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ENDORSED
FILED
ALAMEDA COUNTY

MAY 16 2013

CLERK OF THE SUPERIOR COURT
By **J. DE JESUS** Deputy

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF ALAMEDA

11
12 G. WILLIAM HUNTER,

13 Plaintiff,

14 v.

15 DEREK FISHER, as President of the Executive)
Committee of the National Basketball Players)
16 Association and in his individual capacity,)
JAMIE WIOR, THE NATIONAL)
17 BASKETBALL PLAYERS ASSOCIATION, a)
Delaware corporation, and DOES 1 THROUGH)
18 10, inclusive,)

19 Defendants.)
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Case No.: **R G 1 3 6 7 9 7 3 6**

Date Filed: May 16, 2013

**COMPLAINT FOR COMPENSATORY,
ASSUMED, AND PUNITIVE DAMAGES:**

- 1) **BREACH OF EXPRESS CONTRACT;**
- 2) **BREACH OF IMPLIED-IN-FACT CONTRACT;**
- 3) **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 4) **INDUCING BREACH OF CONTRACT;**
- 5) **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;**
- 6) **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;**
- 7) **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;**
- 8) **INTENTIONAL MISREPRESENTATION;**
- 9) **CONCEALMENT;**
- 10) **NEGLIGENT MISREPRESENTATION;**
- 11) **DEFAMATION PER SE; and**
- 12) **DEFAMATION PER QUOD.**

JURY TRIAL DEMANDED

1 Plaintiff G. William "Billy" Hunter ("Hunter") alleges as follows:

2 **NATURE OF THE ACTION**

3 1. Billy Hunter served as the Executive Director of the National Basketball Players
4 Association (the "NBPA" or the "Union") for seventeen years, guiding the Union through three
5 collective bargaining agreements and creating a legacy of financial prosperity for the Union itself
6 and for its members. During his tenure as Executive Director, Hunter turned the Union's \$5 million
7 deficit into an \$80 million surplus, tripled the size of the Union's charitable foundation, and created
8 lasting programs designed to ease players' transitions to their post-playing careers. Throughout his
9 service, Hunter led the Union for the benefit of *all* players, from the superstars to mid-level players
10 to the last man on the bench.

11 2. Due to Hunter's success in the 2005 collective bargaining process, going into the
12 2010-2011 season, National Basketball Association ("NBA") players had the highest average salary
13 of the four major sports leagues in the United States. From the perspective of some of the NBA
14 team owners, however, Hunter had been too successful in advancing the players' interests. These
15 owners ("Certain Owners") determined to take back a share of NBA revenues from the players.
16 When the prior collective bargaining agreement ("CBA") expired on June 30, 2011, the NBA
17 locked out the players, resulting in the first NBA work stoppage since 1998. Surprisingly, these
18 Certain Owners received aid in their strategy from an unlikely source, the President of the NBPA –
19 Derek Fisher.

20 3. In 2011, Fisher was nearing the end of his playing career. He was in the second year
21 of a three-year contract that could have been his last and was under great pressure to secure a soft
22 landing for himself as his career neared its end. Fisher knew that the key to finding a well-paying
23 position with the NBA or a team's front office was maintaining good relationships with the NBA
24 and team owners. Also, each game cancelled during the lockout represented income that Fisher
25 would never realize and would be unlikely to recover because his remaining playing career was
26 limited. For Fisher, the lockout could not end soon enough. For similar reasons, some of the
27 highest compensated NBA players ("Certain Players"), and their agents, shared Fisher's sentiment
that the lockout must end.

1 4. Jamie Wior was Fisher's publicist and business manager. In 2011, Wior harbored
2 aspirations to assume a position of responsibility within the NBPA. She set out to craft a new
3 public persona for Fisher, taking control of his media appearances and public statements and
4 encouraging him to overreach his authority by, for example, publicly speaking on behalf of the
5 NBPA and disseminating messages to the players even when it was not appropriate for him to do
6 so. Wior also inserted herself into the NBPA's internal affairs and even into NBA players-only
7 meetings.

8 5. During the negotiations over the 2011 CBA, Hunter took an aggressive position,
9 refusing to give players' income back to the owners, and rallied player support around the Union's
10 position. Unbeknownst to Hunter, however, Fisher was secretly negotiating with the Certain
11 Owners – on his own and without any authority – to settle the negotiations on terms less favorable
12 to the players. Fisher was supported in this effort by Wior. When Hunter learned that Fisher was
13 negotiating for his personal benefit and against the bulk of the NBA players' interests, he
14 confronted Fisher about his secret dealings with the Certain Owners. Fisher denied the truth, both
15 to Hunter's face and subsequently in the press.

16 6. The NBPA's Constitution and By-Laws vest in Hunter the sole right to conduct
17 collective bargaining negotiations on behalf of the Union. Fisher's interference in the negotiations
18 exceeded his authority and undermined the Union's negotiating power. Wior's interference was
19 completely without authority or basis. Ultimately, the players accepted a new CBA that left them
20 with a greatly reduced share of the NBA's revenues.

21 7. As alleged below in detail, in the wake of the 2011 CBA negotiations, Fisher and
22 Wior waged a personal campaign to displace Hunter as the Union's Executive Director, including
23 denying that Fisher had ever had authority to sign Hunter's employment contract and instigating an
24 investigation that eventually was used as a pretext by Fisher and the NBPA to terminate Hunter
25 without cause. Fisher and Wior were intimately involved in the events leading up to Hunter's
26 termination. Indeed, on the very day Hunter was unfairly placed on administrative leave, Wior
27 assumed a seat of power in the NBPA's New York headquarters without official title or role but
28 with Fisher's blessing. Hunter's seventeen years of service to the Union were ignored and he was

1 summarily terminated by Fisher and the NBPA and barred from his office without even the
2 opportunity to collect pictures of his grandchildren.

3 8. By this action, Hunter seeks to hold Fisher, Wior, and the NBPA responsible for
4 their wrongdoing and obtain compensation for the injuries they have caused him.

5 **THE PARTIES**

6 9. Plaintiff Billy Hunter is a resident of Oakland, California in Alameda County.
7 Between July 15, 1996 and February 17, 2013, Hunter served as the Executive Director of the
8 National Basketball Players Association under a written employment contract.

9 10. Defendant Derek Fisher ("Fisher") is a professional basketball player who currently
10 plays for the Oklahoma City Thunder of the NBA under a one-year contract. Fisher has served on
11 the NBPA Executive Committee for more than nine years; he currently serves and at all times
12 relevant to the claims alleged herein has served as the President of the NBPA. As of the time of the
13 filing of this Complaint, Fisher is a resident of Oklahoma.

14 11. Defendant Jamie Wior ("Wior") is Fisher's publicist and business manager. As of
15 the time of the filing of this Complaint, Wior is a resident of California.

16 12. Defendant NBPA is a Delaware non-profit corporation with its principal place of
17 business in New York, New York. The NBPA is the official certified union for current professional
18 basketball players in the NBA. Among other responsibilities, the NBPA periodically negotiates a
19 collective bargaining agreement with NBA team owners on behalf of its player members. The
20 NBPA was doing business in Alameda County, California at all times relevant to this action. The
21 NBPA has not filed a statement designating a principal office in California.

22 13. Hunter is ignorant of the true names and/or capacities of the defendants sued under
23 the fictitious names of Does 1-10, inclusive, except that Hunter is informed and believes, and on
24 that basis alleges that the damages alleged herein were proximately caused by these defendants'
25 wrongful acts. Hunter therefore sues these defendants by such fictitious names and Hunter will
26 amend this complaint to allege their true names and capacities when ascertained.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure Section 88, in that this is an unlimited civil action with an amount in controversy exceeding \$25,000.

15. Venue is proper in this Court pursuant to California Code of Civil Procedure Section 395(a), in that Fisher's and the NBPA's obligations under the employment contract between Hunter and those Defendants were to be performed in Alameda County, California, where the NBA Golden State Warriors are based and where Hunter regularly performed his responsibilities as Executive Director, and the injury to Hunter from the Defendants' wrongful acts and/or negligence occurred in Alameda County, California.

FACTUAL ALLEGATIONS

Plaintiff Billy Hunter

16. Billy Hunter's personal and professional background uniquely prepared him to lead the NBPA. He was raised by his grandparents in a poor neighborhood of Cherry Hill, New Jersey. He grew up in an era when segregation still limited his opportunities, but not his aspirations. Hunter played baseball in his youth and was on the roster of one of the first integrated teams to play in the Little League World Series. During the playoff games Hunter was not allowed to lodge with his teammates in public accommodations. He received death threats before playing in a regional playoff game.

17. Hunter excelled in four sports in high school, and ultimately chose to play college football for Syracuse University, where he served as the captain of the football team his senior year. With the memories of his Little League days as an impetus, Hunter led a petition signed by every black athlete at Syracuse stating that they would boycott playing against colleges in the South that maintained segregated seating in sports facilities. After Syracuse, Hunter went on to an NFL career as a defensive back/wide receiver for the Washington Redskins and Miami Dolphins.

18. After his football career, encouraged by the prominent lawyer Edward Bennett Williams, Hunter enrolled in and received a degree from Howard University School of Law. He later attended the University of California at Berkeley's Boalt Hall School of Law, where he

1 received his Master of Laws degree. He rose to prominence in the Bay Area, ascending from a
2 prosecutor's position in the Alameda County District Attorney's Office to the assistant chief in the
3 San Francisco District Attorney's Office.

4 19. In 1977, President Jimmy Carter appointed Hunter as the United States Attorney for
5 the Northern District of California. He was one of the youngest lawyers to ever hold the position.
6 During his tenure, Hunter prosecuted a number of high-profile cases such as the first major federal
7 case against the Hells Angels. Hunter visited Jonestown, Guyana following the 1978 assassination
8 of U.S. Representative Leo Ryan by followers of Jim Jones, leader of the People's Temple cult, and
9 prosecuted the surviving members of the cult who had aided Jim Jones in orchestrating the mass
10 suicide of more than 900 people in Jonestown that same year. Hunter also visited the imprisoned
11 Patty Hearst, the granddaughter of newspaper publisher William Randolph Hearst, who was first
12 kidnapped by the Symbionese Liberation Army and later was thought to have collaborated with the
13 militant group, and recommended to President Carter that her sentence be commuted.

14 20. After leaving government service, Hunter went into private law practice and worked
15 on a wide variety of matters.

16 **Billy Hunter's Employment by the NBPA and Extension of the Term of His Contract by Fisher**

17 21. After an executive search, the NBPA named Hunter as Executive Director in 1996.

18 22. Effective July 15, 1996, the NBPA and Hunter entered into a written contract of
19 employment ("Employment Contract") whereby Hunter was employed as the NBPA's Executive
20 Director. The Employment Contract provided in relevant part that the NBPA "may extend this
21 contract for an additional three-year term" (Emphasis added.) The appointment of Hunter as
22 Executive Director and the terms of the Employment Contract were approved by two-thirds (2/3) of
23 the combined total of all NBPA Board of Player Representatives and NBPA Executive Committee
24 members. A true and correct copy of the Employment Contract is attached hereto as Exhibit A and
25 incorporated herein by reference.

26 23. The Employment Contract states that Hunter's duties as Executive Director are
27 defined by the Constitution and By-Laws of the NBPA as adopted on June 22, 1990, and thereafter
28 amended.

1 24. On July 15, 1999, the NBPA and Hunter extended Hunter's term of employment in
2 writing by an additional seven years, to July 14, 2006 ("1999 Extension"). The 1999 Extension
3 recited in relevant part that the NBPA had "hired [Hunter] as the [NBPA's] executive director (the
4 'Executive Director') pursuant to that certain Employment Contract, dated July 15, 1996"
5 The 1999 Extension further provided that the NBPA "may extend this Agreement for an additional
6 two-year term" A true and correct copy of the 1999 Extension is attached hereto as Exhibit B
7 and incorporated herein by reference.

8 25. The 1999 Extension was signed by the then-Union First Vice President on behalf of
9 the NBPA. By the terms of that instrument, the then-Union First Vice President expressly
10 represented and warranted that he had the authority to sign the 1999 Extension on behalf of the
11 NBPA, and to bind the NBPA to the terms of the agreement.

12 26. In March 2005 and effective July 1, 2005, the NBPA and Hunter extended Hunter's
13 term of employment in writing by an additional five years, to July 30, 2011 ("2005 Extension").
14 The 2005 Extension recited in relevant part that the NBPA "hereby retains and extends the contract
15 of employment of G. William Hunter as the Executive Director for the NBPA" The 2005
16 Extension further provided that the NBPA "may extend this Agreement for an additional one-year
17 term" A true and correct copy of the 2005 Extension is attached hereto as Exhibit C and
18 incorporated herein by reference.

19 27. The 2005 Extension was signed by the then-Union President on behalf of the NBPA.
20 By the terms of that instrument, the then-Union President expressly represented and warranted that
21 he had the authority to sign the 2005 Extension on behalf of the NBPA, and to bind the NBPA to
22 the terms of the agreement.

23 28. In June 2010 and effective July 1, 2011, the NBPA and Fisher, on the one hand, and
24 Hunter, on the other, extended Hunter's term of employment in writing by an additional four years,
25 to June 30, 2015 ("2010 Extension"). The parties to the contract were defined as "G. William
26 Hunter, sometimes referred to hereinafter as 'Employee' and/or Executive Director for the National
27 Basketball Players Association ('NBPA') and Derek Fisher as President of the Executive
28 Committee of the NBPA, referred to hereinafter as 'Employer' and/or Executive Committee."

1 29. The 2010 Extension recited in relevant part that Fisher/the Executive Committee
2 “hereby retains and extends the contract of employment of G. William Hunter as the Executive
3 Director for the NBPA” A true and correct copy of the 2010 Extension is attached hereto as
4 Exhibit D and incorporated herein by reference.

5 30. The 2010 Extension further provided that the NBPA may “extend this Agreement for
6 an additional one-year term . . .” and that this option was exercisable by Hunter at his sole
7 discretion. Hunter has given notice to the NBPA in writing of his intention to exercise this option.

8 31. The 2010 Extension was signed by Fisher as Employer and as President of the
9 NBPA. By the terms of that instrument, Fisher expressly represented and warranted that he had the
10 authority to sign the 2010 Extension on behalf of the NBPA, and to bind the NBPA to the terms of
11 the agreement.

12 **Billy Hunter’s Exemplary Performance as Executive Director of the NBPA**

13 32. Hunter took over as Executive Director in 1996 with an agenda that included
14 strengthening Union solidarity, improving the Union’s negotiating position with the owners, and
15 bettering the position of the Union’s mid-range salary players. He was guided by the principle that
16 the Union existed to protect the rights of *all* NBA players – not just the top one percent, the
17 “superstars.”

18 33. When Hunter came on board, the NBPA was a weak union, marked by internal
19 dissension and inability to effectively represent the interests of the players. As noted in the 1999
20 Extension, the NBPA was fractionalized and its player members lacked solidarity. Many of the
21 players were inactive in and/or disgruntled with the Union, and believed the Union was unable to
22 negotiate effectively with the NBA owners. During Hunter’s tenure, the Union prospered.

23 34. Only three years after Hunter was hired, the 1999 Extension lauded his “excellent
24 performance” and stated that he had performed “in an outstanding manner and significantly
25 improved the [Union] in many ways by, among other things, solidifying the [Union’s] office with
26 key and competent staff, unifying the [Union], retiring the [Union’s] debt, [and] operating the
27 [Union] profitably on a consistent basis.”

1 35. The Union today is substantially stronger than it was when Hunter took the reins.
2 Under Hunter's stewardship, the Union negotiated three collective bargaining agreements and
3 players' salaries doubled, making NBA players the highest paid team athletes in the world. The
4 players' collective salaries have increased by more than \$1 billion and group licensing revenues
5 increased to approximately \$30 million per year.

6 36. Hunter also turned the Union's finances around. At the time of his appointment as
7 Executive Director, the Union had debt of approximately \$5 million. During his tenure, net Union
8 assets grew to more than \$80 million. The Union was able to achieve those results despite the fact
9 that membership dues have not gone up for the last eleven years and during a time of deep
10 economic recession.

11 37. Also due to Hunter's efforts, the NBPA moved from being a renter under an onerous
12 lease in midtown Manhattan to owning the valuable Harlem office building that the Union now calls
13 home, further strengthening the Union's financial security.

14 38. Attending to the financial, medical, and other needs of retired NBA players was also
15 high on Hunter's list of priorities. Today, through Hunter's efforts, recently retired players have
16 access to premier pension and benefit plans and continuing educational opportunities. Under
17 Hunter's leadership, the NBPA:

- 18 a. Began the "Sportscaster U. Broadcasting Program" in conjunction with
19 Syracuse University, which gives players the opportunity to develop the skills
20 and experience necessary to prepare for a career in broadcasting. Several
21 alumni of the program are now working in broadcasting;
- 22 b. Expanded and strengthened the Union's Defined Benefit Pension Plan and
23 Group Licensing Program;
- 24 c. Created a 401(k) Pension Plan, a Supplemental Health Plan ("Super Cobra"),
25 and a Bridge Program designed to provide income to retired NBA players
26 between the ages of 30-50;

- 1 d. Created access to a variety of enrichment programs, such as the NBPA Top
2 100 Coaching Clinic, NBPA Executive Training Program, NBPA Financial
3 Management Program, and NBPA Continuing Education Program; and
4 e. Mandated that players attend financial awareness seminars to educate players
5 on saving and investing to ensure financial security when their playing
6 careers ended.

7 39. It was also important to Hunter that he personally interact with the players. During
8 his seventeen years of service to the NBPA, Hunter traveled tirelessly to every NBA city on a
9 regular basis, including Oakland, California where the Golden State Warriors are based. Hunter
10 met with players, shared updates on the NBPA's activities, was present for elections for player
11 representatives, and distributed licensing checks during these meetings.

12 40. Under Hunter's leadership, the NBPA's charitable foundation has supported a wide
13 range of charities such as the Red Cross, UNICEF, and Habitat for Humanity, and donated millions
14 of dollars to World Trade Center relief, tsunami relief in Bangladesh, earthquake relief in Haiti, and
15 hurricane relief in the U.S. The Union has fed over 100,000 children a day over a two-year period
16 and provided medical care for HIV-infected children through its partnerships with Feed the
17 Children and Project Contact Africa. The Union's commitment to charitable efforts have benefited
18 countless recipients and improved the public image of the NBPA and NBA players. The
19 foundation's assets more than tripled during Hunter's tenure and now stand at approximately \$26
20 million.

21 41. The progress made by the Union under Hunter's leadership was not easily achieved.
22 The income and benefits enjoyed by the modern NBA player are the result, in large part, of
23 Hunter's leadership and commitment to player welfare. Since becoming Executive Director, Hunter
24 has represented the NBPA in three rounds of collective bargaining with the NBA, with new CBAs
25 signed in 1999, 2005 and 2011. Two of these CBAs (1999 and 2011) were finalized only after
26 lockouts led to the cancellation of part of the NBA season.
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The 2011 Collective Bargaining Negotiations and Lockout

42. The NBA CBA is the contract between the NBA and the NBPA that prescribes the rules for player contracts, trades, revenue distribution, the NBA draft, and the NBA salary cap, among other matters. The Executive Director is responsible for negotiating the CBAs on behalf of the Union.

43. In July 2005, the NBA and the NBPA negotiated and ratified a CBA that, among other provisions, guaranteed the NBA players 57% of basketball-related income ("BRI"). That contract expired on June 30, 2011. Well before the expiration of the 2005 CBA, Certain Owners were girding for a contentious labor battle and signaling that they intended to extract some \$700 to \$800 million in salary and benefit reductions from the players. Mitch Lawrence, *Dark Cloud Looming over NBA Season*, FoxSports.com (Oct. 23, 2010).

44. Beginning in early 2010 Hunter held meetings with the NBA teams in every NBA city to discuss the anticipated negotiations with NBA owners to reach agreement on a new CBA. Hunter viewed his responsibility in the negotiations as reaching a deal that maximized the welfare of all players, not only the highly-paid stars, especially as the rank-and-file players did not participate in the negotiations and so could not protect their own interests.

45. Negotiations on a new CBA between the owners and the Union began in late 2010. It quickly became apparent that the parties were far apart on a number of issues, including the division of BRI. The owners initially proposed to reduce the players' share of BRI from 57% to 37%. Other issues in dispute were the structure of the salary cap and luxury tax. The NBA salary cap is a "soft" limit to the total amount of money that NBA teams are allowed to pay their players, calculated as a percentage of NBA revenues from the previous season, but with a complex set of exceptions. The luxury tax is a payment required of teams whose total payroll exceeds a certain level, as determined by a complicated formula.

46. On July 1, 2011, the NBA owners imposed a lockout of the players, which meant that the players could not access NBA team facilities, trainers, or staffs. Negotiations between the owners and the Union continued sporadically in August, September, and October 2011, without

1 progress, with BRI distribution, the salary cap structure, and the luxury tax remaining the key points
2 of disagreement.

3 47. During this time frame, Hunter was under pressure from agents representing the
4 Certain Players to decertify the NBPA as the union representing players under the National Labor
5 Relations Act ("NLRA"). Hunter resisted, believing that a decertification would not serve the long-
6 term interests of players. In addition, once the Union decertified, players would lose access to
7 benefits such as health care coverage and insurance that were covered by the Union.

8 **Lockout Leads to the Cancellation of NBA Games**

9 48. On September 23, 2011, the NBA canceled training camp, which was to begin on
10 October 3, and the first week of preseason games, which were to run from October 9-15. This was
11 a significant occurrence. Although the players had been locked out since July 1, 2011, the lockout
12 had not affected the players financially up until this time because the players' salaries are paid out
13 based on a 92-game season (preseason plus regular season games).

14 49. A consequence of the cancellation of the first week of preseason games was that
15 most players would not receive their bi-weekly paychecks. The loss of income is felt most acutely
16 by the highest compensated players, as they have the most to lose in absolute dollar terms. Veteran
17 players in the final years of their playing careers are also disproportionately harmed by any work
18 stoppage because they are unable to earn back the income lost during the lockout by extending their
19 playing careers. Agents lose as well – especially agents representing the highest paid players –
20 because the agents' income is based on their player-clients' income.

21 50. The media began reporting that the entire season could be jeopardized by the labor
22 dispute. These reports increased the sense of urgency felt by Certain Players and their agents to
23 achieve a CBA sooner rather than later and resume getting their paychecks.

24 51. On October 4, 2011, the NBA canceled the remainder of the preseason. On October
25 10, 2011, the NBA cancelled the first two weeks of regular season games, which had been
26 scheduled to begin on November 1, 2011. On October 30, 2011 the NBA canceled all games
27 through November 30, 2011, as the parties remained unable to reach an agreement.

1 52. Negotiations continued into November 2011 but did not produce agreement on key
2 terms of the CBA, including the BRI split. The owners made several proposals that would have
3 given players between 47-50% of BRI. Hunter on behalf of the players held the line at 52%. Each
4 percentage point represents roughly \$40 million in basketball revenue. On November 14, 2011, the
5 NBPA rejected the owners' final offer and filed a disclaimer of interest that disclaimed the NBPA's
6 status as the players' collective bargaining representative. On November 15, 2011, one group of
7 NBA players filed a federal antitrust lawsuit against the NBA in the Northern District of California,
8 while another group filed a similar lawsuit against the NBA in the District of Minnesota. On that
9 same date, the NBA canceled all games through December 15, 2011.

10 **Hunter Discovers That Fisher Is Secretly Negotiating with Certain Owners**

11 53. Derek Fisher is in the waning days of his playing career. Although he enjoyed team
12 success with the Los Angeles Lakers, he has bounced around from team to team in the latter half of
13 his career, having played for the Lakers, Golden State Warriors, Utah Jazz, the Lakers (again),
14 Houston Rockets (for roughly three days), Oklahoma City Thunder, Dallas Mavericks, and the
15 Thunder (again). As a player, Fisher complemented the superstars with whom he played, but Fisher
16 himself never enjoyed superstar status and the "max contracts" that accompany such playing ability
17 and stardom.

18 54. In 2011, in the midst of the CBA negotiations, Fisher was in the second year of a
19 three-year contract worth \$10.5 million. Given his declining production, Fisher could have rightly
20 assumed that this contract would likely be his last. (Indeed, as discussed later in this Complaint,
21 Fisher was entirely out of the league in November 2012 before the Dallas Mavericks signed him to
22 a one-year contract that allowed Fisher to remain as President of the NBPA.) Fisher faced great
23 pressure to secure a soft landing for himself as his career neared its end. Fisher knew full well that
24 the key to landing a well-compensated position with the NBA, a team's front office, or with the
25 NBA's partners is maintaining good relationships with the NBA and team owners. Fisher had every
26 incentive to ingratiate himself with the NBA and team owners by aligning himself with their
27 interests rather than with the players' interests.

1 55. Moreover, Fisher had much to lose from a protracted lockout, as he would be
2 unlikely to recover the income lost during the lockout as he approached the end of his playing
3 career. Accordingly, Fisher had every incentive to end the lockout as expeditiously as possible,
4 even if the resulting deal came at the expense of his fellow players.

5 56. Also in 2011, Fisher proceeded to bring Wior into every aspect of his dealings with
6 and on behalf of the NBPA. Wior micromanaged Fisher's public statements and appearances.
7 Hunter is informed and believes and on that basis alleges that, with Wior's assistance and
8 prompting, Fisher began to overreach his authority by, for example, making public statements on
9 behalf of the NBPA and disseminating messages to the players even when it was not appropriate for
10 him to do so and even though his communications had not been approved by the Executive
11 Committee or the NBPA's public relations staff.

12 57. On September 15, 2011, the Union held a players-only regional meeting at the Vdara
13 Hotel in Las Vegas. Although numerous players are assisted by agents, personal assistants, public
14 relations consultants, or other representatives, by long tradition these service providers do not attend
15 this meeting, which is restricted to the players themselves. However, on Fisher's authority Wior
16 inserted herself into the meeting and refused to leave even when asked by NBPA security to do so,
17 insisting that she was there on Fisher's authority and only Fisher could ask her to leave, which he
18 did not do.

19 58. Wior's intrusion into the NBPA's internal affairs and attempts to undermine
20 Hunter's authority as Executive Director are demonstrated, for example, by her insistence in early
21 2011 that Hunter should fire an NBPA employee who Wior incorrectly believed had communicated
22 confidential information to the press. Under the Constitution and By-Laws, neither Fisher nor Wior
23 had any authority to hire or terminate NBPA employees. Those responsibilities were vested solely
24 in Hunter as the Executive Director.

25 59. Negotiations on the new CBA continued into October 2011. The NBPA and the
26 NBA scheduled a series of negotiating sessions to take place on or about October 28, 2011, at the
27 Waldorf Astoria Hotel in New York. Prior to the sessions, Hunter made sure to inform the players
28 that, going into the negotiations, the Union would hold firm on a 52% share of BRI. As press

1 reports detailed at the time, the NBA restated its offer of a 50-50 split of BRI. Howard Beck,
2 *N.B.A. Talks Stall and More Games Are Cancelled*, The New York Times (Oct. 28, 2011). Despite
3 the NBA's intransigence, Hunter believed that the NBPA was a unified group going into the high-
4 stakes negotiating session.

5 60. On or about October 27, 2011, Hunter was already in bed for the night when his
6 phone rang. The caller, identified herein as Player #1, told Hunter that he was joined on the call by
7 his agent, identified herein as Agent #1. Player #1, one of the Certain Players, is an NBA superstar
8 who is one of the highest paid players in the NBA. Prior to this late-night phone call, Player #1's
9 public pronouncements had expressed support for the Union's negotiating position. Privately, he
10 said something very different to Hunter. Player #1 directed Hunter to agree to the new CBA at a
11 50-50 share of BRI, saying to Hunter, "I know that tomorrow is a big day. You can put this thing to
12 bed. Do the deal," and assuring Hunter that, "I got your back." Indeed, Player #1 intimated that the
13 50-50 deal had already been completed.

14 61. The following day, the NBPA and NBA owners met for a series of private
15 negotiating sessions at the Waldorf Astoria. During a players-only preplanning session, Hunter
16 briefed the players on the Union's position that it would not settle for less than a 52-48 split of BRI.
17 Approximately fifteen minutes later, Hunter learned that his strategy regarding the 52-48 split of
18 BRI was being reported in the press despite the private nature of the meeting. Obviously, there was
19 a mole in the room.

20 62. As Hunter made phone calls trying to identify the source of the leak, he was told the
21 shocking news that Fisher had been covertly negotiating directly with the Certain Owners
22 unbeknownst to Hunter and the Executive Committee. Hunter was informed that Fisher had
23 committed to deliver a 50-50 share of BRI to the NBA without consulting Hunter or the Executive
24 Committee.

25 63. Upon learning of Fisher's double-dealing, Hunter confronted Fisher with the
26 information that Fisher had been meeting with the Certain Owners and reached a secret agreement
27 with them. Fisher falsely denied the truth of this accusation, and claimed instead that the secret
28

1 negotiations with the Certain Owners had been conducted by Player #1 and Agent #1, adding that
2 Player #1 and Agent #1 had "thrown me under the bus."

3 64. After the players-only meeting, the NBPA and the owners convened in a conference
4 room for the start of all-day negotiating sessions. Fisher had been very active in earlier
5 negotiations. In contrast to Fisher's assertive participation in the earlier negotiating sessions, after
6 his confrontation with Hunter, Fisher sat silently, "comatose" in the words of one observer.
7 Whereas in the earlier negotiating sessions, the team owners directed many questions at Fisher,
8 following the confrontation, the team owners appeared to give Fisher a "pass" and stopped directing
9 questions to him.

10 65. As the day wore on, the two sides remained at odds on BRI. Hunter reiterated the
11 Union's demand for 52-48 split of BRI and led a walkout of the players from the negotiating
12 session. Hunter and all of the players rose from their chairs except for Fisher, who was slow to rise
13 and remained seated to the point of awkwardness. A team owner identified herein as Owner #1
14 pointedly asked Fisher, "Is this what you want?"

15 66. Hunter is informed and believes and on that basis alleges that Wior was closely
16 involved in helping Fisher devise and implement his plan to cut a secret deal with the Certain
17 Owners that would benefit Fisher's – and thus, by extension, Wior's – interests at the expense of the
18 NBA rank-and-file.

19 67. Hunter is informed and believes and on that basis alleges that team owners had been
20 given assurances that a 50-50 deal had been struck with Fisher. Hunter is informed and believes
21 and on that basis alleges that Fisher had negotiated the 50-50 terms of the CBA with Certain
22 Owners behind Hunter's and the Executive Committee's backs.

23 68. Fisher continued to deny his culpability for engaging in secret negotiations with the
24 Certain Owners. Wior was closely involved in the drafting all of Fisher's public statements. On or
25 about October 31, 2011, Fisher and, on information and belief, Wior, wrote a letter to the NBA
26 players falsely stating that Fisher's "ONLY goal is to present you [the players] with the most fair
27 deal possible." Responding to media reports about his secret negotiations, Fisher falsely denied
28 them, saying, "The Players Association is united and any reports to the contrary are false. There

1 have been no side agreements, no side negotiations or anything else.” *Text of Derek Fisher’s Letter*
2 *to Players*, ESPN.com (Oct. 31, 2011).

3 **Fisher, Aided and Abetted by Wior, Cuts a Covert Self-Interested Deal with the**
4 **Certain Owners**

5 69. Fisher’s secret negotiations with the Certain Owners not only exceeded his authority
6 under the NBPA’s Constitution and By-Laws, they also undermined the Union’s momentum in the
7 CBA negotiations.

8 70. Simply put, Fisher had no business negotiating the new CBA with the Certain
9 Owners. The NBPA’s Constitution and By-Laws provide that the Executive Director (*i.e.*, Billy
10 Hunter) is the exclusive conductor of the collective bargaining relationship between the Union and
11 the NBA. In particular, the Constitution and By-Laws state, in part:

12 a. Article V, Section 4. The Executive Director shall: (a) conduct the collective
13 bargaining relationship between the Players Association and the NBA
14 (including, but not limited to, *conducting negotiations*, administering the
15 grievance-arbitration process, and representing the Association in meetings
16 with the NBA or individual teams dealing with any employment related
17 issue). . . .

18 71. Notably, the Constitution and By-Laws do not give the President (*i.e.*, Derek Fisher)
19 any authority to run the day-to-day operations of the NBPA, hire or fire employees, retain outside
20 consultants, or conduct the collective bargaining negotiations with the NBA owners. The
21 Constitution and By-Laws expressly vest those responsibilities in the Executive Director.

22 72. Wior had no authority whatsoever to become involved with or assist Fisher in
23 conducting the covert CBA negotiations. Nonetheless, Wior was a constant presence at the CBA
24 negotiating sessions. As became routine, after Fisher and the Executive Committee met following
25 the CBA negotiating sessions to coordinate on the NBPA’s public message, Fisher would privately
26 consult with Wior and, at times, thereafter deliver a message to the public different from the one
27 agreed to by the Executive Committee.

1 73. The Constitution and By-Laws invest the exclusive negotiating power in the
2 Executive Director with good reason. Hunter is unburdened by the conflict of interests that would
3 be obvious if a current player facing a loss of income was responsible for negotiating the end of a
4 lockout. Hunter's sole motivation was to negotiate a CBA that would benefit every member of the
5 NBPA down to the last man on the bench.

6 74. Fisher, by contrast, was incentivized to complete a deal as quickly as possible given
7 his limited playing career and need to secure his future job prospects by staying on good terms with
8 the NBA and team owners. Acting on self-interest, Fisher inserted himself into the collective
9 bargaining process to the detriment of the Union.

10 **Fisher and Wior's Interference Results in a Less Lucrative CBA**

11 75. The NBPA and the owners reached a tentative deal on November 26, 2011. The
12 NBPA re-formed as a union on December 1, 2011. The players and owners concluded their voting
13 on the deal on December 8, 2011, when the new CBA was ratified and the lockout ended. Under
14 the terms of the new CBA, the players would receive 51.2% of BRI in 2011-12, with a 49-to-51%
15 band in subsequent years.

16 76. Fisher's and Wior's actions undermined Hunter's attempt to present a unified NBPA
17 in the high-stakes CBA negotiations. Hunter had negotiated a CBA in 2005 that entitled the players
18 to 57% of BRI. Fisher's and Wior's improper meddling in the 2011 CBA negotiations resulted in
19 an agreement under which the players' share of BRI could drop as low as 49%. Contemporaneous
20 media reports almost universally described the new CBA – particularly the BRI split – as a “win”
21 for the owners. Larry Coon, *Breaking Down Changes in New CBA*, ESPN.com (Nov. 28, 2011);
22 Patrick Rishe, *NBA Owners Win Big with New Collective Bargaining Agreement*, Forbes.com (Nov.
23 28, 2011).

24 77. By interfering with Hunter's right to act as the Union's collective bargaining
25 negotiator, Fisher not only weakened the Union's negotiating power, but also made it impossible for
26 Hunter to perform his role effectively. Fisher's conduct thus diminished Hunter's credibility with
27 the players and with the Executive Committee. Hunter was assigned blame for the new, less
28 lucrative CBA even though his negotiating efforts had been sabotaged by Fisher's machinations.

1 78. Hunter considered and discussed with others filing a complaint with the National
2 Labor Relations Board alleging that Fisher had worked with Certain Owners to undermine the
3 Union's negotiations. Soon thereafter, Fisher and Wior orchestrated a series of actions that would
4 eventually lead to Hunter's termination by the NBPA.

5 **The Campaign to Retaliate Against Billy Hunter**

6 79. Apparently incensed by the confrontation with Hunter during the October 28, 2011
7 negotiating sessions, Fisher withdrew from participating in the Union's affairs and fulfilling his
8 responsibilities as NBPA President. From December 2011 through April 2012, Fisher failed to
9 participate in Executive Committee conference calls, make appearances on the NBPA's behalf, or
10 cooperate in any way with the Union. Hunter is informed and believes and on that basis alleges that
11 during this time Fisher and Wior were planning to oust Hunter as Executive Director and to vest
12 control of the Union in Fisher and Wior.

13 80. Hunter is informed and believes and on that basis alleges that during this same time
14 frame Fisher and Wior were secretly working with a Washington, D.C.-based law firm (the "DC
15 Firm") to commission an audit of the Union, but without any Executive Committee consultation or
16 approval. In April 2012, after months of inattention to Union matters, Fisher convened an
17 Executive Committee conference call to discuss the retention of the DC Firm to conduct an audit.
18 Four members of the Executive Committee joined the conference call with Fisher. No vote was
19 ever held to approve the retention of the DC Firm. Nonetheless, Fisher falsely represented after the
20 call that the Executive Committee had approved his retention of the DC Firm.

21 81. On or about April 16, 2012, the Executive Committee convened a conference call
22 with Hunter and invited Fisher to share his concerns about the Union's governance. Fisher declined
23 to participate and instead organized a competing conference call, which some members of the
24 Executive Committee also joined. Before this call, Fisher asserted to the Executive Committee
25 members that he possessed incriminating information about Hunter but would not share that
26 information with the Committee members, saying that he wanted to protect them from purported
27 criminal liability.

1 82. On or about April 16, 2012, the Executive Committee voted unanimously to cancel
2 Fisher's planned audit and terminate the retention of the DC Firm.

3 83. In light of Fisher's conduct over the previous six months, the Executive Committee
4 also voted 8-0 that it had lost confidence in Fisher's leadership. Their statement read: "The
5 Executive Committee based its decision on numerous instances over the past six months where
6 Fisher engaged in conduct detrimental to the Union, including acting in contravention of the
7 players' best interests during collective bargaining, declining to follow the NBPA Constitution, and
8 failing to uphold the duties of the Union President. To avoid further damage to the NBPA and its
9 450 members, the Executive Board again calls for Derek's resignation." Fisher refused to resign.

10 84. In the days that followed the vote of no confidence in Fisher's leadership, a flurry of
11 press articles suddenly appeared that presented Hunter's stewardship of the Union in a negative
12 light. Hunter is informed and believes and on that basis alleges that Wior orchestrated this press
13 campaign designed to undermine Hunter and muddy his reputation. The excessive negative
14 attention generated by the articles compelled the Executive Committee to form a Special Committee
15 charged with supervising an internal investigation. On or about April 27, 2012, the Special
16 Committee retained a New York law firm to conduct an internal investigation.

17 **Defendants Use the Internal Investigation as a Pretext for Terminating Billy Hunter**

18 85. Fisher was not on an NBA roster at the beginning of the 2012-2013 NBA season.
19 Thus, according to the Constitution and By-Laws, Fisher was not eligible to serve as the President
20 of the Executive Committee. The Dallas Mavericks signed Fisher to a one-year contract on
21 November 29, 2012. Conveniently for Fisher, this gave him the basis to argue that he could
22 continue to serve as NBPA President. Fisher promptly requested his release from the Mavericks
23 contract approximately three weeks later. Hunter is informed and believes and on that basis alleges
24 that Wior participated in devising and implementing this strategy and that, by this course of
25 conduct, Fisher was able to remain as President of the NBPA and drive the Union's use of the
26 internal investigation as a pretext for terminating Hunter.

27 86. On January 17, 2013, the report on the internal investigation (the "Report") was
28 publicly disclosed via its release on a dedicated Internet homepage, ostensibly for the convenience

1 of NBPA members but also freely available to the public-at-large. No expectation of confidentiality
2 or privilege attached to the Report or to the investigative process or the information on which the
3 Report is based.

4 87. After a nine-month investigation which included an "exhaustive review of tens of
5 thousands of pages of documents" and "evaluating statements made by more than three dozen
6 witnesses," the drafters of the Report absolved Hunter of all serious allegations, concluding that
7 Hunter never engaged in any criminal acts involving embezzlement or theft of Union funds, or
8 violated Union policies or contractual provisions. Instead, the Report describes minor instances of
9 what the drafters deem to be "missteps" – *i.e.*, poor judgment or insufficient attention to avoiding
10 the appearance of a conflict on Hunter's part – although even then, the drafters "could not say that
11 [Hunter] alone was responsible in all instances for these missteps" because "other Union
12 representatives did not always satisfy their own responsibilities." One NBA player even conceded
13 that "[t]here was absolutely nothing in the report that was new news."

14 88. For example, the Report criticizes Hunter for accepting a payout for his unused
15 vacation time. But this only tells part of the story. In fact, the Union approached Hunter and
16 requested that he take a pay-out on his unused vacation time, which the Employment Contract
17 allowed him to accrue. The Union was concerned that the vacation days represented a "huge
18 unsecured liability on the (Union's) balance sheet." Hunter then offered to accept a pay-out and
19 even proposed an alternative calculation method that would have resulted in a smaller payout than
20 what he received. Nonetheless, the Union settled on the method that produced a higher payout
21 because, according to the Report, the members of the Executive Committee believed they owed
22 Hunter the money and the valuation methodology was consistent with the Union's Employee
23 Handbook and standard accounting procedures.

24 89. The Report also criticizes Hunter's hiring practices involving his adult children. The
25 media seized on these statements to allege that Hunter had engaged in nepotistic hiring practices.
26 However, the Report confirms that Hunter's children were highly qualified for the positions they
27 held, fulfilled their job responsibilities, and were not excessively compensated; that the Union had
28 no policy against hiring family members; and that, in any event, it is not a violation of fiduciary

1 duty for a Union officer to employ a family member. In fact, at the time this was a common and
2 widely accepted practice in professional basketball.

3 90. Fisher was interviewed in connection with preparation of the Report. He actively
4 manipulated the investigation by making false statements impugning Hunter's character and
5 integrity to the interviewers. For example, Fisher falsely claimed to have been unaware that
6 Hunter's daughter was employed by the prominent Washington D.C.-based law firm that Hunter
7 retained to represent the NBPA, implying that Hunter was trying to conceal the fact that he had
8 retained a law firm that employed his daughter. That statement is false. Fisher knew who Hunter's
9 daughter was and where she worked. Hunter had informed the Executive Committee, including
10 Fisher, that Hunter intended to retain the law firm and had named his daughter as one of the
11 attorneys who would be working on the matter. A few weeks later, Fisher met personally with
12 Hunter's daughter and others at the law firm's offices.

13 91. In a blatant attack on Hunter's integrity, Fisher falsely conveyed to the Report
14 interviewers that Hunter had tried to bribe him to secure Fisher's support during the 2011 collective
15 bargaining negotiations. This false allegation relates to the NBPA's gift of a watch to Fisher at the
16 end of Fisher's first term as NBPA President. When Hunter began his service as Executive
17 Director, he inherited a tradition of gift-giving. The tradition was in place long before he was hired.
18 All Executive Committee members were aware of it, and no one had ever complained or suggested
19 that the practice was a violation of anyone's duties to the Union. In keeping with this tradition, the
20 NBPA continued the practice of giving gifts to the Executive Committee members to thank them for
21 their service to the Union – a goal which the Report agreed was "appropriate." One such gift was
22 the high-end watch presented to Fisher in June 2010, a gift that Fisher immediately accepted. Yet,
23 two and one-half years later, in speaking to the Report interviewers, Fisher claimed that he had been
24 "uncomfortable" with the gift and that "he felt the watch may have been a gesture timed to ensure
25 his loyalty to Hunter during the upcoming collective bargaining negotiations." In other words, a
26 bribe. Not only is Fisher's accusation inconsistent with the more than decade-long gift-giving
27 tradition, but it is telling that, if Fisher had perceived the gift as a bribe, it was a bribe he
28 immediately and unhesitatingly accepted.

1 92. What is particularly shocking in the sequence of events surrounding the preparation
2 and publication of the Report is that, despite his seventeen years of exemplary service, Hunter was
3 denied any opportunity to respond to the Report's threadbare insinuations. He was not allowed to
4 review the statements made by the witnesses interviewed, question the drafters of the Report, or
5 address the Executive Committee concerning the Report. When the Report's conclusions were
6 presented to the players at their February 2013 All-Star Weekend meeting, Hunter was not allowed
7 to address the players and, in fact, was barred from the meeting altogether.

8 **Fisher and the NBPA Wrongfully Terminate Billy Hunter**

9 93. After the release of the Report, two members of the Executive Committee, identified
10 herein as Player #2 and Player #3, suggested to Hunter that if he terminated his children's
11 employment, the Executive Committee would be willing to discuss Hunter's continued employment
12 as Executive Director, strongly implying that such termination would resolve the issues between
13 Hunter and the Union. After consultation with his family, and with great personal pain, Hunter
14 fired his children. Hunter also instituted an anti-nepotism policy, something which the Union had
15 never adopted previously.

16 94. It quickly became clear that the representations made by Players #2 and #3 were
17 merely pretexts for purging all members of Hunter's family from affiliation with the NBPA. After
18 Hunter terminated his children as requested, Players #2 and #3 refused to discuss Hunter's
19 employment as Executive Director with him. Instead, Fisher and the NBPA moved to summarily
20 terminate his employment. Given that Fisher and the Union had apparently intended all along to
21 terminate Hunter, there could have been no nepotism concern with respect to the Union's
22 employment of Hunter's children going forward. Rather, these actions were merely a pretext for
23 retaliating against Hunter's children as well as against him, and caused Hunter and his family
24 members grievous emotional distress, mental anguish, and disruption of their familial relationships.

25 95. On or about February 1, 2013, an "Interim Executive Committee" of the NBPA
26 placed Hunter on administrative leave. In the following days, Wior moved into the NBPA's Harlem
27 headquarters and communicated by her words and actions that she had been empowered by Fisher
28

1 to direct the Union's affairs. Wior's presence in the Union's offices was inappropriate and
2 unsettling as she held no formal position with the Union and carried no official title.

3 96. On or about February 17, 2013, Fisher and other members of the Executive
4 Committee wrote to Hunter terminating his employment, effective immediately ("Termination
5 Letter"). In the Termination Letter, Fisher and the NBPA repudiated the Employment Contract,
6 taking the position that no valid contract had been formed. The Termination Letter states in
7 relevant part, "Because the Contract of Employment dated June 21, 2010 (the "Proposed
8 Employment Contract") [referring to the 2010 Extension] was not properly negotiated, executed, or
9 approved, that contract is null, void, invalid, and unenforceable." A true and correct copy of the
10 Termination Letter is attached hereto as Exhibit E and incorporated herein by reference.

11 97. Similarly, the Report, referring to the 2010 Extension, concluded that Hunter's
12 employment contract with the Union was never properly approved under the Constitution and By-
13 Laws.

14 98. The Termination Letter was signed by Fisher as well as by two other Executive
15 Committee members. Despite Fisher's express representation and warranty that he was authorized
16 to enter into the 2010 Extension, by signing the Termination Letter Fisher contradicted his
17 representation and warranty and denied having had the authority to agree to the 2010 Extension on
18 behalf of the Union.

19 99. In addition, the Termination Letter purported to terminate Hunter's employment "for
20 cause," without specifying any facts or circumstances on which a "for cause" termination might be
21 based, and despite the fact that the Report had not identified any such reason.

22 100. Fisher further compounded the injury caused to Billy's reputation by holding a press
23 conference at which he accused Hunter of dividing, misleading, and misinforming the Union and
24 players and of propounding threats and lies against the Union.

25 101. Hunter is informed and believes and on that basis alleges that Fisher's campaign to
26 retaliate against Hunter for having confronted Fisher about his secret negotiations with the NBA
27 and/or Certain Owners led to and was a substantial cause of Hunter's termination.
28

110. At all times prior to February 17, 2013, Hunter performed all duties and obligations required of him under the Employment Contract and the 1999, 2005, and 2010 Extensions.

111. Fisher and the NBPA have asserted without qualification that they never entered into a contract with Hunter and denied the very existence of the Employment Contract and the 2010 Extension.

112. Fisher and the NBPA clearly and positively indicated to Hunter that they would not meet the requirements of the contract, thereby expressly repudiating the Employment Contract and the 2010 Extension.

113. Hunter would have been able to continue to fulfill all the duties and obligations required of him under the Employment Contract and the 2010 Extension but for Fisher's and the NBPA's repudiation.

114. Hunter has suffered great financial and other harm as a result of Fisher's and the NBPA's breach. Fisher's and the NBPA's breach entitles Hunter to judgment against them for the full amount of his damages, according to proof.

THIRD CLAIM FOR RELIEF

(Breach of Implied-in-Fact Contract – NBPA and Fisher)

115. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

116. Fisher and the NBPA, on the one hand, and Hunter, on the other have engaged in an intentional and unchanged course of conduct with respect to Hunter's employment as Executive Director since 1996. At all times prior to February 17, 2013, Fisher and the NBPA continued to compensate Hunter as provided under the Employment Contract and the 1999, 2005, and 2010 Extensions and to manifest its expectation that Hunter would perform the duties and obligations required of him under the Employment Contract and the 1999, 2005, and 2010 Extensions.

117. At all times prior to February 17, 2013, Hunter performed all duties and obligations required of him under the Employment Contract and the 1999, 2005, and 2010 Extensions.

118. The conduct and relationship between Hunter and Fisher and the NBPA, including the assent of the NBPA to three different contract extensions and Fisher's assent to the 2010 contract extension, constitute a ratification of the contract extension process and establish that the

1 Employment Contract between Hunter and the NBPA together with the 2010 Extension entered into
2 by Fisher were at all times valid, binding, and enforceable.

3 119. Fisher and the NBPA knew, and had reason to know, that Hunter would interpret
4 their conduct as an agreement to enter into and to extend the Employment Contract.

5 120. All conditions required by the Employment Contract and the 2010 Extension for
6 Fisher's and the NBPA's performance have occurred.

7 121. Fisher and the NBPA breached the Employment Contract by discharging Hunter
8 before the end of his employment term under the Employment Contract and 2010 Extension,
9 including the additional one-year option period provided for in the 2010 Extension.

10 122. Hunter has suffered great financial and other harm as a result of Fisher's and the
11 NBPA's breach. Fisher's and the NBPA's breach entitles Hunter to judgment against them for the
12 full amount of his damages, according to proof.

13 **FOURTH CLAIM FOR RELIEF**

14 **(Breach of Covenant of Good Faith and Fair Dealing – NBPA and Fisher)**

15 123. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

16 124. As alleged more particularly above, in 1996 Hunter and the NBPA entered into the
17 written Employment Contract. The term of the Employment Contract was extended several times,
18 most recently by Fisher in 2010 for an additional four years, effective July 1, 2011 and ending on
19 June 30, 2015. The 2010 Extension further provided that Hunter, at his sole discretion, could
20 extend the Employment Agreement for an additional one-year term, to June 30, 2016. Hunter has
21 given notice to Fisher and the NBPA in writing of his intention to exercise this option.

22 125. At all times prior to February 17, 2013, Hunter performed all duties and obligations
23 required of him under the Employment Contract and the 1999, 2005, and 2010 Extensions.

24 126. All conditions required by the Employment Contract and the 2010 Extension for
25 Fisher's and the NBPA's performance have occurred.

26 127. Fisher and the NBPA breached the Employment Contract by discharging Hunter
27 before the end of his employment term under the Employment Contract and 2010 Extension,
28 including the additional one-year option period provided for in the 2010 Extension, thus interfering

1 with and preventing Hunter from receiving the benefits he was entitled to receive under the
2 Employment Contract and the 2010 Extension.

3 128. Fisher's and the NBPA's conduct was a failure to act fairly and in good faith and a
4 breach of the implied covenant of good faith and fair dealing.

5 129. Hunter has suffered great financial and other harm as a result of Fisher's and the
6 NBPA's actions and breach. Fisher's and the NBPA's actions and breach entitle Hunter to
7 judgment against them for the full amount of his damages, according to proof.

8 **FIFTH CLAIM FOR RELIEF**

9 **(Inducing Breach of Contract – Fisher, Wior, and Does 1-10)**

10 130. As to Fisher, this claim is pleaded in the alternative to the First through Fourth
11 Claims alleged herein.

12 131. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

13 132. As alleged more particularly above, Hunter and the NBPA entered into the
14 Employment Contract and 2010 Extension with a term ending on June 30, 2015, and an additional
15 one-year term, to June 30, 2016, exercisable at Hunter's sole discretion, which option Hunter has
16 exercised.

17 133. At all times relevant hereto Fisher and Wior knew of the Employment Contract and
18 the 2010 Extension.

19 134. By their wrongful actions as alleged more particularly above, Fisher and Wior
20 specifically intended to cause, and did in fact cause, the NBPA to breach the Employment Contract
21 and the 2010 Extension.

22 135. Hunter has suffered great financial and other harm as a result of the NBPA's actions
23 and breach.

24 136. Fisher's and Wior's conduct was a substantial factor in causing Hunter's harm.

25 **SIXTH CLAIM FOR RELIEF**

26 **(Intentional Interference with Contractual Relations – Fisher, Wior, and Does 1-10)**

27 137. As to Fisher, this claim is pleaded in the alternative to the First through Fourth
28 Claims alleged herein.

1 150. By their wrongful actions as alleged more particularly above, Fisher and Wior
2 accomplished the disruption of the economic relationship between Hunter and the NBPA through
3 fraudulent and deceitful actions.

4 151. As the result of Fisher's and Wior's wrongful actions as alleged more particularly
5 above, the economic relationship between Hunter and the NBPA was disrupted.

6 152. Hunter has suffered great financial and other harm as a result of the disruption of the
7 economic relationship between himself and the NBPA.

8 153. Fisher's and Wior's conduct was a substantial factor in causing Hunter's harm.

9 **EIGHTH CLAIM FOR RELIEF**

10 **(Negligent Interference with Prospective Economic Relations – Fisher, Wior, and Does 1-10)**

11 154. As to Fisher, this claim is pleaded in the alternative to the First through Fourth
12 Claims alleged herein.

13 155. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

14 156. As alleged more particularly above, Hunter and the NBPA were in an economic
15 relationship that would have resulted in an economic benefit to Hunter.

16 157. At all times relevant hereto Fisher and Wior knew of the economic relationship
17 between Hunter and the NBPA.

18 158. Fisher and Wior knew or should have known that this economic relationship would
19 be disrupted if they failed to act with reasonable care.

20 159. By their wrongful actions as alleged more particularly above, Fisher and Wior failed
21 to act with reasonable care.

22 160. By their wrongful actions as alleged more particularly above, Fisher and Wior
23 accomplished the disruption of the economic relationship between Hunter and the NBPA through
24 fraudulent and deceitful actions.

25 161. As the result of Fisher's and Wior's wrongful actions as alleged more particularly
26 above, the economic relationship between Hunter and the NBPA was disrupted.

27 162. Hunter has suffered great financial and other harm as a result of the disruption of the
28 economic relationship between himself and the NBPA.

1 163. Fisher's and Wior's conduct was a substantial factor in causing Hunter's harm.

2 **NINTH CLAIM FOR RELIEF**

3 **(Intentional Misrepresentation – Fisher)**

4 164. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

5 165. As alleged more particularly above, Fisher represented to Hunter both directly and
6 through his public statements that an important fact was true, to wit, that Fisher was not and had not
7 been secretly negotiating the 2011 CBA terms with the Certain Owners.

8 166. Fisher's representation was false.

9 167. Fisher knew that the representation was false when he made it, or Fisher made the
10 representation recklessly and without regard for its truth.

11 168. Fisher intended that Hunter rely on the representation.

12 169. Hunter reasonably relied on Fisher's representation in proceeding with and
13 determining his position in the negotiation of the 2011 CBA with the NBA and team owners.
14 Hunter's reliance on Fisher's representation weakened Hunter's negotiating power, sabotaged his
15 negotiating efforts, and made it impossible for Hunter to perform his role effectively, ultimately
16 leading Hunter to agree to a new, less lucrative CBA. The less favorable 2011 CBA diminished
17 Hunter's credibility with the players and with the Executive Committee and ultimately contributed
18 to his termination.

19 170. Hunter has suffered great financial and other harm as a result of Fisher's intentional
20 misrepresentation.

21 171. Hunter's reliance on Fisher's representation was a substantial factor in causing his
22 harm.

23 **TENTH CLAIM FOR RELIEF**

24 **(Intentional Misrepresentation – Fisher)**

25 172. This claim is pleaded in the alternative to the remaining claims alleged herein except
26 for the Twelfth Claim.

27 173. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

1 174. As alleged more particularly above, Fisher expressly represented and warranted to
2 Hunter in writing that an important fact was true, to wit, that Fisher had the authority to sign the
3 2010 Extension on behalf of the NBPA and to bind the NBPA to the terms of the agreement.

4 175. If it is found by a trier of fact that Fisher did not have the authority to sign the 2010
5 Extension on behalf of the NBPA and to bind the NBPA to the terms of the agreement, then
6 Fisher's representation was false.

7 176. In such event, Fisher knew that the representation was false when he made it, or
8 Fisher made the representation recklessly and without regard for its truth.

9 177. Fisher intended that Hunter rely on the representation.

10 178. Hunter reasonably relied on Fisher's representation in entering into the 2010
11 Extension with the NBPA and continuing to perform all duties and obligations required of him
12 under the Employment Contract and the 2010 Extension. Hunter's reliance on Fisher's
13 representation prevented Hunter from insisting that the 2010 Extension should be submitted to the
14 NBPA Board of Player Representatives for approval and ultimately substantially contributed to his
15 termination.

16 179. Hunter has suffered great financial and other harm as a result of Fisher's intentional
17 misrepresentation.

18 180. Hunter's reliance on Fisher's representation was a substantial factor in causing his
19 harm.

20 **ELEVENTH CLAIM FOR RELIEF**

21 **(Concealment – Fisher)**

22 181. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

23 182. As alleged more particularly above, prior to and during the negotiations with the
24 NBA and team owners on terms of the 2011 CBA, Fisher intentionally failed to disclose to Hunter
25 an important fact that was known to Fisher and that Hunter could not have discovered, to wit, that
26 Fisher, acting without authority, was and had been secretly negotiating the 2011 CBA terms with
27 the Certain Owners.

28 183. Hunter did not know of the concealed fact.

1 184. Fisher intended to deceive Hunter by concealing the fact.

2 185. Hunter reasonably relied on Fisher's deception in proceeding with and determining
3 his position in the negotiation of the 2011 CBA with the NBA and team owners. Hunter's reliance
4 on Fisher's deception weakened Hunter's negotiating power, sabotaged his negotiating efforts, and
5 made it impossible for Hunter to perform his role effectively, ultimately leading Hunter to agree to a
6 new, less lucrative CBA. The less favorable 2011 CBA diminished Hunter's credibility with the
7 players and with the Executive Committee and ultimately contributed to his termination.

8 186. Hunter has suffered great financial and other harm as a result of Fisher's deception.

9 187. Hunter's reliance on Fisher's deception was a substantial factor in causing his harm.

10 **TWELFTH CLAIM FOR RELIEF**

11 **(Negligent Misrepresentation – Fisher)**

12 188. This claim is pleaded in the alternative to the remaining claims alleged herein except
13 for the Tenth Claim.

14 189. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

15 190. As alleged more particularly above, Fisher expressly represented and warranted to
16 Hunter in writing that an important fact was true, to wit, that Fisher had the authority to sign the
17 2010 Extension on behalf of the NBPA and to bind the NBPA to the terms of the agreement.

18 191. If it is found by a trier of fact that Fisher did not have the authority to sign the 2010
19 Extension on behalf of the NBPA and to bind the NBPA to the terms of the agreement, then
20 Fisher's representation was false.

21 192. Although Fisher may have honestly believed that the representation was true, Fisher
22 had no reasonable grounds for believing the representation was true when he made it.

23 193. Fisher intended that Hunter rely on the representation.

24 194. Hunter reasonably relied on Fisher's representation in entering into the 2010
25 Extension with the NBPA and continuing to perform all duties and obligations required of him
26 under the Employment Contract and the 2010 Extension. Hunter's reliance on Fisher's
27 representation prevented Hunter from insisting that the 2010 Extension should be submitted to the
28

1 NBPA Board of Player Representatives for approval and ultimately substantially contributed to his
2 termination.

3 195. Hunter has suffered great financial and other harm as a result of Fisher's
4 representation.

5 196. Hunter's reliance on Fisher's representation was a substantial factor in causing his
6 harm.

7 **THIRTEENTH CLAIM FOR RELIEF**

8 **(Defamation Per Se – Fisher)**

9 197. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

10 198. Fisher made defamatory and unprivileged statements about Hunter, including:

- 11 a. Claiming to be aware of conduct by Hunter that might be subject to, and
12 might subject others to, criminal liability;
- 13 b. Claiming to have been unaware that Hunter's daughter was employed by the
14 prominent Washington D.C.-based law firm that Hunter retained to represent
15 the NBPA, thus implying that Hunter was trying to conceal the fact that he
16 had retained a law firm that employed his daughter;
- 17 c. Claiming that the gift given to him by Hunter on behalf of the NBPA at the
18 close of Fisher's first term as NBPA President was intended to ensure his
19 loyalty to Hunter during the upcoming collective bargaining negotiations; and
- 20 d. Stating at a press conference that Hunter had divided, misled, and
21 misinformed the Union and players and propounded threats and lies against
22 the Union.

23 199. Fisher made these defamatory statements to persons other than Hunter, including but
24 not limited to the NBPA Executive Committee, NBA executives, owners, and players, the Report
25 interviewers, the media, and the public.

26 200. The persons reading and/or hearing these statements reasonably understood that the
27 statements were about Hunter.
28

201. The persons reading and/or hearing these statements reasonably understood the statements to mean that Hunter had committed criminal acts.

202. The statements tended to directly injure Hunter in his position as NBPA Executive Director by imputing to him general disqualification in those respects which the position peculiarly requires.

203. The statements by their natural consequence cause actual damage.

204. The statements were false.

205. Fisher knew the statements were false or had serious doubts about the truth of the statements.

206. Hunter has suffered great harm to his employment, property, business, occupation, reputation, shame, mortification, and/or hurt feelings as a result of Fisher's statements.

207. Fisher's wrongful conduct was a substantial factor in causing harm to Hunter's employment, property, business, profession, occupation, reputation, shame, mortification, and/or hurt feelings.

FOURTEENTH CLAIM FOR RELIEF

(Defamation Per Quod – Fisher)

208. Paragraphs 1 to 101 of the Complaint are incorporated by reference.

209. Fisher made defamatory and unprivileged statements about Hunter, including:

- a. Claiming to be aware of conduct by Hunter that might be subject to, and might subject others to, criminal liability;
- b. Claiming to have been unaware that Hunter's daughter was employed by the prominent Washington D.C.-based law firm that Hunter retained to represent the NBPA, thus implying that Hunter was trying to conceal the fact that he had retained a law firm that employed his daughter;
- c. Claiming that the gift given to him by Hunter on behalf of the NBPA at the close of Fisher's first term as NBPA President was intended to ensure his loyalty to Hunter during the upcoming collective bargaining negotiations; and

1 d. Stating at a press conference that Hunter had divided, misled, and
2 misinformed the Union and players and propounded threats and lies against
3 the Union.

4 210. Fisher made these defamatory statements to persons other than Hunter, including but
5 not limited to the NBPA Executive Committee, NBA executives, owners, and players, the Report
6 interviewers, the media, and the public.

7 211. The persons reading and/or hearing these statements reasonably understood that the
8 statements were about Hunter.

9 212. Because of the facts and circumstances known to the reader/listener of the
10 statements, they tended to injure Hunter in his occupation or to expose him to hatred, contempt,
11 ridicule, or shame, or to discourage others from associating or dealing with him.

12 213. The statements were false.

13 214. Fisher knew the statements were false or had serious doubts about the truth of the
14 statements.

15 215. Hunter has suffered great harm to his employment, property, business, occupation,
16 reputation, shame, mortification, and/or hurt feelings, including money spent, as a result of Fisher's
17 statements.

18 216. Fisher's wrongful conduct was a substantial factor in causing harm to Hunter's
19 employment, property, business, profession, occupation, reputation, shame, mortification, and/or
20 hurt feelings.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays as follows:

- 23 1. For compensatory damages in excess of \$25,000 according to proof;
24 2. For assumed damages for defamation;
25 3. For punitive damages according to proof pursuant to California Civil Code
26 § 3294(a);
27 4. For attorney's fees and costs incurred in prosecuting this action according to proof;
28 and

5. For such other and further relief as the Court may deem proper.

Dated: May 16, 2013

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