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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

SCOTT MANUEL, as limited conservator of  
ZOEY M. BELCHER,

*Plaintiff,*

v.

KANSAS CITY CHIEFS FOOTBALL CLUB,  
INC.,

*Defendant.*

Case No. \_\_\_\_\_

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI, AND TO PLAINTIFF HEREIN AND HIS  
ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that, for the reasons set forth below, Defendant, Kansas City Chiefs Football Club, Inc. (the "Club"), by and through its undersigned attorneys, files this Notice of Removal to remove the claims against it in this action from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446. Removal is made pursuant to 28 U.S.C. § 1331 on the basis of federal question jurisdiction and, to the extent federal question jurisdiction pertains to some but not all of Plaintiff's claims, 28 U.S.C. § 1367. The grounds for removal are as follows:

**I. Introduction and Background**

1. On January 31, 2014, Plaintiff served the Club with a Summons and Petition filed in the Circuit Court of the State of Missouri, Jackson County (No. 1416-CV00033). Copies of the

Petition, Summons, and other documents filed in Jackson County are attached hereto as **Exhibit A**.

2. In the Petition, Plaintiff alleges that Zoey Belcher's father, Jovan Belcher ("Decedent"), was employed as a professional football player with the Club from March 2009 through December 1, 2012. Petition, ¶¶ 2, 4. Plaintiff alleges that the Club's "wrongful conduct ... directly caused or directly contributed to cause Decedent to develop post-concussion syndrome (affecting mood, behavior, cognition, and other brain mediated functions), neurological impairments/damage, such as [chronic traumatic encephalopathy] CTE, and caused or contributed to cause irresistible and/or insane impulses." Petition, ¶ 6.

3. Specifically, Plaintiff charges the Club with disregarding evidence of impairments and fostering an environment "where Decedent was required to play through his injuries and become exposed to further neurological harm" (Petition, ¶ 13); failing to warn Decedent about the risks of concussions and subconcussions with resultant neurological dysfunction (Petition, ¶ 54); failing to identify and remove Decedent from practices or games after he suffered significant head trauma and to evaluate, "clear" and remove from further head trauma (Petition, ¶¶ 14, 17-18, 25, 54); failing to monitor, clinically diagnose and/or treat Decedent for neurologic dysfunction, such as alteration in mood, behavior, and cognition (Petition, ¶¶ 37, 41, 43, 54); providing counseling to Decedent "without fully informing the counselor of known dangers of repetitive head trauma and/or failing to obtain counselor input regarding the safest future course of action" for Decedent's health (Petition, ¶ 54); negligently misrepresenting to Decedent the risks associated with repetitive head trauma sustained during football (Petition, ¶¶ 21, 40, 44-45, 62-67); and fraudulently concealing from Decedent the risks associated with repetitive head trauma sustained during football (Petition, ¶¶ 35, 44-45, 75-80).

4. The NFL collective bargaining agreements (“CBAs”) that were executed and operative during Decedent’s employment with the Club, the accompanying NFL Constitution and Bylaws, and the Standard Player Contract govern Plaintiff’s claims, including the existence and scope of any purported duties owed to Decedent by the Club.<sup>1</sup> The CBAs were negotiated and entered into by the National Football League Players Association (“NFLPA”) (the exclusive bargaining representative of employee NFL players) and the NFL Management Council (the exclusive bargaining representative of employer Member Clubs of the NFL, including the Chiefs). All NFL teams, including the Club, are bound by the terms of the CBAs, which “represent[] the complete understanding of the parties on all subjects covered [t]herein.” 2006 CBA Art. III, § 1; 2011 CBA Art. II, § 4. The CBAs, Constitution, and Standard Player Contract include, among other terms, provisions relating to player medical care and safety, rule-making, and dispute resolution.

5. Plaintiff’s claims against the Club are completely preempted under § 301 of the Labor Management Relations Act (the “LMRA”) because their resolution is inextricably intertwined with consideration of the terms of the CBAs, or substantially dependent on analysis of relevant provisions of the CBAs, that governed and informed the relationship between Decedent and the Club, and because the claims actually arise under the CBAs. *See Gore v. Trans World Airlines*, 210 F.3d 944, 950 (8th Cir. 2000) (holding that while Missouri state law has imposed a duty on an employer to preserve workplace safety and security, the employer and employees may negotiate what actions an employer would take to preserve safety in the

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<sup>1</sup> Given that Decedent’s employment with the Club ran from March 2009 through December 1, 2012, two CBAs are implicated in this matter. *See* Petition, ¶ 4. The 2006 Collective Bargaining Agreement (“2006 CBA”) took effect on March 8, 2006, and it remained in effect until the end of the 2010 NFL season. The 2011 Collective Bargaining Agreement (“2011 CBA”) took effect on August 4, 2011, and it remains in effect today.

workplace in a CBA, and a tort claim related to workplace safety may be inextricably intertwined with consideration of the terms of the CBA and thus be preempted); *see also Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213, 215, 220 (1985); *Fouche v. Mo. Am. Water Co.*, No. 11-CV-1622, 2012 WL 2718925, \*6 (E.D. Mo. July 9, 2012).

## II. Grounds for Removal

6. This Court has original jurisdiction of this action under 28 U.S.C. § 1331 because it is founded on a claim or right “arising under the Constitution, laws, or treaties of the United States.” A defendant may remove an action to federal court under 28 U.S.C. § 1441 if the complaint presents a federal question, such as a federal claim. *See Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 560 (1968).

7. Federal question jurisdiction exists in this case based on complete preemption of Plaintiff’s claims under § 301 of the LMRA. *See Schuver v. MidAmerican Energy Co.*, 154 F.3d 795, 798-99 (8th Cir. 1998) (stating that “[o]nce an area of state law has been completely preempted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law” ) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987)). Section 301 of the LMRA “preempts state law claims founded directly on rights created by collective-bargaining agreements, and also claims substantially dependent on analysis of a collective-bargaining agreement.” *Id.* (quoting *Caterpillar Inc.*, 482 U.S. at 394 (internal quotes omitted)).

8. To the extent that any claim in the Petition is not preempted, it “form[s] part of the same case or controversy” as the preempted claims. *See* 28 U.S.C. § 1367(a). Thus, this Court has supplemental jurisdiction over all claims. *See Dunn v. Dubuque Glass Co.*, 870 F. Supp. 2d 654, 660 (N.D. Iowa 2012) (“The court has federal question subject matter jurisdiction over . . .

Count III because it arises under the LMRA. ... The court has supplemental jurisdiction over Counts II and IV because the federal-law claims and state-law claims in the case derive from a common nucleus of operative fact ...”) (citations omitted); *Duerson v. Nat’l Football League*, No. 12 C 2513, 2012 WL 1658353, \*6 (N.D. Ill. May 11, 2012) (“Federal jurisdiction thus exists over [plaintiff’s negligence] claim, and the court can exercise supplemental jurisdiction over the rest of Duerson’s claims.”); *Maxwell v. Nat’l Football League*, No. 11-cv-08394, ECF Dkt. No. 58, Order at \*2 (C.D. Cal. Dec. 8, 2011) (“As long as at least one federal claim is present, this Court can exercise supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.”).

**A. Complete Preemption Under the LMRA**

9. Section 301 of the LMRA provides that federal courts have original jurisdiction over all “[s]uits for violation of contracts between an employer and a labor organization.” 29 U.S.C. § 185(a). The Supreme Court has held that “questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract **or in a suit alleging liability in tort.**” *Allis-Chalmers Corp.*, 471 U.S. at 211 (emphasis added); *see also Smith v. Houston Oilers, Inc.*, 87 F.3d 717, 719 (5th Cir. 1996) (“[I]f the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is preempted and federal labor-law principles-necessarily uniform throughout the nation-must be employed to resolve the dispute.”) (quoting *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405-06 (1988)).

10. Thus, § 301 preempts tort claims seeking to vindicate “state-law rights and obligations that do not exist independently of [collective bargaining] agreements” and also preempts claims “substantially dependent upon analysis of the terms of a [collective bargaining] agreement.” *Allis-Chalmers Corp.*, 471 U.S. at 213, 220; *see also Williams v. Nat’l Football League*, 582 F.3d 863, 882 (8th Cir. 2009) (“Because resolving the Players’ misrepresentation claims will require interpretation of the Policy [incorporated by reference into the CBA], they are preempted by section 301.”); *Schuver*, 154 F.3d at 799 (holding that fraud claims were preempted because resolution of those claims was “inextricably intertwined with and substantially dependent upon analysis of the terms of the collective bargaining agreement”).

***B. Decedent’s Collective Bargaining Agreements and Related Documents***

11. As noted above, the employment relationship between the Club and Decedent was governed and informed by the CBAs. The CBAs, Constitution, and the Standard Player Contract include, among other terms, provisions relating to player medical care and safety, rule-making, and dispute resolution. The CBAs “represent[] the complete understanding of the parties on all subjects covered [t]herein.” 2006 CBA Art. III, § 1; 2011 CBA Art. II, § 4.

12. In the instant case, Plaintiff’s claims are preempted because resolution of the claims is “inextricably intertwined with consideration of the terms of [the CBAs]” or “substantially dependent” on analysis of relevant provisions of the CBAs, and because the claims arise under the CBAs. *See Allis-Chalmers*, 471 U.S. at 213, 215, 220; *see also Williams*, 582 F.3d at 868, 881 (plaintiffs’ negligence claims were preempted because the Court could not determine “whether the NFL ... owed the [plaintiffs] a duty to provide such a warning ... without examining the parties’ legal relationship and expectations as established by the CBA”); *Duerson*, 2012 WL 1658353, at \*6 (concussion-related negligence claim against NFL preempted); *Maxwell*, No. 11-

cv-08394, Order at \*2 (same); *Pear v. Nat'l Football League*, No. 11-cv-08395, Order at \*2 (C.D. Cal. Dec. 8, 2011) (same); *Barnes v. Nat'l Football League*, No. 11-cv-08396, ECF Dkt. No. 58, Order at \*2 (C.D. Cal. Dec. 8, 2011) (same); *Stringer v. Nat'l Football League*, 474 F. Supp. 2d 894, 911 (S.D. Ohio 2007) (wrongful death claim arising out of heat-related illness against the NFL preempted because resolution of the claim was substantially dependent upon an analysis of CBA provisions related to NFL player medical care and treatment); *Fouche*, 2012 WL 2718925, at \*6 (stating that plaintiff's state law statutory claim, arising out of plaintiff's ability to take medical leave, was "inextricably intertwined with the terms of" the CBA's provisions concerning "the conditions for return to duty from sick leave").

13. Plaintiff's claims center on allegations that the Club failed to provide a safe working environment by not providing adequate medical care and advice to Decedent (Petition, ¶¶ 13, 15, 34-48); disregarding evidence of impairments (Petition, ¶ 13); fostering an environment where Decedent was required to play through injuries (Petition, ¶¶ 13 and 19); failing to educate or warn Decedent about various risks pertaining to concussions and subconcussions (Petition, ¶¶ 40, 48, 54(a), and 54(c)); exposing Decedent to repetitive trauma despite knowledge that Decedent was exhibiting symptoms allegedly requiring him to be withheld from games (Petition, ¶ 16); failing to remove Decedent from practices or games after he suffered head trauma (Petition, ¶¶ 14, 17-18, 25, 54(b)); failing to treat, monitor, and clinically diagnose Decedent with neurological dysfunction (Petition, ¶ 54(d)-(e)); and negligently and fraudulently misrepresenting to Decedent the risks associated with head trauma (Petition, ¶¶ 21, 35, 40, 44-45, 62-67, and 75-80). The resolution of such claims is "inextricably intertwined" with and/or "substantially dependent" on an analysis of various CBA provisions, including, but not limited to, the provisions:

a. requiring each Member Club to have a neurological consultant “with extensive experience in mild and moderate brain trauma” and a neuropsychologist as team consultants (2011 CBA Art. XXXIX, § 1(b));

b. giving the NFLPA Medical Director “access to all of the same data, records and other information provided to the NFL Medical Advisor” (2011 CBA Art. XXXIX, § 1(d));

c. establishing an Accountability and Care Committee to “provide advice and guidance regarding the preventive, medical, surgical, and rehabilitative care for players” (2011 CBA Art. XXXIX, § 3);

d. requiring a physician to inform a player if he has a physical condition that “could be significantly aggravated by continued performance” (2006 CBA Art. XLIV, § 1);

e. requiring a physician to disclose to a player information about the player’s physical condition that the physician discloses to the Club (2011 CBA Art. XXXIX, § 1(c));

f. requiring a Member Club’s “full-time head trainers and assistant trainers [to be] certified by the National Athletic Trainers Association” (2006 CBA, Art. XLIV, § 2; 2011 CBA, Art. XXXIX, § 2);

g. requiring that each player undergo a standardized pre-season physical (2006 CBA Art. XLIV, § 5; 2011 CBA Art. XXXIX, § 6);

h. stating that players will “have the opportunity to obtain a second medical opinion[,]” and that the Member Club (i.e., the Chiefs) will be required to pay for the



“costs of medical services rendered by the physician furnishing the second opinion” (2006 CBA Art. XLIV, § 3; 2011 CBA Art. XXXIX, § 4);

i. creating a Joint Committee on Player Safety and Welfare (2006 CBA Art. XIII, § 1(a); 2011 CBA Art. L, § 1(a));

j. mandating procedures for review, investigation, and resolution of disputes involving proposed rule changes that “would adversely affect player safety” (2006 CBA Art. XIII, § 1(c); 2011 CBA Art. L, § 1(c)); and

k. inviting player representatives to the Competition Committee meetings to “represent the players’ viewpoint on rules” (2006 CBA Art. XIII, § 2; 2011 CBA Art. L, § 2).

Determining whether the Club breached a duty to Decedent or acted reasonably will require interpretation of these CBA provisions and whether the Club met the standards imposed therein.

14. Further, resolution of Plaintiff’s claims – as set forth in the Petition – is also inextricably intertwined with and/or substantially dependent on an analysis of the NFL Constitution and Bylaws and the Standard Player Contracts, both of which are incorporated into the CBAs.<sup>2</sup> For example, determining whether the Club was negligent in its treatment of Decedent following any injuries may require the Court to consider whether the Club met the standard imposed by Article XVII of the NFL Constitution and Bylaws, which states that “[a]ll determinations of recovery time for major and minor injuries must be by the club’s medical staff

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<sup>2</sup> See *Clarett v. Nat’l Football League*, 369 F.3d 124, 142 (2d Cir. 2004) (“In the [CBA], the union agreed to waive any challenge to the Constitution and Bylaws and thereby acquiesced in the continuing operation of the ... rules contained therein ...”); see also *Brown v. Nat’l Football League*, 219 F. Supp. 2d 372, 386 (S.D.N.Y. 2002) (“[The NFL Constitution and Bylaws were] bargained over and included within the scope of the CBA.”); *Sherwin v. Indianapolis Colts, Inc.*, 752 F. Supp. 1172, 1177 (N.D.N.Y. 1990) (“The standard player agreement, which is used for every NFL player as required by Article XII, section 1 of the [1982] CBA, is effectively incorporated by reference in that article.”).

and in accordance with the club's medical standards" for players categorized as "Reserve/Injured" on the Reserve List. In the same way, the Court would also have to consider the Standard Player Contract, which requires NFL Member Clubs (i.e., the Chiefs) to provide medical and hospital care as deemed necessary by the team physician in the event that a player is injured. *See* NFL CBA, Appx. C, Standard Player Contract, ¶ 9 (2006); NFL CBA, Appx. A, Standard Player Contract, ¶ 9 (2011).

15. Moreover, an analysis of whether Decedent reasonably relied on any representation or omission by the Club (were Plaintiff's claims to get that far) also would be inextricably intertwined with and substantially dependent on the CBA provisions above and additional provisions. For example, the 2011 CBA requires each Member Club to have a neurological consultant who is certified in "head trauma" and gives the Medical Director of the NFLPA "a critical role" in disseminating information about health and safety to players. 2011 NFL CBA, Art. XXXIX, § 1(b) & (d), § 3. The Court cannot determine whether any reliance by Decedent on any information was justifiable, as required for fraudulent concealment, without interpreting these health and safety provisions and the overall relationship delineated between the parties. *See Williams*, 582 F.3d at 881 (ruling interpretation of CBA health and safety provisions necessary to determine reasonable reliance in fraudulent concealment case); *Hess v. Chase Manhattan Bank, USA, N.A.*, 220 S.W.3d 758, 765 (Mo. 2007).

16. Plaintiff's claims also are preempted by § 301 because the rights Plaintiff seeks to vindicate "arise under," or were created in whole or in part by the CBAs, and are not based on an independent duty "owed to every person in society." *See United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 370-71 (1990) (holding that, absent an independent duty running from defendants "to every person in society," any such duty to plaintiffs must arise out of the CBA); *see also*

*Schweiss v. Chrysler Motors Corp.*, 922 F.2d 473, 476 (8th Cir. 1990) (“[I]f the duty alleged to have been violated by Chrysler ‘is created by a collective-bargaining agreement and without existence independent of the agreement,’ [the] claim is preempted.” (quoting *Rawson*, 495 U.S. at 369)); *Sherwin*, 752 F. Supp. at 1178 (finding fraud claim arose under CBA because “[t]he Colts owed a duty to ... provide truthful information regarding medical treatment ... only to their players covered by the standard player agreement and the CBA,” not “‘to every person in society’ ” (quoting *Rawson*, 495 U.S. at 371)). For instance, the CBAs and Constitution establish the duty of the NFL and its Member Clubs to implement and enforce rules regarding professional football and to follow specific safeguards regarding player medical care. *See* 2006 CBA Art. XIII, § 1(c), 2011 CBA Art. L, § 1(c) (mandating procedures for review, investigation, and resolution of disputes involving proposed rule changes that “would adversely affect player safety”); NFL Constitution and Bylaws Art. XI, § 11.2 (2006 Rev.) (delegating to the NFL, and its Member Clubs, the obligation to “amend[] or change[]” all “[p]laying rules”); NFL Constitution and Bylaws Art. XVII, § 17.16(E) (2006 Rev.) (“All determinations of recovery time for major and minor injuries must be by the club’s medical staff and in accordance with the club’s medical standards” for players categorized as “Reserve/Injured” on the Reserve List.).

### ***C. Federal Jurisdiction over NFL Player Tort Claims***

17. In total, 76 cases – asserting similar claims to Plaintiff’s claims here – against the NFL, NFL Properties, and/or Member Clubs, have been removed to federal court, and none have been remanded to date, the rationale being that resolution of workplace injury-related negligence claims (including chronic traumatic encephalopathy claims) was substantially dependent on, and inextricably intertwined with, an analysis of CBA provisions concerning medical care and

treatment of NFL players. The following cases (including some of those 76 cases) are illustrative:

a. *Duerson*, 2012 WL 1658353, at \*6 (finding NFL player's negligence claims preempted because they were "substantially dependent on the interpretation of CBA provisions");

b. *Maxwell*, No. 11-cv-08394, Order at \*1-2 (holding NFL player's negligence claim to be preempted because it was "inextricably intertwined with and substantially dependent upon an analysis of certain CBA provisions imposing duties on [Member] clubs with respect to the medical care and treatment of NFL players");

c. *Pear*, No. 11-cv-08395, Order at \*1-2;

d. *Barnes*, No. 11-cv-08396, Order at \*1-2 (same);

e. *Stringer*, 474 F. Supp. 2d at 909-10 (holding wrongful death claim by decedent's widow against the NFL based in part on the NFL's alleged failure to adequately regulate practices, games, equipment, and medical care, was preempted because resolution was "inextricably intertwined and substantially dependent upon an analysis of certain CBA provisions imposing duties on the clubs with respect to medical care and treatment of NFL players") (internal quotes omitted);

f. *Givens v. Tenn. Football, Inc.*, 684 F. Supp. 2d 985, 990-91 (M.D. Tenn. 2010) (holding player's tort claims against NFL member club for failure to provide adequate medical care and intentionally withholding information regarding the true nature of his injury were preempted under § 301 because "whether a physician's failure to advise a player of his medical condition should be imputed to the club or whether the

club has a duty independent of the physician to advise a player of his medical condition are ‘inextricably intertwined’ with the provisions of the CBA”);

g. *Sherwin*, 752 F. Supp. at 1178 (holding tort claims against NFL member club, including negligence, fraud, and negligent misrepresentation, were preempted because “[t]he court cannot resolve plaintiff’s claims based on inadequate medical care without interpreting the clauses establishing those duties in the [CBA and Standard Player Contract] agreements”); and

h. *Jeffers v. D’Allesandro*, 681 S.E.2d 405, 414 (N.C. Ct. App. 2009) (holding claims against an NFL member club were preempted because the “touchstone of [the] claims – no matter how couched or labeled – is that the [member club] acted improperly in providing [the player] medical care through the team physician,” which “necessarily derive[s] from the obligations in the CBA”).

18. In *Duerson*, faced with a negligence claim alleging in part that the NFL “fail[ed] to educate players about the risks of concussions and the dangers of continuing to play after suffering head trauma,” and “fail[ed] to implement policies and procedures to prevent David Duerson from returning to play with his injuries,” the court held that the claim was preempted because its resolution would require a court to interpret several CBA provisions concerning player health and safety (including some of the provisions set forth above in paragraphs 13-14), and whether those provisions imposed a duty “to monitor Decedent’s health and fitness to continue to play football.” *Duerson*, 2012 WL 1658353, at \*1, 4.

19. Plaintiff makes an identical assertion here by alleging the Club had a duty to monitor Decedent’s health and fitness to continue to play football but failed to do so. *See* Petition, ¶¶ 51-55. Given this, it is clear that Plaintiff’s claims are completely preempted under

§ 301 of the LMRA because their resolution is inextricably intertwined with and substantially dependent on the terms of the CBAs.

20. The analysis in the instant case is the same as the analysis applied by the courts in *Duerson, Maxwell, Pear, Barnes, and Stringer*. It makes no difference that the defendant in those cases was the NFL and the defendant here is the Club because the substance of the applicable CBA provisions is the same: the CBA, Constitutions, and Standard Player Contract set forth the responsibility of the Member Clubs (i.e., the Chiefs) to provide medical care to NFL players.

21. Although Plaintiff avoids mentioning the CBAs in his Petition, the Court cannot avoid the need to consider and interpret these CBA provisions as “the defining source of the duties specifically owed” to Decedent for each of the state tort claims asserted. *See Gore*, 210 F.3d at 949-50. In a case arising out of this District (decided by Judge Fenner), the Eighth Circuit held that while Missouri state law creates the general duty to provide a safe working environment, employers and employees are free to negotiate how an employer is to satisfy those duties in a CBA. *Id.* at 950. Plaintiff “cannot establish liability ... without demonstrating that the [Club’s] actions were wrongful under a proper interpretation of the relevant rights and duties bargained for in the collective bargaining agreement,” which governed the parties’ relationship. *See id.* at 952.

***D. 28 U.S.C. § 1445(c) Does Not Apply***

22. Plaintiff alleges that, despite Decedent’s employment relationship with the Club, his “claims are not within the scope of [Missouri’s] workers’ compensation [law].” Petition, ¶ 11. Even if Plaintiff somehow changes his position and argues that his claims are within the scope of the workers’ compensation law in an attempt to avoid removal based on 28 U.S.C. § 1445(c), such attempt would be futile. The Eighth Circuit made clear in *Humphrey v. Sequentia, Inc.*, 58

F.3d 1238, 1246 n. 11 (8th Cir. 1995), that, as a matter of Congressional intent, § 1445(c) does not apply where removal, as in the instant case, is based on the doctrine of complete preemption. *See also Meisinger v. Specialty Risk Servs.*, 10-cv-0866, 2010 WL 8354692, \*3 (W.D. Mo. Nov. 19, 2010). Accordingly, removal of this action could not be barred by 28 U.S.C. § 1445(c), as the claims are completely preempted by § 301 of the LMRA.<sup>3</sup>

### III. Removal is Procedurally Proper

23. The Western District of Missouri is the federal district in which the Circuit Court of Jackson County, Missouri, is located.

24. This Notice of Removal is timely under 28 U.S.C. § 1446(b). *See also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999); *Marano Enters. of Kansas v. Z-Teca Rests., L.P.*, 254 F.3d 753, 756 (8th Cir. 2001).

25. Written notice of the filing of this Notice of Removal will be provided to Plaintiff, and a copy of this Notice of Removal will be filed in the appropriate state court, as required by 28 U.S.C. § 1446(d). This Notice of Removal is signed, pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

26. In filing this Notice of Removal, the Club waives none of its available defenses, including, without limitation, jurisdiction, venue, standing, or procedures for the disposition of this action in accordance with the terms of the CBAs or Decedent's employment contracts with the Club. Further, the Club does not admit any of the factual allegations in the Petition; rather, the Club expressly reserves the right to contest those allegations at the appropriate time.

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<sup>3</sup> Even if 28 U.S.C. § 1445(c) were somehow applicable, it would not cover Plaintiff's claims for negligence, negligent misrepresentation, fraudulent concealment, and wrongful death. These claims, as admitted by Plaintiff, do not "arise under" Missouri's workers' compensation laws because those laws do not create a specific right of action for these claims; thus, Plaintiff's claims are removable. *See* RSMo § 281.010 *et seq.*; *Humphrey*, 58 F.3d at 1244-45.

WHEREFORE, Defendant, Kansas City Chiefs Football Club, Inc., removes this action brought against it in the Circuit Court of Jackson County, Missouri.

Respectfully submitted,

**SEIGFREID BINGHAM, P.C.**

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ATTORNEYS FOR DEFENDANT



## Certificate of Service

I hereby certify that on the 28th day of February, 2014, a copy of the foregoing was filed electronically and was served on all parties of interest receiving electronic notices in the above-captioned proceedings through the Court's CM/ECF System. A copy of the foregoing was sent via U.S. Mail, postage prepaid, to the following:

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I (E-CASE)**

<b>Case Header</b>	<b>Parties &amp; Attorneys</b>	<b>Docket Entries</b>	<b>Charges, Judgments &amp; Sentences</b>	<b>Service Information</b>	<b>Filings Due</b>	<b>Scheduled Hearings &amp; Trials</b>	<b>Civil Judgments</b>	<b>Garnishments/Execution</b>
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**Judge/Commissioner Assigned:** MCKENZIE, CHARLES H  
**Location:** Jackson - Independence  
**Disposition:** Not Disposed

**Date Filed:** 12/31/2013**Case Type:** CC Wrongful Death

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## 1416-CV00033 - SCOTT MANUEL V KANSAS CITY CHIEFS FOOTBALL CLUB, I (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/Execution
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**KANSAS CITY CHIEFS FOOTBALL CLUB, INC. , Defendant**

RA: SEIGFRIED BINGHAM LEVY  
911 MAIN STREET, STE. 2800  
KANSAS CITY, MO 64105

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Document ID - 14-SMCC-53; Served To - KANSAS CITY CHIEFS FOOTBALL CLUB, INC.; Server - ; Served Date - 31-JAN-14; Served Time - 11:30:00; Service Type - Special Process Server; Reason Description - Served; Service Text - Served Jeanette Schmeltz

☐ [Notice of Service](#)

Affidavit of Service on Kansas City Chiefs Football Club; Electronic Filing Certificate of Service.

**Filed By:** TIMOTHY JOSEPH KINGSBURY

**On Behalf Of:** SCOTT MANUEL

**01/03/2014**☐ [Summons Issued-Circuit](#)

Document ID: 14-SMCC-53, for KANSAS CITY CHIEFS FOOTBALL CLUB, INC..

☐ [Order - Special Process Server](#)**01/02/2014**☐ [Proposed Order Filed](#)

Proposed Order; Electronic Filing Certificate of Service.

**Filed By:** TIMOTHY JOSEPH KINGSBURY

**On Behalf Of:** SCOTT MANUEL

☐ [Motion Special Process Server](#)

Motion for Appointment of Private Process Server; Electronic Filing Certificate of Service.

**Filed By:** TIMOTHY JOSEPH KINGSBURY

☐ [Notice](#)

of Case Management Conference June 12, 2014 at 11:00 am in Division 13

☐ [Case Mgmt Conf Scheduled](#)

**Scheduled For:** 06/12/2014; 11:00 AM ; CHARLES H MCKENZIE; Jackson - Independence

☐ [Judge Assigned](#)**12/31/2013**☐ [Filing Info Sheet eFiling](#)

**Filed By:** KENNETH BLAIR MCCLAIN II

☐ [Pet Filed in Circuit Ct](#)

Petition for Damages.

**On Behalf Of:** SCOTT MANUEL

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## 1416-CV00033 - SCOTT MANUEL V KANSAS CITY CHIEFS FOOTBALL CLUB, I (E-CASE)

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This information is provided as a service and is not considered an official court record. If an event is continued or cancelled it will not appear on this calendar.

Displaying 1 thru 1 of 1 scheduled hearings and trials returned for case **1416-CV00033**.

THURSDAY, JUNE 12, 2014				
Judge/Commissioner	Time	Day	Setting	Event
CHARLES H MCKENZIE	11:00 AM	1 OF 1		Case Management Conference
Event Text: JMD				Location: DIVISION 13 Jackson - Independence
Address: 308 W Kansas INDEPENDENCE MO				

Displaying 1 thru 1 of 1 scheduled hearings and trials returned for case **1416-CV00033**.

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Released 12/04/2013

**AFFIDAVIT OF SERVICE**

State of Missouri

County of Jackson

Circuit Court

Case Number: 1416CV00033

Plaintiff/Petitioner:

**SCOTT MANUEL**

vs.

Defendant/Respondent:

**KANSAS CITY CHIEFS FOOTBALL CLUB, INC.**

Received by HPS Process Service & Investigations, Inc. to be served on **Kansas City Chiefs Football Club, LLC**  
Registered Agent: **Seigfried Bungham Levy, 911 Main Street, Suite 2800, Kansas City, MO 64105.**

I, **NATHANIEL SCOTT**, being duly sworn, depose and say that on the **31st day of January, 2014** at **11:30 am**, I:

Served the within named with a true copy of the **Summons in Civil Case; Petition for Damages; and Notice of Case Management Conference for Civil Case and Order for Mediation** by leaving with Paralegal, Jeanette Schmeltz, authorized to accept, at **911 Main Street, Suite 2800, Kansas City, MO 64105.**

I am over the age of eighteen, and have no interest in the above action.

Subscribed and Sworn to before me on the 3 day of January, 2014 by the affiant who is personally known to me.

NOTARY PUBLIC



A. MOON  
My Commission Expires  
February 24, 2017  
Jackson County  
Commission #13452192

\_\_\_\_\_  
**NATHANIEL SCOTT**  
Process Server

HPS Process Service & Investigations, Inc.  
[www.hpsprocess.com](http://www.hpsprocess.com)  
1669 Jefferson  
Kansas City, MO 64108  
(800) 796-9559  
Our Job Serial Number: HAT-2014002398  
Ref: Belcher- 23192





## IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: CHARLES H MCKENZIE	Case Number: 1416-CV00033
Plaintiff/Petitioner: SCOTT MANUEL	Plaintiff's/Petitioner's Attorney/Address KENNETH BLAIR MCCLAIN II 221 W LEXINGTON SUITE 400 INDEPENDENCE, MO 64050
Defendant/Respondent: KANSAS CITY CHIEFS FOOTBALL CLUB, INC.	Court Address: 308 W Kansas INDEPENDENCE, MO 64050
Nature of Suit: CC Wrongful Death	

(Date File Stamp)

## Summons in Civil Case

The State of Missouri to: KANSAS CITY CHIEFS FOOTBALL CLUB, INC.

RA: SEIGFRIED BINGHAM LEVY  
911 MAIN STREET, STE. 2800  
KANSAS CITY, MO 64105

COURT SEAL OF



JACKSON COUNTY

## PRIVATE PROCESS SERVER

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

03-JAN-2014  
Date

*[Signature]*  
Clerk

Further Information:

## Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.  
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with \_\_\_\_\_ a person of the Defendant's/Respondent's family over the age of 15 years.  
☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

Jeanette Schmeltz (name) Paralegal / Authorized to Accept (title).

☐ other \_\_\_\_\_

Served at 911 Main St. Ste 2800 Kansas City, Mo 64105 (address)

in Jackson (County/City of St. Louis), MO, on 1/31/14 (date) at 11:30 A.M. (time).

Nathaniel Scott  
Printed Name of Sheriff or Server

*[Signature]*  
Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_ Date

Notary Public

## Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ ( _____ miles @ \$ _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

**SCOTT MANUEL, as limited  
conservator of ZOEY M. BELCHER,**

**Plaintiff,**

**v.**

**KANSAS CITY CHIEFS  
FOOTBALL CLUB, INC.**

**Serve at Registered Agent:**

**Seigfreid Bingham Levy**

**Selzer & Gee, P.C.**

**911 Main Street, Suite 2800**

**Kansas City MO 64105**

**Defendant.**

**Case No.:**

**Division**

**PETITION FOR DAMAGES**

COMES NOW Plaintiff Scott R. Manuel, as Limited Conservator for the Estate of Zoey M. Belcher, a minor, and for her claims and causes of action against the Defendant, upon information and belief, state:

**INTRODUCTION**

1. This case is about an orphaned child who will never get to experience the love, support and affection that Zoey's parents should have been able to provide. Over the course of a four-year career in the National Football League, Jovan unknowingly sacrificed his brain in order to provide for his family. Tragically, the Defendants' wrongful conduct destroyed multiple lives, tore apart families and ultimately caused or contributed to cause Jovan's death.

**PLAINTIFF**

2. Plaintiff Scott R. Manuel is the Limited Conservator of the Estate of Zoey Michelle Belcher, a minor. Zoey Belcher is the natural daughter of Decedent Jovan Henry Allen Belcher (Jovan Belcher). Plaintiff Manuel is a resident of the State of Missouri.

3. Pursuant to RSMo § 537.080, the aforesaid Plaintiff is the proper party to bring this action for the wrongful death of Decedent Jovan Belcher.

**PLAINTIFF'S DECEDENT**

4. Decedent Jovan Belcher was a resident of Missouri. Decedent was employed as a professional football player with the Kansas City Chiefs Football Club, Inc., from March 2009 through December 1, 2012.

5. During the course of Decedent's employment with the Chiefs, he was exposed to repetitive brain trauma and suffered multiple concussive and subconcussive blows to the head which caused or contributed to cause a constellation of neurologic/brain harms, including post-concussion syndrome (affecting mood, behavior, cognition, and other brain mediated functions) and traumatic brain injuries, such as Chronic Traumatic Encephalopathy ("CTE").

6. Defendant's wrongful conduct, as alleged herein, directly caused or directly contributed to cause Decedent to develop post-concussion syndrome (affecting mood, behavior, cognition, and other brain mediated functions), neurological impairments/damage, such as CTE, and caused or contributed to cause irresistible and/or insane impulses.

**DEFENDANT**

7. Defendant Kansas City Chiefs Football Club, Inc. (Kansas City Chiefs) is a Texas corporation with its principal place of business in Jackson County at: 1 Arrowhead Drive, Kansas City, Missouri 64129. At all times relevant herein, Defendant Kansas City Chiefs was

Decedent's employer. Defendant is a member of the National Football League (NFL), which is an unincorporated association consisting of 32 separately owned and independently operated professional football teams.

### **JURISDICTION**

8. Jurisdiction is proper in this Court pursuant to RSMo § 506.500 in that the tortious acts alleged herein took place in Missouri.

9. This is an action requesting relief under the common and statutory laws of the State of Missouri. Defendant owed Decedent non-delegable and non-negotiable duties that are separate and independent from any collective bargaining agreement (CBA). Because federal labor law is not applicable to Plaintiff's claims, and no interpretation of a CBA is required, section 301 of the Labor Management Relations Act cannot provide a basis for federal jurisdiction.

10. Plaintiff's claims do not arise out of an "accident," as the term is defined under Missouri's Workers' Compensation Law. Plaintiff's occupational disease-related claims were not caused by a specific event during a single work shift injury.

11. Plaintiff's claims are not within the scope of workers' compensation and they are not subject to the exclusivity provisions of workers' compensation.

### **VENUE**

12. Venue is proper with this Court pursuant to RSMo § 508.010. Upon information and belief, Decedent was first exposed by the wrongful acts and negligent conduct alleged herein in Jackson County, Missouri.



### GENERAL ALLEGATIONS

13. In the months leading up to Decedent's death, Defendant was aware of Decedent's symptoms and signs of cognitive and neuropsychiatric impairment. Defendant micromanaged virtually every aspect of Decedent's life when it came to his physical abilities to perform in the workplace, including analyzing his diet, speed, strength and body-mass index. Yet when it came to monitoring Decedent's mental health and neurological capacities, Defendant disregarded evidence of impairments and fostered an environment where Decedent was required to play through his injuries and become exposed to further neurological harm.

14. During his first season employed with Defendant, Decedent was knocked unconscious during the Jacksonville Jaguars game on November 8, 2009. Contrary to safe practices, Defendant did not immediately escort Decedent to the locker room to be evaluated and Defendant did not permit time to fully recover. On information and belief, Decedent was back to practice within a matter of days, being exposed to repetitive head trauma, and played the following Sunday against the Oakland Raiders. Because Decedent did not receive proper post-injury treatment, his recovery time was short-circuited which substantially increased his risk of brain injury.

15. Defendant voluntarily assumed a duty to, *inter alia*, provide competent healthcare services to Decedent. In evidence of that duty, Defendant ordered him to see a counselor on at least two separate occasions between October and November 2012.

16. Defendant caused, or contributed to cause, Decedent's cognitive and neuropsychiatric impairment by exposing him to repetitive head trauma in practice and play both before and after November 18, 2012, even though he was allegedly exhibiting changes in mood, behavior and cognition.

17. On November 18, 2012, the Kansas City Chiefs played the Cincinnati Bengals at Arrowhead Stadium. Throughout the game, Decedent was exposed to multiple subconcussive blows. With less than six minutes remaining in the game, Decedent suffered what should have been recognized as an acute concussion. He remained seated for a few seconds, was helped up by his teammates, and shook his head clearly showing signs and symptoms of a concussion. Despite exhibiting obvious symptoms, Decedent was never removed from play for evaluation and recovery.

18. Decedent's family members, teammates and friends noticed further changes/deterioration in his mental cognition and inhibition after the Chiefs/Bengals game. Decedent experienced symptoms including but not limited to: memory loss, confusion, depression, mood swings and explosivity. On information and belief, Decedent was suffering from post-concussion syndrome and neurological impairments, such as incipient CTE. Despite these warning signs, Defendant continued to cause or contributed to cause Decedent's injuries by exposing him to repetitive head trauma in practice and in games.

19. Before and after November 18, 2012, Defendant's coaching staff and management engaged in a systematic campaign of mental abuse to "motivate" Decedent to play through his injuries. General Manager Scott Pioli and other agents of Defendant Kansas City Chiefs often berated Decedent, telling him on numerous occasions, that, "he was just an accident, and they would get rid of him." The Defendants constant bullying pressure and stress coupled with Decedents occupational neurological impairments caused or contributed to cause Decedent to become insane.

20. On the morning of December 1, 2012, while suffering from neurological impairments and insane and/or irresistible impulses overriding his ability to control his actions,



Decedent killed Zoey's natural mother, Kasandra Perkins, he then drove to the Chiefs' facility where he took his own life.

21. Defendant knew that Decedent's behavior and acts of personal physical violence were uncharacteristic of the loving father, son, teammate and advocate for victims of domestic violence that Defendant hired in 2009. Nevertheless, Defendant publicly sought to marginalize, suppress and/or misrepresent the role repetitive head trauma played in Decedent's death by stating, Decedent was, "a player who had not had a long concussion history."

22. Further evidencing its effort to conceal the link between repetitive head trauma and neurological impairment, Defendant failed to take any steps to investigate, preserve, request and/or obtain Decedent's brain to perform a neuropathological analysis. Just seven months prior to Decedent's death, in May 2012, the NFL, its agents and a member team, the San Diego Chargers, meticulously dictated where and to whom Junior Seau's brain would go to be analyzed for CTE.<sup>1</sup> With Decedent, however, Defendant purposefully took no action in order to conceal and/or cause essential evidence to be damaged or destroyed.

23. Defendant's effort to minimize the relationship between head trauma and resulting health conditions is analogous to the tactics used by the tobacco industry. Just as the tobacco industry proposed alternative causes for the health conditions of its consumers, Defendant has suggested that the Decedent's health conditions and abnormal behaviors were caused by: alcohol, steroids, depression, and aggressive personality traits.

24. Defendant knew or should have known that since 1966 the Congress of Neurological Surgeons defined a concussion as a, "clinical syndrome characterized by immediate

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<sup>1</sup> Seau committed suicide on May 2, 2012. Following a contentious fight for Seau's brain, it was subsequently determined that Seau was suffering from CTE.

and transient impairment of neural functions, such as alteration of consciousness, disturbance of vision, equilibrium, etc., due to mechanical forces.”

25. Defendant has known or should have known that an individual is at an increased risk of brain damage if he is returned to play before he is asymptomatic. Thus, an individual should never be exposed to head trauma while symptomatic. Despite this consensus among the medical community, Defendant regularly returned Decedent to play—based upon their flawed “studies”—while experiencing concussion symptoms.

26. Defendant has known or should have known for many years that Post-Concussion Syndrome (PCS) and cognitive impairment occurs in football players. PCS is defined by the fourth edition of the *Diagnostic and Statistics Manual* as (1) cognitive deficits in attention or memory and (2) at least 3 or more of the following symptoms: fatigue, sleep disturbance, headache, dizziness, irritability, affective disturbance, apathy, or personality change. Similarly, the World Health Organization’s International Classification of Diseases (ICD-10) defines PCS as involving 3 or more of the following symptoms: headaches, dizziness, fatigue, irritability, insomnia, concentration difficulty, or memory difficulty.

27. For decades, the scientific community has known that repetitive head trauma can lead to permanent and debilitating neurological impairments.

28. For many years, Defendant knew or should have known that neurologic dysfunction is found in athletes, including football players and boxers, with a history of repetitive head trauma. Published papers, easily accessible to Defendant, have shown that this condition is prevalent in athletes who have a history of head injuries. The changes in the brain begin when the brain is subjected to repetitive trauma.



29. In 1928, pathologist Harrison Martland first described the link between repetitive head trauma and degenerative brain disease as the, "punch drunk syndrome" in the *Journal of the American Medical Association*.

30. In 1934, Dr. Harry Parker published a study confirming Martland's findings and argued that neurological degeneration in boxers was based on the volume of brain trauma sustained. Parker further opined, "the frequency of occurrence of conditions of this kind as reported by...people who followed the profession of pugilism makes it seem very likely that [the patients'] profession led to their ultimate disablement...."

31. On December 29, 1937, at the Seventeenth Annual Meeting of the American Football Coaches Association, the football community acknowledged its keen awareness of the serious risks of concussions, and the necessity of removing an individual from play if they have suffered a concussion:

During the past seven years the practice has been too prevalent of allowing players to continue playing after a concussion. Again this year this is true....Sports demanding personal contact should be eliminated after an individual has suffered one concussion.

32. In 1937, J.A. Millspaugh introduced the term dementia pugilistica to describe the syndrome characterized by motor deficits and mental confusion in boxers. Millspaugh also noted that the disease is likely not limited to boxers but could extend to other sports where repetitive brain trauma is present: "The mental unbalance more commonly encountered among pugilists is also observed among other sports representatives who sustain considerable head trauma." He further opined, "[r]epeat and frequent concussions...are, to say the least, not conducive to stabilized mental equilibrium."

33. In 1949, British neurologist Macdonald Critchley published the first of two important studies on head trauma in boxers. In *Punch Drunk Syndrome: The Chronic Traumatic*



*Encephalopathy of Boxers*, Critchley described the latent effects of repetitive brain trauma, explaining that the condition was generally not observable until a number of years had passed since the onset of boxing. In 1957, Critchley published an article in the *British Medical Journal* and described the symptoms of, "chronic progressive traumatic encephalopathy" to include, "progressive slowing of speech and thoughts...slowness of movement, and tremors." Critchley further noted that brain damage produced by repetitive trauma could lead to personality changes, and that the effects of chronic head trauma are dependent on the volume of impacts as well as the magnitude of those events.

34. Over the next several decades, the link between repetitive head trauma and neurological diseases was overwhelmingly clear. Numerous studies were published in medical journals including the *Journal of the American Medical Association*, *Neurology*, *Journal of Neurotrauma*, *Brain – A Journal of Neurology*, *Clinics in Sports Medicine*, *Journal of Neuropathology and Experimental Neurology*, *Lancet*, the *New England Journal of Medicine* and *Physician and Sports Medicine* warning of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. These studies collectively established that:

- repetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;
- encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;
- acceleration and rapid decelerations of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;
- immediate retrograde amnesia occurs following concussions;
- mild head injury requires recovery time without risk of subjection to further injury;

- a football player who suffers a concussion requires significant rest before being subjected to further contact; and
- minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

35. Although the condition now known as CTE has been discussed widely in the medical literature for more than eight decades, it was not until 2002 that CTE was officially diagnosed post-mortem in professional football players. Upon information and belief, this late disclosure was caused by or contributed to be caused by the Defendant's effort to conceal and/or minimize the link between repetitive head trauma in football and neurological diseases. Since 2002, more than 90% of all former players that have been examined post-mortem exhibited pathological symptoms consistent with CTE.

36. The first professional football player to be diagnosed with CTE was a former Kansas City Chiefs player, "Iron Mike" Webster. Webster played 17 years in the NFL and tragically died only 12 years after retirement at the age of 50. During the latter part of his life, Webster manifested progressive symptoms and signs of cognitive and neuropsychiatric impairment consistent with CTE.

37. Even before this discovery in a former Chiefs' player, Defendant knew or should have known that repetitive head trauma contributed to murder-suicide. In 1980, All-Pro offensive lineman for the Kansas City Chiefs, Jim Tyrer, murdered his wife and then committed suicide. On information and belief, Tyrer's behavior was also consistent with CTE. Thus, at this time, if not well before, Defendant should have established a monitoring system to detect the warning signs of neurological and behavioral impairments.



38. Research suggests that neurological dysfunction such as CTE may have been the true primary cause of death for many professional football players that died as a result of neurodegenerative diseases. Accordingly, it is likely that the rate of neurological dysfunction such as CTE in professional football players is significantly higher than once believed.

39. The clinical manifestations/neurological dysfunction such as CTE are quite variable but can include a number of signs and symptoms such as: headaches, short-term memory difficulties, aggressive tendencies, depression, impulse control, mood lability, explosivity, poor judgment, loss of attention and concentration, executive dysfunction, impulsivity, language difficulties, suicidal ideations, and ultimately, cognitive impairment. All such earlier symptoms can then worsen, leading to more severe depression, mood swings become more violent, severe memory loss, and motor neuron disease may develop. End stage encephalopathy can then set in, with severe memory loss, dementia, executive dysfunction, language difficulties, explosivity, paranoia, gait disturbance, and increased suicidal ideations and violence toward others.

40. Upon information and belief, Decedent experienced clinical symptoms consistent with neurologic dysfunction. Yet, Defendant never, *inter alia*, warned Decedent about the risks of PCS, CTE or CTE-like syndromes. To the contrary, Defendant affirmatively misrepresented to Decedent that his symptoms were not the result of PCS and/or neurodegenerative diseases caused by repetitive head trauma.

41. To date, more than 52 former NFL players have been diagnosed post-mortem with CTE. Defendant has failed to take steps to implement a monitoring system to detect neurological, mood, behavioral and cognitive impairments. Defendant knew or should have

known that abnormal mood, behavioral and cognition impairments, from head trauma can precede the pathological features of CTE.

42. In 2010, a current NFL player was diagnosed post-mortem with CTE. Chris Henry, 26, died after he was involved in an altercation with his fiancée. According to reports, Henry also experienced clinical symptoms consistent with CTE, including mood swings and headaches. Thus, Defendant was clearly aware and on notice that neurodegenerative diseases, including CTE, and their concomitant behavioral patterns were affecting current NFL players.

43. Defendant, however, never took reasonable measures to monitor the mental health of Decedent despite the disconcerting statistics of suicides by current and former players in the three years leading up to Decedent's death. On information and belief, the chart below identifies the list of players that died of an apparent suicide within the last three years:

<u>Date of Suicide</u>	<u>Name of Deceased</u>	<u>Age</u>
September 2010	Kenny McKinley	23
February 2011	Dave Duerson	50
January 2012	Mike Current	66
April 2012	Ray Easterling	62
May 2012	Junior Seau	43
July 2012	OJ Murdock	25
December 2012	Jovan Belcher	25
September 2013	Paul Oliver	29

44. Through various acts, errors, omissions and and/or misrepresentations, Defendant sought to conceal, misrepresent, minimize and/or create doubt about the validity of



subconcussions, concussions, neurological impairment and CTE. From at least 1994, and likely well before, the Defendant and its agents voluntarily assumed a duty to research the risks of concussions and subconcussions through the creation of two separate Brain-Injury Committees (i.e., Mild Traumatic Brain Injury Committee (1994–2010) and the Head, Neck and Spine Committee (2010 – Present)). Instead of carrying out this assumed duty in a reasonable way, Defendant and its agents created, ratified, authorized and/or condoned the publication of invalid scientific studies and sought to suppress, willfully ignore and/or minimize scientifically valid studies. These “studies” formed the basis for the Defendant’s flawed policies, or lack thereof, as they related to the monitoring of concussions, subconcussions and other neurological diseases, such as CTE.

45. Despite the substantial body of independent scientific studies directly linking repetitive head trauma in football and neurological diseases, including CTE, Defendant never warned Decedent and instead willfully ignored, minimized, concealed and/or affirmatively denied and misrepresented the risks.

46. As the purveyor of football in America, and as the leading expert in the field, Defendant owed a continuous duty to keep abreast of the scientific developments relating to football injuries, and it was required to notify Decedent and its employees of any potential short-term and long-term risks of repetitive head trauma, and take affirmative steps to minimize harm to players.

47. Defendant’s duty to warn was commensurate not only with its actual knowledge gained from its “research” and published studies but also with its constructive knowledge as measured by the abundance of scientific literature and other available means of communication.

48. Upon information and belief, Defendant knew or should have known of the short-term and long-term effects of concussive and sub-concussive injuries long before Decedent was exposed to repetitive brain trauma. Defendant had or should have had knowledge of studies that demonstrated a positive link between repetitive head trauma and neurological diseases, including CTE, in the 1920s, 1930s, 1940s, 1950s, 1960s, 1970s, 1980s, 1990s, 2000s and 2010s. During those decades, the Defendant's knowledge about the hazards of repetitive head trauma continued to accumulate, yet Defendant failed to warn Decedent about those hazards.

**COUNT I**  
**NEGLIGENCE**

49. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 48 as if fully set forth herein.

50. Defendant had a common law duty, separate and independent of the CBA, to use ordinary care to make its work environment reasonably safe.

51. Defendant owed a non-delegable and non-negotiable duty to maintain a safe working environment, a duty not to expose Decedent to unreasonable risks of harm, a duty to warn Decedent about the existence of dangers, including latent neurological diseases, of which he could not reasonably be expected to be aware, and a duty to exercise reasonable care so as not to expose its employees, including Decedent, to unreasonable risk of injury or death and a duty to take steps to minimize resultant harm.

52. Defendant failed to use due care under the circumstances, and was thereby negligent in the performance of its non-delegable and non-negotiable duties.

53. Defendant by its respective active and passive negligence failed to exercise the standard of care and skill it was obligated to exercise by reason of its relationship with Decedent, undertakings and assumption of a duty thereby causing, creating or permitting an increased risk

of exposure to repetitive brain trauma, and thereby failing to properly safeguard and warn Decedent.

54. Defendant further breached its duty of care owed to Decedent in the following, but not limited to, ways:

- a. Failing to warn him about the short-term, long-term and permanent risks of concussions and subconcussions with resultant neurological dysfunction;
- b. Failing to identify and remove Decedent from practices or games after he suffered significant head trauma (such as that in the November 18, 2012 game) and to evaluate, "clear" and remove from further head trauma;
- c. Failing to educate Decedent about concussions, subconcussions, and other neurological harms;
- d. Failing to monitor him for neurologic dysfunction, such as alteration in mood, behavior and cognition;
- e. Failing to treat, monitor and/or clinically diagnose Decedent with neurological dysfunction; and
- f. Taking on the assumed responsibility to provide counseling without fully informing the counselor of known dangers of repetitive head trauma and/or failing to obtain counselor input as to the safest future course of action for the health of Decedent.

55. Such negligence directly caused or directly contributed to cause Decedent to suffer from severe and persistent headaches, PCS, depression, mood swings, explosivity, suicidal



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ideations, irresistible and insane impulses, and, upon information and belief neurologic dysfunction such as CTE, all of which contributed to cause his death.

56. Because of the untimely death of Decedent, Plaintiff has been, and in the future will be, deprived of services, support, maintenance, guidance, companionship, comfort, and Plaintiff has sustained other damages which can reasonably be measured in money. Plaintiff has also incurred burial and other expenses as a direct result of the death of Decedent.

57. By reason of the foregoing, Plaintiff has been damaged and is entitled to full and fair compensation.

58. The conduct of Defendant as alleged herein was willful, wanton and/or in reckless disregard for the rights of Decedent and damages for aggravating circumstances should be assessed against Defendant.

WHEREFORE, Plaintiff prays judgment against Defendant in excess of Fifteen Thousand Dollars (\$15,000.00) for actual damages, punitive damages, and/or aggravating circumstances, for the costs of this action, and for such relief as the Court deems fair and reasonable.

**COUNT II**  
**NEGLIGENT MISREPRESENTATION**

59. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 58 as if fully set forth herein.

60. Defendant had a common law duty, separate and independent of the CBA, to use ordinary care to make its work environment reasonably safe.

61. Defendant owed a non-delegable and non-negotiable duty to maintain a safe working environment, a duty not to expose Decedent to unreasonable risks of harm, a duty to



warn employees about the existence of dangers, including latent neurological diseases, of which Decedent could not reasonably be expected to be aware, and a duty to exercise reasonable care so as not to expose Decedent to unreasonable risk of injury.

62. Defendant and its agents represented to Decedent that the incidence and risks of CTE were not scientifically proven.

63. Defendant and its agents represented to Decedent that, “...*we are learning a little bit more about long-term brain damage. No direct cause and effect has been established yet.*” (emphasis added).

64. Defendant and its agents represented to Decedent the following in a pamphlet published in 2007 and posted in Defendant’s workplace:

- a. **Q:** Am I at risk for further injury if I have had a concussion? **A:** Current research with professional athletes has shown that you should not be at greater risk of further injury once you receive proper medical care for a concussion and are free of symptoms.
- b. **Q:** If I have had more than one concussion, am I at increased risk for another injury? **A:** *Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems* if each injury is managed properly. It is important to understand that there is no magic number for how many concussions is too many. *Research is currently underway to determine if there are any long-term effects of concussion in NFL athletes.* (emphasis added).

65. Defendant and its agents represented to Decedent that his mental-health issues were not related to repetitive head trauma sustained during football.

66. When Defendant and its agents made these representations to Decedent, the representations were driven by profit motives so that Decedent would continue to play despite the risks of latent neurological dysfunction and diseases such as CTE.

67. Defendant failed to exercise reasonable care and competence when communicating this information, and as a result the information presented to Decedent was false and misleading.

68. Decedent justifiably relied upon this information since Defendant was in a superior position of knowledge and Defendant could foresee that Decedent would rely and intended that he do so.

69. Defendant's negligent misrepresentations directly caused or directly contributed to cause Decedent to suffer from severe and persistent headaches, PCS, depression, mood swings, explosivity, suicidal ideations, irresistible and insane impulses, and, upon information and belief neurologic dysfunction such as CTE, all of which contributed to cause his death.

70. Because of the untimely death of Decedent, Plaintiff has been, and in the future will be, deprived of services, support, maintenance, guidance, companionship, comfort, and Plaintiff has sustained other damages which can reasonably be measured in money. Plaintiff has also incurred burial and other expenses as a direct result of the death of Decedent.

71. By reason of the foregoing, Plaintiff has been damaged and is entitled to full and fair compensation.

72. The conduct of Defendant as alleged herein was willful, wanton and/or in reckless disregard for the rights of Decedent and damages for aggravating circumstances should be assessed against Defendant.

WHEREFORE, Plaintiff prays judgment against Defendant in excess of Fifteen Thousand Dollars (\$15,000.00) for actual damages, punitive damages, and/or aggravating circumstances, for the costs of this action, and for such relief as the Court deems fair and reasonable.

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

73. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 72 as if fully set forth herein.

74. At all relevant times hereto, Defendant was in a position of superior knowledge, which was not within the fair and reasonable reach of Decedent, nor would it have been discovered through the exercise of Decedent's ordinary diligence.

75. Defendant knew that repetitive head trauma in football created a risk of neurological diseases, such as CTE.

76. Defendant was aware of, knew and understood the significance of the published medical literature dating from as early as the 1920s that there is a serious risk of short-term and long-term brain injury associated with repetitive head trauma in football, to which Decedent was exposed.

77. Defendant had a non-delegable and non-negotiable duty, separate and independent of the CBA, to disclose and/or inform Decedent about these risks.

78. Defendant knew that such information was material to Decedent, and knew that Decedent would rely upon it for accurate information.

79. Defendant knowingly and fraudulently concealed from Decedent the risks of repetitive head trauma, including the risk of neurological disorders, intending that Decedent would rely upon such concealment.

80. Decedent relied upon the Defendant's inaccurate information and incomplete science.



81. Defendant's fraudulent concealment directly caused or directly contributed to cause Decedent to suffer from severe and persistent headaches, PCS, depression, mood swings, explosivity, suicidal ideations, irresistible and insane impulses, and, upon information and belief neurologic dysfunction such as CTE, all of which contributed to cause his death.

82. Because of the untimely death of Decedent, Plaintiff has been, and in the future will be, deprived of services, support, maintenance, guidance, companionship, comfort, and Plaintiff has sustained other damages which can reasonably be measured in money. Plaintiff has also incurred burial and other expenses as a direct result of the death of Decedent.

83. By reason of the foregoing, Plaintiff has been damaged and is entitled to full and fair compensation.

84. The conduct of the Defendant as alleged herein was willful, wanton and/or in reckless disregard for the rights of Decedent and damages for aggravating circumstances should be assessed against the Defendant.

WHEREFORE, Plaintiff prays judgment against Defendant in excess of Fifteen Thousand Dollars (\$15,000.00) for actual damages, punitive damages, and/or aggravating circumstances, for the costs of this action, and for such relief as the Court deems fair and reasonable.

**COUNT IV**  
**WRONGFUL DEATH, PURSUANT TO RSMo § 537.080**

85. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 84 as if fully set forth herein.

86. Plaintiff makes this separate claim for the wrongful death of Jovan Belcher, who died on December 1, 2012, while suffering from severe and persistent headaches PCS,

depression, mood swings, explosivity, suicidal ideations, irresistible and insane impulses and, upon information and belief neurologic dysfunction such as CTE, which were caused or contributed to cause by Defendant's wrongful conduct.

87. Defendant's wrongful conduct as described above caused or contributed to cause Decedent to suffer multiple concussive and subconcussive blows to the head which caused or contributed to cause a constellation of neurologic/brain harms, including post-concussion syndrome and traumatic brain injuries, such as CTE. Decedent's ability to function normally was greatly impaired; he suffered physical pain, mental and emotional distress, and loss of sleep until his death.

88. Defendant's wrongful conduct as described above further caused or contributed to cause Plaintiff to incur funeral expenses, mental anguish, suffering and bereavement both prior to and subsequent to the death of Decedent; loss of companionship, comfort, protection, care, attention, advice, counsel and guidance; loss of financial support and loss of services of the deceased to Plaintiff's actual damage in a sum exceeding Fifteen Thousand Dollars (\$15,000.00).

89. The conduct of the Defendant as alleged herein was willful, wanton and/or in reckless disregard for the rights of Decedent and damages for aggravating circumstances should be assessed against the Defendant.

WHEREFORE, Plaintiff prays judgment against Defendant in excess of Fifteen Thousand Dollars (\$15,000.00) for actual damages, punitive damages, and/or aggravating circumstances, for the costs of this action, and for such relief as the Court deems fair and reasonable.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues in this matter.

*/s/Kenneth B. McClain*

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**ATTORNEYS FOR PLAINTIFF**



IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE

SCOTT MANUEL,

PLAINTIFF(S),

VS.

CASE NO. 1416-CV00033  
DIVISION 13

KANSAS CITY CHIEFS FOOTBALL CLUB, INC.,

DEFENDANT(S).

NOTICE OF CASE MANAGEMENT CONFERENCE FOR CIVIL CASE  
AND ORDER FOR MEDIATION

NOTICE IS HEREBY GIVEN that a Case Management Conference will be held with the Honorable **CHARLES H MCKENZIE** on **12-JUN-2014** in **DIVISION 13** at **11:00 AM**. All Applications for Continuance of a Case Management Conference should be filed on or before Wednesday of the week prior to the case management setting. Applications for Continuance of a Case Management Conference shall comply with Supreme Court Rule and 16<sup>th</sup> Cir. R. 34.1. Continuance of a Case Management Conference will only be granted for good cause shown because it is the desire of the Court to meet with counsel and parties in all cases within the first 4 months that a case has been on file. All counsel and parties are directed to check Case.NET on the 16<sup>th</sup> Judicial Circuit web site at [www.16thcircuit.org](http://www.16thcircuit.org) after filing an application for continuance to determine whether or not it has been granted.

A lead attorney of record must be designated for each party as required by Local Rule 3.5.1. A separate pleading designating the lead attorney of record shall be filed by each party as described in Local Rule 3.5.2. The parties are advised that if they do not file a separate pleading designating lead counsel, even in situations where there is only one attorney representing the party, JIS will not be updated by civil records department, and copies of orders will be sent to the address currently shown in JIS. Civil Records does not update attorney information from answers or other pleadings. The Designation of Lead Attorney pleading shall contain the name of lead counsel, firm name, mailing address, phone number, FAX number and E-mail address of the attorney who is lead counsel.

At the Case Management Conference, counsel should be prepared to address at least the following:

- a. A trial setting;
- b. Expert Witness Disclosure Cutoff Date;
- c. A schedule for the orderly preparation of the case for trial;
- d. Any issues which require input or action by the Court;
- e. The status of settlement negotiations.

**MEDIATION**

The parties are ordered to participate in mediation pursuant to Supreme Court Rule 17. Mediation shall be completed within 10 months after the date the case is filed for complex cases, and 6 months after the date the case is filed for other circuit cases, unless otherwise ordered by the Court. Each party shall personally appear at the mediation and participate in the process. In the event a party does not have the authority to enter into a settlement, then a representative of the entity that does have actual authority to enter into a settlement on behalf of the party shall also personally attend the mediations with the party.

The parties shall confer and select a mutually agreeable person to act as mediator in this case. If the parties are unable to agree on a mediator the court will appoint a mediator at the Case Management Conference.

Each party shall pay their respective pro-rata cost of the mediation directly to the mediator.

**POLICIES/PROCEDURES**

Please refer to the Court's web page [www.16thcircuit.org](http://www.16thcircuit.org) for division policies and procedural information listed by each judge.

**S/ CHARLES H MCKENZIE**

**CHARLES H MCKENZIE, Circuit Judge**

**Certificate of Service**

This is to certify that a copy of the foregoing was electronic noticed, faxed, emailed and/or mailed or hand delivered to the plaintiff with the delivery of the file-stamped copy of the petition. It is further certified that a copy of the foregoing will be served with the summons on each defendant named in this action.

**Attorney for Plaintiff(s):**

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WILLIAM DIRK VANDEVER, THE POPHAM LAW FIRM PC, 712 BROADWAY SUITE  
100, KANSAS CITY, MO 64105

Defendant(s):

KANSAS CITY CHIEFS FOOTBALL CLUB, INC.

Dated: 02-JAN-2014

**Jeffrey A. Eisenbeis**  
Court Administrator

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

**The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s):****First Listed Plaintiff:**

SCOTT MANUEL ;

**County of Residence:** Outside This District**Defendant(s):****First Listed Defendant:**

KANSAS CITY CHIEFS FOOTBALL CLUB, INC. ;

**County of Residence:** Outside This District**County Where Claim For Relief Arose:** Jackson County**Plaintiff's Attorney(s):**

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**Basis of Jurisdiction:** 3. Federal Question (U.S. not a party)

**Citizenship of Principal Parties** (Diversity Cases Only)**Plaintiff:** N/A**Defendant:** N/A**Origin:** 2. Removed From State Court**State Removal County:** Jackson County**State Removal Case Number:** 1416-CV00033**Nature of Suit:** 720 Labor-Management Relations/Reporting**Cause of Action:** Cause of action for tort preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. 185(a)**Requested in Complaint****Class Action:** Not filed as a Class Action**Monetary Demand (in Thousands):****Jury Demand:** Yes**Related Cases:** Is NOT a refiling of a previously dismissed action

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**Signature:** Gregory S. Gerstner**Date:** 2-28-14

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.