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 8 University of California

9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 THE REGENTS OF THE  
 13 UNIVERSITY OF CALIFORNIA, ON  
 BEHALF OF THE DEPARTMENT OF  
 14 INTERCOLLEGIATE ATHLETICS  
 ON ITS LOS ANGELES CAMPUS,

15 Plaintiff,

16 v.

17 UNDER ARMOUR, INC.,

18 Defendant.

Case No. 2:20-cv-07798

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff The Regents of the University of California, on behalf of the  
2 Department of Intercollegiate Athletics on its Los Angeles Campus (“UCLA”), for its  
3 complaint against Under Armour, Inc. (“Under Armour”), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. In 2016, Under Armour and UCLA signed the largest athletic apparel  
6 sponsorship deal in the history of American college sports. By 2020, Under Armour  
7 wanted to get out of that deal—not because of anything UCLA did, but because the  
8 deal now seemed too expensive for the financially-troubled sportswear company.  
9 Under Armour decided that it would use the COVID-19 pandemic as a pretext to  
10 “terminate” the sponsorship agreement. But neither the governing agreement nor  
11 the law allows Under Armour to do so. This action seeks to hold Under Armour to  
12 the promises that it made.

13 2. In the 2016 sponsorship agreement (the “Agreement”), Under Armour  
14 promised to provide UCLA with at least \$280 million in financial support—  
15 consisting of monetary payments and products—over the Agreement’s fifteen-year  
16 term. UCLA, in return, promised that its student-athletes and personnel would wear  
17 and use Under Armour-supplied products, on an exclusive basis, and provide Under  
18 Armour with certain other perks. UCLA lived up to its end of the bargain.

19 3. Nevertheless, in June 2020, Under Armour decided that it wanted out.  
20 Following years of declining business, Under Armour’s corporate leadership  
21 apparently decided that the UCLA deal was over-market and too expensive for a  
22 troubled company. Under Armour decided to try to use the COVID-19 pandemic as  
23 a cover to get out of paying on a deal that it no longer wanted to be in. It purported  
24 to terminate the Agreement, pointing in the vague direction of COVID-19.

25 4. Under Armour is simply wrong about the Agreement and the governing  
26 law. The Agreement sets forth the exact circumstances in which Under Armour  
27 may terminate the Agreement. None of these circumstances is present here.





1 Armour negotiated a ten-year agreement worth \$96 million.

2 14. Prior to the Under Armour deal, UCLA’s student-athletes and sports  
3 staff had been sponsored and outfitted by Under Armour’s rival brand, Adidas.  
4 However, with the Adidas deal ending, Under Armour saw an opportunity to score a  
5 deal with UCLA.

6 15. Consistent with its then-strategy (since changed by new management),  
7 Under Armour launched an aggressive campaign to convince UCLA to choose  
8 Under Armour as its next sponsor, over of its rival brands, by offering UCLA an  
9 unprecedented fifteen-year sponsorship worth upwards of \$280 million.

10 16. This was not only the most expensive exclusive college sponsorship  
11 deal that Under Armour entered into—it was the most lucrative college sponsorship  
12 deal by any sportswear company in history. It bested, for instance, the benchmarks  
13 set by Nike in its fifteen-year sponsorship deals with Ohio State University and the  
14 University of Texas, for \$252 million and \$250 million, respectively.

15 *The Agreement and its terms.*

16 17. Under Armour and UCLA entered into the Agreement in or around  
17 May 2016. Pursuant to the Agreement, Under Armour agreed to provide UCLA  
18 with millions of dollars’ worth of athletic and athleisure apparel, footwear,  
19 accessories, equipment, and fitness products, as well as other financial support over  
20 a fifteen-year period. In exchange, UCLA agreed that Under Armour would provide  
21 UCLA with such products on “an exclusive basis” and that UCLA would provide  
22 Under Armour with contractually-defined “recognition” for Under Armour’s  
23 support.

24 18. The Agreement contained various terms and conditions, including:

- 25       ▪ Term: The term of the Agreement commenced as of July 1, 2017 and  
26 continues for a period of fifteen (15) years, through June 30, 2032.
- 27       ▪ “Core Teams”: The phrase “Core Teams” is defined to mean “UCLA’s  
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1 football, baseball, men’s basketball, and women’s basketball Teams.”

2           ▪ Under Armour’s Financial Obligations: Under the Agreement, Under  
3 Armour agreed to provide UCLA with financial support totaling at least \$280  
4 million, consisting of: (i) a signing bonus of \$15 million; (ii) rights fees in the total  
5 amount of \$135 million; (iii) a minimum total spend of \$15 million on marketing;  
6 (iv) \$150,000.00 to upgrade and re-brand UCLA’s bookstore; (v) a creative services  
7 fee of \$2 million to re-brand UCLA’s athletic facilities; (vi) a total product  
8 allowance of \$112.85 million; and (vii) bonuses based on the meeting of certain  
9 additional criteria.

10           ▪ Under Armour’s “Supplied Products” Obligation: Under Armour was  
11 required to provide UCLA with athletic footwear, apparel, accessories, equipment,  
12 and other products (defined as “Supplied Products”) up to an Annual Product  
13 Allowance each year, with a “year” defined as running from July 1 to June 30. For  
14 example, for the period running from July 1, 2020 to June 30, 2021, UCLA was  
15 entitled to an Annual Product Allowance of \$6.85 million in athletic products.

16           As the Agreement recognized, much of these products would be  
17 customized and highly specific to UCLA and the particular needs of UCLA’s  
18 student-athletes and staff. The Agreement also recognized that UCLA needed to  
19 receive these products considerably before the first athletic competition in the  
20 seasons for which they would be used, including because its athletes and teams  
21 would need to test out and get accustomed to any customized gear well in advance  
22 of when practice and games begin. Accordingly, for fall sports, Under Armour  
23 agreed that UCLA must receive the customized products that it ordered under its  
24 Annual Product Allowance by no later than July 1; for winter sports by no later than  
25 October 1; and for spring sports by no later than January 1. For example, for the  
26 2020-2021 school year, UCLA had ordered the majority of the products to which it  
27 was entitled under its \$6.85-million Annual Product Allowance by December  
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1 2019—long in advance of July 1, 2020; and Under Armour agreed that UCLA  
2 would receive such products for that year’s fall sports by no later than July 1, 2020.

3 Under Armour also was required to reimburse UCLA for its purchase of  
4 certain athletic products that Under Armour could not provide.

5 Under Armour’s “On-Site Representative” and Retail Obligations:

6 Under Armour also promised that it would “provide one (1) full time [Under  
7 Armour] employee, solely dedicated to cover, service, and support UCLA at no cost  
8 to UCLA, to be located on the UCLA campus in a space provided by UCLA each  
9 Contract Year or in a mutually agreeable location within five (5) miles of the main  
10 UCLA campus.” Under Armour further promised that it would open two retail  
11 stores in the Los Angeles area, including making “commercially reasonable” efforts  
12 to open one such store in the West Los Angeles area, at which it would prominently  
13 feature UCLA-branded products.

14 UCLA’s Obligations: Under the Agreement, UCLA agreed to do just  
15 four things: (i) require all of its coaches, staff, and teams “to exclusively wear and  
16 use [Under Armour’s] Supplied Products ... whenever the Coaches, Staff or Teams  
17 coach, practice, perform or play in UCLA’s intercollegiate athletic program,  
18 participate in Team-related activities..., or conduct or participate in exhibitions, on-  
19 campus summer camps or clinics on behalf of UCLA”; (ii) provide Under Armour  
20 with a certain number of “best-available” tickets and season seats to certain home  
21 games, a certain number of post-season game tickets and Olympic Sports Cards, the  
22 opportunity to purchase more tickets to certain games, and certain privileges to use  
23 hospitality areas; (iii) provide certain signage and advertising for Under Armour at  
24 competition and practice venues; and (iv) make UCLA’s Head Coaches and the  
25 Athletic Director available for appearances, on Under Armour’s reasonable request.

26 Termination for “Material Breach” After Opportunity to Cure: The  
27 Agreement provides that Under Armour may terminate the Agreement “[e]ffective  
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1 upon written notice to UCLA if UCLA breaches any material term of the Agreement  
2 and does not cure such breach within thirty (30) days after receiving written notice  
3 ... from [Under Armour] specifying the breach; however, if the breach is one which  
4 cannot reasonably be corrected within thirty (30) days, and [Under Armour]  
5 reasonably determines that UCLA is making substantial and diligent progress  
6 toward correction during such thirty (30)-day period, this Agreement shall remain in  
7 full force and effect for an additional thirty (30)-day period, but may be terminated  
8 upon notice thereafter.”

9           ▪ Termination for Specifically-Enumerated Reasons After Opportunity to  
10 Cure: The Agreement also provides that Under Armour may terminate the  
11 Agreement, among other reasons, if (i) “UCLA ceases for any reason to field a  
12 NCAA Division I Core Team or one of those Core Teams does not participate for  
13 any reason (other than for a Force Majeure Event) in a complete regular season,  
14 missing at least fifty percent (50%) of the scheduled games during the regular  
15 season”; or (ii) “[a] Head Coach, senior member of UCLA’s Department of  
16 Intercollegiate Athletics, Core Team member, or a senior University administrator is  
17 convicted of or pleads guilty or no contest to a severe felony (*e.g.*, first degree,  
18 aggravated, etc.) ... , and following such act, UCLA fails to take reasonably  
19 appropriate action(s)”—again, “provided that [Under Armour] has first provided  
20 UCLA with thirty (30) days prior written notice specifying its concerns and intent to  
21 terminate, and providing UCLA with an opportunity to address [Under Armour’s]  
22 concerns; however, if the circumstance is one which cannot reasonably be corrected  
23 within thirty (30) days but [Under Armour] considers, in good faith, and reasonably  
24 determines that it can be cured or corrected within an additional thirty (30) day  
25 period, and [Under Armour] reasonably determines that UCLA is making  
26 substantial and diligent progress toward correction during such thirty (30)-day  
27 period, this Agreement shall remain in full force and effect for an additional thirty  
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1 (30)-day period, but may be terminated upon notice thereafter.”

2           ▪ “Force Majeure” Clause: The Agreement provides that “[n]either Party  
3 is liable for any breach of its obligations under this Agreement to the extent that the  
4 breach resulted from a Force Majeure Event provided that it: promptly notifies the  
5 other Party the nature and cause of the Force Majeure Event and details of how the  
6 Party is mitigating its losses in relation to the Force Majeure Event; and [t]akes all  
7 reasonable steps to work around, reduce, or mitigate the effects of the Force  
8 Majeure Event. If a Force Majeure Event continues for more than one hundred  
9 (100) days, either Party may terminate this Agreement with immediate effect by  
10 written notice.” In addition, “[d]elays in delivery, whether resulting from a Force  
11 Majeure Event or otherwise, will not change [Under Armour’s] obligation to supply  
12 late items. UCLA reserves the right to acquire Supplied Products that are more than  
13 thirty (30) days late as a result of a Force Majeure Event from another supplier ...,  
14 and [Under Armour] will be responsible for all reasonable costs associated with  
15 acquiring any such items, which costs shall not be charged against that Contract  
16 Year’s Annual Product Allowance.”

17           ▪ “Force Majeure Event”: The Agreement defines a “Force Majeure  
18 Event” as a “cause or event” that meets at least two criteria: (1) it is “is beyond the  
19 commercially reasonable control of [Under Armour] (or the reasonable control of  
20 UCLA)” and (2) it “renders the performance of this Agreement by the affected Party  
21 either impossible or impracticable.” The Agreements provides the following  
22 examples of “causes or events” that may constitute a Force Majeure Event: “flood,  
23 earthquake, fire, labor actions or work stoppages, natural calamities, national  
24 emergencies, declarations of war, riot, civil disturbance, sabotage, explosions, acts  
25 of God, acts of any regulatory, governmental body and/or agency, having  
26 jurisdiction over the affected Party, including without limitation any Laws, orders,  
27 ordinances, acts, or mandates which prohibit, restrict, or regulate the affected  
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1 Party’s performance of its obligations under this Agreement.”

2 ***The parties’ performance under the Agreement.***

3 19. At all relevant times through at least June 2020, UCLA met all of its  
4 material obligations under the Agreement. UCLA required its coaches, staff, and  
5 teams to exclusively wear and use Under Armour products pursuant to the  
6 Agreement. UCLA also complied with its tickets, signage and advertising, and  
7 appearance obligations.

8 20. In contrast, Under Armour, while performing some of its obligations,  
9 did not perform its obligations fully. For example, Under Armour did not comply  
10 with the requirement to provide an on-site Under Armour representative. And, as of  
11 2020, Under Armour failed to be in compliance with its retail store obligation.

12 ***Under Armour’s purported termination of the Agreement.***

13 21. On information and belief, as of June 2020, Under Armour is  
14 financially struggling and has been for quite some time. These struggles long pre-  
15 dated the challenges of COVID-19, and even pre-dated Under Armour’s  
16 negotiations and entering of the Agreement with UCLA in 2016.

17 22. On information and belief, and unbeknownst to UCLA at the time of  
18 the Agreement, Under Armour has been engaging in accounting and disclosure  
19 practices designed to manipulate the appearance of its financial health, since at least  
20 2015.

21 23. In November 2019, Under Armour revealed that it was under  
22 investigation by the U.S. Securities and Exchange Commission and the U.S.  
23 Department of Justice for allegedly engaging in practices to make its financial  
24 condition look healthier than it actually was. On July 27, 2020, Under Armour’s 8-  
25 K filing revealed that Under Armour, its Executive Chairman Kevin Plank, and CFO  
26 David Bergman, each had received a “Wells Notice” notifying them that the SEC  
27 would be recommending an enforcement action based on the results of the  
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1 investigation.

2           24. According to the 8-K filing, the Wells Notices concern Under  
3 Armour's accounting and disclosures for "the *third quarter of 2015 through the*  
4 *period ending December 31, 2016*"—the precise period of time during which Under  
5 Armour was persuading UCLA to enter into the Agreement with it by broadcasting  
6 reports of its glowing financial health and staggering growth. More specifically, the  
7 Wells Notices allege that, throughout 2015 and 2016, Under Armour used a "pull  
8 forward" tactic—*i.e.*, shifting revenues from sales between financial quarters—in  
9 order to enhance the sales reported from quarter to quarter and "meet sales  
10 objectives."

11           25. Under Section IV(A)(7) of the Agreement, Under Armour specifically  
12 agreed that "Company shall comply with all applicable laws in effect during the  
13 Term." Under Sections VI(B) and VI(C) of the Agreement, Under Armour had a  
14 specific, contractual ongoing obligation to provide accurate financial information to  
15 UCLA in its financial statements, in order for "UCLA to evaluate [Under Armour's]  
16 financial condition and ability to perform under this Agreement."

17           26. These contractual provisions reflect an important fact about the  
18 Agreement: it was critically important to UCLA when it entered into the Agreement  
19 in 2016, and thereafter during the term of the Agreement, that Under Armour  
20 comply with all governing laws, including SEC laws and regulations. Beyond that,  
21 Under Armour's statements about its financial condition and growth (including in,  
22 but not limited to, its public financial reporting) was of critical importance to UCLA  
23 in deciding to enter into the Agreement and in deciding to maintain Under Armour  
24 as a business partner under the Agreement. Precisely because the Agreement had a  
25 fifteen-year term, UCLA needed to be certain that Under Armour would be a  
26 reliable partner in meeting that fifteen-year commitment. Beyond that, as a public  
27 institution, UCLA needs to ensure that its business partners comply with the law.

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1 UCLA relied upon Under Armour’s reported financial position and its belief that  
2 Under Armour had in fact accurately reported its financial position in entering into  
3 the Agreement. Had UCLA known that Under Armour was making false financial  
4 statements in violation of law and SEC regulation, and falsely reporting its sales  
5 reported from quarter to quarter, UCLA would never have entered into the  
6 Agreement and/or would have terminated the Agreement at a time when other  
7 similarly-attractive sponsorship agreements could have been negotiated for UCLA.

8 27. Under Armour never disclosed the accounting practices described in  
9 the Wells Notices and the 8-K filing, whether before or after UCLA entered into the  
10 Agreement. Such disclosure would have been necessary to correct the sin of  
11 omission regarding the statements about its financial condition that Under Armour  
12 did make (including in its reported financial statements), and make Under Armour's  
13 statements about its financial condition complete, true, accurate and non-misleading.  
14 Beyond that, by providing false financial statements to UCLA, Under Armour  
15 breached its obligations under Sections IV(A)(7), VI(B) and VI(C) of the  
16 Agreement.

17 28. On information and belief, Under Armour also has been mired in other  
18 financial quandaries in recent years, including dealing with \$1.3 billion in leftover  
19 merchandise in 2018; the shrinking popularity of its brand among younger teens; the  
20 struggle to break into the women’s apparel market; and the fallout from an  
21 embarrassing public scandal in late 2018 involving some of its top male  
22 executives—including Under Armour’s founder, Chairman, and then-CEO Kevin  
23 Plank—reportedly expensing trips to strip clubs.

24 29. In the midst of these various crises, in October 2019, Under Armour’s  
25 longtime leader, Kevin Plank, announced that he would be stepping down from his  
26 position as Under Armour’s CEO.

27 30. More recently, in February 2020, Under Armour admitted that the  
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1 results for its fourth quarter and 2019 fiscal year had fallen substantially short of  
2 analyst expectations, causing Under Armour’s share price to plummet.

3 31. Under Armour’s weakening financial position was not helped by the  
4 COVID-19 crisis, which has had severe effects on the economy generally and the  
5 world of sports in particular. While neither COVID-19 nor Under Armour’s  
6 financial failures prevented Under Armour’s performance under the Agreement, on  
7 information and belief, these broader problems made complying with the Agreement  
8 unattractive for Under Armour.

9 32. In mid-April 2020, Under Armour invited UCLA to discuss potentially  
10 “shifting” the due date of Under Armour’s April payment by a few months, until  
11 July 2020, at which time Under Armour stated that it “intended to be caught up on  
12 all payments.” Under Armour thanked UCLA for its “partnership and helping  
13 Under Armour manage our cash flow during these challenging times.”

14 33. Just before it hit July, however, Under Armour had changed course. It  
15 decided that it wanted to get out of the Agreement altogether, without paying UCLA  
16 what it had promised to pay. Accordingly, Under Armour conjured a scheme to  
17 purport to “terminate” the Agreement in a way that would allow Under Armour to  
18 avoid providing UCLA with the financial support that it had promised.

19 34. On June 22, 2020, not even three years into its fifteen-year sponsorship,  
20 Under Armour announced to UCLA that Under Armour would be terminating the  
21 Agreement due to the COVID-19 pandemic. Under Armour provided *no* prior  
22 notice to UCLA of its intent to terminate the Agreement.

23 35. In its termination letter to UCLA, Under Armour invoked three grounds  
24 for termination. None of them is legitimate.

25 36. *First*, Under Armour purported to invoke the Agreement’s “Force  
26 Majeure” Clause as the basis for “immediate termination.” Taking great pains to  
27 misquote and distort the language of the Agreement, Under Armour claimed that  
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1 various decisions by the NCAA and Pac-12 to pause certain athletic events due to  
2 the COVID-19 pandemic had resulted in a “Force Majeure Event” that relieved all  
3 parties of all obligations under the Agreement. Under Armour further contended  
4 that this “Force Majeure Event” had occurred for a total of more than 100 days,  
5 justifying its immediate termination of the Agreement, effective June 21, 2020.

6 37. That argument ignored the facts, the Agreement, and the law. Under  
7 the Agreement, a “Force Majeure Event” exists as to a party only when there is an  
8 event which “renders the performance of this Agreement *by the affected* Party either  
9 *impossible or impracticable.*” (emphasis added). That definition, like the law of  
10 force majeure and of contractual impossibility and impracticability more broadly,  
11 looks not to whether an event has caused general disruption in an industry, or made  
12 a pre-existing deal less economically attractive to the affected party, but to whether  
13 the event has actually made the performance of a specific contractual obligation by  
14 the affected party impossible or impracticable.

15 38. Here, Under Armour had no basis for claiming cover under the “Force  
16 Majeure” Clause as “the affected Party.” Nothing about COVID-19 made it  
17 “impossible or impracticable” for Under Armour to meet its obligations under the  
18 Agreement. Nor did COVID-19 make it impossible or impracticable for UCLA to  
19 meet its material obligations under the Agreement.

20 39. Under Armour’s primary obligations under the Agreement are to  
21 provide financial support, including money and products, to UCLA. Under Armour  
22 could and can meet these obligations at all times regardless of COVID-19. Indeed,  
23 UCLA has already ordered, and Under Armour has already provided some of the  
24 Supplied Products for fall 2020, regardless of COVID-19. Beyond that, Under  
25 Armour has continued to meet its obligations to other similarly-situated schools and  
26 even publicly announced a four-year contract extension of its sponsorship deal with  
27 Texas Tech University on June 25, 2020, mere days after purporting to terminate its  
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1 Agreement with UCLA.

2 40. UCLA, likewise, was performing all of its enumerated obligations  
3 under the Agreement regardless of COVID-19, namely, wearing and using Under  
4 Armour products and providing Under Armour with the requisite tickets,  
5 recognition, and availability of coaches and the Athletic Director, as required by the  
6 Agreement. COVID-19 did not render UCLA's performance impossible or  
7 impracticable. To the contrary, during the COVID-19 pandemic, UCLA's teams  
8 and athletes continued to engage in team meetings, voluntary workouts, and other  
9 preparations for games, while wearing the Under Armour products that they were  
10 then under an obligation to wear on an exclusive basis. All of that continued and  
11 continues to provide ongoing value to Under Armour under the Agreement.

12 41. Accordingly, under the plain terms of the Agreement—which are  
13 consistent with California law governing impossibility, impracticability, and force  
14 majeure—any general disruption caused by COVID-19 and its impact on college  
15 athletics was not a “Force Majeure Event.” Under Armour was not entitled to  
16 terminate the Agreement simply because COVID-19 caused some disruption for  
17 more than 100 days. Under Armour's mere dislike of the Agreement's economic  
18 implications during COVID-19 did not mean that its performance under the  
19 Agreement was impossible or impracticable. Accordingly, Under Armour's first,  
20 and primary, reason for invoking termination is clearly prohibited.

21 42. **Second**, Under Armour invoked as a ground for termination a provision  
22 of the Agreement, Section VIII(C)(2)(c), which would allow Under Armour to  
23 terminate in some circumstances if: (i) “UCLA ceases for any reason to field a  
24 NCAA Division I Core Team or one of those Core Teams does not participate for  
25 any reason (other than for a Force Majeure Event) in a complete regular season,  
26 missing at least fifty percent (50%) of the scheduled games during the regular  
27 season.” Under Armour argued that “UCLA's baseball team failed to complete its  
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1 regular season, playing in only sixteen (16) of fifty-seven (57) games, before its  
2 season was cancelled by the NCAA.” That argument, too, fails.

3 43. Section VIII(C)(2)(c) does not apply to the 2020 baseball season at all.  
4 The objective intent and plain meaning of Section VIII(C)(2)(c) is that Under  
5 Armour may terminate the Agreement if (1) UCLA *itself* for some reason decides to  
6 cease “fielding” a “Core Team” (*e.g.*, if UCLA decides to stop having a baseball  
7 team); or (2) if UCLA is suspended or barred from participating for some reason in  
8 more than half of actually-scheduled games in a “Core Team” sport (*e.g.*, if UCLA  
9 were forced to miss otherwise-scheduled games as a sanction for violating NCAA  
10 rules).

11 44. Section VIII(C)(2)(c) also focuses exclusively on UCLA’s participation  
12 in “scheduled” games. It does not purport to suggest that there is any obligation by  
13 UCLA to play in non-existent, cancelled, or “un-scheduled” games, including when  
14 the NCAA or Pac-12 has changed the “schedule” of games. That this interpretation  
15 reflected the expressed mutual intent of the parties at the time the Agreement was  
16 entered into can be shown both by reference to the Agreement’s plain meaning and  
17 to extrinsic evidence.

18 45. Here, at all relevant times, UCLA “fielded” all of its Core Teams,  
19 including the baseball team and has played in all “scheduled” games. In other  
20 words, UCLA has never “ceased” to have a baseball team, and its baseball team has  
21 shown up for and played in 100 percent of its “scheduled” games for 2020. That the  
22 NCAA or the Pac-12 altered the “schedule” for 2020 baseball games does not  
23 change the fact that UCLA has “fielded” its baseball team and played in all  
24 “scheduled” games. There is nothing that UCLA failed to do under Section  
25 VIII(C)(2)(c) to permit termination by Under Armour under this provision of the  
26 Agreement. Thus, Section VIII(C)(2)(c) of the Agreement does not apply at all.

27 46. Further, on information and belief, Under Armour has not purported to  
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1 terminate its sponsorship deals with other similarly-situated schools, like Auburn  
2 University and the University of South Carolina, even though those deals contain  
3 similar “Core Team” requirements.

4 47. Alternatively, even if Under Armour’s distorted reading of Section  
5 VIII(C)(2)(c) were to apply, Under Armour still could not invoke that provision to  
6 terminate the Agreement. As Under Armour’s own termination letter admits,  
7 UCLA’s baseball team was able to play only “sixteen (16) of fifty-seven (57)  
8 games” because the rest of “its season was cancelled by the NCAA.” On its face,  
9 Under Armour may terminate the Agreement under Section VIII(C)(2)(c) only if  
10 UCLA’s failure to participate in 50 percent of scheduled games is for a reason  
11 “*other than* for a Force Majeure Event.” Under Armour cannot deny that *if* the  
12 NCAA’s or the Pac-12’s partial cancellation of games in the spring 2020 baseball  
13 season could be construed to make Section VIII(C)(2)(c) applicable, *then* UCLA’s  
14 non-participation in such cancelled baseball games would have been due to a “Force  
15 Majeure Event” that prevented UCLA’s performance under Section VIII(C)(2)(c)  
16 (because, in that case, the NCAA’s or the Pac-12’s partial cancellation of the  
17 baseball season would have made UCLA’s performance under that provision  
18 temporarily “impracticable” or “impossible”). In other words, even if UCLA had  
19 failed to participate in 50 percent of scheduled baseball games, that failure would  
20 have due to a Force Majeure Event—the precise reason that eliminates Section  
21 VIII(C)(2)(c) as a basis for termination.

22 48. Nor, even if Under Armour’s (wrong) interpretation of Section  
23 VIII(C)(2)(c) set forth in the preceding Paragraph were to apply, would there have  
24 been a “Force Majeure Event” preventing the affected party (UCLA) from  
25 performing “*for more than one hundred (100) days*”—the minimum threshold that  
26 a “Force Majeure Event” must surpass in order to give rise to a basis for  
27 termination. As Under Armour acknowledges, the UCLA baseball team would have  
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1 played, in total, a maximum of 57 games in the 2020 baseball season, if not for the  
2 partial cancellation of the season. UCLA’s baseball team played 16 games; it did  
3 not play 41 games that were cancelled and removed from the baseball schedule by  
4 conference rules. Thus, even if the “Force Majeure Event” could conceivably be  
5 COVID-19 and/or the NCAA and Pac-12 rules causing UCLA’s non-participation in  
6 those cancelled baseball games, then the supposed “Force Majeure Event” lasted, at  
7 most, only 41 days—*i.e.*, the number of days that baseball team was unable to play  
8 in those games. Moreover, UCLA’s baseball team played its last scheduled game  
9 on March 8, 2020. Before the NCAA and the Pac-12’s decision to partially cancel  
10 games and thus partially alter the schedule of the 2020 baseball season, the last  
11 regular-season baseball game was set to be played on May 23, 2020—again, fewer  
12 than 100 days later. Accordingly, even under Under Armour’s misreading of  
13 Section VIII(C)(2)(c), any supposed “Force Majeure Event” was far from reaching  
14 the minimum number of days required to give rise to a ground for termination.<sup>1</sup> For  
15 that reason, as well, the abbreviated 2020 baseball season cannot provide a basis for  
16 terminating the Agreement, even on the (incorrect) assumption that Under Armour’s  
17 (incorrect) reading of Section VIII(C)(2)(c) were correct.

18       49. **Third**, Under Armour invoked Section VIII(C)(2)(f) of the Agreement,  
19 and claimed that it was entitled to terminate the Agreement because UCLA had  
20 failed “to take reasonably appropriate action(s)” following the arrest and indictment  
21 of a former UCLA soccer coach in connection with “Operation Varsity Blues”  
22 college admissions scandal. There is no basis at all for Under Armour to invoke this  
23 provision. Its doing so was purely pretextual. As Under Armour knows, UCLA had  
24 placed that coach on leave on the same day as his arrest and promptly accepted his

5 <sup>1</sup> Moreover, Under Armour was well aware of this purported Force Majeure Event  
6 and UCLA’s effort to mitigate it. Under Armour knew that NCAA baseball games  
27 had been cancelled due to COVID-19, and Under Armour was equally aware of the  
28 efforts made by the NCAA, UCLA, and others to deal with the impact of COVID-19  
on college athletics.

1 resignation from UCLA a few days later. Among other reasons, no more “action(s)”  
2 could have been “reasonably appropriate” after the coach had resigned. Nor did  
3 Under Armour, at any point prior to the termination letter, ever suggest that these  
4 actions were insufficient or demand that UCLA take any other action beyond putting  
5 the coach on leave and accepting his resignation.

6 ***The parties’ conduct after the purported “termination.”***

7 50. UCLA received the above-described termination letter from Under  
8 Armour on June 22, 2020. On June 29, 2020, UCLA responded, making the points  
9 set forth above.

10 51. As UCLA noted in its response, Under Armour’s purported  
11 “termination” of the Agreement severely disadvantaged UCLA student-athletes,  
12 coaches, and staff for the summer of 2020, fall of 2020, the 2020-2021 school year,  
13 and beyond. UCLA had already placed much of its orders for “Supplied Products”  
14 from Under Armour for the 2020-2021 school year. The bulk of the products  
15 ordered were customized and UCLA-specific, which is extraordinarily difficult or  
16 impossible for UCLA to source on short notice from sources other than Under  
17 Armour. Under the Agreement, delivery of such custom products for all fall sports  
18 was due no later than July 1, 2020. Moreover, the parties had agreed that UCLA  
19 would receive its bulk shipment of customized Supplied Products for the 2020-2021  
20 school year on June 22, 2020. Instead of receiving the athletic products that UCLA  
21 had been promised on June 22, however, UCLA received Under Armour’s  
22 termination letter.

23 52. On June 30, 2020, in response to UCLA’s letter, Under Armour replied  
24 that, “Regarding your demand that the Supplied Products for the 2020-21 school  
25 year be delivered immediately, you incorrectly assert that Under Armour refuses to  
26 provide those items. In fact, Under Armour has already shipped some of the  
27 Supplied Products, and the balance of Supplied Products ordered by UCLA through  
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1 the termination date is ready to be shipped.” Under Armour also promised that the  
2 Supplied Products that UCLA had already ordered for the 2020-2021 school year  
3 “will be shipped.”

4 53. UCLA relied on that promise by Under Armour to provide all already-  
5 ordered Supplied Products for the 2020-2021 school year, regardless of Under  
6 Armour’s purported termination of the Agreement. In fact, as UCLA noted in  
7 subsequent communications to Under Armour, many of its student-athletes had  
8 already returned to campus by early July 2020, and more were returning, pursuant to  
9 UCLA’s carefully mapped-out “phased” return plan with appropriate safeguards in  
10 place, to engage in athletic activities on-campus. These student-athletes required  
11 timely and accurate delivery of athletic products to participate in their respective  
12 sports.

13 54. Despite Under Armour’s promise to provide already-ordered products  
14 regardless of the “termination,” Under Armour failed to make timely delivery of  
15 such products, causing ongoing harm to UCLA and its student-athletes.

16 55. UCLA also flagged serious flaws in the gear that had been shipped.  
17 UCLA is relying on Under Armour to provide sufficient and proper already-ordered  
18 products for its teams in 2020 and 2021.

19 56. On August 12, 2020 (more than seven weeks after Under Armour’s  
20 termination letter), and after consultation with athletics directors and with the Pac-  
21 12 COVID-19 Medical Advisory Committee, the Pac-12 CEO Group voted  
22 unanimously to postpone all sport competitions through the end of the 2020 calendar  
23 year. This is not, however, the end of the season for affected fall sports—much less  
24 the end of athletic competition at UCLA. The Pac-12 is currently working on  
25 revised schedules for fall sports in 2021, when conditions improve.

26 57. While the schedule for sports in fall 2020 has been altered, competition  
27 has been postponed, not cancelled. UCLA remains strongly committed to playing  
28

1 **all** scheduled competitions in each of the “Core Team” sports under the Agreement.  
2 Moreover, UCLA will return to athletic competition as soon as the Pac-12 and  
3 conditions reasonably so permit. That the Pac-12 has, due to COVID-19, postponed  
4 athletic competitions in the fall of 2020 does **not** mean that Under Armour would  
5 have ceased to receive benefits from its sponsorship of UCLA sports in the fall of  
6 2020—to the contrary, Under Armour continues to receive the benefit of its ongoing  
7 sponsorship of UCLA. Moreover, over the twelve remaining years in the term of  
8 the Agreement (prior to its termination by Under Armour) Pac-12 competition is  
9 certainly expected to resume.

10 58. Under Armour has refused to retract its purported termination of the  
11 Agreement, and has failed to identify any valid ground for its purported termination  
12 of the Agreement.

13 59. Under Armour’s purported termination of the Agreement is  
14 contractually improper, pretextual, and in bad faith. It will deprive UCLA of  
15 hundreds of millions of dollars in payments and financial benefits that Under  
16 Armour committed to provide under the Agreement for at least the next twelve  
17 years. Moreover, Under Armour’s failure to honor its post-“termination” promise to  
18 provide already-ordered goods for the 2020-2021 school year is causing immediate,  
19 irreparable, and ongoing harm to UCLA’s student-athletes.

20 **FIRST CLAIM**

21 **(Breach of Contract Under California Law)**

22 60. UCLA re-alleges and incorporates by reference each of the foregoing  
23 paragraphs, as though fully set forth herein.

24 61. UCLA and Under Armour entered into a sponsorship agreement (the  
25 “Agreement”). At all times relevant to this action, the Agreement was valid and  
26 binding.

27 62. UCLA has performed all material conditions, covenants, and promises  
28

1 that it was not excused from performing, in accordance with the terms and  
2 conditions of the Agreement.

3 63. Under Armour’s performance of its obligations has not been excused.

4 64. Nonetheless, as set forth in part through the examples above, Under  
5 Armour has anticipatorily repudiated and actually breached its obligations under the  
6 Agreement, including by, *inter alia*, purporting to terminate the Agreement and  
7 refusing to comply with its obligations under the Agreement; failing to comply with  
8 the contractual provisions dictating the circumstances under which the Agreement  
9 may be terminated; failing to provide Under Armour products to UCLA by the  
10 agreed-upon, contractual deadlines; purporting to provide UCLA with insufficient,  
11 defective, or non-conforming products; failing to pay monies owed to date; failing  
12 to pay third-party invoices; renouncing any obligation to pay monies owed in the  
13 future; failing to provide an on-site representative; and failing to fulfill its retail  
14 store obligations.

15 65. As a direct and proximate cause of Under Armour’s breaches of the  
16 Agreement as alleged herein, UCLA is entitled to recover contractual damages in an  
17 amount yet to be determined, but in all events exceeding \$200,000,000.00.

18 **SECOND CLAIM**

19 **(Breach of the Implied Covenant of Good Faith and Fair Dealing**  
20 **Under California Law)**

21 66. UCLA re-alleges and incorporates by reference each of the foregoing  
22 paragraphs, as though fully set forth herein.

23 67. UCLA and Under Armour entered into a sponsorship agreement (the  
24 “Agreement”). At all times relevant to this action, the Agreement was valid and  
25 binding.

26 68. Implied in the Agreement is a covenant of good faith and fair dealing,  
27 which obligates the contracting parties to act in good faith, to use their best efforts to  
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1 deal fairly with each other, and to avoid impeding the other from obtaining the  
2 benefits of the Agreement.

3 69. UCLA has performed all material conditions, covenants, and promises  
4 required to be performed by it in accordance with the terms and conditions of the  
5 Agreement.

6 70. Under Armour's performance of its obligations has not been excused.

7 71. Under Armour, nevertheless, has wrongfully deprived, impaired, and  
8 injured UCLA's enjoyment of its rights, benefits, and full value of the Agreement,  
9 including by fabricating a "Force Majeure Event" and disingenuously citing the  
10 COVID-19 pandemic as a pretext for its purported termination of the Agreement.  
11 Under Armour is aware that neither the COVID-19 pandemic nor any event  
12 resulting from the pandemic prevents Under Armour from fully performing its  
13 obligations under the Agreement.

14 72. As a direct and proximate cause of Under Armour's breach of the  
15 implied covenant of good faith and fair dealing as alleged herein, UCLA has been  
16 damaged in an amount as yet to be determined, but in all events exceeding  
17 \$200,000,000.00.

18 **THIRD CLAIM**

19 **(Promissory Estoppel Under California Law)**

20 73. UCLA re-alleges and incorporates by reference each of the foregoing  
21 paragraphs, as though fully set forth herein.

22 74. In addition to its contractual obligations under the Agreement, Under  
23 Armour made a promise that—regardless of its claim that the Agreement was  
24 terminated—under Armour would deliver to UCLA all "Supplied Products" under  
25 the Agreement that UCLA had ordered as of June 22, 2020.

26 75. The relevant promise was clearly made in, *inter alia*, Under Armour's  
27 letter of June 30, 2020, in which Under Armour stated that, "Regarding your  
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1 demand that the Supplied Products for the 2020-21 school year be delivered  
2 immediately, you incorrectly assert that Under Armour refuses to provide those  
3 items. In fact, Under Armour has already shipped some of the Supplied Products,  
4 and the balance of Supplied Products ordered by UCLA through the “termination”  
5 date is ready to be shipped.” Under Armour further promised that such products  
6 “will be shipped.”

7 76. UCLA has detrimentally relied on that promise by, among other things,  
8 planning that its student-athletes would be outfitted and equipped for the 2020-2021  
9 school year in Supplied Products already ordered from Under Armour; not obtaining  
10 those products from other sources; and encouraging its student-athletes to believe  
11 that they will be able to play, practice, and perform on time and on schedule while  
12 being appropriately and safely attired and equipped.

13 77. Under Armour has breached its promise, by *inter alia*, failing to deliver  
14 the Supplied Products it promised to deliver, failing to make timely delivery, and  
15 providing non-conforming products.

16 78. As a result of Under Armour’s breach of its promise, UCLA has  
17 suffered actual, reliance, and consequential damages in an amount yet to be  
18 determined, but in all events well in excess of \$75,000.00.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, UCLA respectfully prays for the following relief:

- 21 A. That judgment be entered in favor of UCLA and against Under  
22 Armour;
- 23 B. That UCLA be awarded its damages;
- 24 C. That UCLA be awarded any reasonable attorneys’ fees, costs, or other  
25 expenses recoverable, including those recoverable pursuant to the Agreement;
- 26 D. That UCLA be awarded interest thereon at the applicable rate under the  
27 Agreement; and  
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