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16
 17 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 18 **SAN FRANCISCO DIVISION**

19 JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
 20 JOHN DOE 4, JOHN DOE 5, JOHN DOE 6,
 JOHN DOE 7, JOHN DOE 8, JOHN DOE 9,
 21 JOHN DOE 10, JOHN DOE 11, and JOHN
 DOE 12, individually and on behalf of all
 22 others similarly situated,

23 Plaintiffs,

24 v.

25 NATIONAL COLLEGIATE ATHLETIC
 ASSOCIATION, THE UNIVERSITY OF SAN
 26 FRANCISCO, ANTHONY N. (AKA NINO)
 GIARRATANO, and TROY NAKAMURA,

27 Defendants.
 28

CASE NO. 3:22-CV-01559-LB

**FIRST AMENDED CLASS ACTION
 COMPLAINT**

JURY TRIAL DEMANDED

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1 Plaintiffs John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, John Doe 6, John
 2 Doe 7, John Doe 8, John Doe 9, John Doe 10, John Doe 11, and John Doe 12, on behalf of
 3 themselves and all others similarly situated, by and through their attorneys, bring this action
 4 against the National Collegiate Athletic Association (“NCAA”), the University of San Francisco
 5 (“USF”), Nino Giarratano (“Giarratano” or “Coach G”), and Troy Nakamura (“Nakamura” or
 6 “Coach Naks”) (Coaches G and Naks collectively referred to as “Coach Defendants” and all
 7 defendants collectively referred to as “Defendants”).

8 **I. INTRODUCTION**

9 1. The NCAA has an ongoing duty to protect the health and safety of student-athletes
 10 at member institutions. Indeed, its President and Board Member, Mark Emmert, testified before
 11 Congress that the NCAA has “a clear, moral obligation to make sure that we do everything we
 12 can to support and protect student-athletes.”¹

13 2. In exercise of that duty, the NCAA promulgated rules that require it to “adopt
 14 legislation to enhance member institutions’ compliance with applicable gender-equity laws.”²
 15 Gender equity includes the right to be free from sexual harassment and other sexualized conduct,
 16 which deprives students of equal access to education.³ Despite this mandate to ensure gender
 17 equity, however, the NCAA has failed to implement any rules prohibiting sexual harassment and
 18 retaliation.

19 3. The NCAA’s duty—and failure—to protect the health and safety of student-
 20 athletes affects these athletes during an incredibly vulnerable period in their lives. NCAA student-
 21 athletes—who are typically living away from home for the first time—arrive at college expecting
 22 to develop into the best athletes they can under the supervision of educated, skilled, and fully
 23 vetted athletics department personnel committed to their best interests. Many student-athletes

24
 25 ¹ U.S. Senate, Comm. on Commerce, Science and Trans., *Promoting the Well-Being and*
 26 *Academic Success of College Athletes*, at 60:25-61:1 (July 9, 2014), <https://bit.ly/3i596YO> (last
 visited Feb. 9, 2022).

27 ² 2.3.2 NCAA Legislation (adopted Jan. 11, 1994),
 28 <https://web3.ncaa.org/lstdbi/bylaw?bylawId=2461&division=1&adopted=0> (last visited Feb. 9,
 2022); <https://www.ncaa.org/about/resources/inclusion/gender-equity-and-title-ix> (last visited
 Feb. 9, 2022).

³ See Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*

1 dream of playing their sports professionally after college and are taught from a young age to trust
2 their coaches to help them realize those dreams. These student-athletes, therefore, accord their
3 coaches, trainers, and team doctors deference, respect, and loyalty.

4 4. This trust—coupled with the NCAA’s failure to promulgate rules for schools to
5 report abuse and deter perpetrators—created and perpetuated a continuing cycle of abusive
6 coaches who move unchecked among NCAA member schools. Without NCAA reporting
7 requirements, colleges and universities can ignore coach misconduct. Even if a school does take
8 action against a coach, the NCAA takes no action against a perpetrator, who can then move on to
9 another college or university, and gain access to a fresh population of unsuspecting student-
10 athletes primed to afford that perpetrator complete trust. Instead of overseeing a system that
11 prioritizes the protection of student-athletes’ well-being, the NCAA oversees one that prioritizes
12 the protection of athletic revenue, alumni donations, and tuition at the expense of student-athletes.

13 5. Within this culture of impunity, USF employed two baseball coaches for over 22
14 years despite knowing that these coaches created an intolerable sexualized environment within
15 USF’s Division I (“DI”) baseball team. From 1999 to 2022, Head Coach Nino Giarratano and
16 Assistant Coach Troy Nakamura wielded their power to subject their players to recurring sexual
17 harassment and psychological abuse resulting in emotional distress so severe that multiple players
18 contemplated suicide.

19 6. Coach Defendants created and perpetuated a culture that normalized seeing Coach
20 Naks naked on the field or visible in a window at practice swinging his penis in a circular motion
21 imitating a helicopter rotor while the entire team—including Coach G—watched.

22 7. Coach Defendants created and perpetuated a culture that normalized handing out
23 sex dolls or sex toys to the players as “awards,” Coach Naks miming sexual acts with the players,
24 and the Coach Defendants discussing their sexual preferences, sexual fantasies, and the bodily
25 fluids they would like to drink with Plaintiffs and other members of the USF baseball team.

26 8. Coach Defendants engaged in retaliation and psychological abuse of any student-
27 athlete, including Plaintiffs, who did not outwardly condone or participate in the sexualized
28 atmosphere. Coach Defendants berated, belittled, and disparaged student-athletes; took away

1 their playing time and scholarships; and coerced student-athletes (who otherwise met all NCAA
2 and academic requirements) into leaving USF through threats and misrepresentations. Coach
3 Defendants tricked student-athletes into signing forms indicating that their relinquishment of their
4 scholarships was voluntary when it was not.

5 9. Make no mistake: this case is not about the behavior of an overbearing “hard-ass”
6 coach or “locker room talk.” Plaintiffs spent most of their lives playing baseball, and the conduct
7 at issue is profoundly more disturbing than anything they experienced on any other baseball team.
8 The conduct was not “normal”—even in the realm of elite, competitive baseball—and USF and
9 the Coach Defendants knew it was not normal. So, they took steps to cover it up.

10 10. When USF—a Jesuit university with a mission to create a more humane and just
11 world, including by holding staff accountable to promote the common good and address
12 inequities—was confronted with the Coach Defendants’ wrongdoing through complaints made to
13 the very highest levels of the Athletic Department, USF chose to back Coach G’s decisions to run
14 student-athletes off the baseball team.

15 11. The intolerable sexualized environment, psychological abuse and retaliation
16 against Plaintiffs and the other student-athletes was and is incredibly effective in driving players
17 to leave the team.

18 12. In the 1999 academic year, when Coach G first became head coach of the USF
19 baseball program, only one of 15 players returned for their sophomore year.

20 13. Of the 12 or 13 players who entered USF baseball program in 2013, only five
21 played baseball at USF for all four years of college, and one of those players is Coach G’s son.
22 Every other player transferred.

23 14. Of the three Plaintiffs who played in 2020-21, none plan to remain at USF. Of the
24 13 freshman recruits in the 2020 USF baseball class, seven transferred and one more is in the
25 process of transferring. The fact that more than 60% of the 2020 recruiting class left or intends to
26 leave is a testament to Coach Defendants’ sexual misconduct, ruthlessness, retaliation, and
27 callous treatment of the USF players. This transfer rate stands in stark contrast to the reported
28 percentage of four-year college transfers among DI baseball players—just 2.3%, the fourth lowest

1 rate out of 38 NCAA DI sports.⁴

2 15. On January 13, 2022, USF announced that Coach Naks was no longer on the
3 baseball team following “a human resources investigation into incidents in which ‘the coaches’
4 language, behavior and/or actions were inappropriate.”⁵ On January 24, 2022, Coach G was
5 officially reprimanded, but allowed to keep his job.⁶

6 16. John Does 1, 2, and 3 filed their original complaint against the NCAA, USF, and
7 Coach Defendants on March 11, 2022, and only because of that filing did USF take any further
8 action to address the situation and mitigate Plaintiffs’ harms. Two days later, USF announced that
9 it had fired Coach G “effectively immediately.”⁷ And on June 10, 2022 USF’s Athletic Director
10 (“AD”), Joan McDermott, announced her retirement “in the wake of lawsuits alleging coaching
11 misconduct in the baseball and women’s basketball programs.”⁸ McDermott’s successor has yet
12 to be selected.

13 17. This amended complaint adds nine more USF baseball players who were coached
14 by Coach Defendants from 1999 to 2018 and also experienced the intolerable sexualized
15 environment, psychological abuse, and retaliation Coach Defendants inflicted on John Does 1, 2,
16 and 3. Their stories substantiate the claims of John Does 1, 2, and 3, and reflect the fact that
17 Coach Defendants engaged in their misconduct at USF throughout their 22-year tenures.

18 18. Through this lawsuit, Plaintiffs seek for themselves and all others similarly-
19 situated (i) to hold the NCAA accountable by requiring it to adopt practice and policy changes to
20

21 ⁴ NCAA, *Transfer Composition of Division I Teams*, 10 (July 2020),
22 https://ncaaorg.s3.amazonaws.com/research/transfers/RES_TransCompD1TeamsSlides.pdf (last
visited Jan. 27, 2022).

23 ⁵ Ron Kroichick, *Intolerable Sexualized Environment’: Ex-USF Baseball Players Sue Coaches,*
School, NCAA, SAN FRANCISCO CHRONICLE (Mar. 11, 2022, updated Mar. 13, 2022),
24 [https://www.sfchronicle.com/sports/college/article/Intolerable-sexualized-environment-Ex-USF-
16994972.php](https://www.sfchronicle.com/sports/college/article/Intolerable-sexualized-environment-Ex-USF-16994972.php).

⁶ *Id.*

25 ⁷ Jessica Flores, *USF Baseball Coach Fired After Ex-players’ Lawsuit Alleges ‘Intolerable*
Sexualized Environment,’ SAN FRANCISCO CHRONICLE (Mar. 13, 2022),
26 [https://www.sfchronicle.com/sports/college/article/USF-baseball-coach-fired-after-ex-players-
16998516.php](https://www.sfchronicle.com/sports/college/article/USF-baseball-coach-fired-after-ex-players-16998516.php).

27 ⁸ Ron Kroichick, *USF’s Joan McDermott Announces Her Retirement, Ending Turbulent Run as*
Athletic Director, SAN FRANCISCO CHRONICLE (June 10, 2022, updated June 11, 2022),
28 [https://www.sfchronicle.com/sports/college/article/USF-s-Joan-McDermott-to-announce-her-
17233293.php](https://www.sfchronicle.com/sports/college/article/USF-s-Joan-McDermott-to-announce-her-17233293.php).

1 protect student-athletes from sexual misconduct and psychological abuse by member institutions'
2 athletic department personnel to ensure this does not happen again, (ii) to hold USF accountable
3 by requiring it to adopt, implement, and enforce appropriate policies and procedures to prevent, or
4 properly respond to, sexual misconduct and psychological abuse of students and student-athletes
5 by USF personnel, and (iii) compensation from NCAA, USF, and the Coach Defendants for
6 Plaintiffs' injuries from the intolerable sexualized environment, psychological abuse, and
7 retaliation to which the Coach Defendants subjected Plaintiffs and other members of the USF
8 baseball to during the relevant time period.

9 19. First, Plaintiffs seek injunctive and equitable relief requiring the NCAA to
10 implement and enforce rules and bylaws considered best practices. That includes, *inter alia*:
11 prohibiting sexual harassment and/or sexual abuse of student-athletes by athletics department
12 personnel; prohibiting romantic or sexual relationships between athletics department personnel
13 and student-athletes; requiring NCAA member institutions to immediately report any allegations
14 of harassment or abuse of a student-athlete by athletics department personnel; requiring that all
15 reports be independently investigated; implementing public sanctions on member institutions and
16 athletics department personnel where allegations are substantiated; banning athletics department
17 personnel found to be in violation from further working or volunteering for any member
18 institution; mandating training; and protecting student-athletes from retaliation and coercion to
19 leave their teams, enter the NCAA transfer portal, and/or forego their scholarships without an
20 independent ombudsman and advocate for the student-athletes.⁹

21 20. Second, Plaintiffs seek injunctive and equitable relief requiring USF to adopt,
22 implement, and enforce appropriate policies and procedures to prevent, or properly respond to,
23 sexual misconduct and psychological abuse of students and student-athletes by USF personnel.

24 21. Third, Plaintiffs seek money damages from the NCAA, USF, and the Coach
25 Defendants for the psychological abuse and repeated inappropriate sexual conduct they suffered,
26

27 ⁹ The transfer portal is an NCAA mechanism for players to make themselves available to other
28 schools; however, to enter the transfer portal, the student-athletes must give up their current
scholarships.

1 and compensation for lost guaranteed scholarship money, other out-of-pocket costs, and
2 impairment of their baseball careers, including playing Major League Baseball. Among other
3 damages, as a result of Coach Defendants' conduct, Plaintiffs and Class members suffered and
4 continue to suffer severe emotional and physical pain, including shock, emotional distress,
5 physical manifestations of emotional distress including embarrassment, loss of self-esteem,
6 disgrace, humiliation, and loss of enjoyment of life and baseball; prevented and will continue to
7 be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
8 loss of earnings and earning capacity, and/or have incurred and will continue to incur expenses
9 for medical and psychological treatment, therapy, and counseling.

10 22. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), (b)(3), and/or (c)(4),
11 Plaintiffs bring this as a class action for violations of Title IX of the Education Amendments of
12 1972 ("Title IX"), as amended, 20 U.S.C. § 1681 *et seq.*, as well as various state statutory and
13 common laws.

14 **II. JURISDICTION AND VENUE**

15 23. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises
16 under the laws of the United States.

17 24. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, as amended by the Class
18 Action Fairness Act, 28 U.S.C. § 1332(d)(2), because: (a) there are at least 100 class members;
19 (b) the matter in controversy exceeds \$5 million, exclusive of interest and costs; (c) at least one
20 Plaintiff is a citizen of a different state than at least one Defendant; and (d) at least one member of
21 the Classes, including Plaintiffs, is a citizen of a different state than at least one Defendant.

22 25. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs'
23 state law claims, because they arise from a common nucleus of operative facts with their federal
24 claims and are so related to the federal claims as to form part of the same case or controversy
25 under Article III of the United States Constitution.

26 26. This Court has personal jurisdiction over the NCAA because the NCAA has
27 contacts with California to render it "essentially at home" in California, such that the exercise of
28 personal jurisdiction is proper. Specifically, this Court has general personal jurisdiction because

1 of the NCAA's meaningful, continuous, and substantial economic, physical, and political
2 presence in California; the 58 NCAA member organizations located in California, including USF;
3 the NCAA's ability to influence the California legislature; the NCAA's attempts to influence the
4 California courts; and the NCAA's availment of the California courts.

5 27. First, the NCAA engages in a continuous stream of activities in and directed
6 towards California, both directly and through its members, that exceeds its activity in other states
7 and renders it at home in California.

8 a. Since its founding in 1916, the NCAA has earned an outsized portion of its
9 over \$1 billion annual revenue directly from activities in California.

10 California has the largest number of DI member institutions in the
11 country—and DI members generate virtually all NCAA revenue.

12 b. California members contribute tens of thousands of dollars in membership
13 dues to the NCAA every year.

14 c. The NCAA affirmatively elects to sponsor many of its largest and most
15 prominent revenue-minting events in California. For example, the oldest
16 and most famous college football playoff game, the Rose Bowl, has taken
17 place in California annually since 1916—evidencing more than 100 years
18 of continuous and highly profitable commercial activity by the NCAA in
19 the State.

20 d. Overall, during the 2019 to 2020 academic year, California was slated to
21 host 43 championship games—more than almost any other state. These
22 games are attended by NCAA representatives, giving the NCAA a
23 meaningful physical presence in the State throughout the year in addition to
24 an economic one.

25 28. Second, the NCAA members are heavily concentrated in California, with 58
26 members in California. Of these 58, 24 are DI members—the most of any state. Moreover, the
27 NCAA exercises significant control over its California members through the imposition of
28 onerous requirements on members' athletic programs and operation of an expansive enforcement

1 program.

2 29. Third, the NCAA has engaged in sustained lobbying efforts specifically targeted at
3 California. For example, on September 18, 2019, the NCAA Board wrote a letter to California
4 Governor Gavin Newsom urging him to reject a bill called the Fair Play to Pay Act that would
5 allow athletes in the state to be compensated for use of their name, image, and likeness. The
6 NCAA spent \$450,000 on lobbying efforts in 2019, much of it directed at California.

7 30. Fourth, the NCAA has engaged in significant activities in an attempt to influence
8 the California courts. For example, in *Brown v. USA Taekwondo*, No. S259216, 2020 WL
9 5705929 (Cal., Sep. 22, 2020), the NCAA filed an amicus brief addressing what duty under
10 California law, if any, the United States Olympic Committee has to protect an athlete from sexual
11 abuse by third-parties. The NCAA deemed the issue as one of “great importance” to the NCAA.

12 31. Finally, the NCAA purposefully avails itself of California courts when it so
13 chooses.¹⁰ The NCAA even admitted that personal jurisdiction and venue are appropriate in
14 California.¹¹

15 32. This Court also has specific personal jurisdiction over the NCAA. First, as
16 reflected above, the NCAA purposefully directed activities towards California and purposefully
17 availed itself of the benefits of doing business in California. Second, the intolerable sexualized
18 environment, psychological abuse, and retaliation at USF occurred in California and arises out of
19 the NCAA’s actions and inactions with respect to its oversight of USF and its coaching staff in
20 California, and its failure to adopt formal policies to monitor, prohibit, or otherwise address
21 rampant sexual misconduct. Third, and based on the above, it would not be unreasonable for this
22 Court to exercise personal jurisdiction over the NCAA.

23 33. This Court has personal jurisdiction over Defendant USF because it is located in
24 this District and the wrongdoing occurred in this District.

25 34. This Court has personal jurisdiction over Defendant Nino Giarratano because,
26 based on information and belief, he resides in this District. Moreover, Giarratano coached in this
27

28 ¹⁰ See, e.g., *NCAA v. Ken Grody Mgmt.*, No. 8:18-cv-00153 (C.D. Cal.).

¹¹ *George v. NCAA*, No. 08-3401, 2008 WL 5422882, at *3 (C.D. Cal. Dec. 17, 2008).

1 District for over 22 years.

2 35. This Court has personal jurisdiction over Defendant Troy Nakamura because,
3 based on information and belief, he resides in this District. Moreover, Nakamura coached in this
4 District for over 22 years.

5 36. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2)
6 because the NCAA resides in every district in which its members reside, including this District;
7 all other defendants are residents of the State in which the District is located; and a substantial
8 part of the events and omissions giving rise to the claims occurred in this District.

9 **III. INTRA-DISTRICT ASSIGNMENT**

10 37. Assignment in the San Francisco Division is appropriate because USF and the
11 Coach Defendants reside in this Division, as does the NCAA, an unincorporated association
12 whose member USF resides in this Division.

13 **IV. PARTIES**

14 **A. Plaintiffs**

15 38. **John Doe 1** is a citizen and resident of California and citizen of the United States.
16 John Doe 1 was a freshman at USF in the fall of 2020 and continues to attend USF by taking
17 classes remotely. After his freshman year, John Doe 1 was run off the baseball team and entered
18 the transfer portal in the winter of 2021 because of Defendants' actions; he is currently awaiting
19 the opportunity to play baseball at another institution.

20 39. **John Doe 2** is a citizen and resident of California and citizen of the United States.
21 John Doe 2 was a freshman at USF in the fall of 2020. John Doe 2 transferred out of USF in
22 January 2022 due to the actions of the Defendants.

23 40. **John Doe 3** is a citizen and resident of California and citizen of the United States.
24 John Doe 3 was a freshman at USF and member of the baseball team in the fall of 2021. He
25 continues to attend USF as of the filing of this lawsuit, but entered the transfer portal in March
26 2022 because of Defendants' actions.

27 41. **John Doe 4** is a citizen of Washington and a citizen of the United States. John Doe
28 4 was a freshman at USF in the fall of 2017, but transferred out of USF after his freshman year

1 due to the actions of Defendants.

2 42. **John Doe 5** is a citizen and resident of Washington and citizen of the United
3 States. John Doe 5 attended USF from 2012 to 2014. At the end of the spring season in 2014,
4 John Doe 5 quit USF's baseball team due to the actions of Defendants.

5 43. **John Doe 6** is a citizen and resident of California and citizen of the United States.
6 Though John Doe 6 attended USF from 2012-15, he quit the baseball team after two years due to
7 the actions of Defendants.

8 44. **John Doe 7** is a citizen and resident of California and citizen of the United States.
9 John Doe 7 committed to play baseball at USF in 2014, but only stayed one semester due to the
10 actions of Defendants.

11 45. **John Doe 8** is a citizen and citizen and resident of Colorado and citizen of the
12 United States. John Doe 8 left USF in 2013 after only one semester because due to the actions of
13 Defendants.

14 46. **John Doe 9** is a citizen and resident of California and a citizen of the United
15 States. John Doe 9 left USF after completing the 2000 academic year due to the actions of
16 Defendants.

17 47. **John Doe 10** is a citizen and resident of California and a citizen of the United
18 States. John Doe 10 attended USF and was a member of the baseball team from 2017-18. John
19 Doe 10 transferred from USF after finishing his spring 2018 semester due to the actions of
20 Defendants.

21 48. **John Doe 11** is a citizen and resident of Missouri and a citizen of the United
22 States. John Doe 11 attended USF only for the freshman year from 1999-2000, and then
23 transferred due to the actions of Defendants.

24 49. **John Doe 12** is a citizen and resident of Texas and a citizen of the United States.
25 John Doe 12 attended USF his freshman year and was a member of the baseball team from 2017-
26 18; he transferred afterwards due to the actions of Defendants.

27 **B. Defendants**

28 50. **Defendant National Collegiate Athletic Association (NCAA)** is an

1 unincorporated association that acts as the governing body of college sports. The NCAA is
 2 comprised of 1,098 colleges and universities and 102 athletic conferences across three divisions:
 3 Division I, Division II and Division III.¹² DI institutions are the most visible collegiate athletic
 4 programs.¹³ The NCAA's principal office is located in Indianapolis, Indiana.

5 51. **Defendant University of San Francisco (USF)** is a California corporation located
 6 at 2130 Fulton Street, San Francisco, California 94117. Its agent for service of process, Donna J.
 7 Davis, is located at the same address. USF is a DI member institution of the NCAA and the only
 8 DI university in San Francisco.

9 52. **Defendant Nino Giarratano** is a resident of San Francisco, California. Coach G
 10 was the head coach of the USF baseball team from 1999 until March 13, 2022, when USF
 11 announced Coach G had been fired.

12 53. **Defendant Troy Nakamura** is a resident of Pacifica, California. Coach Naks was
 13 an assistant to Coach G for 15 years at USF until he was promoted to Associate Head Coach in
 14 the summer of 2013. USF announced on January 13, 2022 that Coach Naks is no longer
 15 associated with the USF baseball program.

16 **V. FACTS**

17 **A. Student-Athletes Are at Risk for Sexual Harassment, Exploitation, and** 18 **Mental Abuse by Coaches.**

19 54. Nancy Hogshead-Makar, a 1984 Olympic gold medalist in swimming and the
 20 CEO of Champion Women, a non-profit providing legal advocacy for athletes, explains the
 21 tremendous power differential present in relationships between coaches and athletes: "There's no
 22 balance of power, there's power one way, which is the coach has all the power and the athlete
 23 does not [The coach] has her scholarship, her ability to continue her education."¹⁴

24 ¹² NCAA, *What is the NCAA?*, <http://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last visited Feb. 1, 2022).

25 ¹³ NCAA, *Overview*, <https://www.ncaa.org/sports/2021/2/16/overview.aspx> (last visited July 9, 2022).

26 ¹⁴ John Barr & Nicole Noren, *Outside the Lines: Track & Fear*, ESPN,
 27 http://www.espn.com/espn/feature/story/_/id/18900659/university-arizona-coach-threatened-one-athletes-blackmail-violence-death-school-stopped-him (quoting Nancy Hogshead-Makar).
 28

1 55. This power imbalance extends beyond the sport and to the personal: “[C]oaches
2 have power over athletes’ lives far exceeding the mechanics of practicing and competing in a
3 sport. A coach’s power over athletes can extend to virtually all aspects of the athlete’s life in such
4 ways that clear boundaries are hard to delineate. This near-total control is rarely questioned.”¹⁵

5 56. “The athlete’s dependence on the coach makes it enormously difficult for the
6 athlete to control the boundaries of the relationship or speak up to a coach who oversteps.”¹⁶ This
7 dependency is often even more acute in student-athletes entering college for the first time.

8 57. All college students are encouraged to develop a clear sense of self, commitment,
9 and direction. Emerging adults engage in a variety of developmental tasks such as identity
10 formation, becoming personally competent, developing interpersonal relationships, and planning
11 for the future.¹⁷

12 58. While engaged in this period of self-exploration, student-athletes must also
13 balance a unique set of often-competing circumstances including, but not limited, to their athletic
14 and academic endeavors. They must balance social activities against the isolation of athletic
15 pursuits; maintain mental equilibrium in the face of athletic success or shortcomings; play
16 notwithstanding physical infirmities and injuries; and, often, reconcile the termination of an
17 athletic career to set goals for the future.¹⁸

18 59. The NCAA acknowledges the uniquely important process of identity formation for
19 NCAA student-athletes, because “NCAA research has shown academic outcomes (grades,
20 graduation and eventual graduate degree attainment) are strongly related to identity as a student
21 while in college, even after taking prior academic performance into account.”¹⁹

22
23 ¹⁵ Deborah L. Brake, *Going Outside Title IX to Keep Coach-Athlete Relationships in Bounds*, 22
MARQUETTE SPORTS L. REV. 395, 405 (Jan. 1, 2012) (footnotes omitted).

24 ¹⁶ *Id.* at 406.

25 ¹⁷ Emily Benton Heird & Jesse A. Steinfeldt, *An Interpersonal Psychotherapy Approach to*
Counseling Student-Athletes: Clinical Implications of Athletic Identity, 16 J. C. COUNSELING 143-
57 (2013).

26 ¹⁸ Joy Gaston Gayles, *Engaging Student Athletes*, STUDENT ENGAGEMENT IN HIGHER EDUCATION:
THEORETICAL PERSPECTIVES AND APPROACHES FOR DIVERSE POPULATIONS 209-21 (Stephen John
27 Quaye et al. eds., 2nd ed. 2015).

28 ¹⁹ NCAA, *Do NCAA Student-Athletes View Themselves As Students Or Athletes?* (Aug. 2013),
[http://www.ncaa.org/about/resources/research/do-ncaa-student-athletes-view-themselves-
students-or-athletes](http://www.ncaa.org/about/resources/research/do-ncaa-student-athletes-view-themselves-students-or-athletes) (last visited Jan, 29, 2022).

1 60. For student-athletes, this crucial developmental period necessarily includes
2 significant time spent with teammates and coaches. While other college students have the
3 opportunity to test their emerging identities through school-based and friendship networks, the
4 college athlete typically spends significant time separated from these networks while they train
5 and compete. Student-athletes often spend hours a day with their coaches on the practice field, in
6 the training room, and in meetings.

7 61. This dynamic with their coaches renders student-athletes uniquely vulnerable to
8 sexual harassment and abuse. As researchers suggest, “the culture of sport, specifically the power
9 invested in the coach, facilitates an environment conducive to, and tolerant of, sexual
10 exploitation.”²⁰

11 62. This power imbalance is especially dangerous for athletes close to the upper
12 echelon of their sport. As one author explains:

13 [A]thletes may be more susceptible to the grooming process which
14 precedes actual sexual abuse when they have most at stake in terms
15 of their sporting careers, that is when they have reached a high
16 standard of performance but are just below the elite level. We call
17 this the ‘stage of imminent achievement’ (SIA). . . . For these
18 athletes, the personal costs of dropping out of their sport might be
19 deemed to be higher than for others. The novice athlete can drop out
20 without loss of face, can leave to find another coach or another sport
21 without loss of reputation and has invested least, in terms of time,
22 effort, money and family sacrifices. The top athlete, on the other
23 hand, has a proven record, has already attained some of the rewards
24 of success, and may be less dependent upon his or her coach for
25 continued achievement at that level. . . . The increased self esteem
26 and personal confidence which accrues to the successful elite
27 performer (after SIA) may provide them with the necessary personal
28 resources to stand on their own[.]

* * *

The elite young athlete treads a fine line between success and failure. Physical injuries or illness can occur at any time, destroying years of training. Psychological damage can be caused by the withdrawal of the coach’s attention of interest. In short, the young athlete often

26 ²⁰ Joy D. Bringer, Celia H. Brackenridge, & Lynn H. Johnston, *Defining Appropriateness in*
27 *Coach-Athlete Sexual Relationships: The Voice of Coaches*, 8 J. SEXUAL AGGRESSION, at 3
28 (2002), (unpublished manuscript),
<https://www.tandfonline.com/doi/abs/10.1080/13552600208413341>.

1 needs the attention of the coach in order to maintain form and the
2 chance to succeed. In these circumstances it is not difficult for a
3 coach with sexual motives to groom and gain compliance from the
4 athlete.²¹

5 63. Furthermore, “[t]he style of coaching that is most conducive to forming coach-
6 athlete sexual relationships is more closely associated with male coaches: authoritarian, requiring
7 unquestioning submission to the coach’s authority, and exercising near total control over athletes’
8 lives.”²² Thus, “having a male coach with an authoritarian coaching style is a high risk factor for
9 coach-athlete sexual abuse.”²³

10 64. The fact that college athletes are over the age of 18, however, does not make any
11 sexual relationship or sexual activity with a coach consensual. According to many experts, the
12 implicit power in the coach-athlete relationship negates consent.²⁴

13 65. A coach with sexual motives is able to groom and gain his athlete’s compliance
14 because of the power differential between a coach and the student-athlete, which makes consent
15 even between adults impossible. From a very young age, athletes are taught to look up to and
16 respect their coaches, to view them as upstanding adults who serve as mentor, trainer, counselor,
17 and sometimes even surrogate parent, and to accord them unquestioning authority.

18 66. In 2012, the NCAA acknowledged a coach’s ability to wield tremendous
19 emotional control and power over his student-athletes:

20 In the most tangible terms, the student-athlete depends on the coach
21 for: a place on the roster; playing time; training and skills-building
22 opportunities; visibility and references that can lead to professional
23 opportunities; and, in Division I and II programs, scholarships that
24 can mean the difference between being able to afford a college
25 education or not. In exercising this power, the coach commonly
26 exerts broad control over a student-athlete’s life, including in such
27 areas as physical fitness, diet, weight, sleep patterns, academic
28 habits, and social life. For intercollegiate athletes, the magnitude of
the coach’s control will likely exceed that of any other single

25 ²¹ Celia Brackenridge & Sandra Kirby, *Playing Safe: Assessing the Risk of Sexual Abuse to Elite*
26 *Child Athletes*, INT’L REVIEW FOR THE SOCIOLOGY OF SPORT: SPECIAL ISSUE ON YOUTH SPORT 13
(1997), <https://bit.ly/3MBMlvJ>.

27 ²² Brake, *supra* note 15, at 403.

28 ²³ *Id.* & n.35 (citations omitted).

²⁴ Brake, *supra* note 15, at 399.

1 individual at that student-athlete's institution. For many, it will
 2 exceed the extent of control any individual has ever had over them at
 any point in their lives, with the exception of their parents.²⁵

3 67. This dependence and power differential created by the coach-athlete relationship
 4 enables predators who work with student-athletes (like Jerry Sandusky, Larry Nassar, Robert
 5 Anderson, and Coach Naks) to thrive.

6 **B. By the 1990s, National Governing Bodies (NGBs)²⁶ Prohibited Sexual**
 7 **Harassment by Coaches of Athletes, Recognizing the Power Disparities and**
 8 **Unequal Bargaining Positions.**

9 68. Historically, the NCAA and other sporting organizations ignored instances of
 10 coaches engaging in in sexual improprieties with their athletes. Karen Morrison, the NCAA
 11 director of gender inclusion, explained the “hesitancy to prescribe what people consider to be the
 12 personal lives of their coaches,” when both parties are consenting adults.²⁷ However, by the
 13 1990s, multiple studies challenged organizations denying the existence of sexual abuse in sport.²⁸
 14 The results of these studies “speak to the intensity of the coach-athlete bond, and the difficulty of
 15 setting boundaries in the relationship” which explain why many athletes do not recognize
 16 harassing or abusive behavior when they experience it.²⁹ In response to these findings, many
 17 sports organizations—but not the NCAA—adopted rules to: prohibit coaches from engaging in
 18 sexual relationships with athletes; to protect athletes from sexual harassment; and to preserve the
 19 safety and well-being of athletes.

20
 21 ²⁵ Deborah L. Brake & Mariah Burton Nelson, *Staying in Bounds* 15 (citations omitted),
 22 http://ncaa.org.s3.amazonaws.com/documents/2021/1/18/Staying_2Bin_2BBounds_2BFinal.pdf
 (last visited Feb. 3, 2022).

23 ²⁶ NGBs are non-profit, non-governmental organizations responsible for promoting and
 developing a specific sport within a country.

24 ²⁷ Allie Grasgreen, *Out-of-Bounds Relationships*, INSIDE HIGHER ED. (May 1, 2012),
 25 <https://www.insidehighered.com/news/2012/05/01/ncaa-asks-colleges-prohibit-romantic-relationships-between-athletes-coaches>.

26 ²⁸ See, e.g., Brackenridge, *supra* note 21, at 9 (citing studies in the United States, including: Lisa
 27 Pike-Masteralexis, *Sexual Harassment and Athletics: Legal and Policy Implications for Athletic*
Departments, 19 J. SPORT & SOCIAL ISSUES 141-156 (1995); Karen A.E. Volkwein et al., *Sexual*
Harassment in Sport - Perceptions and Experiences of Female Student-Athletes, 32 INT'L REVIEW
 28 FOR THE SOCIOLOGY OF SPORT 283-295 (1997).

²⁹ Brake, *supra* note 15, at 400.

1 **1. In 1992, the United States Olympics Committee established a code of**
2 **ethics prohibiting sexual harassment.**

3 69. In 1992, the United States Olympics Committee (“USOC,” now the United States
4 Olympics & Paralympic Committee or “USOPC”) developed a Coaching Ethics Code to
5 “provide[] a common set of values upon which coaches build their professional work” as “[i]t is
6 the individual responsibility of each coach to aspire to the highest possible standards of
7 conduct.”³⁰

8 70. USOPC’s Coaching Ethics Code includes Ethical Standard 1.08, “Sexual
9 Harassment,” which defines and prohibits sexual harassment as follows:

10 (a) Coaches do not engage in sexual harassment. Sexual harassment
11 is sexual solicitation, physical advances, or verbal or nonverbal
12 conduct that is sexual in nature, and that either:

13 (1) is unwelcome, is offensive, or creates a hostile
14 environment, and the coach knows or is told this;

15 (2) is sufficiently severe or intense to be abusive to a
16 reasonable person in the context. Sexual harassment can
17 consist of a single intense or severe act or of multiple
18 persistent or pervasive acts.

19 (b) Coaches accord sexual-harassment complaints and respondents
20 dignity and respect. Coaches do not participate in denying an athlete
21 the right to participate based upon their having made, or their being
22 the subject of, sexual harassment charges.³¹

23 71. Ethical Standard 1.14, “Exploitative Relationships,” recognizes that because of the
24 power differential, sexual or romantic relationships between a coach and athlete would likely
25 impair judgment and become exploitative:

26 (a) Coaches do not exploit athletes or other participants over whom
27 they have supervisory, evaluative, or other authority.³²

28
30 United States Olympic & Paralympic Committee Coaching Ethics Code,
31 [https://www.teamusa.org/USA-Karate/Officials-and-Coaches/Coaches-Resources/USOC-](https://www.teamusa.org/USA-Karate/Officials-and-Coaches/Coaches-Resources/USOC-Coaching-Ethics-Code)
32 [Coaching-Ethics-Code](https://www.teamusa.org/USA-Karate/Officials-and-Coaches/Coaches-Resources/USOC-Coaching-Ethics-Code) (Introduction) (last visited Jan. 31, 2022).

³¹ *Id.*, Ethical Standard 1.08.

³² *Id.*, Ethical Standard 1.14.

1 **2. Since 1998, USA Swimming has prohibited inappropriate sexual**
 2 **conduct.**

3 72. In 1998, USA Swimming adopted a code of conduct that provided for discipline in
 4 cases of “sexual contact or advances directed toward an athlete by a person who, in the context of
 5 swimming, was in a position of authority over that athlete.”³³

6 73. In 2002, the prohibition against sexual advances was modified to include “other
 7 inappropriate sexually oriented behavior or action” and to explicitly apply to coaches.

8 Specifically, Article 304.3.5 prohibited: “Any sexual contact or advance or other inappropriate
 9 sexually oriented behavior or action directed towards an athlete by a coach, official, trainer, or
 10 other person who, in the context of swimming, is in a position of authority over that athlete.”³⁴

11 74. In 2010 (effective 2011), USA Swimming added an “Athlete Protection Policy”
 12 and “Sexual Misconduct Reporting Requirement” to its rulebook. These changes required reports
 13 of sexual misconduct and prohibited retaliation for reporting.³⁵

14 75. In 2012 (effective 2013), USA Swimming clarified that “sexual misconduct”
 15 included “other oral, written, visual, or physical conduct”³⁶ and added a prohibition against
 16 bullying.³⁷ The definition of physical abuse was also expanded to prohibit bullying by a coach.³⁸

17 **3. In 2007, the International Olympic Committee issued a consensus**
 18 **statement on sexual abuse in sport.**

19 76. In 2007, the International Olympic Committee (“IOC”) issued a “Consensus
 20 Statement” on “Sexual Harassment and Abuse in Sport” that highlighted the power differences
 21 between athletes and authority figures and recommended that *all sport organizations* develop

22 ³³ Gunderson Nat’l Child Protection Training Ctr., *When the Athlete Is a Child: An Assessment of*
 23 *USA Swimming’s Safe Sport Program*, at 9 (Jan. 27, 2014),
 24 [https://www.usaswimming.org/docs/default-source/safe-sport-documents/safe-sport-basics/2014-](https://www.usaswimming.org/docs/default-source/safe-sport-documents/safe-sport-basics/2014-vieth-report.pdf)
 25 [vieth-report.pdf](https://www.usaswimming.org/docs/default-source/safe-sport-documents/safe-sport-basics/2014-vieth-report.pdf) (quoting USA Swimming Code of Conduct, § 304.3 (1998 ed.)) (last visited Feb.
 26 1, 2022).

25 ³⁴ *Id.* at 9 & n.30 (quoting USA Swimming Code of Conduct, § 304.3 (2002 ed.)).

26 ³⁵ *Id.* at 11-12 (quoting USA Swimming Code of Conduct, § 304.3.5 (2011 ed.)).

27 ³⁶ *Id.* at 12 & n.45 (quoting USA Swimming Code of Conduct, § 304.3.5, which is now § 304.8
 28 (2013 ed.)).

27 ³⁷ *Id.* at 12 & n.46 (quoting USA Swimming Code of Conduct, § 304.3.7 (2013 ed.)).

28 ³⁸ *Id.* at 12-13 & n.47 (quoting USA Swimming Code of Conduct, § 304.3.13 (2013 ed.)).

1 policies to protect athletes from sexual abuse and harassment.³⁹

2 77. In urging coaches and other authority figures to “stay within the boundaries of a
3 professional relationship with the athlete[.]” the statement noted the profound, negative impacts
4 sexual harassment and abuse has on athletes’ physical and psychological health, which can result
5 impaired performance and dropout:

6 Clinical data indicate that psychosomatic illnesses, anxiety,
7 depression, substance abuse, self-harm and suicide are some of the
8 serious health consequences. Passive attitudes/non-intervention,
9 denial and/or silence by people in positions of power in sport
10 (particularly bystanders) increases the psychological harm of sexual
11 harassment and abuse. Lack of bystander action also creates the
12 impression for victims that sexually harassing and abusive
13 behaviours are legally and socially acceptable and/or that those in
14 sport are powerless to speak out against it.⁴⁰

11 **4. In 2018, the Energy and Commerce Committee investigated and set
12 out best practices for NGBs to prohibit coach misconduct and track
13 wrongdoing.**

13 78. On December 20, 2018, the United States Energy and Commerce Committee (the
14 “Committee”) released a report entitled, “Nassar and Beyond: A Review of the Olympic
15 Community’s Efforts to Protect Athletes from Sexual Abuse” (the “Nassar and Beyond
16 Report”).⁴¹ The report followed a yearlong investigation based on the scandals in gymnastics,
17 swimming, and taekwondo.

18 79. The Committee found a number of systemic failures at NGBs contributing to the
19 widespread instances of sexual abuse that “should be concerning not only to Olympic athletes, but
20 also amateur athletes, parents, and anyone who has a loved one involved in amateur sports.”⁴²

22 ³⁹ See Int’l Olympic Comm., *IOC Adopts Consensus Statement on “Sexual Harassment and
23 Abuse in Sport,”* at 3-5 (Feb. 8, 2007), <https://bit.ly/3IUdIEg> (last visited Jan. 31, 2022).

24 ⁴⁰ *Id.* at 4-5.

25 ⁴¹ Energy & Commerce Comm. Press Release, *Committee Report Details Sexual Abuse in
26 Organized Sports* (Dec. 20, 2018), [https://republicans-
27 energycommerce.house.gov/news/committee-report-details-sexual-abuse-in-organized-sports/](https://republicans-energycommerce.house.gov/news/committee-report-details-sexual-abuse-in-organized-sports/)
28 (last visited Feb. 2, 2022).

⁴² Energy & Commerce Comm., *Nassar and Beyond: A Review of the Olympic Community’s
Efforts to Protect Athletes from Sexual Abuse*, at 3 (Dec. 20, 2018), [https://republicans-
energycommerce.house.gov/wp-content/uploads/2018/12/EC-USOC-Report-12.20.18-Final-
REV.pdf](https://republicans-energycommerce.house.gov/wp-content/uploads/2018/12/EC-USOC-Report-12.20.18-Final-REV.pdf) (last visited Feb. 3, 2022).

1 80. First, the Committee noted that its “most troubling” finding was that the Olympic
2 community inappropriately prioritizes reputation and image—the “medals and money”
3 mentality—rather than athlete safety.⁴³ This same criticism can be applied to the NCAA’s
4 placement of revenue above its duty to protect its student-athletes.

5 81. Second, despite USOPC’s effort to establish minimum standards and an NGB
6 Athlete Safety Policy, each NGB continued to have its own governance structure and applicable
7 bylaws and policies resulting in inconsistencies in publicly identifying those disciplined or
8 banned and policies to handle reports, complaints or allegations of abuse to USOPC and law
9 enforcement.⁴⁴ Here, again, this criticism is applicable to the NCAA, which purports to push
10 responsibility for sexual abuse policies on its 1,200 member institutions.

11 82. Third, the Committee found that some NGBs did not employ simple measures,
12 such as background checks and public banned lists.⁴⁵ The NCAA also fails to impose simple
13 reporting and tracking procedures for coaches who abuse athletes.

14 83. The Committee noted the creation of the United States Center for SafeSport
15 (“USCSS”) on March 3, 2017 as a centralized and neutral organization to oversee education
16 programs for safe sports and to adjudicate claims of sexual misconduct as a step toward
17 establishing consistency and accountability, showing that best practices include a central and
18 neutral oversight organization.⁴⁶

19 84. USCSS created the SafeSport Code for the U.S. Olympic and Paralympic
20 Movement (“SafeSport Code”), which sets out “expectations for Participants related to emotional,
21 physical, and sexual misconduct in sport, including bullying, hazing, and harassment.” Prohibited
22 conduct in the SafeSport Code includes sexual misconduct, emotional and physical misconduct,
23 including stalking, bullying, hazing, and harassment, aiding and abetting, and misconduct related
24

25
26 ⁴³ *Id.*

27 ⁴⁴ *Id.*

28 ⁴⁵ *Id.* at 3-4.

⁴⁶ U.S. Center for SafeSport, *About*, <https://uscenterforsafesport.org/> (last visited Jan. 31, 2022).

1 to reporting.⁴⁷

2 85. In the SafeSport Code, “Sexual misconduct” is defined to include sexual or
3 gender-related harassment and bullying or hazing, or other inappropriate conduct of a sexual
4 nature.⁴⁸ Misconduct related to reporting occurs when an adult participant in sport fails to report
5 actual or suspected sexual misconduct to the Center.⁴⁹

6 86. Despite many NGBs’ long-standing efforts to create and implement effective
7 measures to address sexual abuse and harassment, the NCAA still has yet to set standards of
8 conduct governing abusive coaches.

9 **C. Despite Widespread Recognition that Protection of Student-Athletes Is**
10 **Paramount, the NCAA Knowingly Declined to Act.**

11 **1. The NCAA has a duty to protect the physical and educational well-**
12 **being of student-athletes.**

13 87. Founded in 1906 “to keep college athletes safe[,]” the NCAA’s website notes that
14 it is “working hard” to protect the hundreds of thousands of NCAA-affiliated athletes “physically
15 and mentally, on the field and off.”⁵⁰ Indeed, “[n]early half a million college athletes make up the
16 19,886 teams that send more than 57,661 participants to compete each year in the NCAA’s 90
17 championships in 24 sports across 3 divisions.”⁵¹

18 88. Each NCAA division is governed by rules applicable to all NCAA institutions, as
19 well as rules unique to that division. The NCAA’s DI Manual sets forth the Constitution,
20 Operating Bylaws, and Administrative Bylaws for that division (collectively, the “Manual”).⁵²

21 89. The current NCAA Constitution states that the NCAA’s purposes include
22 maintaining control over and responsibility for intercollegiate sports and the participating student-
23 athletes. The NCAA Constitution states in pertinent part:

24 _____
25 ⁴⁷ United States Center for SafeSport, SafeSport Code for the U.S. Olympic and Paralympic
26 Movement § IX (effective Apr. 1, 2021), [https://uscenterforsafesport.org/wp-](https://uscenterforsafesport.org/wp-content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf)
27 [content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf](https://uscenterforsafesport.org/wp-content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf) (last visited Jan. 31, 2022).

28 ⁴⁸ *Id.*, § IX.C.1.

⁴⁹ *Id.*, § IX.F.

⁵⁰ NCAA, *Well-Being*, <http://www.ncaa.org/health-and-safety> (last visited Feb. 1, 2022).

⁵¹ NCAA, *supra* note 12.

⁵² NCAA Division I Manual (effective Aug. 1, 2021),
<https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited Feb. 1, 2022).

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1.2 Purposes. The purposes of this Association are:

(a) To initiate, stimulate and improve intercollegiate athletics programs for student athletes . . . ;

(b) To uphold the principal of institutional control of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this Association; . . . [and]

(h) To legislate, through bylaws or by resolutions of a Convention, upon any subject of general concern to the members related to the administration of intercollegiate athletics[.]⁵³

90. Article 2.2 of the current NCAA Constitution specifically provides for the well-being of the NCAA’s student-athletes, including in the areas of health and safety and student-athlete/coach relationships:

2.2 The Principle of Student-Athlete Well-Being. [*] Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational wellbeing of student-athletes. (Revised: 11/21/05)

* * *

2.2.3 Health and Safety. [*] It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes. (Adopted: 1/10/95)

2.2.4 Student-Athlete/Coach Relationship. [*] It is the responsibility of each member institution to establish and maintain an environment that fosters positive relationship between the student-athlete and coach. (Adopted: 1/10/95)⁵⁴

91. Moreover, when it comes to gender equity, which includes protection from sexual abuse and harassment, the NCAA has expressly undertaken the duty to adopt rules to ensure member institutions’ compliance with gender equity laws. Article 2.3.2 of the NCAA Constitution provides in pertinent part:

2.3.2 NCAA Legislation. [*] The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions’ compliance with applicable gender-equity laws. (Adopted: 1/11/94)⁵⁵

92. In addition to its Constitution, the NCAA has consistently recognized and publicly

⁵³ NCAA Const., Art.1, §§ 1.2(a), (b) & (h).

⁵⁴ *Id.*, Art. 2, §§ 2.2, 2.2.3 & 2.2.3.

⁵⁵ *Id.*, Art. 2, § 2.3.2.

1 proclaimed its duty to provide a safe environment for student-athletes. President and Board
 2 Member Mark Emmert proclaimed in Congressional testimony that the NCAA has “a clear, moral
 3 obligation to make sure that we do everything we can to support and protect student-athletes.”⁵⁶

4 **2. The NCAA regulates coaches in a myriad of ways—except when it**
 5 **comes to sexual harassment and sexual abuse of student-athletes.**

6 93. Despite its promises to protect student-athletes and its conscious decision to
 7 expressly regulate coaches’ conduct in a myriad of other ways, the NCAA remains unwilling to
 8 address sexual misconduct in any meaningful way.

9 94. For example, Article 10 of the NCAA Bylaws, “Ethical Conduct,” applies to
 10 coaches of intercollegiate athletics, among others. It provides a detailed list of unethical conduct,
 11 which includes, among other things, sports wagering, providing banned substances, providing a
 12 prospective or current student-athletes improper inducements or extra benefits, and facilitating a
 13 meeting between a student-athlete and an agent.⁵⁷ Institutional members such as coaches who
 14 violate this provision are subject to disciplinary or corrective action.⁵⁸

15 95. Article 11 of the NCAA Bylaws, entitled “Conduct and Employment of Athletics
 16 Personnel,” further explains the responsibilities and obligations of coaches and other athletics
 17 personnel. The section regulates coaching bonuses and other compensation, education
 18 requirements and compensation restrictions for certain types of coaching personnel, responsibility
 19 for violations of NCAA regulations, marketing to sports agents, the use of the NCAA name, the
 20 use of tobacco, required contractual provisions, recruiting, scouting, and limitations on the
 21 number and duties of coaching and other staff members. Again, coaches and other athletic
 22 personnel are subject to disciplinary or corrective action for violating these Bylaws.

23 96. Yet, the Bylaws are utterly silent on limitations on coaches with respect to: sexual
 24 harassment or abuse of student-athletes and sexual relationships with student-athletes; internal or
 25 external reporting of coaches who engage in such behavior; the necessity for independent
 26 investigation of coaches who engage in such behavior; a centralized reporting repository so that

27 ⁵⁶ U.S. Senate, *supra* note 1, at 60:25-61:1.

28 ⁵⁷ NCAA Bylaws, Art. 10.

⁵⁸ *Id.*, § 10.4.

1 complaints about coaches can be tracked between and among schools; and mandatory training of
2 coaches relating sexual harassment or abuse of student-athletes.

3 97. A recent example of the perils created by the NCAA's lack of a reporting policy
4 involves former Baylor football coach Art Briles, who left Baylor in the midst of a scandal
5 because he failed to report sexual assaults, but was hired recently by Grambling State after a stint
6 as a high school coach.⁵⁹

7 98. While the NCAA freely metes out punishments for student-athletes for poor
8 academic performance and disciplines athletes for profiting off their own likenesses, the NCAA's
9 Bylaws do not contain any penalties for sexual, violent, or criminal conduct by coaches or
10 personnel in their athletics programs.

11 **3. Student-Athletes suffer in the vacuum created by the NCAA's failure**
12 **to regulate abuse by coaches.**

13 99. Despite USOPC's adoption of a coaching code of ethics in 1992 prohibiting sexual
14 harassment and sexual relationship between coaches and athletes during the coaching
15 relationship, the NCAA took no action for 20 years and then fell short once it did.

16 100. Between 1992 and 2020, multiple accounts of inappropriate sexual conduct by
17 athletics department personnel emerged. A sampling of non-exhaustive incidents follows.

18 101. In 1998, two soccer players, Debbie Keller and Melissa Jennings, brought suit
19 against University of North Carolina soccer coach Anson Dorrance alleging sexual misconduct
20 including uninvited sexual comments, inappropriate advances, and retaliation. In denying
21 Dorrance's Motion to Dismiss, the Fourth Circuit majority noted that Dorrance regularly
22 "bombed players with crude questions and comments about their sexual activities and made
23 comments about players' bodies that portrayed them as sexual objects. In addition, Dorrance

24
25 ⁵⁹ Alanis Thames, *Art Briles, Who Coached Baylor During Sexual Assault Scandal, Is Hired at*
26 *Grambling State*, N.Y. TIMES (Feb. 24, 2022),
<https://www.nytimes.com/2022/02/24/sports/ncaaf/football/art-briles-grambling-state-baylor.html>.
27 Briles resigned four days later in the midst of public outrage—but not because the NCAA had
28 policies in place. Alanis Thames, *Art Briles Resigns From Grambling State*, N.Y. TIMES (Feb. 28,
2022), <https://www.nytimes.com/2022/02/28/sports/football/art-briles-grambling-state.html>.

1 expressed (once within earshot of Jennings) his sexual fantasies about certain players, and he
2 made, in plain view, inappropriate advances to another.”⁶⁰ Keller settled in 2004; Jennings settled
3 for \$385,000 in 2006 with an admission by the coach that he had “participated with members of
4 the UNC-Chapel Hill women’s soccer team in group discussions of those team members’ sexual
5 activities or relationships with men.”⁶¹

6 102. Also in 1998, two former tennis players sued Jesse Dwire, the women’s tennis
7 coach at Syracuse University, alleging that Dwire massaged, fondled, and propositioned them,
8 and that Dwire and the university retaliated against the players after they pursued a complaint
9 through the school’s grievance system. According to one news source: “the lawyer for [the
10 plaintiffs], said Syracuse officials, aware that the National Collegiate Athletic Association has no
11 policy on sexual harassment, had ignored complaints about Dwire’s sexual improprieties for
12 years.”⁶²

13 103. In 2011, a former University of South Carolina women’s soccer player sued the
14 university, alleging she received unwanted sexual advances by the assistant coach and that her
15 academic advisor admitted that the coach had sexually harassed other students. She also alleged
16 that the university failed to renew her scholarship in retaliation for her complaint.⁶³

17 104. In June 2012, The Pennsylvania State University’s (“Penn State”) Jerry Sandusky
18 was convicted of 45 counts of child sexual abuse and sentenced to 30 to 60 years in prison.
19 Several top Penn State officials, including its president and athletic director, were also sentenced
20 to prison for their roles in covering up the crimes:

21 a. Since 2001, Penn State had been aware that Sandusky committed sexual
22

23 ⁶⁰ *Jennings v. Univ. of N.C.*, 482 F.3d 686, 691 (4th Cir. 2007).

24 ⁶¹ Doug Lederman, *North Carolina and Coach Settle Sexual Harassment Suit*, INSIDE HIGHER ED.
25 (Jan. 15, 2008), <https://www.insidehighered.com/news/2008/01/15/north-carolina-and-coach-settle-sexual-harassment-suit>.

26 ⁶² Robin Finn, *Growth in Women’s Sports Stirs Harassment Issue*, N.Y. TIMES (Mar. 7, 1999),
27 <https://www.nytimes.com/1999/03/07/sports/out-of-bounds-a-special-report-growth-in-women-s-sports-stirs-harassment-issue.html>.

28 ⁶³ WISNews, *Former USC Women’s Soccer Player Files Lawsuit* (updated Dec. 21, 2011),
<https://www.wistv.com/story/16301453/former-usc-womens-soccer-player-files-lawsuit/>.

1 acts on a young boy in a shower. Yet the university did nothing, which
2 allowed Sandusky to abuse ten young football players over at least a 15-
3 year period.⁶⁴

4 b. On July 23, 2012, in response to public pressure, the NCAA sanctioned
5 Penn State because of its “conspiracy of silence” relating to Jerry
6 Sandusky’s sexual abuse of boys. The NCAA’s penalties included a
7 \$60,000,000 fine (equating to one year’s gross revenue from the
8 university’s football program) to endow a fund supporting sexual abuse
9 survivor assistance programs; a ban on Penn State’s participation in post-
10 season football games for four years; a reduction in football scholarships
11 from 25 to 15 per year for four years; and vacating all the team’s wins from
12 1998 (when university officials first heard Sandusky might be sexually
13 abusing young boys) to 2011.⁶⁵

14 c. The NCAA announced that its punishment of Penn State was intended to
15 “driv[e] cultural change,” because of the “tragic damage that has been done
16 to the victims or their families.” NCAA President Mark Emmert stated:

17 All involved in intercollegiate athletics must be watchful that
18 programs and individuals do not overwhelm the values of
19 higher education. In the Penn State case, the results were
20 perverse and unconscionable. No price the NCAA can levy
21 will repair the grievous damage inflicted by Jerry Sandusky
22 on his victims. However, we can make clear that the culture,
23 actions and inactions that allowed them to be victimized will
24 not be tolerated in collegiate athletics.⁶⁶

23 ⁶⁴ John Barr, *How Key Figures From Jerry Sandusky’s Crimes View Joe Paterno’s Legacy, 10*
24 *years after his downfall*, ESPN (Apr. 18, 2022), [https://www.espn.com/college-](https://www.espn.com/college-football/story/_id/33743088/how-key-figures-jerry-sandusky-crimes-view-joe-paterno-legacy-10-years-downfall)
25 [football/story/_id/33743088/how-key-figures-jerry-sandusky-crimes-view-joe-paterno-legacy-](https://www.espn.com/college-football/story/_id/33743088/how-key-figures-jerry-sandusky-crimes-view-joe-paterno-legacy-10-years-downfall)
26 [10-years-downfall](https://www.espn.com/college-football/story/_id/33743088/how-key-figures-jerry-sandusky-crimes-view-joe-paterno-legacy-10-years-downfall).

25 ⁶⁵ Mark Memmott, *Penn State Fined \$60M, Banned From Bowls, Wins From 1998 On Vacated*,
26 NPR (July 23, 2021), [https://www.npr.org/sections/thetwo-way/2012/07/23/157222533/penn-](https://www.npr.org/sections/thetwo-way/2012/07/23/157222533/penn-state-fined-60m-banned-from-bowls-wins-from-1998-on-vacated)
27 [state-fined-60m-banned-from-bowls-wins-from-1998-on-vacated](https://www.npr.org/sections/thetwo-way/2012/07/23/157222533/penn-state-fined-60m-banned-from-bowls-wins-from-1998-on-vacated).

27 ⁶⁶ Remarks by Mark Emmert, *Penn State Hit With Severe NCAA Sanctions: \$60 Million Fine,*
28 *Wins Vacated, 4-Year Bowl, Playoff Ban*, YOUTUBE (July 23, 2012),
<https://www.youtube.com/watch?v=MGItBWWTN0k> (last visited Feb. 9, 2022).

1 d. Yet some of the penalties, “which came outside the typical enforcement
2 process,” were later rescinded when private emails released after the
3 settlement “suggested the NCAA [] strong-armed the university into
4 accepting the punishments.” As Gabe Feldman, director of Tulane’s Sports
5 Law Program, noted: ““The lesson here is the N.C.A.A. needs to strictly
6 follow its own rules, and making exceptions for exceptionally bad or
7 criminal conduct can lead to problems.””⁶⁷

8 105. Larry Nassar, like Sandusky, is also serving a prison sentence for sexually abusing
9 hundreds of student-athletes under his care. Over 350 athletes, including Olympic champions
10 Simone Biles, Gabby Douglas, and Aly Raisman, publicly accused the long-time doctor for USA
11 Gymnastics and Michigan State University. Following numerous sexual assault charges, and
12 emotional testimonies from many victims, Nassar received a sentence of up to 175 years in
13 prison. Nassar, also like Sandusky, thrived unchecked for over twenty years.⁶⁸

14 a. At least 14 individuals at Michigan State, including its President Lou Anna
15 Simon, athletic trainers, and assistant coaches, had been notified of sexual
16 misconduct reports concerning Nassar as far back as 1988 but Michigan
17 State took no action for years. Instead, it chose to protect its reputation (and
18 endowments).⁶⁹

19 b. As with Penn State, the NCAA announced an investigation into Michigan
20 State’s handling of the allegations against Nassar in January 2018 only
21 after Nassar was convicted and sentenced. The goal of the investigation
22

23 ⁶⁷ Marc Tracy, *In Michigan State Investigation, N.C.A.A. Moves Beyond Its Comfort Zone*, NEW
24 YORK TIMES (Jan. 24, 2018), <https://www.nytimes.com/2018/01/24/sports/ncaa-investigation-michigan-state.html>.

25 ⁶⁸ In February 2019, Nassar was sentenced to 40-175 years after pleading guilty to seven counts
26 of criminal sexual misconduct in Ingham County, Michigan. Two weeks later, he was sentenced
27 to 40-125 years for pleading guilty to three counts of criminal sexual conduct in Eaton County,
28 Michigan.

⁶⁹ Kim Kozlowski, *What MSU Knew: 14 Were Warned of Nassar Abuse*, THE DETROIT NEWS
(Jan. 18, 2018), <https://www.detroitnews.com/story/tech/2018/01/18/msu-president-told-nassar-complaint-2014/1042071001/>.

1 was to determine if Michigan State violated any NCAA rules.⁷⁰

2 c. In August 2018, the NCAA ended its investigation, finding that Michigan
3 State had not violated any of the NCAA's bylaws. The NCAA stated that
4 despite the allegations of abuse (and Nassar's criminal convictions), the
5 NCAA had "not substantiated violations of N.C.A.A. legislation."⁷¹

6 106. In May 2019, an independent investigative report issued by the law firm Perkins
7 Coie revealed that Ohio State coaches and athletics administrators knew for two decades that a
8 team doctor, Richard Strauss, was molesting NCAA student-athletes on the wrestling team.⁷²

9 107. In August 2020, former NCAA student-athletes from the University of Michigan
10 alleged they were sexually abused by wrestling, football, hockey and track teams' physician Dr.
11 Robert Anderson during physical exams. He reportedly abused hundreds of student-athletes over
12 the course of 37 years.⁷³

13 **4. Even when the NCAA addresses abuse, the NCAA's policies and**
14 **pronouncements lack teeth.**

15 108. Belatedly, and without imposing mandates that would protect its student-athletes,
16 in 2012, the NCAA finally acknowledged that "sexual relationships between coaches and student-
17 athletes have become a serious problem."⁷⁴

18 109. In an NCAA publication, two experts explained that these same principles that
19 forbid sexual relationships in other settings involving asymmetrical relationships—such as
20 lawyer-client, physician-patient, judge-party/lawyer, or clergy-parishioner—should apply to
21

22 ⁷⁰ Faith Karimi & Wayne Sterling, *NCAA Investigating Michigan State Over Larry Nassar Case*,
23 CNN (Jan. 24, 2018) <https://www.cnn.com/2018/01/24/us/ncaa-msu-nassar-investigation/index.html>.

24 ⁷¹ Marc Tracy, *N.C.A.A. Drops Michigan State Inquiry Over Nassar*, NEW YORK TIMES (Aug. 30,
2018), <https://www.nytimes.com/2018/08/30/sports/ncaa-michigan-state-nassar.html>.

25 ⁷² Caryn Trombino & Markus Funk, Perkins Coie LLP, *Report of the Independent Investigation*
26 *Sexual Abuse Committed by Dr. Richard Strauss at The Ohio State University* at 1 (May 15,
2019), https://compliance.osu.edu/assets/site/pdf/Revised_report.pdf (last visited Feb. 1, 2022).

27 ⁷³ *37 Years of Sexual Abuse: This is the Dr. Robert Anderson Story*, THE MICHIGAN DAILY (Nov.
4, 2021), <https://www.michigandaily.com/news/robertanderson/>.

28 ⁷⁴ Brake, *supra* note 25, at 4.

1 coaches and players as well:

2 All of these examples involve relationships that are too fraught with
 3 power imbalances for consent to be meaningfully and reliably given.
 4 While being a coach is, in many respects, different from other
 5 professions, it shares the defining features that make consent to enter
 6 into a sexual relationship inherently problematic. At the core of the
 7 coach-athlete relationship is a duty of care and an imbalance of
 8 power. In many respects, the relationship of dependence is even more
 9 acute here than it is in these other settings due to the breadth of
 10 control that the coach has over the life and education of the student-
 11 athlete.⁷⁵

12 110. After 2014, though the NCAA ostensibly began taking an increasingly visible
 13 stance on sexual assault prevention, its policies and pronouncements were toothless. In 2014, the
 14 NCAA Executive Committee issued a Statement on Sexual Violence Prevention and Compliance
 15 Resolution:

2014 NCAA EXECUTIVE COMMITTEE SEXUAL VIOLENCE PREVENTION AND COMPLIANCE RESOLUTION

WHEREAS NCAA Constitution Article 4.1.2 charges the NCAA Executive Committee with identifying core issues that affect the Association as a whole and with overseeing Association-wide issues and ensuring that each division operates consistent with the basic purposes, fundamental policies and general principle of the Association;

WHEREAS the Executive Committee regularly takes action to preserve and enhance student-athlete health, safety and well-being and promote nondiscriminatory and effective learning and competitive environments;

WHEREAS NCAA Constitution Article 2.2.3 requires each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes;

WHEREAS the U.S. Department of Education Office for Civil Rights has issued guidance related to sexual harassment, bullying and violence against all students under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq, which applies to all educational activities, including athletics programs, of higher education institutions receiving federal financial assistance and which states that sexual violence includes rape, sexual assault, sexual battery, sexual coercion and gender-based harassment.

Now, Therefore, Be It Resolved, that the Executive Committee recognizes the importance of addressing the abhorrent societal issue of sexual violence, especially when it occurs on our campuses. The Executive Committee acknowledges

that it is our members' collective responsibility to maintain campuses as safe places to learn, live, work and play. The Executive Committee expects NCAA members to ensure that the values and principles articulated in the Constitution to protect the health and safety of student-athletes, operate fairly and ethically, and further to ensure that student-athletes are neither advantaged nor disadvantaged by special treatment and that institutions' athletics departments must:

- Comply with campus authorities and ensure that all athletics staff, coaches, administrators and student-athletes maintain a hostile-free environment for all student-athletes regardless of gender or sexual orientation; know and follow campus protocol for reporting incidents of sexual violence; report immediately any suspected sexual violence to appropriate campus offices for investigation and adjudication.
- Educate all student-athletes, coaches and staff about sexual violence prevention, intervention and response.
- Ensure compliance with all federal and applicable state regulations related to sexual violence prevention and response.
- Cooperate with, but not manage, direct, control or interfere with, college or university investigations into allegations of sexual violence, ensuring that investigations involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus.

16 111. Yet the resolution continues to lay responsibility for protecting NCAA student-
 17 athletes on colleges and universities: “[I]t is our members’ collective responsibility to maintain
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 27 ⁷⁵ *Id.*, at 26.
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1 campuses as safe places to learn, live, work and play.”⁷⁶ The resolution sets out four
 2 unremarkable mandates for the institutions’ athletics departments: (i) “Comply with campus
 3 authorities and ensure that all athletics staff, coaches, administrators and student-athletes maintain
 4 a hostile-free environment for all student-athletes;” (ii) “Educate all students-athletes, coaches
 5 and staff about sexual violence prevention, intervention and response;” (iii) “Ensure compliance
 6 with all federal and applicable state regulations related to sexual violence prevention and
 7 response;” and (iv) “Cooperate with, but not manage, direct, control or interfere with, college or
 8 university investigations.”⁷⁷

9 112. In 2016 (updated 2022), and in furtherance of the above resolution, the NCAA’s
 10 Sport Science Institute published a document entitled “Sexual Violence Prevention: An Athletics’
 11 Tool Kit for a Healthy and Safe Culture” (“Tool Kit”).⁷⁸

12 113. In it, the NCAA broadly defines “sexual misconduct” to include “sexual and
 13 gender-based harassment, sexual assault/sexual violence, stalking and intimate partner
 14 violence.”⁷⁹ Again, however, the NCAA foists responsibility for ensuring college student-athlete
 15 environments are safe and healthy solely on the institutions themselves: “Member schools have a
 16 responsibility to protect the health of and provide a safe environment fo reach of their
 17 participating student-athletes.”⁸⁰

18 114. And even though the NCAA acknowledged that coaches have an “influential”
 19
 20

21 ⁷⁶ NCAA, *Sexual Violence Prevention, An Athletics Took Kit for a Healthy and Safe Culture* (2d
 22 ed.), Appendix A, at 35 (Oct. 2016) (“Toolkit 2d ed.”),
https://www.naspa.org/images/uploads/events/NCAA_2016_Sexual-Violence-Prevention-Tool-Kit.pdf.

23 ⁷⁷ *Id.*

24 ⁷⁸ NCAA, *Sexual Violence Prevention, An Athletics Took Kit for a Healthy and Safe Culture* (3d
 25 ed.) (“Toolkit 3d ed.”),
https://ncaaorg.s3.amazonaws.com/ssi/violence/SSI_SexualViolencePreventionToolkit.pdf (last
 26 visited July 14, 2022). On its website, the NCAA states that the “NCAA Sports Science Institute
 27 promotes health and safety through research and training on . . . sexual assault and more.” NCAA,
How We Support College Athletes, <https://www.ncaa.org/sports/2015/12/1/about-resources-media-center-ncaa-101-how-we-support-college-athletes.aspx> (last visited Feb. 3, 2022).

27 ⁷⁹ Tool Kit 2d ed., *supra* note 76, at 3.

28 ⁸⁰ Tool Kit 3d ed., *supra* note 78, at History.

1 relationship over student-athletes,⁸¹ the NCAA identifies coaches as those tasked with
 2 “preventing and responding to sexual violence,”⁸² thereby ignoring the fact that coaches may very
 3 well be perpetrators of sexual harassment and other sexual misconduct.

4 115. Moreover, the goals outlined in the policy are “aspirational,” and the policy merely
 5 mandated annual attestations from each university chancellor/president, athletics director, and
 6 Title IX coordinator regarding compliance with the universities’ own policies.⁸³

7 116. Despite the NCAA’s awareness of sexual violence affecting its student-athletes, it
 8 has resisted any meaningful reform despite calls by eight U.S. senators and its own Commission
 9 to Combat Campus Sexual Violence (the “Commission”).⁸⁴ Instead, in 2018, the NCAA
 10 disbanded its Commission, and the NCAA promised only to continue to “monitor and track on
 11 sexual violence issues.” No additional reform efforts have been made.⁸⁵

12 117. The NCAA’s unwillingness to effectively protect student-athletes from predatory
 13 coaches and trainers is even more egregious in light of its imposition of reporting requirements
 14 for student-athletes who have had claims of sexual misconduct against them investigated. In
 15 2019, *USA Today* reported on what it termed the “Predator Pipeline,” by which sexually violent
 16 student-athletes (not unlike coaches) are allowed to migrate from one NCAA school to another
 17 and remain eligible to play:

18 No matter if a school suspends, dismisses or expels athletes for
 19 sexual misconduct, NCAA rules provide avenues for them to return
 20 to the field on a new team within a year and sometimes immediately;
 21 players routinely exploit the NCAA’s own loopholes to circumvent
 22 penalties; a handful of the NCAA’s Division I conferences have
 23 adopted their own policies ban athletes with past behavioral
 24 problems, but definitions of culpability vary, and most rely on the

24 ⁸¹ *Id.*, at 2.

25 ⁸² *Id.*, at History.

26 ⁸³ *Id.*, at 4, 6, 23.

27 ⁸⁴ See Kenny Jacoby, *NCAA Board of Governors to Review Policies Regarding Sexual Assault
 28 Amid Congressional Pressure on ‘Predator Pipeline’*, USA TODAY (Jan. 16, 2020),
[https://www.usatoday.com/story/sports/college/2020/01/16/ncaa-predator-pipeline-focus-
 congressional-bill-athletes-sexual-assault/4492088002/](https://www.usatoday.com/story/sports/college/2020/01/16/ncaa-predator-pipeline-focus-congressional-bill-athletes-sexual-assault/4492088002/) (citing NCAA committee minutes).

⁸⁵ *Id.*

1 honor system, not record checks, to verify recruits.⁸⁶

2 118. Similarly, in the wake of the *USA Today* investigatory report and introducing
3 legislation, U.S. Representative Donna Shalala stated:

4 College sports, as overseen by the NCAA, have undergone a massive
5 transformation in recent years As profits, compensation for
6 coaches, and spending on luxurious athletic facilities have ballooned,
7 the association has repeatedly failed to address systemic problems
8 with respect to the health and well-being of student athletes It
9 is time for Congress to intercede in order to protect college athletes and
10 maintain the integrity of college sports once and for all.⁸⁷

11 119. In response to *USA Today's* yearlong investigation, as of the 2021-22 school year,
12 the NCAA requires college athlete transfers to disclose to schools whether their conduct has
13 previously resulted in an investigation, discipline through a Title IX proceeding, or a criminal
14 conviction for sexual violence. Schools are also required to take reasonable steps to confirm this
15 information.⁸⁸

16 120. Yet, the NCAA declines to impose such requirements on coaches and other
17 athletics department personnel who commit the same or similar acts and continue to enjoy
18 perhaps even greater immunity as they migrate from one NCAA institution to another throughout
19 their careers.

20 **5. Because of its keen awareness of the problem it fostered and its desire
21 to avoid liability, the NCAA continues to focus on decentralization to
22 the detriment of its student-athletes.**

23 121. Despite its “clear, moral obligation” to protect the health and well-being of its
24 student-athletes, the NCAA’s lawyers have created a strategy to avoid liability that directly

25 ⁸⁶ Kenny Jacoby, *NCAA Looks the Other Way as College Athletes Punished for Sex Offenses Play
26 On*, USA TODAY (Dec. 12, 2019), [https://www.usatoday.com/in-
27 depth/news/investigations/2019/12/12/ncaa-looks-other-way-athletes-punished-sex-offenses-
28 play/4360460002/](https://www.usatoday.com/in-depth/news/investigations/2019/12/12/ncaa-looks-other-way-athletes-punished-sex-offenses-play/4360460002/).

⁸⁷ J. Brady McCollough, *Congressional Commission Proposed to Address NCAA’s ‘Systemic
29 Problems’*, L.A. TIMES (Dec. 19, 2018), [https://www.latimes.com/sports/story/2019-12-
30 19/congressional-commission-proposed-to-address-ncaas-systemic-problems](https://www.latimes.com/sports/story/2019-12-19/congressional-commission-proposed-to-address-ncaas-systemic-problems).

⁸⁸ Hulst & Handler, LLP, *Investigation Report Regarding Allegations of Sexual Misconduct
31 Involving the University of San Francisco Men’s Soccer Team* 43-44, n.67 (Jan. 11, 2021),
<https://bit.ly/3vN0wrB>.

1 contradicts positions the NCAA has taken to recruit student-athletes.

2 122. For example, in the appeal to the California Supreme Court in *Brown v. USA*
3 *Taekwondo*, the NCAA filed an amicus curiae brief in support of the sports organization
4 respondent, USA Taekwondo (“USAT”).⁸⁹ In *Brown*, the California appellate court found that
5 USAT owed a duty of care to plaintiffs who were sexually abused by a coach under USAT’s
6 control, but that USOPC owed no similar duty.⁹⁰

7 123. In its amicus curiae brief, the NCAA took the position that sports organizations
8 have no legal duty to protect their athletes from sexual abuse by coaches. Sidestepping the fact
9 that it has not promulgated any policies prohibiting such abuse, the NCAA argued that it has
10 “limited ability” to “enforce appropriate policies and best practices.”⁹¹ The NCAA also denied it
11 could impose mandatory reporting on its member institutions regarding abusive coaches, claiming
12 that it cannot “monitor the day-to-day conduct of coaches.”⁹²

13 124. In staking out this position, the NCAA omitted its detailed proscriptions governing
14 the day-to-day conduct of those very same coaches—including with regards their tobacco use—
15 whom the NCAA can and does sanction.⁹³

16 125. The NCAA’s argument that “the NCAA’s members have decided that they—
17 rather than the NCAA itself—are better positioned to ensure the health and safety of the student-
18 athletes they enroll”⁹⁴ reveals the slippery slope on which the NCAA stands. This is because the
19 NCAA member institutions have the strongest incentive to cover up coaches’ bad behavior to
20 preserve institutional reputations and attendant alumni donations, athletic revenue, and
21 enrollment.

22
23 ⁸⁹ Application to File Amicus Curiae Brief & Brief of Amicus Curiae of the National Collegiate
24 Athletic Association in Support of Respondent the United States Olympic Committee, 2020 WL
25 5705929 (“NCAA Brief”).

26 ⁹⁰ *Brown v. USA Taekwondo*, 40 Cal. App. 5th 1077, as modified on denial of reh’g, (2019), aff’d
27 11 Cal. 5th 204 (2021).

28 ⁹¹ NCAA Brief, 2020 WL 5705929, at *27.

⁹² *Id.*, at *26.

⁹³ See, e.g., NCAA Bylaws, Art. 10, §10.4 and Art. 11, §11.1.1.

⁹⁴ NCAA Brief, 2020 WL 5705929, at *27.

1 126. The Penn State, Michigan State, Michigan, and Ohio State cases demonstrate that
2 the NCAA’s argument that it has “limited ability to take on that burden”⁹⁵ rings hollow in light
3 of the NCAA’s wealth, reach, micro-management of both coaches and athletes for minor
4 infractions, and its nearly 60-member enforcement staff to investigate potential violations of
5 amateurism and academic eligibility rules.⁹⁶

6 127. The NCAA’s conscious decision to remain decentralized and foist responsibility
7 over protecting student-athletes from sexual harassment and abuse at its member institutions,
8 divisions, and conferences is at odds with best practices on how to protect student-athletes from
9 sexual harassment and abuse.

10 128. As stated above, one “troubling “finding the Committee’s 2018 Nassar and
11 Beyond Report related to USOPC’s prioritizing reputation and image over athlete safety. USOPC
12 determined that it “does not have athletes” to protect from sexual abuse, and instead, that
13 protecting the athletes was the responsibility of each NGB. Yet the NGBs—like NCAA member
14 institutions—are incentivized to protect their reputations at the expense of the athletes.

15 129. Another finding of the Nassar and Beyond Report was that despite USOPC’s
16 governance support, each of the 48 NGBs had its own policies and procedures, creating
17 inconsistencies in critical areas, such as whether to publish the names of those previously
18 disciplined or banned from a sport and how to handle sexual abuse complaints.⁹⁷ Because of the
19 disparate rules and enforcement thereof, abusers were able to thrive. This is not unlike the NCAA
20 squarely placing student-athlete safety and policies in the hands of its 1,200 colleges and
21 universities.

22 130. Thus, the NCAA’s decentralization is contrary to recent, empirical evidence
23 concerning best practices, and will likely continue to lead to inadequate protection of student-
24 athletes from sexual assault, abuse, and harassment.

25 131. The NCAA’s strategy in furtherance of its attempt to disavow liability is all the
26

27 ⁹⁵ NCAA Brief, 2020 WL 5705929, at *27.

28 ⁹⁶ Jacoby, *supra* note 85.

⁹⁷ Nassar and Beyond, *supra* note 42, at 45-61.

1 more evident with the NCAA’s enactment of a new constitution. Claiming to “better meet the
2 needs of our student-athletes,” the NCAA announced the adoption of a new constitution on
3 January 20, 2022. The NCAA constitution supposedly “underscores the importance of both
4 physical and mental health and emphasizes diversity, inclusion and gender equity.”⁹⁸

5 132. Yet the NCAA’s new constitution is only 19 pages, as compared to the prior
6 constitution’s 43 pages. While the preamble to the constitution states that the “basic purpose” of
7 the NCAA “is to support and promote healthy and safe intercollegiate athletics,”⁹⁹ this new
8 constitution decentralizes decision-making, and attempts to pin responsibility for student welfare
9 on the member institutions.

10 **D. With the NCAA’s Blessing, the University of San Francisco Permitted Sexual**
11 **Exploitation of Student-Athletes on and off the Field.**

12 **1. Neither the Archdiocese of San Francisco nor USF are strangers to**
13 **sexual abuse and abuse of power.**

14 133. The University of San Francisco is a Catholic, Jesuit institution.¹⁰⁰ One of its core
15 religious values is *cura personalis*, or “care of the whole person.”¹⁰¹

16 134. USF is part of the Catholic Archdiocese of San Francisco. Saint Ignatius Church is
17 located on the University of San Francisco campus. The church serves a parish of the Catholic
18 Archdiocese of San Francisco and is the university’s chapel.¹⁰²

19 135. A 2018 report of alleged sexual assaults and misconduct among three Bay Area
20 dioceses, including the San Francisco Archdiocese, found that five alleged offenders were priests

21 _____
22 ⁹⁸ Corbin McGuire, *NCAA Members Approve New Constitution*, NCAA (Jan. 20, 2022),
23 [https://www.ncaa.org/news/2022/1/20/media-center-ncaa-members-approve-new-
constitution.aspx](https://www.ncaa.org/news/2022/1/20/media-center-ncaa-members-approve-new-constitution.aspx).

24 ⁹⁹ NCAA Constitution, Preamble (effective Aug. 1, 2022),
25 [https://ncaaorg.s3.amazonaws.com/governance/ncaa/constitution/NCAAGov_Constitution121421
.pdf](https://ncaaorg.s3.amazonaws.com/governance/ncaa/constitution/NCAAGov_Constitution121421.pdf).

26 ¹⁰⁰ USF, *Facts & Statistics*, [https://www.usfca.edu/about-usf/what-you-need-to-know/facts-
statistics](https://www.usfca.edu/about-usf/what-you-need-to-know/facts-statistics) (last visited Mar. 8, 2022).

27 ¹⁰¹ USF, *Our Values*, <https://www.usfca.edu/about-usf/who-we-are/our-values> (last visited Mar.
28 8, 2022).

¹⁰² USF, *Facts & Statistics*, [https://www.usfca.edu/about-usf/what-you-need-to-know/facts-
statistics](https://www.usfca.edu/about-usf/what-you-need-to-know/facts-statistics) (last visited Mar. 8, 2022).

1 affiliated with USF at one point in their careers. Those priests were assigned to USF over a span
 2 of 32 years, from 1949 to 1981, though the report did not say whether the abuse occurred on the
 3 USF campus. Three of the priests faced legal proceedings that included criminal convictions.¹⁰³

4 136. Referring to the history of sexual abuse in the church, USF's president, Fr. Paul
 5 Fitzgerald, vowed to take sexual abuse matters seriously:

6 But the cover-up by civil and religious authority figures allowed
 7 abusers to become repeat offenders; in my view, this is the heart of
 8 the scandal. Today, any abuse is promptly reported to the authorities,
 9 who take these matters extremely seriously.¹⁰⁴

10 137. After the report's revelations, Fr. Fitzgerald also promised to promote a better
 11 culture at USF that supports survivors and includes transparency:

12 Abuse of power is at once infuriating and disillusioning. We cannot
 13 become inured to these published reports and revelations, whether
 14 they occur within the Catholic Church, another organization or even
 15 our own community. We must all work to promote a culture that
 16 prevents abuse, hears and supports survivors, seeks transparency and
 17 advances reform. I write to assure you that I am committed to acting
 18 against all forms of abuse of power by any member of our
 19 community, including the Jesuits.¹⁰⁵

20 138. Despite Fr. Fitzgerald's public statements and the administration's knowledge of
 21 the issue, sexual abuse continues on USF's campus.

22 139. In July of 2020, sexual assault and abuse allegations were revealed against
 23 members of the USF Men's Soccer Team.¹⁰⁶ A Change.org petition described a homophobic and
 24 misogynistic "toxic" sexual environment on the men's soccer team, which led to the suspension
 25 of a professional soccer player based on his conduct while at USF as a student-athlete.¹⁰⁷ The

26 ¹⁰³ Izzie Hallock, *Alleged Sex Abusers Include USF Jesuits*, SAN FRANCISCO FOGHORN (Nov. 8,
 27 2018), <http://sffoghorn.com/alleged-sex-abusers-include-usf-jesuits/>.

28 ¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Gabriel Greschler, *Sexual Assault Allegations Against Soccer Team Members Prompt a Reckoning For USF*, SF EXAMINER (July 19, 2020), <https://www.sfexaminer.com/sports/sexual-assault-allegations-against-soccer-team-force-a-reckoning-for-usf/>.

¹⁰⁷ Petition, *USFCA TAKE ACTION NOW! Alleged Sexual Allegations on the USFCA Men's Soccer Team* (July 13, 2020), https://www.change.org/p/university-of-san-francisco-usfca-take-action-now-alleged-sexual-allegations-on-the-usfca-men-s-soccer-team?original_footer_petition_id=&grid_position=&pt=.

1 petition—signed by over 5,000 individuals—stated that USF’s reporting system is ineffective and
 2 that USF diminishes and dismisses allegations of sexual misconduct against soccer players, and
 3 demanded that USF investigate sexual misconduct claims involving the men’s soccer team.¹⁰⁸

4 140. In response to the petition, USF investigated the alleged misconduct on the men’s
 5 soccer team, as well as USF’s handling of such misconduct, and released a 53-page report on
 6 January 11, 2021.¹⁰⁹ Despite the graphic nature of the incidents reported, as well as the fact that
 7 11 soccer players were accused of engaging in sexual misconduct over the past decade, the
 8 investigative report determined that it is more likely than not that sexual misconduct and/or
 9 disrespectful behavior towards women and/or LGBTQIA individuals was *not* pervasive among
 10 members of the USF men’s soccer team over the past decade, and that USF had acted diligently
 11 in response to reported allegations of sexual misconduct involving soccer players over the past 10
 12 years.¹¹⁰

13 141. In response to the release of the report, Fr. Fitzgerald took a facially strong stance
 14 against sexual misconduct:

15 Sexual misconduct and sex and gender discrimination are not
 16 tolerated at USF and we take all allegations of sexual assault
 17 seriously. Whether occurring days or decades ago, on or off-campus,
 all reports of sexual misconduct received by the university are
 investigated thoroughly.

18 * * *

19 Our goal is to equip students with the understanding that sexual
 20 misconduct is not tolerated at USF and with the tools to intervene if
 21 they see something that may cause harm to another person. USF
 22 offers employee educational programs with the goal of fostering a
 safe and supportive working and learning environment. Our policies
 are continually reviewed and refined to ensure that sexual assault,
 harassment, and discrimination have no place at USF.

23 * * *

24 Together with our staff in Title IX, we affirm our commitment to
 25 students, and all members of the USF community, to continue

26 ¹⁰⁸ *Id.*

27 ¹⁰⁹ Hulst & Handler, LLP, *supra* note 89.

28 ¹¹⁰ *Id.* at 3 (emphasis added).

1 working toward a more positive, safe, and healthy campus. We
 2 affirm our commitment to responding to all incidents of sex and
 3 gender discrimination, providing pathways of opportunities for
 4 victims and survivors to learn about resources, supportive measures,
 and accountability options. We invite students, faculty, and staff to
 join us in these efforts and reaffirm their commitments to the
 betterment of our community.¹¹¹

5 142. *Sports Illustrated* (“SI”) found that the USF-commissioned investigative report’s
 6 conclusions could not be squared with the facts. SI spoke to a former USF student who said that
 7 in 2003, she went to the administration with soccer players’ concerns regarding the filming of
 8 women in intimate settings without their consent, and that there were other instances when the
 9 administration was aware of team members’ behavior. SI’s investigative reporting found that
 10 there was a “distinct culture of misconduct on the team that spanned three coaches, four athletic
 11 directors—though one, Scott Sidwell, was present for the majority of the time—and two school
 12 presidents.” Thus, USF still fails to adequately address misconduct on its sports teams.¹¹²

13 143. Notwithstanding USF’s confounding finding that sexual misconduct was not
 14 pervasive, a new deputy Title IX coordinator position was filled to work directly with Athletics; a
 15 new Policy on Nondiscrimination Based on Sex and Gender, Sexual Harassment, and Sexual
 16 Misconduct for Students, Employees, and Third Parties was approved; and a review of Athletics
 17 was undertaken with every coach and team as a part of an extensive review of the Athletics
 18 Student Handbook as it pertains to sex and gender discrimination, harassing behavior, and sexual
 19 misconduct.¹¹³ Yet, these responses appear to be just window dressing.

20 144. As but one example of USF’s continued failings in this area and relevant to the
 21 allegations of this Complaint, at the outset of the fall 2021 baseball season, members of the USF
 22 baseball team were required to attend a multi-hour session with the Title IX officers at the
 23

24 ¹¹¹ myUSF, *Men’s Soccer Investigation: Update from President Fitzgerald Regarding the Sports*
 25 *Illustrated Story*, <https://myusf.usfca.edu/title-ix/mens-soccer-investigation> (last visited Mar. 8,
 2022).

26 ¹¹² Priya Desai & Jenny Vrentas, *A Predatory Culture, a Viral Reckoning—and Now What?*,
 27 SPORTS ILLUSTRATED (Sep. 30, 2021), [https://www.si.com/college/2021/09/30/usf-mens-soccer-](https://www.si.com/college/2021/09/30/usf-mens-soccer-sexual-assault-and-harassment-reckoning-daily-cover)
 sexual-assault-and-harassment-reckoning-daily-cover.

28 ¹¹³ *Id.*

1 baseball field. However, neither Coach G nor Coach Naks attended.¹¹⁴

2 145. Moreover, USF knew about the baseball coaches' harassment and abuse long
3 before the soccer scandal broke yet turned a blind eye. Upon information and belief, a number of
4 parents complained to both USF and NCAA about the USF baseball program before the
5 allegations against the USF Men's Soccer Team were revealed in 2020.

6 146. For example, in May of 2014, John Doe 6's parents sent the USF Associate
7 Athletic Director and the NCAA Faculty Athletic Representative a letter describing the coaches'
8 conduct. The Athletic Director Scott Sidwell was also informed of the complaints. Again, USF
9 did nothing.

10 147. Because neither USF nor the NCAA did anything about these reports, the abuse
11 continued for years thereafter, affecting countless other young men.

12 **2. Coach Naks created an intolerable sexualized environment at every**
13 **practice and Coach G not only tolerated it, he participated in it.**

14 148. During the time Coach Naks was at USF, USF described his duties as follows: "In
15 addition to guiding the Dons¹¹⁵ on the base paths, Nakamura's other on-field duties include
16 coaching third base, overseeing the team's SPARQ (Speed, Power, Agility, Reaction, and
17 Quickness) training and leading the team's visualization and imagery training program."¹¹⁶

18 149. Further, in July 2020, USF's Executive Senior Associate Athletic Director
19 described Coach Naks as "an amazing man who truly defines what it means to be a Diamond
20 Don."¹¹⁷

21 150. In a November 2020 interview, Coach G described Coach Naks as follows:
22

23 ¹¹⁴ Additionally, in June 2021, twin sisters and former USF basketball players Marta and Marija
24 Galic brought suit in San Francisco Superior Court against Molly Goodenbour, the head coach of
25 the USF women's basketball team, and USF, challenging Coach Goodenbour's "archaic and
abusive conduct" towards the twins from 2019 to 2021 and USF's awareness of the coach's
verbal and psychological abuse.

26 ¹¹⁵ Members of USF baseball team are referred to as the Diamond Dons. *See, e.g.*, Diamond Dons
Take Two (Feb. 18, 2017), <https://usfdons.com/news/2017/2/18/baseball-diamond-dons-take-two.aspx>.

27 ¹¹⁶ Profile: Troy Nakamura, <https://usfdons.com/sports/baseball/roster/coaches/troy-nakamura/66>
(last visited Jan. 26, 2022).

28 ¹¹⁷ Tuesday Testimonial: Troy Nakamura (July 28, 2020),
https://www.youtube.com/watch?v=Rtd_HrkWW9w (last visited Jan. 28, 2022).

1 Oh boy, Troy and I have you know we've been together for 22 years
 2 here at USF. So um what a great relationship and just Troy's loyalty
 3 to me is why he's here. Troy's had plenty of opportunities right and
 4 he's always wanted to stay and it's it's it's [sic] wonderful that he's
 5 wanted to be here in the Bay Area and be my right-hand man. I could
 6 never express how appreciative I am of Troy as a, as a person, as a
 7 friend, as a coach, uh as a mentor, as someone to to [sic] spend this
 8 time with. I mean he's just wonderful. He he leads in a lot of ways.
 9 He does a lot of things for me and I never have to question it . . . Me
 10 and Troy spend more time together than than [sic] me and my wife
 11 most of the time and more emotional wins and losses there too. A
 12 lot of times where we've been up at the top and we've been down
 13 and we've Oh it's it's [sic] I can't thank him enough. He's he's
 14 he's [sic] the best.¹¹⁸

15 151. Coach Naks was also an integral part of recruiting high school players. In fact, in
 16 2013, Coach G promoted Coach Naks to associate head coach for “play[ing] a critical role in the
 17 recruitment and development of student-athletes.”¹¹⁹

18 152. Coach Naks had therefore established himself as a trusted coach and advisor
 19 before members of the USF Baseball Subclass even stepped on campus.

20 153. Plaintiffs arrived on campus their freshman year ready to work and succeed. All
 21 had successful careers in high school and on travel teams that were touted by USF publicly when
 22 they committed. Coach G or Coach Naks assured all of them that they would be major additions
 23 to the USF baseball team, were integral to the team's future success, and had the skills to make it
 24 to the next level. All had aspirations of playing Major League Baseball.

25 154. However, within the first couple of months of Plaintiffs' arrival on campus—
 26 sometimes days—the Coach Defendants' mental (and sometimes physical) abuse would escalate.
 27 Plaintiffs were isolated and told they were worthless or that they “fucking suck so much.” The
 28 Coach Defendants told players they could not and would not succeed and were routinely called
 “pussies” and “faggots,” and told they were throwing or hitting like a “pussy” or “bunch of
 pussies.” One player was called a “fucking cunt,” within earshot of the opposing team's fans.

¹¹⁸ Tuesday Testimonial: Baseball Head Coach Nino Giarratano (Nov. 3, 2020),
https://www.youtube.com/watch?v=tvdyIFXEYq0&list=PLQJ7Y9Sjcc_ivhkGCZkiQKJlfrE7Ql15D
 (last visited July 12, 2022).

¹¹⁹ Profile: Troy Nakamura, *supra*.

1 They were repeatedly berated, beaten down, and forced to practice even when physically
2 impaired.

3 155. Each of the Plaintiffs desired to make it to the next level, so most independently
4 asked the coaches for help and direction. But Coach G and Coach Naks regularly responded to
5 these requests by telling Plaintiffs that these requests were a waste of time; that they were not
6 good enough or that their personalities did not fit with the team; that they were toxic, a cancer, or
7 worthless; that they would never make it in DI baseball; that they might as well leave; that they
8 should give up their scholarships, and that they would never make it as professional baseball
9 players. Coach G even told one player he might as well kill himself.

10 156. Against this backdrop of mental abuse, the coaches also engaged in inappropriate
11 sexual conduct, created an intolerable sexualized environment, and retaliated against the players.

12 157. For example, at one of John Doe 8's first practices as a freshman in 2013, Coach
13 Naks gestured to the undergraduate dormitories overlooking the baseball field and said:
14 "Sometimes girls will stand at their windows, pull up their shirts, and show their boobs. We're
15 here to play baseball, so just look at them and jerk off about it later. Trust me, I want to fuck them
16 too." John Doe 9 also recalls, in the fall of 2000, Coach Naks persistently encouraging female
17 students at these same open dorm windows to flash their breasts by whistling and lifting his shirt
18 to suggest the females do the same. Coach G would laugh.

19 158. The coaches also subjected the team's pitchers to strip games during practice. John
20 Does 6, 7, and 8 recall that during the 2012-14 seasons, any pitcher who made an error at practice
21 would have to take off an item of clothing. There were times the players had to strip down to their
22 underwear and the coaches and other players would laugh. John Does 10 and 12 were also forced
23 to participate in these strip games during the 2017-18 season.

24 159. Another example involves a player who was on the USF baseball team from in or
25 about 2011-13. During a gift exchange, a coach gave the player a life-sized, blow-up female sex
26 doll. The coach told the player that if he did not bring the doll to practice the next day, he would
27 make him run. The player was forced to walk home from practice with the doll, and on his way
28 home, he was stopped by a police officer who yelled at him for possessing the doll and popped it.

1 160. Yet another example is that, from the outset of John Does 1, 2, and 3’s freshman
2 years in 2020 and 2021, Coach Naks started practices or particular drills with a “café” exercise.
3 The point of the exercise was to loosen up the players before they started practice. The café
4 exercise involved Coach Naks identifying a dinner theme, such as a barbecue or fast food dinner.
5 Then, each person, including both coaches and players, would go around the circle and identify
6 what they would bring to the barbecue, such as a type of drink or food.

7 161. The players quickly learned that Coach Naks would always sexualize the
8 exercise—and that Coach Naks encouraged the other players and coaches to sexualize their
9 answers, too. Coach Naks would refer to women’s body parts he wanted to eat, bodily fluids and
10 secretions he wanted to drink, or other sexual innuendo. For example, Coach Naks would say he
11 wanted to eat “Jennifer Aniston’s boobs” or “slurp whipped cream from Pamela Anderson’s
12 crotch.”

13 162. Coach G was included in these café exercises, witnessed the way Coach Naks
14 spoke and encouraged sexual banter, and did nothing to stop it. In fact, Coach G engaged in the
15 same behavior, naming women’s body parts or fluids he wanted to eat or drink.

16 163. All of the players were affected. For example, John Doe 1 was extremely
17 bothered—and tried to stick to appropriate answers, such as milk or soda. When John Doe 1—or
18 any other player—did not play along, however, he was laughed at by the coaches and others who
19 were forced to join in the conduct and pressured to play along. Plaintiffs felt pressured to stay
20 when these exercises were happening, given that the coaches demanded the players’ participation.

21 164. Coach Naks sexualized other exercises prior to John Does 1, 2, and 3’s tenure on
22 the team, as well. For example, during the 2017-18 season, while players would do their daily
23 butterfly stretches, the coaches on at least a weekly basis would ask John Does 4 and 12, “Where
24 are your butterflies flying to?” Coach Naks would respond with sexual comments like, “They’re
25 going to get some strippers,” or, “They’re going to strippers’ asses.” The players felt extreme
26 pressure from Coach Naks to respond to the coaches’ question in a sexual manner because he
27 would get angry with players who did not.

28 165. Plaintiffs’ discomfort and reluctance to participate in such bizarre behavior was

1 apparent to the Coach Defendants, whose abuse and taunting escalated as a result.

2 166. Coach Naks' inappropriate sexual banter was not limited to the exercises. He
3 would also regularly talk about the fact that he was bisexual, how little clothing female students
4 on campus would wear during warm weather, and what sexual acts he would like to perform on
5 young women he saw on campus. At one point in time, Coach Naks moved to live on campus,
6 and his comments about the women on campus became increasingly sexual and distressing to the
7 players. Their discomfort with such conversation was apparent.

8 167. Coach G heard and participated in these conversations.

9 168. The inappropriate things Coach Naks did or said that day—and what seemed like
10 every day—was a regular topic of conversation among the players.

11 169. Coach Naks' sexually charged behavior was not limited to the way he spoke. He
12 also engaged in calculated displays of nudity on and off the field, exposing himself to the players
13 and other coaches.

14 170. For example, another exercise the coaches required before most practices was the
15 performance of skits. Players were split up into four groups at first, second, third, and home
16 bases, and had to improvise skits for the team judged by Coach G.

17 171. As with the café exercises, Coach Naks would regularly sexualize the skits. He
18 did so at least twice a week by instructing players to perform sexualized skits and/or by
19 participating in the skits in a sexual manner himself.

20 172. For example, on multiple occasions in 2017, 2018, and 2021, Coach Naks would
21 pretend he was at a buffet by having a player do a handstand, grabbing that player's legs and
22 splitting them open, then pretending to eat spaghetti from that player's genital region. Many
23 players would be visibly disgusted and upset and would turn their heads away when Coach Naks
24 performed this skit.

25 173. On another occasion, John Doe 12 recalls Coach Naks performed his own skit in
26 which he instructed a player to get on his hands and knees and then proceeded to ride that player
27 as though the player was a bull and Coach Naks was having sex with it.

28 174. During another practice, Coach Naks told his group that he would take care of the

1 group's skit for the day. When it was Coach Naks' group's turn to perform, Coach Naks crawled
2 out of the dugout naked, moved to a kneeling position in front of the players, and swung his penis
3 around. Plaintiffs and some other players looked away in disbelief, embarrassment, and disgust.

4 175. Rather than condemn Coach Naks' actions, Coach G kissed the cross on his
5 necklace and jokingly mimed looking up at the sky to ask God for forgiveness.

6 176. Coach G knew that Coach Naks' actions were wrong. Coach G would say to older
7 players, "We could get fired for this." He also told the players that his wife was mad at him
8 because his job was in jeopardy due to Coach Naks' nudity and behavior on the field and around
9 the players. Yet Coach G condoned and even facilitated Coach Naks' behavior by playing along
10 with and normalizing it.

11 177. This was not the first time Coach Naks crawled on to the field naked. All Plaintiffs
12 report often seeing Coach Naks naked or holding a bat between his legs and pretending it was his
13 erect penis. On another occasion, a player fielding ground balls after practice heard Coach Naks
14 call his name and looked to see Coach Naks standing on a table completely naked and swinging
15 his penis in a helicopter motion while yelling: "Hey, [Player X]!"¹²⁰

16 178. Coach Naks took these grooming actions on the field and extended them to more
17 intimate settings. For example, the coaches would often shower with the players in the players'
18 locker room. They would also walk around the player's locker room, either naked or barely
19 dressed.

20 179. In the fall of 2000, Coach Naks often asked John Doe 9 if he could shower in his
21 dormitory, which was comprised of all first-year students.

22 180. Players who attended an away game in the spring of 2021 reported that Coach
23 Naks entered a group of players' hotel room and asked to use their shower. After Coach Naks got
24 out of the shower, he walked around naked in the room, exposing himself to the players while
25 talking about his bisexuality.

26 181. No one was immune from the sexualized environment, which was used as a
27

28 ¹²⁰ To protect their privacy, Plaintiffs do not use any USF baseball players' real names.

1 weapon to psychologically harass those who would not conform in order to force them off the
2 team. In addition to the examples above, the sexualized environment became the centerpiece of
3 so-called “team bonding” exercises and presentations the coaches endorsed. The coaches were
4 present and participated in them at the expense of players who would not conform.

5 182. For example, John Does 4 and 12 recall military training-type exercises at 6:00
6 a.m. on Saturday mornings where, at the beach, players would strip down to their underwear and
7 float in the water with linked arms. Upon the players emerging from the water, Coach Defendants
8 would comment on how shriveled up all the players’ penises were.

9 183. The Coach Defendants were also present for and condoned sexualized and
10 degrading skits and presentations roasting freshmen teammates every year at the team’s annual
11 Rookie Show, including the following incidents:

- 12 a. During the 2013 Rookie Show, two players did a skit that depicted John
13 Doe 5 and another teammate (who are both gay but were not out at that
14 time) biking to Whole Foods and having anal sex.
- 15 b. During John Doe 8’s freshman year in 2013, one of his teammates did not
16 trim his pubic hair. A picture of that teammate was broadcast on a
17 presentation screen with a graphic of a large bush over his genital area. The
18 room erupted with laughter. That player was so mortified, John Doe 8
19 never saw him take a shower with the other players again.
- 20 d. During John Doe 7’s freshman year in 2014, team bonding included
21 comments about another player who wore “tighty whities” and had a small
22 penis.
- 23 e. During the 2017 Rookie Show, a slide show contained a naked picture of
24 the then-current Director of Operations for the team, who had been cat-
25 fished by several of the players.

26 184. In addition to the team building events, there were annual hazing parties thrown at
27 the expense of the incoming freshman. For example:

- 28 a. During 2000, John Doe 9 recalls discussion of 25 tasks that the freshman

1 had to accomplish. Some of the items on the list included: “have sex with
2 a fat woman, get a hickey from a girl, do a 30-second beer bong or keg
3 stand, and get your girlfriend to blow you and swallow your load.” This
4 hazing was tied to drinking, where the players would go to a bar called
5 “Steps of Rome,” with fake identification. The coaches were aware of and
6 encouraged this behavior.

7 b. During 2013, John Doe 8 recalls that freshman were given a checklist of 25
8 items worth certain points. For example, one item was to go to a strip club
9 and take a picture with a stripper and another one was to get a hickey from
10 a girl and take a picture of it. While all freshmen had to drink, the freshman
11 with the most points had to drink the least, while the freshman with the
12 least points had to drink the most. Upon information and belief, Coach
13 Defendants were aware of these parties, their sexual content, and the fact
14 that drinking was mandatory, as they would cancel practice the morning
15 after the party.

16 c. During 2014, John Doe 7 was given the list of 25 items during his
17 freshman year, which included many of the above items. The drinking was
18 also a part of it, and the freshman were forced into a contest to see who
19 could drink the most before blacking out. The coaches knew about the
20 hazing party, as they would cancel the next morning’s practice.

21 185. The hazing condoned by the Coach Defendants extended to physical abuse of
22 others. One semester in or around 2013, a USF baseball player injured and threw a young man out
23 of a party hosted by the baseball team because he was gay. The USF player slammed the young
24 man, injuring him. At a team meeting following the incident, Coach G told all the players not to
25 discuss what happened because “this needs to stay in house,” suggesting that there would be an
26 internal cover-up of the incident. However, John Doe 5 (who witnessed the incident and is gay)
27 was not invited to this meeting. Later, the incident became a source of locker room humor for the
28 coaches and the upperclassmen.

1 186. Similarly, during a team Christmas banquet in or about 2017, one player was
2 challenged to spank the female school nutritionist in front of her husband (and the team) to win a
3 challenge.

4 187. These are just a few examples of the completely inappropriate sexual misconduct
5 that created an intolerable sexualized environment the players had to endure—and participate in
6 to survive—on a near-daily basis. Rather than create fun, relax the players, or build rapport
7 among teammates, this environment made the players stressed, upset, and unable to concentrate.
8 This behavior occurred year after year, and any player who did not endorse this atmosphere or
9 participate in the customs was singled out by the coaches for further abuse and retaliation
10 (including being forced off the team).

11 188. That players saw Coach Naks as a sexual predator encouraged by Coach G is
12 evinced by an incident at a 2021 fall World Series game. While players were in the dugout, they
13 saw Coach Naks interacting with a little girl next to the dugout, and one player remarked that if
14 he saw Coach Naks interacting with his little sister, he would strangle him.

15 189. Many players discussed not wanting to go to practice because of this intolerable
16 sexualized environment or leaving practice as soon as it ended to avoid Coach Naks. The players
17 also regularly discussed ways to get the Coach Defendants' behavior to stop. However, as set
18 forth below, Coach Defendants retaliated against those who refused to play along or spoke up.

19 190. For example, in his freshman year, John Doe 1 discussed reporting the Coach
20 Defendants' behavior to the school's Title IX office with several older players. All agreed that
21 none of their prior coaches acted like Coach Naks or Coach G, and that the sexual conduct and
22 psychological abuse was not normal. One of the older players also told John Doe 1 that he had
23 offered a player \$100 to turn Coach Defendants in. John Doe 1 offered to contribute another \$100
24 to get the same player to make a complaint.

25 191. Another one of these older players told John Doe 1 and several other players not to
26 be surprised if they were called in for interviews after that player graduated because he planned to
27 file a Title IX complaint as soon as he could no longer be subject to retaliation.

28 192. John Doe 3 also spoke with an older transfer player who assured John Doe 3 that

1 Coach Naks' behavior was not normal, that the sexualized environment "not the way college
2 athletics was supposed to be," and that Coach Defendants were not "doing it right" at USF.

3 193. In late November 2021, after the "skit" incidents, eight players—including John
4 Does 1, 2, and 3—decided to express their discomfort with Coach Defendants' inappropriate
5 behavior. Wary of retaliation, however, they determined it would be wisest to do so in a way
6 Coach Defendants would find comical. Thus, during one pre-workout skit, the players pretended
7 to make a complaint about Coach Naks to the Title IX Office. They feigned putting Coach Naks
8 in handcuffs and carrying him off to jail (the "Title IX Skit").

9 194. During and after the Title IX Skit, both Coach Defendants looked extremely
10 uncomfortable. Yet neither followed up with the players after practice to determine whether the
11 skit was performed seriously or in jest, nor did either take any action to change their behavior.

12 **3. USF retaliated against the players who tried to stop the abusive**
13 **behavior or who did not condone it, running them off the team.**

14 195. Coaches in the NCAA can "run off" players they do not like or they are retaliating
15 against for reasons stated in this lawsuit. Being run off the team occurs when a coach kicks the
16 player off the team for reasons other than those that are academic or disciplinary, i.e., reasons not
17 within the student-athlete's control.

18 196. Prior to January 2015, NCAA schools were required to give scholarships that were
19 renewable each year rather than guaranteed four-year scholarships. Thus, it was much easier for a
20 coach to pull a scholarship from a student-athlete to force him to transfer. Nevertheless, even that
21 involved paperwork and red tape, so it was easiest for the coaches to force players to resign their
22 scholarship themselves.

23 197. In January 2015, the NCAA permitted conferences to start providing four-year
24 guaranteed scholarships, which took away the coaches' ability to not renew scholarships (thus
25 making it harder to run a student-athlete off their team to free up the scholarship money for
26 someone else).

27 198. Coach G and Coach Naks avoided this limitation by implementing a system of
28 emotional abuse intended to get rid of players who did not play along or fit within the sexually

1 charged culture they created. Coach Defendants’ mental and psychological abuse worked. Of the
 2 11 or 12 recruits in the 2001 freshman class, only one or two stayed for all four years. Of the 12
 3 or 13 recruits in the 2013 USF baseball class, 75%, or all but five, transferred in the following
 4 four years. Of the 13 recruits in the 2017 class, only five stayed for four years. Of the 17 recruits
 5 in the 2020 USF baseball class, eight transferred and two more may transfer. These statistics are a
 6 testament to the ruthlessness of Coach Defendants’ illegal abuse and retaliation.

7 199. According to the NCAA, based on a 2018 study from the National Student
 8 Clearinghouse, just 13% of then-current DI student-athletes in all sports transferred from another
 9 school.¹²¹

10 200. The 2018-19 percentage of four-year college transfers among DI student-athletes
 11 on baseball teams was even lower—just 2.3%, or the fourth lowest rate out of all 38 NCAA DI
 12 men and women’s sports:¹²²

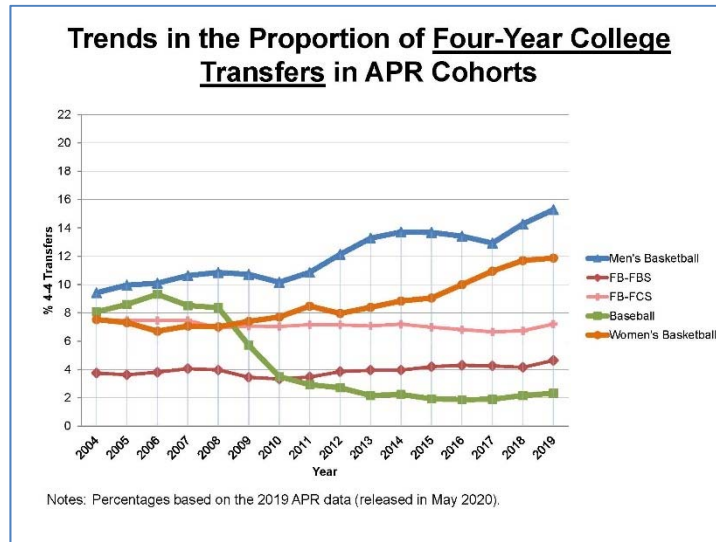
2018-19 Percentage of Four-Year College Transfers among Division I Student-Athletes

Men's Sport	4-year	Women's Sport	4-year
Soccer	18.6%	Beach Volleyball	18.4%
Basketball	15.3%	Tennis	14.1%
Tennis	13.8%	Basketball	11.9%
Golf	8.3%	Volleyball	9.7%
Track and Field	8.1%	Golf	9.0%
Cross Country	7.2%	Softball	8.5%
Football (FCS)	7.2%	Track and Field	7.1%
Wrestling	6.8%	Soccer	7.0%
Ice Hockey	6.7%	Cross Country	6.3%
Skiing	6.1%	Bowling	5.5%
Swimming	5.7%	Skiing	4.8%
Volleyball	5.4%	Water Polo	4.6%
Football (FBS)	4.6%	Fencing	4.4%
Lacrosse	3.6%	Ice Hockey	4.4%
Fencing	2.8%	Swimming	4.4%
Rifle (co-ed)	2.4%	Field Hockey	4.0%
Baseball	2.3%	Lacrosse	3.1%
Gymnastics	2.0%	Rowing	3.0%
Water Polo	1.8%	Gymnastics	1.6%

27 ¹²¹ NCAA, *Research on Student-Athlete Transfers*,
 28 <https://www.ncaa.org/sports/2019/8/5/research-on-student-athlete-transfers.aspx> (last visited Jan. 27, 2022).

¹²² NCAA, *Transfer Composition of Division I Teams*, *supra* note 4, at 10.

201. In fact, the overall trend from 2004 to 2019 was a significant decrease in the transfer rate among NCAA DI baseball teams.¹²³



202. One of the largest amateur baseball scouting organizations ranked USF's 2020 recruiting class #80 in the nation among DI baseball programs.¹²⁴ USF was one of only two West Coast Conference baseball programs ranked in the top 100 and USF was ranked higher than programs such as Michigan State, Rice, and UCSB.¹²⁵

203. The data show that these well-regarded recruits transferred out of USF at an abnormally high transfer rate as a direct result of USF and Coach Defendants' wrongdoing.

a. 2020-22: John Doe 1's experience was typical.

204. John Doe 1 was a standout on his high school baseball team, was recruited by many schools, and given offers by multiple schools, including Ivy League schools.

205. Coach Naks scouted and met John Doe 1 at a 2019 tournament in Arizona while John Doe 1 was in his junior year of high school. Impressed by John Doe 1's play, Coach Naks invited him to an official visit at USF two weeks later, where John Doe 1 met the entire coaching staff.

¹²³ *Id.* at 13.

¹²⁴ Perfect Game, *College Recruiting Rankings: Class of 2020*, <https://www.perfectgame.org/rankings/Recruiting/Rankings.aspx?g=2020> (last visited Mar. 11, 2022).

¹²⁵ *Id.*

1 206. USF heavily recruited John Doe 1 based on his baseball skills and experience. The
2 coaches sold John Doe 1 on representations that USF’s Jesuit culture set the team apart from all
3 others, all the teammates loved each other, and the coaches treated the players as “family.” Coach
4 Naks emphasized four core values, including trust and accountability. He said that John Doe 1
5 would be a “cornerstone” of the USF baseball team.

6 207. USF offered John Doe 1 guaranteed four-year athletic and academic grants-in-aid
7 (scholarships) of approximately \$60,000 per year. On October 7, 2019, Coach Naks sent a letter
8 to John Doe 1 along with his official offer. In the letter Coach Naks wrote, “I do not believe I
9 mentioned to you that we are one of the few schools out there that offer 4-year guaranteed
10 contracts. If you sign a National Letter of Intent with the [USF] Dons, your scholarship is
11 guaranteed to you for the entire time you are on the Hilltop. It cannot be reduced for any reason,
12 only increased. Like I mentioned, we have a tradition of reinvesting in our family for guys that
13 take care of business on the field, in the classroom and protect the culture.” This guarantee was
14 dispositive in John Doe 1’s decision to sign with USF.

15 208. The retaliation and emotional abuse against John Doe 1 began as soon as it became
16 apparent to the coaches that he would not play along with the sexually charged behavior on the
17 field and/or that John Doe 1 was discussing ways to get the behavior to stop.

18 209. Though John Doe 1 injured his hand the fall of his freshman year, he was told to
19 continue playing. Eight days later, he injured his ACL and meniscus and underwent surgery to
20 repair both injuries.

21 210. When John Doe 1 returned following surgery, the coaches, including Coach G,
22 would interfere with his doctor’s orders and yell at him for either doing too much physical
23 therapy or not the right kind of therapy. Despite his injury, John Doe 1 would show up to practice
24 early and before anyone else—yet he was yelled at for being tardy. Coach G demanded that John
25 Doe 1 practice 100% with the team even though John Doe 1’s doctor prohibited that.

26 211. Coach Defendants regularly told John Doe 1 that he was not working hard enough
27 and that would never be good enough. Coach Naks regularly berated John Doe 1 at practice and
28 in his office.

1 212. At the end of his freshman year, and after John Doe 1’s parents learned of several
2 of the above-described incidents, John Doe 1’s mom left several voicemails for USF’s AD at the
3 time, Joan McDermott, which were not returned.

4 213. Under the USF Nondiscrimination Based on Sex and Gender, Sexual Harassment,
5 and Sexual Misconduct Policy (“Title IX Policy”), the AD is considered a “Mandatory Reporter”
6 and should have immediately followed up with John Doe 1’s mother and reported the substance
7 of John Doe 1’s complaints to USF’s Title IX office.¹²⁶ The AD’s failure to do so was, itself, a
8 violation of USF’s Title IX Policy.¹²⁷

9 214. Not only did the AD not report John Doe’s mother’s complaint, John Doe 1
10 believes the AD shared the complaint with Coach G and Coach Naks because the abuse then
11 escalated throughout the summer of 2021.

12 215. Specifically, during the summer between his freshman and sophomore year, Coach
13 Naks called John Doe 1 multiple times and told him not to come back. Every time, John Doe 1
14 told Coach Naks he intended to return to school as he had a four-year scholarship and wanted to
15 honor his commitment to the team. In response, Coach Naks told him he was “the most irrational
16 person he had ever met.” Coach Naks also said, “The people here don’t believe in you.” Coach
17 Naks told him he was “tearing up the fabric of the program and not protecting the culture.” Coach
18 Naks threatened, “I am going to make sure it is not an enjoyable experience for you.” He would
19 keep John Doe 1 on the phone for 30 minutes at a time, relentlessly threatening and berating him
20 if he would not agree to transfer from USF. He also refused to allow John Doe 1 to discuss the
21 matter with his parents, demanding an immediate answer.

22 216. Coach G also called John Doe 1 several times that summer. He told John Doe 1
23 that he would never play at USF again, that he was “toxic” to the program, and that he might as
24 well leave. Coach G called him a “fucking pussy,” told him he was being “fucking selfish for
25 _____

26 ¹²⁶ USF, Nondiscrimination Based on Sex and Gender, Sexual Harassment, and Sexual
27 Misconduct for All Students, Employees, and Third-Parties, Title IX Policy 2 (effective Aug. 14,
28 [https://myusf.usfca.edu/sites/default/files/users/jvarga/Interim%20Policy%20and%20Procedures
%2008.14.2020.pdf](https://myusf.usfca.edu/sites/default/files/users/jvarga/Interim%20Policy%20and%20Procedures%2008.14.2020.pdf) (last visited Feb. 9, 2022).

¹²⁷ *Id.* at 21.

1 keeping his scholarship,” and that he was hurting the rest of the team by not agreeing “to give his
2 scholarship to someone who would buy into the culture of the program.”

3 217. John Doe 1 did not want to leave USF. He liked his teammates, and if John Doe 1
4 chose to leave, he would lose his scholarship and valuable playing time under the NCAA’s
5 transfer rules. Staying and succeeding at USF both academically and on the baseball team was
6 also important to John Doe 1 because he wanted to become the best possible player and aspired to
7 play professional baseball.

8 218. John Doe 1 returned for the fall season his sophomore year. Both Coach G and
9 Coach Naks largely ignored John Doe 1 from a coaching perspective, refusing to help him. At the
10 end of the fall season (and after the Title IX Skit described above), all the coaches held exit
11 interviews with every player to discuss their futures.

12 219. At John Doe 1’s exit interview, each coach told him that he should leave. Coach G
13 told him that the relationship between the coaches and John Doe 1 had become “toxic.” Coach G
14 told him that he was being “very selfish” for staying at USF and not agreeing to enter the transfer
15 portal and relinquish his scholarship. John Doe 1 insisted he was not going to leave.

16 220. Shortly after the exit interview, the AD reached out to John Doe 1 and told him she
17 understood he was going to enter the transfer portal to leave USF. John Doe 1 was surprised by
18 the AD’s call, given that he had not agreed to go into the portal nor to give up his scholarship.

19 221. John Doe 1’s mom spoke with the AD and reminded the AD that she had tried to
20 contact her in the spring of 2021 about the problems her son was experiencing on the baseball
21 team, but the AD had never responded.

22 222. During one of the calls between John Doe 1’s mom and the AD in December of
23 2021, the AD disclosed that the Title IX office had already been alerted to issues on the baseball
24 team and that John Doe 1 would be contacted and interviewed as part of the investigation.

25 223. After that call, John Doe 1 learned he was excluded from an upcoming team
26 meeting where the AD shared the status of the investigation and suspension of the coaches with
27 the other players.

28 224. Three weeks later (in January 2022), neither John Doe 1 (nor many of the other

1 players) had been contacted regarding the Title IX investigation. John Doe 1 contacted the AD to
2 express concern that he had not yet been interviewed. He was only called for a cursory interview
3 after his mom inquired with the AD herself.

4 225. On January 11, 2022, USF issued the following statement to student-athletes via
5 email:

6 Dear Members of the USF Baseball Team,

7 On Dec. 17, 2021, after receiving complaints from members of the
8 USF community, USF baseball head coach Nino Giarratano and
9 associate coach Troy Nakamura were suspended with pay, pending
10 results of an internal investigation. Conducted by USF's Office of
11 Human Resources, the investigation was focused on reports of
12 incidents within the baseball program when the coaches [*sic*]
13 language, behavior, and/or actions were inappropriate and did not
14 reflect USF's mission and values.

15 As a result of that investigation, Coach Nakamura is no longer
16 associated with the USF baseball program, effective immediately.
17 Coach Giarratano was officially reprimanded for inappropriate
18 behavior related to the reported incidents.

19 While the investigation did not find evidence of a widespread
20 harmful culture within the baseball program, the reported incidents
21 indicated that coaches showed poor judgment and lack of
22 supervision. The university has taken immediate action to address
23 this. Procedures are being put in place to ensure baseball team
24 members are ensured a respectful, safe environment with proper
25 oversight, direction, and mentoring by their coaches. The wellbeing
26 of all students at USF is our highest priority.

27 The Athletic Department and the university is grateful to members
28 of the community who came forward with concerns, and provided
information. We are also grateful to the staff in Human Resources
who conducted a thorough, swift and comprehensive investigation.

29 226. In light of USF's attempt to close out these issues without acknowledging that
30 sexually abusive behavior was indeed widespread on the baseball team and that its investigation
31 was not thorough, it is unsurprising that USF's administration has continued to engage in
32 retaliation.

33 227. For example, right after the above announcement, the AD contacted John Doe 1 to
34 inform him that while Coach Naks had been terminated, Coach G would stay on. She stated that
35 Coach G would be on a year-to-year contract and would not be allowed to travel or hold meetings
36 without an administrator present. John Doe 1 asked the AD how Coach G felt about John Doe 1

1 remaining on the team, and the AD said she would speak to Coach G and follow up with John
2 Doe 1 “in a couple of days.”

3 228. In the interim, USF posted a message on Instagram, congratulating John Doe 1 and
4 three other players for maintaining a 4.0 GPA in the fall semester. Just an hour later, the post was
5 taken down. On information and belief, it was taken down because Coach G continued his
6 campaign of retaliation and wanted to force John Doe 1 to leave USF by discrediting his
7 accomplishments and deflating his confidence.

8 229. Given his anxiety about returning to USF’s campus, John Doe 1 tried to register
9 for online classes for the spring 2021 semester but was unable to register for a full course load.
10 He signed up for class waitlists, emailed professors, and had multiple calls with his advisor, but
11 was still unable to register for enough classes. After additional complaints, USF finally helped
12 John Doe 1 by assigning him an academic success coach.

13 230. After almost two weeks, John Doe 1 still had not heard back from the AD, so John
14 Doe 1 called her. The AD told John Doe 1 that Coach G did not want him to return to the team,
15 and that she was going to stand behind Coach G’s decision that John Doe 1 should leave the team.
16 The AD thus adopted and furthered the abusive coach’s retaliation against a student-athlete brave
17 enough to call out the coaches for their illegal behavior.

18 231. USF encouraged John Doe 1 to sign a document to enter the transfer portal so he
19 could play baseball at another college or university. Contrary to the assertions USF made to John
20 Doe 1, that document contained a location for John Doe 1’s signature, agreeing that USF could
21 revoke his scholarship. John Doe 1 refused to sign that portion of the document. In January 2022,
22 John Doe 1 entered the transfer portal, and is still in it.

23 **b. 2020-22: John Doe 2’s experience was typical.**

24 232. USF heavily recruited John Doe 2 based on his baseball skills and experience. The
25 coaches at USF portrayed the USF baseball team as a cohesive, caring culture where everyone
26 cared about each other’s successes and had each other’s backs.

27 233. John Doe 2 committed to play baseball at USF in his senior year of high school
28 and signed a National Letter of Intent. John Doe 2 was offered (and accepted) guaranteed four-

1 year athletic and academic grants-in-aid (scholarships) in an amount of \$75,000 per year to attend
2 USF. John Doe 2 received the largest scholarship ever awarded by USF for an outfielder.

3 234. The retaliation and emotional abuse against John Doe 2 began as soon as it became
4 apparent to the coaches that he would not play along with the sexually charged behavior on the
5 field and/or that he and his teammates were discussing ways to stop the behavior.

6 235. Throughout the fall of 2020, Coach G and Coach Naks did not provide John Doe 2
7 with opportunities to play, nor did they provide coaching direction. While Coach G texted John
8 Doe 2 that he was doing great, those accolades did not transfer to opportunities to practice or
9 playing time on the field.

10 236. At the time, in the fall of 2020, John Doe 2 did not understand why he was not
11 afforded playing time and practice opportunities. John Doe 2 had dreams of playing baseball
12 professionally, and he wanted to do all that he could to better himself as a ball player and athlete
13 while at USF.

14 237. During the spring of 2021, Coach Naks began verbally abusing John Doe 2. By
15 way of example only, at an away game, Coach Naks screamed at John Doe 2, calling him a
16 “fucking cunt” while they were in the dugout. Parents from the opposing team reported the event
17 to several USF parents, and John Doe 2’s parents learned about the shocking conduct. John Doe 2
18 was humiliated.

19 238. In the spring of 2021, Coach G brought John Doe 2 in for an early exit interview.
20 Coach G told John Doe 2 that he wanted him gone from the team because John Doe 2 was “too
21 nice and too respectful,” presumably for the intolerable sexualized environment Coach
22 Defendants had created. Coach G told John Doe 2 that he did not like him and that John Doe 2
23 did not have the type of personality Coach G wanted. Coach G tried to force John Doe 2 to
24 verbally agree to leave the team and to give up his scholarship. John Doe 2 was stunned and
25 upset. He was not prepared to leave the team or give up his scholarship, particularly without
26 speaking with his parents.

27 239. On May 30, 2021, John Doe 2’s parents requested “an urgent in person meeting”
28 with USF’s AD. The subject line of the email stated, “URGENT MEETING REQUEST.” The

1 AD never responded to this email.

2 240. Shortly after his early exit interview, John Doe 2 showed up to take the bus to an
3 away game, but the team did not have him on the player list or assigned seating chart. John Doe 2
4 understood this was because Coach G was retaliating against him by trying to run him off the
5 team.

6 241. In the summer of 2021, Coach G repeatedly called John Doe 2, asking him if he
7 was returning to the team. John Doe 2 told him he was. Coach G became very upset, telling John
8 Doe 2 that he was making a terrible decision, that he did not belong at USF, and that he was
9 going to be cut from the team as soon as he got back to campus.

10 242. In the fall of 2021, Coach G largely ignored John Doe 2 when it came to providing
11 coaching direction. John Doe 2 would ask Coach G what he could do to get more playing time
12 and how he could improve. Coach G would respond that John Doe 2's playing ability was fine,
13 but that he just did not have room for him.

14 243. Coach G and Coach Naks clearly communicated that they hated John Doe 2, that
15 they wanted him to leave, and that they would not give him any coaching direction. John Doe 2
16 became extremely stressed. He was upset that no matter how hard he worked—and even though
17 his playing ability was not in question—the coaches wanted him to leave. His grades suffered,
18 and he began isolating himself. He felt degraded given that he had to suffer through the
19 sexualized conduct and harassment at practice, with little to no coaching, and then be told his
20 personality was the problem because he would not play along.

21 244. John Doe 2 became physically ill from the stress, resulting in five emergency room
22 visits during the fall of 2021; by the end of fall 2021, Coach G's campaign to force John Doe 2 of
23 the team succeeded. John Doe 2 determined that his physical and mental health was suffering too
24 much and advised USF that he intended to transfer and lose his scholarship.

25 245. John Doe 2 spoke with both the AD and assistant AD regarding his reasons for
26 leaving USF. During his call with the AD, the AD told John Doe 2 that she knew things were
27 going on with the coaches on the team and implied that both Coach G and Coach Naks were
28 going to be terminated.

1 246. In December 2021, John Doe 2 learned of a Zoom meeting the AD was holding
2 with the team that he had not been invited to. Like John Doe 1, he reached out to the AD seeking
3 to be included.

4 247. During this Zoom meeting, which was attended by over 40 people, the AD
5 acknowledged how angry and distraught the team must be, and that she felt the same, alluding to
6 Coach Naks' behavior and the complaints about him. She told the team that Coach G was a "great
7 guy," that she and Coach G had been friends for years, and that they all would get through this
8 together. She told the team that the events that had transpired were hard on her, too. She said she
9 had hardly slept and she loves "those guys."

10 248. John Doe 2 understood from the team meeting that the AD intended to protect
11 Coach G, despite the fact that Coach G had normalized and participated in Coach Naks' sexual
12 harassment. John Doe 2 was upset that the AD minimized the players' experiences, including the
13 inappropriate sexual conduct that created an intolerable sexualized environment and
14 psychological abuse in which Coach G had engaged.

15 c. **2021-22: John Doe 3's experience was typical.**

16 249. John Doe 3 received approximately 10 offers, including from Ivy League schools
17 as well as USF, which heavily recruited John Doe 3 based on his baseball skills and experience.

18 250. The coaches sold John Doe 3 on the USF baseball team through representations
19 that the baseball players were very close to each other, there was a family culture on the team,
20 John Doe 3 could leave a legacy on the program, and he would be the "foundation of the
21 program" for years to come.

22 251. John Doe 3 committed to play baseball at USF in his junior year of high school
23 and signed a National Letter of Intent. John Doe 3 was offered (and accepted) guaranteed four-
24 year athletic and academic grants-in-aid (scholarships) of more than \$280,000.

25 252. Afterwards, John Doe 3 was injured during his senior year of high school and
26 worked extensively with a physical therapist to be ready to play baseball for USF.

27 253. The summer before John Doe 3 was to begin his fall semester at USF, John Doe 3
28 was invited to work out with Coach G on campus numerous times. During this time, several

1 coaches praised John Doe 3 and said they were excited to get him on campus.

2 254. Just weeks later, when John Doe 3 started at USF in the fall of 2021, Coach
3 Defendants began constantly verbally abusing him for being injured and for having to rehabilitate
4 his arm. Coach G would yell “you pussy” at John Doe 3, and demand he throw the ball harder or
5 differently, causing John Doe 3’s arm injury to worsen. John Doe’s worsening injury made him
6 unable to throw at all for more than a month, spurring additional criticism from Coach G.

7 255. Just three weeks into school, John Doe 3 asked Coach G for help. John Doe 3
8 wanted to become a standout player on the USF team, as he had aspirations of one day playing
9 professional baseball. Coach G responded that it would be a waste of his time, pointless for him
10 to help John Doe 3 out with coaching, that John Doe 3 was not and never would be one of his top
11 five players, and so he refused to work with him.

12 256. During practice, Coach G would verbally abuse John Doe 3 in front of the other
13 players, threatening to hit him on the head with a baseball bat, and telling him he was the problem
14 with the team. Despite Coach Defendants’ treatment, John Doe 3 strived to be successful. Every
15 day from 7 a.m. to 6 p.m., John Doe 3 was either in class, on the baseball field, or in physical
16 therapy. He showed up at practice, even when he could not participate in certain drills due to his
17 injury.

18 257. In a subsequent meeting in Coach G’s office, Coach G called John Doe 3 a liar,
19 when John Doe 3 told him that he had not been late for physical therapy. When John Doe 3 tried
20 to defend himself, Coach G told him that none of his teammates or coaches liked him, that he was
21 a waste of space, and that he was a problem for “everyone.” Coach G told John Doe 3 to “get the
22 fuck out” of the school because he did not belong there. Coach G also said that he wished he
23 could take John Doe 3’s scholarship away more than anything, and that he was the biggest
24 mistake he had made in 22 years of coaching. Coach G called John Doe 3 a “pussy” repeatedly
25 during this meeting.

26 258. When John Doe 3 reinjured his arm soon thereafter, Coach G became angry and
27 told John Doe 3 that there was “something seriously wrong” with John Doe 3’s head.

28 259. Because of his injury, Coach G told John Doe 3 not to do anything during

1 practices, and sarcastically said that John Doe 3 could have fun and watch his teammates
2 improve. At an away game, while John Doe 3 was observing his teammates practice, Coach G
3 called John Doe 3 over and began yelling at him for not joining practice. When John Doe 3
4 responded that he (Coach G) told him not to do anything, Coach G responded, “Can’t you even
5 think? I’ve never in my life had someone make me so angry every day. You can’t go a day
6 without pissing me off.”

7 260. No matter what John Doe 3 did, the coaches berated him. For example, for one
8 game, the players were supposed to arrive at 8 a.m. John Doe 3 showed up at 7:53 a.m. and was
9 the first to take batting practice. A little while later, Coach G made him leave the game because
10 he “had arrived 10 minutes late” (which was obviously not true). Later in the game, Coach G
11 badmouthed John Doe 3 to his teammates, asking, “Where’s [John Doe 3]? He must be home
12 taking a long nap since he’s not here.”

13 261. The following Monday, the coaches sent John Doe 3 for a blood draw to test for
14 drugs. John Doe 3 had not been taking drugs and understood that no other baseball player had
15 been sent for drug testing, ever. John Doe 3 believed Coach Defendants were singling him out for
16 abuse to get him to leave the team, and of course, John Doe 3 tested negative for drugs.¹²⁸

17 262. John Doe 3 became increasingly anxious and depressed as the semester
18 progressed. When not in class or at practice, he stayed in his room distressed. He could not sleep
19 or eat and felt very anxious at practices, waiting to be singled out and abused, and hoping for the
20 practices to end.

21 263. John Doe 3 was retaliated against for not participating in the sexually charged
22 behavior in which the coaches were engaged. Most times, when a sexual conversation was
23 occurring, John Doe 3 would distance himself by walking or turning away.

24 264. During the semester, John Doe 3 complained to the Director of Player
25 Development, who is responsible for safeguarding players’ mental health. He spoke with the
26

27 ¹²⁸ Notably, the NCAA Drug-Testing Program for 2020-2021 specifies urine collection, not blood
28 draws. See https://ncaaorg.s3.amazonaws.com/ssi/substance/2020-21SSI_DrugTestingProgramBooklet.pdf (last visited March 27, 2022).

1 director for a week about the abuse before he was sent to a USF sports therapist. That USF sports
2 therapist told John Doe 3 that his experience and those events occurring with the team were
3 normal, and that is how most coaches act.

4 265. In advance of his exit interview after the season, the coaches told the players that
5 they needed to fill out their personal evaluation forms in advance, but that they needed to be filled
6 out in the way that the coaches wanted them to. If they did not, the players were told that their
7 subsequent “conversation would not be pleasant and would involve a lot of yelling.” Fearing
8 further verbal abuse, John Doe 3 complied with Coach G’s order to fill out the form as directed.

9 266. At John Doe 3’s Fall 2021 season exit interview, the coaches told John Doe 3 that
10 his scholarship was revoked and that he would not be at USF next semester. They demanded that
11 John Doe 3 enter the transfer portal immediately and forced him to fill out another form stating
12 that he (John Doe 3) was being cut from the team.

13 267. John Doe 3 left the meeting upset and confused. He had chosen USF because of
14 the guaranteed four-year scholarship. He did not understand how the coaches could revoke it. So,
15 he undertook his own research online and learned that the coaches had lied about their ability to
16 revoke the scholarship and had tricked him into writing that he was leaving on the form.

17 268. John Doe 3 contacted the Associate AD. The Associate AD confirmed that the
18 coaches could not take away his scholarship.

19 269. John Doe 3 then contacted Coach Naks and asked how his guaranteed scholarship
20 could be taken away. Coach Naks told him to come by the office. Coach G told John Doe 3 at that
21 meeting that he understood John Doe 3 wanted to leave. He asked: “Are you leaving?” When
22 John Doe 3 said he did not know, Coach G looked surprised and told him there was no point in
23 staying as he would never be part of the baseball team. Coach G demanded an immediate answer
24 and would not allow John Doe 3 to discuss the matter with his parents.

25 270. John Doe 3 was then contacted by USF’s NCAA representative, Jeremy Howell by
26 phone, to discuss why he was leaving the team. At that meeting, John Doe 3 received
27 confirmation that USF does not drug test its players and spoke about his plans if he left USF.

28 271. Following the meeting and phone calls, Coach Defendants sent John Doe 3 text

1 messages about other schools interested in him and with requests to return his equipment.

2 272. During winter break, John Doe 3 spoke with the AD, who told John Doe 3 that he
3 could stay and finish the school year and that USF does not have pre-exit interview forms. The
4 guaranteed scholarship was important to John Doe 3, and he did not want to relinquish it.

5 273. Nevertheless, in March of 2022, John Doe 3 entered the transfer portal because of
6 the abuse inflicted upon him by the Defendants.

7 **d. 2017-18: John Doe 10's experience was typical.**

8 274. John Doe 10 was a talented baseball player in high school. In 2016, after his junior
9 year, he was named to the all-state baseball team by Cal-Hi Sports, a prestigious honor for a high
10 school baseball player. John Doe 10 graduated in 2017 and was drafted by a Major League
11 Baseball team, but decided to attend college before going to the major leagues.

12 275. John Doe 10 knew it was important to pick the right college on his path to the
13 major leagues. His grandfather had been inducted into the Professional Baseball Scouts Hall of
14 Fame, and his father worked as a scout for over a decade for several Major League Baseball
15 organizations.

16 276. John Doe 10 was heavily recruited but decided to attend USF based on Coach G's
17 representations that the team was a "family," that it was built on certain pillars of faith and
18 morals, and that Coach G cared about the players as people.

19 277. John Doe 10 also established an excellent rapport with the pitching coach. Coach
20 G and the pitching coach convinced John Doe 10 that he was the future of the USF program.

21 278. John Doe 10 received an athletic and academic grants-in-aid (scholarships) valued
22 at \$200,000 guaranteed for four years to play baseball at USF and earned one of three coveted
23 starting weekend pitching spots as a freshman in 2018.

24 279. John Doe 10 had been diagnosed with ADHD, executive functioning disorder, and
25 verbal dyslexia. During his first semester of his freshman year at USF, John Doe 10 struggled
26 with the academic workload on top of the training schedule, and his learning disabilities
27 contributed to his difficulties.

28 280. During this time, his learning disabilities became known to the team, and John Doe

1 10's stress was exacerbated because Coach G and Coach Naks called him a loser, made fun of his
2 learning disabilities, and told him that ADHD is not "real".

3 281. Additionally, John Doe 10 was subjected to the intolerable sexualized environment
4 Coach Defendants created and perpetuated. For example, during practice for the pitchers, the
5 coaches made them play a strip game they called flinch or balk. Each pitcher would have to take
6 off a layer of clothing during practice when they made an error. There were times when the
7 players stripped down to their compression shorts, and the coaches and other players would
8 laugh. John Doe 10 recalls thinking, "What are we doing?" but the coaches acted as if it was
9 normal, and John Doe 10 was scared that the coaches would penalize him if he complained.

10 282. The coaches would also make the players perform skits on the field during practice
11 that were judged by Coach G. The coaches encouraged these skits to be sexual in nature. In one
12 example, a group of players "dry hump[ed]" each other; Coach G pointed at them and yelled,
13 "Winner!"

14 283. Coach Naks would also talk about female athletes in a sexualized and offensive
15 manner in front of the team. Coach G would talk with the players about the size or shape of
16 individual players' penises.

17 284. John Doe 10 was disgusted by the coaches' conduct, which was so distracting that
18 he struggled to consistently performance on the mound. During a February 20, 2018 meeting,
19 John Doe 10 shared with Coach G that he was struggling and felt like he was blacking out on the
20 mound. Rather than help John Doe 10, Coach G berated him, telling him he was "a piece of shit,"
21 "a fuck-wit-freshman," and "a nobody."

22 285. Coach G told John Doe' 10, "your family isn't shit and you aren't shit," referring
23 to John Doe 10's grandfather and father. Coach G said: "Suck my cock," adding, "You aren't a
24 winner, you know nothing about winning, I know everything about winning, I'm a winner, you
25 aren't close. You're lucky I even let you be a part of this program."

26 286. During Coach G's tirade, John Doe 10 asked how Coach G could say these harsh
27 things about him when had hadn't taken the time to get to know John Doe 10 or what he was
28 dealing with on a day-to-day basis (including with respect to his ADHD, executive functioning

1 disorder, and verbal dyslexia) over the last seven months. In response, Coach G told John Doe 10
2 to “shut the fuck up,” and said: “ADHD is a hoax, and you just use it as an excuse when you fail.”

3 287. In another example, after a Saturday doubleheader, Coach G told John Doe 10 that
4 he was a “fucking embarrassment” and a “fucking loser” in front of the team. John Doe 10 was so
5 visibly upset that the pitching coach told him to come to his room after the game. There, while
6 crying hysterically, John Doe 10 confided in the pitching coach about Coach G’s abuse. The
7 following Tuesday, Coach G yelled at John Doe 10 to stop talking to the pitching coach and said,
8 “If you can’t throw strikes, you might as well fucking kill yourself.” The pitching coach was not
9 the only staff member with whom John Doe 10 shared the abuse that Coach G inflicted.

10 288. During one game, Coach G became so incensed at John Doe 10 that he physically
11 abused John Doe 10, throwing him against the wall in the dugout.

12 289. Coach G’s abuse and retaliation of John Doe 10 extended beyond USF. In the
13 summer of 2018, John Doe 10 was accepted to play with a collegiate summer baseball league
14 known for its association with top prospects and draftees to the MLB.

15 290. At the end of the USF season, Coach G told John Doe 10 that he had notified the
16 summer baseball league that he was withdrawing his referral. Coach G told John Doe 10 that
17 there was “no way” John Doe 10 would be good enough to play in that league and that he wasn’t
18 “going to ruin [his] relationship with” the team. This caused John Doe 10 to miss a once-in-a-
19 lifetime opportunity that would have advanced his professional baseball career.

20 291. John Doe 10 was devastated by the combination of psychological and physical
21 abuse, combined with the sexualized environment. He began to believe what the coaches said
22 about him—that he was a loser, worthless, and a bad baseball player—and to hate himself.
23 Because John Doe 10 was depressed, he began struggling to perform and as punishment, he was
24 not allowed to travel and received minimal play time. When he did play, and Coach G began
25 forcing John Doe 10 to throw only fastballs, preventing him from throwing other pitches. One
26 time John Doe 10 attempted to “shake a pitch,” which means to ignore the catcher’s call for the
27 next pitch and throw a different pitch; Coach G yelled at him, saying words to the effect that if
28 John Doe 10 did that again, Coach G would throw him off the team.

1 292. John Doe 10's parents were extremely worried about him. He would call them
2 crying, and they were concerned he would harm himself. On one occasion, he was so upset that
3 they stayed on the phone with him until he fell asleep. On numerous occasions, John Doe 10's
4 father would make the nearly two-hour drive to San Francisco to check on him. He would
5 sometimes stay into the early morning hours to console John Doe 10 and ensure he would not
6 harm himself.

7 293. By the end of the year, John Doe 10 and his parents agreed that John Doe 10
8 needed to leave in order to protect his mental health and get the coaching support he deserved. At
9 the exit meeting at the end of the season, John Doe 10 asked for a release from the team because
10 of the abuse.

11 294. After leaving USF, John Doe 10 focused on his mental and physical health and
12 was able to find his passion for baseball again. He played summer ball, while he sent text
13 messages and emails, and made phone calls to dozens of colleges in an attempt to transfer. He
14 wrongly assumed that there would be the same interest in him as there was when he was recruited
15 from high school, but that was not so. He only received a few walk-on offers. He discovered that
16 Coach G was "blackballing" him when one DI coach told John Doe 10: "I like you, but I am
17 friends with Nino [Giarratano], so I am not interested."

18 295. John Doe 10 decided to attend a DI school where he would have to pay his own
19 tuition and sit out for one year due to the NCAA's transfer rules. Based on his new coach's
20 statements, it was clear that Coach G had also tried to blackball John Doe 10 from this school.

21 296. John Doe 10 worked hard to recover from the abuse and setbacks USF inflicted
22 and had a successful year at his new school and a promising summer in 2019 with his summer
23 league team. However, because of the NCAA's transfer rule at that time, John Doe 10 had no
24 body of work to show after his initial season at his new school. This changed his career trajectory
25 for the MLB draft, as he was relegated to sign as an undrafted free agent by an MLB team and
26 currently fights to be seen in the minor leagues.

27 e. **2017-18: John Doe 4's experience was typical.**

28 297. Being offered a spot on the USF baseball team was a dream come true for John

1 Doe 4. He was recruited his senior year of high school and had offers to play at many DI schools
2 but was persuaded to attend USF because Coach Defendants sold him on the school's Jesuit
3 values and Coach G "rolled out the red carpet" during John Doe 4's visit to USF.

4 298. During this visit, Coach G showed John Doe 10 and his parents his house and
5 spoke to them about the team being a "big family" in which everyone gets along. Coach G told
6 them that if a player cannot "go home for a holiday, there's always a seat at the [Giarratano]
7 dinner table." John Doe 4 signed a National Letter of Intent committing to play baseball as a
8 freshman at USF in the fall of 2017.

9 299. John Doe 4's dream quickly became a nightmare once John Doe 4 arrived on
10 campus. Coach Defendants were often nude around players and would shower with them. Though
11 John Doe 4 thought this was very strange, he attempted to accept the behavior as it was portrayed
12 as "normal" within the team culture. This also applied to Coach Naks' more frequent nudity, for
13 which the players even had the expression: "If Coach Naks whips his dick out, you know he's in a
14 good mood."

15 300. John Doe 4 also recalls Coach Defendants constantly talking with the players
16 about the shape and size of the players' penises.

17 301. John Doe 4 did not participate in the sexualized behaviors, and Coach Defendants
18 noticed. So, they constantly belittled him throughout the school year in an effort to force John
19 Doe 4 off the team.

20 302. For example, when John Doe 4 would make a mistake, Coach G would
21 immediately berate him, saying, for example: "Hey, [John Doe 4], why don't you just try to do
22 one thing right instead of everything wrong. You're such a stupid fucking idiot."

23 303. While at bat during a scrimmage, John Doe 4 moved out of the way of a pitch.
24 Coach G stopped the game and said, "You can't hit anyway so [getting hit by a pitch] might be
25 your only shot to get on base. Toughen up and don't be a pussy." Later that day, with the entire
26 team in the dugout, Coach G said, "[John Doe 4], you played like a scared bitch today. What
27 happened? [Another teammate], too, you guys both looked like scared girls running the bases."
28 While the team laughed, John Doe 4, mortified, was nearly brought to tears.

1 304. One day Coach G said to the entire team, “Last night I laid in bed and thought to
2 myself: Tomorrow I’m going to try and not be mean to [John Doe 4]. Then I thought, no, it’s just
3 too easy to be mean to him, I don’t know what it is about that guy but it’s so easy to be mean to
4 him.”

5 305. During a rain delay affecting one game, a senior captain picked up and threw John
6 Doe 4 on the field, then forced him to dance on the field in front of the entire USF team, the
7 coaches, and the opposing team. Everyone, including Coach Defendants, laughed. John Doe 4
8 was humiliated.

9 306. The incessant, degrading treatment and comments worked: after his freshman year,
10 John Doe 4 was crushed. He lost all confidence, dreaded going to practice, and wanted off the
11 team. He was severely depressed, could not complete his homework, and would call his mother
12 every day in tears. His parents worried that he might harm himself.

13 307. John Doe 4 left USF after his freshman year, played baseball near his home for
14 two years, then transferred to another DII university to continue playing baseball.

15 308. In 2019, John Doe 4 sought counseling to help overcome the trauma caused by
16 Defendants’ conduct.

17 **f. 2017-18: John Doe 12’s experience was typical.**

18 309. Baseball meant everything to John Doe 12 as a child and young adult: he was the
19 youngest of three brothers—all of whom played baseball—and began playing baseball at the age
20 of three on a select team coached by his father. John Doe 12’s childhood dream before starting at
21 USF was to join a DI school and then play baseball professionally.

22 310. John Doe 12 was a gifted baseball player. In high school, he started varsity at
23 shortstop all four years; played on three prestigious traveling teams; and led the state’s batting
24 statistics when he was a member of his home state’s all-state team his junior and senior years.

25 311. Because of his baseball skills and experience, John Doe 12 was heavily recruited
26 by over 40 college baseball programs, including 22 NCAA DI baseball programs and five Top 20
27 NCAA DI baseball programs.

28 312. John Doe 12 signed a National Letter of Intent after his junior year of high school

1 (July 2016) committing to USF because USF offered him a 4-year guaranteed scholarship
2 \$256,000 after he was told that many other schools do not offer this kind of guarantee, which
3 could not be taken away from him, and was an investment in him and his family. John Doe 12
4 also chose USF because he had been told that USF was recruiting him to be a starting player.

5 313. However, once John Doe 12 moved into his dormitory in August 2017, Coach
6 Defendants immediately began abusing John Doe 12. Coach G constantly cursed at John Doe 12
7 and forced him to play even when he was injured or physically unwell.

8 314. For example, within John Doe 12's first two weeks of practice as a freshman, John
9 Doe 12 recalls Coach G telling John Doe 12 how much he sucked at fielding the baseball and that
10 he was "the biggest pussy" he'd seen. Coach G told John Doe 12 that John Doe 12 "had no dick,
11 so even if the ball did hit" him, "it wouldn't hurt" in response to John Doe 12 not fielding the ball
12 the way Coach G wanted him to. At a practice later that fall, when John Doe 12 missed a ground
13 ball considered unfieldable because it was hit so hard, Coach G stalked over to John Doe 12 at
14 third base, and said, "You have no fucking balls. I have more balls than you and I have one
15 fucking testicle, you pussy."

16 315. Another incident took place in the spring of 2018 at a pre-game practice at Saint
17 Mary's College of California ("St. Mary's"). In response to John Doe 12 missing a ground ball at
18 third base, Coach G stopped the entire batting practice. In front of the USF baseball team, St.
19 Mary's baseball team, and staff from both schools watching the practice, Coach G walked slowly
20 over to John Doe 12 while cursing at him and stating: "How embarrassing is it that I have to come
21 over here just to teach you how to field a fucking ground ball."

22 316. Coach G came up behind John Doe 12, and grabbed him by the waist, which made
23 John Doe 12 extremely uncomfortable, especially in light of the abusive environment he and
24 other teammates had been subjected to all year. Coach G then patronizingly "taught" John Doe 12
25 how to field a ground ball as though John Doe 12 was a small child. This incident lasted for about
26 5-7 minutes, during which the St. Mary's team and staff, as well as USF's team and staff,
27 watched and laughed at John Doe 12. After Coach G was done humiliating John Doe 12, he said,
28 "See now, you've ruined our whole entire batting practice, look what you did[]" and walked off.

1 317. It was an exception for John Doe 12 to be able to leave a practice or game without
2 getting railed against by the coaches. Statements such as “you fucking suck so much today,”
3 “you’re a fucking terrible baseball player,” and “you’re a pussy” were common. The coaches
4 made these statements to John Doe 12 regardless of whether John Doe 12 was performing well
5 that day.

6 318. Coach G would also pull John Doe 12 out of games or no apparent reason. For
7 example, in the spring of 2018 at a game against Reno, Nevada, despite John Doe 12 executing
8 two plays perfectly, Coach G called John Doe 12 over, questioned how he could have put John
9 Doe 12 in a game if John Doe 12 was “such an incompetent pussy,” and pulled him out of the
10 game.

11 319. Additionally, despite the fact that in the spring of 2018, John Doe was batting .400
12 after the first five games, the second best average on the team at the time, Coach G benched him
13 for the next 15 games with no explanation.

14 320. Instead, Coach G put a fifth-year senior second baseman in who had never batted
15 over .250. Upon information and John Doe 12’s belief, Coach G played that second baseman
16 because he had a better relationship with that second baseman than he did with John Doe 12. That
17 second baseman batted below .200 during those 15 games John Doe 12 was benched.

18 321. The night before another practice John Doe 12’s freshman year, John Doe 12 came
19 down with food poisoning. Despite the fact that he told Coach Naks that he had vomited many
20 times the night before and could not practice, Coach Naks called John Doe 12 a “completely ball-
21 less pussy” and said that if John Doe 12 did not practice, he would be “looked at like a pussy by
22 everyone, especially Coach G.” Because of Coach Naks’ statements to John Doe 12, John Doe 12
23 felt the need to try to practice; John Doe 12 threw up for hours after practice and ultimately lost
24 eight pounds in 48 hours.

25 322. At a practice game towards the end of John Doe 12’s freshman year, after John
26 Doe 12 broke this throwing hand thumb, Coach G called John Doe 12 a “big pussy” and forced
27 him to continue throwing because John Doe 12 “needed to get better” according to Coach G.

28 323. The incident with his throwing hand thumb catalyzed John Doe 12’s decision to

1 quit the USF baseball team. John Doe 12 attended his exit interview at the end of his freshman
2 year and told Coach G that he felt Coach G had treated him poorly and did not like how Coach G
3 stripped John Doe 12 of his “confidence and dignity all-year long.”

4 324. In response, Coach G aggressively came at John Doe 12 and began yelling at him
5 in a manner that made John Doe 12 fear harm from Coach G. Coach G told John Doe 12 that he
6 had never been “worthy” of his USF scholarship and had to give it back, and that he needed to
7 leave because there was no place left for John Doe 12 at USF; John Doe, did not fit into USF’s
8 baseball program. Coach G also told John Doe 12 that he did not deserve to play at USF and
9 called John Doe 12 “stupid” and “incapable.”

10 325. That meeting made John Doe 12 feel unwanted, and as though he had no choice
11 but to relinquish his scholarship and leave USF. At the time of his exit interview, John Doe 12
12 was not comfortable openly discussing the sexual abuse he had been subjected to, but he is now.

13 326. Most memorable for John Doe 12 were the comments Coach Defendants would
14 make about each other’s penises, as well as those of the other players. For example, two minutes
15 into John Doe 12’s first practice with the USF team, Coach G asked John Doe 12 if he had “seen
16 [Player Y’s] piece yet.” When John Doe 12 expressed confusion over what Coach G was
17 referring to, Coach G said: “Ohhh, you’ll see it soon, you better watch out.” Upon information
18 and John Doe 12’s belief, Coach G had been referring to teammate Player Y’s penis size.

19 327. During John Doe 12’s first month at USF, Coach G began talking about how small
20 Coach Naks’ penis is on the baseball mound at practice, noting that he could “barely see it.”
21 Coach G then imitated Coach Naks urinating by holding his penis with only his thumb and one
22 finger to indicate how small it was. Coach Naks laughed and repeated the same imitation vis-à-vis
23 Naks.

24 328. After an away game at Oregon in 2018, the USF players showered in the Oregon
25 visitors’ locker room. The coaches showered with them. Coach G and Naks also waited in line to
26 shower, with towels on their shoulders and genitals uncovered. They both, without refrain, looked
27 and commented on the players’ private parts. Coach G would say things such as: “How’s it
28 hanging today?” “Is it a cold one today for you?” “Oh come on, you don’t even use that thing.”

1 “You need a lawn mower down there.” Coach Naks also laughed and swung his penis around
2 during that time.

3 329. Because of Coach Defendants’ abuse, John Doe 12’s father flew across state lines
4 to USF 16 times over the course of John Doe 12’s freshman year to provide his son emotional
5 support out of concern for how isolating Coach Defendants’ abuse was for John Doe 12 and fear
6 that his son would harm himself.

7 330. Because of the NCAA’s rules, once John Doe 12 quit the USF baseball team, he
8 had to go back to a junior college for a year. After that year, he then went back to a DI school—
9 this time without any financial assistance—and continued to play baseball.

10 331. It was only after John Doe 12 experienced the abuse-free environments at his
11 junior college and new DI school that he truly began to understand how egregious Coach
12 Defendants’ behavior was.

13 332. John Doe 12 stopped playing baseball in June 2021, and then finished his last
14 semester at his new DI school.

15 333. Because of Coach Defendants’ abuse, John Doe 12 ultimately gave up his lifelong
16 dream to play professional baseball and now plans to attend law school. John Doe 12 felt Coach
17 Defendants’ emotional and sexual abuse wore him down to the point where he “could no longer
18 become what [he] wanted to be.” John Doe 12 has not yet recovered from the trauma to which
19 Coach Defendants subjected him and still experiences the anxiety and depression he began
20 feeling his freshman year at USF.

21 **g. 2011-14: John Doe 5’s experience was typical.**

22 334. John Doe 5 received numerous offers, including from USF, which heavily
23 recruited John Doe 5 based on his baseball skills and experience. Coach Defendants sold John
24 Doe 5 on the USF baseball team through representations that the baseball players were very close
25 to each other, there was a family culture on the team, and John Doe 5 would be an important
26 member of the team.

27 335. John Doe 5 was offered (and accepted) a renewable annual scholarship of athletic
28 and academic grants-in-aid (scholarships), starting at 25% his freshman year which increased

1 over time to nearly 100% based on his performance. In 2013, he received the Con Dempsey Jr.
2 Award,¹²⁹ named for a former USF baseball player who played in the MLB in the 1950s. The
3 award is given every year to the USF baseball player “who comes on late in the season to make a
4 significant impact.”¹³⁰ Although John Doe 5’s scholarship amount increased over the years, the
5 Coach Defendants treated him worse each year.

6 336. John Doe 5 soon learned that there was no family culture and that a player’s
7 staying power on the team was dependent on participating in the coaches’ sexualized
8 environment. For example, in November 2011, Coach Naks emailed John Doe 5 a visualization
9 technique that was supposed to “free you up to attack like a rabid, horny Rottweiler.”

10 337. On multiple occasions, John Doe 5 witnessed Coach Naks exposing himself as a
11 joke in front of players, which was accepted as a normal part of team culture. Coach Naks also
12 frequently asked John Doe 5 and other teammates sexual questions about women. This made John
13 Doe 5, a gay man not yet out, incredibly uncomfortable. Further, John Doe 5’s lack of responses
14 often resulted in his teammates ridiculing him and invasively questioning his sexuality.

15 338. On another occasion, a pitching coach (now head coach at another university)
16 exposed himself in front of the team to pee on a scouting report of USF players to demonstrate
17 that the opinions of other teams in those scouting reports did not matter to him.

18 339. Coach Defendants and several teammates who knew John Doe 5 is gay would also
19 single him out because of his sexuality and make him feel unsafe. For instance, each year, Coach
20 Defendants organized a “Rookie Show” and encouraged players to provide sexualized
21 entertainment. During John Doe 5’s freshman year, two players performed a skit depicting John
22 Doe 5 and the only other gay teammate (also not out at the time) biking to Whole Foods and
23 having anal sex. The coaches laughed at this skit.

24 340. Coach Defendants were aware that one of the baseball players who acted in the
25 above skit punched a gay student physically threw him out of a USF baseball party because there

26 _____
27 ¹²⁹ The award is named after a former USF baseball player who played in the MLB in the 1950s.
28 ¹³⁰ SF Baseball, *BASE: Dons Hand Out Annual End-of-Year Awards* (May 20, 2019),
<https://usfdons.com/news/2019/5/20/baseball-base-dons-hand-out-annual-end-of-year-awards>
(last visited July 7, 2022).

1 were no “faggots” allowed at the party.

2 341. John Doe 5 heard about the assault from other players and was very upset that
3 Coach G condoned the incident by covering it up. In fact, Coach G went out of his way to cater to
4 this player, who became a first-round MLB draft pick.

5 342. Coach G and John Doe 5’s teammates also often made jokes about John Doe 5 and
6 his straight roommate dating.

7 343. Because John Doe 5 saw that no one was punished after these events, John Doe 5
8 no longer felt safe. As a result, he began volunteering less for optional team activities, which
9 Coach G seized on to vocalize John Doe 5’s lack of commitment to the entire team on multiple
10 occasions. For example, Coach G selected John Doe 5 to host the Rookie Show his sophomore
11 year, but John Doe 5 declined. Coach G became irate, belittling John Doe 5 for not being a good
12 teammate.

13 344. Coach G also isolated John Doe 5 during multiple one-on-one meetings in which
14 he told John Doe 5 that he had mental issues and needed to see a sports psychologist provided to
15 him by USF.

16 345. During batting practice freshman year, John Doe 5 was joking around with a few
17 of his teammates while another player took batting practice from one of the other coaches in the
18 team’s batting cage. When it was John Doe 5’s turn, a coach threw a hard and fast pitch at John
19 Doe 5’s face, striking him in the neck. He then called John Doe 5 a “pussy” and said that he
20 deserved the hit for joking around.

21 346. The NCAA sanctioned Coach G and USF for using too much off-season practice
22 time during John Doe 5’s tenure at USF.¹³¹ In response to the sanctions, USF staff replaced
23 practices with additional workouts and “non-team practices” that were ostensibly optional.
24 However, players including John Doe 5, felt forced to go to them to avoid Coach G’s retaliation

25
26
27 ¹³¹ Though not the subject of this litigation, John Does 4 and 12 recall that during one of their first
28 practices in 2017, the coaches made all players pre-sign their weekly NCAA practice hour logs
for the entire semester. Though the coaches explained they did this to avoid forgetting to turn any
logs in, John Does 4 and 10 later learned that the coaches did this because they made the players
practice more hours each week than allowed by the NCAA.

1 for not attending. These additional unconventional practices, which included long marches and
2 hikes, caused John Doe 5 to develop a wear and tear injury in his hip.

3 347. Following his injury, USF coaching staff intimidated John Doe 5 into having hip
4 surgery so that he could get back onto the field as soon as possible. The coaches then forced John
5 Doe 5 to play summer baseball before recovering from the surgery. This injury, which included
6 torn cartilage, a torn hip flexor, and hip damage, has caused life-long problems for John Doe 5.

7 348. John Doe 5 did not feel comfortable talking with the AD because the AD, as it is
8 now widely known, was already covering up a major sexual abuse scandal relating to the men's
9 soccer team. Coach G knew this and used this information against the team to make them feel
10 unsafe and unsupported.

11 349. After one game where John Doe 5 and the only other gay player on the team
12 played poorly, Coach G told the team that "they played like a bunch of faggots" and challenged
13 them to tell the AD if they had a problem with how Coach G was speaking to the players, while
14 looking directly at John Doe 5. After this game, Coach G had a meeting with both John Doe 5 and
15 the other gay player and told them he only had room for one of them on the team—even though
16 they played different positions and were both starters. John Doe 5 thinks Coach G said this
17 because both players were gay, making John Doe 5 feel even more isolated and threatened.

18 350. During the spring of his junior year, John Doe 5 was batting over .300 in
19 conference play during his first season back since his hip surgery. Despite performing well, he
20 started to notice that (along with the consistent verbal abuse from Coach G) Coach G was now
21 starting to regularly bench John Doe 5 in front of the team during the 7th or 8th inning of games
22 whose outcomes were already determined to demoralize John Doe 5 and single him out because
23 of his sexuality. However, because Coach G was not willing to risk losing a game by replacing
24 John Doe 10, he did not do this during close or important games.

25 351. John Doe 5 continued to try to ignore these events and Coach G used John Doe 5's
26 lack of reaction to point out to the team how little John Doe 5 cared, furthering his argument that
27 John Doe 5 was "toxic" and a "cancer" to the team as a whole.

28 352. Coach Defendants' jokes about John Doe 5's sexuality, sexually inappropriate

1 actions, mentally and physically abusive behavior towards the team, and verbal and physical
2 assaults of gay players in particular made John Doe 5 feel so extremely unsafe, he felt forced to
3 quietly quit the program at the end of the spring 2014 season. During his time on the team, John
4 Doe 5 become depressed and suicidal and witnessed other players become depressed and suicidal.

5 353. Many teammates who were not aware of the full scope of the abuse did not
6 understand why John Doe 5 had left the team, and Coach G used this as further proof that John
7 Doe 5 was not committed to the team and that Coach G had effectively excised a “cancer” from
8 the team.

9 354. John Doe 5’s academic advisor was Coach G’s wife, Brenda Giarratano. She used
10 her advisory time with John Doe 5 to question what was going on with his relationship with
11 Coach G and why it was bad.

12 355. After John Doe 5 quit the team, he applied to graduate early using college credits
13 he accumulated during high school through the “Running Start” program, which allowed him to
14 take college courses at Washington community and technical colleges. Though these records were
15 provided to USF when John Doe 5 was admitted and used to place him in certain USF classes,
16 when John Doe 5 applied to graduate early, Coach G’s wife claimed that she could not locate
17 John Doe 5’s transcripts.

18 356. Upon information and belief, Coach G’s wife used her power as a USF staff
19 member with access to John Doe 5’s academic records to try and prevent him from applying for
20 and receiving early graduation as a punishment for perceived wrongs against her husband and the
21 USF baseball program. Coach G and his family used their power to manipulate and punish USF
22 players who they did not like and were willing to go to great lengths to assert their authority.

23 357. Prior to USF, John Doe 5 had aspirations of playing MLB, and his performance
24 during his college career certainly pointed in the direction of him being selected in the MLB draft,
25 but Coach G told John Doe 5 that he had informed scouts that John Doe 5 had no interest in
26 playing professionally, and that he didn’t really care about baseball in general.

27 358. Coach G systematically destroyed John Doe 5’s love for the game and destroyed
28 any professional prospects John Doe 5 had, thus ensuring that John Doe 5 would never play

1 baseball again.

2 359. John Doe 5 had planned to get his MBA from USF while on scholarship but lost
3 his scholarship when he was forced to quit the program because of concerns for his personal
4 safety. As a result, he had to pay out of pocket to continue his education.

5 360. Since 2012, John Doe 5 has suffered from recurring nightmares about USF
6 baseball, frequent anxiety attacks, and bouts of depression affecting his personal and professional
7 relationships, as well as his ability to stay employed. He feels unable to rekindle previously
8 significant friendships with many of his teammates who continued to play after John Doe 5 left
9 USF. He was made to feel as though he was a pariah and would not be welcomed back because
10 he was told that the way he left the program was disgraceful and harmful to the team.

11 361. In early December of 2021, John Doe 5 finally felt he had the capacity to begin to
12 address his mental health and began discussing his experience at USF with some of his former
13 teammates.

14 362. In December of 2021, John Doe 5 also reached out to Coach G on LinkedIn and
15 asked him to catch up. That same day, over the phone, John Doe 5 explained to Coach G how the
16 incidents of abuse and the intolerable sexualized environment he experienced on the baseball
17 team made him feel at the time, and how they continue to affect him to this day. John Doe 5
18 mentioned Coach G saying the team “played like faggots,” and his teammate’s assault of the gay
19 student at the USF baseball party as examples.

20 363. When John Doe 5 expressed to Coach G that Coach G’s failure to punish the
21 player who had assaulted the gay student was upsetting and contributed to his feeling that he was
22 not safe on the team, Coach G said he could not apologize for other people’s actions. Coach G’s
23 lack of remorse shocked John Doe 5.

24 364. After this conversation, John Doe 5 learned of Coach G’s suspension and Coach
25 Naks’ termination and realized that there were other instances of Coach Defendants’ abuse he had
26 not known about.

27 365. Learning that Coach G would not be fired because USF took the positions that
28 only Coach Naks was a problem and that there was no proof of a problematic culture on the

1 baseball team was incredibly upsetting for John Doe 5, because he knew both Coach Naks and
2 Coach G created and fostered the pervasive abuse Plaintiffs suffered.

3 366. On Friday, March 11, 2022, when John Doe 5 read the filed Complaint brought
4 against Defendants, he suffered a panic attack because of the trauma he endured at the hands of
5 Coach Defendants.

6 **h. 2012-14: John Doe 6's experience was typical.**

7 367. John Doe 6 was recruited by USF as a sophomore during high school based on his
8 baseball skills and experience. John Doe 6 backed out of an offer he had from another DIII
9 school, and instead went to a community college for his freshman year pursuant to an agreement
10 with USF to accept him afterwards. John Doe 6 picked USF because he was told that the
11 "culture" on the baseball team was such that the team is very close and supportive of each other
12 so that each member becomes the best player that he can.

13 368. After that one year, during which he was awarded Junior College All American,
14 John Doe 6 transferred to USF for his sophomore year in the fall of 2012 and accepted an annual
15 renewable scholarship of athletic and academic grants-in-aid (scholarships) of 35%.

16 369. When John Doe 6 arrived on campus, there were many sexualized events
17 constituting part of the team's culture. For example, Coach Naks sometimes showered at the same
18 time the players did. John Doe 6 thought it was highly inappropriate but felt he could not speak
19 up because this behavior appeared "normal" to the others. One time, John Doe 6 recalls seeing
20 Coach Naks crawling on the field naked, which he found extremely bizarre.

21 370. Coach Naks also spoke about trying to get the female students in the overlooking
22 dorm rooms to flash their breasts.

23 371. And although, as a pitcher, he was not required to participate in the skits, John Doe
24 6 would often see Coach Naks performing skits and Coach G grinning. Coach Naks was often
25 grunting and making animal sounds. Coach Naks would sometimes hold a bat between his legs
26 like it was a penis.

27 372. John Doe 6 played baseball at USF for two years. His first year, he spent under the
28 supervision and protection of the pitching coach, who never endorsed Coach Defendants' sexual

1 abuse. However, after the pitching coach left following John Doe 6's first year, John Doe 6 had a
2 drastically different experience in his second (junior) year because he was now subject to abuse,
3 harassment, and retaliation. For example, Coach G often called John Doe 6 a "pussy." Coach G
4 would also say that the pitchers were throwing "like a bunch of pussies."

5 373. The fall of 2013 saw a large incoming freshman class on the baseball team, and
6 one of the freshmen was Coach G's son. John Doe 6 and other players believe Coach Defendants
7 began to take steps to force the current players off the team to make space for the freshmen.

8 374. For example, although John Doe 6 had a stress fracture in his back from his youth
9 that the coaches and trainers knew about, the coaches and trainers demanded he do strength-
10 building exercises incompatible with his injury. Not wanting to contradict the authority figures he
11 trusted, John Doe 6 followed USF staff's exercise protocol. One day while doing the exercises, he
12 heard a pop in his back, felt a tingling sensation in his legs, and fell over. An MRI revealed a
13 slipped disk and a herniated disk. Even though his injury was documented by an MRI, John Doe 6
14 had to convince the Coach Defendants that he was indeed injured.

15 375. John Doe 6 worked hard at rehabilitating his injury in the off-season and was
16 cleared to start the 2014 season in the spring. Even though he had not pitched much, he was
17 brought in to pitch in the second game of the season and, unsurprisingly, did not perform well.
18 Coach G walked out on the mound and said, "Get off my fucking mound; you're a piece of shit
19 and an embarrassment to the program."

20 376. The next time John Doe 6 pitched, he performed very well, evidenced by a
21 scoreless inning. Despite this, Coach G later called him into his office and said, "Unless anything
22 drastic changes, we're going to go in another direction next year. We don't think your heart is in
23 it. You don't have the ability to play on this team. We found our pitchers that we're going to use,
24 and you're not one of them. You're still on the team and can come to practices, but you can't go
25 on road trips." Though he was not permitted to travel, John Doe 6 continued to attend practices
26 and to rehabilitate his back because he wanted to succeed on the team.

27 377. At John Doe 6's exit interview with Coach G at the end of that season, Coach G
28 said that he found John Doe 6 a summer league in the Bay Area. John Doe 6 was astounded, as he

1 had previously understood that he was going to be cut from the team. John Doe 6 told Coach G
2 that he got an internship in Los Angeles and found a summer league there in which to play. Coach
3 G responded, “If you’re going to do this internship and not play ball in the Bay Area, you’re not
4 going to be on the team next year,” even though he had told him previously he was not on the
5 team. Coach G added: “Since you have a career-ending injury, you should approach the NCAA to
6 give your scholarship to them next year.”

7 378. John Doe 6 quit the team due to Coach G’s constant abuse and belittlement
8 throughout that year. However, he was allowed to keep his scholarship and graduate from USF
9 because his parents complained to the school and the NCAA faculty representative of the “hostile
10 environment.”

11 379. Specifically, in May of 2014, John Doe 6’s parents sent the Associate Athletic
12 Director and the NCAA Faculty Athletic Representative a letter. The NCAA Faculty Athletic
13 Representative brought the Athletic Director, Scott Sidwell, into the conversation. Among other
14 things, John Doe 6’s parents wrote:

15 **Hostile Environment**

16 With the change in the coaching personnel this year there has been a
17 significant change in the way the program has been managed, and
18 this has created a ‘hostile environment’ for the athletes, especially
19 the Pitching Squad. Players are being called out and they are told
20 they are ‘pathetic’, ‘weak-minded’, ‘a cancer to the team’, and that
21 they ‘need to understand that their baseball career is over’. This is
22 completely unacceptable behavior from any coach, especially a
23 college coach at an institution such as USF, which subscribed to fair
24 play, high values and ethics.

25 380. In the face of these complaints, Scott Sidwell, USF’s AD at the time, offered to
26 continue John Doe 6’s partial scholarship, but only if he did an “internship” for the baseball team.
27 Though John Doe 6 declined the offer because he no longer wanted to be around Coach
28 Defendants, USF continued to provide John Doe 6 his scholarship. Upon information and belief,
USF continued to provide John Doe 6 a scholarship because John Doe 6 and his parents
possessed information that Coach G had been falsifying baseball players’ statistics.

381. During one of the several conversations with USF, John Doe 6’s parents
mentioned their awareness that Coach G had been falsifying his son’s baseball performance

1 statistics. These falsified statistics had been used to the detriment of John Doe 6 and other
2 players.

3 382. Until that point in time, Coach G's wife had been John Doe 6's academic advisor
4 and told him that he was on track to graduate. But at the beginning of his senior year, he was told
5 by his new academic advisor that he did not have enough credits to graduate. John Doe 6 had to
6 take an overload of classes his senior year and paid extra to do so in order to graduate on time
7 because of the misinformation provided by Coach G's wife.

8 383. Though John Doe 6 was no longer an active player on the baseball team, during
9 his last year at USF, Coach Naks called John Doe 6 into his office and told him that he had been
10 randomly selected for a drug screening test to be administered by the NCAA. Curiously, none of
11 the players selected for the "random drug test" were starting players.

12 384. Because of Defendants' actions, John Doe 6 suffered an avoidable physical injury;
13 lost all will, ambition, and love for the game of baseball; and gave up on his dream to one day
14 play professional baseball.

15 **i. 2014: John Doe 7's experience was typical.**

16 385. John Doe 7 was a legacy USF baseball player and student: his grandfather played
17 baseball at USF; and his father, uncle, and cousin attended USF. While John Doe 7 had
18 opportunities to play baseball elsewhere, he only wanted to play at USF because of this legacy.
19 While recruiting him, Coach G told John Doe 7 that he would be treated "like family" and that
20 "we take care of each other" and "we build people up."

21 386. When John Doe 7 arrived on campus, it was apparent that the team was not like a
22 family. Instead, there was a great divide between the players who parroted Coach G and Coach
23 Naks' conduct—including the sexualized activities and the unrelenting cruelty—to stay in the
24 coaches' good graces, and everyone else.

25 387. In fact, those players who were not a part of the "in group" were not even allowed
26 to sit at the same table with the others and would sometimes be forced to pay for those other
27 players' meals. John Doe 7 and his roommate would eat dinner at different times to avoid paying
28 for other players' meals. There were also rumors that, in prior years, players had to serve meals in

1 French maids' costumes.

2 388. Another activity to keep the divide between the players was called "Kangaroo
3 Court." Senior players would call out younger players' mistakes and impose "fines" that had to be
4 paid on the spot. For example, they would announce, "[John Doe 7] owes \$15 for missing a
5 ground ball." The senior players would take the money for themselves. Coach G and Coach Naks
6 participated and laughed.

7 389. During his freshman year, John Doe 7 was assigned the same jersey number of a
8 former USF player who went on to play Major League Baseball. A senior later told John Doe 7
9 that Coach Naks made another teammate take John Doe 7's jersey out of his locker because John
10 Doe 7 "didn't deserve to wear that number." John Doe 7 was fined in Kangaroo Court for
11 "losing" the jersey.

12 390. If John Doe 7 did well, it was not good enough for Coach G. If he performed
13 poorly, Coach G would say words to the effect of, "You suck and that's what I expected." Coach
14 G often told him, "You're a pussy. You're letting your family down. You're not capable of
15 playing baseball at this level."

16 391. Coach G also used "team building" events as a tool to degrade players. In a skit
17 teammates performed about John Doe 7 when he was a freshman in 2014, another player
18 portrayed John Doe 7 as the intellectually disabled character Lenny from *Of Mice and Men*. At
19 the end of the skit, Lenny/John Doe 7 was killed with a baseball bat. Following the skit,
20 upperclassmen showed John Doe 7 a series of video clips from all his teammates about why they
21 hated John Doe 7, why he sucked at baseball, and why he is a bad person. This was the worst
22 night of John Doe 7's life.

23 392. John Doe 7 also endured Coach Naks' sexual displays and efforts to persuade
24 females to expose themselves in front of dorm windows. At the time, John Doe 7 minimized these
25 incidents because Coach G did not seem bothered by them.

26 393. John Doe 7 was also mandated to participate in stripping drills where players
27 would have to remove articles of clothing during practice when they made errors.

28 394. Despite this unrelenting abuse, John Doe 7 continued to work hard. Taking Coach

1 G upon his professed open door policy, John Doe 7 attempted to meet with him on several
2 occasions to discuss how to improve his performance. Each time, Coach G brushed him off by
3 telling him that he was too busy and would catch up with him later. He never did.

4 395. John Doe 7 began experiencing anxiety and sleep deprivation. He dreaded
5 attending practice because he feared being targeted. Older players on multiple occasions
6 threatened him with violence in front of the whole team, yet Coach Defendants did nothing. He
7 was afraid for his safety given the violent culture Coach Defendants created and perpetuated on
8 the team.

9 396. John Doe 7 was so depressed he transferred out of USF after only one semester, as
10 did his roommate, also a freshman on the baseball team. When John Doe 7 told Coach G about
11 his plans to transfer, Coach G responded, "I knew you weren't capable of playing here. Thank
12 you for wasting our time."

13 397. John Doe 7 then attended a local community college, yet even there, Coach G's
14 reach extended, and John Doe 7's new teammates (who were friends with Coach G's son) were
15 told, "[John Doe 7]'s a pussy who sucked at baseball and couldn't hang at USF."

16 398. Based upon these events, John Doe 7 became severely depressed and had to work
17 hard to overcome the emotional injuries that Defendants inflicted. To this day, regrets his
18 decision to attend USF.

19 **j. 2013: John Doe 8's experience was typical.**

20 399. John Doe 8 was recruited by USF during his junior year of high school based on
21 his baseball skills and fan other experience. He was also actively recruited by several other
22 schools and received an offer his junior year from Pepperdine University, another school in the
23 same conference as USF. However, the summer after his junior year, John Doe 8 bonded with the
24 USF pitching coach and verbally committed to USF based on the representations the pitching
25 coach made about the USF baseball team.

26 400. The pitching coach called John Doe 8 weekly as part of the recruiting process,
27 consistently spoke about how much John Doe 8 was wanted at USF, and how USF would help
28 him make it to the major leagues. He told John Doe 8 that the USF baseball team is a

1 “brotherhood” in which teammates are very close, build each other up, and spend time together
2 off the field.

3 401. John Doe 8 was offered and accepted USF’s renewable annual scholarship of
4 athletic and academic grants-in-aid (scholarships) of 25%. However, right before John Doe 8
5 arrived on campus, the pitching coach left USF to serve as a DI head coach in Southern California
6 and John Doe 8 soon learned that everything he was told about the baseball program’s culture
7 was untrue.

8 402. At one of John Doe 8’s first practices as a freshman in 2013, Coach Naks
9 referenced the undergraduate dormitories overlooking the baseball field and said: “Sometimes
10 girls will stand at their windows, pull up their shirts, and show their boobs. We’re here to play
11 baseball, so just look at them and jerk off about it later. Trust me, I want to fuck them too.”

12 403. John Doe 8 was also subjected to strip games where each pitcher had to take an
13 item of clothing off when they made an error during practice.

14 404. During John Doe 8’s freshman year in 2013, a picture of John Doe 8’s girlfriend,
15 an elite athlete, was posted on the same screen alongside a picture of a famous athlete and word to
16 the effect of “Your girlfriend is now fucking him. Not sure why she was ever with you.” John
17 Doe 8 was appalled that he and his girlfriend were the brunt of cruel and sexualized humor
18 condoned by the coaches.

19 405. Additionally, Coach G constantly berated John Doe 8 on the field, no matter how
20 hard he tried. Coach G used insulting phrases including, “something is wrong with you;” “you
21 will never go anywhere in baseball;” “we don’t want you here, you need to leave;” “you are
22 selfish;” “you are a pussy;” and “no one wants you on the team.”

23 406. Almost immediately, Coach G suggested John Doe 8 should give up his USF
24 scholarship. This constant barrage of insults, no matter what John Doe 8 did, soon destroyed his
25 confidence and his mental state. Nevertheless, John Doe 8 was determined to succeed. Coach G
26 professed an open door policy, and several times, John Doe 8 would ask Coach G how to take his
27 game to the next level. Coach G’s response was always the same: “I don’t have time for you.”
28 Coach G called John Doe 8 “useless” and told him that he regretted awarding him a partial

1 scholarship.

2 407. John Doe 8 began hating going to the field each day because he was anxious about
3 the abuse Coach G would inflict on him. Coach G would say things such as: “Don’t do it like
4 [John Doe 8],” in front of the entire team. John Doe 8 walked on eggshells at each practice, not
5 wanting to make any mistakes, knowing that if he did, Coach Defendants would call him out in
6 front of everybody and they would all laugh at him.

7 408. John Doe 8 became severely depressed and suicidal because he was constantly
8 berated and told that he was a failure. One day, John Doe 8 went to Coach G in tears and told him
9 that while he was trying his hardest on the field, he was struggling with the baseball program’s
10 culture and “not in a good head space.” Instead of offering even a modicum of support, Coach G
11 responded by telling John Doe 8 that he was the problem, that his teammates did not like him, and
12 that Coach G wished he had never offered John Doe 8 a scholarship.

13 409. Coach G demanded that John Doe 8 sign papers to relinquish his scholarship.
14 When John Doe 8 told Coach G that he wanted to talk to his parents first, Coach G responded:
15 “You’re 18 years old. Be a man and make a decision. You don’t need to talk to your parents.”

16 410. After only one semester, John Doe 8 decided to transfer. And even though Coach
17 G told John Doe 8 that he did not have a place on the team, Coach G refused to release him,
18 preventing John Doe 8 from being able to talk to other DI schools and explore other options.

19 411. Prior to USF, John Doe 8 never required counseling or medication. He was an
20 upbeat positive young man when he arrived at USF. However, during his one semester at USF,
21 John Doe 8 sought counseling, was diagnosed with severe depression and anxiety, and started
22 taking anti-depressant medication that he continues to take. On his darkest day, John Doe 8 called
23 a suicide hotline.

24 412. Because John Doe 8 was so depressed and desperate to leave USF, John Doe 8
25 considered transferring to a school without a baseball program because Coach G refused to
26 release him. However, John Doe 8’s high school baseball coach was able to convince John Doe 8
27 to continue playing college baseball at a lower division outside USF’s conference.

28 413. Not only did USF force John Doe 8 to give up his scholarship, Coach Defendants

1 made efforts to sabotage his new opportunity. In the transition to his new school, John Doe 8
2 learned that Coach G made an unsolicited call to John Doe 8's new coach to express his opinions
3 to the effect of John Doe 8 being "at the bottom of USF's depth chart" and "not a fit for their
4 program." John Doe 8 also learned that during a college baseball showcase, another USF coach
5 made comments to one of John Doe 8's new coaches, claiming that John Doe 8 "lacked energy
6 and competitiveness" and "was not DI material."

7 414. None of these comments about John Doe 8's ability and skills were true. John Doe
8 8 set a record at his new school for most wins as a pitcher and was named him an All-American
9 and an All-Conference player for three years. After college, John Doe 8 was signed by an MLB
10 team as an undrafted free agent and played professional baseball for four years.

11 415. Upon information and belief, had John Doe 8 been able to continue his college
12 career at a DI university, he would have had a greater chance of being drafted by an MLB team,
13 and thus would have had greater earning potential.

14 **k. 2000: John Doe 9's experience was typical.**

15 416. USF heavily recruited John Doe 9 based on his baseball skills and experience.
16 During his junior year of high school, USF offered John Doe 9 an annual renewable scholarship
17 of over 60% of to play on the baseball team.

18 417. Though St. Mary's, Cal Poly, and other DI and DII universities also offered John
19 Doe 9 scholarships, John Doe 9 chose to attend USF because Coach G told him the baseball team
20 was a unified brotherhood in which players supported each other to bring forth the best each
21 could be and because of USF's Jesuit mission statement communicating Christian beliefs and a
22 moral culture welcoming all.

23 418. Upon arriving on campus, John Doe 9 soon learned this was not true. In addition to
24 observing Coach Naks regularly encourage females in nearby dorms to flash their breasts while
25 Coach G laughed, John Doe 9 recalls Coach Naks constantly talking about sexual topics,
26 including his sexual escapades with his girlfriend, sexual positions, oral sex, and sexual fantasies.
27 Coach Naks also attempted to engage John Doe 9 in discussions about John Doe 9's sexuality and
28 his sexual experiences, asking questions like: "Tell me what your tongue did" and "What

1 positions did you do?” Coach G also once said, “There’s a lot of pussy on campus.”

2 419. John Doe 9 was very uncomfortable with these types of conversations, and it soon
3 became evident to Coach Defendants that John Doe 9 would not participate in their intolerable
4 sexualized environment. As a result, they began ostracizing John Doe 9 and tried to run him off
5 the team. For example, once when John Doe 9 was sick and presented Coach G a doctor’s note
6 excusing him from practice, Coach G became enraged and told him that he was going to “rip his
7 ass.”

8 420. John Doe 9 came to dread the nearly weekly meetings he had with Coach G in
9 Coach G’s office because he was afraid of Coach G’s volatility. During these meetings, Coach G
10 would typically threaten John Doe 9 with what he could do John Doe 9 and his baseball career.

11 421. At one of their last meetings, Coach G called John Doe 9 into his office and told
12 him that he needed to work harder and that he (Coach G) “didn’t believe his commitment to the
13 team.” John Doe 9 responded that he had been working very hard, which incensed Coach G, who
14 jumped up, lunged across the desk, grabbed a report card from John Doe 9’s hand, and ripped it
15 up. He told John Doe 9, “You’re the most condescending piece of shit I’ve ever met.”

16 422. No matter how hard John Doe 9 tried on the field, he was bullied and harassed. For
17 example, one of John Doe 9’s roles on the team was to put the baseballs away at the end of
18 practice. Coach G’s son, a young child at the time, asked John Doe 9 to leave a few balls out so
19 that he could play with them. John Doe 9 did, and the next day, Coach G verbally attacked him
20 for not completing his job. To this day, John Doe 9 has never been yelled at as Coach G did that
21 day. When John Doe 9 explained that he left the balls out for Coach G’s son, Coach G said,
22 “Leave my son alone.”

23 423. Coach G also unrelentingly abused John Doe 9’s teammates. At their first team
24 meeting of the season, Coach G yelled at all the players, including John Doe 9, calling them a
25 “disgrace” and stating that he should strip them of their scholarships. He often called players
26 “faggots,” both in meetings and on the field.

27 424. John Doe 9 no longer wanted to be around Coach G because he was afraid of him.
28 By October of his freshman year, John Doe 9 was severely depressed. He stopped going to class,

1 rarely left his dormitory, and gained weight.

2 425. When John Doe 9 told his mother about Coach G's bullying behavior, John Doe
3 9's mother called Coach G to tell Coach G that her son was struggling and to demand the abuse
4 stop. Coach G claimed he had no idea what John Doe 9's mother was talking about and told her
5 she was wasting his time. When John Doe 9's mother threatened to complain to Coach G's
6 supervisors, Coach G said, "If you say anything to the people above me, I will make sure your
7 son never puts a uniform on again." The next day, Coach G told John Doe 9 that he would be
8 kicked off the team if he or his mother called the athletic department.

9 426. John Doe 9 decided to give up his scholarship and leave USF to maintain his
10 mental health. When John Doe 9 told Coach G that he wanted to retrieve his personal equipment,
11 Coach G told him to come back later that evening, which John Doe 9 thought strange. When
12 John Doe 9 did come back, he noticed several of his baseball gloves had been stolen from his
13 locker.

14 427. Additionally, Coach G promised John Doe 9 an "A" for his physical education
15 class (baseball), but retaliated and gave him a failing grade, which lowered John Doe 9's GPA
16 and it more difficult for John Doe 9 to transfer.

17 428. Because Coach G would not release John Doe 9 to a four-year university, John
18 Doe 9 could only transfer to a junior college and he became a "4-2-4 Transfer."¹³² The NCAA's
19 policies concerning such transfers made it impossible for John Doe 9 to finish his college
20 education. To return to a 4-year school, he would have to take and pay for extra classes, as he no
21 longer had a scholarship. So, he played baseball at a junior college for one year, where he became
22 an All-American player. However, without the ability to finish his college education, he was
23 forced to sign a low value contract with an MLB team.

24 429. In his second year of spring training for MLB, John Doe 9 suffered a serious injury
25 to his right arm, which left him unable to continue playing baseball. As such, he became a 22-

26
27 ¹³² Planning to go Division I – 4-2-4 Transfer,
28 http://fs.ncaa.org/Docs/eligibility_center/Transfer/DI_4-2-4_Transfer.pdf (last visited April 8,
2022).

1 year old unable to complete his college education and unable to earn a living playing baseball.

2 **I. 1999-2000: John Doe 11's experience was typical**

3 430. In 1998 during his senior year of High School and based on his baseball skills and
4 experience, John Doe 11 was recruited heavily by Coach G, who at the time was an assistant
5 coach at Arizona State. In 1999, Coach G became the head coach at USF and continued recruiting
6 John Doe 11.

7 431. Coach G scheduled a USF visit for John Doe 11. John Doe 11 enjoyed the
8 atmosphere of the university and its location, and chose to play baseball there, as opposed to any
9 of the other schools where he could have played.

10 432. John Doe 11 was offered a scholarship to play on the USF baseball team.

11 433. When John Doe 11 arrived on campus, "it all began." Coach G would go on
12 vicious tirades, constant yelling and screaming. Name-calling was a daily thing. If Coach G did
13 not like how a player was performing, he would say things such as, "You're a piece of shit" or
14 "You're a fucking pussy."

15 434. During one game, in which John Doe 11 was delayed in putting his shin guards on,
16 Coach G screamed the following at him the entire time it took John Doe 11 to put the shin guards
17 on: "You son-of-a-bitch. You lazy motherfucker. I don't know why you're on this team."
18 Everyone in the dugout at the time stared at John Doe 11 during Coach G's tirade.

19 435. Coach G required all players use a certain type of baseball bat because, upon
20 information and belief, USF had a contract with that bat manufacturer. During one practice while
21 John Doe 11 was in the batting cage and Coach G was pitching balls, Coach G noticed John Doe
22 11 using his own bat (which John Doe 11 preferred and was manufactured by a different
23 company). Coach G then threw a pitch to hit John Doe 11, which struck John Doe 11 in the back
24 as he turned away to avoid the ball. After commenting that John Doe 11 was not a "team player,"
25 Coach G threw another pitch hitting John Doe 11 again while making a similar comment. Coach
26 G's third pitch hit John Doe 11 in the head, stunning him. Coach G called him a "fucking pussy"
27 and kicked him out of the batting cage. John Doe 11 was in shock that his coach was trying to
28 injure him with his pitches.

1 436. The abuse continued at every practice. Nothing was off-limits and John Doe 11's
2 personal life outside of baseball became the subject of Coach G's intense and inappropriate
3 interest. For example, John Doe 11 began dating another student during the fall of 1999.
4 Supposedly, another player asked this student why she was dating John Doe 11, and she
5 responded, "Because he has a big dick."

6 437. Whether she said this or not, word spread throughout the team. After one away
7 game when John Doe 11 was in the shower and Coach G was taking a shower with the players,
8 Coach G said, "Turn around. Let me see it. Let me see what you're working with," referring to
9 John Doe 11's penis. The rest of the players in the shower erupted in laughter, but John Doe 11
10 was mortified. John Doe 11 refused to turn around and faced the wall until Coach G left the
11 shower.

12 438. After that, Coach G persistently asked John Doe 11 about his sex life in front of
13 the other players. John Doe 11 became highly uncomfortable during practices, as Coach G would
14 ask about the women John Doe 11 was seeing and say things like, "I heard you got some pussy
15 last night, she's hot," or, "Tell me what you did last night." "Everything always related back to
16 sex."

17 439. Coach G's angry outbursts continued. A rumor had spread about an extra-marital
18 affair in which Coach G was involved with an assistant coach's girlfriend. Coach G gathered the
19 whole team to an indoor meeting and started screaming and threatening them, saying that what he
20 did in his private life was none of their business and that if anyone said anything more, he would
21 ruin their career. He said, "If you're man enough to come talk to me one-on-one, you know where
22 my office is," which John Doe 11 took as a challenge not to talk, but to fight.

23 440. John Doe 11's mental, emotional, and physical condition declined because of
24 Coach Defendants' constant belittling. He did not want to go to practices to get screamed at, or to
25 hear other players get screamed at. He was not excited to play baseball anymore. He lost the love
26 of the sport. Coach G would criticize him, no matter how hard he worked, and would hurl insults
27 all the time. He was anxious and depressed and began to suffer from panic attacks, which
28 continue to this day. John Doe 11 began seeing a therapist early in his freshman year.

1 441. For example, one day John Doe 11 missed a weightlifting practice because of his
2 anxiety. Furious, Coach G punished John Doe 11 by making him run “pole to pole” 80 times,
3 which is more than 100 yards 80 times over. Coach G threatened: “If you stop, you’ll be off the
4 team.” John Doe 11 knew that Coach’s G’s home was within eyesight of the field, so John Doe
5 11 ran for what seemed to be hours. Even though John Doe 11 was suffering from Coach G’s
6 constant abuse, John Doe 11 wanted to succeed with the hopes of one day playing MLB. As he
7 ran into the evening, his roommate brought him a hamburger, which he ate while he was running.

8 442. In his second semester, John Doe 11 injured his back and was immediately
9 ostracized. Coach G told him he was not worth playing and subsequently ignored him; the rest of
10 his team followed Coach G’s lead.

11 443. John Doe 11’s panic attacks became more prevalent during his second semester at
12 USF. John Doe 11 recalls his heart racing while he hid in his dorm room to avoid practice. Coach
13 G would then call his dorm room, sometimes around 10:00 or 11:00 p.m., yelling, “Where were
14 you? What were you doing?” At times John Doe 11 would see Coach G walking on campus and
15 turn the other way to avoid him.

16 444. After the pitching incident, John Doe 11 began feeling unsafe around Coach G.
17 During weightlifting workouts, Coach G would periodically say he wanted to fight John Doe 11
18 one day. Although Coach G would make the statement in a joking manner, John Doe 11 felt that
19 Coach G was attempting to assert his dominance by challenging John Doe 11 to a fight.

20 445. Depression and anxiety spread through the team. The incoming freshmen began
21 discussing dropping out, and after the winter break, many did not return. Out of the 18 incoming
22 freshmen in 1999, 17 did not return for their sophomore year. Upon information and belief, the
23 one player who stayed on the team had a full academic scholarship and tolerated the abuse
24 because he did not want to forfeit that scholarship.

25 446. John Doe 11 chose to drop out of the program after his freshman year. He
26 transferred to a junior college and played one more year of baseball before sustaining a career-
27 ending arm injury.

28 447. John Doe 11 worked hard to overcome the severe emotional injuries Defendants

1 inflicted and to come to terms with the fact that he would never be able to realize his dream of
2 playing professional baseball.

3 **E. Plaintiffs and the Classes Were Injured and Continue to be Injured.**

4 448. Plaintiffs' harms stem from the fact that the NCAA and its member institutions—
5 including USF—created a system that places a higher value on institutional reputations, at the
6 expense of the student-athletes' well-being.

7 449. The sexual, physical, and mental harassment and abuse many student-athletes—
8 including the Plaintiffs in this case—have suffered has been accompanied by self-doubt, shame,
9 blame, and guilt, and oftentimes requires years of reflection, meditation, counseling, medication,
10 and psychotherapy. All the while, many continue to be plagued with depression, anxiety, and
11 suicidal thoughts.¹³³

12 450. Sexual and mental harassment and abuse of athletes results in long-term
13 posttraumatic symptomology, with core symptoms including re-experiencing, avoidance, and
14 hyperarousal symptoms.¹³⁴ Furthermore, recounting sexual abuse can lead to “double-trauma,”
15 which can cause intense ruptures in day-to-day life.¹³⁵

16 451. Psychological damage from sexual abuse is especially harmful when the
17 perpetrator is known and trusted by the victim.¹³⁶

18 452. In addition to psychological injury, Plaintiffs and the Classes suffered out-of-
19 pocket losses from the loss of scholarships, payments of costs-of-attendance, payments for
20 medical and psychiatric treatment, damage to their careers as college baseball players directly
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22 ¹³³ Ingunn Bjørnseth & Attila Szabo, *Sexual Violence Against Children in Sports and Exercise: A*
23 *Systematic Literature Review*, JOURNAL OF CHILD SEXUAL ABUSE, 27:4, 365-385, 365 (2018).

24 ¹³⁴ Helen Owton & Andrew C. Sparkes, *Sexual Abuse and the Grooming Process in Sport:*
25 *Learning from Bella's Story*, SPORT EDUC. AND SOCIETY, at 5 (July 2015) (unpublished
26 manuscript),
https://www.researchgate.net/publication/281771790_Sexual_abuse_and_the_grooming_process_in_sport_Learning_from_Bella's_story.

27 ¹³⁵ *See id.*

28 ¹³⁶ *See* Gloria Dura-Vila & Roland Littlewood, *Integration of Sexual Trauma in a Religious*
Narrative: Transformation, Resolution and Growth among Contemplative Nuns 50 TRANSCULT
PSYCHIATRY 21–46 (2013); Kimberly A. Lonsway & Sgt. Joann Archambault (Ret.), *Victim*
Impact: How Victims are Affected by Sexual Assault and How Law Enforcement Can Respond
33-37 (Apr. 2006, updated Nov. 2020) [https://evawintl.org/wp-content/uploads/Module-](https://evawintl.org/wp-content/uploads/Module-2_Victim-Impact.pdf)
2_Victim-Impact.pdf (last visted July 14, 2022).

1 affecting their prospects of becoming professional baseball players, and other compensatory and
2 consequential damages.

3 453. Unless the NCAA and USF are required to adopt, implement, and enforce
4 appropriate policies and procedures to prevent, or properly respond to, sexual misconduct and
5 psychological abuse of students and student-athletes by institution personnel, current and future
6 students and student-athletes will continue to suffer these injuries.

7 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

8 454. All statutes of limitations are tolled based on the doctrines of equitable estoppel,
9 fraudulent concealment, and/or equitable tolling.

10 455. The Defendants' unlawful conduct has also been continuing. Upon information
11 and belief, sexual, emotional, and/or physical abuse of Plaintiffs occurred as early as 2000 and
12 continued into at least 2022, if not the present.

13 456. In May of 2014, John Doe 6's parents sent the USF Associate Athletic Director
14 and the NCAA Faculty Athletic Representative a letter describing Coach Defendants' conduct.
15 The Athletic Director Scott Sidwell was also informed of the complaints. USF and the NCAA
16 intentionally ignored these Plaintiffs' complaints to protect reputations and to cause those
17 Plaintiffs to believe they did not have any legal rights.

18 457. USF's failure to act was intended to deceive and silence those Plaintiffs and their
19 parents to make them believe that their complaints were isolated, not actionable, and not a
20 systemic problem, so they would not make their experiences public by complaining in other fora
21 or otherwise filing suit. USF's actions were also intended to ensure that other USF baseball
22 players would not make their experiences public or file suit.

23 458. USF's failure to investigate these complaints or notify students and the public of
24 the persistent abuse, was also contrary to USF's mandatory reporting and investigation policies.
25 Plaintiffs' complaints should have been investigated yet were not so that USF could continue to
26 ignore Defendants' misconduct, which it effectively did until 2022 when John Does 1, 2, and 3
27 brought suit.

28 459. The NCAA's failure to act on Plaintiffs' complaints, including directing John

1 Doe's 8's parents to complain to the school, were also intended to divert Plaintiffs so they would
2 not make the events public or otherwise bring suit.

3 460. These actions and failings effectively tolled the statutes of limitations for the
4 claims alleged by Plaintiffs herein based on the doctrines of equitable estoppel, fraudulent
5 concealment, and/or equitable tolling.

6 461. USF and NCAA should be equitably estopped from relying on any statutes of
7 limitations defenses because of their gross negligence and silence, as well as their active and
8 deliberate efforts to deceive Plaintiffs and conceal their unlawful and grossly negligent conduct.
9 Defendants also knew about Coach Defendants' conduct based on John Does 8 and 6's parents'
10 complaints, yet did nothing to suppress the truth.

11 462. Plaintiffs relied on Defendants' failure to take action to their detriment.

12 463. Plaintiffs John Does 4-12 did not discover that they had viable claims until March
13 11, 2022, when the *San Francisco Chronicle* published a story entitled "Intolerable sexualized
14 environment': Ex-USF baseball players sue coaches, school, NCAA."

15 464. It would be fundamentally unfair to allow USF and the NCAA to rely on a statute
16 of limitations defense against Plaintiffs' claims based on the above facts. Thus, equitable tolling
17 also tolled the accrual of Plaintiffs John Does 4-12's claims.

18 465. Once Plaintiffs John Does 4-12 found out the truth, they exercised diligence in
19 filing this Amended Complaint as soon as possible.

20 **VII. CLASS ALLEGATIONS**

21 466. Plaintiffs bring this action against the NCAA on behalf of the following
22 "Nationwide Class" pursuant to Federal Rules of Civil Procedure ("Rules") 23(a), 23(b)(2),
23 and/or 23(c)(4): "All student-athletes who participated in NCAA sports at NCAA member
24 institutions during the past four years."

25 467. Plaintiffs also bring this action against the NCAA on behalf of the following
26 "California Subclass" pursuant to Rules 23(a), 23(b)(2), and/or 23(c)(4): "All student-athletes
27 who participated in NCAA sports at California-based NCAA member institutions during the past
28 four years."

1 468. Plaintiffs also bring this action against USF and Coach Defendants on behalf of the
2 following “USF Baseball Subclass” pursuant to Rules 23(a), 23(b)(2), 23(b)(3), and/or 23(c)(4):
3 “All members of the University of San Francisco baseball team since 2000.”

4 469. Plaintiffs reserve the right to modify or amend the class definitions, including the
5 addition of one or more subclasses, after having the opportunity to conduct discovery.

6 470. Excluded from the Classes are Defendants and any of their affiliates, parents,
7 subsidiaries, officers, and directors; any entity in which Defendants have a controlling interest; all
8 persons who make a timely election to be excluded from the class; governmental entities; and all
9 judges assigned to hear any aspect of this litigation, including their immediate family members.

10 471. Numerosity: The NCAA reports that there are more than 460,000 NCAA student-
11 athletes competing in 24 sports every year.¹³⁷ Similarly, there are an average of 35 players per
12 year on a DI baseball roster.¹³⁸ As such, the members of the Classes are so numerous joinder is
13 impractical.

14 472. Typicality: Plaintiffs’ claims are typical of the claims of each class member in that
15 Plaintiffs, like all class members, are or were NCAA student-athletes. Plaintiffs and the class
16 members were injured through the NCAA and USF’s failure to protect them, and Plaintiffs are
17 advancing the same legal theories on behalf of themselves and the Classes.

18 473. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Classes.
19 Plaintiffs’ interests and the interests of all other members of the Classes are identical, and
20 Plaintiffs are cognizant of their duty and responsibility to the Classes. Accordingly, Plaintiffs can
21 fairly and adequately represent the interests of the Classes. Moreover, Plaintiffs’ counsel are
22 competent and experienced in litigating class actions, including litigation of this kind. Plaintiffs
23 and counsel intend to vigorously prosecute this case and will fairly and adequately protect the
24 Classes’ interests.

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26 _____
27 ¹³⁷ NCAA, *Student-Athletes*, <http://www.ncaa.org/student-athletes> (last visited Feb. 9, 2022).

28 ¹³⁸ Aria Gerson, *NCAA Provides Relief on Division I Baseball Roster Limits in Wake of Shorter MLB Draft*, USA TODAY (June 10, 2020), <https://www.usatoday.com/story/sports/2020/06/10/ncaa-division-i-baseball-roster-limits-relief/5335956002/> (last visited Feb. 9, 2022).

1 474. Commonality and Predominance: There are numerous questions of law and fact
2 common to the Classes, and these common questions predominate over any issues affecting only
3 individual Class members. Questions common to the Classes include:

- 4 a. Whether the NCAA had a duty to implement and enforce rules and bylaws
5 to, *inter alia*:
- 6 • prohibit sexual harassment and/or sexual abuse of student-athletes by
7 athletics department personnel;
 - 8 • prohibit romantic and sexual relationships between coaches and
9 student-athletes;
 - 10 • prohibit grooming and other sexually-exploitative behavior by athletics
11 department personnel of student-athletes;
 - 12 • require NCAA member institutions to immediately report any
13 allegations of sexual harassment or abuse of a student-athlete by
14 athletics department personnel;
 - 15 • maintain all reports of sexual relationships, harassment, or abuse of a
16 student-athlete by athletics department personnel in a centralized
17 repository so they can be tracked by the NCAA and its member
18 institutions;
 - 19 • require that all reports of sexual relationships, harassment, or abuse of a
20 student-athlete by athletics department personnel be independently
21 investigated;
 - 22 • implement public sanctions on member institutions and athletics
23 department personnel where allegations of sexual relationships,
24 harassment, or abuse of a student-athlete by athletics department
25 personnel are substantiated;
 - 26 • ban athletics department personnel from working or volunteering for
27 any member institution where allegations of sexual relationships,
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harassment, or abuse of a student-athlete by such athletics department personnel are substantiated;

- mandate training of athletics department personnel regarding grooming, sexual relationships with student-athletes, sexual abuse and harassment, the prohibition thereof, and reporting obligations;
- mandate training of athletics department personnel and student-athletes to recognize the signs of grooming and sexual abuse and harassment by athletics department personnel, and to provide confidential avenues to report the abuse;
- provide an independent ombudsman when student-athletes seek to leave their teams, enter the NCAA transfer portal, and/or forego their scholarships;
- protect Plaintiffs and members of the Classes from such abuse and other known and/or foreseeable risks, including the loss of scholarships; and
- provide a safe environment for NCAA student-athletes free from sexual abuse and/or sexual harassment;

- b. Whether the NCAA breached the foregoing duties;
- c. Whether the NCAA and the student-athletes entered into a contract requiring the NCAA to abide by, implement, and enforce rules concerning gender equity, including with respect to the prohibition of sexual relationships between coaches and student-athletes, and the sexual abuse and harassment of student-athletes;
- d. Whether the NCAA breached the foregoing express or implied contract;
- e. Whether USF had a duty to implement and enforce policies to, *inter alia*:
 - prohibit sexual harassment and/or sexual abuse of student-athletes by athletics department personnel;
 - prohibit romantic and sexual relationships between coaches and

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- student-athletes;
- prohibit grooming and other sexually-exploitative behavior by athletics department personnel of student-athletes;
- require mandatory reporting to higher levels of the institution of any allegations of sexual harassment or abuse of a student-athlete by athletics department personnel;
- maintain all reports of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel;
- require that all reports of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel be independently investigated;
- implement public sanctions on athletics department personnel where allegations of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel are substantiated;
- mandate training of athletics department personnel regarding grooming, sexual relationships with student-athletes, sexual abuse and harassment, the prohibition thereof, and reporting obligations;
- mandate training of athletics department personnel and student-athletes to recognize the signs of grooming and sexual abuse and harassment by athletics department personnel, and to provide confidential avenues to report the abuse;
- provide an independent ombudsman when student-athletes seek to leave their teams, enter the NCAA transfer portal, and/or forego their scholarships;
- protect Plaintiffs and members of the Classes from such abuse and other known and/or foreseeable risks, including the loss of scholarships; and
- provide a safe environment for USF student-athletes free from

- 1 sexual abuse and/or sexual harassment;
- 2 f. Whether USF breached the foregoing duties;
- 3 g. Whether Coach Defendants sexually harassed and retaliated against
- 4 Plaintiffs and the USF Baseball Subclass;
- 5 h. Whether the NCAA, USF, and Coach Defendants intentionally or
- 6 negligently inflicted emotional distress on Plaintiffs and the USF Baseball
- 7 Subclass;
- 8 i. Whether the NCAA and USF should be held vicariously liable for Coach
- 9 Defendants' tortious conduct;
- 10 j. Whether the NCAA and USF ratified Coach Defendants' tortious conduct;
- 11 and
- 12 k. The scope of declaratory and/or injunctive relief and the nature and amount
- 13 of damages to which Plaintiffs and the Classes are entitled.

14 475. Superiority: A class action is superior to any other available means for the fair and

15 efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered

16 in the management of this class action. Individual litigation by each class member would also

17 strain the court system, create the potential for inconsistent or contradictory judgments, and

18 increase the delay and expense to all parties and the court system. Moreover, the highly sensitive

19 and traumatic nature of the facts involved here makes a class action superior, because in

20 circumstances like these, there will be some survivors who are emotionally ready and able to

21 come forward and bring suit on behalf of the many others who are not able or ready to come

22 forward to bring suit on their own. In sum, the class action presents far fewer management

23 difficulties and provides the benefits of a single adjudication, economies of scale, and

24 comprehensive supervision by a single court.

25 476. Declaratory/Equitable Relief: Class certification is also appropriate under Rule

26 23(b)(2) because Defendants acted and refused to act on grounds generally applicable to the

27 Classes as a whole, such that final injunctive relief is appropriate with respect to the Classes as a

28 whole. Such injunctive relief includes, but is not limited to, requiring the NCAA and USF to

1 adopt, implement, and enforce appropriate policies and procedures to prevent, or properly
2 respond to, sexual misconduct and psychological abuse of students and student-athletes.

3 477. In the alternative, this action is also properly maintainable under Rule 23(c)(4) in
4 that particular issues common to the class, as set out above, are most appropriately and efficiently
5 resolved through a class action and would advance the disposition of this matter and the parties'
6 interests.

7 **VIII. CLAIMS AGAINST THE NCAA, USF, AND COACH DEFENDANTS ON**
8 **BEHALF OF THE USF BASEBALL SUBCLASS**

9 **COUNT I**

10 **VIOLATION OF TITLE IX [20 U.S.C. § 1681 *et seq.*] FOR DISCRIMINATION**
11 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST USF)**

12 478. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

13 479. Title IX of the Education Amendments of 1972 (“Title IX”), as amended, 20
14 U.S.C. § 1681 *et seq.*, provides that “[n]o person in the United States shall, on the basis of sex, be
15 excluded from participation in, be denied the benefits of, or be subjected to discrimination under
16 any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

17 480. Title IX bars gender-based discrimination and discrimination based on sexual
18 orientation by federally funded educational institutions.

19 481. USF receives federal funding, including but not limited to financial aid and grants,
20 and grants from the Higher Education Emergency Relief Fund (authorized by the American
21 Rescue Plan (ARP), Public Law 117-2, signed into law on March 11, 2021).

22 482. At the time of the events in question, Plaintiffs were enrolled as undergraduate
23 students at USF.

24 483. USF exercised substantial control over its baseball program, as well as over its
25 coaching staff, including Coach Defendants.

26 484. Plaintiffs suffered sexual harassment by Coach Naks, facilitated and condoned by
27 Coach G, and/or by Coach G that was so severe, pervasive, and objectively offensive it deprived
28 Plaintiffs access to educational opportunities and benefits USF provides.

485. Specifically, the intolerable sexualized environment and emotional abuse Plaintiffs

1 were forced to endure since the beginning of their time at USF was continuous and unrelenting,
2 thereby violating Title IX.

3 486. Coach G oversaw, participated in, and approved of this culture of harassment and
4 abuse in the baseball program, which was so extreme and outrageous that several Plaintiffs had to
5 leave USF at great personal and financial losses, including damage to each of their elite baseball
6 careers.

7 487. Coach G, as the head coach of the baseball program, had actual knowledge of the
8 harassment and physical and mental abuse that was occurring, and indeed, condoned and
9 participated in the conduct.

10 488. The Athletic Director, who is in a position of oversight and control of USF's
11 baseball program including its coaching staff, had actual knowledge of the harassment that was
12 occurring.

13 489. In May of 2014, John Doe 6's parents advised the USF Athletic Director, the
14 assistant Athletic Director, and the NCAA Faculty Athletic Representative that the baseball
15 program contained a "hostile environment" that included mental abuse, favoritism, and nepotism.
16 USF's response was that John Doe 6 was allowed to retain his partial scholarship for his last year
17 in college and not play baseball. USF did nothing, and the abuse continued.

18 490. The AD is a Mandatory Reporter under the USF Title IX Policy and had a duty to
19 report the complaint to the USF Title IX Officer. Thus, the AD's failure to report the complaint
20 was, itself, a violation of the USF Title IX Policy.

21 491. The AD also ignored an "URGENT MEETING REQUEST" from John Doe 2's
22 parents on that same day, May 20, 2021.

23 492. The AD's failures allowed the severe and pervasive harassment to continue
24 through the end of 2021.

25 493. The AD's actions constituted deliberate indifference on the part of USF to the
26 harassment, and USF's failure to respond to the complaint was clearly unreasonable in light of the
27 circumstances.

28 494. USF's actions allowed the bullying, harassment, intimidation, and sexual

1 misconduct to continue.

2 495. As a direct and proximate result of USF's actions and inactions, Plaintiffs and the
3 USF Baseball Subclass were damaged and continue to be damaged.

4 496. Because Plaintiffs and the USF Baseball Subclass are at continuing risk of harm,
5 Plaintiffs seek injunctive or equitable relief requiring USF to adopt, implement, and enforce
6 appropriate policies and procedures to prevent, or properly respond to, sexual misconduct and
7 psychological abuse of students and student-athletes, including ones that:

- 8 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
9 athletics department personnel;
- 10 b. prohibit romantic or sexual relationships between athletics department
11 personnel and student-athletes;
- 12 c. prohibit grooming and other sexually-exploitative behavior by athletics
13 department personnel of student-athletes;
- 14 d. require mandatory reporting of any allegations of sexual relationships,
15 harassment, or abuse of a student-athlete by athletics department personnel;
- 16 e. maintain all reports of sexual relationships, harassment, or abuse of a
17 student-athlete by athletics department personnel;
- 18 f. require that all reports of sexual relationships, harassment, or abuse of a
19 student-athlete by athletics department personnel be independently
20 investigated;
- 21 g. implement public sanctions on athletics department personnel where
22 allegations of sexual relationships, harassment, or abuse of a student-
23 athlete by athletics department personnel are substantiated;
- 24 h. mandate training of athletics department personnel regarding grooming,
25 sexual relationships with student-athletes, sexual abuse and harassment, the
26 prohibition thereof, and reporting obligations;
- 27 i. mandate training of athletics department personnel and student-athletes to
28 recognize the signs of grooming and sexual abuse and harassment by

1 athletics department personnel, and to provide confidential avenues to
2 report the abuse;

3 j. provide an independent ombudsman when student-athletes seek to leave
4 their teams, enter the NCAA transfer portal, and/or forego their
5 scholarships;

6 k. protect Plaintiffs and members of the USF Baseball Subclass from such
7 abuse and other foreseeable risks, including the loss of scholarships; and

8 l. provide a safe environment for USF student-athletes free from sexual abuse
9 and/or sexual harassment.

10 **COUNT II**

11 **VIOLATION OF TITLE IX [20 U.S.C. § 1681 *et seq.*] FOR RETALIATION**
12 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST USF)**

13 497. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

14 498. Retaliation against an individual for complaining of sex discrimination, including
15 sexual harassment, constitutes prohibited sex discrimination under Title IX.

16 499. USF receives federal funding, including but not limited to financial aid and grants,
17 and grants from the Higher Education Emergency Relief Fund (authorized by the American
18 Rescue Plan (ARP), Public Law 117-2, signed into law on March 11, 2021).

19 500. At the time of the events in question, Plaintiffs were enrolled as undergraduate
20 students at USF.

21 501. The Athletic Director had actual knowledge of the harassment occurring in the
22 USF baseball program.

23 502. Specifically, as alleged above, John Doe 6's parents complained in May of 2014
24 about the "hostile environment" Coach Defendants created. Additionally, John Doe 8's father met
25 with the then-AD, because he was concerned about this son's treatment. USF did nothing and the
26 abuse continued.

27 503. On May 30, 2021, John Doe 1's mother advised the AD of the "culture" of the
28 baseball team that included "constant bullying, harassment and intimidation" as well as

1 “continuous stories of sexual misconduct by coach Naks. . . .”

2 504. The current AD ignored John Doe 1’s mother, in violation of the USF Title IX
3 Policy, allowing the severe and pervasive harassment to continue through the end of 2021.

4 505. The AD also never responded to John Doe 2’s parents’ March 30, 2021 request for
5 an urgent in-person meeting.

6 506. Coach G, as the head coach of the baseball program, had actual knowledge of the
7 harassment that was occurring, and indeed, condoned and participated in the harassment. Coach
8 G was also a witness to John Doe 1’s Title IX Skit that occurred in October or November of
9 2021. Yet Coach G never questioned John Doe 1 about the reasons underlying the skit.

10 507. Coach Defendants’ retaliation included a relentless campaign to bully and demean
11 each Plaintiff into to leaving USF, resulting in severe depression and anxiety among all Plaintiffs,
12 as well as damage to their baseball careers.

13 508. The examples in this Complaint are part of a concerted practice by USF
14 administration—including Coach Defendants—to isolate and bully Plaintiffs into relinquishing
15 their scholarships and leaving USF, and to ruin their baseball careers.

16 509. Such retaliation caused all Plaintiffs to leave or want to leave USF, at considerable
17 personal and financial expense to each, including damage to their baseball careers.

18 510. As a direct and proximate result of USF’s actions and inactions, Plaintiffs and the
19 USF Baseball Subclass were damaged and continue to be damaged.

20 **COUNT III**

21 **NEGLIGENT SUPERVISION AND RETENTION OF TROY NAKAMURA**
22 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA, USF,**
AND NINO GIARRATANO)

23 511. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

24 512. The USF Baseball Subclass brings this claim pursuant to California law.

25 513. Since 2000 and until USF removed Coach Naks in 2022, USF employed Coach
26 Naks and had the right to control him and the manner and methods in which he fulfilled his duties
27 as an NCAA baseball coach.

28 514. During this same period, the NCAA had the right to control Coach Naks and the

1 manner and methods in which he fulfilled his duties as an NCAA baseball coach.

2 515. During this same period, Coach G had the right to control Coach Naks and the
3 manner and methods in which he fulfilled his duties as an NCAA baseball coach.

4 516. Coach Naks was unfit or incompetent to work directly with student-athletes and
5 posed a particular risk of sexually harassing and mentally abusing them.

6 517. USF, the NCAA, and Coach G knew or should have known that Coach Naks was
7 unfit or incompetent to work directly with student-athletes and posed a particular risk of sexually
8 harassing or mentally abusing them, and that this unfitness created a particular risk to Plaintiffs
9 and the USF Baseball Subclass.

10 518. Coach Naks' unfitness and particular risk to student-athletes on USF's baseball
11 team harmed Plaintiffs and the USF Baseball Subclass.

12 519. USF, the NCAA, and Coach G's negligence in supervising and/or retaining Coach
13 Naks were substantial factors in causing harm to Plaintiffs and the USF Baseball Subclass.

14 520. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs
15 and the USF Baseball Subclass were damaged.

16 **COUNT IV**

17 **NEGLIGENT SUPERVISION AND RETENTION OF NINO GIARRATANO**
18 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST USF AND THE**
19 **NCAA)**

20 521. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

21 522. The USF Baseball Subclass brings this claim pursuant to California law.

22 523. Since 1999 and until USF fired Coach G in 2022, USF employed Coach G and had
23 the right to control him and the manner and methods in which he fulfilled his duties as an NCAA
24 baseball coach. During this same period, the NCAA also had the right to control Coach G and the
25 manner and methods in which he fulfilled his duties as an NCAA baseball coach.

26 524. Coach G was unfit or incompetent to work directly with student-athletes because
27 he sexually harassed and mentally abused them and/or allowed Coach Naks to sexually harass
28 and mentally abuse the student-athletes.

525. USF and the NCAA knew or should have known that Coach G was unfit or

1 incompetent to work directly with student-athletes because he was sexually harassing and
2 mentally abusing them, and that this unfitness created a particular risk to Plaintiffs and the USF
3 Baseball Subclass.

4 526. USF and the NCAA knew or should have known that Coach G was protecting
5 Coach Naks and facilitating Coach Naks' sexual harassment and mental abuse of student-athletes,
6 and that Coach Naks' unfitness created a particular risk to Plaintiffs and the USF Baseball
7 Subclass.

8 527. Coach G's unfitness and particular risk to student-athletes on USF's baseball team
9 harmed Plaintiffs and the USF Baseball Subclass.

10 528. USF and the NCAA's negligence in supervising and/or retaining Coach G were
11 substantial factors in causing harm to Plaintiffs and the USF Baseball Subclass.

12 529. As a direct and proximate result of Defendants' actions and/or inactions, Plaintiffs
13 and the USF Baseball Subclass were damaged and continue to be damaged.

14 **COUNT V**

15 **DISCRIMINATION IN THE EDUCATIONAL SETTING**
16 **[CAL. EDUC. CODE § 66270]**
17 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST USF)**

18 530. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

19 531. Section 66270 of the California Education Code provides in pertinent part: "No
20 person shall be subjected to discrimination on the basis of disability, gender, gender identity,
21 gender expression, nationality, race or ethnicity, religion, [or] sexual orientation . . . in any
22 program or activity conducted by any postsecondary educational institution that receives, or
23 benefits from, state financial assistance or enrolls students who receive state student financial
24 aid."

25 532. Upon information and belief, USF receives state financial assistance and enrolls
26 students who receive state student financial aid.

27 533. Plaintiffs and the USF Baseball Subclass members were harmed by the
28 psychological and physical abuse, as well as intolerable sexualized environment, Coach
Defendants subjected them to at USF because of Plaintiffs and the USF Baseball Subclass

1 members' gender, sexual orientation, and disability status; and Defendant USF is responsible for
2 that harm.

3 534. Plaintiffs and the USF Baseball Subclass members suffered harassment that was so
4 severe, pervasive, and offensive it effectively deprived Plaintiffs and the Class members the right
5 of equal access to educational benefits and opportunities.

6 535. Because of Defendant USF's conduct, Plaintiffs and the USF Baseball Subclass
7 have been damaged and continue to be damaged in an amount to be proven at trial.

8 536. Further, Defendant USF acted willfully and maliciously with the intent to harm
9 Plaintiffs and the USF Baseball Subclass members, and in conscious disregard of the rights of
10 Plaintiffs and the Class members, so as to constitute malice and oppression under California Civil
11 Code Section 3294. Plaintiffs and the USF Baseball Subclass members are therefore entitled to
12 the recovery of punitive damages, in an amount to be determined at trial.

13 **COUNT VI**

14 **VIOLATION OF THE CALIFORNIA EQUITY IN HIGHER EDUCATION ACT**
15 **[CAL. EDUC. CODE § 66250]**
16 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST USF)**

17 537. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

18 538. Section 66281.5 of the California Equity in Higher Education Act provides in
19 pertinent part: "(a) It is the policy of the State of California, pursuant to Section 66251, that all
20 persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the
21 postsecondary educational institution of the state. The purpose of this section is to provide
22 notification of the prohibition against sexual harassment as a form of sexual discrimination and to
23 provide notification of available remedies."

24 539. USF's conduct as alleged herein constitutes sexual harassment as a form of sexual
25 discrimination against Plaintiffs and the USF Baseball Subclass and violated the Equity in Higher
26 Education Act. Plaintiffs are entitled to enforce the Act through a civil action pursuant to
27 Education Code Section 66292.4.

28 540. Because of Defendants' conduct, Plaintiffs and the USF Baseball Subclass have
been damaged and continue to be damaged in an amount to be proven at trial.

COUNT VII

**GROSS NEGLIGENCE
(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA, USF,
AND COACH DEFENDANTS)**

1
2
3
4 541. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

5 542. The USF Baseball Subclass brings this claim pursuant to California law.

6 543. The NCAA, USF, and Coach Defendants owed Plaintiffs and the USF Baseball
7 Subclass a duty to use due care to ensure their safety and freedom from sexual harassment and
8 abuse while interacting with their respective employees, representatives, and/or agents, including
9 Coach Defendants.

10 544. Coach Defendants owed Plaintiffs a duty of due care in carrying out their coaching
11 responsibilities as employees, agents, and/or representatives of the NCAA and USF.

12 545. The Plaintiffs and the USF Baseball Subclass' acceptance of USF's offers to join
13 the baseball team and seek out coaching from Coach Defendants in the course of their
14 employment, agency, and/or representation of USF and the NCAA created a special, confidential,
15 and fiduciary relationship between Plaintiffs and Coach Defendants, resulting in both Coach
16 Defendants owing Plaintiffs a duty to use due care.

17 546. The NCAA and USF's failure to adequately supervise Coach Defendants,
18 especially after the NCAA and USF knew or should have known of complaints regarding their
19 sexual harassment and abuse while coaching was so reckless as to demonstrate a substantial lack
20 of concern for whether Plaintiffs would be injured as a result.

21 547. Coach Defendants' conduct in sexually harassing Plaintiffs in the course of their
22 employment, agency, and/or representation of USF and the NCAA as baseball coaches was so
23 reckless as to demonstrate a substantial lack of concern for whether Plaintiffs would be injured as
24 a result.

25 548. The NCAA and USF's conduct as described above demonstrated a willful
26 disregard for precautions to ensure Plaintiffs' safety, as well as a willful disregard for substantial
27 risks to Plaintiffs and the USF Baseball Subclass.

28 549. The NCAA and USF breached duties owed to Plaintiffs and the USF Baseball

1 Subclass and were grossly negligent when they conducted themselves as described above, said
2 acts having been committed with reckless disregard for Plaintiffs and the USF Baseball Subclass'
3 health, safety, constitutional and/or statutory rights, and with a substantial lack of concern as to
4 whether Plaintiffs would be injured as a result.

5 550. The NCAA and USF are liable and vicariously liable for Coach Defendants'
6 conduct.

7 551. As a direct and/or proximate result of Defendants' actions and inactions, Plaintiffs
8 and the USF Baseball Subclass were damaged and continue to be damaged.

9 **COUNT VIII**

10 **NEGLIGENCE**
11 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA, USF,**
12 **AND COACH DEFENDANTS)**

12 552. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

13 553. The USF Baseball Subclass brings this claim pursuant to California law.

14 554. The NCAA, USF, and Coach Defendants owed Plaintiffs and the USF Baseball
15 Subclass a duty to use due care to ensure their safety and freedom from sexual harassment and
16 abuse while interacting with their respective employees, representatives, and/or agents, including
17 Coach Defendants.

18 555. Coach Defendants owed Plaintiffs a duty of due care in carrying out their coaching
19 responsibilities as employees, agents, and/or representatives of the NCAA and USF.

20 556. The Plaintiffs and the USF Baseball Subclass' acceptance of USF's offers to join
21 the baseball team and seek out coaching from Coach Defendants in the course of their
22 employment, agency, and/or representation of USF and the NCAA created a special, confidential,
23 and fiduciary relationship between Plaintiffs and Coach Defendants, resulting in both Coach
24 Defendants owing Plaintiffs a duty to use due care.

25 557. The NCAA and USF's negligence in supervising Coach Defendants, especially
26 after the NCAA and USF knew or should have known of complaints regarding their sexual
27 harassment and abuse while coaching were substantial factors in causing harm to Plaintiffs and
28 the USF Baseball Subclass.

1 558. Coach Defendants' negligent conduct in sexually harassing Plaintiffs in the course
2 of their employment, agency, and/or representation of USF and the NCAA as baseball coaches
3 was so reckless as to demonstrate a substantial lack of concern for whether Plaintiffs would be
4 injured as a result.

5 559. The NCAA and USF's conduct as described above demonstrated a negligent
6 disregard for precautions to ensure Plaintiffs' safety, as well as a negligent disregard for
7 substantial risks to Plaintiffs and the USF Baseball Subclass.

8 560. The NCAA and USF breached duties owed to Plaintiffs and the USF Baseball
9 Subclass and were negligent when they conducted themselves as described above, said acts
10 having been committed with disregard for Plaintiffs and the USF Baseball Subclass' health,
11 safety, constitutional and/or statutory rights, and with a substantial lack of concern as to whether
12 Plaintiffs would be injured as a result.

13 561. The NCAA and USF are liable and vicariously liable for Coach Defendants'
14 conduct.

15 562. As a direct and/or proximate result of Defendants' actions and inactions, Plaintiffs
16 and the USF Baseball Subclass were damaged and continue to be damaged.

17 **COUNT IX**

18 **NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE**
19 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS**
20 **AGAINST THE NCAA AND USF)**

21 563. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

22 564. The USF Baseball Subclass brings this claim pursuant to California law.

23 565. The NCAA and USF owed Plaintiffs and Class members a duty to take reasonable
24 protective measures to protect them and other student-athletes from the risk of sexual harassment
25 and abuse by Coach Defendants by properly warning, training, and educating Plaintiffs and the
26 Class members and others about how to avoid such a risk.

27 566. The NCAA and USF breached their duty to take reasonable protective measures to
28 protect Plaintiffs and other student-athletes from the risk of sexual harassment and abuse by
Coach Defendants, such as the failure to properly warn, train or educate Plaintiffs and Class

1 members and other student-athletes about how to avoid the particular risk Coach Defendants
2 posed of sexual misconduct.

3 567. The NCAA and USF breached their duties to take reasonable protective measures
4 to protect Plaintiffs, Class members, and other student-athletes from the risk of sexual harassment
5 and abuse by Coach Defendants, by failing to supervise and stop their employees, agents and
6 representatives, including Coach Defendants, from committing wrongful harassment and abuse of
7 student-athletes, including Plaintiffs and Class members.

8 568. As a direct and/or proximate result of Defendants' actions and/or inactions,
9 Plaintiffs and Class members were damaged and continue to be damaged.

10 **COUNT X**

11 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
12 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA, USF,**
13 **AND COACH DEFENDANTS)**

14 569. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

15 570. The USF Baseball Subclass brings this claim pursuant to California law.

16 571. USF and Coach Defendants' extreme and outrageous conduct intentionally or
17 recklessly Plaintiffs and the Subclass members to suffer severe emotional distress. This conduct
18 was not the type of ordinary rude or obnoxious behavior student-athletes should be expected to
19 weather—it exceeded all possible bounds of decency.

20 572. USF and Coach Defendants acted with the intention of causing, or with reckless
21 disregard for the probability of causing, Plaintiffs to endure extreme emotional distress.

22 573. Indeed, USF and Coach Defendants used student-athletes' severe distress to
23 subdue and threaten them; to force them to leave USF, give up their scholarships, and enter the
24 NCAA transfer portal; and to prevent them from complaining or suing over Coach Defendants'
25 misconduct. They did so with deliberate disregard as to the high possibility such actions would
26 result in Plaintiffs and the USF Baseball Subclass experiencing additional severe emotional
27 distress.

28 574. USF and Coach Defendants' conduct intended to cause and caused Plaintiffs and
the USF Baseball Subclass suffering exceeding all bound that are usually tolerated in a civilized

1 community.

2 575. A causal nexus existed between (i) Coach Defendants' recruitment and grooming
3 of student-athletes to participate in the NCAA and at USF; and (ii) their abuse of power to coerce
4 and harass those student-athletes.

5 576. Each act of harassment and abuse was foreseeable given, *inter alia*, the use of
6 NCAA and USF materials to lure victims and the commission of the acts on NCAA member
7 institutions' property or with NCAA or NCAA member institutions' chattels.

8 577. Coach Defendants' conduct is not so unusual or startling that it would seem unfair
9 to include the loss resulting from it among other costs of the NCAA or USF's business. Assaults
10 in the context of NCAA and USF athletics by coaches and other athletics department personnel
11 are exactly why student-athletes would expect the NCAA and USF to take extra precautions, or
12 would expect the NCAA to require member institutions to implement extra precautions to ensure
13 that they are protected from abuse by athletics department personnel.

14 578. Coach Defendants' conduct was committed within the scope of their positions as
15 NCAA and USF coaches. Holding the NCAA and USF liable furthers the policy goals of
16 *respondeat superior*, including the prevention of future injuries and the assurance of
17 compensation to victims, given that Plaintiffs and the USF Baseball Subclass do not have separate
18 remedies under Title VII because they are not (currently) considered employees of the NCAA or
19 USF, or under Title IX as to the NCAA because the NCAA does not receive federal funding.

20 **COUNT XI**

21 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
22 **(PLAINTIFFS AND USF BASEBALL SUBCLASS AGAINST THE NCAA, USF, AND**
23 **COACH DEFENDANTS)**

24 579. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

25 580. The USF Baseball Subclass brings this claim pursuant to California law.

26 581. USF and Coach Defendants' conduct negligently caused emotional distress to
27 Plaintiffs and the USF Baseball Subclass, and USF and Coach Defendants could reasonably
28 foresee that their actions would cause Plaintiffs and the USF Baseball Subclass to suffer
emotional distress.

1 582. Plaintiffs and the USF Baseball Subclass were in a specific zone of danger training
2 with Coach Defendants and at risk of physical harm, causing their fear.

3 583. Plaintiffs and the USF Baseball Subclass, immediately or shortly after training
4 with Coach Defendants, suffered distress and emotional harm.

5 584. A causal nexus existed between (i) Coach Defendants' recruitment and grooming
6 of student-athletes to participate in the NCAA and at USF; and (ii) their abuse of power to coerce
7 and harass those student-athletes.

8 585. Each act of harassment and abuse was foreseeable given, *inter alia*, the use of
9 NCAA and USF materials to lure victims and the commission of the acts on NCAA member
10 institutions' property or with NCAA or NCAA member institutions' chattels.

11 586. Coach Defendants' conduct is not so unusual or startling that it would seem unfair
12 to include the loss resulting from it among other costs of the NCAA's or USF's business.
13 Assaults in the context of NCAA and USF athletics by coaches and other athletics department
14 personnel are exactly why student-athletes would expect the NCAA and USF to take extra
15 precautions or would expect the NCAA to require member institutions to implement extra
16 precautions to ensure that they are protected from abuse by athletics department personnel.

17 587. Coach Defendants' conduct was committed within the scope of their positions as
18 NCAA and USF coaches. Holding the NCAA and USF liable furthers the policy goals of
19 *respondeat superior*, including the prevention of future injuries and the assurance of
20 compensation to victims, given that Plaintiffs and the USF Baseball Subclass do not have separate
21 remedies under Title VII because they are not (currently) considered employees of the NCAA or
22 USF, or under Title IX as to the NCAA because the NCAA does not receive federal funding.

23 **COUNT XII**

24 **RATIFICATION**
25 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS**
26 **AGAINST THE NCAA AND USF)**

26 588. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

27 589. The USF Baseball Subclass brings this claim pursuant to California law.

28 590. Coach Defendants were NCAA and USF coaches for several decades.

1 591. At the time of the acts alleged herein, there was an actual or assumed agency
2 relationship between Coach Defendants and the NCAA, Coach Defendants and USF, and USF
3 and the NCAA.

4 592. All acts or omissions alleged herein were ratified by the NCAA and USF. The
5 NCAA and USF had knowledge that Coach Defendants and/or other coaches like Coach
6 Defendants were in sexual relationships with student-athletes and/or were sexually abusing or
7 harassing student-athletes but refused to take any action to Coach Defendants or other predators
8 like them. Moreover, USF hid this information from the public so that Coach Defendants could
9 continue to work for the NCAA and its member institutions until at least 2022.

10 593. Despite the NCAA, USF, and/or their agents' knowledge of Coach Defendants'
11 sexual misconduct, Coach Defendants were allowed to be alone with student-athletes while on
12 NCAA and USF business during the relevant time period.

13 **COUNT XIII**

14 **The NCAA and USF are thus responsible for Coach Defendants' actions.**

15 **BREACH OF FIDUCIARY DUTY** 16 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA)**

17 594. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

18 595. The USF Baseball Subclass brings this claim pursuant to California law.

19 596. The NCAA owed a fiduciary duty to Plaintiffs and the USF Baseball Subclass
20 arising out of the special relationship of trust and confidence its student-athletes placed in the
21 NCAA. This fiduciary duty formed because the NCAA actively promoted itself as providing a
22 safe and nurturing environment for its student-athletes and intended for Plaintiffs and the USF
23 Baseball Subclass to believe this so they would participate in NCAA sports.

24 597. Plaintiffs and the USF Baseball Subclass trusted that the NCAA and its member
25 institutions would employ skilled, trained, competent, and ethical coaches and trainers in
26 connection with NCAA sports who would coach and train student-athletes without committing
27 sexual assault; sexual, physical, and psychological abuse; and molestation against them.

28 598. Plaintiffs and the USF Baseball Subclass trusted that the NCAA would inform

1 Plaintiffs and the public of any concerns relating to sexual harassment; sexual, physical, and
2 psychological abuse; and molestation committed by NCAA coaches and trainers.

3 599. The NCAA owed Plaintiffs and the USF Baseball Subclass the highest duty to
4 protect them and other student-athletes from sexual predators such as Coach Defendants; the
5 NCAA breached its fiduciary duty to Plaintiffs and the USF Baseball Subclass by failing to
6 protect them from sexual predators such as Coach Defendants, and by failing to warn them
7 regarding the same.

8 600. NCAA's breaches of its fiduciary duties were substantial contributing causes of
9 Plaintiffs and the USF Baseball Subclass' injuries.

10 601. As a direct and proximate result of NCAA's breaches of its fiduciary duties,
11 Plaintiffs and the USF Baseball Subclass suffered and continue to suffer from emotional distress,
12 physical manifestations of emotional distress, loss of self-esteem, fright, anxiety, grief,
13 humiliation and loss of enjoyment of life; were prevented and will continue to be prevented from
14 performing their daily activities and obtaining the full enjoyment of life; and have sustained
15 financial losses including, but not limited, to the amounts of tuition and costs-of-attendance paid
16 because of loss of scholarship due to the NCAA's actions and inactions, as well as out-of-pocket
17 costs for therapy, counseling, and medication to address the mental anguish and despair caused by
18 the NCAA.

19 602. Because Plaintiffs and the USF Baseball Subclass are at continuing risk of harm,
20 Plaintiffs seek injunctive or equitable relief.

21 **COUNT XIV**

22 **NEGLIGENT MISREPRESENTATIONS AND OMISSIONS**
23 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA)**

24 603. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

25 604. The USF Baseball Subclass brings this claim pursuant to California law.

26 605. The NCAA negligently concealed facts and information material to Plaintiffs and
27 the USF Baseball Subclass. As more fully described above, the NCAA knew or should have
28 known that its actions or inactions in the area of gender equity, including with respect to sexual

1 harassment, sexual, physical, and psychological abuse, and molestation of its student-athletes by
2 coaches or trainers, would cause harm to Plaintiffs and the USF Baseball Subclass.

3 606. The NCAA knew or should have known, but negligently concealed, the following
4 facts regarding student-athletes' risk of sexual exploitation:

5 a. The power differential between coaches and trainers and student-athletes
6 makes student-athletes more vulnerable to sexual harassment; physical,
7 sexual, or psychological abuse; and molestation;

8 b. College athletics attracts sexual predators who secure jobs as coaches and
9 trainers at NCAA member institutions to have nearly unfettered access to
10 victims;

11 c. An extremely high incidence of marriage between coaches or trainers and
12 student-athletes/former student-athletes indicates the existence of improper
13 relationships between coaches and trainers and student-athletes.

14 607. Through negligent concealment of material facts, the NCAA intended to induce
15 the false belief in its student-athletes that NCAA sports were safe from inappropriate sexual
16 relationships, abuse or harassment by athletics department personnel; and that NCAA sports
17 provided a safe and nurturing environment for student-athletes. However, the NCAA failed to
18 provide Plaintiffs and other student-athletes a reasonably safe place for NCAA sports activities
19 and interactions with member institution coaches and trainers.

20 608. Plaintiffs and the USF Baseball subclass justifiably relied on the NCAA's
21 misrepresentations. They participated in NCAA sports because the NCAA lulled them into
22 believing that NCAA member institutions employed skilled, trained, competent, and ethical
23 coaches and trainers in connection with NCAA sports, who would coach and train student-
24 athletes without committing sexual harassment; sexual, physical, and psychological abuse; and
25 molestation against them.

26 609. Furthermore, Plaintiffs could not have discovered the truth through a reasonable
27 inquiry and/or were prevented from doing so, because: (1) the NCAA did not require or
28 encourage member institutions to report sexual abuse or harassment by athletics department

1 personnel and thus fraudulently concealed the true nature and scope of the problem; and (2) the
 2 NCAA and its member institutions knowingly empowered coaches with full discretion over
 3 student-athletes' academic and athletic careers.

4 610. Plaintiffs would have acted differently, including with respect to their college and
 5 coaching choices, had they been aware of all material facts.

6 611. As a proximate cause of NCAA's concealment, Plaintiffs and the USF Baseball
 7 Subclass suffered harm as described above.

8 612. Because Plaintiffs and USF Baseball Subclass members are at continuing risk of
 9 harm, Plaintiffs seek injunctive or equitable relief.

10 COUNT XV

11 **BREACH OF CONTRACT** 12 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA)**

13 613. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

14 614. The USF Baseball Subclass brings this claim pursuant to California law.

15 615. Each Plaintiff and Class member entered into a contract with the NCAA. The
 16 NCAA requires all student-athletes, prior to participation in the NCAA, affirm in writing that
 17 they read NCAA regulations and their respective NCAA Division Manual, which expressly
 18 encompasses the NCAA Constitution, Operating Bylaws, and Administrative Bylaws.

19 616. DI student-athletes each sign a contract substantially the same as the Form 19-1a
 20 John Does 1 and 2 signed, attached to this complaint as Exhibit A. Upon information and belief,
 21 the NCAA and USF possess Plaintiffs' contracts.

22 617. The NCAA also requires each student-athlete affirm in writing that they "read the
 23 Summary of NCAA Regulations, or another outline or summary of NCAA legislation, provided
 24 to you by your director of athletics (or his or her designee) or read the bylaws of the NCAA
 25 Division I Manual that address your eligibility."¹³⁹

26 618. In the Manual, the NCAA promises to do the following for student-athletes:

27 ¹³⁹ NCAA Division I Student-Athlete Statement, Academic Year 2019-20,
 28 https://ncaaorg.s3.amazonaws.com/compliance/d1/2019-20D1Comp_Form19-1a-StudentAthleteStatement.pdf (last visited July 13, 2022).

- 1 a. “initiate, stimulate and improve intercollegiate athletics programs;”
- 2 b. “uphold the principal of institutional control of, and responsibility for, all
- 3 intercollegiate sports in conformity with the constitution and bylaws of this
- 4 association;”
- 5 c. “legislate . . . upon any subject of general concern to the members related
- 6 to the administration of intercollegiate athletics;”
- 7 d. conduct intercollegiate athletics programs “in a manner designed to protect
- 8 and enhance” student-athletes’ physical and educational wellbeing;
- 9 e. require each member institution “protect the health of, and provide a safe
- 10 environment for, each of its participating student-athletes;”
- 11 f. require each member institution “establish and maintain an environment
- 12 that fosters a positive relationship between the student-athlete and coach;”
- 13 g. require each member institution “establish and maintain an environment in
- 14 which a student-athlete’s activities are conducted as an integral part of the
- 15 student-athlete’s educational experience;”
- 16 h. “assist the institution in its efforts to achieve full compliance with all rules
- 17 and regulations and . . . afford the institution, its staff and student-athletes
- 18 fair procedures in the consideration of an identified or alleged failure in
- 19 compliance.”¹⁴⁰

20 619. In consideration of the NCAA’s undertakings, each student-athlete agrees to abide
 21 by the Manual and any other NCAA rules; to participate in an NCAA sport, which provides a
 22 benefit to the NCAA and its member institutions; and to waive certain rights, including the right
 23 to profit from participation.

24 620. The Manual thus constitutes a contract between the NCAA and Plaintiffs and the
 25 Baseball Subclass members, and Plaintiffs have fulfilled their obligations under the contract by
 26 providing their services as student-athletes in the NCAA.

27
 28 ¹⁴⁰ See NCAA Const., Arts. 1& 2.

1 621. The NCAA breached its contractual obligations to Plaintiffs and the USF Baseball
2 Subclass by failing to:

- 3 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
4 athletics department personnel;
- 5 b. prohibit any romantic or sexual relationships between athletics department
6 personnel and student-athletes;
- 7 c. prohibit grooming and other sexually-exploitative behavior by athletics
8 department personnel of student-athletes;
- 9 d. require NCAA member institutions to immediately report any allegations
10 of sexual relationships, harassment, or abuse of a student-athlete by
11 athletics department personnel;
- 12 e. maintain all reports of sexual relationships, harassment, or abuse of a
13 student-athlete by athletics department personnel in a centralized repository
14 so they can be tracked by the NCAA and its member institutions;
- 15 f. require that all reports of sexual relationships, harassment, or abuse of a
16 student-athlete by athletics department personnel be independently
17 investigated;
- 18 g. implement public sanctions on member institutions and athletics
19 department personnel where allegations of sexual relationships,
20 harassment, or abuse of a student-athlete by athletics department personnel
21 are substantiated;
- 22 h. ban athletics department personnel from working or volunteering for any
23 member institution where allegations of sexual relationships, harassment,
24 or abuse of a student-athlete by such athletics department personnel are
25 substantiated;
- 26 i. mandate training of athletics department personnel regarding grooming,
27 sexual relationships with student-athletes, sexual abuse and harassment, the
28 prohibition thereof, and reporting obligations;

- 1 j. mandate training of athletics department personnel and student-athletes to
- 2 recognize the signs of grooming and sexual abuse and harassment by
- 3 athletics department personnel, and to provide confidential avenues to
- 4 report the abuse;
- 5 k. protect Plaintiffs and members of the USF Baseball Subclass from such
- 6 abuse and other foreseeable risks; and
- 7 l. provide a safe environment for NCAA student-athletes free from sexual
- 8 abuse and/or sexual harassment.

9 622. As a direct result of these breaches, Plaintiffs and the USF Baseball Subclass have
10 suffered harm as described above including, but not limited, to the amounts of tuition and costs-
11 of-attendance paid because of their loss of scholarships due to NCAA's actions and inactions, as
12 well as out-of-pocket costs for therapy, counseling, and medication to address the mental anguish
13 and despair caused by the NCAA.

14 623. Because Plaintiffs and the USF Baseball Subclass are at continuing risk of harm,
15 Plaintiffs seek injunctive or equitable relief.

16 **COUNT XVI**

17 **BREACH OF IMPLIED CONTRACT**
18 **(PLAINTIFFS AND THE USF SUBCLASS AGAINST THE NCAA)**

19 624. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

20 625. The USF Baseball Subclass brings this claim pursuant to California law.

21 626. To the extent an express contract does not exist, the facts and circumstances set
22 forth above establish an implied contract wherein student-athletes, in return for participation
23 under the NCAA's governance, agreed to be bound by the NCAA's rules and expected the
24 NCAA to provide appropriate rules and regulations to protect their health and safety to the extent
25 possible.

26 627. The NCAA breached its contractual obligations to Plaintiffs and the USF Baseball
27 Subclass by failing to:

- 28 a. prohibit sexual harassment and/or sexual abuse of student-athletes by

- 1 athletics department personnel;
- 2 b. prohibit any romantic or sexual relationships between athletics department
- 3 personnel and student-athletes;
- 4 c. prohibit grooming and other sexually-exploitative behavior by athletics
- 5 department personnel of student-athletes;
- 6 d. require NCAA member institutions to immediately report any allegations
- 7 of sexual relationships, harassment, or abuse of a student-athlete by
- 8 athletics department personnel;
- 9 e. maintain all reports of sexual relationships, harassment, or abuse of a
- 10 student-athlete by athletics department personnel in a centralized repository
- 11 so that they can be tracked by the NCAA and its member institutions;
- 12 f. require that all reports of sexual relationships, harassment, or abuse of a
- 13 student-athlete by athletics department personnel be independently
- 14 investigated;
- 15 g. implement public sanctions on member institutions and athletics
- 16 department personnel where allegations of sexual relationships,
- 17 harassment, or abuse of a student-athlete by athletics department personnel
- 18 are substantiated;
- 19 h. ban athletics department personnel from working or volunteering for any
- 20 member institution where allegations of sexual relationships, harassment,
- 21 or abuse of a student-athlete by such athletics department personnel are
- 22 substantiated;
- 23 i. mandate training of athletics department personnel regarding grooming,
- 24 sexual relationships with student-athletes, sexual abuse and harassment, the
- 25 prohibition thereof, and reporting obligations;
- 26 j. mandate training of athletics department personnel and student-athletes to
- 27 recognize the signs of grooming and sexual abuse and harassment by
- 28 athletics department personnel, and to provide confidential avenues to

- 1 report the abuse;
- 2 k. provide an independent ombudsman when student-athletes seek to leave
- 3 their teams, enter the NCAA transfer portal, and/or forego their
- 4 scholarships;
- 5 l. protect Plaintiffs and members of the USF Baseball Subclass from such
- 6 abuse and other foreseeable risks; and
- 7 m. provide a safe environment for NCAA student-athletes free from sexual
- 8 abuse and/or sexual harassment.

9 628. As a direct result of these breaches, Plaintiffs and the USF Baseball Subclass have
10 suffered harm described above, including, but not limited to the amounts of tuition and costs-of-
11 attendance paid because of loss of scholarships due to NCAA's actions and inactions, as well as
12 out-of-pocket costs for therapy, counseling, and medication to address the mental anguish and
13 despair caused by the NCAA.

14 629. Because Plaintiffs and the USF Baseball Subclass are at continuing risk of harm,
15 Plaintiffs seek injunctive or equitable relief.

16 **COUNT XVII**

17 **BREACH OF CONTRACT AS THIRD-PARTY BENEFICIARIES**
18 **(PLAINTIFFS AND THE USF SUBCLASS AGAINST THE NCAA)**

19 630. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

20 631. The USF Baseball Subclass brings this claim pursuant to California law.

21 632. To the extent the Court finds no contract exists, either express or implied, between
22 Plaintiffs and the USF Baseball Subclass and the NCAA, then the NCAA and its member
23 institutions are contractual parties. As an express condition of its membership in the NCAA, each
24 institution must agree to abide by its respective NCAA Division Manual, which expressly
25 encompasses the NCAA Constitution, Operating Bylaws, and Administrative Bylaws. The
26 Manual thus constitutes a contract between the NCAA and its member institutions.

27 633. Plaintiffs and the USF Baseball Subclass are third-party beneficiaries of the
28 contract between the NCAA and its members because the parties to the contract intended to

1 benefit the student-athletes.

2 634. In the Manual, the NCAA promises to do the following for student-athletes:

- 3 a. “initiate, stimulate and improve intercollegiate athletics programs;”
- 4 b. “uphold the principal of institutional control of, and responsibility for, all
- 5 intercollegiate sports in conformity with the constitution and bylaws of this
- 6 association;”
- 7 c. “legislate . . . upon any subject of general concern to the members related
- 8 to the administration of intercollegiate athletics;”
- 9 d. conduct intercollegiate athletics programs “in a manner designed to protect
- 10 and enhance” student-athletes’ physical and educational wellbeing;
- 11 e. require each member institution “protect the health of, and provide a safe
- 12 environment for, each of its participating student-athletes;”
- 13 f. require each member institution “establish and maintain an environment
- 14 that fosters a positive relationship between the student-athlete and coach;”
- 15 g. require each member institution “establish and maintain an environment in
- 16 which a student-athlete’s activities are conducted as an integral part of the
- 17 student-athlete’s educational experience;”
- 18 h. “assist the institution in its efforts to achieve full compliance with all rules
- 19 and regulations and . . . afford the institution, its staff and student-athletes
- 20 fair procedures in the consideration of an identified or alleged failure in
- 21 compliance.”¹⁴¹

22 635. The NCAA breached its contractual obligations to Plaintiffs and the USF Baseball
23 Subclass by failing to:

- 24 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
- 25 athletics department personnel;
- 26 b. prohibit any romantic or sexual relationships between athletics department
- 27

28 ¹⁴¹ See NCAA Const., Arts. 1& 2.

- 1 personnel and student-athletes;
- 2 c. prohibit grooming and other sexually-exploitative behavior by athletics
- 3 department personnel of student-athletes;
- 4 d. require NCAA member institutions to immediately report any allegations
- 5 of sexual relationships, harassment, or abuse of a student-athlete by
- 6 athletics department personnel;
- 7 e. maintain all reports of sexual relationships, harassment, or abuse of a
- 8 student-athlete by athletics department personnel in a centralized repository
- 9 so they can be tracked by the NCAA and its member institutions;
- 10 f. require that all reports of sexual relationships, harassment, or abuse of a
- 11 student-athlete by athletics department personnel be independently
- 12 investigated;
- 13 g. implement public sanctions on member institutions and athletics
- 14 department personnel where allegations of sexual relationships,
- 15 harassment, or abuse of a student-athlete by athletics department personnel
- 16 are substantiated;
- 17 h. ban athletics department personnel from working or volunteering for any
- 18 member institution where allegations of sexual relationships, harassment,
- 19 or abuse of a student-athlete by such athletics department personnel are
- 20 substantiated;
- 21 i. mandate training of athletics department personnel regarding grooming,
- 22 sexual relationships with student-athletes, sexual abuse and harassment, the
- 23 prohibition thereof, and reporting obligations;
- 24 j. mandate training of athletics department personnel and student-athletes to
- 25 recognize the signs of grooming and sexual abuse and harassment by
- 26 athletics department personnel, and to provide confidential avenues to
- 27 report the abuse;
- 28 k. provide an independent ombudsman when student-athletes seek to leave

1 their teams, enter the NCAA transfer portal, and/or forego their
2 scholarships;

3 l. protect Plaintiffs and members of the USF Baseball Subclass from such
4 abuse and other foreseeable risks; and

5 m. provide a safe environment for NCAA student-athletes free from sexual
6 abuse and/or sexual harassment.

7 636. As a direct result of these breaches, Plaintiffs and the USF Baseball Subclass have
8 suffered harm as described above, including, but not limited, to the amounts of tuition and costs-
9 of-attendance paid because of loss of scholarships due to the NCAA's actions and inactions, as
10 well as out-of-pocket costs for therapy, counseling, and medication to address the mental anguish
11 and despair caused by the NCAA.

12 637. Because Plaintiffs and the USF Baseball Subclass are at continuing risk of harm,
13 Plaintiffs seek injunctive or equitable relief.

14 **IX. CLAIMS AGAINST THE NCAA ON BEHALF OF THE NATIONWIDE CLASS**
15 **AND CALIFORNIA SUBCLASS**

16 **COUNT XVIII**

17 **GROSS NEGLIGENCE**
18 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND THE CALIFORNIA SUBCLASS**
19 **AGAINST THE NCAA)**

20 638. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

21 639. The Nationwide Class brings this claim pursuant to Indiana law.

22 640. The California Subclass brings this claim pursuant to California law.

23 641. At all relevant times, the NCAA owed a duty to Plaintiffs, the Nationwide Class,
24 and the California Subclass to implement and enforce rules and bylaws to, *inter alia*:

25 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
26 athletics department personnel;

27 b. prohibit grooming and other sexually-exploitative behavior by athletics
28 department personnel of student-athletes;

c. require NCAA member institutions to immediately report any allegations

- 1 of sexual harassment, or abuse of a student-athletes by athletics department
2 personnel;
- 3 d. maintain all reports of sexual harassment or abuse of a student-athlete by
4 athletics department personnel in a centralized repository so that they can
5 be tracked by the NCAA and its member institutions;
- 6 e. require that all reports of sexual harassment or abuse of a student-athlete by
7 athletics department personnel be independently investigated;
- 8 f. implement public sanctions on member institutions and athletics
9 department personnel where allegations of sexual harassment or abuse of a
10 student-athlete by athletics department personnel are substantiated;
- 11 g. ban athletics department personnel from working or volunteering for any
12 member institution where allegations of sexual harassment, or abuse of a
13 student-athlete by such athletics department personnel are substantiated;
- 14 h. mandate training of athletics department personnel regarding grooming,
15 sexual abuse and harassment, the prohibition thereof, and reporting
16 obligations;
- 17 i. mandate training of athletics department personnel and student-athletes to
18 recognize the signs of grooming and sexual abuse and harassment by
19 athletics department personnel, and to provide confidential avenues to
20 report the abuse;
- 21 j. protect Plaintiffs, the Nationwide Class, and the California Subclass from
22 such abuse and other foreseeable risks;
- 23 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
24 coercion to leave their teams, enter the NCAA transfer portal, and/or
25 forego their scholarships without an independent ombudsman and advocate
26 for the student-athletes; and
- 27 l. provide a safe environment for NCAA student-athletes free from sexual
28 abuse and harassment.

1 2. The NCAA’s duty arose from the following:

- 2 a. The NCAA’s Constitution and Bylaws, which, among other things,
3 establish a duty to protect the health and well-being of NCAA student-
4 athletes, including in the areas of health and safety and in gender equity,
5 which includes student-athlete/coach relationships;
- 6 b. The NCAA’s website, which establishes a duty to exercise reasonable care
7 concerning the health and well-being of its student-athletes in connection
8 with its sports; and
- 9 c. The NCAA positioning itself as the exclusive authority in intercollegiate
10 athletics to preserve amateurism.

11 642. The NCAA acted recklessly and indifferently in its position as the regulatory body
12 for college athletics among its member institutions and its student-athletes, including Plaintiffs,
13 the Nationwide Class, and the California Subclass.

14 643. The NCAA knew or should have known that its actions and inactions in the area of
15 gender equity with respect to sexual abuse and harassment by athletics department personnel of
16 student-athletes created an unreasonable risk of harm to Plaintiffs, the Nationwide Class, and the
17 California Subclass, such that the risk was so great that it was highly probable that harm would
18 result.

19 644. The NCAA has been aware of sexual misconduct by its coaches for decades, yet
20 has ignored previous calls by eight United States senators and its own Commission to fix the
21 problem. In fact, the NCAA disbanded the Commission in 2018, promising only to continue to
22 “monitor and track on sexual violence issues.”

23 645. The NCAA knew or should have known that the power differential between
24 coaches and trainers on the one hand, and student-athletes on the other, so favors athletics
25 department personnel that student-athletes cannot effectively protect themselves from
26 inappropriate conduct or from retaliation. This power disparity negates any purported consent by
27 the student-athlete.

28 646. The NCAA thus owed its student-athletes a duty to protect them from the

1 foreseeable risk of coaches or trainers taking advantage of the power differential for improper
2 purposes.

3 647. The NCAA knew or should have known that college athletics attracts sexual
4 predators who secure jobs as coaches and trainers at NCAA member institutions to have nearly
5 unfettered access to victims, and so owed its student-athletes a duty to protect them from the
6 foreseeable risk of such coaches or trainers.

7 648. Plaintiffs had a reasonable expectation that the NCAA would require its member
8 institutions to employ (and that its member institutions would actually employ) skilled, trained,
9 competent, and ethical coaches and trainers in connection with NCAA sports, who would coach
10 and train student-athletes without committing sexual harassment; sexual, physical, and
11 psychological abuse; or molestation against them.

12 649. Plaintiffs also had a reasonable expectation that the NCAA would inform Plaintiffs
13 and the public of sexual harassment, sexual, physical, and psychological abuse, and molestation
14 committed by NCAA coaches and trainers.

15 650. The NCAA willfully disregarded precautions that would reasonably protect
16 Plaintiffs, the Nationwide Class, and the California Subclass and their safety and well-being by
17 failing to:

- 18 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
19 athletics department personnel;
- 20 b. prohibit sexual and romantic relationships between student-athletes and
21 athletics department personnel;
- 22 c. prohibit grooming and other sexually-exploitative behavior by athletics
23 department personnel of student-athletes;
- 24 d. require NCAA member institutions to immediately report any allegations
25 of sexual harassment, or abuse of a student-athletes by athletics department
26 personnel;
- 27 e. maintain all reports of sexual harassment or abuse of a student-athlete by
28 athletics department in a centralized repository so they complaints can be

- 1 tracked by the NCAA and its member institutions;
- 2 f. require that all reports of sexual harassment or abuse of a student-athlete by
- 3 athletics department personnel be independently investigated;
- 4 g. implement public sanctions on member institutions and athletics
- 5 department personnel where allegations of sexual harassment or abuse of a
- 6 student-athlete by athletics department personnel are substantiated;
- 7 h. ban athletics department personnel from working or volunteering for any
- 8 member institution where allegations of sexual harassment, or abuse of a
- 9 student-athlete by such athletics department personnel are substantiated;
- 10 i. mandate training of athletics department personnel regarding grooming,
- 11 sexual abuse and harassment, the prohibition thereof, and reporting
- 12 obligations;
- 13 j. mandate training of athletics department personnel and student-athletes to
- 14 recognize the signs of grooming and sexual abuse and harassment by
- 15 athletics department personnel, and to provide confidential avenues to
- 16 report the abuse;
- 17 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 18 such abuse and other foreseeable risks;
- 19 l. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 20 coercion to leave their teams, enter the NCAA transfer portal, and/or
- 21 forego their scholarships without an independent ombudsman and advocate
- 22 for the student-athletes; and
- 23 m. provide a safe environment for NCAA student-athletes free from sexual
- 24 abuse and harassment.

25 651. The NCAA's reckless conduct as described above demonstrated a willful disregard
26 for substantial risks to Plaintiffs, the Nationwide Class, and the California Subclass; as well as a
27 willful disregard for necessary precautions to reasonably protect Plaintiffs, the Nationwide Class,
28 and the California Subclass; and were substantial contributing causes of Plaintiffs' sexual

1 harassment, and sexual and psychological abuse.

2 652. Because Plaintiffs, the Nationwide Class, and the California Subclass are at
3 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

4 **COUNT XIX**

5 **NEGLIGENCE**
6 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND THE CALIFORNIA SUBCLASS**
7 **AGAINST THE NCAA)**

7 653. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

8 654. The Nationwide Class brings this claim pursuant to Indiana law.

9 655. The California Subclass brings this claim pursuant to California law.

10 656. At all relevant times, the NCAA owed a duty to Plaintiffs, the Nationwide Class,
11 and the California Subclass to implement and enforce rules and bylaws to, *inter alia*:

- 12 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
13 athletics department personnel;
- 14 b. prohibit grooming and other sexually-exploitative behavior by athletics
15 department personnel of student-athletes;
- 16 c. require NCAA member institutions to immediately report any allegations
17 of sexual harassment, or abuse of a student-athletes by athletics department
18 personnel;
- 19 d. maintain all reports of sexual harassment or abuse of a student-athlete by
20 athletics department personnel in a centralized repository so that they can
21 be tracked by the NCAA and its member institutions;
- 22 e. require that all reports of sexual harassment or abuse of a student-athlete by
23 athletics department personnel be independently investigated;
- 24 f. implement public sanctions on member institutions and athletics
25 department personnel where allegations of sexual harassment or abuse of a
26 student-athlete by athletics department personnel are substantiated;
- 27 g. ban athletics department personnel from working or volunteering for any
28 member institution where allegations of sexual harassment, or abuse of a

- 1 student-athlete by such athletics department personnel are substantiated;
- 2 h. mandate training of athletics department personnel regarding grooming,
- 3 sexual abuse and harassment, the prohibition thereof, and reporting
- 4 obligations;
- 5 i. mandate training of athletics department personnel and student-athletes to
- 6 recognize the signs of grooming and sexual abuse and harassment by
- 7 athletics department personnel, and to provide confidential avenues to
- 8 report the abuse;
- 9 j. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 10 such abuse and other foreseeable risks;
- 11 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 12 coercion to leave their teams, enter the NCAA transfer portal, and/or
- 13 forego their scholarships without an independent ombudsman and advocate
- 14 for the student-athletes; and
- 15 l. provide a safe environment for NCAA student-athletes free from sexual
- 16 abuse and harassment.

17 657. The NCAA's duty arose from the following:

- 18 a. The NCAA's Constitution and Bylaws, which, among other things,
- 19 establish a duty to protect the health and well-being of NCAA student-
- 20 athletes, including in the areas of health and safety and in gender equity,
- 21 which includes student-athlete/coach relationships;
- 22 b. The NCAA's website, which establishes a duty to exercise reasonable care
- 23 concerning the health and well-being of its student-athletes in connection
- 24 with its sports;
- 25 c. The NCAA's positioning itself as the exclusive authority in intercollegiate
- 26 athletics to preserve amateurism.

27 658. The NCAA acted negligently, carelessly, and indifferently in its position as the
28 regulatory body for college athletics among its member institutions and its student-athletes,

1 including Plaintiffs, the Nationwide Class, and the California Subclass.

2 659. The NCAA knew or should have known that its actions and inactions in the area of
3 gender equity with respect to sexual abuse and harassment by athletics department personnel of
4 student-athletes created an unreasonable risk of harm to Plaintiffs, the Nationwide Class, and the
5 California Subclass, so great it was highly probable harm would result.

6 660. The NCAA has been aware of sexual misconduct by its coaches for decades, yet
7 has ignored previous calls by eight United States senators and its own Commission to fix the
8 problem. In fact, the NCAA disbanded the Commission in 2018, promising only to continue to
9 “monitor and track on sexual violence issues.”

10 661. The NCAA knew or should have known that the power differential between
11 coaches and trainers on the one hand, and student-athletes on the other, so favors athletics
12 department personnel that student-athletes cannot effectively protect themselves from
13 inappropriate conduct or from retaliation. This power disparity negates any purported consent by
14 the student-athlete.

15 662. The NCAA thus owed its student-athletes a duty to protect them from the
16 foreseeable risk of coaches or trainers taking advantage of the power differential for improper
17 purposes.

18 663. The NCAA knew or should have known that college athletics attracts sexual
19 predators who secure jobs as coaches and trainers at NCAA member institutions to have nearly
20 unfettered access to victims, and so owed its student-athletes a duty to protect them from the
21 foreseeable risk of such coaches or trainers.

22 664. Plaintiffs had a reasonable expectation that the NCAA would require its member
23 institutions to employ (and that its member institutions would actually employ) skilled, trained,
24 competent, and ethical coaches and trainers in connection with NCAA sports, who would coach
25 and train student-athletes without committing sexual harassment; sexual, physical, and
26 psychological abuse; or molestation against them.

27 665. Plaintiffs also had a reasonable expectation that the NCAA would inform Plaintiffs
28 and the public of sexual harassment, sexual, physical, and psychological abuse, and molestation

1 committed by NCAA coaches and trainers.

2 666. The NCAA willfully disregarded precautions that would reasonably protect
3 Plaintiffs, the Nationwide Class, and the California Subclass and their safety and well-being by
4 failing to:

- 5 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
6 athletics department personnel;
- 7 b. prohibit grooming and other sexually-exploitative behavior by athletics
8 department personnel of student-athletes;
- 9 c. require NCAA member institutions to immediately report any allegations
10 of sexual harassment, or abuse of a student-athletes by athletics department
11 personnel;
- 12 d. maintain all reports of sexual harassment or abuse of a student-athlete by
13 athletics department personnel in a centralized repository so they can be
14 tracked by the NCAA and its member institutions;
- 15 e. require that all reports of sexual harassment or abuse of a student-athlete by
16 athletics department personnel be independently investigated;
- 17 f. implement public sanctions on member institutions and athletics
18 department personnel where allegations of sexual harassment or abuse of a
19 student-athlete by athletics department personnel are substantiated;
- 20 g. ban athletics department personnel from working or volunteering for any
21 member institution where allegations of sexual harassment, or abuse of a
22 student-athlete by such athletics department personnel are substantiated;
- 23 h. mandate training of athletics department personnel regarding grooming,
24 sexual abuse and harassment, the prohibition thereof, and reporting
25 obligations;
- 26 i. mandate training of athletics department personnel and student-athletes to
27 recognize the signs of grooming and sexual abuse and harassment by
28 athletics department personnel, and to provide confidential avenues to

- 1 report the abuse;
- 2 j. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 3 such abuse and other foreseeable risks;
- 4 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 5 coercion to leave their teams, enter the NCAA transfer portal, and/or
- 6 forego their scholarships without an independent ombudsman and advocate
- 7 for the student-athletes; and
- 8 l. provide a safe environment for NCAA student-athletes free from sexual
- 9 abuse and harassment.

10 667. The NCAA’s conduct as described above demonstrated a negligent disregard for
11 substantial risks to Plaintiffs, the Nationwide Class, and the California Subclass; and a negligent
12 disregard for necessary precautions to reasonably protect Plaintiffs, the Nationwide Class, and the
13 California Subclass; which were substantial contributing causes of Plaintiffs’ sexual and
14 psychological abuse, and molestation.

15 668. Because Plaintiffs, the Nationwide Class, and the California Subclass are at
16 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

17 **COUNT XX**

18 **BREACH OF FIDUCIARY DUTY**
19 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND THE CALIFORNIA SUBCLASS**
20 **AGAINST THE NCAA)**

21 669. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

22 670. The Nationwide Class brings this claim pursuant to Indiana law.

23 671. The California Subclass brings this claim pursuant to California law.

24 672. The NCAA owed a fiduciary duty to Plaintiffs, the Nationwide Class, and the
25 California Subclass arising out of the special relationship of trust and confidence its student-
26 athletes placed in the NCAA. This fiduciary duty formed because the NCAA actively promoted
27 itself as providing a safe and nurturing environment for its student-athletes, and intended for
28 Plaintiffs, the Nationwide Class, and the California Subclass to believe this so they would
participate in NCAA sports.

1 the California Subclass.

2 682. The NCAA knew or should have known, but negligently concealed, the following
3 facts regarding student-athletes' risk of sexual exploitation:

- 4 a. The power differential between coaches and trainers and student-athletes
5 makes student-athletes more vulnerable to sexual harassment; physical,
6 sexual, or psychological abuse; and molestation;
- 7 b. College athletics attracts sexual predators who secure jobs as coaches and
8 trainers at NCAA member institutions to have nearly unfettered access to
9 victims;
- 10 c. An extremely high incidence of marriage between coaches or trainers and
11 student-athletes/former student-athletes indicates the existence of improper
12 relationships between coaches and trainers and student-athletes.

13 683. Through negligent concealment of material facts, the NCAA intended to induce
14 the false belief in its student-athletes that NCAA sports were safe from inappropriate sexual
15 relationships, abuse or harassment by athletics department personnel; and that NCAA sports
16 provided a safe and nurturing environment for student-athletes. However, the NCAA failed to
17 provide Plaintiffs and other student-athletes a reasonably safe place for NCAA sports activities
18 and interactions with member institution coaches and trainers.

19 684. Plaintiffs, the Nationwide Class, and the California Subclass justifiably relied on
20 the NCAA's misrepresentations. They participated in NCAA sports because the NCAA lulled
21 them into believing that NCAA member institutions employed skilled, trained, competent, and
22 ethical coaches and trainers in connection with NCAA sports, who would coach and train student-
23 athletes without committing sexual harassment; sexual, physical, and psychological abuse; and
24 molestation against them.

25 685. Furthermore, Plaintiffs could not have discovered the truth through a reasonable
26 inquiry and/or were prevented from doing so, because: (1) the NCAA did not require or
27 encourage member institutions to report sexual abuse or harassment by athletics department
28 personnel and thus fraudulently concealed the true nature and scope of the problem; and (2) the

1 NCAA and its member institutions knowingly empowered coaches with full discretion over
2 student-athletes' academic and athletic careers.

3 686. Plaintiffs would have acted differently, including with respect to their college and
4 coaching choices, had they been aware of all material facts.

5 687. As a proximate cause of NCAA's concealment, Plaintiffs, the Nationwide Class,
6 and the California Subclass suffered harm as described above.

7 688. Because Plaintiffs, the Nationwide Class, and the California Subclass are at
8 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

9 **COUNT XXII**

10 **BREACH OF CONTRACT**
11 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND THE**
12 **CALIFORNIA SUBCLASS AGAINST THE NCAA)**

12 689. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

13 690. The Nationwide Class brings this claim pursuant to Indiana law.

14 691. The California Subclass brings this claim pursuant to California law.

15 692. Each Plaintiff and Class member entered into a contract with the NCAA. The
16 NCAA requires all student-athletes, prior to participation in the NCAA, affirm in writing that
17 they read NCAA regulations and their respective NCAA Division Manual, which expressly
18 encompasses the NCAA Constitution, Operating Bylaws, and Administrative Bylaws.

19 693. DI student-athletes each sign a contract substantially the same as Form 19-1a (Ex.
20 A). Upon information and belief, the NCAA and USF possess Plaintiffs' contracts.

21 694. The NCAA also requires each student-athlete affirm in writing that they "read the
22 Summary of NCAA Regulations, or another outline or summary of NCAA legislation, provided
23 to you by your director of athletics (or his or her designee) or read the bylaws of the NCAA
24 Division I Manual that address your eligibility."¹⁴²

25 695. In the Manual, the NCAA promises to do the following for student-athletes:
26

27 ¹⁴² NCAA Division I Student-Athlete Statement, Academic Year 2019-20,
28 https://ncaaorg.s3.amazonaws.com/compliance/d1/2019-20D1Comp_Form19-1a-StudentAthleteStatement.pdf (last visited July 13, 2022).

- 1 a. “initiate, stimulate and improve intercollegiate athletics programs;”
- 2 b. “uphold the principal of institutional control of, and responsibility for, all
- 3 intercollegiate sports in conformity with the constitution and bylaws of this
- 4 association;”
- 5 c. “legislate . . . upon any subject of general concern to the members related
- 6 to the administration of intercollegiate athletics;”
- 7 d. conduct intercollegiate athletics programs “in a manner designed to protect
- 8 and enhance” student-athletes’ physical and educational wellbeing;
- 9 e. require each member institution “protect the health of, and provide a safe
- 10 environment for, each of its participating student-athletes;”
- 11 f. require each member institution “establish and maintain an environment
- 12 that fosters a positive relationship between the student-athlete and coach;”
- 13 g. require each member institution “establish and maintain an environment in
- 14 which a student-athlete’s activities are conducted as an integral part of the
- 15 student-athlete’s educational experience;”
- 16 h. “assist the institution in its efforts to achieve full compliance with all rules
- 17 and regulations and . . . afford the institution, its staff and student-athletes
- 18 fair procedures in the consideration of an identified or alleged failure in
- 19 compliance.”¹⁴³

20 696. In consideration of the NCAA’s undertakings, each student-athlete agrees to abide
 21 by the Manual and any other NCAA rules; to participate in an NCAA sport, which provides a
 22 benefit to the NCAA and its member institutions; and to waive certain rights, including the right
 23 to profit from participation.

24 697. The Manual thus constitutes a contract between the NCAA and Plaintiffs, the
 25 Nationwide Class, and the California Subclass, and Plaintiffs have fulfilled their obligations
 26 under the contract by providing their services as student-athletes in the NCAA.

27
 28 ¹⁴³ See NCAA Const., Arts. 1 & 2.

1 698. The NCAA breached its contractual obligations to Plaintiffs, the Nationwide
2 Class, and the California Subclass by failing to:

- 3 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
4 athletics department personnel;
- 5 b. prohibit any romantic or sexual relationships between athletics department
6 personnel and student-athletes;
- 7 c. prohibit grooming and other sexually-exploitative behavior by athletics
8 department personnel of student-athletes;
- 9 d. require NCAA member institutions to immediately report any allegations
10 of sexual relationships, harassment, or abuse of a student-athlete by
11 athletics department personnel;
- 12 e. maintain all reports of sexual relationships, harassment, or abuse of a
13 student-athlete by athletics department personnel in a centralized repository
14 so they can be tracked by the NCAA and its member institutions;
- 15 f. require that all reports of sexual relationships, harassment, or abuse of a
16 student-athlete by athletics department personnel be independently
17 investigated;
- 18 g. implement public sanctions on member institutions and athletics
19 department personnel where allegations of sexual relationships,
20 harassment, or abuse of a student-athlete by athletics department personnel
21 are substantiated;
- 22 h. ban athletics department personnel from working or volunteering for any
23 member institution where allegations of sexual relationships, harassment,
24 or abuse of a student-athlete by such athletics department personnel are
25 substantiated;
- 26 i. mandate training of athletics department personnel regarding grooming,
27 sexual relationships with student-athletes, sexual abuse and harassment, the
28 prohibition thereof, and reporting obligations;

- 1 j. mandate training of athletics department personnel and student-athletes to
- 2 recognize the signs of grooming and sexual abuse and harassment by
- 3 athletics department personnel, and to provide confidential avenues to
- 4 report the abuse;
- 5 k. provide an independent ombudsman when student-athletes seek to leave
- 6 their teams, enter the NCAA transfer portal, and/or forego their
- 7 scholarships;
- 8 l. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 9 such abuse and other foreseeable risks; and
- 10 m. provide a safe environment for NCAA student-athletes free from sexual
- 11 abuse and/or sexual harassment.

12 699. As a direct result of these breaches, Plaintiffs, the Nationwide Class, and the
13 California Subclass have suffered harm as described above.

14 700. Because Plaintiffs, the Nationwide Class, and the California Subclass are at
15 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

16 **COUNT XXIII**

17 **BREACH OF IMPLIED CONTRACT**
18 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND**
CALIFORNIA SUBCLASS AGAINST THE NCAA)

19 701. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

20 702. The Nationwide Class brings this claim pursuant to Indiana law.

21 703. The California Subclass brings this claim pursuant to California law.

22 704. To the extent an express contract does not exist, the facts and circumstances set
23 forth above establish an implied contract wherein student-athletes, in return for participation,
24 agreed to be bound by NCAA rules and expected the NCAA to provide appropriate rules and
25 regulations so as to protect their health and safety to the extent possible.

26 705. The NCAA breached its contractual obligations to Plaintiffs, the Nationwide
27 Class, and the California Subclass by failing to:

- 28 a. prohibit sexual harassment and/or sexual abuse of student-athletes by

- 1 athletics department personnel;
- 2 b. prohibit any romantic or sexual relationships between athletics department
- 3 personnel and student-athletes;
- 4 c. prohibit grooming and other sexually-exploitative behavior by athletics
- 5 department personnel of student-athletes;
- 6 d. require NCAA member institutions to immediately report any allegations
- 7 of sexual relationships, harassment, or abuse of a student-athlete by
- 8 athletics department personnel;
- 9 e. maintain all reports of sexual relationships, harassment, or abuse of a
- 10 student-athlete by athletics department personnel in a centralized repository
- 11 so they can be tracked by the NCAA and its member institutions;
- 12 f. require that all reports of sexual relationships, harassment, or abuse of a
- 13 student-athlete by athletics department personnel be independently
- 14 investigated;
- 15 g. implement public sanctions on member institutions and athletics
- 16 department personnel where allegations of sexual relationships,
- 17 harassment, or abuse of a student-athlete by athletics department personnel
- 18 are substantiated;
- 19 h. ban athletics department personnel from working or volunteering for any
- 20 member institution where allegations of sexual relationships, harassment,
- 21 or abuse of a student-athlete by such athletics department personnel are
- 22 substantiated;
- 23 i. mandate training of athletics department personnel regarding grooming,
- 24 sexual relationships with student-athletes, sexual abuse and harassment, the
- 25 prohibition thereof, and reporting obligations;
- 26 j. mandate training of athletics department personnel and student-athletes to
- 27 recognize the signs of grooming and sexual abuse and harassment by
- 28 athletics department personnel, and to provide confidential avenues to

- 1 report the abuse;
- 2 k. provide an independent ombudsman when student-athletes seek to leave
- 3 their teams, enter the NCAA transfer portal, and/or forego their
- 4 scholarships;
- 5 l. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 6 such abuse and other foreseeable risks; and
- 7 m. provide a safe environment for NCAA student-athletes free from sexual
- 8 abuse and/or sexual harassment.

9 706. As a direct result of these breaches, Plaintiffs, the Nationwide Class, and the
10 California Subclass have suffered harm described above.

11 707. Because Plaintiffs, the Nationwide Class, and the California Subclass are at
12 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

13 **COUNT XXIV**

14 **BREACH OF CONTRACT AS THIRD-PARTY BENEFICIARIES**
15 **(PLAINTIFFS, THE NATIONWIDE CLASS,**
16 **AND CALIFORNIA SUBCLASS AGAINST THE NCAA)**

17 708. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

18 709. The Nationwide Class brings this claim pursuant to Indiana law.

19 710. The California Subclass brings this claim pursuant to California law.

20 711. To the extent the Court finds no contract exists, either express or implied, between
21 Plaintiffs, the Nationwide Class, and the California Subclass and the NCAA, then the NCAA and
22 its member institutions were parties to a contract. As an express condition of their membership in
23 the NCAA, each institution must agree to abide by its respective NCAA Division Manual, which
24 expressly encompasses the NCAA Constitution, Operating Bylaws, and Administrative Bylaws.
25 The Manual thus constitutes a contract between the NCAA and its member institutions.

26 712. Plaintiffs, the Nationwide Class, and the California Subclass are third-party
27 beneficiaries of the contract between the NCAA and its members because the parties to the
28 contract intended to benefit the student-athletes.

713. In the Manual, the NCAA promises to do the following for student-athletes:

- 1 a. “initiate, stimulate and improve intercollegiate athletics programs;”
- 2 b. “uphold the principal of institutional control of, and responsibility for, all
- 3 intercollegiate sports in conformity with the constitution and bylaws of this
- 4 association;”
- 5 c. “legislate . . . upon any subject of general concern to the members related
- 6 to the administration of intercollegiate athletics;”
- 7 d. conduct intercollegiate athletics programs “in a manner designed to protect
- 8 and enhance” student-athletes’ physical and educational wellbeing;
- 9 e. require each member institution “protect the health of, and provide a safe
- 10 environment for, each of its participating student-athletes;”
- 11 f. require each member institution “establish and maintain an environment
- 12 that fosters a positive relationship between the student-athlete and coach;”
- 13 g. require each member institution “establish and maintain an environment in
- 14 which a student-athlete’s activities are conducted as an integral part of the
- 15 student-athlete’s educational experience;”
- 16 h. “assist the institution in its efforts to achieve full compliance with all rules
- 17 and regulations and . . . afford the institution, its staff and student-athletes
- 18 fair procedures in the consideration of an identified or alleged failure in
- 19 compliance.”¹⁴⁴

20 714. The NCAA breached its contractual obligations to Plaintiffs, the Nationwide
21 Class, and the California Subclass by failing to:

- 22 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
- 23 athletics department personnel;
- 24 b. prohibit any romantic or sexual relationships between athletics department
- 25 personnel and student-athletes;
- 26 c. prohibit grooming and other sexually-exploitative behavior by athletics
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28 ¹⁴⁴ See NCAA Const., Arts. 1& 2.

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- department personnel of student-athletes;
- d. require NCAA member institutions to immediately report any allegations of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel;
- e. maintain all reports of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel in a centralized repository so they can be tracked by the NCAA and its member institutions;
- f. require that all reports of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel be independently investigated;
- g. implement public sanctions on member institutions and athletics department personnel where allegations of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel are substantiated;
- h. ban athletics department personnel from working or volunteering for any member institution where allegations of sexual relationships, harassment, or abuse of a student-athlete by such athletics department personnel are substantiated;
- i. mandate training of athletics department personnel regarding grooming, sexual relationships with student-athletes, sexual abuse and harassment, the prohibition thereof, and reporting obligations;
- j. mandate training of athletics department personnel and student-athletes to recognize the signs of grooming and sexual abuse and harassment by athletics department personnel, and to provide confidential avenues to report the abuse;
- k. provide an independent ombudsman when student-athletes seek to leave their teams, enter the NCAA transfer portal, and/or forego their scholarships;

- 1 l. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 2 such abuse and other foreseeable risks; and
- 3 m. provide a safe environment for NCAA student-athletes free from sexual
- 4 abuse and/or sexual harassment.

5 715. As a direct result of these breaches, Plaintiffs, the Nationwide Class, and the
6 California Subclass have suffered harm as described above.

7 716. Because Plaintiffs, the Nationwide Class, and the California Subclass are at
8 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

9 **X. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, individually and on behalf of the Nationwide Class, the USF
11 Baseball Subclass, and the California Subclass, respectfully request that the Court enter a
12 judgment on their behalf and against the NCAA, the University of San Francisco, Nino
13 Giarratano, and Troy Nakamura, and further grant the following relief:

14 A. Certify the proposed Class and Subclasses pursuant to the Rules 23(a), (b)(2),
15 (b)(3) and/or (c)(4);

16 B. Designate Plaintiffs as representatives of the proposed Class and Subclasses and
17 Plaintiffs' counsel as Class counsel;

18 C. Declare that the NCAA owes a legal duty to protect student-athletes enrolled at
19 member institutions;

20 D. Award injunctive relief requiring the NCAA to adopt, implement, and enforce
21 appropriate policies and procedures to prevent, or properly respond to, sexual misconduct and
22 psychological abuse of students and student-athletes, because: (1) there is a substantial likelihood
23 that Plaintiffs and the Classes will prevail on the merits; (2) there is a real and substantial threat
24 that the Classes will suffer irreparable injury if the injunction is not granted; (3) the Classes'
25 threatened injury outweighs any threatened harm to the NCAA; and (4) granting the injunction
26 will serve the public interest.

27 E. Award injunctive relief requiring USF to adopt, implement, and enforce
28 appropriate policies and procedures to prevent, or properly respond to, sexual misconduct and

1 psychological abuse of students and student-athletes, because: (1) there is a substantial likelihood
2 that Plaintiffs and the Classes will prevail on the merits; (2) there is a real and substantial threat
3 that the Classes will suffer irreparable injury if the injunction is not granted; (3) the Classes'
4 threatened injury outweighs any threatened harm to USF; and (4) granting the injunction will
5 serve the public interest.

6 F. Award Plaintiffs and the Classes compensatory damages, punitive damages,
7 damages for pain and suffering and emotional distress, and any other relief to which they are
8 entitled under the law;

9 G. Award Plaintiffs and the Classes prejudgment interest, costs and attorneys' fees;
10 and

11 H. Award Plaintiffs and the Classes such other and further relief as the Court deems
12 just and proper.

13 **XI. DEMAND FOR TRIAL BY JURY**

14 Plaintiffs, individually and on behalf of the proposed Classes, respectfully request a trial
15 by jury as to all matters so triable.

16 Dated: July 15, 2022

Respectfully submitted,

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18 By: /s/Jonathan Selbin

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