

1 Stewart R. Pollock (SBN – 301356)
spollock@edelson.com
2 EDELSON PC
123 Townsend Street
3 San Francisco, California 94107
Tel: 415.212.9300
4 Fax: 415.373.9435

5 *Attorney for Plaintiff and the Putative Class*

6 [Additional counsel appear on the signature page.]
7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 NEVILLE HAWKINS, individually and on
12 behalf of all others similarly situated,

13 *Plaintiff,*

14 v.

15 PAC-12 CONFERENCE and THE
16 NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

17 *Defendants.*

Case No.: 3:16-cv-5056

COMPLAINT FOR:

- 1. **Negligence;**
- 2. **Fraudulent Concealment;**
- 3. **Breach of Express Contract;**
- 4. **Breach of Implied Contract;**
- 5. **Breach of Third-Party Contract; and**
- 6. **Unjust Enrichment.**

DEMAND FOR JURY TRIAL

CLASS ACTION

1 Plaintiff Neville Hawkins brings this Class Action Complaint and Demand for Jury Trial
2 against Defendants Pac-12 Conference (“Pac-12”) and the National Collegiate Athletic Association
3 (“NCAA”) to obtain redress for all persons injured by their reckless disregard for the health and
4 safety of generations of University of California, Berkeley (“Berkeley”) student-athletes. Plaintiff
5 alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as
6 to all other matters, upon information and belief, including investigation conducted by his attorneys.

7 NATURE OF THE ACTION

8 1. Nearly one hundred thousand student-athletes sign up to compete in college football
9 each year and it’s no surprise why. Football is America’s sport and Plaintiff and a Class of football
10 players (defined below) were raised to live and breathe the game. During football season, there are
11 entire days of the week that millions of Americans dedicate to watching these kids play. On game
12 days, hundreds of thousands of fans fill stadium seats and even more watch around the world.
13 Before each game, these players—often 18 year old freshmen in college—are riled up and told to do
14 whatever it takes to win and, when playing, are motivated to do whatever it takes to keep going.

15 2. But Defendants Pac-12 and the NCAA kept their players and the public in the dark
16 about an epidemic that was slowly killing their athletes.

17 3. During the course of a college football season, athletes can receive more than 1,000
18 impacts greater than 10g’s (gravitational force) and, worse yet, the majority of football-related hits
19 to the head exceed 20g’s, with some approaching 100g’s. To put this in perspective, if you drove
20 your car into a wall at twenty-five miles per hour and you weren’t wearing a seatbelt, the force of
21 you hitting the windshield would be around 100g’s. That means that each season, these 18, 19, and
22 20 year old student-athletes are subjected to the equivalent of several hundred car accidents.

23 4. Over time, the repetitive and violent impacts to players’ heads led to repeated
24 concussions that severely increased their risks of long term brain injuries, including memory loss,
25 dementia, depression, Chronic Traumatic Encephalopathy (“CTE”), Parkinson’s disease, and other
26 related symptoms. Meaning, long after they played their last game, they are left with a series of
27 neurological events that could slowly strangle their brains.

1 5. Unfortunately, for decades, Defendants Pac-12 and the NCAA knew about the
 2 debilitating long-term dangers of concussions, concussion-related injuries, and sub-concussive
 3 injuries (referred to as “traumatic brain injuries” or “TBIs”) that resulted from playing college
 4 football, but actively concealed this information to protect the very profitable business of “amateur”
 5 college football.

6 6. While in school, Berkeley football players were under Pac-12’s and the NCAA’s
 7 care. But, unfortunately, Defendants Pac-12 and the NCAA did not care about the off-field
 8 consequences that would haunt their student-athletes for the rest of their lives.

9 7. Despite knowing for decades of a vast body of scientific research describing the
 10 danger of TBIs, Defendants failed to implement procedures to protect Plaintiff and other Berkeley
 11 football players from the long-term dangers associated with them. They did so knowingly and for
 12 profit.

13 8. As a direct result of Defendants’ actions (or lack thereof), Plaintiff and a Class of
 14 former players (defined below) now suffer from neurological and cognitive damage, including
 15 symptoms of traumatic encephalopathy.

16 **PARTIES**

17 9. Plaintiff Neville Hawkins is a natural person and citizen of the State of California.

18 10. Defendant Pac-12 Conference is a collegiate athletic conference with its principal
 19 office located at 360 3rd Street, 3rd Floor, San Francisco, California 94107. Defendant Pac-12
 20 conducts business throughout this District, the State of California, and the United States.

21 11. Defendant NCAA is an unincorporated association with its principal office located at
 22 700 West Washington Street, Indianapolis, Indiana 46206. Defendant NCAA conducts business
 23 throughout this District, the State of California, and the United States.

24 **JURISDICTION AND VENUE**

25 12. This Court has subject matter jurisdiction over this case under 28 U.S.C. §
 26 1332(d)(2) because (a) at least one member of the Class, which consists of at least 100 members, is
 27 a citizen of a state different from Defendants, (b) the amount in controversy exceeds \$5,000,000,
 28

1 exclusive of interest and costs, and (c) none of exceptions under that subsection apply to this action.

2 13. This Court has personal jurisdiction over Defendants because they conduct
3 significant business in this District, including establishing consumer and business contracts here,
4 and because the unlawful conduct alleged in the Complaint occurred in, was directed at, and/or
5 emanated in part from this District.

6 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial
7 part of the events giving rise to Plaintiff's claims occurred in and/or emanated from this District,
8 and because Defendant Pac-12 resides here.

9 INTRADISTRICT ASSIGNMENT

10 15. Pursuant to Civil Local Rule 3-2(d), this case should be assigned to the San
11 Francisco Division.

12 FACTUAL BACKGROUND

13 I. The NCAA and Pac-12 Had a Duty to Protect Their Student-Athletes.

14 16. Defendant NCAA is the governing body of collegiate athletics that oversees twenty-
15 three college sports and over 400,000 students who participate in intercollegiate athletics, including
16 in the Pac-12 and the football program at Berkeley. According to the NCAA, “[m]ore than 1,200
17 schools, conferences, and affiliate organizations collectively invest in improving the experiences of
18 student-athletes – on the field, in the classroom, and in life.”¹

19 17. To accommodate the wide spectrum of student-athletes at its member schools, the
20 NCAA has three different divisions of intercollegiate competition. Division I is the highest level of
21 intercollegiate athletes sanctioned by the NCAA and includes many well-known schools, with high
22 ranking teams, larger budgets, better facilities, and more athletics scholarships.

23 18. Each NCAA Division is composed of several “conferences” to facilitate regional
24 league play. Berkeley is a Division I football team in the Pac-12 Conference. The Pac-12 operates
25 in the western United States and participates in over 20 NCAA sports with members located in
26 Arizona, California, Colorado, Oregon, Utah, and Washington. Berkeley football attracts top high

27 ¹ Membership, *National Collegiate Athletic Association*, <http://www.ncaa.org/about/who-we-are/membership> (last visited Sept. 1, 2016).
28

1 school talent from across the nation and enjoys a national television audience. Berkeley football
2 generates millions of dollars in revenue for the school each year and consistently ranks among the
3 top teams in the country.

4 19. Collectively, Defendants govern and regulate the Berkeley football program and owe
5 a duty of care to safeguarding the well being of its student-athletes.

6 20. In fact, since its founding in 1906, the NCAA (then the Intercollegiate Athletic
7 Association of the United States (“IAAUS”)), has claimed to be “dedicated to safeguarding the
8 well-being of student-athletes and equipping them with the skills to succeed on the playing field, in
9 the classroom and throughout life.”² The IAAUS was specifically formed for this purpose because,
10 at the turn of the 20th Century, head injuries were occurring at an alarming rate in college football.
11 In response, President Theodore Roosevelt convened a group of Ivy League university presidents
12 and coaches to discuss how the game could be made safer. As a result of several subsequent
13 meetings of colleges, the association was established.³ As such, the genesis of the NCAA was for a
14 singular goal: student-athlete safety.

15 21. According to the NCAA, “[c]ollege and university presidents and chancellors guide
16 each division, supported by an extensive committee structure guided by athletic administrators,
17 faculty and student-athlete representatives[, but that each] division creates its own rules that follow
18 the overarching principles of the NCAA.”⁴

19 22. The overarching principles of the NCAA, including its purported commitment to
20 safeguarding its student-athletes, are contained in the NCAA Constitution. The NCAA Constitution
21 clearly defines the NCAA’s purpose and fundamental policies to include maintaining control over
22 and responsibility for intercollegiate sports and student-athletes. The NCAA Constitution states in
23 pertinent part:

24 _____
25 ² About the NCAA, *National Collegiate Athletic Association*, <http://www.ncaa.org/about> (last
visited Sept. 1, 2016).

26 ³ In 1910, the IAAUS changed its name to the National Collegiate Athletic Association.

27 ⁴ Membership, *National Collegiate Athletic Association*, <http://www.ncaa.org/about/who-we-are/membership> (last visited Sept. 1, 2016).
28

1 The purposes of this Association are:

- 2 (a) To initiate, stimulate and improve intercollegiate athletics
3 programs for student-athletes;
- 4 (b) To uphold the principal of *institutional control* of, and
5 responsibility for, all intercollegiate sports in conformity with the
6 constitution and bylaws of this association;

7 NCAA Const., Art. 1, § 1.2(a)(b) (emphasis added).

8 23. The NCAA Constitution also defines one of its “Fundamental Policies” as the
9 requirement that “Member institutions shall be obligated to apply and enforce this legislation, and
10 the enforcement procedures of the Association shall be applied to an institution when it fails to
11 fulfill this obligation.” NCAA Const., Art. 1, § 1.3.2.

12 24. Article 2.2 of the NCAA Constitution specifically governs the “Principle of Student-
13 Athlete Well-Being,” and provides:

14 **2.2 The Principle of Student-Athlete Well-Being.**

15 Intercollegiate athletics programs shall be conducted in a manner designed
16 to protect and enhance the physical and educational well-being of student
17 athletes. (Revised: 11/21/05.)

18 **2.2.3 Health and Safety.**

19 It is the responsibility of each member institution to protect the health of,
20 and provide a safe environment for, each of its participating student
21 athletes. (Adopted: 1/10/95.)

22 25. To accomplish this purported purpose, NCAA promulgates and implements standard
23 sport regulations and requirements, such as the NCAA Constitution, Operating Bylaws, and
24 Administrative Bylaws. These NCAA documents provide detailed instructions on game and
25 practice rules, player eligibility, scholarships, and player well-being and safety. NCAA member
26 institutions, including athletic conferences like Pac-12, are required to abide by the NCAA rules and
27 requirements. Specifically, according to the NCAA Constitution: “Each institution shall comply
28 with all applicable rules and regulations of the Association in the conduct of its intercollegiate
athletics programs . . . Members of an institution’s staff, student-athletes, and other individuals and
groups representing the institution’s athletics interests shall comply with the applicable Association
rules, and the member institution shall be responsible for such compliance.” NCAA Const., Art. 2, §

1 2.8.1.

2 26. The NCAA publishes a health and safety guide termed the Sports Medicine
3 Handbook (the “Handbook”). The Handbook, which is produced annually, includes the NCAA’s
4 official policies and guidelines for the treatment and prevention of sports-related injuries, as well as
5 return-to-play guidelines, and recognizes that “student-athletes rightfully assume that those who
6 sponsor intercollegiate athletics have taken reasonable precautions to minimize the risk of injury
7 from athletics participation.”⁵

8 27. To provide member institutions with the tools that they need to comply with NCAA
9 legislation, the NCAA Constitution promises that the “Association shall assist the institution in its
10 efforts to achieve full compliance with all rules and regulations. . . .” NCAA Const., Art. 2, § 2.8.2.

11 28. Likewise, according to the NCAA Constitution, a member conference is entitled to
12 all of the privileges of active members, except the right to compete in NCAA championships. *See*
13 NCAA Const., Art. 3, § 3.02.3.2. Member “conferences of [the NCAA] agree to administer their
14 athletics programs in accordance with the constitution, bylaws and other legislation of the
15 Association.” NCAA Const., Art. 3, § 3.3.4.1.

16 29. The NCAA, therefore, holds itself out as both a proponent of and authority on the
17 treatment and prevention of sports-related injuries upon which the student-athletes, Pac-12, and
18 Berkeley (*i.e.*, a member institution) can rely upon for guidance on player-safety issues.

19 30. As a member conference, Pac-12 is charged with implementing and enforcing those
20 guidelines in a meaningful way to protect the health and safety of Berkeley football players,
21 including Plaintiff.

22 31. Moreover, as a member of the NCAA, Pac-12 is obligated to help protect the health
23 and safety of its student-athletes and agreed to abide by the NCAA Constitution.

24 32. As compared to Plaintiff and other Berkeley football players, Defendants were in
25 superior positions to know of and mitigate the risks of concussions and other TBIs.

26
27 ⁵ *See, e.g.*, David Klossner, *2013-14 NCAA Sports Medicine Handbook*, NATIONAL
28 COLLEGIATE ATHLETIC ASSOCIATION (Aug. 2013), *available at*
<https://www.ncaa.org/sites/default/files/2013-14%20Sports%20Medicine%20Handbook.pdf>.

1 **II. Decades of Studies Firmly Establish the Dangers Associated With Football-Related**
2 **Concussions.**

3 33. Throughout the twentieth century and into the twenty-first century, studies have
4 firmly established that repetitive and violent impacts to the head can cause concussions with a
5 heightened risk of long term traumatic brain injuries (or TBI), including memory loss, dementia,
6 depression, CTE, Alzheimer's disease, Parkinson's disease, and other related symptoms. To better
7 understand the results of these studies, a brief introduction to concussions in football follows.

8 *A. An Overview of Concussions in Football.*

9 34. A concussion is a traumatic brain injury caused by an impact that causes the head
10 and brain to move rapidly back and forth. The movement causes the brain to bounce around or twist
11 in the skull, damaging brain cells and creating chemical changes in the brain.

12 35. The human brain is made of soft tissue, cushioned by spinal fluid, and encased in a
13 hard skull. During everyday activity, the spinal fluid protects the brain from crashing against the
14 skull. But relatively minor impacts—including not only direct blows to the head but also blows to
15 the body and movements that cause the neck to whiplash—can move the brain enough to press
16 through the spinal fluid, knock against the inside of the skull, and cause concussions.

17 36. Concussions typically occur when linear and rotational accelerations impact the
18 brain through either direct impacts to the head or indirect impacts that whiplash the head. During
19 the course of a college football season, studies have shown athletes can receive more than 1,000
20 impacts greater than 10g (or gravitational) force. This is slightly more force than a fighter pilot
21 receives doing maximal maneuvers. The majority of football-related hits to the head exceed 20g's.

22 37. Kevin Guskiewicz, of the University of North Carolina's Sports Concussion
23 Research Program, compared the impacts sustained in a routine college football practice to crashing
24 a car: "If you drove your car into a wall at twenty-five miles per hour and you weren't wearing your
25 seat belt, the force of your head hitting the windshield would be around 100[g]'s: in effect, the
26 player [who sustained two hits above 80g's,] had two car accidents that morning."⁶

27 ⁶ Malcolm Gladwell, *Offensive Play*, *The New Yorker* (October 19, 2009)
28 <http://www.newyorker.com/magazine/2009/10/19/offensive-play>.

1 i. Concussion Symptoms.

2 38. When a student-athlete suffers a severe impact to the head, they may start
3 experiencing concussion-related symptoms, including:

- 4 • “seeing stars” and feeling dazed, dizzy, or lightheaded;
- 5 • memory loss, such as trouble remembering things that happened right
6 before and after the injury;
- 7 • nausea or vomiting;
- 8 • headaches;
- 9 • blurred vision and sensitivity to light;
- 10 • slurred speech or saying things that do not make sense;
- 11 • difficulty concentrating, thinking, or making decisions;
- 12 • difficulty with coordination or balance (such as being unable to catch a
13 ball or other easy tasks);
- 14 • feeling anxious or irritable for no apparent reason; or
- 15 • feeling overly tired.

16 39. A student-athlete may not recognize the signs or symptoms of a concussion, and,
17 often, the effect of the concussion itself prevents him from recognizing them. Because of that, he
18 may put himself at risk of further injury by returning to a game after a concussion. Brains that have
19 not had time to properly heal from a concussion are particularly susceptible to further injury.

20 ii. Post-Concussion Treatment.

21 40. After a concussion, the brain needs time to heal. Doctors generally prohibit
22 individuals from returning to normal activities—certainly including contact sports—until all
23 symptoms have subsided. They do so because, immediately after a concussion, the brain is
24 particularly vulnerable to further injury.

25 41. The length of the healing process varies from person to person and from concussion
26 to concussion. Symptoms may even last for one or two weeks.

27 42. Individuals who do not recover from a concussion within a few weeks are diagnosed
28 with post-concussion syndrome. The symptoms of post-concussion syndrome can last for months or

1 sometimes even be permanent. Generally, people suffering from post-concussion syndrome are
2 referred to specialists for additional medical help.

3 43. Many people think of concussions as short-term, temporary injuries. But scientific
4 research demonstrates that the effects of concussions are anything but temporary.

5 *B. Studies Confirm the Dangers and Long-Term Effects of Concussions.*

6 44. The two leading studies of the long-term effects of concussions were conducted by
7 Boston University's Center for the Study of Traumatic Encephalopathy and the Brain Injury
8 Research Institute. These studies showed the "devastating consequences" of repeated concussions,
9 including that they lead to an increased risk of depression, dementia, and suicide. These studies
10 have also demonstrated that repeated concussions trigger progressive degeneration of the brain
11 tissue, including the build-up of an abnormal protein called tau.

12 45. Between 2002 and 2007, Dr. Omalu, of the Brain Injury Research Institute,
13 examined the brains of five former NFL players: Andre Waters, Mike Webster, Terry Long, Justin
14 Strzelczyk, and Damien Nash. Waters and Nash killed themselves, Webster—homeless and
15 cognitively impaired—died of heart failure, and Strzelczyk died driving the wrong way down a
16 highway at 90 miles per hour. Four of the five brains showed the telltale characteristics of CTE,
17 which is a progressive degenerative disease of the brain found in people with a history of repetitive
18 brain trauma.

19 46. Dr. Cantu, of the Boston University Center for the Study of Traumatic
20 Encephalopathy, has found evidence of CTE in 90 of 94 (96%) autopsied brains of former NFL
21 players. He has found CTE in 79% of all autopsied brains of former football players (who played at
22 *any* level).

23 47. Dr. Omalu now believes that more than 90% of former NFL players suffer from
24 CTE.

25 48. Unfortunately, studies like Drs. Cantu's and Omalu's—which establish the
26 devastating dangers related to TBIs—date back to the early twentieth century. Beginning with
27 studies on the brain injuries suffered by boxers in the 1920s, medical science has long recognized
28

1 the debilitating effects of concussions and other TBI, and found that that repetitive head impacts can
2 cause permanent brain damage and increased risk of long-term cognitive decline and disability.

3 49. For instance, in 1928, pathologist Dr. Harrison Martland published a study called
4 “Punch Drunk” in the *Journal of the American Medical Association*, where he described the clinical
5 spectrum of abnormalities found in nearly 50 percent of boxers who had been knocked out our or
6 who had suffered a considerable impact to the head. *See* Dr. Harrison S. Martland, *Punch Drunk*, 91
7 JAMA 1103 (1928).

8 50. Countless studies were later conducted on boxers suffering chronic neurological
9 damage as a result of repeated head injuries and who were displaying signs of dementia and
10 impairment of motor function. As incidents of chronic encephalopathy increased, they were often
11 characterized as a “Parkinsonian” pattern of progressive decline.

12 51. Nearly a decade after Dr. Martland’s study, the American Football Coaches
13 Association first published a report warning that players who suffer concussions should be removed
14 from play. Then nearly twenty years after that, in 1952, an article published in *The New England*
15 *Journal of Medicine* first recommended a three-strike rule for concussions in football, that
16 recommended that players cease to play football permanently after receiving their third concussion.

17 52. Starting in the late 1960’s, the medical community began focusing on the effects of
18 concussion-related injuries in football. In a 1967 study, Drs. Hughes and Hendrix examined how
19 severe impacts affected brain activity in football players by utilizing electroencephalograms
20 (commonly known as “EEGs”). Shortly after that, a potentially fatal condition known as “Second
21 Impact Syndrome” was identified, which is a re-injury to an already-concussed brain that triggers
22 swelling that the skull cannot accommodate.

23 53. Study after study published in medical journals including *The Journal of the*
24 *American Medical Association*, *Neurology*, *The New England Journal of Medicine*, and *Lancet*
25 warned of the dangers of single concussions, multiple concussions, and/or football-related head
26 trauma from multiple concussions. These studies collectively established that:

- 27 • repetitive head trauma in contact sports, including football, has potential
28 dangerous long-term effects on brain function;

- 1 • encephalopathy (dementia pugilistica) is caused by repeated sub-
- 2 concussive and concussive blows to the head;
- 3 • acceleration and rapid deceleration of the head that results in brief loss of
- 4 consciousness also results in a tearing of the axons (brain cells) brainstem;
- 5 • with respect to head injury in athletes who play contact sports, there is a
- 6 relationship between neurologic pathology and length of the athlete's
- 7 career;
- 8 • immediate retrograde memory issues occur following concussions;
- 9 • head injury requires recovery time without risk of subjection to further
- 10 injury;
- 11 • a football player who suffers a concussion requires significant rest before
- 12 being subjected to further contact; and
- 13 • minor head trauma can lead to neuropathological and neurophysiological
- 14 alterations, including neuronal damage, reduced cerebral blood flow,
- 15 altered brainstem evoked potentials and reduced speed of information
- 16 processing.

17 54. As a result of these, and countless other studies, medical professionals began
18 recommending changes to the game of football and how concussion-related injuries should be
19 handled.

20 55. By 1991, Dr. Cantu, the American Academy of Neurology, and Colorado Medical
21 Society developed return-to-play criteria for football players suspected of sustained head injuries.

22 56. In 2003, a NCAA concussion study concluded that football players who had
23 previously sustained a concussion were more likely to have future concussion injuries. Another
24 2003 NCAA concussion study concluded that collegiate football players "may require several days
25 for recovery of symptoms, cognitive dysfunction, and postural instability after [a] concussion," and
26 that concussions are "followed by a complex cascade of ionic, metabolic, and physiological events
27 that can adversely affect cerebral function for several days to weeks."⁷

28 57. Following these studies, a National Athletic Trainers' Association position statement

⁷ Michael McCrea, *et al.*, Acute Effects and Recovery Time Following Concussion in Collegiate Football Players, The NCAA Concussion Study, *The Journal of the American Medical Association* (November 19, 2003), available at <http://jama.jamanetwork.com/article.aspx?articleid=197668>.

1 in 2004 recommended baseline cognitive and postural-stability testing, as well as return-to-play
2 recommendations including holding out athletes who exhibit symptoms of a suspected head injury.

3 58. Building upon that, a convention of neurological experts met in Prague in 2004 with
4 the aim of providing recommendations for the improvement of safety and health of athletes who
5 suffer concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-
6 date research. These experts recommended that a player never be returned to play symptomatic,
7 and coined the phrase, “when in doubt, sit them out.”

8 59. Ultimately, while the NCAA and Pac-12 knew for decades of the harmful effects of
9 TBI on student-athletes, they ignored these facts and failed to institute any meaningful methods of
10 warning and/or protecting student-athletes, including football players. For Defendants, the
11 continued expansion and operation of college football was simply too profitable to put at risk.

12 **III. The NCAA and Pac-12 Breached Their Duties to Their Student-Athletes By**
13 **Concealing the Dangers of Concussions and Refusing to Implement Reasonable**
14 **Concussion Management Protocols.**

15 60. For decades, the NCAA and Pac-12 have been aware that severe head impacts can
16 lead to long-term brain injury, including memory loss, dementia, depression, and CTE.
17 Unfortunately, while the NCAA and Pac-12 knew about the harmful and devastating effects of these
18 sub-concussive and concussive injuries, they actively concealed these facts from student-athletes
19 and the public.

20 61. In fact, on information and belief, during every decade referenced above, the NCAA
21 and Pac-12 were advised by physicians and researchers of the severe risks associated with playing
22 football, including the risks associated with TBI.

23 62. Rather than inform their student-athletes of these risks or implement protocols to
24 protect and safeguard them from TBI-related injuries (as, at least, the NCAA and Pac-12 promised
25 to do through the NCAA Constitution, among other things), the NCAA and Pac-12 failed to adopt
26 the internationally accepted guidelines regarding concussion management and return to play
27 protocols until 2010.

28 63. Instead, and in complete disregard of the vast body of known scientific evidence and

1 the resources and authority possessed by NCAA and Pac-12 up until 2010, Defendants orchestrated
2 an approach to football practices and games that:

- 3 • ignored the medical risks to Plaintiff and other Berkeley football players;
- 4 • aggravated and enhanced the medical risks to Plaintiff and other Berkeley
5 football players;
- 6 • failed to educate Plaintiff and other Berkeley football players of the link
7 between TBIs in amateur football and chronic neurological damage,
8 illnesses, and decline;
- 9 • failed to implement or enforce any system that would reasonably have
10 mitigated, prevented, or addressed TBIs suffered by Plaintiff and other
11 Berkeley football players; and
- 12 • failed to timely implement “return to play” guidelines for student-athletes
13 who sustain concussions.

14 64. Indeed, the NCAA didn’t even acknowledge the dangers of concussions in its Sports
15 Medicine Handbook until 1994 when it added what it captioned “Guideline 2o”: “Concussions and
16 Second Impact Syndrome.” But rather than mandating a specific treatment protocol for member
17 institutions, Guideline 2o left concussion management and treatment to the individual team’s
18 discretion.

19 65. For example, while the 1998–99 version of Guideline 2o reported that “[c]oncussion
20 and the resulting potential complications, such as second-impact syndrome, are potentially life-
21 threatening situations that student-athletes may suffer as a result of their athletics participation,” it
22 also stated that the NCAA “does not endorse any specific concussion grading scale or return-to-play
23 criteria.”

24 66. In this way, Guideline 2o acted as a liability cover for the NCAA without any NCAA
25 enforcement activity to actually protect student-athletes.

26 67. As such, despite having actual knowledge of the dangers of concussions, the NCAA
27 refused to implement, endorse, or even recommend specific concussion grading scale or return-to-
28 play criteria.

68. To make matters worse, Berkeley ignored Guideline 2o and failed to adopt or
implement adequate concussion safety measures or return to play guidelines for decades. In fact,

1 Berkeley's football program had no adequate concussion-related safety measures or protocols until
2 2010.

3 69. Moreover, neither the NCAA nor the Pac-12 enforced—and Berkeley did not
4 comply with—Guideline 2o's statement that: "A student athlete rendered unconscious for any
5 period of time should not be permitted to return to the practice or game in which the head injury
6 occurred. In addition, no student-athlete should be allowed to return to athletics activity while
7 symptomatic."

8 70. Ultimately, until 2010, Defendants failed to:

- 9 • implement guidelines or rules to prevent repeated concussions and failed
10 to educate players about the increased risk of concussive and sub-
11 concussive injury in football, particularly under circumstances when the
12 helmet is used as a weapon when tackling, blocking, or running with the
13 football;
- 14 • recommend or enforce return to play procedures or take any action to
15 educate student-athletes about the risks of repetitive head injuries;
- 16 • conduct a football program that proactively encouraged Plaintiff and other
17 Berkeley football players to avoid head injuries, instead compelling
18 players to ignore concussion symptoms and continue to play football
19 within moments of experiencing concussion symptoms. For instance,
20 Berkeley coaches demanded that its football players, including Plaintiff,
21 forego their own self-interest and continue playing despite sustaining head
22 injuries for the purpose of advancing Berkeley football program by
23 winning games, obtaining fame and favorable publicity, and gaining
24 millions of dollars in revenue for Berkeley, Pac-12, and NCAA; and
- 25 • contact Plaintiff and other Berkeley football players after they left
26 Berkeley to inform them that had been exposed to an increased risk of
27 long-term brain damage by the concussive and sub-concussive blows
28 sustained while playing football for Berkeley.

71. It was also not until April 2010, under mounting public pressure, that the NCAA
made changes to its concussion treatment protocols, this time passing legislation that required its
member institutions to have a Concussion Management Plan ("CMP") in place for all sports.

72. Under that new policy, schools were required to have a CMP on file "such that a
student-athlete who exhibits signs, symptoms, or behaviors consistent with a concussion shall be
removed from practice or competition and evaluated by an athletics healthcare provider with

1 experience in the evaluation and management of concussions.”

2 73. The policy further states that students diagnosed with a concussion “shall not return
3 to activity for the remainder of that day” and the team physician would determine that medical
4 clearance.

5 74. Finally, the policy required students to sign a statement “in which they accept the
6 responsibility for reporting their injuries and illnesses, including signs and symptoms of
7 concussion” to medical staff and noted that students would be provided educational materials on
8 concussions during the signing process.

9 75. However, this policy too is flawed: due to the very nature of concussions, student-
10 athletes suffering concussive injuries are in no position to police themselves or to give informed
11 consent about whether to continue playing. As the NCAA and Pac-12 have long known, the types of
12 questions used to screen players for concussions include “What’s your name?”, “What year is it?”,
13 and “What sport are we playing?”. These types of questions are used for screening precisely
14 because players experiencing concussions routinely fail to answer them correctly. A player who
15 cannot state his or her own name is in no condition to make an informed decision about whether or
16 not to continue playing, and is entirely dependent on others, such as NCAA or Pac-12 to identify
17 concussive injuries in real-time and take appropriate remedial actions. For an injured student,
18 Defendants stand in the role of a guardian tasked with making decisions in the student’s best
19 interest. For decades, Defendants have failed to fulfill that role and have instead acted in their own
20 best interest, all to the life long detriment of thousands of 18 to 22 year olds.

21 76. In the end, these (still deficient) policies were implemented far too late for Plaintiff
22 and the Class, who suffered reasonably foreseeable harm as a result of the NCAA’s and Pac-12’s
23 actions.

24 **FACTS SPECIFIC TO PLAINTIFF HAWKINS**

25 77. Plaintiff Neville Hawkins played football at Berkeley from 1970 to 1971 as a middle
26 linebacker.

27 78. Hawkins recalls suffering from many concussions while playing football at Berkeley.
28

1 He specifically recalls one game against University of Texas where he was hit so hard it “rattled”
2 his neck and cracked the side of his helmet, causing him to develop severe (subsequently recurring)
3 headaches.

4 79. Berkeley failed to provide appropriate medical treatment during these incidents.

5 80. Since the inception of the Berkeley’s football program, through at least 2010, there
6 were no adequate concussion management protocols or policies of any kind in place at Berkeley to
7 address and treat concussions sustained by student-athletes during practices or in games.

8 81. In fact, although Plaintiff sustained repetitive concussive and sub-concussive hits in
9 practices and games for the profit and promotion of Berkeley, the NCAA, and Pac-12 (then Pac-8),
10 Defendants failed to adopt or implement adequate concussion management safety protocols or
11 return to play guidelines during his time on Berkeley’s football team.

12 82. Accordingly, every time Plaintiff suffered a concussive or sub-concussive hit, he
13 would quickly be returned to the field of play.

14 83. Likewise, each time Plaintiff suffered a concussive or sub-concussive hit, he was
15 deprived by Defendants of the appropriate medical attention and treatment that they knew was
16 necessary to monitor, manage, and mitigate risks associated with TBI.

17 84. As a result, Plaintiff now suffers from dementia, severe headaches, and loss of
18 memory, and other debilitating issues.

19 CLASS ALLEGATIONS

20 85. **Class Definition:** Plaintiff brings this action pursuant to Federal Rule of Civil
21 Procedure 23(b)(3) on behalf of himself and a Class defined as follows:

22 All individuals who participated in Berkeley’s varsity football program
23 between 1959 and 2010.

24 The following people are excluded from the Class: (1) any Judge or Magistrate presiding
25 over this action and members of their families; (2) Defendants, Defendants’ subsidiaries, parents,
26 successors, predecessors, and any entity in which the Defendants or their parents have a controlling
27 interest and its current or former employees, officers and directors; (3) persons who properly
28 execute and file a timely request for exclusion from the Class; (4) persons whose claims in this

1 matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and
2 Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded
3 persons.

4 86. **Numerosity:** The exact number of the members of the Class is unknown and not
5 available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On
6 information and belief, hundreds of Berkeley football players fall into the definition of the Class.
7 Members of the Class can be identified through Defendants' records.

8 87. **Commonality:** There are many questions of law and fact common to the claims of
9 Plaintiff and the Class, and those questions predominate over any questions that may affect
10 individual members. Common questions for the Class include, but are not limited to the following:

- 11 (a) Whether Defendants had a duty to adequately warn and educate
12 players about the dangers and symptoms of concussions and
 concussion-related brain injuries;
- 13 (b) Whether Defendants had a duty to enact rules and procedures to
14 protect players from sustaining concussions and concussion-
15 related traumatic brain injuries;
- 16 (c) Whether Defendants' conduct as alleged herein constitutes a
 breach of duty;
- 17 (d) Whether Defendants' conduct as alleged herein constitutes
18 negligence;
- 19 (e) Whether Defendants' conduct as alleged herein constitutes breach
20 of contract;
- 21 (f) Whether Defendants' conduct as alleged herein constitutes
 fraudulent concealment;
- 22 (g) Whether Defendants' were unjustly enriched at the expense of
23 Plaintiff and the Class; and
- 24 (h) Whether Plaintiff and the Class are entitled to equitable relief,
25 including actual and compensatory damages, and other injunctive
 relief.

26 88. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class,
27 as Plaintiff and other members sustained damages arising out of the wrongful conduct of
28 Defendants based upon the same negligent conduct.

1 89. **Adequate Representation:** Plaintiff will fairly and adequately protect the interests
 2 of the Class and has retained counsel competent and experienced in complex litigation and class
 3 actions. Plaintiff has no interest antagonistic to those of the Class, and Defendants have no defenses
 4 unique to Plaintiff.

5 90. **Predominance and Superiority:** Class proceedings are superior to all other
 6 available methods for the fair and efficient adjudication of this controversy, as joinder of all
 7 members is impracticable. The damages suffered by the individual members of the Class are
 8 relatively small in comparison to the burden and expense of individual prosecution of the complex
 9 litigation necessitated by Defendants' actions. It would be virtually impossible for the members of
 10 the Class to obtain effective relief from Defendants' misconduct on an individual basis. Even if
 11 members of the Class themselves could sustain such individual litigation, it would not be preferable
 12 to a class action, because individual litigation would increase the delay and expense to all parties
 13 due to the complex legal and factual controversies presented in this Complaint. By contrast, a class
 14 action presents far fewer management difficulties and provides the benefits of single adjudication,
 15 economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and
 16 expense will be fostered and uniformity of decisions will be ensured.

17 **FIRST CAUSE OF ACTION**
 18 **NEGLIGENCE**

19 **(Individually and on Behalf of the Class as Against All Defendants)**

20 91. Plaintiff incorporates by reference the foregoing allegations.

21 92. From its inception and by virtue of its role as the governing body in college athletics,
 22 the NCAA has historically assumed a duty to protect the health and safety of all student-athletes at
 23 member institutions. The NCAA also assumed a duty of care by voluntarily taking steps to protect
 24 and promote the health and safety of its players, including promulgating safety handbooks and
 25 regulations. That duty included an obligation to supervise, regulate, and monitor the rules of its
 26 governed sports, and provide appropriate and up-to-date guidance and regulations to minimize the
 27 risk of injury to football players. Defendant Pac-12 shared this same duty to supervise, regulate, and
 28 monitor the rules of its governed sports, and provide appropriate and up-to-date guidance and

1 regulations to minimize the risk of injury to football players.

2 93. The duties of all Defendants included an obligation to supervise, regulate, and
3 monitor the rules of Berkeley football program and provide appropriate and up-to-date guidance and
4 regulations to minimize the risk of long-term and short-term brain damage to Berkeley football
5 players.

6 94. Defendants NCAA and Pac-12 had a duty to educate Berkeley and Berkeley football
7 players on the proper ways to evaluate and treat TBI during football games and practices, including
8 repetitive sub-concussive and concussive injury. The NCAA's and Pac-12 duty further included a
9 duty to warn student-athletes of the dangers of sub-concussive and concussive injuries and of the
10 risks associated with football before, during, and after they played college football and as additional
11 information came to light.

12 95. Defendants had a duty not to conceal material information from Berkeley football
13 players, including Plaintiff.

14 96. Defendants breached their duties to Plaintiff by failing to implement, promulgate, or
15 require appropriate and up-to-date guidelines regarding the evaluation and treatment of TBIs on the
16 playing field, in locker rooms, and in the weeks and months after Berkeley football players
17 sustained TBIs, as well as providing treatment for the latent effects of TBI. These failings include,
18 but are not limited to:

- 19 (a) failing to recognize and monitor concussive and sub-concussive injury
20 during football practices and games;
- 21 (b) failing to inform the student football players of the dangers of concussive
22 and sub-concussive injuries;
- 23 (c) failing to implement return to play regulations for student football players
24 who sustained concussive and/or sub-concussive injuries and/or is
25 suspected of sustaining such injuries;
- 26 (d) failing to implement procedures to monitor the health of football players
27 who have sustained (or are suspected of sustaining) concussive and/or sub-
28 concussive injuries;
- (e) failing to inform the football players' extended families of concussive
and/or sub-concussive injuries the student football players had sustained;
and

1 (f) failing to provide adequate notification, warning and treatment for latent
2 neuro-cognitive and neuro-behavioral effects of concussive and sub-
3 concussive injuries, after the time Plaintiff left Berkeley.

4 97. Defendants breached their duties to Plaintiff by fraudulently concealing and/or
5 failing to disclose and/or failing to recognize and/or being willfully blind to: (a) material
6 information regarding the long-term risks and effects of repetitive head trauma they possessed or
7 should have possessed; (b) the dangers of concussive and sub-concussive injuries; and (c) the
8 proper ways to evaluate, treat, and avoid concussive and sub-concussive trauma to student football
9 players.

10 98. Plaintiff relied upon the guidance, expertise, and instruction of Defendants in
11 understanding risks associated with the serious and life-altering medical issue of concussive and
12 sub-concussive risk in football.

13 99. At all times, Defendants had superior knowledge of material information regarding
14 the effect of repeated traumatic head injuries. Because such information was not readily available to
15 Plaintiff, Defendants knew or should have known that Plaintiff would act and rely upon the
16 guidance, expertise, and instruction of Defendants on this crucial medical issue, while at Berkeley
17 and thereafter.

18 100. Repetitive TBIs during college football practices and games have a pathological and
19 latent effect on the brain. Repetitive exposure to rapid accelerations to the head causes deformation,
20 twisting, shearing, and stretching of neuronal cells such that multiple forms of damage take place,
21 including the release of small amounts of chemicals within the brain, such as protein, which is a
22 signature pathology of the same phenomenon as boxer's encephalopathy (or "punch drunk
23 syndrome") studied and reported by Harrison Martland in 1928.

24 101. Plaintiff experienced repetitive sub-concussive and concussive brain impacts during
25 his college football career that significantly increased his risk of developing neurodegenerative
26 disorders and diseases, including but not limited to CTE, Alzheimer's disease, and other similar
27 cognitive-impairing conditions.

28 102. The repetitive head accelerations and hits to which Plaintiff was exposed presented

1 risks of latent and long-term debilitating chronic illnesses. Absent Defendants' negligence and
2 concealment, the risks of harm to Plaintiff would have been materially lower, and Plaintiff would
3 not have sustained the brain damage from which he currently suffers.

4 103. The repetitive head impacts and TBIs Plaintiff sustained while playing football at
5 Berkeley resulted in neuro-cognitive and neuro-behavioral changes in Plaintiff, including neuro-
6 cognitive disability, decline, and forgetfulness, all of which will require future medical care.

7 104. As a direct and proximate result of Defendants' negligence, Plaintiff has incurred
8 damages in the form of permanent brain damage, emotional distress, past and future medical costs,
9 health care, home care expenses, other out of pocket expenses, lost time, lost future earnings, and
10 other damages. Plaintiff will likely incur future damages caused by Defendants' negligence.

11 105. As a result of their misconduct, Defendants are liable to Plaintiff for the full measure
12 of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class, seeks
13 actual damages for Defendants' negligence, as well as interest, reasonable attorneys' fees, expenses,
14 and costs to the extent allowable.

15 **SECOND CAUSE OF ACTION**
16 **FRAUDULENT CONCEALMENT**
17 **(Individually and on Behalf of the Class as Against All Defendants)**

18 106. Plaintiff incorporates by reference the foregoing allegations.

19 107. Defendants knew that repetitive head impacts in football games and full-contact
20 practices created a risk of harm to student-athletes that was similar or identical to the risk boxers'
21 faced when receiving repetitive impacts to the head during boxing practices and matches, and
22 professional football players, many of whom were forced to retire from professional football
because of head injuries.

23 108. Defendants were aware of and understood the significance of the published medical
24 literature described in the preceding paragraphs of this Complaint, which detailed the serious risk of
25 short-term and long-term brain injury associated with repetitive traumatic impacts to the head which
26 Berkeley football players were exposed to.

27 109. Defendants were willfully blind to and/or knowingly concealed from Plaintiff and
28

1 the Class the risks of TBI in NCAA football games and practices, including the risks associated
2 with returning to physical activity too soon after sustaining a sub-concussive or concussive injury.

3 110. Through concealment of material facts, Defendants intended to induce a false belief,
4 under circumstances creating a duty to speak. Defendants intended to induce a false belief that
5 Plaintiff and the Class should continue to play football and should not be prevented from playing
6 football after a concussion or several concussions that should have required time to heal.

7 111. Plaintiff and the Class could not have reasonably been expected to know or discover
8 the truth about the risks associated with sub-concussive or concussive injuries, or were prevented or
9 mislead from obtaining such truthful information. Plaintiff and the Class were under the care and
10 treatment of Defendants and justifiably relied on their silence as representing facts that did not exist.

11 112. Given Defendants' superior and unique vantage point, Plaintiff reasonably looked to
12 Defendants for guidance on head injuries and concussions, including the later-in-life consequences
13 of the repetitive head impacts he sustained while a football player at Berkeley.

14 113. The concealed information was such that Plaintiff and the Class would have acted
15 differently if they had been aware of the material facts known to, and concealed by, Defendants.
16 Had Plaintiff and members of the Class known the full facts in Defendants' possession, they would:
17 (i) not have continued to play after an injury; (ii) have taken additional time to allow their brain
18 injuries to heal before returning to play; (iii) have taken additional precautions while playing
19 football; or (iv) not have continued to play college football at all. Despite Defendants' knowledge,
20 they failed to act reasonably by developing appropriate guidelines or rules regarding return to play
21 criteria and other safety procedures. The Defendants' inaction and concealment increased the risk of
22 long-term injury and illness in their student-athletes.

23 114. As a direct and proximate result of Defendants' knowing concealment and/or willful
24 blindness, Plaintiff has suffered and will continue to suffer substantial injuries, emotional distress,
25 pain and suffering, and economic and non-economic damages that are ongoing and continuing in
26 nature.

27 115. As a result of their misconduct, Defendants are liable to Plaintiff for the full
28

1 measure of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class,
2 seeks actual damages for Defendants' fraudulent concealment, as well as interest, reasonable
3 attorneys' fees, expenses, and costs to the extent allowable.

4 **THIRD CAUSE OF ACTION**
5 **BREACH OF EXPRESS CONTRACT**
6 **(Individually and on Behalf of the Class as Against Defendant NCAA)**

7 116. Plaintiff incorporates by reference the foregoing allegations.

8 117. As a football player at Berkeley, an institution governed by the NCAA, Plaintiff was
9 required to, and did, enter into a contract with the NCAA as a prerequisite to sports participation.
10 The contract required Plaintiff to complete a form affirming that he has read the NCAA regulations
11 and applicable NCAA Division manual, which expressly encompassed the NCAA Constitution,
12 Operating Bylaws, and Administrative Bylaws, and further, that he agreed to abide by NCAA
13 Division bylaws.

14 118. In exchange for Plaintiff's agreement, the NCAA promised to perform certain
15 services and functions, including, inter alia:

- 16 • conducting intercollegiate athletics in a manner designed to protect and
17 enhance the physical and educational well being of student-athletes;
- 18 • requiring that each member institution protect the health of, and provide a
19 safe environment for, each of its participating student-athletes; and
- 20 • requiring that each member institution must establish and maintain an
21 environment in which a student-athlete's activities are conducted as an
22 integral part of the student-athlete's educational experience.

23 119. By signing and agreeing to abide by NCAA regulations, and thereafter participating
24 in a NCAA sanctioned sports program in accordance with such regulations, Plaintiff and the Class
25 fulfilled their contractual obligations to the NCAA.

26 120. As described in the foregoing allegations, the NCAA breached the Parties'
27 agreement by failing to ensure that its student-athletes were provided with a safe environment in
28 which to participate in their NCAA sport activities. The NCAA further breached the contract by
concealing and/or failing to properly educate and warn players about the symptoms and long-term

1 risks of concussions and concussion-related traumatic injury.

2 121. Plaintiff entered into a written agreement with NCAA in which he committed to play
3 football at Berkeley, to attend Berkeley as a student, and to comply with all codes of conduct and
4 obligations as both a football player and student at Berkeley.

5 122. Plaintiff fulfilled his obligations under the contract by playing football at Berkeley.

6 123. NCAA's contractual breaches with Plaintiff and the Class caused Plaintiff and the
7 Class to suffer physical injury and damages in the form of past, ongoing, and future medical
8 expenses.

9 124. As a result of its misconduct, Defendant NCAA is liable to Plaintiff for the full
10 measure of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class,
11 seeks actual damages for NCAA's contractual breaches, as well as interest, reasonable attorneys'
12 fees, expenses, and costs to the extent allowable.

13 **FOURTH CAUSE OF ACTION**
14 **BREACH OF IMPLIED CONTRACT**
15 **(Individually and on Behalf of the Class as Against all Defendants)**

16 125. Plaintiff incorporates by reference the foregoing allegations.

17 126. To the extent an express written contract cannot be established among Plaintiff, the
18 Class, and Defendants, the facts set forth above support the finding of an implied contract.

19 127. Under the implied contract, student-athletes agreed to be bound by NCAA and Pac-
20 12 rules and regulations in exchange for their participation in NCAA and Pac-12 controlled athletic
21 programs, including Berkeley's football program. As a condition of the implied contract, the NCAA
22 agreed to abide by, and Pac-12 agreed to implement, the promises set forth in its own Constitution
23 and Bylaws, as described above.

24 128. Plaintiff and the Class indicated their acceptance of the contract, and further, fully
25 performed under the contract, by participating in Berkeley's football program in accordance with
26 NCAA and Pac-12 rules and regulations.

27 129. Defendants breached their implied contractual duties by failing to ensure that
28 student-athletes were provided with a safe environment in which to participate in football activities.

1 Defendants further breached their contracts by concealing and/or failing to properly educate and
2 warn players about the symptoms and long-term risks of concussions and concussion-related
3 traumatic injury.

4 130. Defendants' breach caused Plaintiff and the Class to suffer physical injury and
5 damages in the form of past, ongoing, and future medical expenses, other out of pocket expenses,
6 lost time, lost future earnings, and other damages. Further, Plaintiff and the Class will likely incur
7 future damages caused by Defendants' breaches.

8 131. As a result of their misconduct, Defendants are liable to Plaintiff for the full measure
9 of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class, seeks
10 actual damages for Defendants' contractual breaches, as well as interest, reasonable attorneys' fees,
11 expenses, and costs to the extent allowable.

12 **FIFTH CAUSE OF ACTION**
13 **BREACH OF EXPRESS CONTRACT**
14 **(Individually and on Behalf of the Class as**
Third-Party Beneficiaries as Against Defendant NCAA)

15 132. Plaintiff incorporates by reference the foregoing allegations.

16 133. To the extent that no express or implied contract is found to exist between Plaintiff
17 and Defendants, an express contract existed between the NCAA and Berkeley.

18 134. Under the terms of that contract, Berkeley agreed to abide by the applicable NCAA
19 rules and regulations, including those expressly set forth in the NCAA's Division Manuals,
20 Constitution, and Bylaws.

21 135. The terms of that contract, as set forth in the NCAA Constitution and encompassed
22 within the NCAA Division Manuals, Berkeley and NCAA agreed to, among other things: (i)
23 conduct intercollegiate athletic programs in a manner designed to protect and enhance the physical
24 and educational well-being of student athletes; and (ii) protect the health of and provide a safe
25 environment for each of their participating student-athletes.

26 136. Plaintiff and the Class are the intended third-party beneficiaries of the contract
27 between the NCAA and Berkeley. Such an intention can be found in the express language of the
28

1 NCAA's rules and regulations, as well as the stated purpose and principles of the NCAA
2 organization.

3 137. NCAA breached its contractual duties owed to Plaintiff and the Class under that
4 contract by: (i) failing to implement or require rules of play and return to play criteria to minimize
5 or prevent the risk of concussions and concussion-related injuries; and (ii) failing to adequately
6 inform and educate Berkeley football players on the symptoms and long-term dangers of
7 concussions and concussion-related injuries.

8 138. As a direct result of NCAA's breach, Plaintiff and the Class suffered physical injury
9 and damages in the form of past, ongoing, and future medical expenses, and other out of pocket
10 expenses, lost time, lost future earnings, and other damages. Further, Plaintiff and the Class will
11 likely incur future damages caused by NCAA's conduct.

12 139. As a result of its misconduct, Defendant NCAA is liable to Plaintiff for the full
13 measure of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class,
14 seeks actual damages for NCAA's contractual breaches, as well as interest, reasonable attorneys'
15 fees, expenses, and costs to the extent allowable.

16 **SIXTH CAUSE OF ACTION**
17 **UNJUST ENRICHMENT**
18 ***(In the Alternative to Breach of Contract)***
19 **(Individually and on Behalf of the Class as Against All Defendants)**

20 140. Plaintiff incorporates by reference the foregoing allegations, excluding paragraphs
21 116–139.

22 141. Defendants receive significant revenues from the collegiate football played by
23 student-athletes. These revenues include, but are not limited to, contractual revenues from
24 broadcasting, merchandising agreements, and ticket sales.

25 142. Defendants appreciate and have knowledge of such benefits.

26 143. Under principles of equity and good conscience, Defendants should not be
27 permitted to retain the profits they receive at the expense of Plaintiff and the Class while refusing to
28 pay for medical expenses incurred as a result of their unlawful actions or otherwise failing to
prevent such injuries.

1 144. Plaintiff, individually and on behalf of the Class, seeks restitution and/or
2 disgorgement of all monies Defendants have unjustly received as a result of its conduct alleged
3 herein.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff Neville Hawkins, individually and on behalf of the Class, requests
6 that the Court enter an Order providing for the following relief:

7 A. Certify this case as a class action on behalf of the Class defined above, appoint
8 Plaintiff as Class Representative, and appoint his counsel as Class Counsel;

9 B. Declare that Defendants' actions, as set out above, constitute negligence, fraudulent
10 concealment, breach of contract, and unjust enrichment;

11 C. Award all economic, monetary, actual, consequential, compensatory, and punitive
12 damages caused by Defendants' conduct, including without limitation damages for past, present,
13 and future medical expenses, other out of pocket expenses, lost time and interest, lost future
14 earnings, and other damages. Further, Plaintiff and the Class will likely incur future damages caused
15 by Defendants' misconduct;

16 D. Award Plaintiff and the Class their reasonable litigation costs and attorneys' fees;

17 E. Award Plaintiff and the Class pre- and post-judgment interest, to the extent
18 allowable;

19 F. Enter injunctive and/or declaratory relief as is necessary to protect the interests of
20 Plaintiff and the Class; and

21 G. Award such other and further relief as equity and justice may require.

22 **JURY DEMAND**

23 Plaintiff demands a trial by jury for all issues so triable.

24 Respectfully submitted,

25 **NEVILLE HAWKINS**, individually and on
26 behalf of all others similarly situated,

27 Dated: September 1, 2016

28 By: /s/ Stewart R. Pollock
One of Plaintiff's Attorneys

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Stewart R. Pollock (SBN – 301356)
spollock@edelson.com
EDELSON PC
123 Townsend Street
San Francisco, California 94107
Tel: 415.212.9300
Fax: 415.373.9435