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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, and JOHN DOE
20 3, individually and on behalf of all others
similarly situated,

21 Plaintiffs,

22 v.

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

26 Defendants.

CASE NO. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs John Doe 1, John Doe 2, and John Doe 3, on behalf of themselves and all others
2 similarly situated, by and through their attorneys, bring this action against the National Collegiate
3 Athletic Association (“NCAA”), the University of San Francisco (“USF”), Nino Giarratano
4 (“Giarratano” or “Coach G”), and Troy Nakamura (“Nakamura” or “Coach Naks”) (Coach G and
5 Coach Naks may also be collectively referred to as the “Coach Defendants,” and all defendants
6 may also be collectively referred to as the “Defendants”). Plaintiffs’ allegations are based upon
7 information and belief.

8 **I. INTRODUCTION**

9 1. The NCAA has a historical and ongoing duty to protect the health and safety of
10 student-athletes. 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 has 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 When students suffer sexual abuse and harassment, they are deprived of equal access to
17 education. Despite this duty to promulgate legislation to augment gender equity, however, the
18 NCAA has failed to implement any rules prohibiting sexual harassment and retaliation.

19 3. The NCAA’s duty to protect the health and safety of student-athletes—and failure
20 to discharge that duty—affects some of the most vulnerable individuals in our society. NCAA
21 student-athletes are typically living away from home for the first time. Student-athletes arrive at
22 college with the expectation that they will become the best athletes they possibly can be under the
23 supervision of educated, skilled, and fully vetted athletics department personnel looking out for
24

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

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

1 their best interests. Many student-athletes dream of playing their sports professionally after
2 college, and are taught from a young age that trusting and believing their coaches is the key to
3 realizing that dream. The student-athletes therefore accord their coaches and trainers deference,
4 respect, and loyalty. A tragic example is U.S.A. gymnastics, where the female gymnasts trusted
5 their coaches, who sent them year after year to serial sexual predator Larry Nassar.

6 4. This trust—coupled with the NCAA’s failure to impose sanctions that would
7 incentivize schools to report abuse and deter perpetrators—has created and perpetuated a
8 continuing cycle of abusive coaches who move unchecked among schools. Without NCAA
9 reporting requirements, colleges and universities can turn a blind eye to a coach’s misconduct.
10 Even if a school takes action, the NCAA permits the perpetrator to move to another college or
11 university, and thereby grants the perpetrator access to a fresh population of student-athletes who
12 are unaware of these prior allegations and primed to afford the perpetrator complete trust. Instead
13 of a system that protects the well-being of student-athletes, the NCAA therefore oversees one that
14 prioritizes the protection of athletic revenue, alumni donations, and tuition at the expense of
15 student-athletes.

16 5. Within this culture, the University of San Francisco employed two baseball
17 coaches for 22 years, despite an awareness that these coaches created an intolerable sexualized
18 environment within USF’s Division I baseball team that included persistent psychological abuse
19 and repeated inappropriate sexual conduct. For 22 years and counting, Head Coach Nino
20 Giarratano and Assistant Coach Troy Nakamura have wielded their power to psychologically
21 abuse their players, destroying their spirits to the point where multiple players have become
22 suicidal.

23 6. The Coach Defendants created a culture where, in the light of the day, it was
24 “normal” to see Coach Naks naked on the field or in a window, swinging his penis in a helicopter
25 fashion while the entire team—and Coach G—watched.

26 7. The Coach Defendants created a culture where, under the guise of relaxing the
27 student-athletes before practice, it was “normal” for Coach Naks to mime sexual acts with the
28 players.

1 8. The Coach Defendants created a culture where it was perfectly “normal” for the
2 coaches to discuss their sexual preferences, the sexual acts they would like to engage in, and the
3 bodily fluids they would like to drink with Plaintiffs and other members of the USF baseball
4 team.

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

10 10. The Coach Defendants engaged in extreme retaliation and psychological abuse of
11 any student-athlete, including Plaintiffs, who did not outwardly condone or participate in the
12 sexualized atmosphere. The Coach Defendants berated, belittled, and disparaged student-athletes;
13 threatened to take away their playing time and their scholarships; and told the student-athletes
14 (who otherwise met all NCAA and academic requirements) to leave USF and not come back. The
15 Coach Defendants tricked the student-athletes into signing forms to make it seem as though
16 revocation of their scholarships was voluntary, when it was not.

17 11. And, when USF—a Jesuit university whose mission is to create a more humane
18 and just world, including by holding staff accountable to promote the common good and address
19 inequities—was confronted with the Coach Defendants’ wrongdoing through complaints made to
20 the very highest levels of the Athletic Department, USF chose to back Coach G’s decisions to run
21 student-athletes off the baseball team.

22 12. The Coach Defendants’ psychological abuse and retaliation against Plaintiffs and
23 the other student-athletes worked. Of the three Plaintiffs, only one plans to remain at USF. One
24 transferred and another is in the process of transferring. Of the 13 freshman recruits in the 2020
25 USF baseball class, seven have transferred and one more is in the process of transferring. The fact
26 that more than 60% of the 2020 recruiting class left or intends to leave is a testament to the
27 coaching staff’s illegal behavior, ruthlessness, retaliation, and callous treatment of its players.
28 This transfer rate stands in stark contrast to the reported percentage of four-year college transfers

1 among Division I baseball players—just 2.3%, the fourth lowest rate out of 38 NCAA Division I
2 sports.³

3 13. Through this lawsuit, Plaintiffs seek to hold the NCAA and USF accountable,
4 including through demands: (i) to make changes to the NCAA’s policies and practices to ensure it
5 fulfills its obligation to protect student-athletes from athletic department personnel’s
6 psychological abuse and repeated inappropriate sexual conduct that creates an intolerable
7 sexualized environment now and in the future; and (ii) for compensation from the NCAA, USF,
8 and the Coach Defendants for the psychological abuse, repeated inappropriate sexual conduct that
9 created an intolerable sexualized environment, and retaliation Plaintiffs and members of the USF
10 baseball team have suffered.

11 14. First, Plaintiffs seek injunctive and equitable relief requiring the NCAA to
12 implement and enforce rules and bylaws considered best practices. That includes, *inter alia*:
13 prohibiting sexual harassment and/or sexual abuse of student-athletes by athletics department
14 personnel; prohibiting romantic or sexual relationships between athletics department personnel
15 and student-athletes; requiring NCAA member institutions to immediately report any allegations
16 of harassment or abuse of a student-athlete by athletics department personnel; requiring that all
17 reports be independently investigated; implementing public sanctions on member institutions and
18 athletics department personnel where allegations are substantiated; banning athletics department
19 personnel found to be in violation from further working or volunteering for any member
20 institution; mandating training; and protecting student-athletes from retaliation and coercion to
21 leave their teams, enter the NCAA transfer portal, and/or forego their scholarships without an
22 independent ombudsman and advocate for the student-athletes.⁴

23 15. Second, Plaintiffs seek damages from the NCAA, USF, and the Coach Defendants
24 for the psychological abuse and repeated inappropriate sexual conduct they suffered, and
25 _____

26 ³ NCAA, *Transfer Composition of Division I Teams*, 10 (July 2020), available at
27 https://ncaaorg.s3.amazonaws.com/research/transfers/RES_TransCompD1TeamsSlides.pdf (last
28 accessed Jan. 27, 2022).

⁴ The transfer portal is an NCAA mechanism for players to make themselves available to other
schools; however, to enter the transfer portal, the student-athletes must give up their current
scholarships.

1 compensation for lost guaranteed scholarship money, other out-of-pocket costs, and impairment
2 of their baseball careers, including playing Major League Baseball.

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

7 **II. JURISDICTION AND VENUE**

8 17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
9 1332, as amended by the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because: (a) there
10 are at least 100 class members; (b) the matter in controversy exceeds \$5 million, exclusive of
11 interest and costs; (c) at least one Plaintiff is a citizen of a different state than at least one
12 Defendant; and (d) at least one member of the Classes, including Plaintiffs, is a citizen of a
13 different state than at least one Defendant.

14 18. This Court has personal jurisdiction over the NCAA because the NCAA has
15 contacts with California to render it “essentially at home” in California, such that the exercise of
16 personal jurisdiction is proper. Specifically, this Court has general personal jurisdiction because
17 of the NCAA’s meaningful, continuous, and substantial economic, physical, and political
18 presence in California; the 58 NCAA member organizations located in California, including USF;
19 the NCAA’s ability to influence the California legislature; the NCAA’s attempts to influence the
20 California courts; and the NCAA’s availment of the California courts.

21 19. First, the NCAA engages in a continuous stream of activities in and directed
22 towards California, both directly and through its members, that exceed its activity in other states
23 and renders it at home in California.

24 a. Since its founding in 1916, the NCAA has received substantial revenue
25 directly tied to activities in California. California has the largest number of
26 Division I member institutions in the country—the Division that generates
27 virtually all NCAA revenue. California members are thus responsible for
28 an outsized portion of the NCAA’s over \$1 billion annual revenue.

- 1 b. California members contribute tens of thousands of dollars in membership
2 dues to the NCAA.
- 3 c. The NCAA affirmatively elects to sponsor many of its largest and most
4 prominent revenue-minting events in California. For example, the oldest
5 and most famous college football playoff game, the Rose Bowl, has been
6 held in California continuously since 1916—evidencing more than 100
7 years of continuous and highly profitable commercial activity by the
8 NCAA in the State.
- 9 d. Overall, during the 2019 to 2020 academic year, California was slated to
10 host 43 championship games—more than almost any other state. These
11 games are attended by NCAA representatives, giving the NCAA a
12 meaningful physical presence in the State throughout the year in addition to
13 an economic one.

14 20. Second, the NCAA members are heavily concentrated in California, with 58
15 members in California. Of these 58, 24 are Division I members—the most of any state. Moreover,
16 the NCAA exercises significant control over its California members through the imposition of
17 onerous requirements on members’ athletic programs and operation of an expansive enforcement
18 program.

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

24 22. Fourth, the NCAA has engaged in significant activities in an attempt to influence
25 the California courts. In *Brown v. USA Taekwondo*, No. S259216, 2020 WL 5705929 (Cal., Sep.
26 22, 2020), the NCAA filed an amicus brief addressing what duty under California law, if any, the
27 United States Olympic Committee has to protect an athlete from sexual abuse by third-parties.
28 The NCAA deemed the issue as one of “great importance” to the NCAA.

1 23. Finally, the NCAA purposefully avails itself of California courts when it so
2 chooses.⁵ The NCAA even admitted that personal jurisdiction and venue are appropriate in
3 California.⁶

4 24. This Court also has specific personal jurisdiction over the NCAA. First, as
5 reflected above, the NCAA purposefully directed activities towards California or purposefully
6 availed itself of the benefits of doing business in California. Second, the psychological abuse and
7 repeated inappropriate sexual conduct that created an intolerable sexualized environment and
8 retaliation at USF occurred in California and arises out of the NCAA's actions or inactions with
9 respect to its oversight of USF and its coaching staff in California, and its failure to adopt formal
10 policies to monitor, prohibit, or otherwise address rampant sexual misconduct. Third, and based
11 on the above, it would not be unreasonable for this Court to exercise personal jurisdiction over the
12 NCAA.

13 25. This Court has personal jurisdiction over Defendant USF because it is located in
14 this District and the wrongdoing occurred in this District.

15 26. This Court has personal jurisdiction over Defendant Nino Giarratano because,
16 based on information and belief, he resides in this District. Moreover, Coach G has coached in
17 this District for 22 years.

18 27. This Court has personal jurisdiction over Defendant Troy Nakamura because,
19 based on information and belief, he resides in this District. Moreover, Coach Naks coached in this
20 District for 22 years.

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

25 **III. INTRA-DISTRICT ASSIGNMENT**

26 29. Assignment in the San Francisco Division is appropriate because USF, Coach G,
27 _____

28 ⁵ See, e.g., *NCAA v. Ken Grody Mgmt.*, No. 8:18-cv-00153 (C.D. Cal.).

⁶ *George v. NCAA*, 2008 WL 5422882, at *3 (C.D. Cal. Dec. 17, 2008).

1 and Coach Naks reside in this Division, as does Defendant NCAA, an unincorporated association
2 whose member Defendant USF resides in this Division.

3 **IV. PARTIES**

4 **A. Plaintiffs**

5 30. **John Doe 1** is a citizen and resident of California and citizen of the United States.
6 John Doe 1 was a standout on his high school baseball team, was recruited by many schools, and
7 given offers by multiple schools, including Ivy League schools.

8 31. Coach Naks scouted and met John Doe 1 at a 2019 tournament in Arizona while
9 John Doe 1 was in his junior year of high school. Coach Naks was accompanied by a former
10 Major League baseball player who helped analyze the players. Impressed by John Doe 1's play,
11 Coach Naks invited him to an official visit at USF two weeks later, where John Doe 1 met the
12 entire coaching staff.

13 32. USF heavily recruited John Doe 1 based on his baseball skills and experience. The
14 coaches sold John Doe 1 on the notions that the Jesuit culture set the team apart from all others,
15 all of the teammates loved each other, and the coaches treated the players as "family." Coach
16 Naks emphasized four core values, including trust and accountability. He said that John Doe 1
17 would be a "cornerstone" of the USF baseball team.

18 33. USF offered John Doe 1 guaranteed four-year athletic and academic grants-in-aid
19 (scholarships) in the amount of approximately \$60,000 per year (\$240,000 total) to attend USF.
20 On October, 7, 2019, Coach Naks sent a letter to John Doe 1 along with his official offer. In the
21 letter Coach Naks wrote, "I do not believe I mentioned to you that we are one of the few schools
22 out there that offer 4 year guaranteed contracts. If you sign a National Letter of Intent with the
23 [USF] Dons, your scholarship is guaranteed to you for the entire time you are on the Hilltop. It
24 cannot be reduced for any reason, only increased. Like I mentioned, we have a tradition of
25 reinvesting in our family for guys that take care of business on the field, in the classroom and
26 protect the culture." This guarantee was dispositive in John Doe 1's decision to sign with USF.

27 34. John Doe 1 was a freshman at USF in the fall of 2020, and has been a member of
28 the baseball team since then. He continues to attend USF as of the time of this Complaint.

1 Because of Defendants' attempt to force him to give up his scholarship and leave the baseball
2 team, however, he has recently entered the NCAA transfer portal.

3 35. **John Doe 2** is a citizen and resident of California and citizen of the United States.
4 USF heavily recruited John Doe 2 based on his baseball skills and experience. The coaches at
5 USF portrayed the USF baseball team as a cohesive, caring culture where everyone cared about
6 each other's successes and had each other's backs.

7 36. John Doe 2 committed to play baseball at USF in his senior year of high school,
8 and signed a National Letter of Intent. John Doe 2 was offered (and accepted) guaranteed four-
9 year athletic and academic grants-in-aid (scholarships) in an amount of \$75,000 per year
10 (\$300,000 total) to attend USF. John Doe 2 received the largest scholarship ever awarded by
11 USF for an outfielder.

12 37. John Doe 2 was a freshman at USF in the fall of 2020. John Doe 2 transferred in
13 January 2022 due to the actions of the Defendants described herein.

14 38. **John Doe 3** is a citizen and resident of California and citizen of the United States.
15 John Doe 3 received approximately 10 offers, including from Ivy League schools as well as USF,
16 which heavily recruited John Doe 3 based on his baseball skills and experience.

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

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

25 41. John Doe 3 was a freshman at USF in the fall of 2021. He continues to attend USF
26 as of the filing of this lawsuit, but hopes to transfer at the end of this academic year.

27 **B. Defendants**

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

1 unincorporated association that acts as the governing body of college sports. Its principal office is
2 located in Indianapolis, Indiana.

3 43. **Defendant University of San Francisco (USF)** is a California corporation located
4 at 2130 Fulton Street, San Francisco, CA 94117, with its agent for service of process, Donna J.
5 Davis, at the same address. USF is a Division I member institution of the NCAA. It is the only
6 Division I university in San Francisco.

7 44. **Defendant Nino Giarratano** is a resident of San Francisco, California. Coach G
8 is the head coach of the USF baseball team where he has coached since 1999.

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

13 **V. FACTS**

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

16 46. All college students are encouraged to develop a clear sense of self, commitment,
17 and direction. Emerging adults engage in a variety of developmental tasks such as identity
18 formation, becoming personally competent, developing interpersonal relationships, and planning
19 for the future.⁷

20 47. While engaged in this period of self-exploration, student-athletes must also
21 balance a unique set of often-competing circumstances, including but not limited to their athletic
22 and academic endeavors. They must: balance social activities against the isolation of athletic
23 pursuits; maintain mental equilibrium in the face of athletic success or shortcomings; play
24

25
26
27 ⁷ Emily Benton. Heird & Jesse A. Steinfeldt, An Interpersonal Psychotherapy Approach to
28 Counseling Student-Athletes: Clinical Implications of Athletic Identity, JOURNAL OF COLLEGE
COUNSELING, 16(2), 143-57 (2013).

1 notwithstanding physical infirmities and injuries; and, often, reconcile the termination of an
2 athletic career to set goals for the future.⁸

3 48. The NCAA acknowledges the uniquely important process of identity formation for
4 NCAA student-athletes, because “NCAA research has shown academic outcomes (grades,
5 graduation and eventual graduate degree attainment) are strongly related to identity as a student
6 while in college, even after taking prior academic performance into account.”⁹

7 49. For student-athletes, then, this crucial developmental period necessarily includes
8 significant time spent with their teammates and coaches. When other college students might be
9 testing their emerging identity in school-based and friendship networks, the college athlete is
10 spending significant time separated from these networks while they train and compete. Student-
11 athletes often spend hours a day with their coaches on the practice field, in the training room, and
12 in meetings.

13 50. This reality renders student-athletes uniquely vulnerable to sexual harassment and
14 abuse. Researchers suggest “the culture of sport, specifically the power invested in the coach,
15 facilitates an environment conducive to, and tolerant of, sexual exploitation.”¹⁰

16 51. This power imbalance is especially prevalent at the highest level of intercollegiate
17 athletics. One author explained that a student-athlete’s susceptibility to the influence of his coach
18 is even greater for athletes close to the upper echelon of their sport:

19 [A]thletes may be more susceptible to the grooming process which
20 precedes actual sexual abuse when they have most at stake in terms
21 of their sporting careers, that is when they have reached a high
22 standard of performance but are just below the elite level. We call
23 this the ‘stage of imminent achievement’ (SIA) (see Fig. 1). This
stage might include athletes on national squads who have not yet
been selected for the national/ international honours, those who
occupy rankings just outside the top echelon for their sport and those

24 ⁸ Joy Gaston Gayles, *Engaging Student Athletes*, STUDENT ENGAGEMENT IN HIGHER EDUCATION:
25 THEORETICAL PERSPECTIVES AND APPROACHES FOR DIVERSE POPULATIONS 209-21 (Stephen John
Quaye, et al. eds., 2nd ed. 2015).

26 ⁹ NCAA, *Do NCAA Student-Athletes View Themselves As Students Or Athletes?* (Aug. 2013),
27 available at <http://www.ncaa.org/about/resources/research/do-ncaa-student-athletes-view-themselves-students-or-athletes> (last accessed Jan, 29, 2022).

28 ¹⁰ Joy D. Bringer, Celia H. Brackenridge, and Lynn H. Johnston, *Defining Appropriateness in Coach-Athlete Sexual Relationships: The Voice of Coaches*, THE JOURNAL OF SEXUAL AGGRESSION, 8(2), 83-98 (2002).

1 for whom junior or age phase representative honours have been
2 achieved. For these athletes, the personal costs of dropping out of
3 their sport might be deemed to be higher than for others. The novice
4 athlete can drop out without loss of face, can leave to find another
5 coach or another sport without loss of reputation and has invested
6 least, in terms of time, effort, money and family sacrifices. The top
7 athlete, on the other hand, has a proven record, has already attained
8 some of the rewards of success, and may be less dependent upon his
9 or her coach for continued achievement at that level. In other words,
10 they may have less to prove.

11 * * *

12 The elite young athlete treads a fine line between success and failure.
13 Physical injuries or illness can occur at any time, destroying years of
14 training. Psychological damage can be caused by the withdrawal of
15 the coach's attention of interest. In short, the young athlete often
16 needs the attention of the coach in order to maintain form and the
17 chance to succeed. In these circumstances it is not difficult for a
18 coach with sexual motives to groom and gain compliance from the
19 athlete.¹¹

20 52. "The style of coaching that is most conducive to forming coach-athlete sexual
21 relationships is more closely associated with male coaches: authoritarian, requiring unquestioning
22 submission to the coach's authority, and exercising near total control over athletes' lives."¹²
23 Commentators have noted that having a male coach with an authoritarian coaching style is a high
24 risk factor for coach-athlete sexual abuse.¹³

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

54. In 2012, the NCAA acknowledged the coach's ability to wield tremendous
emotional control and power over his student-athletes:

In the most tangible terms, the student-athlete depends on the coach

¹¹Celia Brackenridge & Sandra Kirby, *Playing Safe: Assessing the Risk of Sexual Abuse to Elite Child Athletes*, INT'L REVIEW FOR THE SOCIOLOGY OF SPORT: SPECIAL ISSUE ON YOUTH SPORT 13 (1997), available at <https://bit.ly/3MBMlvJ>.

¹²Deborah L. Brake, *Going Outside Title IX to Keep Coach-Athlete Relationships in Bounds*, 22 MARQUETTE SPORTS L. REV. 395, 403 (Jan. 1, 2012) (citation omitted).

¹³*Id.* & n.35 (citations omitted).

1 for: a place on the roster; playing time; training and skills-building
2 opportunities; visibility and references that can lead to professional
3 opportunities; and, in Division I and II programs, scholarships that
4 can mean the difference between being able to afford a college
5 education or not. In exercising this power, the coach commonly
6 exerts broad control over a student-athlete's life, including in such
7 areas as physical fitness, diet, weight, sleep patterns, academic
8 habits, and social life. For intercollegiate athletes, the magnitude of
9 the coach's control will likely exceed that of any other single
10 individual at that student-athlete's institution. For many, it will
11 exceed the extent of control any individual has ever had over them at
12 any point in their lives, with the exception of their parents.¹⁴

13 55. Nancy Hogshead-Makar, a 1984 Olympic gold medalist in swimming and the
14 CEO of the non-profit Champion Women which provides legal advocacy for athletes in sport, has
15 explained that the coach holds all the power in a relationship with the athlete, stating: "There's no
16 balance of power, there's power one way, which is the coach has all the power and the athlete
17 does not [The coach] has her scholarship, her ability to continue her education."¹⁵

18 56. This power imbalance extends beyond the sport and to the personal: "[C]oaches
19 have power over athletes' lives far exceeding the mechanics of practicing and competing in a
20 sport. A coach's power over athletes can extend to virtually all aspects of the athlete's life in such
21 ways that clear boundaries are hard to delineate. This near-total control is rarely questioned."¹⁶

22 57. "The athlete's dependence on the coach makes it enormously difficult for the
23 athlete to control the boundaries of the relationship or speak up to a coach who oversteps."¹⁷ This
24 dependence and power differential created by the coach-athlete relationship enables predators
25 who work with student-athletes (like Jerry Sandusky, Larry Nassar, and Coach Naks) to thrive.

26 ¹⁴ Deborah L. Brake & Mariah Burton Nelson, *Staying in Bounds* 15 (citations omitted), available
27 at http://ncaa.org.s3.amazonaws.com/documents/2021/1/18/Staying_2Bin_2BBounds_2BFinal.pdf (last accessed Feb. 3, 2022).

28 ¹⁵ John Barr & Nicole Noren, *Outside the Lines: Track & Fear*, ESPN, available at
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) (last accessed Feb. 9, 2022).

¹⁶ Brake, *supra*, at 405 (footnotes omitted).

¹⁷ *Id.* at 406.

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

4 58. Historically, the NCAA and other sporting organizations looked the other way
5 when coaches became involved in sexual improprieties with their athletes. Karen Morrison, the
6 NCAA director of gender inclusion, explained: “‘I think there is some hesitancy to prescribe what
7 people consider to be the personal lives of their coaches,’ Morrison said. ‘A lot of times there’s a
8 fallback to, ‘Well, they’re consenting adults.’”¹⁸

9 59. The fact that college athletes are over the age of 18, however, does not make any
10 sexual relationship or sexual activity with a coach consensual. According to many experts, the
11 implicit power in the coach-athlete relationship negates consent.¹⁹

12 60. By the 1990s, multiple studies challenged organizations that denied the existence
13 of sexual abuse in sport.²⁰ The results of these studies “speak to the intensity of the coach-athlete
14 bond, and the difficulty of setting boundaries in the relationship.”²¹ This also explains why, when
15 confronted with sexual abuse, athletes do not recognize harassing or abusive behavior when they
16 experience it.²²

17 61. Although belatedly, and without imposing mandates that would protect its student-
18 athletes, in 2012, the NCAA finally acknowledged that “sexual relationships between coaches
19 and student-athletes have become a serious problem.”²³

20 62. In an NCAA publication, two experts explained that these same principles that
21 forbid sexual relationships in other settings involving asymmetrical relationships—such as

22 ¹⁸ Allie Grasgreen, *Out-of-Bounds Relationships*, INSIDE HIGHER ED. (May 1, 2012), available at
23 <https://www.insidehighered.com/news/2012/05/01/ncaa-asks-colleges-prohibit-romantic-relationships-between-athletes-coaches> (quoting Karen Morrison).

24 ¹⁹ Brake, *supra*, at 399.

25 ²⁰ See, e.g., Brackenridge, *supra*, at 9 (citing studies in the United States, including: Pike-
26 Masteralexis, L., *Sexual Harassment and Athletics: Legal and Policy Implications for Athletic*
27 *Departments*, JOURNAL OF SPORT AND SOCIAL ISSUES, 19(2), 141-156 (1995); Volkwein, K.,
28 *Sexual Harassment in Sport - Perceptions and Experiences of Female Student-Athletes* (1996)
(paper presented at the Pre-Olympic Scientific Congress, Dallas, USA, July 11-14, 1996).

²¹ Brake, *supra*, at 400.

²² *Id.*

²³ *Staying in Bounds*, *supra*, at 4.

1 lawyer-client, physician-patient, judge-party/lawyer, or clergy-parishioner—should apply to
2 coaches and players as well:

3 All of these examples involve relationships that are too fraught with
4 power imbalances for consent to be meaningfully and reliably given.
5 While being a coach is, in many respects, different from other
6 professions, it shares the defining features that make consent to enter
7 into a sexual relationship inherently problematic. At the core of the
8 coach-athlete relationship is a duty of care and an imbalance of
9 power. In many respects, the relationship of dependence is even more
10 acute here than it is in these other settings due to the breadth of
11 control that the coach has over the life and education of the student-
12 athlete.²⁴

13
14 63. Thus, many sports organizations have adopted rules to prohibit coaches from
15 engaging in sexual relationships with athletes, to prohibit sexual harassment, and to protect the
16 safety and preserve the well-being of the athlete.

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

19 64. In 1992, the United States Olympics Committee (“USOC,” now called the
20 “USOPC”) developed a Coaching Ethics Code “to provide standards of professional conduct that
21 can be applied by the USOC and its member organizations that choose to adopt them.”²⁵ The
22 USOPC intended that the code of ethics “provides a common set of values upon which coaches
23 build their professional work” as “[i]t is the individual responsibility of each coach to aspire to
24 the highest possible standards of conduct.”²⁶

25 65. The USOPC’s Coaching Ethics Code includes Ethical Standard 1.08, titled
26 “Sexual Harassment,” which defines and prohibits sexual harassment by coaches as follows:

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

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

²⁴ Staying in Bounds, *supra*, at 26.

²⁵ United States Olympic and Paralympic Committee Coaching Ethics Code, available at <https://www.teamusa.org/USA-Karate/Officials-and-Coaches/Coaches-Resources/USOC-Coaching-Ethics-Code> (Introduction) (last accessed Jan. 31, 2022).

²⁶ *Id.*, Introduction.

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

5 (b) Coaches accord sexual-harassment complaints and respondents
6 dignity and respect. Coaches do not participate in denying an athlete
7 the right to participate based upon their having made, or their being
8 the subject of, sexual harassment charges.²⁷

9 66. Ethical Standard 1.14, titled “Exploitative Relationships,” recognizes that because
10 of the power differential, any relationship between a coach and athlete would likely impair
11 judgment and become exploitative:

12 (a) Coaches do not exploit athletes or other participants over whom
13 they have supervisory, evaluative, or other authority.²⁸

14 **2. In 1993, USA Hockey established a sexual abuse and harassment**
15 **policy.**

16 67. USA Hockey first established a Sexual Abuse Policy, Physical Abuse Policy, and
17 Background Screening Policy in 1993.²⁹

18 68. USA Hockey’s 1993 Sexual Abuse Policy provided that, upon proof of a violation,
19 the perpetrator would be permanently banned or suspended from USA Hockey programs.

20 69. To help guide USA Hockey programs and administrators of USA Hockey,
21 Affiliates, and local programs, USA Hockey also published “Abuse and Screening Policies:
22 Guidelines for Administrators” as early as 1997.

23 70. USA Hockey established the USA Hockey SafeSport Program upon adoption by
24 its Board of Directors in June 2012, updated December 22, 2021. This followed a mandate by
25 USA Hockey’s then President to immediately create a comprehensive athlete safety policy to
26 protect USA Hockey members from abuse or misconduct. The USA Hockey Safe Sport Program
27 Handbook incorporated:

28 ²⁷ *Id.*, Standard 1.08.

²⁸ *Id.*, Standard 1.14.

²⁹ Letter dated March 21, 2018 from USA Hockey regarding “USA Hockey Response to House
Committee on Energy and Commerce Letter of March 7, 2018,” available at <https://republicans-energycommerce.house.gov/wp-content/uploads/2018/12/U.S.A.-Hockey.pdf> (last accessed Mar. 8, 2022).

- a. USA Hockey’s previous Sexual Abuse, Physical Abuse, Hazing, Background Screening and Locker Room Supervision policies;
- b. new policies addressing Emotional Abuse, Bullying, Threats and Harassment, Electronic Communications, Travel and Billeting;
- c. already existing procedures for taking disciplinary action for violations of any of those policies;
- d. new education and training requirements for SafeSport Training of coaches, officials and other employees and volunteers in USA Hockey programs;
- e. a Reporting Policy making it mandatory to report all allegations of sexual abuse to both USA Hockey and the appropriate law enforcement authorities; and
- f. a mechanism to monitor the programs in USA Hockey, its affiliates and local programs.³⁰

71. Upon USA Hockey’s receipt of any report with allegations or suspicions of sexual abuse, a report is made to the United States Center for SafeSport, and any allegations of sexual or physical abuse of a child are reported to law enforcement. In those cases, USA Hockey directs its affiliates to promptly issue a “summary suspension” prohibiting the person from participating in any USA Hockey programs until the allegation has been investigated by the appropriate agency. Summary suspensions are issued so that USA Hockey and its affiliates can take swift action in the event that SafeSport delays issuing its own interim suspension.³¹

72. Importantly, USA Hockey’s mandatory reporting policy applies to all members of USA Hockey and all employees and volunteers of USA Hockey and its member programs.³²

³⁰ See USA Hockey Safe Sport Program Handbook (rev. Dec. 22, 2021), available at <https://bit.ly/3tIMWCW> (last accessed Jan. 31, 2022).

³¹ *Id.*, at 36-41.

³² *Id.*, at 36.

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

3 73. 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 74. In 2002, the prohibition against sexual advances was modified to include “other
7 inappropriate sexually oriented behavior or action.” Specifically, Article 304.3.5 prohibited: “Any
8 sexual contact or advance or other inappropriate sexually oriented behavior or action directed
9 towards an athlete by a coach, official, trainer, or other person who, in the context of swimming,
10 is in a position of authority over that athlete.”³⁴

11 75. Effective September 2008, this rule was amended to include language prohibiting
12 sexual harassment and sexual misconduct by any “other adult” participating “in any capacity.”³⁵

13 76. In 2010 (effective 2011), USA Swimming added an “Athlete Protection Policy”
14 and “Sexual Misconduct Reporting Requirement” to its rulebook. These changes required reports
15 of sexual misconduct and prohibited retaliation for reporting.³⁶

16 77. In 2012 (effective 2013), USA Swimming clarified that “sexual misconduct”
17 included “other oral, written, visual, or physical conduct”³⁷ and added a prohibition against
18 bullying.³⁸ The definition of physical abuse was also expanded to prohibit bullying by a coach.³⁹

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

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

25 ³⁵ *Id.* at 9 & n.31 (quoting USA Swimming Code of Conduct, § 304.3.5 (2008 ed.)).

26 ³⁶ *Id.* at 11-12 (quoting USA Swimming Code of Conduct, § 304.3.5 (2011 ed.)).

26 ³⁷ *Id.* at 12 & n.45 (quoting USA Swimming Code of Conduct, § 304.3.5, which is now § 304.8
(2013 ed.)).

27 ³⁸ *Id.* at 12 & n.46 (quoting USA Swimming Code of Conduct, § 304.3.7 (2013 ed.)).

28 ³⁹ *Id.* at 12-13 & n.47 (quoting USA Swimming Code of Conduct, § 304.3.13 (2013 ed.))

1 **4. In 2007, the International Olympic Committee issued a consensus**
2 **statement on sexual abuse in sport.**

3 78. In 2007, the International Olympic Committee (IOC) issued a “Consensus
4 Statement” on “Sexual Harassment and Abuse in Sport.”⁴⁰

5 79. The statement cautioned that power differences between athletes and authority
6 figures in sport create the risk of sexual harassment and abuse, and exploitative sexual
7 relationships with athletes.⁴¹ It urged **all sport organizations** to develop policies to protect
8 athletes from sexual abuse and harassment.

9 80. The statement highlighted the power difference between authority figures and
10 athletes, and urged coaches and other authority figures to “stay . . . within the boundaries of a
11 professional relationship with the athlete.”⁴²

12 81. The statement noted the profound, negative impact that sexual harassment and
13 abuse has on the athlete:

14 Research demonstrates that sexual harassment and abuse in sport
15 seriously and negatively impact on athletes’ physical and
16 psychological health. It can result in impaired performance and lead
17 to athlete drop-out. Clinical data indicate that psychosomatic
18 illnesses, anxiety, depression, substance abuse, self-harm and suicide
19 are some of the serious health consequences. Passive attitudes/non-
20 intervention, denial and/or silence by people in positions of power in
21 sport (particularly bystanders) increases the psychological harm of
22 sexual harassment and abuse. Lack of bystander action also creates
23 the impression for victims that sexually harassing and abusive
24 behaviours are legally and socially acceptable and/or that those in
25 sport are powerless to speak out against it.⁴³

25 ⁴⁰ See International Olympic Committee, *IOC Adopts Consensus Statement on “Sexual*
26 *Harassment and Abuse in Sport”* at 3 (Feb. 8, 2007), available at <https://bit.ly/3IUdIEg> (last
27 accessed Jan. 31, 2022).

28 ⁴¹ *Id.* at 4.

⁴² *Id.* at 5.

⁴³ *Id.* at 4.

1 **5. In 2018, the Energy and Commerce Committee investigated and set**
2 **out best practices for NGBs to prohibit coach misconduct and track**
3 **wrongdoing.**

4 82. On December 20, 2018, the United States Energy and Commerce Committee (the
5 “Committee”) released a report entitled, “Nassar and Beyond: A Review of the Olympic
6 Community’s Efforts to Protect Athletes from Sexual Abuse” (the “Nassar and Beyond
7 Report”).⁴⁴ The report followed a yearlong investigation based on the scandals in gymnastics,
8 swimming, and taekwondo.

9 83. The Committee found a number of systemic failures at NGBs, like the NCAA, that
10 contributed to the widespread instances of sexual abuse that “should be concerning not only to
11 Olympic athletes, but also amateur athletes, parents, and anyone who has a loved one involved in
12 amateur sports.”⁴⁵

13 84. First, the Committee noted that its “most troubling” finding was that the Olympic
14 community inappropriately prioritizes reputation and image—the “medals and money”
15 mentality—rather than athlete safety.⁴⁶ This same criticism can be applied to the NCAA’s
16 placement of revenue above its duty to protect its student-athletes.

17 85. Second, the Committee found an inconsistency in policies and procedures across
18 NGBs. Despite the USOPC’s effort to establish minimum standards and an NGB Athlete Safety
19 Policy, each NGB continued to have its own governance structure and applicable bylaws and
20 policies. As a result, there are inconsistencies in publicly identifying those disciplined or banned
21 and policies to handle reports, complaints or allegations of abuse to USOPC and law

22
23 ⁴⁴ Energy & Commerce Comm. Press Release, *Committee Report Details Sexual Abuse in*
24 *Organized Sports* (Dec. 20, 2018), available at [https://republicans-](https://republicans-energycommerce.house.gov/news/committee-report-details-sexual-abuse-in-organized-sports/)
25 [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/)
26 (last accessed Feb. 2, 2022).

27 ⁴⁵ Energy & Commerce Comm., *Nassar and Beyond: A Review of the Olympic Community’s*
28 *Efforts to Protect Athletes from Sexual Abuse* at 3 (Dec. 20, 2018), available at
29 [https://republicans-energycommerce.house.gov/wp-content/uploads/2018/12/EC-USOC-Report-](https://republicans-energycommerce.house.gov/wp-content/uploads/2018/12/EC-USOC-Report-12.20.18-Final-REV.pdf)
30 [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 accessed Feb. 3, 2022).

31 ⁴⁶ *Id.*

1 enforcement.⁴⁷ Here, again, this criticism is applicable to the NCAA, which purports to push
2 responsibility for sexual abuse policies on its 1,200 member institutions.

3 86. Third, the Committee found that some NGBs did not employ simple measures,
4 such as background checks and public banned lists.⁴⁸ The NCAA also fails to impose simple
5 reporting and tracking procedures for coaches who abuse athletes.

6 87. The Committee noted the creation of the United States Center for SafeSport
7 (“USCSS”) on March 3, 2017 to oversee education programs for safe sport and to adjudicate
8 claims of sexual misconduct as a step toward establishing consistency and accountability,
9 showing that best practices include a central and neutral oversight organization.⁴⁹

10 88. The USCSS itself created the SafeSport Code for the U.S. Olympic and
11 Paralympic Movement (SafeSport Code), effective April 1, 2021.⁵⁰

12 89. The SafeSport Code sets out “expectations for Participants related to emotional,
13 physical, and sexual misconduct in sport, including bullying, hazing, and harassment.” Prohibited
14 conduct in the SafeSport Code includes sexual misconduct, emotional and physical misconduct,
15 including stalking, bullying, hazing, and harassment, aiding and abetting, and misconduct related
16 to reporting.⁵¹

17 90. In the SafeSport Code, “Sexual misconduct” is specifically defined to include
18 sexual or gender-related harassment and bullying or hazing, or other inappropriate conduct of a
19 sexual nature.⁵² Misconduct related to reporting occurs when an adult participant in sport fails to
20 report actual or suspected sexual misconduct to the Center.⁵³

21
22
23 ⁴⁷ *Id.*

24 ⁴⁸ *Id.* at 3-4.

25 ⁴⁹ U.S. Center for SafeSport, *About*, available at <https://uscenterforsafesport.org/> (last accessed
26 Jan. 31, 2022).

27 ⁵⁰ United States Center for SafeSport, SafeSport Code for the U.S. Olympic and Paralympic
28 Movement (effective Apr. 1, 2021), available at [https://uscenterforsafesport.org/wp-
content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf](https://uscenterforsafesport.org/wp-content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf) (last accessed Jan. 31, 2022).

⁵¹ *Id.*, § IX.

⁵² *Id.*, § IX.C.1.

⁵³ *Id.*, § IX.F.

1 91. But the NCAA has retreated from its ability, because of its reach and power, to set
2 standards of conduct governing abusive coaches.

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

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

7 92. The NCAA is comprised of 1,098 colleges and universities and 102 athletic
8 conferences.⁵⁴ The NCAA schools are divided into Division I, Division II and Division III
9 schools. Division I institutions are the most visible collegiate athletic programs.

10 93. Each division within the NCAA is governed by rules applicable to all NCAA
11 institutions, as well as rules unique to that division. The Division I Manual sets forth the
12 Constitution, Operating Bylaws, and Administrative Bylaws for that division (at times referred to
13 collectively as “Manual”).⁵⁵

14 94. The current NCAA Constitution defines the NCAA’s purposes and fundamental
15 policies to include maintaining control over and responsibility for intercollegiate sports and the
16 participating student-athletes. The NCAA Constitution states in pertinent part:

17 **1.2 Purposes.** The purposes of this Association are:

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

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

23 (h) To legislate, through bylaws or by resolutions of a Convention,
24 upon any subject of general concern to the members related to the
25 administration of intercollegiate athletics[.]⁵⁶

26 _____
27 ⁵⁴ NCAA, *What is the NCAA?*, available at <http://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last accessed Feb. 1, 2022).

28 ⁵⁵ NCAA Division I Manual (effective Aug. 1, 2021), available at
<https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last accessed Feb. 1, 2022).

⁵⁶ NCAA Const., Art.1, §§ 1.2(a), (b) & (h).

1 98. In addition, the NCAA’s website states that it was founded in 1906 “to keep
2 college athletes safe.” “We are working hard to protect them physically and mentally, on the field
3 and off.”⁶⁰

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 99. The NCAA expressly regulates the conduct of coaches in a myriad of ways.

7 100. Article 10 of the NCAA Bylaws is titled “Ethical Conduct,” and applies to coaches
8 of intercollegiate athletics, among others. It provides a detailed list of unethical conduct.⁶¹ That
9 unethical conduct includes, among other things, sports wagering, providing banned substances,
10 providing a prospective or current student-athlete with an improper inducement or extra benefit,
11 and facilitating a meeting between a student-athlete and an agent.⁶² Institutional members such as
12 coaches who violate this provision are subject to disciplinary or corrective action.⁶³

13 101. Article 11 of the NCAA Bylaws, entitled “Conduct and Employment of Athletics
14 Personnel,” further explains the responsibilities and obligations of coaches and other athletics
15 personnel. The section regulates coaching bonuses and other compensation, education
16 requirements and compensation restrictions for certain types of coaching personnel, responsibility
17 for violations of NCAA regulations, marketing to sports agents, the use of the NCAA name, the
18 use of tobacco, required contractual provisions, recruiting, scouting, and limitations on the
19 number and duties of coaching and other staff members.⁶⁴ Again, coaches and other athletic
20 personnel are subject to disciplinary or corrective action for violating these Bylaws.⁶⁵

21 102. Yet, the Bylaws are utterly silent on limitations on coaches with respect to sexual
22 harassment or abuse of student-athletes and sexual relationships with student-athletes; internal or
23 external reporting of coaches who engage in such behavior; the necessity for an independent
24

25 ⁶⁰ NCAA, *Well-Being*, available at <http://www.ncaa.org/health-and-safety> (last accessed Feb. 1,
26 2022).

27 ⁶¹ NCAA Bylaws, Art. 10.

28 ⁶² *Id.*, § 10.1-10.3.

⁶³ *Id.*, § 10.4.

⁶⁴ NCAA Bylaws, Art. 11, § 11.1.

⁶⁵ *Id.*, §11.1.1.

1 investigation of coaches who engage in such behavior; implementation of a centralized repository
2 for reports so that complaints about a coach can be tracked between and among schools; and
3 mandatory training of coaches relating sexual harassment or abuse of student-athletes.

4 103. A recent example of the perils created by the NCAA’s lack of a reporting policy
5 involves Art Briles, who coached at Baylor and left in the midst of a scandal because he failed to
6 report sexual assaults, but was hired recently by Grambling State after a stint as a high school
7 coach.⁶⁶

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

12 **3. In the vacuum of the NCAA’s failure to regulate abuse by coaches,**
13 **student-athletes are the victims.**

14 105. Despite the USOPC’s adoption of a coaching code of ethics in 1992, which
15 prohibited sexual harassment and sexual relationship between coaches and athletes during the
16 coaching relationship, the NCAA took no action for 20 years and then fell short.

17 106. During that time, multiple reports of inappropriate sexual conduct by athletics
18 department personnel emerged. A sampling of non-exhaustive reports follows.

19 107. In 1998, a lawsuit was filed against University of North Carolina soccer coach
20 Anbson Dorrance by two players who accused Dorrance of inappropriate behavior that included
21 uninvited sexual comments and retaliation. As one court opinion characterized the allegations,
22 Dorrance regularly “bombarded players with crude questions and comments about their sexual
23

24 ⁶⁶ Alanis Thames, *Art Briles, Who Coached Baylor During Sexual Assault Scandal, Is Hired at*
25 *Grambling State*, NEW YORK TIMES (Feb. 24, 2022), available at
26 <https://www.nytimes.com/2022/02/24/sports/ncaaf/football/art-briles-grambling-state-baylor.html>
27 (last accessed Mar. 1, 2022). Briles resigned four days later in the midst of public outrage—but
28 not because the NCAA had policies in place. Alanis Thames, *Art Briles Resigns From Grambling*
State, NEW YORK TIMES (Feb. 28, 2022), available at
<https://www.nytimes.com/2022/02/28/sports/football/art-briles-grambling-state.html> (last
accessed Mar. 8, 2022).

1 activities and made comments about players' bodies that portrayed them as sexual objects. In
2 addition, Dorrance expressed (once within earshot of [plaintiff Melissa] Jennings) his sexual
3 fantasies about certain players, and he made, in plain view, inappropriate advances to another."⁶⁷
4 One of the players settled in 2004. The second, Melissa Jennings, settled for \$385,000 in 2006
5 with an admission by the coach that he had "participated with members of the UNC-Chapel Hill
6 women's soccer team in group discussions of those team members' sexual activities or
7 relationships with men."⁶⁸

8 108. Also in 1998, a lawsuit was filed against Jesse Dwire, the women's tennis coach at
9 Syracuse University, alleging that Dwire massaged, fondled, and propositioned two scholarship
10 tennis players, and that Dwire and the university retaliated against the players after they pursued a
11 complaint through the school's grievance system. According to one report: "the lawyer for [the
12 plaintiffs], said Syracuse officials, aware that the National Collegiate Athletic Association has no
13 policy on sexual harassment, had ignored complaints about Dwire's sexual improprieties for
14 years."⁶⁹

15 109. In 2011, a former University of South Carolina women's soccer player sued the
16 university, alleging she received unwanted sexual advances by the assistant coach and that her
17 academic advisor admitted that the coach had sexually harassed other students. She also alleged
18 that the university failed to renew her scholarship in retaliation for her complaint.⁷⁰

19 110. In June 2012, Penn State's Jerry Sandusky was convicted on 45 counts relating to
20 the sexual abuse of minors and was sentenced to 30 to 60 years in prison. Several top Penn State
21 University officials, including its president and athletic director, were sentenced to prison for their
22 roles in covering up the crimes.

23 _____
24 ⁶⁷ *Jennings v. Univ. of N.C.*, 482 F.3d 686, 691 (4th Cir. 2007).

25 ⁶⁸ Doug Lederman, *North Carolina and Coach Settle Sexual Harassment Suit*, INSIDE HIGHER ED.
(Jan. 15, 2008), available at <https://www.insidehighered.com/news/2008/01/15/north-carolina-and-coach-settle-sexual-harassment-suit> (last accessed Feb. 1, 2022).

26 ⁶⁹ Robin Finn, *Growth in Women's Sports Stirs Harassment Issue*, NEW YORK TIMES (Mar. 7,
27 1999), available at <https://www.nytimes.com/1999/03/07/sports/out-of-bounds-a-special-report-growth-in-women-s-sports-stirs-harassment-issue.html> (last accessed Feb. 1, 2022).

28 ⁷⁰ WISNews, *Former USC Women's Soccer Player Files Lawsuit* (Dec. 11, 2011), available at
<https://www.wistv.com/story/16301453/former-usc-womens-soccer-player-files-lawsuit/> (last
accessed Feb. 1, 2022).

1 a. Penn State had been aware since 2002 that Sandusky committed sexual acts
2 on a young boy in a shower. Yet the university did nothing, which allowed
3 Sandusky to abuse ten young football players over a 15-year period.

4 b. On July 23, 2012, in response to public pressure, the NCAA imposed
5 punishment on Penn State because of its “conspiracy of silence” relating to
6 Jerry Sandusky’s sexual abuse of minor boys. The penalties included a
7 \$60,000,000 fine (which equated to one year’s gross revenue from the
8 university’s football program) to endow a fund to support programs to
9 assist victims of sexual abuse; a ban on Penn State’s participation in post-
10 season football games for four years; a reduction in the number of football
11 scholarships from 25 to 15 per year for four years; and vacating all of the
12 team’s wins from 1998 (when university officials first heard that Sandusky
13 might be sexually abusing young boys) to 2011.⁷¹

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.” In announcing the punishment, NCAA
17 President Mark Emmert stated:

18 This case involves tragic and tragically unnecessary
19 circumstances. One of the grave dangers stemming from our
20 love of sports is that the sports themselves can become too
21 big to fail and indeed too big to even challenge. The result
22 can be an erosion of academic values that are replaced by the
23 value of hero worship and winning at all costs. All involved
24 in intercollegiate athletics must be watchful that programs
and individuals do not overwhelm the values of higher
education. In the Penn State case, the results were perverse
and unconscionable. No price the NCAA can levy will repair
the grievous damage inflicted by Jerry Sandusky on his
victims. However, we can make clear that the culture, actions
and inactions that allowed them to be victimized will not be

25
26 ⁷¹ Mark Memmott, *Penn State Fined \$60M, Banned From Bowls, Wins From 1998 On Vacated*,
27 NPR (July 23, 2021), available at <https://www.npr.org/sections/thetwo-way/2012/07/23/157222533/penn-state-fined-60m-banned-from-bowls-wins-from-1998-on-vacated> (last accessed Feb. 9, 2022).

1 tolerated in collegiate athletics.⁷²

- 2 d. Yet some of the penalties were later rescinded because the NCAA was
3 accused of strong-arming Penn State into accepting the punishments.⁷³

4 111. Larry Nassar, like Sandusky, is also serving a prison sentence for the sexual abuse
5 he inflicted over decades. The long-time USA Gymnastics national team doctor and physician at
6 Michigan State University sexually abused hundreds of athletes under his care. Over 350 athletes,
7 including Olympic champions Simone Biles, Gabby Douglas, and Aly Raisman, publicly accused
8 Nassar of sexually abusing them. After numerous emotional testimonies from victims, the
9 disgraced physician was sentenced up to 175 years in prison on sexual assault charges.⁷⁴

- 10 a. Complaints were reportedly made to Michigan State University about
11 Larry Nassar as far back as 1988. But Michigan State did not take any
12 appropriate action, and instead, chose to protect its reputation (and
13 endowments) to the detriment of the victims, thereby allowing Nassar to
14 thrive unchecked for decades at the expense of his victims.
- 15 b. At least 14 individuals at Michigan State, including its President Lou Anna
16 Simon, athletic trainers, and assistant coaches, had known about
17 complaints regarding Nassar, yet they allowed the abuse to continue
18 unabated for 20 years.⁷⁵
- 19 c. As with Penn State, it was only after Nassar was convicted and sentenced
20

21 ⁷² Remarks by Mark Emmert, *Penn State Hit With Severe NCAA Sanctions: \$60 Million Fine,*
22 *Wins Vacated, 4-Year Bowl, Playoff Ban*, YOUTUBE (July 23, 2021), available at
<https://www.youtube.com/watch?v=MGItBWWTN0k> (last accessed Feb. 9, 2022).

23 ⁷³ Marc Tracy, *In Michigan State Investigation, N.C.A.A. Moves Beyond Its Comfort Zone*, NEW
24 YORK TIMES (Jan. 24, 2018), available at [https://www.nytimes.com/2018/01/24/sports/ncaa-](https://www.nytimes.com/2018/01/24/sports/ncaa-investigation-michigan-state.html)
[investigation-michigan-state.html](https://www.nytimes.com/2018/01/24/sports/ncaa-investigation-michigan-state.html) (last accessed Feb. 9, 2022).

25 ⁷⁴ 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.

⁷⁵ Kim Kozlowski, *What MSU Knew: 14 Were Warned of Nassar Abuse*, THE DETROIT NEWS
(Jan. 18, 2018), available at [https://www.detroitnews.com/story/tech/2018/01/18/msu-president-](https://www.detroitnews.com/story/tech/2018/01/18/msu-president-told-nassar-complaint-2014/1042071001/)
[told-nassar-complaint-2014/1042071001/](https://www.detroitnews.com/story/tech/2018/01/18/msu-president-told-nassar-complaint-2014/1042071001/) (last accessed Feb. 9, 2022).

1 that the NCAA announced an investigation into Michigan State’s handling
2 of the allegations against Nassar in January 2018. The goal of the
3 investigation was to determine if Michigan State violated any NCAA
4 rules.⁷⁶

5 d. In August 2018, the NCAA dropped its investigation of Michigan State,
6 finding that Michigan State had not violated any of the NCAA’s bylaws.
7 The NCAA stated that despite the allegations of abuse (and despite
8 Nassar’s criminal convictions), the NCAA had “not substantiated
9 violations of N.C.A.A. legislation.”⁷⁷

10 112. Reports of sexual abuse by athletics department personnel continued. In May
11 2019, an investigative report issued by the law firm Perkins Coie revealed that Ohio State coaches
12 and athletics administrators knew for two decades that a team doctor, Richard Strauss, was
13 molesting NCAA student-athletes on the wrestling team.⁷⁸

14 113. In August 2020, former NCAA student-athletes from the University of Michigan
15 alleged they were sexually abused by team physician Dr. Robert Anderson, under the guise of
16 physical exams. The team doctor for the wrestling, football, hockey and track teams, Dr.
17 Anderson reportedly abused hundreds of student-athletes over 37 years.⁷⁹

18 **4. Even when the NCAA addresses abuse, the NCAA’s policies and**
19 **pronouncements lack teeth.**

20 114. After 2014, the NCAA seemingly began to take a more visible stance on the topic
21 of sexual assault prevention, but its policies and pronouncements were without teeth. In 2014, the
22 _____

23 ⁷⁶ Faith Karimi & Wayne Sterling, *NCAA Investigating Michigan State Over Larry Nassar Case*,
24 CNN (Jan. 24, 2018) available at <https://www.cnn.com/2018/01/24/us/ncaa-msu-nassar-investigation/index.html> (last accessed Feb. 9, 2022).

25 ⁷⁷ Marc Tracy, *N.C.A.A. Drops Michigan State Inquiry Over Nassar*, NEW YORK TIMES (Aug. 30,
26 2018), available at <https://www.nytimes.com/2018/08/30/sports/ncaa-michigan-state-nassar.html>
(last accessed Feb. 9, 2022).

27 ⁷⁸ Perkins Coie LLP, *Report of the Independent Investigation Sexual Abuse Committed by Dr.*
Richard Strauss at The Ohio State University (May 15, 2019), available at
https://compliance.osu.edu/assets/site/pdf/Revised_report.pdf (last accessed Feb. 1, 2022).

28 ⁷⁹ *37 Years of Sexual Abuse: This Is the Dr. Robert Anderson Story*, THE MICHIGAN DAILY (Nov.
4, 2021), available at <https://www.michigandaily.com/news/robertanderson/> (last accessed Feb. 1,
2022).

1 NCAA Executive Committee issued a Statement on Sexual Violence Prevention and Compliance
2 Resolution:

3 **2014 NCAA EXECUTIVE COMMITTEE SEXUAL VIOLENCE**
4 **PREVENTION AND COMPLIANCE RESOLUTION**

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

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

15 WHEREAS NCAA Constitution Article 2.2.3 requires each
16 member institution to protect the health of, and provide
17 a safe environment for, each of its participating stu-
18 dent-athletes;

19 WHEREAS the U.S. Department of Education Office for Civ-
20 il Rights has issued guidance related to sexual harassment,
21 bullying and violence against all students under Title IX of
22 the Education Amendments of 1972 (Title IX), 20 U.S.C.
23 §§ 1681 et seq, which applies to all educational activities,
24 including athletics programs, of higher education institu-
25 tions receiving federal financial assistance and which states
26 that sexual violence includes rape, sexual assault, sexual
27 battery, sexual coercion and gender-based harassment.

28 Now, Therefore, Be It Resolved, that the Executive Commit-
tee 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-ath-
letes 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.

115. Yet the resolution puts responsibility for protecting NCAA student-athletes on the colleges and universities: “it is our members’ collective responsibility to maintain campuses as safe places to learn, live, work and play.”⁸⁰ The resolution sets out four unremarkable mandates for the institutions’ athletics departments, to: (i) “Comply with campus authorities and ensure that all athletics staff, coaches, administrators and student-athletes maintain a hostile-free environment for all student-athletes;” (ii) “Educate all students-athletes, coaches and staff about sexual violence prevention, intervention and response;” (iii) “Ensure compliance with all federal and applicable state regulations related to sexual violence prevention and response;” and (iv)

26 ⁸⁰ NCAA, *Sexual Violence Prevention, An Athletics Took Kit for a Healthy and Safe Culture* ((2d ed.), Appendix A, available at
27 https://ncaaorg.s3.amazonaws.com/ssi/violence/SSI_SexualViolencePreventionToolkit.pdf (last
28 accessed Feb. 3, 2022).

1 “Cooperate with, but not manage, direct, control or interfere with, college or university
2 investigations.”⁸¹

3 116. In 2016 (updated 2019), and in furtherance on the above resolution, the NCAA’s
4 Sport Science Institute published a document entitled “Addressing Sexual Assault and
5 Interpersonal Violence: An Athletics’ Tool Kit for a Healthy and Safe Culture” (“Tool Kit”).⁸²

6 117. In it, the NCAA broadly defines “sexual misconduct” to include “sexual and
7 gender-based harassment, sexual assault/sexual violence, stalking and intimate partner
8 violence.”⁸³

9 118. Again, however, the NCAA foists responsibility for ensuring college student-
10 athlete environments are safe and healthy solely on the institutions themselves: “Member schools
11 have a responsibility to have healthy environments for prospective and current student-athletes
12 both on and off campus.”⁸⁴

13 119. Indeed, in his introduction, NCAA President Mark Emmert said, “The college
14 sports community – including the college and university presidents and chancellors on the NCAA
15 Board of Governors – recognize **member schools and conferences have a collective
16 responsibility to maintain campuses as safe places to learn, live work and play.**”⁸⁵

17 120. And even though the NCAA acknowledged that coaches have an “influential”
18 relationship over student-athletes,⁸⁶ the NCAA identifies coaches as those tasked with
19 “preventing and responding to sexual violence,”⁸⁷ thereby ignoring the fact that coaches are
20 equally likely to be perpetrators of sexual harassment and other sexual misconduct.

21
22 ⁸¹ *Id.*

23 ⁸² *Id.*. On its website, the NCAA states that the “NCAA’s Sports Science Institute promotes
24 health and safety through research and training on . . . sexual assault and more.” NCAA, *How We
25 Support College Athletes*, available at <https://www.ncaa.org/sports/2015/12/1/about-resources-media-center-ncaa-101-how-we-support-college-athletes.aspx> (last accessed Feb. 3, 2022).

25 ⁸³ Tool Kit, *supra*, at 1.

26 ⁸⁴ Tool Kit, *supra*, Call to Action.

26 ⁸⁵ Tool Kit, *supra*, Introduction from the President (emphasis added).

27 ⁸⁶ Tool Kit, *supra*, at 1; *see also* Tool Kit, *supra*, at 5 (“Coaches . . . directly influence student-
27 athletes’ attitudes and behaviors.”).

28 ⁸⁷ Tool Kit, *supra*, Call to Action & p.3.

1 121. In 2017 (updated 2018), the NCAA adopted an association-wide policy on campus
2 sexual violence. The NCAA noted that “[s]exual discrimination, sexual harassment and sexual
3 violence violate human decency and the Association’s core values.”⁸⁸ Yet the goals outlined in
4 the policy were called “aspirational,” and the policy merely mandated annual attestations from
5 each university chancellor/president, athletics director, and Title IX coordinator regarding
6 compliance with the universities’ own policies.⁸⁹

7 122. Despite the NCAA’s awareness of the issue of sexual violence affecting its
8 student-athletes, it has resisted any meaningful reforms despite calls by eight U.S. senators and its
9 own commission. Instead, in 2018, the study group called the Commission to Combat Campus
10 Sexual Violence was disbanded, and the NCAA merely promised only to continue to “monitor
11 and track on sexual violence issues.” No further action has been taken.⁹⁰

12 123. The *USA Today* reported on what it called the “Predator Pipeline,” showing how
13 sexually violent student-athletes (not unlike coaches) are allowed to migrate from one NCAA
14 school to another and yet remain eligible to play:

15 No matter if a school suspends, dismisses or expels athletes for
16 sexual misconduct, NCAA rules provide avenues for them to return
17 to the field on a new team within a year and sometimes immediately;
18 players routinely exploit the NCAA’s own loopholes to circumvent
19 penalties; a handful of the NCAA’s Division I conferences have
20 adopted their own policies ban athletes with past behavioral
21 problems, but definitions of culpability vary, and most rely on the
22 honor system, not record checks, to verify recruits.⁹¹

22 ⁸⁸ Tool Kit, *supra*, Appendix B.

23 ⁸⁹ *Id.*

24 ⁹⁰ See Kenny Jacoby, NCAA Board of Governors to Review Policies Regarding Sexual Assault
25 Amid Congressional Pressure on ‘Predator Pipeline,’ USA TODAY (Jan. 16, 2020), available at
26 [https://www.usatoday.com/story/sports/college/2020/01/16/ncaa-predator-pipeline-focus-
27 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) (last
28 accessed Feb. 1, 2022).

29 ⁹¹ Kenny Jacoby, *NCAA Looks the Other Way as College Athletes Punished for Sex Offenses Play
30 On*, USA TODAY (Dec. 12, 2019) available at [https://www.usatoday.com/in-
31 depth/news/investigations/2019/12/12/ncaa-looks-other-way-athletes-punished-sex-offenses-
32 play/4360460002/](https://www.usatoday.com/in-depth/news/investigations/2019/12/12/ncaa-looks-other-way-athletes-punished-sex-offenses-play/4360460002/) (last accessed Feb. 1, 2022).

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

3 College sports, as overseen by the NCAA, have undergone a massive
4 transformation in recent years As profits, compensation for
5 coaches, and spending on luxurious athletic facilities have ballooned,
6 the association has repeatedly failed to address systemic problems
7 with respect to the health and well-being of student athletes It
8 is time for Congress to intercede in order to protect college athletes and
9 maintain the integrity of college sports once and for all.⁹²

10 125. In response to the *USA Today* investigation, starting with the 2021-22 school year,
11 the NCAA requires college athlete transfers to disclose to schools whether their conduct has
12 previously resulted in an investigation, discipline through a Title IX proceeding, or a criminal
13 conviction for sexual violence. Schools will be required to take reasonable steps to confirm this
14 information.⁹³

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

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25 ⁹² J. Brady Mccollough, *Congressional Commission Proposed to Address NCAA's 'Systemic
26 Problems,'* LOS ANGELES TIMES (Dec. 19, 2018), available at
27 [https://www.latimes.com/sports/story/2019-12-19/congressional-commission-proposed-to-
28 address-ncaas-systemic-problems](https://www.latimes.com/sports/story/2019-12-19/congressional-commission-proposed-to-address-ncaas-systemic-problems) (last accessed Feb. 3, 2022).

⁹³ Hulst & Handler, LLP, *Investigation Report Regarding Allegations of Sexual Misconduct
Involving the University of San Francisco Men's Soccer Team* 43-44, n.67 (Jan. 11, 2021),
available at <https://bit.ly/3vN0wrB> (last accessed Feb. 4, 2022).

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

4 127. Despite its “clear, moral obligation” to protect the health and well-being of its
5 student-athletes, the NCAA’s lawyers have created a strategy in an effort to avoid liability that is
6 directly contrary to the positions the NCAA uses to recruit student-athletes.

7 128. For example, in the appeal to the California Supreme Court in the case of *Brown v.*
8 *USA Taekwondo*, No. S259216 (Cal.), the NCAA filed an amicus curiae brief in support of the
9 sports organization respondent.⁹⁴

10 129. In *Brown*, the California appellate court found that USA Taekwondo (“USAT”)
11 owed a duty of care to plaintiffs who were sexually abused by a coach under the control of the
12 USAT, but the USOPC owed no similar duty.⁹⁵

13 130. In its amicus curiae brief filed before the California Supreme Court, the NCAA
14 posited that sports organizations have no duty at law to protect their athletes from sexual abuse by
15 coaches. Sidestepping the fact that it has not promulgated any policies prohibiting such abuse, the
16 NCAA argued that it has “limited ability” to “enforce appropriate policies and best practices.”⁹⁶
17 The NCAA also denied it could impose mandatory reporting of its member institutions regarding
18 abusive coaches, claiming that it cannot “monitor the day-to-day conduct of coaches.”⁹⁷

19 131. In staking out this position, however, the NCAA omitted its detailed proscriptions
20 governing the day-to-day conduct of those very same coaches – including their tobacco use –
21 whom the NCAA can and does sanction.⁹⁸

22 132. The NCAA’s argument that “the NCAA’s members have decided that they—
23 rather than the NCAA itself—are better positioned to ensure the health and safety of the student-

24 ⁹⁴ Application to file Amicus Curiae Brief and Brief of Amicus Curiae of the National Collegiate
25 Athletic Association in Support of Respondent the United States Olympic Committee, No.
26 S259216, 2020 WL 5705929 (Sept. 22, 2020) (“NCAA Brief”).

27 ⁹⁵ *Brown v. USA Taekwondo*, 40 Cal. App. 5th 1077, as modified on denial of reh’g, (2019), aff’d
28 11 Cal. 5th 204 (2021).

⁹⁶ NCAA brief, 2020 WL 5705929, at *27.

⁹⁷ *Id.*, at *26.

⁹⁸ See NCAA Bylaws, Art. 10, §10.4 and Art. 11, §11.1.1.

1 athletes they enroll”⁹⁹ reveals the slippery slope on which the NCAA stands. This is because the
2 NCAA member institutions have the strongest incentive to cover up coaches’ bad behavior to
3 preserve institutional reputations and the attendant alumni donations, athletic revenue, and
4 enrollment.

5 133. The examples of Penn State, Michigan State, Michigan, and Ohio State have
6 proven this to be true. The NCAA’s argument, that it has “limited ability to take on that burden”
7 rings hollow in view of the NCAA’s wealth, reach, micro-management of both coaches and
8 athletes when it comes to minor infractions, and considering that it employs a nearly 60-member
9 enforcement staff to investigate potential violations of amateurism and academic eligibility
10 rules.¹⁰⁰

11 134. The NCAA’s decentralization, giving responsibility to the institutions, divisions,
12 and conferences to protect student-athletes from sexual harassment and abuse, is at odds with best
13 practices on how to protect student-athletes from sexual harassment and abuse.

14 135. As stated above, the United States Energy and Commerce Committee’s 2018
15 Nassar and Beyond Report concluded that there has been a “systemic failure across the Olympic
16 community to adequately protect athletes, particularly with respect to the case management of
17 instances involving sexual misconduct or abuse.” One “troubling” finding related to the USOPC’s
18 prioritizing reputation and image over athlete safety. This was because the USOPC determined
19 that it “does not have athletes” to protect from sexual abuse, and instead, that protecting the
20 athletes was the responsibility of each NGB. Yet the NGBs—not unlike the colleges and
21 universities—have the greatest incentive to protect their reputations at the expense of the athletes.

22 136. Another finding of the Nassar and Beyond Report was that despite the USOPC’s
23 governance support, each of the 48 NGBs had its own policies and procedures which created
24 inconsistencies. The Committee found inconsistencies in critical areas such as publishing the
25 names (or not) of those previously disciplined or banned from sport and the handling of

26
27 ⁹⁹ *Id.*, at *27.

28 ¹⁰⁰ Predator Pipeline, *supra*.

1 complaints of sexual abuse.¹⁰¹ Because of the disparate rules, and the difference in enforcement,
2 abusers were allowed to exist and thrive without any oversight. This is not unlike the NCAA
3 squarely placing student-athlete safety and policies in the hands its 1,200 colleges and
4 universities.

5 137. Thus, the NCAA’s decentralization is contrary to recent, empirical evidence of
6 best practices, and will likely lead to less protections for student-athletes from sexual assault,
7 abuse, and harassment.

8 138. The NCAA’s strategy in furtherance of its attempt to disavow liability is all the
9 more evident with the NCAA’s enactment of a new constitution. Claiming to “better meet the
10 needs of our student-athletes,” the NCAA announced the adoption of a new constitution on
11 January 20, 2022. The NCAA constitution supposedly “underscores the importance of both
12 physical and mental health and emphasizes diversity, inclusion and gender equity.”¹⁰²

13 139. Yet the NCAA’s new constitution was whittled from 43 pages to 19. While the
14 preamble to the constitution states that the “basic purpose” of the NCAA “is to support and
15 promote healthy and safe intercollegiate athletics,”¹⁰³ this new constitution decentralizes decision-
16 making, and attempts to pin responsibility for student welfare on the member institutions.

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

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

21 140. The University of San Francisco is a Catholic, Jesuit institution.¹⁰⁴ One of its core
22

23 ¹⁰¹ Nassar and Beyond, *supra*, at 45-61.

24 ¹⁰² Corbin McGuire, *NCAA Members Approve New Constitution*, NCAA (Jan. 20, 2022),
25 available at <https://www.ncaa.org/news/2022/1/20/media-center-ncaa-members-approve-new-constitution.aspx> (last accessed Feb. 1, 2022).

26 ¹⁰³ NCAA Constitution, Preamble (effective Aug. 1, 2022), available at
27 https://ncaaorg.s3.amazonaws.com/governance/ncaa/constitution/NCAAGov_Constitution121421.pdf (last accessed Feb. 1, 2022).

28 ¹⁰⁴ USF, *Facts & Statistics*, available at <https://www.usfca.edu/about-usf/what-you-need-to-know/facts-statistics> (last accessed Mar. 8, 2022).

1 religious values is *cura personalis*, which translates to “care for the whole person.”¹⁰⁵

2 141. USF is part of the Catholic Archdiocese of San Francisco. Saint Ignatius Church is
3 located on the University of San Francisco campus. The church serves a parish of the Catholic
4 Archdiocese of San Francisco and is the university’s chapel.¹⁰⁶

5 142. A 2018 report of alleged sexual assaults and misconduct among three Bay Area
6 dioceses, including the San Francisco Archdiocese, found that five alleged offenders were priests
7 affiliated with USF at one point in their careers. Those priests were assigned to USF over a span
8 of 32 years, from 1949 to 1981, though the report did not say whether the abuse occurred on the
9 USF campus. Three of the priests faced legal proceedings that included criminal convictions.¹⁰⁷

10 143. Referring to the history of sexual abuse in the church, USF’s president, Fr. Paul
11 Fitzgerald, vowed to take sexual abuse matters seriously:

12 But the cover-up by civil and religious authority figures allowed
13 abusers to become repeat offenders; in my view, this is the heart of
14 the scandal. Today, any abuse is promptly reported to the authorities,
15 who take these matters extremely seriously.¹⁰⁸

16 144. After the report’s revelations, Fr. Fitzgerald also promised to promote a better
17 culture at USF that supports survivors and includes transparency:

18 Abuse of power is at once infuriating and disillusioning. We cannot
19 become inured to these published reports and revelations, whether
20 they occur within the Catholic Church, another organization or even
21 our own community. We must all work to promote a culture that
22 prevents abuse, hears and supports survivors, seeks transparency and
23 advances reform. I write to assure you that I am committed to acting
24 against all forms of abuse of power by any member of our
25 community, including the Jesuits.¹⁰⁹

23 ¹⁰⁵ USF, *Our Values*, available at <https://www.usfca.edu/about-usf/who-we-are/our-values> (last
24 accessed Mar. 8, 2022).

25 ¹⁰⁶ USF, *Facts & Statistics*, available at <https://www.usfca.edu/about-usf/what-you-need-to-know/facts-statistics> (last accessed Mar. 8, 2022).

26 ¹⁰⁷ Izzie Hallock, *Alleged Sex Abusers Include USF Jesuits*, SAN FRANCISCO FOGHORN (Nov. 8,
27 2018), available at <http://sffoghorn.com/alleged-sex-abusers-include-usf-jesuits/> (last accessed
28 Mar. 8, 2022).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

1 145. Despite Fr. Fitzgerald’s public statements, sexual abuse has been a continuing
2 problem on the USF campus – and one that is known to the administration.

3 146. In July of 2020, allegations of sexual assault and abuse were revealed against the
4 USF Men’s Soccer Team.¹¹⁰ A Change.org petition described a homophobic and misogynistic
5 “toxic” sexual environment in the men’s soccer team which led to the suspension of a
6 professional soccer player based on his conduct while a student at USF.¹¹¹ The petition, signed by
7 over 5,000 individuals, demanded that USF investigate claims of sexual misconduct involving the
8 men’s soccer team. The petition also claimed that USF’s system for reporting is not effective and
9 that USF diminishes and dismisses allegations of sexual misconduct against soccer players.¹¹²

10 147. USF undertook an investigation involving the men’s soccer team and USF’s
11 handling of such misconduct.¹¹³ On January 11, 2021, a 53-page investigative report was
12 released.

13 148. Despite the graphic detail of the incidents revealed and its finding that 11 soccer
14 players were accused of engaging in sexual misconduct over the past decade, the investigative
15 report determined that it is more likely than not that sexual misconduct and/or disrespectful
16 behavior toward women and/or LGBTQIA individuals was **not** pervasive among members of the
17 USF men’s soccer team over the past decade, and that USF had acted diligently in response to
18 reported allegations of sexual misconduct involving soccer players over the past 10 years.¹¹⁴

19 149. In response to the release of the report, Fr. Fitzgerald took a strong stance against
20 sexual misconduct:

21 Sexual misconduct and sex and gender discrimination are not
22 tolerated at USF and we take all allegations of sexual assault
23 seriously. Whether occurring days or decades ago, on or off-campus,

24 ¹¹⁰ Gabriel Greschler, *Sexual Assault Allegations Against Soccer Team Members Prompt a*
25 *Reckoning For USF*, SF EXAMINER, available at [https://www.sfexaminer.com/sports/sexual-](https://www.sfexaminer.com/sports/sexual-assault-allegations-against-soccer-team-force-a-reckoning-for-usf/)
26 [assault-allegations-against-soccer-team-force-a-reckoning-for-usf/](https://www.sfexaminer.com/sports/sexual-assault-allegations-against-soccer-team-force-a-reckoning-for-usf/) (last accessed Mar. 8, 2022).

27 ¹¹¹ Petition, *USFCA TAKE ACTION NOW! Alleged Sexual Allegations on the USFCA Men’s*
28 *Soccer Team*, available at [https://www.change.org/p/university-of-san-francisco-usfca-take-](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=)
29 [action-now-alleged-sexual-allegations-on-the-usfca-men-s-soccer-](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=)
30 [team?original_footer_petition_id=&grid_position=&pt=](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=) (last accessed Mar. 8, 2022).

¹¹² *Id.*

¹¹³ USF Investigative Report, *supra*.

¹¹⁴ *Id.* at 3 (emphasis added).

1 all reports of sexual misconduct received by the university are
2 investigated thoroughly.

3 * * *

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

11 * * *

12 Together with our staff in Title IX, we affirm our commitment to
13 students, and all members of the USF community, to continue
14 working toward a more positive, safe, and healthy campus. We
15 affirm our commitment to responding to all incidents of sex and
16 gender discrimination, providing pathways of opportunities for
17 victims and survivors to learn about resources, supportive measures,
18 and accountability options. We invite students, faculty, and staff to
19 join us in these efforts and reaffirm their commitments to the
20 betterment of our community.¹¹⁵

21 150. As a result of the allegations, a new deputy Title IX coordinator position was filled
22 to work directly with Athletics; a new Policy on Nondiscrimination Based on Sex and Gender,
23 Sexual Harassment, and Sexual Misconduct for Students, Employees, and Third Parties was
24 approved; and a review of Athletics was undertaken with every coach and team as a part of an
25 extensive review of the Athletics Student Handbook as it pertains to sex and gender
26 discrimination, harassing behavior, and sexual misconduct.¹¹⁶

27 151. Yet *Sports Illustrated* (“SI”) found that the USF-commissioned investigative
28 report’s conclusions could not be squared with the facts. SI talked to a former student who said
that in 2003, she went to the administration with soccer players’ concerns regarding the filming of
women in intimate settings without their consent, and there were other instances when the
administration was aware of team members’ behavior. SI’s investigative reporting found that

¹¹⁵ myUSF, *Men’s Soccer Investigation: Update from President Fitzgerald Regarding the Sports Illustrated Story*, available at <https://myusf.usfca.edu/title-ix/mens-soccer-investigation> (last accessed Mar. 8, 2022).

¹¹⁶ *Id.*

1 there was a “distinct culture of misconduct on the team that spanned three coaches, four athletic
2 directors—though one, Scott Sidwell, was present for the majority of the time—and two school
3 presidents.” Thus, USF still has not taken the problem seriously enough.¹¹⁷

4 152. As but one example of USF’s failings in this area and relevant to the allegations of
5 this Complaint, at the outset of the Fall 2021 baseball season, the members of the USF baseball
6 team were required to attend a several hour session with the Title IX officers at the baseball field.
7 However, neither Coach G nor Coach Naks attended.

8 **2. Coach Naks created an intolerable sexualized environment at every**
9 **practice and Coach G participated.**

10 153. During the time Coach Naks was at USF, USF described his duties as follows: “In
11 addition to guiding the Dons on the base paths, Nakamura’s other on-field duties include
12 coaching third base, overseeing the team’s SPARQ (Speed, Power, Agility, Reaction, and
13 Quickness) training and leading the team’s visualization and imagery training program.”¹¹⁸

14 154. Further, in July 2020, USF’s Executive Senior Associate Athletic Director
15 described Coach Naks as “an amazing man who truly defines what it means to be a Diamond Don
16 [USF’s mascot].”¹¹⁹

17 155. In a November 2020 interview, Coach G described Coach Naks as follows:

18 Q. . . . Troy Nakamura is like a second son to you. Tell me about
19 that relationship and what makes you two so successful.

20 A. Oh boy, Troy and I have you know we’ve been together for
21 22 years here at USF. So um what a great relationship and
22 just Troy’s loyalty to me is why he’s here. Troy’s had plenty
23 of opportunities right and he’s always wanted to stay and it’s
24 it’s it’s [*sic*] wonderful that he’s wanted to be here in the Bay
25 Area and be my right-hand man. I could never express how

24 ¹¹⁷ Priya Desai & Jenny Vrentas, *A Predatory Culture, a Viral Reckoning—and Now What?*,
25 SPORTS ILLUSTRATED (Sep. 30, 2021), available at [https://www.si.com/college/2021/09/30/usf-](https://www.si.com/college/2021/09/30/usf-mens-soccer-sexual-assault-and-harassment-reckoning-daily-cover)
26 [mens-soccer-sexual-assault-and-harassment-reckoning-daily-cover](https://www.si.com/college/2021/09/30/usf-mens-soccer-sexual-assault-and-harassment-reckoning-daily-cover) (last accessed Mar. 8, 2022).

26 ¹¹⁸ Profile: Troy Nakamura, available at [https://usfdons.com/sports/baseball/roster/coaches/troy-](https://usfdons.com/sports/baseball/roster/coaches/troy-nakamura/66)
27 [nakamura/66](https://usfdons.com/sports/baseball/roster/coaches/troy-nakamura/66) (last accessed Jan. 26, 2022).

27 ¹¹⁹ Tuesday Testimonial: Troy Nakamura (July 28, 2020), available at
28 https://www.youtube.com/watch?v=Rtd_HrkWW9w (last accessed Jan. 28, 2022).

1 appreciative I am of Troy as a, as a person, as a friend, as a
2 coach, uh as a mentor, as someone to to [sic] spend this time
3 with. I mean he's just wonderful. He he leads in a lot of ways.
4 He does a lot of things for me and I never have to question it
5 . . . Me and Troy spend more time together than than [sic] me
6 and my wife most of the time and more emotional wins and
7 losses there too. A lot of times where we've been up at the
8 top and we've been down and we've . . . Oh it's it's [sic] I
9 can't thank him enough. He's he's he's [sic] the best.¹²⁰

7 156. Coach Naks was also an integral part of bonding with the high school baseball
8 prospects during recruitment. USF promoted Coach Naks for “play[ing] a critical role in the
9 recruitment and development of student-athletes.”¹²¹

10 157. Coach Naks had therefore established himself as a trusted coach and advisor
11 before the members of the USF Baseball Subclass stepped on campus.

12 158. Plaintiffs arrived at campus their freshman year ready to work and succeed. Each
13 had a successful career in high school and on travel teams that was touted by USF publicly when
14 they committed. Each was promised by Coach G or Coach Naks that they would be major
15 additions to the USF baseball team and were integral to the team's future success. Each was told
16 that they had the skills to make it to the next level. Each had aspirations of playing Major League
17 Baseball.

18 159. Coach G's and Coach Nak's manipulation, grooming, and abuse of power began
19 not long after Plaintiffs arrived on campus. For example, John Does 1 and John Doe 2 chose to
20 live together off campus because of the uncertainties of COVID-19. Once John Doe 1 found the
21 place to live and told Coach G, he responded to John Doe 1, “Wonderful, if you can secure this
22 it's better than any I have seen and the commute to school is very easy. Clean!! Should lock it up
23 if you can.” Yet later, Coach G would criticize the players for choosing to live off campus.

24 160. As another example, one coach would tell Plaintiffs and their roommates (also
25 members of the baseball team) to work harder on the field, while the other coach would tell them

27 ¹²⁰ Tuesday Testimonial: Baseball Head Coach Nino Giarratano (Nov. 3, 2020), available at
28 https://www.youtube.com/watch?v=tvdyIFXEYq0&list=PLQJ7Y9Sjcc_ivhkGCZkiQKJlfrE7Q1l5D (last accessed Jan. 28, 2022).

¹²¹ Profile: Troy Nakamura, *supra*.

1 that they needed to “have more fun” and integrate with other kids on the campus, rather than
2 spending so much time on the field. Whichever path they took—Coach G’s or Coach Naks’—
3 they were called in and berated for it.

4 161. Within the first couple of months of their freshman year, the mental abuse
5 escalated. Plaintiffs were isolated and told they were worthless. Coach G and Coach Naks told
6 them they could not and would not succeed. The coaches regularly called each of them a “pussy”
7 or told them they hit like a “pussy.” One was called a “fucking cunt,” within earshot of the
8 opposing team’s fans. They were repeatedly berated and beaten down.

9 162. They were told to work harder, to work more, or to work differently, but always
10 given conflicting directions. They were told to go to physical therapy, or to skip it, or to do it
11 differently. Yet, other than being berated (and being sexually harassed as described below),
12 Coach G and Coach Naks largely ignored their requests for coaching help and instructions, telling
13 them it was a waste of time, or that they were toxic, or that their personalities were not a fit.

14 163. Each of the Plaintiffs desired to make it to the next level, so each independently
15 asked the coaches for help and direction. But Coach G and Coach Naks regularly responded to
16 these requests by telling Plaintiffs they were not good enough, they would never make it in
17 Division I baseball, they might as well leave, they should give up their scholarships, and they
18 would never make it as professional baseball players.

19 164. One Plaintiff was even told by Coach G: “I wish I could hit you with a bat right in
20 the middle of the forehead but that would be illegal.” Coach G was not joking.

21 165. Against this backdrop of this mental abuse, the coaches also engaged in
22 inappropriate sexual conduct, created an intolerable sexualized environment, and retaliated
23 against the players.

24 166. From the outset of Plaintiffs’ freshman years, Coach Naks would start practices or
25 particular drills with a “Café” exercise. The point of the exercise was to loosen up the players
26 before they started practice. The Café exercise involved Coach Naks identifying a dinner theme,
27 such as a barbecue or fast food dinner. Then, each person, including both coaches and players,
28 would go around the circle and identify what they would bring to the barbecue, such as a type of

1 drink or food.

2 167. The players quickly learned that Coach Naks would always find a way to make the
3 exercise sexual—and that Coach Naks encouraged the other players and coaches to be sexual in
4 their answers, too. Coach Naks would refer to women’s body parts he wanted to eat, bodily fluids
5 and secretions he wanted to drink, and other sexual innuendo. For example, Coach Naks would
6 say he wanted to eat “Jennifer Aniston’s boobs” or “slurp whipped cream from Pamela
7 Anderson’s crotch.”

8 168. Coach G was included in these Café exercises, saw and heard the way Coach Naks
9 spoke and encouraged sexual banter, and did nothing to stop it. In fact, Coach G engaged in the
10 same behavior, naming women’s body parts or fluids he wanted to eat or drink.

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

16 170. Plaintiffs’ discomfort and/or reluctance to participate in such bizarre behavior was
17 apparent to the coaches, and their abuse and taunting escalated as a result.

18 171. Coach Naks’ inappropriate sexual banter was not limited to the Café exercises. He
19 would also regularly talk about the fact that he was bisexual, how little (in clothing) the girls on
20 campus were wearing during warm weather, and what sexual acts he would like to perform on
21 girls he saw on campus. At one point in time, Coach Naks moved to live on campus, and his
22 comments about the girls on campus became increasingly sexual and distressing to the players.
23 Their discomfort with such conversation was apparent.

24 172. Coach G heard and participated in these conversations.

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

27 174. Coach Naks’ sexually charged behavior was not limited to the way he spoke. He
28 also engaged in calculated displays of nudity on and off the field, exposing himself to the players

1 and other coaches.

2 175. For example, another exercise the coaches required before certain practices
3 involved skits. The players were split up into four groups at first, second, third, and home bases.
4 They would have to come up with an improvisational skit for the team to be judged by Coach G.

5 176. Again, Coach Naks would regularly find ways to make the skits sexual.

6 177. On one occasion (in early November 2021), Coach Naks pretended to be at a
7 buffet. He had a player do a handstand, grabbed the player's legs, split them open, and then
8 pretended to eat spaghetti out of the player's genital region. Many of the players, visibly
9 disgusted and upset, turned away.

10 178. On another occasion (just a week or two after the handstand incident), Coach Naks
11 told his group that he would take care of that day's skit. When it was his group's turn, Coach
12 Naks crawled out of the dugout completely naked on all fours. He then proceeded to move to a
13 kneeling position in front of the players and swing his penis around. Plaintiffs and some other
14 players looked away in disbelief, embarrassment, and disgust.

15 179. Rather than condemning Coach Naks' actions, Coach G kissed the cross on his
16 necklace and mimed as if he were looking up at the sky at God in a joking way, asking for
17 forgiveness.

18 180. Dormitories overlook the baseball field where this incident occurred, and so other
19 USF students in the dormitories were also able to witness this conduct.

20 181. Coach G knew that Coach Naks' actions were wrong. Coach G would say to older
21 players, "We could get fired for this." He also told the players that his wife was mad at him
22 because his job was in jeopardy as a result of Coach Naks' nudity and behavior on the field and
23 around the players. Yet Coach G facilitated and condoned Coach Naks' behavior, playing along
24 with and normalizing it.

25 182. On another occasion, a player fielding ground balls after practice heard Coach
26 Naks call his name. He looked over to the press box and saw Coach Naks standing on a table
27 completely naked, swinging his penis in a helicopter motion while yelling "Hey [player's name]!"

28 183. Coach Naks took these grooming actions on the field and extended them to more

1 intimate settings. For example, players who attended an away game in the spring of 2021 reported
2 that Coach Naks entered a group of players' hotel room and asked to use their shower. After
3 Coach Naks got out of the shower, he walked around naked in the room, exposing himself to the
4 players while talking about his bisexuality.

5 184. These are just a few examples of the gross and completely inappropriate sexual
6 harassment and sexual misconduct that created an intolerable sexualized environment the players
7 had to endure on a near-daily basis. Rather than create fun or relax the players as the exercises
8 were supposed to do, the players became stressed, upset, and unable to concentrate as a result.
9 Plaintiffs' discomfort was obvious to the coaches.

10 185. Many of the players discussed that they did not even want to go to practice. Many
11 players would go to practice and leave immediately, not wanting to do extra work or be caught
12 alone with Coach Naks.

13 186. The players saw Coach Naks as a sexual predator, encouraged by Coach G. The
14 fact that Coach Naks was viewed as a sexual predator is demonstrated by an incident at a 2021
15 Fall World Series game. The players were in the dugout and Coach Naks was interacting with a
16 little girl next to the dugout. One of the players remarked that if he saw Coach Naks interacting
17 with his little sister, he would strangle him.

18 187. The players regularly discussed ways to get the Coaches' behavior to stop.
19 However, as set forth below, those who refused to play along or who spoke up were retaliated
20 against.

21 188. John Doe 1 discussed reporting the behavior to the school's Title IX office with
22 several older players. One of the older players told John Doe 1 he had offered a player \$100 to
23 turn the coaches in. John Doe 1 offered to contribute another \$100 to get the former player to
24 make a complaint.

25 189. John Doe 1 asked older transfer players about their experiences with college
26 coaches at their prior teams. All agreed that none of their prior coaches acted like Coach Naks or
27 Coach G, and that the sexual conduct and psychological abuse was not normal.

28 190. One of those players told John Doe 1 and several other players not to be surprised

1 if they were called in for interviews after that player graduated, because he planned to file a Title
2 IX complaint as soon as he could no longer be subject to retaliation.

3 191. John Doe 3 talked with an older transfer player who assured John Doe 3 that
4 Coach Naks' behavior was not normal, that coaches acting in this way was not the way college
5 athletics was supposed to be, and that the coaches were not "doing it right" at USF.

6 192. In late November 2021, after the "skit" incidents, eight players, including John
7 Does 1, 2, and 3, decided to express their discomfort with the coaches' inappropriate behavior.
8 Wary of retaliation, however, they determined that it would be wisest to do so in a way that the
9 coaches would think is funny, while still alerting the coaches to the impropriety of their behavior.
10 During one pre-workout skit, the players therefore pretended to make a complaint about Coach
11 Naks to the Title IX office. They feigned putting Coach Naks in handcuffs and carrying him off
12 to jail (the "Title IX Skit").

13 193. During and after the Title IX Skit, both Coach G and Coach Naks looked
14 extremely uncomfortable. Yet neither followed up with the players after practice to determine
15 whether the skit was performed seriously or in jest, nor did either take any action to change his
16 behavior.

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

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

23 195. Prior to January 2015, NCAA schools were required to give scholarships that were
24 renewable each year. In other words, a student-athlete was not guaranteed a four-year scholarship.
25 Thus, it was much easier for a coach to pull a scholarship from a student-athlete and force him to
26 transfer.

27 196. In January 2015, the NCAA permitted conferences to start providing four-year
28 guaranteed scholarships. The problem for coaches is that these guaranteed scholarships took away

1 their ability to not renew a scholarship, thus making it harder to run a student-athlete off their
2 team to free up the scholarship money for someone else.

3 197. Coach G and Coach Naks avoided this limitation by implementing a system of
4 emotional abuse intended to get rid of players who did not play along or fit within the sexually
5 charged culture they created.

6 198. The Coach Defendants' mental and psychological abuse worked. Of the 17 recruits
7 in the 2020 USF baseball class, eight have transferred and two more may transfer. The fact that
8 almost 60% of the 2020 recruiting class has left or is likely to leave is a testament to the coaching
9 staff's illegal behavior, ruthlessness, retaliation, and callous player treatment.

10 199. According to the NCAA, based on a 2018 study from the National Student
11 Clearinghouse, just 13% of then-current Division I student-athletes transferred from another
12 school.¹²²

13 200. The percentage of four-year college transfers among Division I student-athletes on
14 baseball teams was even lower—just 2.3%, the fourth lowest rate out of 38 NCAA Division I
15 sports.¹²³

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26 ¹²² NCAA, *Research on Student-Athlete Transfers*, available at
27 <https://www.ncaa.org/sports/2019/8/5/research-on-student-athlete-transfers.aspx> (last accessed
28 Jan. 27, 2022).

¹²³ NCAA, *Transfer Composition of Division I Teams*, available at
https://ncaaorg.s3.amazonaws.com/research/transfers/RES_TransCompD1TeamsSlides.pdf (last
accessed Jan. 27, 2022).

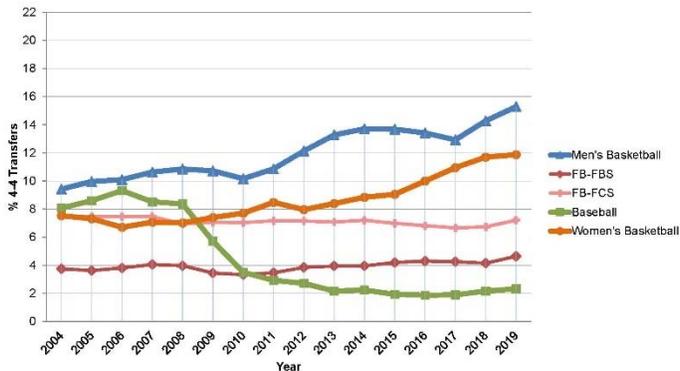
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2018-19 Percentage of Four-Year College Transfers among Division I Student-Athletes

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%

201. In fact, the overall trend since 2004 was a significant decrease in the transfer rate among NCAA Division I baseball teams.¹²⁴

Trends in the Proportion of Four-Year College Transfers in APR Cohorts



Notes: Percentages based on the 2019 APR data (released in May 2020).

202. One of the largest amateur baseball scouting organizations ranked USF's 2020 recruiting class #80 in the nation among Division I baseball programs.¹²⁵ USF was one of only

¹²⁴ *Id.*

¹²⁵ Perfect Game, *College Recruiting Rankings: Class of 2020*, available at <https://www.perfectgame.org/rankings/Recruiting/Rankings.aspx?g=2020> (last accessed Mar. 11, 2022).

1 two West Coast Conference baseball programs ranked in the top 100 and USF was ranked higher
2 than programs such as Michigan State, Rice, and UCSB.¹²⁶

3 203. The data demonstrates that these well-regarded recruits have since transferred out
4 of USF at an abnormally high transfer rate as a direct result of USF and the Coach Defendants'
5 wrongdoing.

6 a. *USF and the Coach Defendants subjected John Doe 1 to extreme*
7 *psychological abuse and retaliated against him.*

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

11 205. John Doe 1 was injured in the fall of his freshman year. When he returned
12 following surgery, the coaches, including Coach G, would yell at him for doing too much
13 physical therapy or not the right kind (despite his doctor's orders otherwise). He would show up
14 to practice early before anyone else—and then be yelled at for being tardy. Coach G demanded
15 that he practice 100% with the team even though it was against John Doe 1's doctor's orders.

16 206. Coach G and Coach Naks regularly told John Doe 1 he was not working hard
17 enough and would never be good enough. Coach Naks regularly berated John Doe 1 at practice
18 and in his office.

19 207. At the end of his freshman year, and after John Doe 1's parents learned of several
20 of the above-described incidents, John Doe 1's mom left several voicemails for USF's Athletic
21 Director ("AD"), which were not returned. On May 30, 2021, she also sent an email to USF's
22 AD. She stated that she was concerned "with the culture of the baseball program," "the constant
23 bullying, harassment, and intimidation" of her son, and the "sexual misconduct by coach Naks":
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28 ¹²⁶ *Id.*

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208. The AD never responded to John Doe 1’s mother’s email.

209. Under the USF Nondiscrimination Based on Sex and Gender, Sexual Harassment, and Sexual Misconduct Policy (“Title IX Policy”), the AD is considered a “Mandatory Reporter” and should have immediately reported the substance of John Doe 1’s mother’s email to USF’s Title IX office.¹²⁷ The AD’s failure to do so was, itself, a violation of the USF Title IX Policy.¹²⁸

210. John Doe 1 believes that not only did the AD not report his mother’s complaint, but she instead shared the complaint with Coach G and Coach Naks, because the abuse escalated and continued throughout the summer of 2021.

211. Specifically, during the summer between his freshman and sophomore year, Coach Naks called John Doe 1 multiple times and told him not to come back. Every time, John Doe 1

¹²⁷ USF, Title IX Policy 2 (effective Aug. 14, 2020), available at <https://myusf.usfca.edu/sites/default/files/users/jvarga/Interim%20Policy%20and%20Procedures%2008.14.2020.pdf> (last accessed Feb. 9, 2022).

¹²⁸ *Id.*, at 21.

1 told Coach Naks he intended to return to school as he had a four-year scholarship and wanted to
2 honor his commitment to the team. In response, Coach Naks told him he was “the most irrational
3 person he had ever met.” Coach Naks also said, “The people here don’t believe in you.” Coach
4 Naks told him he was “tearing up the fabric of the program and not protecting the culture.” Coach
5 Naks threatened, “I am going to make sure it is not an enjoyable experience for you.” He would
6 keep John Doe 1 on the phone for 30 minutes at a time, relentlessly threatening and berating him
7 if he would not agree to transfer from USF. He also refused to allow John Doe 1 to discuss the
8 matter with his parents, demanding an immediate answer.

9 212. Coach G also called John Doe 1 several times that summer. He told John Doe 1
10 that he would never play at USF again, that he was “toxic” to the program, and that he might as
11 well leave. Coach G called him a “fucking pussy,” told him he was being “fucking selfish for
12 keeping his scholarship,” and that he was hurting the rest of the team by not agreeing “to give his
13 scholarship to someone who would buy into the culture of the program.”

14 213. John Doe 1 did not want to leave. He liked his teammates, and his scholarship was
15 important to him and his family. If he chose to leave, he would lose his scholarship and valuable
16 playing time under the NCAA’s transfer rules.

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

21 215. At John Doe 1’s exit interview, each coach told him that he should leave. Coach G
22 told him that the relationship between the coaches and John Doe 1 had become “toxic,” again
23 using that same word. They told him that he was being “very selfish” for staying at USF and not
24 agreeing to enter the transfer portal and relinquish his scholarship. John Doe 1 insisted he was not
25 going to leave.

26 216. Shortly after the exit interview, the AD reached out to John Doe 1 and told him she
27 understood he was going to enter the transfer portal to leave USF.

28 217. John Doe 1 was surprised by the AD’s call, given that he had not agreed to go into

1 the portal nor to give up his scholarship.

2 218. John Doe 1's mom spoke with the AD, and reminded the AD that she had tried to
3 contact the AD in the spring of 2021 about the problems on the baseball team, but that the AD
4 had never responded.

5 219. During one of the calls between John Doe 1's mom and the AD in December of
6 2021, after sharing John Doe 1's experience, the AD disclosed that the Title IX office had already
7 been alerted to problems on the baseball team and that John Doe 1 would be contacted and
8 interviewed as part of the investigation.

9 220. After that call, John Doe 1 learned he was being excluded from an upcoming team
10 meeting where the AD shared the status of the investigation and suspension of the coaches with
11 the other players.

12 221. Three weeks later (in January 2022), neither John Doe 1 (nor many of the other
13 players) had been contacted regarding the Title IX investigation. John Doe 1 contacted the AD to
14 express concern that he had not yet been interviewed. He was only called for a cursory interview
15 after his mom inquired with the AD herself.

16 222. On January 11, 2022, USF issued the following statement to student-athletes via
17 email:

18 Dear Members of the USF Baseball Team,

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

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

26 While the investigation did not find evidence of a widespread
27 harmful culture within the baseball program, the reported incidents
28 indicated that coaches showed poor judgment and lack of
supervision. The university has taken immediate action to address
this. Procedures are being put in place to ensure baseball team

1 members are ensured a respectful, safe environment with proper
2 oversight, direction, and mentoring by their coaches. The wellbeing
of all students at USF is our highest priority.

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

6 223. Notwithstanding USF's attempt to close out the issues without acknowledging that
7 the sexually abusive behavior was indeed widespread and that its investigation was not thorough,
8 USF's administration has continued to engage in retaliation.

9 224. Right after the announcement was sent, the AD contacted John Doe 1. The AD
10 told John Doe 1 that Coach Naks had been terminated, but that Coach G would stay on. She
11 stated that Coach G would be on a year-to-year contract and would not be allowed to travel or
12 hold meetings without an administrator present.

13 225. John Doe 1 asked the AD how Coach G felt about John Doe 1 staying on the team.
14 Staying and succeeding at USF both academically and on the baseball team was important to John
15 Doe 1, as he wanted to become the best possible player and had aspirations of playing
16 professional baseball. The AD said she would talk to Coach G about his return to the baseball
17 team and would follow up with John Doe 1 in a couple of days.

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

23 227. John Doe 1 tried to register for online classes for Spring 2021 due to anxiety about
24 returning to USF, but was unable to register for a full course load. He signed up for class waitlists
25 and emailed professors and had multiple calls with his advisor, but with no response or resolution.
26 After additional complaints, USF finally helped John Doe 1 by assigning him an academic
27 success coach.

28 228. After almost two weeks, John Doe 1 still had not heard back from the AD, so John

1 Doe 1 called her. The AD told John Doe 1 that Coach G did not want him to return to the team,
2 and that she was going to stand behind Coach G's decision that John Doe 1 should leave the team.
3 The AD thus adopted and furthered the abusive coach's retaliation against a student-athlete brave
4 enough to call out the coaches for their illegal behavior.

5 229. USF encouraged John Doe 1 to sign a document to enter the transfer portal so he
6 could play baseball at another college or university. Contrary to the assertions USF made to John
7 Doe 1, that document contained a location for John Doe 1's signature, agreeing that USF could
8 revoke his scholarship. John Doe 1 refused to sign that portion of the document. In January 2022,
9 John Doe 1 entered the transfer portal, and is still in it now.

10 **b. *John Doe 2 suffered extreme emotional abuse, repeated***
11 ***inappropriate sexualized conduct, and retaliation, and was forced***
to leave USF.

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

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

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

23 233. During the spring of 2021, Coach Naks began verbally abusing John Doe 2. By
24 way of example only, at an away game, Coach Naks screamed at John Doe 2, calling him a
25 "fucking cunt" while they were in the dugout. Parents from the opposing team reported the event
26 to several USF parents, and John Doe 2's parents learned about the shocking conduct. John Doe 2
27 was humiliated and embarrassed.

28 234. In the spring of 2021, Coach G brought John Doe 2 in for an early exit interview.

1 Coach G told John Doe 2 that he wanted him gone from the team because John Doe 2 was too
2 nice and too respectful. Coach G told John Doe 2 that he did not like him and that John Doe 2 did
3 not have the type of personality Coach G wanted. Coach G tried to force John Doe 2 to verbally
4 agree to leave the team and to give up his scholarship. John Doe 2 was stunned and upset. He was
5 not prepared to leave the team or give up his scholarship, particularly without speaking with his
6 parents.

7 235. Coach G’s comments reflect that John Doe 2 did not fit within the sexually explicit
8 environment in which the coaches were engaged.

9 236. On May 30, 2021, John Doe 2’s parents requested “an urgent in person meeting”
10 with USF’s AD. The subject line of the email stated, “URGENT MEETING REQUEST.” This
11 email was wholly ignored and never responded to by the AD.

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

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

20 239. In the fall of 2021, Coach G largely ignored John Doe 2 when it came to providing
21 coaching direction. John Doe 2 would ask Coach G what he could do to get more playing time
22 and how he could improve. Coach G would respond that John Doe 2’s playing ability was fine,
23 but that he just didn’t have room for him.

24 240. Coach G and Coach Naks made it clear that they hated John Doe 2, that they
25 wanted him to leave, and that they would not give him any coaching direction. John Doe 2
26 became extremely stressed. He was upset that no matter how hard he worked—and even though
27 his playing ability was not in question—the coaches wanted him to leave. His grades suffered,
28 and he began isolating himself. He felt degraded as a human—he had to suffer through the

1 sexualized conduct and harassment at practice, with little to no coaching, and then was told his
2 personality was the problem because he would not play along.

3 241. John Doe 2 became physically ill from the stress, resulting in five emergency room
4 visits during the fall of 2021.

5 242. By the end of fall 2021, Coach G's campaign to force John Doe 2 to leave
6 succeeded. John Doe 2 determined that his physical and mental health was suffering, and advised
7 USF that he intended to leave and lose his scholarship. John Doe 2 spoke with both the AD and
8 assistant AD regarding the reasons for his departure.

9 243. During his call with the AD, the AD told John Doe 2 that she knew things were
10 going on with the coaches on the team and implied that both Coach G and Coach Naks were
11 going to be terminated.

12 244. In December 2021, John Doe 2 learned of a Zoom meeting the AD was holding
13 with the team that he had not been invited to. He reached out to the AD seeking to be included (as
14 did John Doe 1, who was also initially excluded).

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

21 246. John Doe 2 understood from the team meeting that the AD intended to protect
22 Coach G, despite the fact that Coach G had normalized and participated in Coach Naks' sexual
23 harassment. John Doe 2 was upset that the AD minimized the players' experiences, including the
24 inappropriate sexual conduct that created an intolerable sexualized environment and
25 psychological abuse in which Coach G had engaged.

26 c. ***John Doe 3 was subjected to extreme psychological abuse, and***
27 ***the Coach Defendants retaliated against him by trying to trick***
28 ***him into foregoing his scholarship.***

247. John Doe 3 was injured during his senior year of high school, and worked

1 extensively with a physical therapist to be ready to play baseball for USF.

2 248. But when John Doe 3 started at USF in the fall of 2021, he was subject to constant
3 verbal abuse by the Coach Defendants.

4 249. Just three weeks into school, John Doe 3 asked Coach G for help. John Doe 3
5 wanted to become a standout player on the USF team, as he had aspirations of one day playing
6 professional baseball. Coach G responded that it would be a waste of his time, pointless for him
7 to help John Doe 3 out with coaching, that John Doe 3 was not and never would be one of his top
8 5 players, and so he refused to work with him.

9 250. Despite the coaches' treatment of him, John Doe 3 strived to be successful on the
10 field. Every day from 7 a.m. to 6 p.m., John Doe 3 was either in class, on the baseball field, or
11 doing physical therapy. He showed up at practice, even when he could not participate in certain
12 drills due to his injury.

13 251. Because of his injury, Coach G told John Doe 3 not to do anything during
14 practices, and sarcastically said that John Doe 3 could have fun and watch his teammates
15 improve. At an away game, John Doe 3 was observing his teammates catch pop ups. Coach G
16 called John Doe 3 over and began yelling, asking why he was not joining. When John Doe 3
17 responded that he (Coach G) told him not to do anything, Coach G responded, "Can't you even
18 think? I've never in my life had someone make me so angry every day. You can't go a day
19 without pissing me off."

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

26 253. The following Monday, the coaches sent John Doe 3 for a blood draw to test for
27 drugs. John Doe 3 was not taking drugs, and understood that no other baseball player had been
28 sent for drug testing—ever. John Doe 3 believed that the coaches were singling him out for abuse

1 to get him to leave the team but did not understand why. John Doe 3 tested negative for drugs.

2 254. In a subsequent meeting in Coach G's office after the above-mentioned game,
3 Coach G called John Doe 3 a liar when he tried to defend himself, told him none of his teammates
4 or coaches liked him, that he was a waste of space, and that he was a problem for everyone.
5 Coach G told John Doe 3 to "get the f%&\$ out" of the school because he did not belong there.
6 Coach G said that he wishes that he could take John Doe 3's scholarship away more than
7 anything. Coach G called him a "pussy" repeatedly. Coach G even said: "I wish I could take my
8 bat and hit your head as hard as I can and maybe I can get your brain to work."

9 255. When John Doe 3 reinjured his arm soon thereafter, Coach G became angry and
10 told him there was "something seriously wrong" with his head.

11 256. John Doe 3 became increasingly anxious and depressed as the semester
12 progressed. When not in class or at practice, he stayed in his room distressed. He could not sleep
13 or eat, and felt very anxious at practices, waiting for them to end.

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

17 258. During the semester, John Doe 3 complained to a representative of the baseball
18 team responsible for mental health. He was sent to a USF sports therapist. However, the therapist
19 told John Doe 3 his experience and those events occurring with the team were normal, and that is
20 how most coaches act.

21 259. In advance of his exit interview after the season, the coaches told the players that
22 they needed to fill out a form in advance in the way that the coaches wanted them to, and that if
23 they did not, the conversation would not be pleasant and would involve a lot of yelling. Fearing
24 further verbal abuse and assaults, John Doe 3 complied with Coach G's order to fill out the form
25 to state that he (John Doe 3) was being cut from the team.

26 260. At John Doe 3's Fall 2021 season exit interview, the coaches told John Doe 3 they
27 were cutting him. They told him that his scholarship was revoked, and that he would not be at
28 USF the next semester. They demanded that he enter the transfer portal immediately.

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

5 262. John Doe 3 contacted the Associate AD. The Associate AD confirmed that there is
6 no such thing as pre-exit interview forms, and definitively told him that the coaches could not
7 take away his scholarship.

8 263. John Doe 3 then contacted Coach Naks, and asked how his guaranteed scholarship
9 could be taken away. Coach Naks told him to come by the office and see Coach G. Coach G told
10 John Doe 3 that he understood John Doe 3 wanted to leave. He asked: “Are you leaving?” When
11 John Doe 3 said he did not know, Coach G looked surprised, and told him there was no point in
12 staying as he would never be part of the baseball team. Coach G demanded an answer and would
13 not allow John Doe 3 to discuss the matter with his parents.

14 264. Following the meeting, the coaches sent John Doe 3 text messages about other
15 schools that were interested in him, and with requests to return his equipment.

16 265. During Winter Break, John Doe 3 spoke with the AD, who told John Doe 3 that he
17 could stay and finish the school year. The guaranteed scholarship is important to John Doe 3 and
18 he will not voluntarily relinquish it.

19 **E. Plaintiffs and the Class Were Damaged.**

20 266. Plaintiffs’ damages stem from the fact that the NCAA and its member
21 institutions—including USF—have created a system that places a higher value on institutional
22 reputations, at the expense of the student-athletes’ well-being.

23 267. The sexual, physical, and mental harassment and abuse many student-athletes—
24 including the Plaintiffs in this case—have suffered is accompanied by self-doubt, shame, blame,
25 and guilt, and oftentimes requires years of reflection, meditation, counseling, medication, and
26 psychotherapy. All the while, many of these young lives are plagued with depression, anxiety,
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1 and suicidal thoughts.¹²⁹

2 268. Sexual and mental harassment and abuse of athletes results in long-term
3 posttraumatic symptomology, with core symptoms including re-experiencing, avoidance, and
4 hyperarousal. Furthermore, disclosing or recounting the experience of sexual abuse can be
5 traumatic and lead to a “double-trauma,” which can cause intense ruptures in day-to-day life.¹³⁰

6 269. In addition to psychological injury, Plaintiffs and the Class suffered out of pocket
7 losses from the loss of scholarships, payments of costs-of-attendance, payments for medical and
8 psychiatric treatment, damage to their careers as college baseball players that directly impacts
9 their prospects of becoming professional baseball players, and other compensatory and
10 consequential damages.

11 **VI. CLASS ALLEGATIONS**

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

16 271. Plaintiffs also bring this action against the NCAA on behalf of the following
17 “California Subclass” pursuant to Rules 23(a), 23(b)(2), and/or 23(c)(4): “All student-athletes
18 who participated in NCAA sports at California-based NCAA member institutions during the past
19 four years.”

20 272. Plaintiffs also bring this action against USF and the Coach Defendants on behalf of
21 the following “USF Baseball Subclass” pursuant to Rules 23(a), 23(b)(2), 23(b)(3), and/or
22 23(c)(4): “All members of the University of San Francisco baseball team during the past four
23 years.”

24 273. Plaintiffs reserve the right to modify or amend the class definitions, including the
25 addition of one or more subclasses, after having the opportunity to conduct discovery.

26 _____
27 ¹²⁹ Ingunn Bjørnseth & Attila Szabo, *Sexual Violence Against Children in Sports and Exercise: A*
Systematic Literature Review, JOURNAL OF CHILD SEXUAL ABUSE, 27:4, 365-385, 365 (2018).

28 ¹³⁰ Helen Owton & Andrew C. Sparkes, *Sexual Abuse and the Grooming Process in Sport:*
Learning from Bella’s Story, SPORT EDUCATION AND SOCIETY, 22:6, 732-743, 733 (2017).

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

5 275. Numerosity: The NCAA reports that there are more than 460,000 NCAA student-
6 athletes competing in 24 sports every year.¹³¹ Similarly, there is an average of 35 players per year
7 on a Division I baseball roster.¹³² As such, the members of the Classes are so numerous that
8 joinder is impractical.

9 276. Typicality: Plaintiffs' claims are typical of the claims of each class member in that
10 Plaintiffs, like all class members, were NCAA student-athletes. Plaintiffs and the class members
11 were injured through the NCAA's failure to protect them, and Plaintiffs are advancing the same
12 legal theories on behalf of themselves and the Classes.

13 277. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Classes.
14 Plaintiffs' interests and the interests of all other members of the Classes are identical, and
15 Plaintiffs are cognizant of their duty and responsibility to the Classes. Accordingly, Plaintiffs can
16 fairly and adequately represent the interests of the Classes. Moreover, Plaintiffs' counsel are
17 competent and experienced in litigating class actions, including litigation of this kind. Plaintiffs
18 and counsel intend to vigorously prosecute this case and will fairly and adequately protect the
19 Classes' interests.

20 278. Commonality and Predominance: There are numerous questions of law and fact
21 common to the Classes, and these common questions predominate over any issues affecting only
22 individual Class members. Questions common to the Classes include:

- 23 a. Whether the NCAA had a duty to implement and enforce rules and bylaws
24 to, *inter alia*:

25 _____
26 ¹³¹ NCAA, Student-Athletes, available at <http://www.ncaa.org/student-athletes> (last accessed Feb.
27 9, 2022).

28 ¹³² Aria Gerson, *NCAA Provides Relief on Division I Baseball Roster Limits in Wake of Shorter
MLB Draft*, USA TODAY (June 10, 2020), available at
[https://www.usatoday.com/story/sports/2020/06/10/ncaa-division-i-baseball-roster-limits-
relief/5335956002/](https://www.usatoday.com/story/sports/2020/06/10/ncaa-division-i-baseball-roster-limits-relief/5335956002/) (last accessed Feb. 9, 2022).

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- prohibit sexual harassment and/or sexual abuse of student-athletes by athletics department personnel;
- prohibit romantic and sexual relationships between coaches and student-athletes;
- prohibit grooming and other sexually-exploitative behavior by athletics department personnel of student-athletes;
- require NCAA member institutions to immediately report 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 in a centralized repository so that they can be tracked by the NCAA and its member institutions;
- 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 member institutions and athletics department personnel where allegations of sexual relationships, harassment, or abuse of a student-athlete by athletics department personnel are substantiated;
- 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;
- mandate training of athletics department personnel regarding grooming, sexual relationships with student-athletes, sexual abuse and harassment, the prohibition thereof, and reporting obligations;

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- 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;
- 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 Coach G and Coach Naks sexually harassed and retaliated against Plaintiffs and the USF Baseball Subclass;
- f. Whether the NCAA, USF, Coach G, and Coach Naks intentionally or negligently inflicted emotional distress on Plaintiffs and the USF Baseball Subclass;
- g. Whether the NCAA and USF should be held vicariously liable for the tortious conduct of Coach G and Coach Naks;
- h. Whether the NCAA and USF ratified the tortious conduct of Coach G and Coach Naks; and
- i. The scope of declaratory and/or injunctive relief and damages to which the Plaintiffs and the Classes are entitled.

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

1 efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered
2 in the management of this class action. The purpose of a class action is to permit litigation against
3 wrongdoers even when damages to an individual plaintiff may not be sufficient to justify
4 individual litigation. Individual litigation by each class member would also strain the court
5 system, create the potential for inconsistent or contradictory judgments, and increase the delay
6 and expense to all parties and the court system. Moreover, the highly sensitive and traumatic
7 nature of the facts involved here makes a class action superior, because in circumstances like
8 these, there will be some victims who are emotionally ready and able to come forward and bring
9 suit on behalf of the many others who are not able or ready to come forward to bring suit on their
10 own. In sum, the class action presents far fewer management difficulties and provides the benefits
11 of a single adjudication, economies of scale, and comprehensive supervision by a single court.

12 280. Declaratory/Equitable Relief: Class certification is also appropriate under Rule
13 23(b)(2) because Defendants have acted and refused to act on grounds generally applicable to the
14 Classes as a whole, such that final injunctive relief is appropriate with respect to the Classes as a
15 whole. Such injunctive relief includes, but is not limited to, the implementation of systemic
16 changes to prevent such conduct in the future as mentioned above.

17 281. This action is also properly maintainable under Rule 23(c)(4) in that particular
18 issues common to the class, as set out above, are most appropriately and efficiently resolved
19 through a class action, and would advance the disposition of this matter and the parties' interests.

20 **VII. CLAIMS AGAINST THE NCAA, USF, AND THE COACH DEFENDANTS ON**
21 **BEHALF OF THE USF BASEBALL SUBCLASS**

22 **COUNT I**

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

25 282. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

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

1 284. Title IX bars gender-based discrimination by federally funded educational
2 institutions.

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

6 286. At the time of the events in question, Plaintiffs were enrolled as undergraduate
7 students at USF.

8 287. USF exercised substantial control over its baseball program, as well as over its
9 coaching staff, including Coaches Giarratano and Nakamura.

10 288. Plaintiffs suffered sexual harassment by Coach Naks, facilitated and condoned by
11 Coach G, that was so severe, pervasive, and objectively offensive that it deprived Plaintiffs of
12 access to the educational opportunities and benefits provided by USF.

13 289. Specifically, the sexual language, actions, and conduct Plaintiffs were forced to
14 endure since the beginning of their time at USF was continuous and unrelenting, thereby violating
15 Title IX.

16 290. Coach G oversaw, participated in, and approved of this culture of harassment and
17 abuse in the baseball program.

18 291. The conduct was so extreme and outrageous that two Plaintiffs have been forced to
19 leave USF, at great personal and financial losses for each, including damage to their baseball
20 careers. Furthermore, USF has attempted to force the remaining Plaintiff to leave.

21 292. Coach G, as the head coach of the baseball program, had actual knowledge of the
22 harassment that was occurring, and indeed, condoned, approved, and participated in the
23 harassment.

24 293. The Athletic Director, who is in a position of oversight and control of USF's
25 baseball program including its coaching staff, had actual knowledge of the harassment that was
26 occurring.

27 294. Specifically, on May 30, 2021, John Doe 1's mother advised the AD in writing of
28 the "culture" of the baseball team that included "constant bullying, harassment and intimidation"

1 as well as “continuous stores of sexual misconduct by coach Naks” The AD ignored John
2 Doe 1’s mother’s email.

3 295. The AD is a Mandatory Reporter under the USF Title IX Policy and had a duty to
4 report the complaint to the USF Title IX Officer. Thus, the AD’s failure to report the complaint
5 was, itself, a violation of the USF Title IX Policy.

6 296. The AD also ignored an “URGENT MEETING REQUEST” from John Doe 2’s
7 parents on that same day, May 20, 2021.

8 297. The AD’s failures allowed the severe and pervasive harassment to continue
9 through the end of 2021.

10 298. The AD’s actions constituted deliberate indifference on the part of USF to the
11 harassment, and USF’s failure to respond to the complaint was clearly unreasonable in light of the
12 circumstances.

13 299. USF’s actions allowed the bullying, harassment, intimidation, and sexual
14 misconduct to continue.

15 300. As a direct and proximate result of USF’s actions and/or inactions, Plaintiffs and
16 the USF Baseball Subclass were damaged.

17 **COUNT II**

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

20 301. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

21 302. Retaliation against an individual for complaining of sex discrimination, including
22 sexual harassment, constitutes prohibited sex discrimination under Title IX.

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

26 304. At the time of the events in question, Plaintiffs were enrolled as undergraduate
27 students at USF.

28 305. The Athletic Director had actual knowledge of the harassment occurring in the

1 USF baseball program.

2 306. Specifically, on May 30, 2021, John Doe 1's mother advised the AD of the
3 "culture" of the baseball team that included "constant bullying, harassment and intimidation" as
4 well as "continuous stores of sexual misconduct by coach Naks...."

5 307. The AD ignored John Doe 1's mother, in violation of the USF Title IX Policy,
6 allowing the severe and pervasive harassment to continue through the end of 2021.

7 308. The AD also never responded to and ignored John Doe 2's parents' request for an
8 urgent in-person meeting.

9 309. Coach G, as the head coach of the baseball program, had actual knowledge of the
10 harassment that was occurring, and indeed, condoned, approved, and participated in the
11 harassment.

12 310. Coach G was also a witness to John Doe 1's Title IX Skit that occurred in October
13 or November of 2021. Yet Coach G never questioned John Doe 1 about the reasons underlying
14 the skit.

15 311. The retaliation included a relentless campaign to bully and demean each Plaintiff,
16 causing severe depression and anxiety in each, in an effort to cause them to leave USF and
17 damage to their baseball careers. By way of example only:

- 18 a. Not long after the Title IX Skit, each coach told John Doe 1 that he should
19 leave. Coach G told him that the relationship between the coaches and John
20 Doe 1 had become "toxic." They told him that by staying at USF, he was
21 being "very selfish."
- 22 b. Soon after, the AD contacted John Doe 1 and told him that she understood
23 he was going to enter the transfer portal to leave USF when he had no such
24 plans.
- 25 c. John Doe 1 was also excluded from a player's meeting, which John Doe 1
26 believes was intentional.
- 27 d. The baseball team's post about John Doe 1's 4.0 GPA was immediately
28 taken down, which John Doe 1 believes was done at Coach G's insistence.

- 1 e. The AD told John Doe 1 that she is standing behind Coach G's decision
2 not wanting John Doe 1 on the USF baseball team.
- 3 f. Despite John Doe 1 negotiating a promise from USF that he would not lose
4 his scholarship if he transferred, USF presented him with a transfer portal
5 document that said otherwise; John Doe 1 refused to sign it.
- 6 g. John Doe 2 was told that he was not liked and that he could not succeed on
7 the team. Coach G told him that he did not like his personality because he
8 was too nice.
- 9 h. John Doe 2 was excluded from the seating chart for an away game, and not
10 invited to a player's meeting, both of which John Doe 2 believes was
11 intentional.
- 12 i. John Doe 3 was similarly called names, such as liar and pussy, and berated
13 him in front of the team for "napping" when Coach G told him to leave
14 practice.
- 15 j. Coach G threatened to hit him John Doe 3 in the head with a bat.
- 16 k. John Doe 3 was mandated to take a blood draw drug test, for which he was
17 singled out.
- 18 l. Coach G told John Doe 3 that his scholarship was revoked, and when John
19 Doe 3 questioned the AD about USF's ability to do so in light of the
20 guarantee, Coach G said that his statement about revoking John Doe 3's
21 scholarship was a mistake.

22 312. All of the above are merely examples, and were part of a concerted action by USF,
23 including Coaches G and Naks, to isolate all Plaintiffs and bully them to force them to leave the
24 school and give up their scholarships and to ruin their baseball careers.

25 313. Such retaliation caused two out of the three plaintiffs to leave USF, at considerable
26 personal and financial expense to each, including damage to their baseball careers, and USF
27 continues to try to force the remaining Plaintiff to leave.

28 314. As a direct and proximate result of USF's actions and/or inactions, Plaintiffs and

1 the USF Baseball Subclass were damaged.

2 **COUNT III**

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

6 315. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

7 316. The USF Baseball Subclass brings this claim pursuant to California law.

8 317. At all times material since 2000 and until Coach Naks was removed in 2022, USF
9 employed Coach Naks and had the right to control Coach Naks and the manner and methods in
10 which he fulfilled his duties as an NCAA baseball coach.

11 318. At all times since 2000, the NCAA had the right to control Coach Naks and the
12 manner and methods in which he fulfilled his duties as an NCAA baseball coach.

13 319. At all times since 2000, Coach G had the right to control Coach Naks and the
14 manner and methods in which he fulfilled his duties as an NCAA baseball coach.

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

17 321. USF knew or should have known that Coach Naks was unfit or incompetent to
18 work directly with student-athletes and posed a particular risk of sexually harassing or mentally
19 abusing them, and that this unfitness created a particular risk to Plaintiffs and the USF Baseball
20 Subclass.

21 322. The NCAA knew or should have known that Coach Naks was unfit or incompetent
22 to work directly with student-athletes and posed a particular risk of sexually harassing or mentally
23 abusing them, and that this unfitness created a particular risk to Plaintiffs and the USF Baseball
24 Subclass.

25 323. Coach G knew or should have known that Coach Naks was unfit or incompetent to
26 work directly with student-athletes and posed a particular risk of sexually harassing or mentally
27 abusing them, and that this unfitness created a particular risk to Plaintiffs and the USF Baseball
28 Subclass.

324. Coach Naks' unfitness and particular risk to student-athletes on USF's baseball

1 team harmed Plaintiffs and the USF Baseball Subclass.

2 325. USF's negligence in supervising and/or retaining Coach Naks was a substantial
3 factor in causing harm to Plaintiffs and the USF Baseball Subclass.

4 326. The NCAA's negligence in supervising and/or retaining Coach Naks was a
5 substantial factor in causing harm to Plaintiffs and the USF Baseball Subclass.

6 327. Coach G's negligence in supervising and/or retaining Coach Naks was a
7 substantial factor in causing harm to Plaintiffs and the USF Baseball Subclass.

8 328. As a direct and proximate result of Defendants' actions and/or inactions, Plaintiffs
9 and the USF Baseball Subclass were damaged.

10 **COUNT IV**

11 **NEGLIGENT SUPERVISION AND RETENTION OF NINO GIARRATANO**
12 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST USF AND THE**
13 **NCAA)**

14 329. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

15 330. The USF Baseball Subclass brings this claim pursuant to California law.

16 331. At all times material since 1999, USF employed Coach G and had the right to
17 control Coach G and the manner and methods in which he fulfilled his duties as an NCAA
18 baseball coach.

19 332. At all times since 1999, the NCAA had the right to control Coach G and the
20 manner and methods in which he fulfilled his duties as an NCAA baseball coach.

21 333. Coach G was unfit or incompetent to work directly with student-athletes and posed
22 a particular risk of sexually harassing and mentally abusing them and/or allowing Coach Naks to
23 sexually harass and mentally abuse the student-athletes.

24 334. USF knew or should have known that Coach G was unfit or incompetent to work
25 directly with student-athletes and posed a particular risk of sexually harassing or mentally abusing
26 them, and that this unfitness created a particular risk to Plaintiffs and the USF Baseball Subclass.

27 335. USF knew or should have known that Coach G was protecting Coach Naks, and
28 facilitating Coach Naks' sexual harassment or mental abuse of student-athletes, and that Coach
Naks' unfitness created a particular risk to Plaintiffs and the USF Baseball Subclass.

1 was so reckless as to demonstrate a substantial lack of concern for whether an injury would result
2 to Plaintiffs.

3 360. Coach Naks' conduct in sexually harassing Plaintiffs in the course of his
4 employment, agency, and/or representation of USF and the NCAA under the guise of coaching
5 was so reckless as to demonstrate a substantial lack of concern for whether an injury would result
6 to Plaintiffs.

7 361. The NCAA and USF's conduct demonstrated a willful disregard for precautions to
8 ensure Plaintiffs' safety.

9 362. The NCAA and USF's conduct as described above demonstrated a willful
10 disregard for substantial risks to Plaintiffs and the USF Baseball Subclass.

11 363. The NCAA and USF breached duties owed to Plaintiffs and the USF Baseball
12 Subclass and were grossly negligent when they conducted themselves as described above, said
13 acts having been committed with reckless disregard for Plaintiffs and the USF Baseball Subclass'
14 health, safety, constitutional and/or statutory rights, and with a substantial lack of concern as to
15 whether an injury would result.

16 364. The NCAA and USF are liable and vicariously liable for the Coach Defendants'
17 conduct.

18 365. As a direct and/or proximate result of Defendants' actions and/or inactions,
19 Plaintiffs and the USF Baseball Subclass were damaged.

20 **COUNT VIII**

21 **NEGLIGENCE**

22 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA, USF, AND THE COACH DEFENDANTS)**

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

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

25 368. The NCAA, USF, Coach G, and Coach Naks owed Plaintiffs and the USF
26 Baseball Subclass a duty to use due care to ensure their safety and freedom from sexual
27 harassment or abuse while interacting with their employees, representatives, and/or agents,
28 including Coach G and Coach Naks.

1 369. Coach G and Coach Naks owed Plaintiffs a duty of due care in carrying out their
2 coaching responsibilities as employees, agents, and/or representatives of the NCAA and USF.

3 370. The Plaintiffs and the USF Baseball Subclass' acceptance of USF's offer to join
4 the baseball team, including seeking out coaching from Coach G and Coach Naks in the course of
5 their employment, agency, and/or representation of USF and the NCAA, created a special,
6 confidential, and fiduciary relationship between Plaintiffs and Coach G, and between Plaintiffs
7 and Coach Naks, resulting in Coach G and Coach Naks owing Plaintiffs a duty to use due care.

8 371. The NCAA and USF's negligence in supervising Coach G, especially after the
9 NCAA and USF knew or should have known of complaints regarding his sexual harassment and
10 abuse while coaching was a substantial factor in causing harm to Plaintiffs and the USF Baseball
11 Subclass.

12 372. The NCAA and USF's negligence in supervising Coach Naks, especially after the
13 NCAA and USF knew or should have known of complaints regarding his sexual harassment and
14 abuse while coaching was a substantial factor in causing harm to Plaintiffs and the USF Baseball
15 Subclass.

16 373. Coach G's negligent conduct in sexually harassing Plaintiffs in the course of his
17 employment, agency, and/or representation of USF and the NCAA under the guise of coaching
18 was a substantial factor in causing harm to Plaintiffs and the USF Baseball Subclass.

19 374. Coach Naks' negligent conduct in sexually harassing Plaintiffs in the course of his
20 employment, agency, and/or representation of USF and the NCAA under the guise of coaching
21 was a substantial factor in causing harm to Plaintiffs and the USF Baseball Subclass.

22 375. The NCAA and USF's conduct demonstrated a negligent disregard for precautions
23 to ensure Plaintiffs' safety.

24 376. The NCAA and USF's conduct as described above demonstrated a negligent
25 disregard for substantial risks to Plaintiffs and the USF Baseball Subclass.

26 377. The NCAA and USF breached duties owed to Plaintiffs and the USF Baseball
27 Subclass and were negligent when they conducted themselves as described above, said acts
28 having been committed with disregard for Plaintiffs and the USF Baseball Subclass' health,

1 safety, constitutional and/or statutory rights, and with a substantial lack of concern as to whether
2 an injury would result.

3 378. The NCAA and USF are liable and vicariously liable for the Coach Defendants'
4 conduct.

5 379. As a direct and/or proximate result of Defendants' actions and/or inactions,
6 Plaintiffs and the USF Baseball Subclass were damaged.

7 **COUNT IX**

8 **NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE**
9 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS**
10 **AGAINST THE NCAA AND USF)**

11 380. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

12 381. The USF Baseball Subclass brings this claim pursuant to California law.

13 382. The NCAA and USF owed Plaintiffs and the Class members a duty to take
14 reasonable protective measures to protect them and other student-athletes from the risk of sexual
15 harassment and abuse by the Coach Defendants by properly warning, training or educating
16 Plaintiffs and the Class members and others about how to avoid such a risk.

17 383. The NCAA and USF breached their duty to take reasonable protective measures to
18 protect Plaintiffs and other student-athletes from the risk of sexual harassment and abuse by the
19 Coach Defendants, such as the failure to properly warn, train or educate Plaintiffs and the Class
20 members and other student-athletes about how to avoid such a particular risk that the Coach
21 Defendants posed of sexual misconduct.

22 384. The NCAA and USF breached their duties to take reasonable protective measures
23 to protect Plaintiffs, Class members, and other student-athletes from the risk of sexual harassment
24 and abuse by the Coach Defendants, by failing to supervise and stop their employees, agents and
25 representatives, including the Coach Defendants, from committing wrongful harassment and
26 abuse of student-athletes, including Plaintiffs and Class members.

27 385. As a direct and/or proximate result of Defendants' actions and/or inactions,
28 Plaintiffs and Class members were damaged.

1 COUNT X

2 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
3 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA, USF,**
4 **AND THE COACH DEFENDANTS)**

4 386. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

5 387. The USF Baseball Subclass brings this claim pursuant to California law.

6 388. USF, Coach G, and Coach Naks' extreme and outrageous conduct intentionally or
7 recklessly caused severe emotional distress to Plaintiffs and the Subclass members.

8 389. USF, Coach G, and Coach Naks' outrageous conduct was not the type of ordinary
9 rude or obnoxious behavior that student-athletes should be expected to weather. Rather, USF,
10 Coach G, and Coach Naks' conduct exceeded all possible bounds of decency.

11 390. USF, Coach G and Coach Naks acted with intent or recklessness, knowing that the
12 student-athletes were likely to endure emotional distress.

13 391. Indeed, they used this distress to subdue and threaten the student-athletes, to force
14 them to leave USF, to force them to give up their scholarships, to force them into the NCAA
15 transfer portal, and to prevent them from complaining or suing based on their actions. They did so
16 with deliberate disregard as to the high possibility that severe emotional distress would occur.

17 392. USF and the Coach Defendants' conduct caused suffering for Plaintiffs and the
18 USF Baseball Subclass at levels that no reasonable person should have to endure.

19 393. The Coach Defendants' conduct was committed within the scope of their positions
20 as NCAA and USF coaches.

21 394. A causal nexus existed between (i) the Coach Defendants' recruitment and
22 grooming of student-athletes to participate in the NCAA and at USF; and (ii) their abuse of power
23 to coerce and harass those student-athletes.

24 395. Each act of harassment and abuse was foreseeable given, *inter alia*, the use of
25 NCAA and USF materials to lure the victims and the commission of the acts on the property of
26 NCAA member institutions or with the chattels of the NCAA or NCAA member institutions.

27 396. The Coach Defendants' conduct is not so unusual or startling that it would seem
28 unfair to include the loss resulting from it among other costs of the NCAA or USF's business.

1 Assaults in the context of NCAA and USF athletics by coaches and other athletics department
2 personnel are exactly why student-athletes would expect the NCAA and USF to take extra
3 precautions, or would expect the NCAA to require member institutions to implement extra
4 precautions, to ensure that they are protected from abuse by athletics department personnel.

5 397. Holding the NCAA and USF liable furthers the policy goals of *respondeat*
6 *superior*, including the prevention of future injuries and the assurance of compensation to victims,
7 given that Plaintiffs and the USF Baseball Subclass do not have separate remedies under Title VII
8 because they are not (currently) considered employees of the NCAA or USF, or under Title IX as
9 to the NCAA because the NCAA does not receive federal funding. The Coach Defendants'
10 conduct was committed within the scope of their positions as NCAA and USF coaches.

11 COUNT XI

12 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS** 13 **(PLAINTIFFS AND USF BASEBALL SUBCLASS AGAINST THE NCAA, USF, AND** 14 **THE COACH DEFENDANTS)**

14 398. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

15 399. The USF Baseball Subclass brings this claim pursuant to California law.

16 400. USF and the Coach Defendants' conduct negligently caused emotional distress to
17 Plaintiffs and the USF Baseball Subclass.

18 401. USF and the Coach Defendants could reasonably foresee that their actions would
19 have caused emotional distress to Plaintiffs and the USF Baseball Subclass.

20 402. Plaintiffs and the USF Baseball Subclass were in a specific zone of danger meeting
21 with the Coach Defendants and at risk of physical harm, causing their fear.

22 403. Plaintiffs and the USF Baseball Subclass, immediately or shortly after meeting
23 with the Coach Defendants, suffered distress and emotional harm.

24 404. The Coach Defendants' conduct was committed within the scope of their position
25 as NCAA and USF coaches.

26 405. A causal nexus existed between (i) the Coach Defendants' recruitment and
27 grooming of student-athletes to participate in the NCAA and at USF; and (ii) their abuse of power
28 to coerce and harass those student-athletes.

1 information so that the Coach Defendants could continue to work for the NCAA and its member
2 institutions.

3 414. Despite knowledge of the Coach Defendants' sexual misconduct by the NCAA,
4 USF, and/or their agents, no disciplinary action was taken and they were allowed to be alone with
5 student-athletes while on NCAA and USF business.

6 415. The NCAA and USF are thus responsible for the Coach Defendants' actions.

7 **COUNT XIII**

8 **BREACH OF FIDUCIARY DUTY**
9 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST THE NCAA)**

10 416. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

11 417. The USF Baseball Subclass brings this claim pursuant to California law.

12 418. The NCAA owed a fiduciary duty to Plaintiffs and the USF Baseball Subclass that
13 arose out of the special relationship founded upon trust and confidence between the NCAA and
14 its student-athletes. A fiduciary duty was formed because the NCAA actively promoted itself as
15 providing a safe and nurturing environment for its student-athletes, and intended that Plaintiffs
16 and the USF Baseball Subclass believe this to be true so as to participate in NCAA sports.

17 419. Plaintiffs and the USF Baseball Subclass believed and trusted the NCAA that its
18 member institutions would employ skilled, trained, competent, and ethical coaches and trainers in
19 connection with NCAA sports, who would carry out said coaching and training without sexual
20 assault, sexual, physical, and psychological abuse, and molestation.

21 420. Plaintiffs and the USF Baseball Subclass believed and trusted that the NCAA
22 would inform Plaintiffs and the public of any allegations and concerns relating to sexual
23 harassment, sexual, physical, and psychological abuse, and molestation committed by NCAA
24 coaches and trainers.

25 421. The NCAA owed Plaintiffs the highest duty to protect them and other student-
26 athletes from sexual predator coaches and trainers like the Coach Defendants.

27 422. The NCAA breached its fiduciary duty to Plaintiffs and the USF Baseball Subclass
28 by failing to protect them from sexual predators such as the Coach Defendants, and failing to

1 warn them regarding the same.

2 423. NCAA's breaches of its fiduciary duties were substantial contributing causes of
3 Plaintiffs' injuries and played a substantial part in bringing about the harm to Plaintiffs and the
4 USF Baseball Subclass.

5 424. As a direct and proximate result of NCAA's breaches of its fiduciary duties,
6 Plaintiffs suffered and continue to suffer from emotional distress, physical manifestations of
7 emotional distress, loss of self-esteem, fright, anxiety, grief, humiliation and loss of enjoyment of
8 life; were prevented and will continue to be prevented from performing their daily activities and
9 obtaining the full enjoyment of life; and have sustained financial losses including but not limited
10 to the amounts of tuition and costs-of-attendance paid because of loss of scholarship due to
11 NCAA's actions and inactions, as well as out-of-pocket costs for therapy, counseling, and
12 medication to address the mental anguish and despair caused by NCAA's actions.

13 425. Because Plaintiffs and the USF Baseball Subclass are at a continuing risk of harm,
14 Plaintiffs seek injunctive or equitable relief.

15 **COUNT XIV**

16 **NEGLIGENT MISREPRESENTATIONS AND OMISSIONS**
17 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST NCAA)**

18 426. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

19 427. The USF Baseball Subclass brings this claim pursuant to California law.

20 428. The NCAA negligently concealed facts and information which were material to
21 Plaintiffs and the USF Baseball Subclass. As more fully described above, the NCAA knew or
22 should have known that its actions or inactions in the area of gender equity, including with
23 respect to sexual harassment, sexual, physical, and psychological abuse, and molestation of its
24 student-athletes by coaches or trainers, would cause harm to Plaintiffs and the USF Baseball
25 Subclass.

26 429. The NCAA knew or should have known but negligently concealed the following
27 facts:

28 a. The power differential between coaches and trainers and student-athletes

1 exists and/or that certain coaching styles create a disparity of power, which
2 would make student-athletes vulnerable to coaches or trainers who take
3 advantage of the power differential for improper purposes, including sexual
4 harassment, physical, sexual, or psychological abuse, and molestation;

5 b. College athletics attracts sexual predators who secure jobs as coaches and
6 trainers at NCAA member institutions to have nearly unfettered access to
7 victims, which would make student-athletes vulnerable to such predators;
8 and

9 c. An extremely high incidence of marriages between coaches or trainers and
10 student-athletes/former student-athletes, which indicates the existence of
11 improper relationships between coaches and trainers and student-athletes,
12 making student-athletes vulnerable to such inappropriate relationships.

13 430. Through negligent concealment of material facts, the NCAA intended to induce a
14 false belief in its student-athletes that NCAA sports were safe from sexual relationships, abuse or
15 harassment by athletics department personnel, and that NCAA sports were a safe and nurturing
16 environment for student-athletes. It failed to provide Plaintiffs and other student-athletes with a
17 reasonably safe place for NCAA sports activities and interactions with coaches and trainers of
18 NCAA member institutions.

19 431. Plaintiffs justifiably relied on the misrepresentations. Plaintiffs and the USF
20 Baseball Subclass were lulled into a false sense of belief that NCAA member institutions
21 employed skilled, trained, competent, and ethical coaches and trainers in connection with NCAA
22 sports, who would carry out said coaching and training without sexual harassment, sexual,
23 physical, and psychological abuse, and molestation.

24 432. Plaintiffs could not have discovered the truth through a reasonable inquiry and/or
25 were prevented from doing so, because (1) the NCAA did not require nor encourage member
26 institutions to publicly or privately report sexual abuse or harassment by athletics department
27 personnel and thus fraudulently concealed the true nature and scope of the problem; (2) coaches
28 demand unquestioning loyalty, and the NCAA and member institutions knowingly empowered

1 the coaches with full discretion over the student-athlete's scholarship and, hence, academic and
2 athletic careers.

3 433. The concealed information was such that Plaintiffs would have acted differently,
4 including with respect to their college and coaching choices, had they been aware of all material
5 facts.

6 434. As a proximate cause of NCAA's concealment, Plaintiffs and the USF Baseball
7 Subclass suffered harm described above.

8 435. Because Plaintiffs and members of the USF Baseball Subclass are at a continuing
9 risk of harm, Plaintiffs seek injunctive or equitable relief.

10 **COUNT XV**

11 **BREACH OF CONTRACT**
12 **(PLAINTIFFS AND THE USF BASEBALL SUBCLASS AGAINST NCAA)**

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

14 437. The USF Baseball Subclass brings this claim pursuant to California law.

15 438. Each Plaintiff and class member entered into a contract with the NCAA. The
16 NCAA required that each student-athlete, prior to participation as an NCAA athlete, affirm in
17 writing that they read the NCAA regulations and the respective NCAA Division Manual, each of
18 which expressly encompasses the NCAA Constitution, Operating Bylaws, and Administrative
19 Bylaws (collectively "Manual"). The contract for Division I is called a Form 19-1a, and the most
20 recent version is attached as Exhibit A. Based upon information and belief, the NCAA and USF
21 have Plaintiffs' contracts.

22 439. The NCAA required that each student-athlete affirm in writing to having "read the
23 Summary of NCAA Regulations, or another outline or summary of NCAA legislation provided
24 by your director of athletics (or his or her designee) or read the bylaws of the NCAA Division I
25 Manual that address your eligibility. You are responsible for knowing and understanding the
26 application of all NCAA Division I bylaws related to your eligibility."

27 440. For its part, in the Manual, the NCAA promised the following for the student-
28 athletes' benefit:

- 1 a. “To initiate, stimulate and improve intercollegiate athletics programs for
2 student athletes” NCAA Const., Art.1, § 1.2(a);
- 3 b. “To uphold the principal of institutional control of, and responsibility for,
4 all intercollegiate sports in conformity with the constitution and bylaws of
5 this association,” NCAA Const., Art.1, § 1.2(b);
- 6 c. “To legislate, through bylaws or by resolutions of a Convention, upon any
7 subject of general concern to the members related to the administration of
8 intercollegiate athletics” NCAA Const., Art.1, § 1.2(h);
- 9 d. To conduct intercollegiate athletics programs “in a manner designed to
10 protect and enhance the physical and educational wellbeing of student-
11 athletes,” NCAA Const., Art. 2, § 2.2 (Revised: 11/21/05);
- 12 e. To require “each member institution to protect the health of, and provide a
13 safe environment for, each of its participating student-athletes,” NCAA
14 Const., Art. 2, § 2.2.3 (Adopted: 1/10/95);
- 15 f. To require “each member institution to establish and maintain an
16 environment that fosters a positive relationship between the student-athlete
17 and coach,” NCAA Const., Art. 2, § 2.2.4 (Adopted: 1/10/95);
- 18 g. To require that “each member institution to establish and maintain an
19 environment in which a student-athlete’s activities are conducted as an
20 integral part of the student-athlete’s educational experience,” NCAA
21 Const., Art. 2, § 2.2 (Adopted: 1/10/95); and
- 22 h. To “assist the institution in its efforts to achieve full compliance with all
23 rules and regulations and shall afford the institution, its staff and student-
24 athletes fair procedures in the consideration of an identified or alleged
25 failure in compliance,” NCAA Const., Art. 2, § 2.8.2.

26 441. For consideration in return for the NCAA’s undertakings, each student-athlete
27 agrees to abide by the Manual and any other NCAA rules, participates in an NCAA sport which
28 provides a benefit to the NCAA and its member institutions, and agrees to waive certain rights,

1 including the right to profit from participation.

2 442. The Manual thus constitutes a contract between the NCAA and Plaintiffs and the
3 Class members.

4 443. Plaintiffs have fulfilled their obligations under the contract by providing their
5 services as student-athletes in the NCAA.

6 444. The NCAA has breached its contractual obligations to Plaintiffs and the USF
7 Baseball Subclass by failing to:

- 8 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
9 athletics department personnel;
- 10 b. prohibit any 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 NCAA member institutions to immediately report any allegations
15 of sexual relationships, harassment, or abuse of a student-athlete by
16 athletics department personnel;
- 17 e. maintain about sexual relationships, harassment, or abuse of a student-
18 athlete by athletics department personnel all reports in a centralized
19 repository so that all complaints can be tracked by the NCAA and its
20 member institutions;
- 21 f. require that all reports of sexual relationships, harassment, or abuse of a
22 student-athlete by athletics department personnel be independently
23 investigated;
- 24 g. implement public sanctions on member institutions and athletics
25 department personnel where allegations of sexual relationships,
26 harassment, or abuse of a student-athlete by athletics department personnel
27 are substantiated;
- 28 h. ban athletics department personnel from working or volunteering for any

1 member institution where allegations of sexual relationships, harassment,
2 or abuse of a student-athlete by such athletics department personnel are
3 substantiated;

4 i. mandate training of athletics department personnel regarding grooming,
5 sexual relationships with student-athletes, sexual abuse and harassment, the
6 prohibition thereof, and reporting obligations;

7 j. mandate training of athletics department personnel and student-athletes to
8 recognize the signs of grooming and sexual abuse and harassment by
9 athletics department personnel, and to provide confidential avenues to
10 report the abuse;

11 k. protect Plaintiffs and members of the USF Baseball Subclass from such
12 abuse and other foreseeable risks; and

13 l. provide a safe environment for NCAA student-athletes free from sexual
14 abuse and/or sexual harassment.

15 445. As a direct result of those breaches, Plaintiffs and the USF Baseball Subclass have
16 suffered harm as described above, including but not limited to the amounts of tuition and costs-
17 of-attendance paid because of loss of scholarship due to NCAA's actions and inactions, as well as
18 out-of-pocket costs for therapy, counseling, and medication to address the mental anguish and
19 despair caused by NCAA's actions.

20 446. Because Plaintiffs and the USF Baseball Subclass are at a continuing risk of harm,
21 Plaintiffs seek injunctive or equitable relief.

22 **COUNT XVI**

23 **BREACH OF IMPLIED CONTRACT** 24 **(PLAINTIFFS AND THE USF SUBCLASS AGAINST NCAA)**

25 447. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

26 448. The USF Baseball Subclass brings this claim pursuant to California law.

27 449. To the extent an express contract does not exist, the facts and circumstances set
28 forth above establish an implied contract wherein student-athletes, in return for participation,

1 agreed to be bound by NCAA rules and expected the NCAA to provide appropriate rules and
2 regulations so as to protect their health and safety to the extent possible.

3 450. The NCAA has breached its contractual obligations to Plaintiffs and the USF
4 Baseball Subclass by failing to:

- 5 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
6 athletics department personnel;
- 7 b. prohibit any romantic or sexual relationships between athletics department
8 personnel and student-athletes;
- 9 c. prohibit grooming and other sexually-exploitative behavior by athletics
10 department personnel of student-athletes;
- 11 d. require NCAA member institutions to immediately report any allegations
12 of sexual relationships, harassment, or abuse of a student-athlete by
13 athletics department personnel;
- 14 e. maintain all reports complaints about sexual relationships, harassment, or
15 abuse of a student-athlete by athletics department personnel in a centralized
16 repository so that all can be tracked by the NCAA and its member
17 institutions;
- 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 member institutions and athletics
22 department personnel where allegations of sexual relationships,
23 harassment, or abuse of a student-athlete by athletics department personnel
24 are substantiated;
- 25 h. ban athletics department personnel from working or volunteering for any
26 member institution where allegations of sexual relationships, harassment,
27 or abuse of a student-athlete by such athletics department personnel are
28 substantiated;

- 1 i. mandate training of athletics department personnel regarding grooming,
2 sexual relationships with student-athletes, sexual abuse and harassment, the
3 prohibition thereof, and reporting obligations;
- 4 j. mandate training of athletics department personnel and student-athletes to
5 recognize the signs of grooming and sexual abuse and harassment by
6 athletics department personnel, and to provide confidential avenues to
7 report the abuse;
- 8 k. protect Plaintiffs and members of the USF Baseball Subclass from such
9 abuse and other foreseeable risks; and
- 10 l. provide a safe environment for NCAA student-athletes free from sexual
11 abuse and/or sexual harassment.

12 451. As a direct result of those breaches, Plaintiffs and the USF Baseball Subclass have
13 suffered harm described above, including but not limited to the amounts of tuition and costs-of-
14 attendance paid because of loss of scholarship due to NCAA's actions and inactions, as well as
15 out-of-pocket costs for therapy, counseling, and medication to address the mental anguish and
16 despair caused by NCAA's actions.

17 452. Because Plaintiffs and the USF Baseball Subclass re at a continuing risk of harm,
18 Plaintiffs seek injunctive or equitable relief.

19 **COUNT XVII**

20 **BREACH OF CONTRACT AS THIRD-PARTY BENEFICIARIES**
21 **(PLAINTIFFS AND THE USF SUBCLASS AGAINST THE NCAA)**

22 453. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

23 454. The USF Baseball Subclass brings this claim pursuant to California law.

24 455. To the extent the Court finds no contract exists, either express or implied, between
25 Plaintiffs and the USF Baseball Subclass and the NCAA, then the NCAA and its member
26 institutions were parties to a contract. As an express condition of their membership in the NCAA,
27 each institution must agree to abide by the respective NCAA Division Manual, each of which
28 expressly encompasses the NCAA Constitution, Operating Bylaws, and Administrative Bylaws

1 (collectively “Manual”). The Manual thus constitutes a contract between the NCAA and its
2 member institutions.

3 456. Plaintiffs and the USF Baseball Subclass are third-party beneficiaries of the
4 contract between the NCAA and its members because the parties to the contract intended to
5 benefit the student-athletes.

6 457. In the Manual, the NCAA promises the following for the student-athlete’s benefit:

- 7 a. “to initiate, stimulate and improve intercollegiate athletics programs for
8 student athletes . . . ,” NCAA Const., Art.1, § 1.2(a);
- 9 b. “to uphold the principal of institutional control of, and responsibility for,
10 all intercollegiate sports in conformity with the constitution and bylaws of
11 this association,” NCAA Const., Art.1, § 1.2(b);
- 12 c. to conduct intercollegiate athletics programs “in a manner designed to
13 protect and enhance the physical and educational wellbeing of student-
14 athletes,” NCAA Const., Art. 2, § 2.2 (Revised: 11/21/05);
- 15 d. to require “each member institution to protect the health of, and provide a
16 safe environment for, each of its participating student-athletes,” NCAA
17 Const., Art. 2, § 2.2.3 (Adopted: 1/10/95);
- 18 e. to require “each member institution to establish and maintain an
19 environment that fosters a positive relationship between the student-athlete
20 and coach,” NCAA Const., Art. 2, § 2.2.4 (Adopted: 1/10/95);
- 21 f. to require that “each member institution to establish and maintain an
22 environment in which a student-athlete’s activities are conducted as an
23 integral part of the student-athlete’s educational experience,” NCAA
24 Const., Art. 2, § 2.2 (Adopted: 1/10/95);
- 25 g. to “assist the institution in its efforts to achieve full compliance with all
26 rules and regulations and shall afford the institution, its staff and student-
27 athletes fair procedures in the consideration of an identified or alleged
28 failure in compliance,” NCAA Const., Art. 2, § 2.8.2.

1 458. The NCAA has breached its contractual obligations to Plaintiffs and the USF
2 Baseball 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 about sexual relationships, harassment, or abuse of a
13 student-athlete by athletics department personnel in a centralized repository
14 so that all complaints can be tracked by the NCAA and its member
15 institutions;
- 16 f. require that all reports of sexual relationships, harassment, or abuse of a
17 student-athlete by athletics department personnel be independently
18 investigated;
- 19 g. implement public sanctions on member institutions and athletics
20 department personnel where allegations of sexual relationships,
21 harassment, or abuse of a student-athlete by athletics department personnel
22 are substantiated;
- 23 h. ban athletics department personnel from working or volunteering for any
24 member institution where allegations of sexual relationships, harassment,
25 or abuse of a student-athlete by such athletics department personnel are
26 substantiated;
- 27 i. mandate training of athletics department personnel regarding grooming,
28 sexual relationships with student-athletes, sexual abuse and harassment, the

- 1 prohibition thereof, and reporting obligations;
- 2 j. mandate training of athletics department personnel and student-athletes to
- 3 recognize the signs of grooming and sexual abuse and harassment by
- 4 athletics department personnel, and to provide confidential avenues to
- 5 report the abuse;
- 6 k. protect Plaintiffs and members of the USF Baseball Subclass from such
- 7 abuse and other foreseeable risks; and
- 8 l. provide a safe environment for NCAA student-athletes free from sexual
- 9 abuse and/or sexual harassment.

10 459. As a direct result of those breaches, Plaintiffs and the USF Baseball Subclass have
11 suffered harm described above, including but not limited to the amounts of tuition and costs-of-
12 attendance paid because of loss of scholarship due to NCAA's actions and inactions, as well as
13 out-of-pocket costs for therapy, counseling, and medication to address the mental anguish and
14 despair caused by NCAA's actions.

15 460. Because Plaintiffs and the USF Baseball Subclass are at a continuing risk of harm,
16 Plaintiffs seek injunctive or equitable relief.

17 **VIII. CLAIMS AGAINST THE NCAA ON BEHALF OF THE NATIONWIDE CLASS**
18 **AND CALIFORNIA SUBCLASS**

19 **COUNT XVIII**

20 **GROSS NEGLIGENCE**
21 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND THE CALIFORNIA SUBCLASS**
22 **AGAINST THE NCAA)**

22 461. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

23 462. The Nationwide Class brings this claim pursuant to Indiana law.

24 463. The California Subclass brings this claim pursuant to California law.

25 464. At all relevant times, the NCAA owed a duty to Plaintiffs, the Nationwide Class,
26 and the California Subclass to implement and enforce rules and bylaws to, *inter alia*:

- 27 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
- 28 athletics department personnel;

- 1 b. prohibit grooming and other sexually-exploitative behavior by athletics
2 department personnel of student-athletes;
- 3 c. require NCAA member institutions to immediately report any allegations
4 of sexual harassment, or abuse of a student-athletes by athletics department
5 personnel;
- 6 d. maintain all reports about sexual harassment or abuse of a student-athlete
7 by athletics department personnel in a centralized repository so that all
8 complaints can be tracked by the NCAA and its member institutions;
- 9 e. require that all reports of sexual harassment or abuse of a student-athlete by
10 athletics department personnel be independently investigated;
- 11 f. implement public sanctions on member institutions and athletics
12 department personnel where allegations of sexual harassment or abuse of a
13 student-athlete by athletics department personnel are substantiated;
- 14 g. ban athletics department personnel from working or volunteering for any
15 member institution where allegations of sexual harassment, or abuse of a
16 student-athlete by such athletics department personnel are substantiated;
- 17 h. mandate training of athletics department personnel regarding grooming,
18 sexual abuse and harassment, the prohibition thereof, and reporting
19 obligations;
- 20 i. mandate training of athletics department personnel and student-athletes to
21 recognize the signs of grooming and sexual abuse and harassment by
22 athletics department personnel, and to provide confidential avenues to
23 report the abuse;
- 24 j. protect Plaintiffs, the Nationwide Class, and the California Subclass from
25 such abuse and other foreseeable risks;
- 26 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
27 coercion to leave their teams, enter the NCAA transfer portal, and/or
28 forego their scholarships without an independent ombudsman and advocate

- 1 for the student-athletes; and
- 2 1. provide a safe environment for NCAA student-athletes free from sexual
- 3 abuse and harassment.
- 4 2. The NCAA's duty arose from the following:
- 5 a. The NCAA's Constitution and Bylaws, which, among other things,
- 6 establish a duty to protect the health and well-being of NCAA student-
- 7 athletes, including in the areas of health and safety and in gender equity,
- 8 which includes student-athlete/coach relationships;
- 9 b. The NCAA's website, which establishes a duty to exercise reasonable care
- 10 concerning the health and well-being of its student-athletes in connection
- 11 with its sports; and
- 12 c. The NCAA's positioning of itself as the exclusive authority in
- 13 intercollegiate athletics to preserve its goal of preserving amateurism.

14 465. The NCAA acted recklessly and indifferently in its position as the regulatory body

15 for college athletics among its members institutions and its student-athletes, including Plaintiffs,

16 the Nationwide Class, and the California Subclass.

17 466. The NCAA knew or should have known that its actions or inactions in the area of

18 gender equity with respect to sexual abuse and harassment by athletics department personnel of

19 student-athletes created an unreasonable risk of harm to Plaintiffs, the Nationwide Class, and the

20 California Subclass, such that the risk was so great that it was highly probable that the harm

21 would result.

22 467. The NCAA has been aware of the issue for years, and has ignored previous calls

23 by eight United States senators and its own study commission to fix the problem. In fact, the

24 NCAA disbanded the NCAA study group called the Commission to Combat Campus Sexual

25 Violence in 2018, promising only to continue to "monitor and track on sexual violence issues."

26 468. The NCAA knew or should have known that the power differential between

27 coaches, trainers and other athletics department personnel on the one hand, and student-athletes

28 on the other, so favors the athletics department personnel that student-athletes cannot effectively

1 protect themselves from inappropriate conduct or from retaliation. Moreover, this disparity of
2 power negates any purported consent by the student-athlete when confronted by inappropriate
3 conduct or retaliation.

4 469. The NCAA thus owed its student-athletes a duty to protect them from the
5 foreseeable risk of coaches or trainers who take advantage of the power differential for improper
6 purposes.

7 470. The NCAA knew or should have known that college athletics attracts sexual
8 predators who secure jobs as coaches and trainers at NCAA member institutions to have nearly
9 unfettered access to victims, and so owed its student-athletes a duty to protect them from the
10 foreseeable risk of such coaches or trainers.

11 471. Plaintiffs had a reasonable expectation that the NCAA would require its member
12 institutions to employ (and the member institutions would employ) skilled, trained, competent,
13 and ethical coaches and trainers in connection with NCAA sports, who would carry out said
14 coaching and training without sexual harassment, sexual, physical, and psychological abuse, and
15 molestation.

16 472. Plaintiffs also had a reasonable expectation that the NCAA would inform Plaintiffs
17 and the public of sexual harassment, sexual, physical, and psychological abuse, and molestation
18 committed by NCAA coaches and trainers.

19 473. The NCAA willfully disregarded precautions that would reasonably protect
20 Plaintiffs, the Nationwide Class, and the California Subclass and their safety and well-being in
21 the following, including but not limited to by failing to:

- 22 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
23 athletics department personnel;
- 24 b. prohibit sexual and romantic relationships between student-athletes and
25 athletics department personnel;
- 26 c. prohibit grooming and other sexually-exploitative behavior by athletics
27 department personnel of student-athletes;
- 28 d. require NCAA member institutions to immediately report any allegations

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- of sexual harassment, or abuse of a student-athletes by athletics department personnel;
- e. maintain all reports about sexual harassment or abuse of a student-athlete by athletics department in a centralized repository so that all complaints can be tracked by the NCAA and its member institutions;
- f. require that all reports of sexual 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 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 harassment, or abuse of a student-athlete by such athletics department personnel are substantiated;
- i. mandate training of athletics department personnel regarding grooming, 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. protect Plaintiffs, the Nationwide Class, and the California Subclass from such abuse and other foreseeable risks;
- l. protect Plaintiffs, the Nationwide Class, and the California Subclass from coercion to leave their teams, enter the NCAA transfer portal, and/or forego their scholarships without an independent ombudsman and advocate for the student-athletes; and
- m. provide a safe environment for NCAA student-athletes free from sexual abuse and harassment.

- 1 f. implement public sanctions on member institutions and athletics
2 department personnel where allegations of sexual harassment or abuse of a
3 student-athlete by athletics department personnel are substantiated;
- 4 g. ban athletics department personnel from working or volunteering for any
5 member institution where allegations of sexual harassment, or abuse of a
6 student-athlete by such athletics department personnel are substantiated;
- 7 h. mandate training of athletics department personnel regarding grooming,
8 sexual abuse and harassment, the prohibition thereof, and reporting
9 obligations;
- 10 i. mandate training of athletics department personnel and student-athletes to
11 recognize the signs of grooming and sexual abuse and harassment by
12 athletics department personnel, and to provide confidential avenues to
13 report the abuse;
- 14 j. protect Plaintiffs, the Nationwide Class, and the California Subclass from
15 such abuse and other foreseeable risks;
- 16 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
17 coercion to leave their teams, enter the NCAA transfer portal, and/or
18 forego their scholarships without an independent ombudsman and advocate
19 for the student-athletes; and
- 20 l. provide a safe environment for NCAA student-athletes free from sexual
21 abuse and harassment.

22 481. The NCAA's duty arose from the following:

- 23 a. The NCAA's Constitution and Bylaws, which, among other things,
24 establish a duty to protect the health and well-being of NCAA student-
25 athletes, including in the areas of health and safety and in gender equity,
26 which includes student-athlete/coach relationships;
- 27 b. The NCAA's website, which establishes a duty to exercise reasonable care
28 concerning the health and well-being of its student-athletes in connection

1 with its sports;

2 c. The NCAA's positioning of itself as the exclusive authority in
3 intercollegiate athletics to preserve its goal of preserving amateurism.

4 482. The NCAA acted negligently, carelessly, and indifferently in its position as the
5 regulatory body for college athletics among its members' institutions and its student-athletes,
6 including Plaintiffs, the Nationwide Class, and the California Subclass.

7 483. The NCAA knew or should have known that its actions or inactions in the area of
8 gender equity with respect to sexual abuse and harassment by athletics department personnel of
9 student-athletes created an unreasonable risk of harm to Plaintiffs, the Nationwide Class, and the
10 California Subclass, such that the risk was so great that it was highly probable that the harm
11 would result.

12 484. The NCAA has been aware of the issue for years, and has ignored previous calls
13 by eight United States senators and its own study commission to fix the problem. In fact, the
14 NCAA disbanded the NCAA study group called the Commission to Combat Campus Sexual
15 Violence in 2018, promising only to continue to "monitor and track on sexual violence issues."

16 485. The NCAA knew or should have known that the power differential between
17 coaches, trainers and other athletics department personnel on the one hand, and student-athletes
18 on the other hand, so favors the athletics department personnel that student-athletes cannot
19 effectively protect themselves from inappropriate conduct. Moreover, this disparity of power
20 negates any purported consent by the student-athlete when confronted by inappropriate conduct.

21 486. The NCAA thus owed its student-athletes a duty to protect them from the
22 foreseeable risk of coaches or trainers who take advantage of the power differential for improper
23 purposes.

24 487. The NCAA knew or should have known that college athletics attracts sexual
25 predators who secure jobs as coaches and trainers at NCAA member institutions to have nearly
26 unfettered access to victims, and so owed its student-athletes a duty to protect them from the
27 foreseeable risk of such coaches or trainers.

28 488. Plaintiffs had a reasonable expectation that the NCAA would require its member

1 institutions to employ (and the member institutions would employ) skilled, trained, competent,
2 and ethical coaches and trainers in connection with NCAA sports, who would carry out said
3 coaching and training without sexual harassment, sexual, physical, and psychological abuse, and
4 molestation.

5 489. Plaintiffs also had a reasonable expectation that the NCAA would inform Plaintiffs
6 and the public of sexual harassment, sexual, physical, and psychological abuse, and molestation
7 committed by NCAA coaches and trainers.

8 490. The NCAA willfully disregarded precautions that would reasonably protect
9 Plaintiffs, the Nationwide Class, and the California Subclass and their safety and well-being in
10 the following, including but not limited to by failing to:

- 11 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
12 athletics department personnel;
- 13 b. prohibit grooming and other sexually-exploitative behavior by athletics
14 department personnel of student-athletes;
- 15 c. require NCAA member institutions to immediately report any allegations
16 of sexual harassment, or abuse of a student-athletes by athletics department
17 personnel;
- 18 d. maintain all reports about sexual harassment or abuse of a student-athlete
19 by athletics department personnel in a centralized repository so that all
20 complaints can be tracked by the NCAA and its member institutions;
- 21 e. require that all reports of sexual harassment or abuse of a student-athlete by
22 athletics department personnel be independently investigated;
- 23 f. implement public sanctions on member institutions and athletics
24 department personnel where allegations of sexual harassment or abuse of a
25 student-athlete by athletics department personnel are substantiated;
- 26 g. ban athletics department personnel from working or volunteering for any
27 member institution where allegations of sexual harassment, or abuse of a
28 student-athlete by such athletics department personnel are substantiated;

- 1 h. mandate training of athletics department personnel regarding grooming,
2 sexual abuse and harassment, the prohibition thereof, and reporting
3 obligations.;
- 4 i. mandate training of athletics department personnel and student-athletes to
5 recognize the signs of grooming and sexual abuse and harassment by
6 athletics department personnel, and to provide confidential avenues to
7 report the abuse;
- 8 j. protect Plaintiffs, the Nationwide Class, and the California Subclass from
9 such abuse and other foreseeable risks;
- 10 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
11 coercion to leave their teams, enter the NCAA transfer portal, and/or
12 forego their scholarships without an independent ombudsman and advocate
13 for the student-athletes; and
- 14 l. provide a safe environment for NCAA student-athletes free from sexual
15 abuse and harassment.

16 491. The NCAA's conduct described above demonstrated a negligent disregard for
17 substantial risks to Plaintiffs, the Nationwide Class, and the California Subclass.

18 492. The NCAA's negligent conduct exhibited a disregard for necessary precautions to
19 reasonably protect Plaintiffs, the Nationwide Class, and the California Subclass, which was a
20 substantial contributing cause of Plaintiffs' sexual and psychological abuse, and molestation.

21 493. Because Plaintiffs, the Nationwide Class, and the California Subclass are at a
22 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

23 **COUNT XX**

24 **BREACH OF FIDUCIARY DUTY**
25 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND THE CALIFORNIA SUBCLASS**
AGAINST THE NCAA)

26 494. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

27 495. The Nationwide Class brings this claim pursuant to Indiana law.

28 496. The California Subclass brings this claim pursuant to California law.

1 506. The California Subclass brings this claim pursuant to California law.

2 507. The NCAA negligently concealed facts and information which were material to
3 Plaintiffs, the Nationwide Class, and the California Subclass. As more fully described above, the
4 NCAA knew or should have known that its actions or inactions in the area of gender equity,
5 including with respect to sexual harassment, sexual, physical, and psychological abuse, and
6 molestation of its student-athletes by coaches or trainers, would cause harm to Plaintiffs, the
7 Nationwide Class, and the California Subclass.

8 508. The NCAA knew or should have known but negligently concealed the following
9 facts:

- 10 a. The power differential between coaches and trainers and student-athletes
11 exists and/or that certain coaching styles create a disparity of power, which
12 would make student-athletes vulnerable to coaches or trainers who take
13 advantage of the power differential for improper purposes, including sexual
14 harassment, physical, sexual, or psychological abuse, and molestation;
- 15 b. College athletics attracts sexual predators who secure jobs as coaches and
16 trainers at NCAA member institutions to have nearly unfettered access to
17 victims, which would make student-athletes vulnerable to such predators;
18 and
- 19 c. An extremely high incidence of marriages between coaches or trainers and
20 student-athletes/former student-athletes, which indicates the existence of
21 improper relationships between coaches and trainers and student-athletes,
22 making student-athletes vulnerable to such inappropriate relationships.

23 509. Through negligent concealment of material facts, the NCAA intended to induce a
24 false belief in its student-athletes that NCAA sports were safe from sexual relationships, abuse or
25 harassment by athletics department personnel, and that NCAA sports were a safe and nurturing
26 environment for student-athletes. It failed to provide Plaintiffs and other student-athletes with a
27 reasonably safe place for NCAA sports activities and interactions with coaches and trainers of
28 NCAA member institutions.

1 which expressly encompasses the NCAA Constitution, Operating Bylaws, and Administrative
2 Bylaws (collectively “Manual”). The contract for Division I is called a Form 19-1a, and the most
3 recent version is attached as Exhibit A. Based upon information and belief, the NCAA and USF
4 have Plaintiffs’ contracts.

5 519. The NCAA required that each student-athlete affirm in writing to having “read the
6 Summary of NCAA Regulations, or another outline or summary of NCAA legislation provided
7 by your director of athletics (or his or her designee) or read the bylaws of the NCAA Division I
8 Manual that address your eligibility. You are responsible for knowing and understanding the
9 application of all NCAA Division I bylaws related to your eligibility.”

10 520. For its part, in the Manual, the NCAA promised the following for the student-
11 athletes’ benefit:

- 12 a. “To initiate, stimulate and improve intercollegiate athletics programs for
13 student athletes” NCAA Const., Art.1, § 1.2(a);
- 14 b. “To uphold the principal of institutional control of, and responsibility for,
15 all intercollegiate sports in conformity with the constitution and bylaws of
16 this association,” NCAA Const., Art.1, § 1.2(b);
- 17 c. “To legislate, through bylaws or by resolutions of a Convention, upon any
18 subject of general concern to the members related to the administration of
19 intercollegiate athletics” NCAA Const., Art.1, § 1.2(h);
- 20 d. To conduct intercollegiate athletics programs “in a manner designed to
21 protect and enhance the physical and educational wellbeing of student-
22 athletes,” NCAA Const., Art. 2, § 2.2 (Revised: 11/21/05);
- 23 e. To require “each member institution to protect the health of, and provide a
24 safe environment for, each of its participating student-athletes,” NCAA
25 Const., Art. 2, § 2.2.3 (Adopted: 1/10/95);
- 26 f. To require “each member institution to establish and maintain an
27 environment that fosters a positive relationship between the student-athlete
28 and coach,” NCAA Const., Art. 2, § 2.2.4 (Adopted: 1/10/95);

- 1 g. To require that “each member institution to establish and maintain an
2 environment in which a student-athlete’s activities are conducted as an
3 integral part of the student-athlete’s educational experience,” NCAA
4 Const., Art. 2, § 2.2 (Adopted: 1/10/95); and
- 5 h. To “assist the institution in its efforts to achieve full compliance with all
6 rules and regulations and shall afford the institution, its staff and student-
7 athletes fair procedures in the consideration of an identified or alleged
8 failure in compliance,” NCAA Const., Art. 2, § 2.8.2.

9 521. For consideration in return for the NCAA’s undertakings, each student-athlete
10 agrees to abide by the Manual and any other NCAA rules, participates in an NCAA sport which
11 provides a benefit to the NCAA and its member institutions, and agrees to waive certain rights,
12 including the right to profit from participation.

13 522. The Manual thus constitutes a contract between the NCAA and Plaintiffs, the
14 Nationwide Class, and the California Subclass.

15 523. Plaintiffs have fulfilled their obligations under the contract by providing their
16 services as student-athletes in the NCAA.

17 524. The NCAA has breached its contractual obligations to Plaintiffs, the Nationwide
18 Class, and the California Subclass by failing to:

- 19 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
20 athletics department personnel;
- 21 b. prohibit any romantic or sexual relationships between athletics department
22 personnel and student-athletes;
- 23 c. prohibit grooming and other sexually-exploitative behavior by athletics
24 department personnel of student-athletes;
- 25 d. require NCAA member institutions to immediately report any allegations
26 of sexual relationships, harassment, or abuse of a student-athlete by
27 athletics department personnel;
- 28 e. maintain about sexual relationships, harassment, or abuse of a student-

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athlete by athletics department personnel all reports in a centralized repository so that all complaints 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. protect Plaintiffs, the Nationwide Class, and the California Subclass from such abuse and other foreseeable risks; and
- l. provide a safe environment for NCAA student-athletes free from sexual abuse and/or sexual harassment.

525. As a direct result of those breaches, Plaintiffs, the Nationwide Class, and the California Subclass have suffered harm as described above.

526. Because Plaintiffs, the Nationwide Class, and the California Subclass are at a

1 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

2 **COUNT XXIII**

3 **BREACH OF IMPLIED CONTRACT**
4 **(PLAINTIFFS, THE NATIONWIDE CLASS, AND**
5 **CALIFORNIA SUBCLASS AGAINST NCAA)**

6 527. Plaintiffs incorporate by reference all prior paragraphs as if set forth in full herein.

7 528. The Nationwide Class brings this claim pursuant to Indiana law.

8 529. The California Subclass brings this claim pursuant to California law.

9 530. To the extent an express contract does not exist, the facts and circumstances set
10 forth above establish an implied contract wherein student-athletes, in return for participation,
11 agreed to be bound by NCAA rules and expected the NCAA to provide appropriate rules and
12 regulations so as to protect their health and safety to the extent possible.

13 531. The NCAA has breached its contractual obligations to Plaintiffs, the Nationwide
14 Class, and the California Subclass by failing to:

- 15 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
16 athletics department personnel;
- 17 b. prohibit any romantic or sexual relationships between athletics department
18 personnel and student-athletes;
- 19 c. prohibit grooming and other sexually-exploitative behavior by athletics
20 department personnel of student-athletes;
- 21 d. require NCAA member institutions to immediately report any allegations
22 of sexual relationships, harassment, or abuse of a student-athlete by
23 athletics department personnel;
- 24 e. maintain all reports complaints about sexual relationships, harassment, or
25 abuse of a student-athlete by athletics department personnel in a centralized
26 repository so that all can be tracked by the NCAA and its member
27 institutions;
- 28 f. require that all reports of sexual relationships, harassment, or abuse of a
student-athlete by athletics department personnel be independently

- 1 investigated;
- 2 g. implement public sanctions on member institutions and athletics
- 3 department personnel where allegations of sexual relationships,
- 4 harassment, or abuse of a student-athlete by athletics department personnel
- 5 are substantiated;
- 6 h. ban athletics department personnel from working or volunteering for any
- 7 member institution where allegations of sexual relationships, harassment,
- 8 or abuse of a student-athlete by such athletics department personnel are
- 9 substantiated;
- 10 i. mandate training of athletics department personnel regarding grooming,
- 11 sexual relationships with student-athletes, sexual abuse and harassment, the
- 12 prohibition thereof, and reporting 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; and
- 19 l. provide a safe environment for NCAA student-athletes free from sexual
- 20 abuse and/or sexual harassment.

21 532. As a direct result of those breaches, Plaintiffs, the Nationwide Class, and the

22 California Subclass have suffered harm described above.

23 533. Because Plaintiffs, the Nationwide Class, and the California Subclass are at a

24 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

25 **COUNT XXIV**

26 **BREACH OF CONTRACT AS THIRD-PARTY BENEFICIARIES**

27 **(PLAINTIFFS, THE NATIONWIDE CLASS,**

28 **AND CALIFORNIA SUBCLASS AGAINST THE NCAA)**

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

1 535. The Nationwide Class brings this claim pursuant to Indiana law.

2 536. The California Subclass brings this claim pursuant to California law.

3 537. To the extent the Court finds no contract exists, either express or implied, between
4 Plaintiffs, the Nationwide Class, and the California Subclass and the NCAA, then the NCAA and
5 its member institutions were parties to a contract. As an express condition of their membership in
6 the NCAA, each institution must agree to abide by the respective NCAA Division Manual, each
7 of which expressly encompasses the NCAA Constitution, Operating Bylaws, and Administrative
8 Bylaws (collectively, the “Manual”). The Manual thus constitutes a contract between the NCAA
9 and its member institutions.

10 538. Plaintiffs, the Nationwide Class, and the California Subclass are third-party
11 beneficiaries of the contract between the NCAA and its members because the parties to the
12 contract intended to benefit the student-athletes.

13 539. In the Manual, the NCAA promises the following for the student-athlete’s benefit:

- 14 a. “to initiate, stimulate and improve intercollegiate athletics programs for
15 student athletes . . . ,” NCAA Const., Art.1, § 1.2(a);
- 16 b. “to uphold the principal of institutional control of, and responsibility for,
17 all intercollegiate sports in conformity with the constitution and bylaws of
18 this association,” NCAA Const., Art.1, § 1.2(b);
- 19 c. to conduct intercollegiate athletics programs “in a manner designed to
20 protect and enhance the physical and educational wellbeing of student-
21 athletes,” NCAA Const., Art. 2, § 2.2 (Revised: 11/21/05);
- 22 d. to require “each member institution to protect the health of, and provide a
23 safe environment for, each of its participating student-athletes,” NCAA
24 Const., Art. 2, § 2.2.3 (Adopted: 1/10/95);
- 25 e. to require “each member institution to establish and maintain an
26 environment that fosters a positive relationship between the student-athlete
27 and coach,” NCAA Const., Art. 2, § 2.2.4 (Adopted: 1/10/95);
- 28 f. to require that “each member institution to establish and maintain an

1 environment in which a student-athlete's activities are conducted as an
2 integral part of the student-athlete's educational experience," NCAA
3 Const., Art. 2, § 2.2 (Adopted: 1/10/95);

- 4 g. to "assist the institution in its efforts to achieve full compliance with all
5 rules and regulations and shall afford the institution, its staff and student-
6 athletes fair procedures in the consideration of an identified or alleged
7 failure in compliance," NCAA Const., Art. 2, § 2.8.2.

8 540. The NCAA has breached its contractual obligations to Plaintiffs, the Nationwide
9 Class, and the California Subclass by failing to:

- 10 a. prohibit sexual harassment and/or sexual abuse of student-athletes by
11 athletics department personnel;
- 12 b. prohibit any romantic or sexual relationships between athletics department
13 personnel and student-athletes;
- 14 c. prohibit grooming and other sexually-exploitative behavior by athletics
15 department personnel of student-athletes;
- 16 d. require NCAA member institutions to immediately report any allegations
17 of sexual relationships, harassment, or abuse of a student-athlete by
18 athletics department personnel;
- 19 e. maintain all reports about sexual relationships, harassment, or abuse of a
20 student-athlete by athletics department personnel in a centralized repository
21 so that all complaints can be tracked by the NCAA and its member
22 institutions;
- 23 f. require that all reports of sexual relationships, harassment, or abuse of a
24 student-athlete by athletics department personnel be independently
25 investigated;
- 26 g. implement public sanctions on member institutions and athletics
27 department personnel where allegations of sexual relationships,
28 harassment, or abuse of a student-athlete by athletics department personnel

- 1 are substantiated;
- 2 h. ban athletics department personnel from working or volunteering for any
- 3 member institution where allegations of sexual relationships, harassment,
- 4 or abuse of a student-athlete by such athletics department personnel are
- 5 substantiated;
- 6 i. mandate training of athletics department personnel regarding grooming,
- 7 sexual relationships with student-athletes, sexual abuse and harassment, the
- 8 prohibition thereof, and reporting obligations;
- 9 j. mandate training of athletics department personnel and student-athletes to
- 10 recognize the signs of grooming and sexual abuse and harassment by
- 11 athletics department personnel, and to provide confidential avenues to
- 12 report the abuse;
- 13 k. protect Plaintiffs, the Nationwide Class, and the California Subclass from
- 14 such abuse and other foreseeable risks; and
- 15 l. provide a safe environment for NCAA student-athletes free from sexual
- 16 abuse and/or sexual harassment.

17 541. As a direct result of those breaches, Plaintiffs, the Nationwide Class, and the
18 California Subclass have suffered harm described above.

19 542. Because Plaintiffs, the Nationwide Class, and the California Subclass are at a
20 continuing risk of harm, Plaintiffs seek injunctive or equitable relief.

21 **IX. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs, individually and on behalf of the Nationwide Class, the USF
23 Subclass, and the California Subclass, respectfully request that the Court enter a judgment on
24 their behalf and against the NCAA, the University of San Francisco, Nino Giarratano, and Troy
25 Nakamura, and further grant the following relief:

- 26 A. Certify the proposed Class and Subclasses pursuant to the Rules 23(a), (b)(2),
- 27 (b)(3) and/or (c)(4);
- 28 B. Designate Plaintiffs as representatives of the proposed Class and Subclasses and

1 Plaintiffs' counsel as Class counsel;

2 C. Declare that the NCAA owes a legal duty to protect student-athletes enrolled at
3 member institutions;

4 D. Award injunctive relief requiring the NCAA to implement and enforce rules and
5 bylaws that are considered consensus best practices, including those set out above because: (1)
6 there is a substantial likelihood that Plaintiffs and Classes will prevail on the merits; (2) there is a
7 real and substantial threat that the Classes will suffer irreparable injury if the injunction is not
8 granted; (3) the Classes' threatened injury outweighs any threatened harm to the NCAA; and (4)
9 granting the injunction will serve the public interest.

10 E. Award Plaintiffs and Classes compensatory damages, punitive damages, pain and
11 suffering, and any other relief to which they are entitled under the law;

12 F. Award Plaintiffs and the Classes prejudgment interest, costs and attorneys' fees;
13 and

14 G. Award Plaintiffs and Classes for such other and further relief as the Court deems
15 just and proper.

16 **X. DEMAND FOR TRIAL BY JURY**

17 Plaintiffs, individually and on behalf of the proposed Classes, respectfully request a trial
18 by jury as to all matters so triable.

19 Dated: March 11, 2022

Respectfully submitted,

21 By: /s/ Jonathan Selbin

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