and coaches about CTE and/or concussion injury;
- (d) It owed a duty of reasonable care to Plaintiff to have in place strict return-to-play guidelines to prevent CTE and/or concussion injury;
- (e) It owed a duty of reasonable care to Plaintiff to promote a “whistleblower” system where teammates would bring to the attention of a trainer, physician, or coach that another player had sustained concussion injury;
- (f) It owed a duty of reasonable care to Plaintiff to design rules and penalties for players who use their head or upper body to hit or tackle;
- (g) It owed a duty of reasonable care to Plaintiff to design rules to eliminate the risk of concussion during games and/or practices;
- (h) It owed a duty of reasonable care to Plaintiff to promote research into and cure for CTE and the effects of concussion injury over a period of time; and

- (i) It owed a duty of reasonable care to State governments, local sports organizations, all American Rules Football leagues and players, and the public at large to protect against the long-term effects of CTE and/or concussion injury.

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

42. Plaintiff Fulton Kuykendall did not know, nor did he have reason to know, the long-term effects of concussions and relied on the Defendants to provide reasonable warnings, rules, regulations and studies.

### **DEFENDANTS' KNOWLEDGE OF THE RISK OF CONCUSSIONS**

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

44. This action arises from Defendants' failure to warn and protect NFL players, such as Plaintiff Fulton Kuykendall, against long-term brain injury risks associated with football-related concussions.

45. While Defendants undertook to investigate, research, and promulgate multiple safety rules, Defendants were negligent in failing to act reasonably and exercise their duty to enact reasonable league-wide guidelines and mandatory rules

regulating post-concussion medical treatment and return-to-play standards for players who suffer a concussion and/or multiple concussions.

46. Defendants affirmatively assumed a duty to use reasonable care in the study of post-concussion syndrome, and to use reasonable care in the publication of data from the MTBI Committee's work.

47. Rather than exercising reasonable care in these duties, Defendants immediately engaged in a long-running course of negligent conduct.

48. By failing to exercise their duty to enact reasonable and prudent rules to better protect players against the risks associated with repeated brain trauma, Defendants' failures to exercise their independent duty has led to the deaths of some, and brain injuries of many other former players, including Plaintiff Fulton Kuykendall.

49. Defendants' ongoing undertaking to protect the health and safety of the players is evidenced by the NFL's enactment of at least the following non-exhaustive list of rules pertaining to players' health and safety:

- (a) In 1956, the NFL enacted a rule that prohibited the grabbing of any player's facemask, other than the ball carrier;
- (b) In 1962, the NFL enacted a rule that prohibited players from grabbing any player's facemask;

- (c) In 1976, the NFL enacted a rule that prohibited players from grabbing the facemask of an opponent. The penalty for an incidental grasp of the facemask was 5 yards. The penalty for twisting, turning, or pulling the facemask was 15 yards. A player could be ejected from the game if the foul is judged to be vicious and/or flagrant;
- (d) In 1977, the NFL enacted a rule that prohibited players from slapping the head of another player during play. This rule was referred to as the “Deacon Jones Rule,” named after the Rams’ defensive end who frequently used this technique;
- (e) In 1977, the NFL enacted a rule that prohibited Offensive Lineman from thrusting their hands into a defender’s neck, face, or head;
- (f) In 1979, the NFL enacted a rule that prohibited players from using their helmets to butt, spear, or ram an opponent. Pursuant to this rule, any player who used the crown or top of his helmet unnecessarily will be called for unnecessary roughness;
- (g) In 1980, the NFL enacted rule changes that provided greater restrictions on contact in the area of the head, neck, and face;
- (h) In 1980, the NFL enacted rule changes that prohibited players from directly striking, swinging, or clubbing the head, neck, or face (“personal foul”). Beginning in 1980, a penalty could be called for such contact whether or not the initial contact was made below the neck area;
- (i) In 1982, the NFL enacted a rule change by which the penalty for incidental grabbing of a facemask by a defensive team was changed from 5 yards to an automatic first down plus a 5 yard penalty;

- (j) In 1983, the NFL enacted a rule that prohibited players from using a helmet as a weapon to strike or hit an opponent;
- (k) In 1988, the NFL enacted a rule that prohibited defensive players from hitting quarterbacks below the waist while they are still in the pocket. (The rule was unofficially called the “Andre Waters Rule” based upon a hit that Waters placed on Los Angeles Rams quarterback Jim Everett in 1988); and
- (l) Following the 2004-2005 season, the NFL’s Competition Committee reviewed video of the entire season and concluded that the horse-collar tackle resulted in six serious injuries. On May 23, 2005, the NFL owners voted 27-5 to ban such tackles. The ban states that a horse-collar tackle is an open-field tackle in which a defender uses the shoulder pads to immediately bring a ball carrier down.

50. However, the Defendants failed to enact reasonable rules and regulations for the prevention of traumatic brain injuries.

**NFL FRAUDULENTLY CONCEALED  
THE LONG-TERM EFFECTS OF CONCUSSIONS**

51. Instead of taking measures to actually protect its players from suffering long-term brain injuries, the NFL created the MTBI Committee in 1994 to study the effects of concussions on NFL players.

52. The MTBI Committee was chaired by Dr. Elliot Pellman, a rheumatologist who is not certified as a brain injury and/or concussion specialist.

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

54. According to Defendants' own "studies," the speedy return to play after suffering a concussion demonstrates that such players were at no greater risk of suffering long-term brain injury.

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

56. A series of clinical and neuropathological studies performed by independent scientists and physicians demonstrated that multiple NFL induced-concussions cause cognitive problems such as depression, early on-set dementia and CTE and its related symptoms.



57. In response to these studies, Defendants, to further a scheme of fraud and deceit, had members of the NFL's MTBI Committee deny knowledge of a link between concussion and cognitive decline.

58. When the NFL's MTBI Committee anticipated studies that would show causal links between concussion and cognitive degeneration, the Committee promptly published articles producing contrary findings, as part of Defendants' scheme to deceive Congress, the players and the public at large.

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

60. In response to Dr. Omalu's article, Defendants' MTBI Committee, (Drs. Ira Casson, Eliot Pellman and David Viano) wrote a letter to the editor of Neurosurgery asking that Dr. Omalu's article be retracted.

61. A clinical study performed by Dr. Kevin Guskiewicz found that retired players who sustained three or more concussions in the NFL had a five-fold prevalence of mild cognitive impairment. The NFL's MTBI Committee, (Dr. Mark Lowell), promptly attacked the article by refusing to accept a survey of 2,400 former NFL players.

62. Because of Congressional scrutiny and media pressure, the NFL scheduled a league-wide Concussion Summit for June 2007. Defendants, in furtherance of their scheme of deceit issued a pamphlet to players in August 2007, which stated: “there is no magic number for how many concussions is too many.”

63. When Boston University’s Dr. Ann McKee found CTE present in the brains of two more deceased NFL players, a member of the Committee characterized each study as an “isolated incident” from which no conclusion could be drawn.

64. The NFL MTBI Committee has been on direct notice of multiple NFL head injuries contributing to cognitive decline in later life, yet it has never amended the 2007 NFL’s MTBI Committee statement: “Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems... It is important to understand that there is no magic number for how many concussions is too many.”

65. Defendants have yet to amend these inaccurate and misrepresentative statements to any NFL retiree, including Plaintiff Fulton Kuykendall.

**DEFENDANTS ACKNOWLEDGE THEIR DUTY TO  
PROTECT AGAINST THE LONG-TERM RISK OF CONCUSSIONS**

66. On August 14, 2007, Defendants acknowledged their duty to players by enacting rules to protect them against the risk associated with repeated brain trauma.

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

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

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

70. In a statement issued by the NFL on August 14, 2007, Roger Goodell, the Commissioner of the NFL, introduced the NFL's 2007 concussion guidelines

by saying, “We want to make sure all NFL players, coaches and staff members are fully informed and take advantage for the most up-to-date information and resources as we continue to study the long-term impact of concussions.”

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

72. The NFL’s 2007 concussion guidelines indicate when a player with a concussion can return to a game or practice.

73. The NFL’s 2007 concussion guidelines specifically mandate that a player should have normal neurological test results and no concussion symptoms before returning to play.

74. Defendants acknowledged that said guidelines were inadequate and insufficient. As a result, the NFL enacted more strict regulations to handle concussions starting in the 2009 season. Specifically, the NFL announced new rules requiring players who exhibit any significant concussion signs to be removed from a game or practice and be barred from returning the same day.

75. Nevertheless, it was not until June of 2010 that the NFL warned any player of the long-term risks associated with multiple concussions, including

dementia, memory loss, CTE and its related symptoms. The Defendants also failed to so warn active players until approximately the same time frame.

76. As of today, Defendants have never warned any retired player, like Plaintiff Fulton Kuykendall, of the long-term health effects of concussions.

**DEFENDANTS' CONDUCT  
WAS DELIBERATE, WILFULL AND WANTON**

77. The aforementioned acts and omissions of Defendants demonstrate that Defendants acted deliberately, willfully, and wantonly with indifference to the rights and duties owed and consequences to Plaintiff Fulton Kuykendall.

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

**PLAINTIFF FULTON KUYKENDALL'S INJURIES**

79. Plaintiff Fulton Kuykendall was born on June 10, 1953 in Coronado, California.

80. Plaintiff Fulton Kuykendall played eleven (11) NFL seasons, including during the 1985 season for the San Francisco 49ers and from 1975-1984 for the Atlanta Falcons.

81. Throughout his career as a professional football player, Plaintiff Fulton Kuykendall suffered multiple concussions.

82. Plaintiff Fulton Kuykendall was not warned by Defendants of the risk of long-term injury due to football-related concussions or that the League-managed equipment did not protect him from such injury. This was a substantial factor in causing his current injuries.

83. Plaintiff Fulton Kuykendall suffers from multiple past traumatic brain injuries with symptoms including but not limited to, memory loss, headaches, and sleeplessness.

**COUNT I**  
**NEGLIGENCE**

84. Plaintiffs incorporate by reference all facts set forth in the preceding paragraphs and further alleges on information and belief as follows.

85. Defendants, as purveyors of safety rules for the League, owed Plaintiff Fulton Kuykendall a duty to use reasonable care in researching, studying and/or examining the dangers and risks of head injuries and/or concussions to NFL

players; to inform and warn him of such risks and to effectuate reasonable league policies; and/or take other reasonable action to minimize the risks of head injuries.

86. At all times relevant hereto, Defendants negligently performed such duties by failing to adequately study, warn and/or implement reasonable rules and regulations to minimize traumatic brain injuries to its players, including Plaintiff Fulton Kuykendall.

87. Defendants knew or should have known that its policies, rules and regulations in place were inadequate to minimize traumatic brain injuries and that Plaintiff Fulton Kuykendall's injuries were foreseeable.

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

89. Defendants failed to use reasonable care in the manner in which it created the MTBI Committee and in the appointment of physicians to head the Committee who were not qualified for the job.

90. Defendants, failed to use reasonable care in researching, studying and/or examining the risks of head injuries and/or concussions in professional football. Defendants downplayed and in many cases denied both the severity of head injuries and the clear link between concussions and brain damage, thereby breaching its duty to its players, including Plaintiff Fulton Kuykendall.

91. Defendants, failed to inform, warn and/or advise its players and/or misinformed them of the risks and complications inherent in sustaining concussions, thereby breaching its duty to its players, including Plaintiff Fulton Kuykendall.

92. Defendants, were further negligent in the following respects:

- In failing to use reasonable care in overseeing, controlling and/or regulating policies and procedures of the League so as to minimize the risk of head injuries and/or concussions;
- In failing to use reasonable care in the research and/or investigation of the concussion issue;
- In failing to appoint a qualified physician or panel of physicians to head Defendants' MTBI committee;
- In placing a physician in charge of the committee whose primary motive was to appease the NFL rather than to report accurately;
- In disregarding independent scientific studies which showed the risks of head injuries and/or concussions to NFL players' health;



- In failing to acknowledge, either publicly or to their players, the clear link between concussions and brain injuries being suffered by their players;
- In failing to acknowledge, either publically or to their players, the linkage between playing football and long-term brain injuries;
- In failing to make and/or timely make necessary league policy changes as it pertains to intentional hits to the head, hits to the head of a defenseless player, helmet to helmet hits, and concussions in general;
- In publishing misleading and erroneous findings regarding hits to the head and NFL head injuries;
- In failing to issue a timely warning, through a concussion pamphlet or other means, to the players concerning the causal link between concussions and later life cognitive decline;
- In issuing misinformation and purposefully attempting to mislead their players through the concussion pamphlet which they issued in August 2007;
- In collecting and reporting upon data that was “infected” and/or not reliable;
- In causing, by and through their negligent conduct and omissions, an increased risk of harm to their players;
- In breaching their duty to ensure that the equipment it licensed and approved was of the highest possible quality and sufficient to protect the NFL players, including Plaintiff Fulton Kuykendall, from the risk of concussive brain injuries;
- In failing to provide competent information to its teams, players, coaches, trainers and medical personnel with respect to the significance of head injuries and/or concussions, their symptoms and necessary and/or proper treatment of same; and

- In creating a “culture” within the NFL in which concussions and their devastating effects would run rampant.

93. As a direct and proximate result of the Defendants negligent acts and omissions as aforesaid, Plaintiff Fulton Kuykendall suffered serious injury, including but not limited to brain damage, with a resultant loss therefrom.

94. That by reason of the foregoing negligence on the part of Defendants, Plaintiff Fulton Kuykendall believes that his aforesaid injuries are permanent and that he will continue to suffer from the effects of his aforesaid injuries, including but not limited to continuous pain and suffering and severe emotional distress.

95. That by reason of the foregoing, Plaintiff Fulton Kuykendall has and will be required in the future to obtain medical aid and attention, with a resultant cost therefrom.

96. That by reason of the foregoing, Plaintiff may suffer a loss of employment opportunity in the future with a resultant loss therefrom.

**COUNT II**  
**FRAUD**

97. Plaintiffs incorporate by reference all facts set forth in the preceding paragraphs and further alleges on information and belief as follows.

98. The NFL materially misrepresented the risk faced by Plaintiff related to head injuries. Defendants MTBI Committee, through misleading public

statements, published articles and the concussion pamphlet issued to the players, downplayed known long-term risks of concussions to NFL players.

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

100. The material misrepresentations include the NFL's remarks that Plaintiff Fulton Kuykendall and other players were not at an increased risk of head injury if they returned too soon to an NFL game or training session after suffering a head injury.

101. Defendants' material misrepresentations also included the NFL's criticism of legitimate scientific studies which illustrated the dangers and risks of head injuries.

102. Defendants knew the misleading nature of these statements when they were made.

103. Defendants knew, or should have known, that Plaintiff and other players would rely on these misrepresentations.

104. Plaintiff Fulton Kuykendall relied on these misrepresentations when playing in the NFL. Had Plaintiff Fulton Kuykendall known the risks to his health, he would not have agreed to jeopardize his health.

105. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiff Fulton Kuykendall has suffered physical injury, including, but not limited to, memory and cognitive problems, and economic losses.

**COUNT III**  
**FRAUDULENT CONCEALMENT**

106. Plaintiffs incorporate by reference all facts set forth in the preceding paragraphs and further alleges on information and belief as follows.

107. Defendants' MTBI Committee concealed the risks of head injuries to Plaintiff Fulton Kuykendall, and the risk to him if he returned to the playing field before making a proper recovery from his head injuries.

108. Defendants' MTBI Committee, through misleading public statements, published articles and the concussion pamphlet issued to players, concealed and downplayed known long-term risks of concussions to NFL players.

109. The concussion pamphlet created player reliance. The NFL stated that "[w]e want to make sure all N.F.L. players ... are fully informed and take advantage of the most up to date information and resources as we continue to study the long-term impact on concussions."

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

111. Defendants failed to acknowledge, either publicly or to its players, the clear link between concussions and brain injuries being suffered by NFL players.

112. Defendants failed to acknowledge, either publicly or to its players, the linkage between playing football and long-term brain injuries.

113. Defendants willfully concealed this information from Plaintiff Fulton Kuykendall in order to prevent negative publicity and increased scrutiny of their medical practices.

114. Defendants knew that Plaintiff Fulton Kuykendall and other NFL players would rely on the inaccurate information provided by the NFL.

115. Plaintiff Fulton Kuykendall relied on this inaccurate information during his NFL career.

116. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiff Fulton Kuykendall has suffered physical injury, including, but not limited to, memory and cognitive problems, and economic losses.

**COUNT IV**  
**NEGLIGENT MISREPRESENTATION**

117. Plaintiffs incorporate by reference all facts set forth in the preceding paragraphs and further alleges on information and belief as follows.

118. The NFL misrepresented the dangers that NFL players faced in returning to play too quickly after sustaining a head injury. Defendants' MTBI Committee, through public statements which it knew or should have known were misleading, published articles and issued the concussion pamphlet to its players, and downplayed the long-term risks of concussions to NFL players.

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

120. The misrepresentations included the NFL's remarks that Plaintiff Fulton Kuykendall and other NFL players were not at an increased risk of head injury if they returned too soon to an NFL game or training session after suffering a head injury.

121. Defendants' material misrepresentations also included the NFL's criticism of legitimate scientific studies that illustrated the dangers and risks of head injuries.

122. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known, because of their superior position of knowledge, that Plaintiff Fulton Kuykendall faced health problems if he were to return to a game too soon.

123. Defendants knew or should have known the misleading nature of these statements when they were made.

124. Defendants made misrepresentations and actively concealed information with the intention that Plaintiff Fulton Kuykendall and other NFL players would rely on the misrepresentations or omissions in selecting their course of action.

125. As a direct and proximate result of the Defendants' fraudulent conduct, Plaintiff Fulton Kuykendall has suffered physical injury, including, but not limited to, memory and cognitive problems, and economic losses.

**COUNT V**  
**LOSS OF CONSORTIUM**

126. Plaintiffs incorporate by reference all facts set forth in the preceding paragraphs and further alleges on information and belief as follows.

127. At all times herein mentioned, Plaintiffs Fulton Kuykendall and Sherry Kuykendall were, and are, legally married as husband and wife.

128. As a direct and proximate result of the aforementioned conduct of Defendants, and as a result of the injuries and damages to Plaintiff Fulton Kuykendall, Plaintiff Sherry Kuykendall has been deprived of the love, companionship, comfort, affection, society, solace or moral support, protection, loss of consortium, and loss of physical assistance in the operation and maintenance of the home, of her husband, Fulton Kuykendall, and has thereby sustained, and will continue to sustain damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for relief and judgment as follows:

- a. For past and future medical and incidental expenses, according to proof;
- b. Awarding to Plaintiff Fulton Kuykendall past and future loss of earnings and/or earning capacity, according to proof;
- c. Awarding to Plaintiff Fulton Kuykendall past and future general damages, including pain and suffering according to proof;
- d. Awarding to Plaintiff Sherry Kuykendall for loss of consortium, according to proof;
- e. Punitive damages as allowable by law;



- f. Awarding to Plaintiffs the costs of this action, including reasonable attorneys' fees; and
- g. Granting any and all such other and further relief as the Court deems necessary, just, and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby request a trial by jury of all issues triable by jury.

DATED: December 21, 2011

Respectfully submitted,

/s/ Michael L. McGlamry \_\_\_\_\_

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