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18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

20 THERON AYCH,

21 *Plaintiff,*

22 v.

23 UNIVERSITY OF ARIZONA;
24 THE ARIZONA BOARD OF REGENTS;
25 NATIONAL COLLEGIATE ATHLETIC
26 ASSOCIATION; UNIVERSITY OF
27 CALIFORNIA, LOS ANGELES; THE
28 REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a California Corporation;
PACIFIC 12 CONFERENCE; DAVE
HEEKE, individually, JEDD FISCH,
individually, JIMMIE DOUGHERTY,
individually, and DOES 1-10, inclusive,

Defendants.

Case No.

COMPLAINT FOR

(1) SECTION 1981

DISCRIMINATION

(2) RACKETEERING

(3) SHERMAN ACT VIOLATION

(4) INTENTIONAL INTERFERENCE

WITH PROSPECTIVE

ECONOMIC ADVANTAGE

(5) NEGLIGENT INTEREFERENCE

WITH PROSPECTIVE

ECONOMIC ADVANTAGE

(6) FRAUD; AND

(7) DEFAMATION

JURY DEMAND

1 **NOW COMES**, Plaintiff Theron Aych (hereinafter “Coach Aych” or
2 “Plaintiff”) files this Original Complaint against the University of Arizona (“U of A”),
3 the Arizona Board of Regents (“ABR”), Dave Heeke, individually, Jedd Fisch,
4 individually, James Dougherty, individually, the National Collegiate Athletic
5 Association (“NCAA”), the University of California, Los Angeles (“UCLA”), the
6 Regents of the University of California (“RUC”), and the Pacific 12 Conference
7 (“Pac-12”), collectively “Defendants,” and will show the following:

8 **INTRODUCTION**

9 1. From 2017-2020, Theron Aych (“Coach Aych”) was the Wide Receiver
10 and Tight Ends Coach for the U of A football team. After Coach Aych’s first season,
11 the U of A hired Kevin Sumlin (“Coach Sumlin”) as the Head Coach of the U of A
12 football team.

13 2. In an effort to terminate the entire coaching staff under the pretense of
14 ineffective coaching, U of A purposely transferred and released Coach Sumlin’s
15 private football playbook to opposing college football teams from other NCAA and
16 Pac-12 institutions.

17 3. U of A gave competitors access to Coach Sumlin’s private playbook in
18 an effort to compromise the credibility U of A coaches and/or make its coaches look
19 bad during games.

20 4. Defendants’ improper conduct eliminated and/or restricted Coach
21 Aych’s ability to be successful on U of A’s football coaching staff, damaged Coach
22 Aych’s coaching reputation, and injured Coach Aych’s business and property interest
23 by putting into question, throughout the NCAA football coaching community, his
24 character, work ethic, and ability to be a successfully coach.

25 5. Defendants conspired to misrepresent, conceal, omit, and/or fail to
26 disclose material facts regarding the release of Coach Sumlin’s private playbook to
27 other NCAA institutions, including, but not limited to UCLA, and other NCAA and
28 Pac-12 schools.

1 6. As a direct and proximate result of Defendants' actions, Coach Aych
2 suffered reasonably foreseeable injury, including losing (i) compensation and
3 benefits; (ii) business relationships; (iii) football and related employment
4 opportunities; and (iv) his business reputation as a football coach.

5 7. Defendants earn billions of dollars in revenues each year through college
6 football. However, instead of allowing fair competition amongst member institutions,
7 Defendants conspired to transfer and release the private playbook of Coach Sumlin to
8 Pac-12, and possibly other NCAA institutions, with the effect of ensuring the demise
9 of Coach Sumlin and his entire staff. The conspiracy to cause the demise of Coach
10 Sumlin staff impacted U of A football's staff, players, and everyday people who gave
11 everything to the U of A football team.

12 8. African-American college football coaches are continuously
13 discriminated against in connection with the terms and conditions of their employment
14 and compensation and terminated even as far less successful white coaches are
15 retained. Moreover, African-American college football coaches are more likely to be
16 used as pawns and scapegoats to allow NCAA institutions the ability to justify their
17 discriminatory animus. Here, white college football coaches and personnel are given
18 second chances to coach at comparable NCAA institutions; while African-American
19 coaches, such as Plaintiff, are denied comparable and equal opportunities based on
20 conspiring schemes within NCAA institutions to diminish the reputation and
21 credibility of African-American coaches.

22 9. These conspired acts were intentional, and a blatant violation of the
23 discrimination laws, antitrust laws, and have no legitimate pro-competitive
24 justification.

25 **JURISDICTION AND VENUE**

26 10. This case arises under 18 U.S.C. §§ 1961-1968; and 15 U.S.C. § 1; as
27 well as supplemental jurisdiction over related state law claims pursuant to 28 U.S.C.
28 § 1367(a).

1 11. This Court has subject matter jurisdiction of this case under 28 U.S.C. §§
2 1331 and 1337, and because this action arises under the federal laws.

3 12. The acts out of which this Complaint arises have occurred within the
4 Central District of California and/or caused Plaintiff's damages and/or because
5 Defendants are subject to personal jurisdiction in this district under 18 U.S.C. §§
6 1965 as RICO stipulates that process may be served in "any judicial district of the
7 United States" when required by the "ends of justice."

8 **SATISFACTION OF CLAIM PRESENTATION REQUIREMENT**

9 13. In May 2021, Plaintiff presented claims to Defendant U of A, and the
10 Arizona Board of Regents for the injuries, damages, and losses that are the basis for
11 this action. Plaintiff timely filed this suit after denial of such claims. Since Defendants
12 failed and refused to act on the claim within the time prescribed by the written letter,
13 the claim shall be deemed to have been rejected by Defendants on July 5, 2021.

14 14. Pursuant to California Government Code § 905.6, Defendant the
15 Regents of the University of California is exempt from requiring a claim form to be
16 submitted prior to the initiating of a civil action.

17 **PARTIES**

18 15. Plaintiff, Theron Aych, is an individual residing in Texas.

19 16. Defendant, University of Arizona, an institution of higher learning, is
20 owned, operated, maintained and controlled by the State of Arizona or by an agency,
21 board, department or bureau thereof. University of Arizona may be served through
22 Suzanne Templin – Secretary to the Board; 2020 N. Central Ave., Suite 230 Phoenix,
23 AZ 85004-4593.

24 17. Defendant, the Arizona Board of Regents, which governs the University
25 of Arizona, established under Article XI, Section 5 of the Arizona State Constitution.
26 According to Arizona Revised Statutes § 15-1625, the Arizona Board of Regents is a
27 corporate body that can sue and be sued. The Regents have its principal place of
28 business in Phoenix, Arizona. Defendant is a resident of Arizona.

1 18. Defendant, NCAA, is an unincorporated association of more than 1,200
2 United States colleges, universities, and athletic conferences, with its principal place
3 of business in Indianapolis, Indiana.

4 19. Defendant, University of California Los-Angeles, may be served through
5 the Office of General Counsel – University of California – 1111 Franklin Street, 8th
6 Floor Oakland, CA 94607.

7 20. Defendant, Regents of the University of California, is formed under and
8 empowered by Article IX, Section 9 of the California Constitution and oversees the
9 ten universities including, UCLA. Defendant Regents’ official office is in Alameda
10 County, California, with its principal place of business at 1111 Franklin Street,
11 Oakland, California 94607. Defendant, Regents of the University of California is a
12 corporate body that can sue and be sued and has the power to take and hold property
13 in its own name.

14 21. Defendant Pacific 12 Conference is a multi-sport athletic conference and
15 an unincorporated association, with its principal place of business located at 1350
16 Treat Boulevard, Suite 500, Walnut Creek, CA 94597.

17 22. Defendant, Dave Heeke, is an individual residing in Arizona. Defendant
18 Heeke is an American University sports administrator who currently serves as athletic
19 director at the University of Arizona since 2017.

20 23. Defendant, Jedd Fisch, is an individual residing in Arizona. Defendant
21 Fisch is an American football coach who is currently the Head Coach at the University
22 of Arizona since 2021.

23 24. Defendant, James “Jimmie” Dougherty, is an individual residing in
24 Arizona. Defendant Dougherty is an American football coach who is currently the
25 Assistant Coach/Passing Game Coordinator & Quarterbacks at the University of
26 Arizona since 2021.

1 **INTERSTATE TRADE AND COMMERCE**

2 25. Defendants and their co-conspirators are in the business of governing and
3 operating major college football businesses, including the sale of tickets and telecast
4 rights to the public which feature the individual and collective efforts of coaches such
5 as Plaintiff. Defendants’ sales are made to individuals and businesses located
6 throughout the United States, including in this District. During the relevant times
7 herein, Defendants did and will continue to transact business in and across state lines
8 in a continuous and uninterrupted flow of interstate commerce throughout the United
9 States.

10 26. The NCAA is engaged in interstate commerce, including running the
11 NCAA Division I Football Bowl Subdivision (“FBS”) the highest level of college
12 football in the United States.

13 27. Within the FBS, the Power Five conferences are considered the elite in
14 college football, attracting the largest audiences and the most revenues.

15 28. The Pac12, nicknamed the “Conference of Champions,” is a Power Five
16 conference. It includes the following member institutions: University of Arizona,
17 Arizona State University, University of California (Berkeley), University of Colorado,
18 University of Oregon, Oregon State University, Stanford University, University of
19 California, Los Angeles, University of Southern California, University of Utah, and
20 Washington State University.

21 29. The Pac-12 has a wholly owned media network, the Pac-12 Network. A
22 USA Today report estimates that between Pac-12 Network and the conference’s 12-
23 year deal with ESPN and Fox, the Pac-12 could distribute as much as \$30 million
24 annually to each of its schools.

25 30. The individual Defendants’ business activities that are the subject of this
26 Complaint were within the flow of and substantially affected interstate trade and
27 commerce. The anticompetitive conduct alleged in this Complaint has a direct,
28 substantial, and foreseeable adverse effect on United States commerce. Defendants’

1 interstate activities include, but are not limited to interstate: travel, communications,
2 sales of tickets, sales of merchandise, advertisements and other promotions,
3 broadcasting of games, employment of coaches and other personnel, recruitment of
4 players, and negotiations of all of the foregoing.

5 31. As established in more detail infra, Defendants’ and their co-
6 conspirators’ interstate businesses generate billions of dollars of commerce.

7 **FACTUAL ALLEGATIONS**

8 32. This matter is primarily centered on the intentional release of Coach
9 Sumlin’s private football playbook to opposing teams from other Pac-12 and NCAA
10 institutions; and the role internal figures within the University of Arizona played to
11 ensure the release of this playbook. This release was deliberate and intended to harm
12 and/or completely ruin Plaintiff’s coaching reputation by directly targeting Coach
13 Sumlin and his staff.

14 33. Coach Sumlin’s private playbook was released by U of A and transferred
15 to one or more of the NCAA and Pac-12 Conference member institutions, including
16 but not limited to: University of Arizona and University of California – Los Angeles;
17 pursuant to their rules, practices, and procedures at issue in this action, while engaging
18 in interstate commerce as top-tier college football programs.

19 34. Plaintiff, Theron Aych, is a former collegiate athlete, who now has spent
20 the last twenty-five years coaching football in multiple parts of the country, including,
21 the University of Houston (2000-02); the University of Washington (2003); Central
22 Missouri (2004-08); Angelo State (2011-15); the University of Texas – El Paso
23 (2016); and the University of Arizona (2017-20).

24 35. During the 2017 season, Coach Aych was hired by the University of
25 Arizona as the Assistant Coach and Wide Receivers and Tight Ends coach and
26 Passing Game Coordinator for the U of A football team. When Coach Aych was
27 initially hired, the head coach of U of A was Rich Rodriguez, who was fired at the end
28 of the 2017 season.

1 36. During the 2018 season, U of A hired Kevin Sumlin as the head football
2 coach, and retained Coach Aych within the coaching staff. The new head coach
3 brought a brand-new playbook for the football program, which was considered
4 private/confidential and only accessible via the University of Arizona's X-Drive.

5 37. During the 2018-2020, college football seasons, U of A had a losing
6 record, and the entire coaching staff, including Coach Aych, was terminated after the
7 2020 season due to a "poor season."

8 38. Based on information and statements by individuals with first-hand
9 knowledge, during Head Coach Sumlin's tenure at the University of Arizona, U of A
10 executives, including Director of Athletics Dave Heeke, became disgruntled with him.

11 39. Within eleven days of terminating the entire coaching staff, U of A hired
12 Jedd Fisch as the new head football coach. That was surprising because typically
13 searches for new staff, particularly a prestigious position such as a head coach of a
14 university football team, are rigorous and undergo a time intensive selection process.
15 Shockingly, Jedd Fisch never played college football, nor did he have any previous
16 experience as a head coach. This hire made two things obvious. First, Heeke's long-
17 standing relationship and history with Fisch likely influenced this choice. And second,
18 Jedd Fisch had been hand chosen, possibly long before the actual termination of Coach
19 Sumlin and his staff.

20 40. Upon his hiring, Fisch immediately announced Jimmie Dougherty as his
21 "Head Assistant Coach." Dougherty previously coached football at University of
22 California, Los Angeles (UCLA) from 2017-2020. Coincidentally, Fisch had also
23 recently spent time coaching at UCLA from 2017-2020. Fisch and Dougherty had
24 worked previously together at the University of Michigan prior to UCLA.

25 41. On or about January 5, 2021, on his first day on the job for the University
26 of Arizona, Dougherty handed to a thumb drive to an Assistant Quarterback Coach
27 and Offensive Analyst for the University of Arizona. Dougherty instructed the Analyst
28 to perform changes to the documents located within the thumb drive, specifically to

1 remove any UCLA logos within the documents and replace them with University of
2 Arizona logos. *See Affidavit of John Marinelli ¶ 3.*

3 42. On the thumb drive were 8 folders and 31 files. As this staff member
4 worked his way through the thumb drive, **he discovered a call sheet which looked**
5 **exactly like the one used at the University of Arizona.** To confirm his findings, a
6 graduate assistant was called over who verified the surprise discovery as well.
7 Continuing through the thumb drive, additional documents from the University of
8 Arizona were found. **What was discovered on Dougherty's thumb drive by the**
9 **University of Arizona's own staff was the entire playbook belonging to Coach**
10 **Sumlin's coaching staff.** The documents found on Dougherty's thumb drive were
11 previously only accessible via the University of Arizona's X-Drive. *See Affidavit of*
12 *John Marinelli ¶ 4-6.*

13 43. The X-Drive is a private, confidential, and secure server for the
14 University of Arizona's football program. Aside from administrators at the
15 University's McKale Memorial Center, the only other personnel within the University
16 who had access to the X-Drive are those who worked in the University of Arizona's
17 Athletics Department. *See Affidavit of John Marinelli ¶ 6.*

18 44. Upon information and belief, unknown actors within the University of
19 Arizona, with access to the X-Drive, disseminated propriety information regarding the
20 University of Arizona's football program, to outside parties, for use against the
21 University of Arizona's football team. *See Affidavit of John Marinelli ¶ 7.*

22 45. The question remains how long Dougherty had possession of the thumb
23 drive, Dougherty had previously been with UCLA since 2017, and on his first day on
24 the job with the University of Arizona, he had possession of proprietary University of
25 Arizona football documents **including Arizona's entire playbook belonging to**
26 **Coach Sumlin's staff.** Shocked by his discovery and fearing the invaluable
27 information could be and had been used against the University of Arizona on game
28

1 days, the analyst documented his findings and spoke to other staff within the
2 University of Arizona football program regarding the discovery.

3 46. Upon information and belief, this is not the typical “stealing” of signs,
4 etc., nor is it a matter involving mere spying by an opposing team. Based on
5 information and belief, other NCAA and Pac-12 institutions, not limited to U of A and
6 UCLA, may have had access to Coach Sumlin’s private playbook throughout his
7 entire tenure at University of Arizona.

8 47. Upon information and belief, the documents found within Dougherty’s
9 thumb drive were not disseminated by anyone on Coach Sumlin’s staff.

10 48. Upon information and belief, the dissemination was a coordinated effort
11 by the University of Arizona to undermine Coach Sumlin and his coaching staff so
12 that Dave Heeke could make his associate Jedd Fisch one of the highest paid
13 employees in the State of Arizona.

14 49. The entire University of Arizona football staff under Coach Sumlin was
15 intentionally set up for failure by the University of Arizona. Covid-19 happened to be
16 an unexpected, yet perfect opportunity and excuse to terminate Coach Sumlin’s staff
17 before the end of the 2020-2021 Division I football season. Covid 19 was the golden
18 ticket outside of their sinister acts to “justify” the termination, but true intentions were
19 revealed when a new head coach was hired immediately after, who already had a copy
20 of U of A’s X-Drive.

21 50. Plays had been stolen, distributed to rivals, and used against Head Coach
22 Sumlin’s football team at the University of Arizona possibly from the inception of his
23 tenure until he was terminated in 2020.

24 51. Upon information and belief, Pac-12 and NCAA member institutions,
25 collusively released and received Coach Sumlin’s private playbook, in attempt to
26 ensure the demise of the U of A coaching staff, as alleged herein, and thereby has
27 damaged and will continue to cause damage to Plaintiff professional reputation.

28

1 race and/or color. The NCAA and Pac-12 actually participated in and aided and
2 abetted the discriminatory conduct of the other Defendants.

3 57. The NCAA has one-hundred and twenty-nine (129) Football Subdivision
4 Schools (FBS), but only fourteen (14) African-American head football coaches for
5 FBS schools; and out of the twelve schools in the Pac-12, there are only (3) African-
6 American head football coaches. ([https://hithighlights.com/list-of-black-head-football-
7 coaches-at-ncaa-division-i-fbs-schools/](https://hithighlights.com/list-of-black-head-football-coaches-at-ncaa-division-i-fbs-schools/)). Head coaches, with rare exceptions, come from
8 the pool of assistant coaches (or previous head coaches) and this pool includes a
9 greater number of African-American assistant football coaches in the FBS schools.
10 However, the NCAA and Pac-12 have condoned discriminatory tactics to prevent
11 African-American assistant football coaches from being promoted and selected into
12 head coaching positions.

13 58. In a wide variety of occupations, minority advancement can be hindered
14 by certain jobs being viewed as appropriate for minorities (the “occupational ghetto”)
15 whereas others are reserved for whites. Assistant college football coaching jobs and/or
16 specific position coaching jobs have been viewed as appropriate for majority of
17 African American coaches due to their history of playing or coaching in that position,
18 which limits African American coaches’ ability to expand their coaching experiences.
19 These stereotypes and biases have been condoned by the NCAA for years, and is
20 evidenced by the gaps in head coach hiring among African American assistant and
21 position coaches. Coupled with the history of heightened scrutiny on African
22 American football coaches, and the allegations of anticompetitive conduct, and
23 conspiracies to make coaches look bad, create inferences that the NCAA and Pac-12
24 have allowed discrimination against Plaintiff, and similarly situated African American
25 assistant coaches on the basis of race and/or color in violation of Section 1981.

26 59. As a direct and proximate result of Defendants’ unlawful discriminatory
27 conduct in violation of Section 1981, Plaintiff has suffered, and continues to suffer,
28

1 economic damages, loss of opportunity, loss of reputation and mental anguish for
2 which they are entitled to an award of damages.

3 60. Defendants’ unlawful discriminatory actions constitute reckless,
4 malicious, willful and wanton violations of Section 1981 for which Plaintiff is entitled
5 to an award of punitive damages.

6 **COUNT II**

7 **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**

8 **ACT 18 U.S.C. §§ 1961-1968 (“RICO”) SECTION 1962(C)**

9 **(Against Defendants Dave Heeke, Jedd Fisch, Jimmie Dougherty)**

10 61. Plaintiff reasserts and incorporates all allegations set forth herein.

11 **RICO Section 1962(C)**

12 62. Section 904 (a) of RICO, 84 Stat. 947, directs that “[t]he provisions of
13 this Title shall be liberally construed to effectuate its remedial purposes.”

14 63. 18 U.S.C. § 1962(c). “To state a claim under § 1962(c), a plaintiff must
15 allege ‘(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering
16 activity.’” *Odom v. Microsoft Corp.*, 486 F.3d 541, 547 (9th Cir. 2007) (quoting
17 *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d
18 346 (1985)).

19 64. This Count is against Defendants listed above who (1) gave direction; (2)
20 occupy a position in the chain of command; (3) knowingly implement decisions;
21 and/or (4) is indispensable to achievement of the enterprise’s goal.

22 65. Dave Heeke, Jedd Fisch, and Jimmie Dougherty (“the individual
23 Defendants”) are individuals engaged in and whose activities affect interstate
24 commerce.

25 66. The individual Defendants are each a “person” as defined under 18
26 U.S.C. §1961(3), and further are jointly and/or severally an “enterprise” as defined
27 under 18 U.S.C. §1961(4). Dave Heeke, Jedd Fisch, and Jimmie Dougherty’s actions
28 were “related” by a common scheme constituting a series of “predicate acts”

1 enumerated under 18 U.S.C. §1961(1). These related acts were “continuous” and
2 demonstrated an ongoing “pattern” of unlawful activity extending over a substantial
3 period of time, and exhibited a threat of being repeated in the future.

4 67. Plaintiff alleges that under controlling Ninth Circuit precedent as set
5 forth in *U.S. v. Benny*, 786 F. 2d 1410 (9th Cir. 1986), even a single individual can
6 concomitantly constitute both the individual and the “enterprise” under federal law,
7 and therefore Plaintiff has met all necessary criteria for application
8 of RICO civil remedies authorized under 18 U.S.C. § 1964 (c).

9 68. The individual Defendants agreed to and did conduct and participate in
10 the conduct of the enterprise’s affairs through a pattern of racketeering activity, (i.e.,
11 releasing and transferring the Coach Sumlin’s private playbook), and for the unlawful
12 common purpose of intentionally conspiring to defraud and misrepresent Coach Aych
13 of his benefits and rights.

14 69. Defendants conduct constituted a scheme to defraud Plaintiff of benefits
15 and rights to obtain money, funds, or other property by means of numerous false and
16 fraudulent pretenses, representations, promises, material omissions, concealments
17 and/or non-disclosures for the common purpose of committing multiple related and
18 continuous predicate acts against Plaintiff including but not limited to: § 1621 and §
19 1951(a) and also, for the purpose of executing this scheme, it is possible Defendants
20 placed in post offices or authorized depositories for mail, matters or things to be sent
21 or delivered by the Postal Service or other private or commercial interstate carriers in
22 violation of 18 U.S.C. § 1341,118 and/or Defendants transmitted or caused to be
23 transmitted by means of wire communication in interstate or foreign commerce,
24 writings, signs, signals, pictures, or sounds for the purpose of executing such scheme
25 or artifice in violation of 18 U.S.C. § 1343.

26 70. Defendants’ illegal acts (releasing and transferring Coach Sumlin’s
27 private playbook) as described in this Complaint have occurred and continue to occur
28 since possibly, 2017, and constitute a pattern of racketeering activity

1 under 18 U.S.C. § 1961, which has the threat of continuity because Defendants are
2 defrauding Plaintiff of benefits and rights based on this conspiracy, which has caused
3 harm to Plaintiff's reputation and future earnings.

4 71. The Defendants' pattern of racketeering activity was committed in
5 furtherance of association-in-fact involving each of the Defendants' officers,
6 directors, employees, attorneys, agents and/or associates and which was, and still is
7 engaged in conspiring to defraud Plaintiff of his benefits and rights.

8 72. As a direct and proximate result of the Defendants' racketeering
9 activities and violations of 18 U.S.C. § 1962 (C), Plaintiff has been injured in his
10 business and property.

11 **COUNT III**

12 **15 U.S.C. § 1 VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

13 **(Against Defendants Dave Heeke, Jedd Fisch, Jimmie Dougherty)**

14 73. Plaintiff reasserts and incorporates all allegations set forth herein.

15 74. The individual Defendants, Dave Heeke, Jedd Fisch, Jimmie Dougherty
16 have conspired to create competitive restraints by exposing, transferring, and releasing
17 the private playbook of U of A Coach Sumlin, in an attempt to cause the team to not
18 be competitive against Pac-12 and NCAA member institutions, based on the pretense
19 to terminate the entire coaching staff under the guise of ineffective coaching. This
20 conspiracy is blatantly anticompetitive, and was used to give Defendants an unfair
21 advantage in collegiate football games, and to fulfill the individual Defendants' goal
22 of hiring a new coaching staff in violation of Section 1 of the Sherman Act.

23 75. The restraints also constitute an unreasonable restraint of trade under the
24 rule of reason, whether under a "quick look" or full-blown rule of reason analysis.
25 Within their respective positions, the individual Defendants have market power in the
26 relevant markets for the services of top-tier college football. Each of the individual
27 Defendants are a participant in this unlawful conspiracy.

1 76. The agreements among Dave Heeke, Jedd Fisch, Jimmie Dougherty
2 relating to release and transfer of Coach Sumlin’s private playbook is blatantly
3 anticompetitive. The necessary means by which the members have accomplished and
4 carried out this illicit horizontal conspiracy is their agreement to release, produce, and
5 use Coach Sumlin’s private playbook, in an effort to lose games, and justify
6 termination of U of A’s entire coaching staff. By entering into these agreements,
7 Defendants, and the subset comprised of Elite College Football programs, have
8 restrained competition in the NCAA Football Markets and Pac-12 Football Markets,
9 respectively.

10 77. The conspiracy consisted of a continuing agreement, understanding, or
11 concerted action between and among the individual Defendants and their co-
12 conspirators in furtherance of which Defendants fixed, maintained, or engaged in
13 anticompetitive conduct by transferring and releasing Coach Sumlin’s private
14 playbook during the relevant time period by allowing Pac-12 and NCAA competitors
15 to have access to U of A private “X-Drive, in an effort to pretextually and/or willfully
16 terminate Plaintiff under the guise of a “poor season.” Defendants’ conspiracy
17 constitutes a per se violation of the Sherman Act.

18 78. Defendants’ unlawful conduct was through mutual understandings,
19 combinations or agreements by, between, and among Defendants and other unnamed
20 co-conspirators. Defendants’ conspiracy is a per se violation of the Sherman Antitrust
21 Act and is, in any event, an unreasonable and unlawful restraint of trade.

22 79. There is no legitimate business justification for, or procompetitive
23 benefit caused by, Defendants’ unreasonable restraint of trade. Any ostensible
24 procompetitive benefit was pretextual or could have been achieved by less restrictive
25 means.

26 80. Absent the agreements to release and transfer Coach Sumlin’s private
27 playbook, each member of the NCAA and Pac-12 football program would be free of
28 any doubt of unfair and anticompetitive conduct by these programs behind the scenes.

1 The college football market would fluctuate based on actual coaching and student-
2 athletes, rather than behind-the-scenes agreements to completely ruin Plaintiff's
3 coaching reputation. And each NCAA and Pac-12 member, knowing it would be
4 competing with every other member institution, without the idea looming that teams
5 are receiving an unfair advantage, would make the competitive-market level in the
6 College Football market more credible, thus raising more opportunities for revenue
7 amongst all teams.

8 81. Plaintiff has suffered and will continue to suffer antitrust injury by reason
9 of the continuation of this unlawful conspiracy. This conspiracy to release the private
10 playbook of Coach Sumlin injured and will continue to injure Plaintiff by depriving
11 him of the ability to receive market value for their services as a college football coach
12 in a free and open market.

13 82. As a direct and proximate result of the unlawful conduct of Defendants
14 in furtherance of the violations alleged, Plaintiff has been injured in its business and
15 property, in an amount to be proven at trial and automatically trebled pursuant to 15
16 U.S.C. § 15. By agreeing to release, transfer, and produce Coach Sumlin's private
17 playbook, as a means of enabling their anticompetitive expenditures, and insulating
18 themselves from any liability by terminating Plaintiff under the guise of "poor
19 season;" Defendants have artificially suppressed Plaintiff's coaching reputation and
20 future earnings, and prevented Plaintiff from competing with Pac-12 and NCAA
21 institutions to provide quality competitive football games, and from earning the profits
22 Plaintiff would have earned but for U of A and UCLA's unlawful conduct.

23 **COUNT IV**

24 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE**
25 **ECONOMIC ADVANTAGE**

26 **(Against University of Arizona, the Arizona Board of Regents, and the**
27 **California Board of Regents)**

28 83. Plaintiff reasserts and incorporates all allegations set forth herein.

1 84. The actions of Defendants as alleged herein
2 constitute intentional interference with Plaintiff's prospective economic advantage, in
3 violation of California law.

4 85. On information and belief, Plaintiff alleges Defendants knew of
5 Plaintiff's efforts to market himself as a highly valued football coach. Nonetheless
6 Defendants have intentionally and willfully interfered, and attempted to interfere,
7 with the prospective economic relationship Plaintiff sought to form with other
8 member NCAA and Pac-12 institutions.

9 86. On information and belief, by conspiring and fraudulently transferring
10 the private "X-Drive" of Coach Sumlin, and releasing it to other NCAA and Pac-12
11 institutions, in an attempt to destroy Plaintiff's reputation; Defendants, purposefully
12 and knowingly committed such acts designed to disrupt Plaintiff's ability to market
13 himself within future contractual relationship. Indeed, such acts prevented Plaintiff
14 from establishing a potentially lucrative business relationship with other member
15 NCAA and Pac-12 institutions.

16 87. As a proximate result of Defendants' conduct, Plaintiff has suffered
17 harm, including lost wages and other financial benefits, in an amount to be proven at
18 time of trial, with interest thereon at the legal rate.

19 88. The aforementioned acts of Defendants were willful, oppressive,
20 fraudulent and malicious. Plaintiff is therefore entitled to punitive damages in a total
21 amount to be established by proof at trial.

22 **COUNT V**

23 **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC**
24 **ADVANTAGE**

25 **(Against University of Arizona, the Arizona Board of Regents, and the**
26 **California Board of Regents)**

27 89. Plaintiff reasserts and incorporates all allegations set forth herein.
28

1 90. The actions of Defendants as alleged herein constitute
2 negligent interference with Plaintiff's prospective economic advantage, in violation
3 of California law.

4 91. On information and belief, Plaintiff alleges Defendants knew of
5 Plaintiff's efforts to market himself as a highly valued football coach. Nonetheless
6 Defendants have negligently interfered, and attempted to interfere, with the
7 prospective economic relationship Plaintiff sought to form with other member NCAA
8 and Pac-12 institutions.

9 92. On information and belief, by conspiring and fraudulently transferring
10 the private "X-Drive" of Coach Sumlin, and releasing it to other NCAA and Pac-12
11 institutions, in an attempt to destroy Plaintiff's reputation; Defendants, negligently
12 committed such acts designed to disrupt Plaintiff's ability to market himself within
13 future contractual relationship. Indeed, such acts prevented Plaintiff from establishing
14 a potentially lucrative business relationship with other member NCAA and Pac-12
15 institutions.

16 93. As a proximate result of Defendants' conduct, Plaintiff has suffered
17 harm, including lost wages and other financial benefits, in an amount to be proven at
18 time of trial, with interest thereon at the legal rate.

19 **COUNT VI**

20 **COMMON LAW FRAUD**

21 **(Against University of Arizona, the Arizona Board of Regents, and the**
22 **California Board of Regents)**

23 94. Plaintiff reasserts and incorporates all allegations set forth herein.

24 95. To establish actionable fraud, the Plaintiff must show a concurrence of
25 nine elements: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's
26 knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it should
27 be acted upon by the person and in the manner reasonably contemplated; (6) the
28

1 hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's
2 right to rely upon the representation; and (9) consequent and proximate injury.

3 96. In this case, Defendants, through a conspiracy to defraud, falsely
4 misrepresented and/or failed to disclose their intentions to release and expose Coach
5 Sumlin's private playbook to other member institutions within the NCAA. First, U of
6 A made public representations that Plaintiff was terminated due to a "poor season;"
7 yet it was known behind the scenes that U of A produced and transferred the "X-
8 Drive" of Coach Sumlin's private playbook to NCAA and Pac-12 member institutions
9 at a certain time during Plaintiff's employment. Furthermore, Plaintiff was terminated
10 on a duplicitous way, and now other NCAA and Pac-12 institutions will rely on the
11 "poor season" assessment by U of A, which will proximately cause harm to Plaintiff's
12 reputation and future coaching opportunities.

13 97. Defendants knew that a conspiracy to defraud Plaintiff of his rights and
14 benefits was actively taking place. Coach Aych was defrauded by the University of
15 Arizona when the University undertook a coordinated effort to undermine and ensure
16 the demise of the coaching staff it wanted to terminate under the pretense of
17 ineffective coaching. Again, the entire University of Arizona football staff was fired
18 on or before the end of the 2020-2021 Division I football season because of the
19 deliberate and calculated actions described above and Covid 19 was simply an excuse
20 to accelerate the termination. Misrepresentations made by the University of Arizona
21 to its own staff, including Coach Aych, led our client to suffer injuries.

22 98. A plaintiff may allege a unified course of fraudulent conduct and rely
23 entirely on that course of conduct as the basis of that claim. In that event, the claim is
24 said to be 'grounded in fraud' or to 'sound in fraud,' and the pleading ... as a whole
25 must satisfy the particularity requirement of Rule 9(b). *Id.* at 1103-04. Defendants
26 engaged in a fraudulent course of conduct. Moreover, U of A made a representation
27 that Plaintiff was terminated due to a "poor season;" yet it was known behind the
28 scenes that U of A produced and transferred the "X-Drive" with the private playbook

1 to member Pac-12 and NCAA institutions at a certain time during Plaintiff's
2 employment. Now other institutions will rely on the "poor season" assessment, when
3 making hiring decisions, which will proximately cause harm to Plaintiff's future
4 coaching market value.

5 i. **Who:** Defendant U of A hired Plaintiff and represented to Plaintiff that:
6 (1) the private playbook on the "X-Drive" would remain U of A property; and (2) U
7 of A would to protect Plaintiff's best interests. Yet, U of A conspired with UCLA, the
8 Pac-12, and possibly other NCAA institutions to release and transfer the "X-Drive" in
9 an attempt to terminate Plaintiff based on a "poor season."

10 ii. **What:** The "X-Drive" containing Coach Sumlin's private playbook was
11 released and transferred to Pac-12 and NCAA institutions. The X-Drive contains were
12 8 folders and 31 files, including Arizona's entire playbook belonging to Coach
13 Sumlin's staff. Plaintiff was subsequently terminated for a "poor season" even though
14 behind the scenes U of A released and transferred Coach Sumlin's staff private
15 playbook to Pac-12 and NCAA institutions.

16 iii. **When:** Upon information and belief, the "X-Drive" was released and
17 transferred to Pac-12 and NCAA institutions sometime before the 2021 season, but
18 after Coach Sumlin was hired in 2018. Plaintiff was terminated in December 2020 due
19 to a "poor season," and subsequently was unable to find comparable coaching jobs
20 with a university with similar prestige as U of A or a Pac-12 school.

21 iv. **Where:** Defendants and their co-conspirators are in the business of
22 governing and operating major college football businesses nationwide. U of A is
23 located in Tucson, Arizona, and UCLA is located in Los Angeles. Upon information
24 and belief, the "X-Drive" was released and transferred in at least Arizona and
25 California, but may have also been sent to other Pac-12 and NCAA institutions
26 nationwide.

27 v. **How:** Upon information and belief, Defendants conspired to release and
28 transfer the private playbook for Coach Sumlin's staff. On or about January 5, 2021,

1 on his first day on the job for the University of Arizona, former UCLA coaches Fisch
2 and Dougherty handed a thumb drive to John Marinelli containing 31 files and 8
3 folders, including Coach Sumlin’s staff private playbook. Dougherty instructed
4 Marinelli to perform changes to the documents located within the thumb drive,
5 specifically to remove any UCLA logos within the documents and replace them with
6 University of Arizona logos. U of A represented that it would retain all private
7 information within the University (including Coach Sumlin’s private playbook), yet
8 U of A intentionally, knowingly, and/or negligently released and transferred the
9 private information in attempt to terminate Plaintiff under the guise of a “poor
10 season.” Upon information and belief, the X-Drive file could have been sent to
11 Defendants via email, and/or using U.S. mailing services sometime between 2018 and
12 January 2021 (end of 2020 season).

13 **COUNT VII**

14 **DEFAMATION**

15 **(Against University of Arizona, and the Arizona Board of Regents)**

16 99. Plaintiff reasserts and incorporate all allegations set forth herein.

17 100. Defamation is defined by the invasion of a person’s interest in his
18 reputation and good name. Plaintiff would show that Defendants, through the actions
19 of University of Arizona, published false information about Plaintiff (i.e., Plaintiff
20 was terminated for a “poor season”) in an attempt to tarnish the reputation of Coach
21 Sumlin’s coaching staff.

22 101. Coach Aych meets each element in a claim for defamation. The actions
23 taken by the staff at the University of Arizona against Coach Sumlin’s football
24 coaching team directly affected and negatively harmed Coach Aych’s reputation by
25 putting his character, work ethic and ability to successfully coach into question among
26 the professional football coaching community.

1 102. U of A intentionally, knowingly, and/or negligently released and
2 transferred the private information in attempt to terminate Plaintiff under the guise of
3 a “poor season.”

4 103. As Coach Sumlin’s Assistant Coach, Coach Aych is a causality caught
5 in the destructive crossfire between the University of Arizona staff and Coach Sumlin.
6 The unlawful publication of Coach Sumlin’s private playbook to an unknown number
7 of unauthorized third parties with the intention it be used to harm Coach Sumlin
8 professionally, which it did so effectively, also harmed Coach Aych’s reputation in
9 the community by the direct association to Coach Sumlin.

10 **PRAYER**

11 Plaintiff and similarly situated players be granted judgment against Defendants
12 for all relief allowed by federal statutes, including exemplary damages, compensatory,
13 punitive damages, and attorneys’ fees where applicable. Plaintiff respectfully pray that
14 the Defendants be cited to appear and answer, and that upon a final hearing of the
15 cause, judgment be entered for the Plaintiff against Defendants for the damages
16 requested in excess of the minimum jurisdictional limits of the Court, together with
17 prejudgment and post-judgment interest at the maximum rate allowed by law,
18 attorney's fees, court costs and such further relief to which the Plaintiffs may be
19 entitled to at law or in equity, whether pled or unpled.

20
21 Dated: September 1, 2023

Respectfully submitted,



23 A handwritten signature in black ink, appearing to be 'A. Kennard', written over a horizontal line.

24 **Alfonso Kennard, Jr.**
25 Texas Bar No. 24036888
26 Southern District TX - 713316
27 **Eddie Hodges Jr.**
28 Texas Bar No. 24116523
Southern District TX - 3479748

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and L.R. 38-1,
Plaintiff demands a trial by jury for all issues so triable.



Alfonso Kennard Jr.