

From: Joann Pham

Fax: 14159861474

To:

Fax: (510) 267-5739

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1 Jennie Lee Anderson (SBN 203586)
 2 jennie@andrusanderson.com
 3 Lori E. Andrus (SBN 205816)
 4 lori@andrusanderson.com
 5 ANDRUS ANDERSON LLP
 155 Montgomery Street, Suite 900
 San Francisco, CA 94104
 Telephone: (415) 986-1400
 Facsimile: (415) 986-1474

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 CASE NUMBER:
RG19037605

6 *Attorneys for Plaintiff Melissa Martin*

7

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

ALAMEDA COUNTY

10

MELISSA MARTIN,

Case No.

11

Plaintiff,

COMPLAINT

12

vs.

DEMAND FOR JURY TRIAL

13

14 THE REGENTS OF THE UNIVERSITY OF
 15 CALIFORNIA; USA FEDERATION FOR
 16 SPORT CHEERING, d/b/a USA CHEER;
 LISA KEYS, an individual; JESSICA
 CHATTO, an individual; and DOES 1-10,

16

Defendants.

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18

19 Plaintiff Melissa Martin ("Plaintiff"), by and through her undersigned counsel, brings this
 20 Complaint for damages and injunctive relief against the Regents of the University of California
 21 (including the University of California, Berkeley) (the "University" or "UC Berkeley"), the USA
 22 Federation for Sport Cheering, also d/b/a USA Cheer ("USA Cheer"), Lisa Keys and Jessica
 23 Chatto (together, the "Individual Defendants") (collectively, the "Defendants"), and alleges the
 following:

24

NATURE OF THE CASE

25

26 1. Modern-day cheerleading, or stunting, is highly athletic and involves a variety of
 27 technical and physically demanding maneuvers, including building pyramids, high-flying basket
 tosses and tumbling. As a result, injuries may occur. To prevent unnecessary injuries, however,

28

1 appropriate training and supervision, and adherence to safety precautions and protocols are
2 critical.

3 2. The UC Berkeley Cheerleading and STUNT team (“University Cheerleading and
4 STUNT team”) is comprised of talented and dedicated student female athletes who support
5 multiple teams, including but not limited to UC Berkeley’s football, and men’s and women’s
6 basketball teams; engage in community and alumni outreach; and compete in intercollegiate
7 STUNT competitions. The value they bring to the University cannot be understated.

8 3. When Plaintiff Melissa Martin joined the UC Berkeley Cheerleading and STUNT
9 team, she was excited to contribute to a University tradition and looked forward to the
10 camaraderie and athletic challenges ahead of her.

11 4. But when Plaintiff suffered her first concussion during practice, Defendants did
12 not rally to support her. Instead, University coaches bullied Plaintiff into participating at games
13 and practices, despite being physically unfit to do so due to her concussion, and over her stated
14 concerns.

15 5. While there has been significant national focus on concussion risks for young men
16 in football, there has not been the same degree of concern around head injuries for young women
17 participating in cheerleading programs. Defendants should be in the forefront of changing that
18 lack of concern to protect their student athletes from known head injury risks. Instead,
19 Defendants failed to take basic steps to protect Plaintiff from permanent head injury. Defendants
20 failed to properly train, supervise and discipline Plaintiff’s coaches. And when Plaintiff sought
21 medical support, Defendants failed to take her head injuries seriously or follow standard
22 concussion protocol. Plaintiff’s head injuries were not given the appropriate medical attention
23 and supervision as required by law. Instead, Plaintiff’s complaints were met with indifference
24 and even disdain.

25 6. Indeed, the University appears to regard the UC Berkeley Cheerleaders as “half-
26 letes,” meaning the women do not enjoy the resources and medical care afforded to many of the
27 University’s other athletes. The University inappropriately treats its cheerleaders as mere
28 entertainers instead of athletes.

1 7. As a consequence of Defendants’ negligence and disregard for Plaintiff’s serious
2 head injuries, Plaintiff suffered *three concussions* over the course of a few months while
3 performing or practicing under Defendants’ supervision. Her serious and severe concussion
4 symptoms have required Plaintiff to seek ongoing medical care and forced her to take a medical
5 leave of absence from school. All of this could have been prevented had Defendants exercised
6 reasonable care. They did not.

7 PARTIES

8 8. Plaintiff Melissa Martin resides in Berkeley, California. She was a member of the
9 University of California, Berkeley Cheerleading Spirit Group and STUNT team from 2017-2018.

10 9. Defendant the Regents of the University of California is a public entity that
11 includes and subsumes all University of California campuses and medical centers, including the
12 University of California, Berkeley.

13 10. Defendant USA Federation for Sport Cheering (also d/b/a USA Cheer) (“USA
14 Cheer”), is a non-profit organization headquartered in Memphis, Tennessee.

15 11. Defendant Lisa Keys is an individual residing in Oakdale, California. Defendant
16 Keys is and at all relevant times was Head Coach of the UC Berkeley Cheerleading and STUNT
17 team.

18 12. Defendant Jessica Chatto is an individual residing in Danville, California.
19 Defendant Chatto is and at all relevant times was the Assistant Coach of the UC Berkeley
20 Cheerleading and STUNT team and is the Executive Assistant and West Coast Director of
21 STUNT Operations for USA Cheer.

22 13. The true names of Defendants sued as Does 1-10 are unknown to Plaintiff and are
23 sued pursuant to California Code of Civil Procedure section 474.

24 14. Each of the fictitiously-named Doe Defendants is responsible in some manner for
25 the conduct alleged herein, including, without limitation, by way of conspiracy, aiding, abetting,
26 furnishing the means for, and/or acting in capacities that create agency, respondeat superior,
27 and/or predecessor- or successor-in-interest relationships with the other Defendants.

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1 15. Plaintiff may seek to amend these pleadings as the identities of the Doe
2 Defendants are discovered, and to add additional facts and/or legal theories.

3 **JURISDICTION AND VENUE**

4 16. This Court has jurisdiction over this matter because the Regents of the University
5 of California is a public entity of the State of California. All Defendants reside and/or do
6 business in California, and Defendants committed and continue to commit the unlawful acts
7 alleged herein in California.

8 17. Venue is proper in this Court pursuant to California Code of Civil Procedure
9 section 395.5 because: a) liability arises in this county; and b) one or more defendant maintains
10 their principal places of business in this county.

11 **FACTUAL ALLEGATIONS**

12 **UC Berkeley Cheerleading and STUNT Program**

13 18. Plaintiff Melissa Martin joined the UC Berkeley Cheerleading Spirit Group and its
14 competitive STUNT team in April 2017. The UC Berkeley Cheerleading Spirit Group is part of
15 the University’s Department of Intercollegiate Athletics, and STUNT refers to its competitive
16 intercollegiate cheer team.

17 19. USA Cheer is the National Governing Body for Sport Cheerleading, also known as
18 STUNT, in the United States. According to Defendant USA Cheer, STUNT is the fastest
19 growing female sport in the country.¹

20 20. “USA Cheer created STUNT as an opportunity for colleges, universities and high
21 schools to meet the strict Title IX requirements of a sport. With more than 500,000 high school
22 cheerleaders, STUNT expands participation opportunities for young women by providing
23 an avenue for female athletes to use their cheerleading background in a new format.”²

24 21. Both UC Berkeley and USA Cheer uphold their STUNT programs as sports that
25 are recognized in some capacity by the National Collegiate Athletic Association (“NCAA”). The
26 USA Cheer’s STUNT website boasts “12 NCAA Programs Under Athletics” and “27 NCAA

27 _____
28 ¹ *STUNT the Sport*, USA Cheer, <https://www.usacheer.org/stunt/stunthesport> (last visited Sept. 19, 2019).

² *Id.*

1 Club...Programs”.³ UC Berkeley’s website states that “Cal Cheerleading also participates in the
2 NCAA emerging sport, STUNT, in the Division 1 category.”⁴ But the NCAA does not include
3 competitive cheerleading in its list of sports, despite UC Berkeley and USA Cheer representations
4 suggesting otherwise.⁵ “This has important implications on injury rates and prevention, because
5 being classified as a sport affords valuable safety resources and regulations, such as qualified
6 coaches, adequate and well-maintained practice facilities, preseason conditioning, access to
7 certified athletic trainers and team physicians, and mandated preparticipation physical
8 examinations.”⁶

9 22. UC Berkeley Cheerleading and STUNT team members are denied basic health and
10 safety measures enjoyed by athletes on the very teams they support. For example, the
11 Cheerleading and STUNT team members are not allowed access to University athletic department
12 training equipment and supplies, forcing them to practice in unsafe conditions and denying them
13 the ability to train and condition most effectively. The coaches are not properly trained,
14 monitored or supervised, and there is no team physician or certified athletic trainer dedicated to
15 the team. Indeed, while undeniably dedicated athletes, the UC Berkeley Cheerleaders say the
16 University treats them like “half-letes”—something less than fully human and not deserving of
17 training facilities, appropriate protocols for injury or advanced medical treatment that are
18 mandatory for other student athletes.

19 UC Berkeley Cheerleaders Must Dedicate Themselves Fully to the Program

20 23. In addition to upholding rigorous academic standards required for all UC Berkeley
21 students, UC Berkeley Cheerleaders must adhere to physically and mentally demanding practice
22

23 ³ STUNT the Sport, <https://www.stunththesport.org/> (last visited Sept. 25, 2019).

24 ⁴ Cal Cheerleading, *University of California Cheerleading Tryout Information*, Cal Spirit (May 5, 2019),
<https://calspirit.berkeley.edu/cheer/auditions.php> (last visited September 22, 2019).

25 ⁵ In fact, in June 2019, the NCAA announced its decision to *not* recognize USA Cheer’s STUNT as an Emerging
26 Sport, which was instead awarded to the National Collegiate Acro and Tumbling Association (“NCATA”). *NCATA
Beats Out Stunt for Consideration of NCAA Emerging Sport Recognition*, Cheer Daily,
<https://www.cheerdaily.com/2019/06/ncata-beats-out-stunt-for-consideration-for-ncaa-emerging-sport-recognition/>
(last visited September 22, 2019).

27 ⁶ Council on Sports Medicine and Fitness, *Policy Statement, Cheerleading Injuries: Epidemiology and
28 Recommendations for Prevention*, 130 *American Association of Pediatrics* 966, 967 (2012),
<https://pediatrics.aappublications.org/content/pediatrics/early/2012/10/15/peds.2012-2480.full.pdf> (last visited on
Sept. 22, 2019).

1 and game schedules. The Cal Cheerleading Candidate Contract states that team members must be
2 available for all home and away football games, all post-season football games, all home men's
3 and women's basketball games and post-season games, including where applicable, over
4 Thanksgiving, Winter and Spring breaks, all practices year round, and all rallies, alumni and
5 community events. The UC Berkeley Cheerleaders are also required to perform at private events
6 and parties at the University's leisure.

7 24. The rules and regulations in the Cal Cheerleading Constitution, which Plaintiff and
8 other UC Berkeley Cheerleaders were required to sign, expressly apply to both the Cheerleading
9 and STUNT teams. Indeed, the Cheerleading and STUNT teams are coextensive with each other
10 in all respects, including team membership, required practice and event attendance. According to
11 the Cal Cheerleading Constitution, attendance at all practices, special events and games is
12 mandatory. Even when sick or injured, the UC Berkeley Cheerleaders must attend events unless
13 expressly excused by the coach: "Sick or injured team members are excused from participating
14 fully in practice but are expected to attend and contribute as an active member unless other
15 arrangements are made in advance with the Coach."

16 25. The UC Berkeley Cheerleading and STUNT team is and was at all relevant times
17 coached by USA Cheer-certified coaches, Head Coach Lisa Keys and Assistant Coach Jessica
18 Chatto. Assistant Coach Chatto is also Executive Assistant and Director of STUNT Operations
19 for USA Cheer.

20 26. The UC Berkeley Cheerleaders must follow directions of their coaches without
21 exception. The "Cal Cheerleading STUNT Agreement" Plaintiff was required to sign states:
22 "Defiance of authority toward advisor/coach" or "absence from any STUNT activity" may result
23 in suspension or other discipline, according to the agreement.

24 27. The "Cal Cheerleading Strike System" is the "main disciplinary system for Cal
25 Cheerleading." Strikes are given for missing or being late to any practice, game or special event.
26 Again, being excused from participating is at the sole discretion of the coaches or advisors.
27 According to the Strike System, the "Coach/Advisor will consider personal family issues, as well
28 as serious illness or injury on an individual basis. It is the discretion of the Coach/Advisor if

1 strikes will be awarded in these instances.” The document also makes clear that exhibiting what
2 may be interpreted as a disrespectful attitude towards a coach can alone be grounds for dismissal
3 from the team.

4 28. The Cal Cheerleading Constitution sets forth the following protocol for addressing
5 injuries: “1. alert coach & advisor. 2. Seek treatment at Tang Center or Emergency Room,
6 pending level of injury. 3. Meet with coach to discuss next steps. 4. Be cleared by sports
7 medicine before returning to action.” It does not include any concussion-specific protocol,
8 however. Nor were team members advised of whether sports medicine would notify coaches
9 directly when they are cleared to return in the event of an injury.

10 **Defendants Repeatedly Endangered Plaintiff’s Health and Safety**

11 29. On or around October 4, 2017, during her fall season with the team, Plaintiff was
12 kicked in the head while stunting as a base during practice. Assistant Coach Chatto witnessed the
13 injury. Plaintiff remained conscious but experienced mild head pain. She did not immediately
14 feel that she was in distress. Neither coach performed any evaluation for signs of concussion, and
15 Plaintiff continued with the practice.

16 30. That evening Plaintiff developed a severe headache, and additional symptoms
17 presented in the following days—nausea, dizziness, confusion, and sensitivity to light and sound.
18 On October 7, 2017, Plaintiff emailed Coach Keys about the incident to report her symptoms and
19 stated that she intended to go to the Tang Center, also known as University Health Services, for
20 further evaluation.

21 31. Coach Keys responded by saying she would call Plaintiff instead of responding by
22 email. On the phone, rather than expressing concern or instructing Plaintiff to go to University
23 Health Services, Coach Keys pressured Plaintiff to attend and cheer at the upcoming game.
24 Coach Keys told Plaintiff, “we really needed you in the game this weekend,” and asked Plaintiff
25 “can you do that for me?” At the end of the conversation, Coach Keys also instructed Plaintiff
26 not to go to the doctor.

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1 32. Plaintiff felt intimidated and silenced by Coach Keys, as her coaching style was
2 strict and authoritarian. And the contracts the University and USA Cheer required Plaintiff to
3 sign also required her to follow the coaches' instructions.

4 33. Unfortunately, Plaintiff's symptoms persisted. On October 9, 2017, she visited
5 University Health Services (despite Coach Keys' earlier instructions) reporting severe head injury
6 symptoms. The doctor confirmed that Plaintiff had suffered a concussion. The doctor instructed
7 her to rest and return to physical activity in a "step-up" fashion. Plaintiff was also referred to the
8 specialty concussion clinic at that time.

9 34. On the following day, Plaintiff relayed to Coach Keys the doctor's instructions to
10 rest and avoid physical activity. Coach Keys did not agree that Plaintiff should rest or avoid
11 physical activity. On the contrary, Plaintiff was still required to attend practices and Coach Keys
12 instructed her to participate in the upcoming football game on October 13, 2017.

13 35. Early in the afternoon of October 13, 2017, prior to that evening's football game,
14 Plaintiff saw the University's concussion specialist, Kent Scheff, M.D. He instructed Plaintiff to
15 rest and avoid physical activity until she was symptom-free for twenty-four hours. Plaintiff
16 informed Dr. Scheff that she was being required by Coach Keys to perform in the half-time
17 performance that night, despite continued concussion symptoms. Rather than intervening and
18 forbidding Plaintiff from participating, however, Dr. Scheff was dismissive and told Plaintiff it
19 was "up to [her]." Dr. Scheff did not contact Coach Keys or Assistant Coach Chatto to instruct
20 that Plaintiff was not allowed to cheer, nor did he advise Plaintiff of the seriousness of her
21 condition. In other words, both the University concussion specialist and Plaintiff's coaches failed
22 to prevent Plaintiff from participating in these cheer activities when she was not physically fit to
23 do so. Again, intimidated by Coach Keys, Plaintiff attended the football game that evening. At
24 the instruction of her coaches, Plaintiff was required to attend the game and participate in the
25 half-time performance.

26 36. On November 1, 2017, Plaintiff told her coaches that she did not think she was
27 medically cleared to cheer. Nonetheless, on November 4, 2017, Coach Keys included Plaintiff in
28 the line-up to cheer at another football game, unreasonably increasing Plaintiff's risk of injury.

1 At the instruction of her coaches, Plaintiff attended and cheered in the football game that evening,
2 during which time she was kicked in the head *again* while stunting. Plaintiff was in immediate
3 distress. “I’m not ok!” Plaintiff exclaimed multiple times to both Coach Keys and Assistant
4 Coach Chatto, as she cried and began hyperventilating. Coach Keys initially instructed Plaintiff
5 to just sit out the first quarter of the game. About ten minutes later, Coach Keys instructed
6 Plaintiff—who had just been concussed for the second time in one month—to walk to University
7 Health Services, located over a mile away, alone. When Plaintiff arrived at the student urgent
8 care—in pain, emotionally distraught and physically exhausted—the University doctor confirmed
9 a second concussion.

10 37. Despite Plaintiff’s persisting symptoms and medical treatment, Coach Keys made
11 clear that Plaintiff was expected to, at minimum, attend rallies, practices and games. Even when
12 not cheering, this requirement exposed Plaintiff to loud noises and bright lights, which further
13 heightened her concussion symptoms. Frightened of the consequences of disobeying Coach
14 Keys, Plaintiff resorted to communicating her further concerns directly to the athletic department
15 on November 15, 2017. The University athletic department then directly informed Coach Keys
16 that Plaintiff would not be able to attend rallies or games. But Coach Keys still required Plaintiff
17 to attend practices, and on more than one occasion Coach Keys instructed Plaintiff to physically
18 participate during practice, knowing that doing so was endangering her health and safety.

19 38. Between November 2017 and January 2018, Plaintiff attended multiple
20 appointments with concussion and vision specialists. In addition to headaches, nausea, confusion
21 and light sensitivity, Plaintiff’s concussion was also impacting her vision, which inhibited her
22 ability to study or read.

23 39. At a follow-up appointment on January 11, 2018, the University concussion
24 specialist told Plaintiff that she could cheer at events but could not tumble or stunt, and he sent a
25 letter to that effect to Plaintiff’s coaches. Despite the doctor’s instructions, Coach Keys
26 instructed Plaintiff to front spot a stunt during practice, knowing that Plaintiff had not been
27 medically cleared to stunt.

28

1 40. On February 2, 2018, University concussion specialist, Dr. Scheff, cleared Plaintiff
2 to return to all cheerleading activities, even though Plaintiff was not yet symptom-free. Such
3 clearance was directly contrary to standard concussion protocol.

4 41. The following day, Plaintiff cheered at a basketball game and was hit in the head
5 again during the warmup. Plaintiff cheered at one more basketball game before being overcome
6 by her concussion symptoms. Because she believed it was not possible for her to care for her
7 brain injury and comply with coaches' instructions as required, Plaintiff resigned from the cheer
8 and STUNT team on February 19, 2018.

9 42. Plaintiff continued experiencing headaches, nausea and light sensitivity, but hoped
10 with rest that these symptoms would subside. She saw a doctor again when the symptoms
11 became unbearable. Her symptoms persisted throughout the summer and into the fall.

12 43. Plaintiff attempted to enroll in school again in the fall of 2018. However, due to
13 her ongoing and unbearable concussion symptoms, Plaintiff was forced to withdraw from UC
14 Berkeley and take a medical leave of absence on September 10, 2018. The University refunded
15 only half of her tuition.

16 44. Throughout her leave of absence, Plaintiff continued to seek treatment for her
17 concussion. Plaintiff's injuries and symptoms continued to radically impact her daily life. She
18 has been diagnosed with post-concussion syndrome with associated disorder of binocular vision.
19 Her vision problems make it difficult for her to use both eyes together and maintain a single
20 image for reading. She endured months of therapy, and continues to experience headaches,
21 nausea, confusion and light sensitivity. She is in constant pain and suffers from depression and
22 anxiety over her inability to return to her normal life.

23 **Defendants Could Have Prevented Plaintiff's Injuries, But Unreasonably Failed to Act.**

24 45. Defendants' actions, lack of action and negligence are inexcusable. Plaintiff's
25 resulting injuries were both foreseeable and preventable.

26 46. All of the Defendants knew or should have known the dangers associated with
27 concussions, as well as the rest, treatment and medical care a concussed athlete requires. All
28

1 Defendants knew or should have known the dangers associated with stunting and cheerleading
2 and that a concussed athlete should not be unnecessarily exposed to those dangers.

3 47. Competitive cheer results in the largest number of catastrophic injuries among
4 women and girls of any sport. A 2012 report and policy statement by the American Academy of
5 Pediatrics (“AAP”), reports that cheerleading “accounted for 65.0 [percent] of all direct
6 catastrophic injuries to girl athletes at the high school level and 70.8 [percent] at the college
7 level.”⁷

8 48. Plaintiff was injured while stunting as a base. Consistent with Plaintiff’s
9 experience, the AAP report indicates that “the most common mechanisms for injury are
10 basing/spotting (23%)...Stunting accounts for... 96% of concussions and closed-head injuries.”⁸

11 49. The Defendants also knew or should have known the appropriate actions necessary
12 to prevent further injury to Plaintiff, but they each failed to take such action without justification.
13 The University has a document called the Cal Sports Concussion Management Plan, but it was
14 never implemented for the Cheerleading and STUNT athletic program, and its basic tenants of
15 safety were blatantly violated on multiple occasions here. Similarly, USA Cheer has Guidelines
16 for the Medical Management of Concussions, but these guidelines were also not enforced and
17 repeatedly violated. Coach Keys and Assistant Coach Chatto also knew or should have known to
18 follow these standard protocols for the safety of their team members, but they failed to do so.

19 50. Both the University management plan and USA Cheer guidelines supposedly
20 require significant symptom-free time and medical clearance before being allowed to return to
21 activity. But Defendants allowed, indeed, encouraged and pressured Plaintiff to return to play
22 when she was still symptomatic. The University’s plan, if implemented, also calls for *daily*
23 follow-up using a symptom checklist, but this was never done. It also specifically says that
24 symptomatic student athletes should not transport themselves, but Plaintiff was forced to walk by
25 herself for over a mile to receive medical attention after her second concussion in a month. The
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27 _____
28 ⁷ Council on Sports Medicine and Fitness, *supra* note 6, at 968.

⁸ *Id* at 967.

1 list of violations goes on. In short, Defendants could have prevented Plaintiff's injuries, but
2 standard concussion policies and protocols were never implemented or enforced.

3 **Defendants Continue to Refuse to Take Remedial Action**

4 51. Although she was in great discomfort and pain, Plaintiff continued to
5 communicate with University representatives about her medical treatment, insurance, and
6 improving the University's concussion protocol and practices.

7 52. Plaintiff tried to work collaboratively with the University on multiple occasions,
8 requesting that it make systemic changes to improve student health and safety in the area of
9 concussion prevention, education and care. She made a similar request of USA Cheer. The
10 University told Plaintiff it would look into the changes she requested, including coach and team
11 member training, formalizing a review of coaches and teams, establishing new policies, and better
12 educating team members on the resources available to them when injured. However, on
13 information and belief, Defendants have taken no action to improve concussion safety in their
14 Cheerleading and STUNT program.

15 **CAUSES OF ACTION**

16 **FIRST CLAIM FOR RELIEF**

17 **NEGLIGENCE**

18 **(Against all Defendants)**

19 53. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
20 this Complaint as if the same were set forth at length herein.

21 54. Defendants each and collectively owed a duty of care to develop, implement and
22 enforce a reasonable concussion protocol, and to take reasonable steps to avoid unnecessary
23 injury to Plaintiff.

24 55. Defendants breached their duty of care by failing to implement and enforce
25 reasonable concussion protocols. Defendants further breached their duty of care by requiring and
26 allowing Plaintiff to return to play when she was not medically cleared and symptom-free.
27 Defendants knew or should have known that these failures could likely result in unnecessary and
28

1 serious injury to Plaintiff. But Defendants, each of them, acted in utter disregard for Plaintiff's
2 health and well-being.

3 56. Defendants' conduct was an extreme departure from the ordinary standard of
4 conduct for the detection, treatment and prevention of concussions. As evidenced above, the
5 Defendants knew or should have known that, at minimum, concussed athletes require rest and
6 must not return to intense activity until they are symptom-free. Their failure to bench Plaintiff
7 from stunting while experiencing concussion symptoms is just one extreme departure from the
8 ordinary standard of care.

9 57. Defendants' actions and inactions proximately caused Plaintiff's injuries. Had
10 Defendants implemented and enforced appropriate concussion policies and practices, Plaintiff
11 would not have suffered multiple concussions and successive head injuries.

12 58. As a result of Defendants' actions, Plaintiff suffered serious, potentially permanent
13 bodily injuries, severe emotional distress, loss of income, loss of tuition, pain and suffering and
14 out of pocket expenses. Defendants are jointly and severally liable for these harms.

15 **SECOND CLAIM FOR RELIEF**

16 **NEGLIGENCE SUPERVISION, HIRING OR RETENTION**

17 **(Against the University and USA Cheer Defendants)**

18 59. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
19 this Complaint as if the same were set forth herein.

20 60. The University employs or employed defendants Keys and Chotta as Head Coach
21 and Assistant Coach of the UC Berkeley Cheerleading and STUNT team, respectively.

22 61. USA Cheer certified Keys and Chotta as qualified cheerleading coaches and
23 employs Chotta as its Executive Assistant and West Coast Director of STUNT Operations for
24 USA Cheer.

25 62. Keys and Chotta were and are unfit to coach the Cheerleading and STUNT team.
26 A significant part of their job as coaches is to supervise athletes without placing them in
27 unreasonable and avoidable danger. They are also required to be knowledgeable on concussion
28 and sports safety and take action to ensure concussions are properly addressed.

1 69. Title III of the California Education Code applies to post-secondary education. As
2 part of the Student Athlete Bill of Rights, section 67453(b) requires that “an athletic program
3 shall adopt and implement guidelines to prevent, assess, and treat sports-related concussions and
4 dehydration.” Educ. Code § 67453(b). An “athletic program” is any intercollegiate athletic
5 program at any institution of higher education, including any University of California campus.
6 Educ. Code §§ 67451(b), (d). Thus, the UC Berkeley Cheerleading and STUNT team is an
7 “athletic program” under the code.

8 70. USA Cheer is an “athletic association” under the code, which is defined as an
9 organization that is responsible for governing an intercollegiate athletic program. Educ. Code §
10 67451(a). Plaintiff was a member of the UC Berkeley intercollegiate STUNT team, which is
11 governed by USA Cheer.

12 71. While Plaintiff meets the definition of “student athlete” under section 67451(f),
13 section 67453(b) does not limit application of the concussion guidelines that must be adopted and
14 implemented to student athletes.

15 72. The University’s Cheerleading and STUNT program failed to adopt and
16 implement any guidelines to prevent, assess, and treat sports-related concussions as required. As
17 alleged, the Cheerleading and STUNT program did not have a concussion protocol. Both USA
18 Cheer and the University are aware of what a reasonable concussion protocol entails. The
19 University has a document called the Cal Sports Concussion Management Plan, but no part of the
20 plan was ever adopted or implemented for the Cheerleading and STUNT athletic program.
21 Similarly, USA Cheer has published concussion guidelines for cheerleading, but has not required
22 or ensured that the programs it governs adopt and implement the guidelines, even when failure to
23 do so violates state law.

24 73. If the University or USA Cheer had adopted and implemented guidelines to
25 prevent, assess, and treat sports-related concussions, Plaintiff would not have suffered successive
26 concussions when she was not symptom-free. For instance, Plaintiff would not have been
27 permitted to return to play after reporting symptoms consistent with concussion; she would have
28 received daily follow-up using a symptom checklist; she would not have been forced to transport

1 herself by walking to University Health Services after her second concussion; she would have
2 been promptly evaluated by a team doctor; she would have been educated regarding the
3 importance of reporting all concussion symptoms; and she would have received post-injury
4 neurological testing, among other requirements.

5 74. Plaintiff contacted the University and USA Cheer seeking reform that would
6 include guidelines to prevent, assess, and treat sports-related concussions for the Cheerleading
7 and STUNT program, and other programs governed by the Education Code. On information and
8 belief, neither the University nor USA Cheer has taken any action in response to Plaintiff's
9 complaints and demands.

10 75. The University's and USA Cheer's failures to adopt and implement concussion
11 guidelines for the Cheerleading and STUNT program caused harm to Plaintiff, including serious,
12 potentially permanent bodily injury and emotional distress, loss of income, loss of tuition, and
13 out-of-pocket expenses for which the University and USA Cheer are liable for failing to comply
14 with the Education Code.

15 **FOURTH CLAIM FOR RELIEF**

16 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW**

17 **Business and Professions Code § 17200, et seq.**

18 **Unfair Competition Law ("UCL")**

19 **(Against Defendant USA Cheer and the Individual Defendants)**

20 76. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
21 this Complaint as if the same were set forth herein.

22 77. USA Cheer and the Individual Defendants are each a "person" as defined under
23 California Business & Professions Code § 17201.

24 78. The UCL prohibits all conduct that is unlawful, unfair or fraudulent.

25 79. Plaintiff was charged a STUNT association fee pursuant to the STUNT Agreement
26 with USA Cheer she signed.

27 80. USA Cheer represents on its website that its certified coaches are trained in sports
28 safety and are competent. Its failure to ensure its certified coaches and the University STUNT

1 program it governs would implement and enforce responsible protocols to identify and treat
2 concussions is unlawful, unfair or fraudulent in violation of the UCL.

3 81. USA Cheer has concussion guidelines but did not require or confirm that they be
4 provided to the student athletes or adhered to by the coaches. These failures also violate
5 California law. As noted above, the Student Athlete Bill of Rights, requires that “an athletic
6 program shall adopt and implement guidelines to prevent, assess, and treat sports-related
7 concussions and dehydration.” Educ. Code § 67453(b).

8 82. As a result of these defendants’ unlawful, fraudulent or unfair acts, Plaintiff
9 suffered an injury in fact and lost money. USA Cheer has reaped and continues to reap benefits
10 of its unlawful, unfair or fraudulent conduct.

11 83. As noted above, prior to filing her lawsuit, Plaintiff sent USA Cheer executives a
12 letter outlining her complaints and asking USA Cheer to take remedial measure including
13 implementing strict guidelines and protocols, training and education, reporting requirements and
14 discipline for coaches who fail to adhere to the polices. USA Cheer ignored Plaintiff’s request,
15 however.

16 84. Accordingly, Plaintiff is entitled to injunctive and equitable relief to remedy USA
17 Cheers’ unlawful conduct, as well as restitution.

18 **FIFTH CLAIM FOR RELIEF**

19 **NEGLIGENCE PER SE**

20 **(Against All Defendants)**

21 85. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
22 this Complaint as if the same were set forth herein.

23 86. The Education Code requires that athletic programs such as the UC Berkeley
24 Cheerleading and STUNT program “adopt and implement guidelines to prevent, assess, and treat
25 sports-related concussions.” Educ. Code § 67453(b). As is clear from the face of the statute, the
26 purpose of this statute is to prevent, assess, and treat sports-related concussions to prevent
27 unnecessary head injuries. Defendants, each of them, failed to adopt and implement concussion
28

1 guidelines for the University Cheerleading and STUNT program, which resulted in Plaintiff
2 suffering unnecessary, successive concussions.

3 87. Defendants' violation of law proximately caused the injuries to Plaintiff alleged
4 herein. As a result, Defendants were negligent per se and are jointly and severally liable for the
5 bodily injuries, pain and suffering, emotional distress, loss of income, loss of tuition and out of
6 pocket expenses Plaintiff suffered as a result of Defendants' conduct.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays that this Court:

9 a. Issue a permanent injunction preventing Defendants from violating the
10 California Education Code's requirement that they adopt and implement guidelines to prevent,
11 assess, and treat sports-related concussions in their intercollegiate athletic programs, including
12 Cheerleading and STUNT teams at all University of California campuses and all STUNT
13 programs at universities and colleges governed by the California Education Code;

14 b. Order the University and USA Cheer to adopt and implement effective
15 guidelines to prevent, assess, and treat sports-related concussions in their intercollegiate athletic
16 programs, in consultation with physicians specializing in concussions, including Cheerleading
17 and STUNT teams at all University of California campuses and all STUNT programs governed
18 by the California Education Code and USA Cheer;

19 c. Order that this Court retain jurisdiction of this action until such time as the
20 Court is satisfied Defendants have remedied the conduct complained of herein and is determined
21 to be in full compliance with the law;

22 d. Award of damages for all economic losses suffered by Plaintiff, including
23 but not limited to out-of-pocket expenses, lost income and compensation, and lost tuition, with
24 pre-judgment and post-judgment interest in amounts to be determined at trial;

25 e. Award of noneconomic damages suffered by Plaintiff, including pain and
26 suffering and emotional distress in an amount to be determined at trial;

27 f. Award punitive damages in an amount to be determined at trial;

28 g. Award litigation costs and expenses, including, but not limited to,

1 reasonable attorneys' fees pursuant to California Civil Code § 1021.5;

2 h. Award any other appropriate equitable relief to Plaintiff;

3 i. Award any other relief as this Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff hereby demands a jury trial in this action for all claims so triable.

6
7 DATE: October 2, 2019

ANDRUS ANDERSON LLP

8 By: /s/ Jennie Lee Anderson
9 Jennie Lee Anderson

Jennie Lee Anderson (SBN 203586)

10 jennie@andrusanderson.com

Lori E. Andrus (SBN 205816)

11 lori@andrusanderson.com

12 ANDRUS ANDERSON LLP

13 155 Montgomery Street, Suite 900

San Francisco, CA 94104

14 Telephone: (415) 986-1400

Facsimile: (415) 986-1474

15 *Attorneys for Plaintiff Melissa Martin*