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9
10 **IN THE UNITED STATES DISTRICT COURT**
11
12 **FOR THE DISTRICT OF ARIZONA**

13 **Michael Grabowski, A single man,**
14
15 **Plaintiff,**
16
17 **Vs.**
18
19 **Arizona Board of Regents; and**
20 **University of Arizona,**
21
22 **Defendants.**

23 **No. 4:19-cv-00460-SHR**
24
25 **PLAINTIFF’S FOURTH**
26 **AMENDED COMPLAINT**
Federal Discrimination/
Retaliation;
(Jury Trial Requested)
Assigned to Scott H. Rash

Plaintiff, for his Fourth Amended Complaint against Defendants, alleges as follows:

Parties

1. **Plaintiff Michael Grabowski**, a single man, was a student at the University of Arizona since August 14, 2017 and at all times relevant hereto.
2. **Defendant Arizona Board of Regents** is, and was at all times relevant hereto, the administrative and funding body for the State of Arizona, the University of Arizona, and University of Arizona Athletics.

1 12. **Coach Li** and his assistant Coach Tim Riley were both kind and enthusiastic
2 about his joining the team.

3 13. **Coach Harvey** also urged Plaintiff to join the team.

4 14. In June of 2017, **Plaintiff** engaged in a championship tour as a high school
5 senior and became friends with top runners around the country.

6 15. During the tour, he had a breakout performance in the National
7 Championship for the Under 20 Men’s 3K Steeple Chase. At the U20’s, **Plaintiff** placed
8 approximately .2 of a second from being on the US Team headed to Lima, Peru for the
9 Pan-American Games.
10

11 16. University of Arizona **Coaches Harvey and Li** and Assistant Coach Riley
12 saw Plaintiff’s performance at the U20’s and congratulated **Plaintiff Grabowski** on his
13 run.
14

15 17. In August 2017, **Plaintiff Grabowski** arrived at the University of Arizona
16 and moved into the dorms. At that time, he was on an educational scholarship and an
17 athletic scholarship as a distance runner.
18

19 18. **Plaintiff Grabowski’s** roommate, upon arriving at the U of A, was Vincent
20 Huynh-Watkins who left the U of A mid-semester and moved back home to Oregon due to
21 clinical depression.
22

23 19. By the end of **Plaintiff’s** freshman year, he was the only one of four (4)
24 distance recruits that year who would be returning to the University of Arizona for his
25 sophomore year.
26

1 20. Henry Weisberg, another freshman recruit of the same year, told **Plaintiff**
2 that he had been falsely accused of racism by **Coach Harvey**. Weisberg told **Harvey**
3 during his exit interview that there was bullying on the team. He returned home to Reno,
4 Nevada where, upon information and belief, he now attends the University of Nevada at
5 Reno.
6

7 21. On August 16 – 22, 2017, **Plaintiff** attended a pre-season cross-country camp
8 at Forest Lakes, Arizona.
9

10 22. Starting at the camp, **Plaintiff Grabowski** began receiving sexual and
11 homophobic bullying, by team members which occurred almost daily. He also experienced
12 regular sexual bullying from team member Carlos Villareal when Villareal was in the
13 company of Hunter Davila.
14

15 23. Teammates regularly, and almost daily, claimed that Plaintiff should have
16 gone somewhere other than Arizona; that he was “gay”; that he was a “fag”; and made
17 multiple additional references alleging that they perceived him as gay.
18

19 24. Repeatedly, and again throughout his first year at the University of Arizona,
20 Davila and Villarreal claimed to **Plaintiff** that he should have gone somewhere other than
21 Arizona.
22

23 25. At the camp, everyone had a bed except for **Plaintiff**. During the camp,
24 **Plaintiff** was treated poorly, and other members of the team began accusing the Plaintiff
25 of being gay, alleging to him and others that he was homosexual, gay, a fag.
26

1 26. Plaintiff's relationships with other students that were not in the running
2 program was always exemplary. His access to educational opportunities and benefits,
3 however, were effectively barred as follows:

4 (a) He was excluded from group meetings and projects in educational classes
5 that he attended with other student athletes on a regular basis;

6 (b) He was denied an \$8000.00 grant/scholarship because his grades slipped
7 below the minimum once the effects of the harassment and retaliation were known to
8 Michael.

9 (c) He was denied access to special tutoring, available only to student athletes
10 on scholarship;

11 (d) Because of the hostile environment at the University of Arizona, caused by
12 the harassment by student athletes, lack of response by the institutional defendants and the
13 retaliation and further harassment by being excluded from the team, he was denied his
14 scholarship and other benefits. As a result of the loss of his scholarship, he was forced to
15 transfer to another college and to retake numerous classes.

16 In 2017, **Plaintiff** was awarded the Butch Dellacave Award for excellence in
17 athletics and community service for his involvement in a combination of athletic and
18 community service. Prior to receiving the award, he had volunteered to help the elderly in
19 addition to his athletic successes.

20 27. On August 28, 2017, Philip Grabowski, Plaintiff's father, called **Coach Li**.
21 When **Li** returned the call, Plaintiff's dad talked directly about an ongoing knee injury
22 which **Plaintiff** sustained at the camp.
23
24
25
26

1 28. Plaintiff's father also directly reported to **Li** the bullying to which **Plaintiff**
2 had been subjected since the pre-season camp.

3 29. **Li** reported that **Plaintiff Grabowski** didn't "know the culture yet" so he
4 couldn't judge the team. **Li** promised that he would look into the instances of sexual
5 bullying and promised to talk to **Plaintiff** about the sexual bullying separately.

6 30. **Plaintiff** and **Li** talked about the sexual bullying sometime within the next
7 week.
8

9 31. On October 4, 2017, Plaintiff's mother, Mary Ann Stephens, emailed the
10 team sports psychologist, Dr. Amy Athey, giving her permission to speak to **Plaintiff** since
11 he was still a minor. Plaintiff's mother requested that Athey speak to **Plaintiff** about the
12 persistent sexual bullying.
13

14 32. By this time, as stated in previous paragraphs, the **Defendant University of**
15 **Arizona**, and particularly **Coaches Li** and **Harvey** had personal knowledge of the nature
16 and extent of the sexual bullying **Plaintiff** received from Hunter Davila and Carlos
17 Villarreal and many others on University of Arizona Cross-Country/Track and Field Team.
18

19 33. Given the statements of **Coach Li** to Plaintiff's father that he would be "right
20 on top" of the sexual and homophobic bullying issue, Plaintiff's mother told **Plaintiff** that
21 **Li** had promised that **Plaintiff** was simply "adjusting" and that he would be "right on top"
22 of the sexual bullying issue.
23

24 34. In the last week of October, 2017, the sexual and homophobic bullying of the
25 **Plaintiff** was repeated by numerous members of the University of Arizona Athletic
26 Department.

1 35. In late October, 2017, students on the team posted on the internet a harassing,
2 homophobic, obscene video about **Plaintiff** at the team’s public chat group. The videotape
3 was made at a University of Arizona party, attended by many people who were unknown
4 to **Plaintiff**. Subsequently, the video was published to the internet again.

5 36. The allegations in the video were untrue.

6 37. The videotape remains published to this day for all who have computer
7 access to view.
8

9 38. Although **Plaintiff** did not attend the party, he heard about and viewed the
10 video and the sexual, homophobic and untrue allegations against him.
11

12 39. On October 31, 2017, **Fred Harvey** hosted a Halloween party but did not
13 raise any issues concerning the publication of the video or the constant homophobic and
14 sexual bullying suffered by the **Plaintiff**. During the party, **Harvey** did not respond
15 whatsoever to the complaints made by **Plaintiff** at the party.
16

17 40. On November 9, 2017, **Plaintiff** turned 18.

18 41. In January, 2018, after having met with Dr. Athey and reporting aggressive
19 bullying, almost daily, **Plaintiff** met several times with Dr. Athey’s associate, Michelle
20 Johnson-Skog. Again, he reported aggressive sexual and homophobic bullying, almost
21 daily.
22

23 42. Every time **Plaintiff Grabowski** mentioned the “sexual and homophobic
24 bullying” to either one of the **coaches**, they rephrased it as Plaintiff’s need to “adjust” and,
25 on information and belief, they did nothing to address or report the sexual or homophobic
26 bullying in clear violation of the University of Arizona’s Non-Discrimination and Anti-

1 Harassment Policy which obligated each of the **coaches** to report the bullying, yet they did
2 nothing.

3 43. On January 19, 2018, Plaintiff's father called **Coach Li** and left a voicemail.

4 44. On January 24, 2018, **Li** returned the telephone call during which Plaintiff's
5 father reported that little had changed since the first phone conversation with **Li**.
6

7 45. On January 24, 2018, **Li** promised to speak to **Plaintiff** about the sexual,
8 homophobic bullying.

9 46. On the same day, Plaintiff's mother sent her second email to Dr. Amy Athey,
10 expressing serious concern about **Plaintiff's** increasing sadness and asking her to speak to
11 **Plaintiff** as soon as possible.
12

13 47. Although his mother did not speak personally about the sexual and
14 homophobic bullying, she did discuss the sexual and homophobic bullying at length with
15 Athey and Skog in both October of 2017 and January, 2018.
16

17 48. During those calls, Athey and Skog refused to describe the activity with
18 **Plaintiff Grabowski** as "sexual and homophobic bullying". They simply stated that they
19 blamed **Plaintiff Grabowski** and told him repeatedly of his need to "adjust".
20

21 49. On August 24th, 2018, shortly after the pre-season camp, **Plaintiff** met with
22 **Li** and the new assistant coach, Hannah Peterson.
23

24 50. At that meeting, **Coach Li** asked him, as if he had no advance reporting of
25 it, if there had been any bullying "going on".

26 51. **Plaintiff**, at that time, specifically named student athletes as members of the
team that had sexually and homophobically bullied him. **Plaintiff** reported that other

1 teammates had been bullied by them too. **Coach Li** replied: “you can’t single out the two
2 top runners on the team”.

3 52. Since being told on August 24, 2018 by **Li** that he could not “single out” his
4 bullies, **Plaintiff** noted a concerted effort among the coaches to demoralize him.
5

6 53. On September 1, after **Plaintiff** vomited twice during the team’s meeting at
7 Flagstaff and ended the race with a very disappointing time, **Plaintiff** reported his fever
8 and nausea, which continued after he returned to Tucson.
9

10 54. At practice, Assistant Coach Peterson angrily scolded **Plaintiff** for “faking”
11 an illness.

12 55. When **Plaintiff** voluntarily saw a doctor at McKale, he was sent for blood
13 tests and diagnosed with viral illness.
14

15 56. On the evening of September 12, 2018, after a team dinner, **Harvey** and long-
16 distance running coach **Li**, assistant coach Hannah Peterson and Benjamin Crawford
17 brought **Plaintiff** to **Coach Li’s** office at McKale Stadium.
18

19 57. In the face of new initiatives in athletics against harassment and acting as if
20 he had no advance reports of the bullying, **Harvey** and **Coach Li** denied that they knew
21 anything about the sexual, homophobic bullying received by the **Plaintiff**.
22

23 58. Coaches **Harvey** and **Li** directly lied about their knowledge of the sexual and
24 homophobic bullying of **Plaintiff**.

25 59. As indicated above, **Coach Li** knew directly of the sexual and homophobic
26 bullying by multiple members of the team, including Hunter Davila and Carlos Villarreal.

1 60. On the evening of September 12, 2018, **Plaintiff** was brought into Coach Li’s
2 office at McKale for a “meeting” with **Li**, Peterson, **Harvey**, and Crawford.

3 61. While in the meeting, the **coach** locked the door so that no one could come
4 in or hear the discussion.

5 62. **Coach Li** then took **Plaintiff’s** possessions away from him and placed them
6 behind Li’s desk, far out of his reach.

7 63. **Coach Harvey** then sternly stated, “there’s a certain atmosphere we are
8 trying to establish on this team, and you do not fit in it”. He dismissed **Plaintiff** from the
9 program, furiously and repeatedly saying that **Plaintiff’s** name “kept coming up”
10 associated with “a string of things” and refused to give **Plaintiff** any specific details.

11 64. To the date of the filing of this Complaint, despite repeated requests,
12 **Plaintiff** has never received any written notice in any form from anyone at the University
13 of Arizona indicating that he had ever done anything wrong.

14 65. At the meeting, **Plaintiff** told **Harvey** that he had never done anything
15 wrong, had never violated any team rules, and asked him specifically for details. **Harvey**
16 gave no details, only insults. When **Plaintiff** brought up the sexual and homophobic
17 bullying, **Harvey** lept out of his chair, ran up to within a few inches of **Plaintiff’s** face,
18 slammed his hands down hard on **Plaintiff’s** arms, pressing them painfully into the metal
19 arms of the chair as he leaned in with spit hitting **Plaintiff’s** face and called **Plaintiff** a
20 “fucking racist”, a “white racist”, a “fucking white racist”, a “fucking liar”, and more.
21
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26

 66. **Plaintiff** was terrified. His heart was pounding, his blood pressure shot up
and he had a spontaneous bloody nose and fainted.

1 67. **Plaintiff** woke up on the floor. As soon as he could get back into the chair,
2 **Harvey** continued insisting that **Plaintiff** was lying, that there could never be any sexual,
3 homophobic bullying on his team, that he was a “person of low character” for even
4 suggesting that bullying could ever exist on his team, and for a long string of things, none
5 of which he could describe, other than **Plaintiff’s** opposition to being sexually and
6 homophobically bullied.
7

8 68. On September 14, believing that his removal from the team had been a
9 misunderstanding and would be sorted out, **Plaintiff** went to cheer on his roommates at a
10 meet in Reid Park.
11

12 69. As he neared the team tent, **Coach Li** told him that Peterson had complained
13 to associate athletic director James Francis, that **Plaintiff** was at the park and, although it
14 was a public park, Francis ordered that **Plaintiff** could not speak with any of his many
15 teammates who ran out to greet **Plaintiff**.
16

17 70. At the meet, **Plaintiff’s** parents joined him and had a lengthy discussion with
18 Francis. Francis repeated **Harvey’s** mantra, that **Plaintiff’s** “name” kept coming up
19 because he was being accused by athletes of a “string of things”.
20

21 71. **Coach Harvey** claimed **Plaintiff** had sexually harassed a female student who
22 later transferred out of the University of Arizona. Francis insisted there were outstanding
23 University of Arizona and Title IX Complaints filed against **Plaintiff** for this incident.
24

25 72. At the beginning of the 2018 semester, **Li** told **Plaintiff** directly that the
26 female student never filed any complaint, that **Plaintiff’s** name was not involved in the

1 allegations and that he should forget about the entire incident, for it never concerned

2 **Plaintiff.**

3 78. Other university officials confirmed **Li's** reporting.

4 79. **Coach Harvey**, on information and belief, insisted that Plaintiff was
5 involved in a racial incident for which **Harvey** alleged **Plaintiff** and another recruit were
6 called together for a meeting in **Harvey's** office. This accusation was a complete lie, and
7 **Harvey's** allegation was entirely fabricated. **Plaintiff** was never involved in this or any
8 other racial incident
9

10
11 80. **Coaches Harvey** and **Li** insisted that **Plaintiff** was overheard "joking" about
12 rape with teammates and therefore had an official Title IX Complaint lodged against him.

13
14 81. On September 10th, while **Plaintiff** was at practice, he softly spelled "R-A-
15 P-E" in response to a teammate while having a conversation about the importance of a
16 woman's right to say no to sex.

17 82. **Plaintiff's** response to said allegation is, "I have always been a strong
18 women's rights advocate and any comment I made was in support of a woman's right to
19 say no regardless of the circumstance."
20

21 83. Francis claimed that he learned from **Harvey** that Plaintiff had sexually
22 harassed a female student who later transferred out of the University of Arizona.
23

24 84. Francis insisted that there were outstanding University of Arizona and Title
25 IX Complaints filed against Plaintiff.

26 85. These were lies, as at the beginning of the 2018 semester, **Coach Li** told
Plaintiff directly that the female student never filed any complaint, and that Plaintiff's

1 name was not involved in the allegations and he should forget about the entire incident, for
2 it never concerned Plaintiff.

3 86. Other university officials confirmed.

4 87. According to **Coaches Harvey** and **Li**, teammates of the **Plaintiff** filed a
5 Title IX complaint alleging that he been “joking” about rape. “The coaches claimed that
6 that there was cause to remove **Plaintiff** from the program.”
7

8 88. The Dean of Students has repeatedly told **Plaintiff** that no complaint was
9 ever filed against him, there are no substantiated complaints of any type against him and
10 he has never been found to have violated Title IX.
11

12 89. On September 27, 2018, **Plaintiff** and his parents met with **Coaches Harvey**
13 and **Li**, Associate Director of Athletics Francis and Erika Kim Hanson Barnes in **Harvey’s**
14 office.
15

16 90. James Francis told **Plaintiff** and his parents, and **Harvey** confirmed, that the
17 purpose of this meeting was solely for **Plaintiff** and his parents to ask questions about the
18 reasons for **Plaintiff’s** removal. They stated that **Plaintiff’s** place on the team was a
19 privilege; that the coaches could, and did, instantly rescind at their complete discretion and
20 that there would be no opportunity for reconsideration or appeal of the removal.
21

22 91. At the meeting, the persons there reviewed **Harvey’s** “string of things” and
23 his responses.
24

25 92. **Plaintiff** and his parents stated that the Title IX and University offices had
26 no complaints against **Plaintiff**.

93. Both **Coaches** insisted that the complaints existed within athletics.

1 94. Ms. Barnes asked the coaches if they had ever filed anything in writing within
2 athletics about the allegations and much to her dismay, they both stated “no”.

3 95. At the meeting, the focus became the “rape” conversation. Both **coaches**
4 insisted, at the meeting, that **Plaintiff’s** comments in that regard were “inappropriate
5 joking”, insisting that voicing support for a feminist cause with the word “rape” in its name
6 and having the audacity to spell the word “rape” was disruptive to the team and reason for
7 dismissal.
8

9 96. This, from a team with rampant depravity, abundant rule-breaking and
10 regular serious sexual and homophobic harassment, was clearly made up.
11

12 97. At the time of the meeting, team member Hunter Davila, the most active and
13 malicious bully had a “Do Not Contact Order” in place against him for his sexual
14 harassment of a female teammate.
15

16 98. At this meeting, **Harvey** lied, vehemently denying that he ever heard about
17 the sexual and homophobic bullying from anyone.
18

19 99. From 2015 – 2018, only 12.5% of recruited runners have even a chance to
20 finish all four years of running on the team. One was Carlos Villarreal and the other is
21 Connor McCabe who is currently a sophomore.
22

23 100. No runners from the 2016-2017 recruiting classes finished more than 1.5
24 semesters on the team.

25 101. The 2016 recruiting class was composed of six runners and the 2017
26 recruiting class was four runners for a total of 10 runners.

1 102. 87.5% of recruited runners did not finish four years on the cross-country
2 team.

3 103. 75% of the recruited runners (2015-2018) were gone by 1.5 semesters.

4 104. 68.75% of recruited runners (2015 – 2018) were gone by year one.

5
6 105. The average retention rate for a Division I NCAA team recruiting class is
7 80% which is four times better than U of A Cross-Country's retention rate.

8 106. A program that loses almost every athlete most certainly has problems.

9
10 107. The running program at the University of Arizona is sexist and designed such
11 that the program is not susceptible to favoring or helping the students who enter. Rather,
12 the coaching staff, and ancillary persons at the University of Arizona are designed to
13 protect the coaches and favor certain runners over others.
14

15 108. At all relevant times hereto, Plaintiff was discriminated against and his
16 educational opportunities at the University of Arizona were significantly disrupted by the
17 sexual and homophobic rants and subsequent discrimination by his teammates.
18

19
20 **COUNT I**
(Violations of Title IX; Board of Regents, University of Arizona)

21 109. Paragraphs 1 – 108 are incorporated by reference.

22
23 110. **Defendants Arizona Board of Regents and University of Arizona** receive
24 and expend fees from the federal government and are subject to the requirements of 28
25 U.S.C. Title IX.
26

111. The actions, statements and facts cited above show a pattern of racial, sexual
and other discrimination against **Plaintiff** by **Defendants** aforementioned.

1 112. instead of attempting to remedy the situation, dismissed **Plaintiff** from the
2 team, cancelling his scholarship and preventing him from continuing to attend the
3 **University of Arizona**.

4 113. As stated above, **Defendants Arizona Board of Regents and University of**
5 **Arizona** had actual knowledge of (1) the bullying; (2) that harassers as alleged above were
6 under the control of the **Arizona Board of Regents and University of Arizona**; (3) the
7 harassment alleged above was based on the victim's perceived sexual orientation; (4) the
8 harassment was so severe, pervasive and objectively offensive that it effectively barred the
9 victim's access to an educational opportunity or benefit; and (5) the District was
10 deliberately indifferent to the harassment.

11 114. **Defendants'** failure to investigate, acknowledge, and failure to attempt to
12 rectify the sexual bullying of **Plaintiff** indicate a formal policy of indifference to the rights
13 of **Plaintiff**.

14 115. The acts of **Harvey** and **Li**, in expelling **Plaintiff** from the program and
15 cancelling his scholarship in discrimination against him for his reports of sexual bullying
16 constitute the office policy of the **University of Arizona** in discriminating against the
17 **Plaintiff**.

18 **Wherefore**, Plaintiff prays for the following relief:

19 • Compensatory damages against each **Defendant** for the acts alleged herein
20 in an amount of \$10,000,000.00

21 • Attorney's fees, taxable costs;

22 Respectfully submitted this 18th day of January, 2024.

1 WILLIAM G. WALKER, P.C.

2 /s/ William G. Walker
3 Attorney for Plaintiff
4

5
6 **Certification and Closing**

7
8 Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best
9 of my knowledge, information, and belief that this complaint: (1) is not being presented
10 for an improper purpose, such as to harass, cause unnecessary delay, or needlessly
11 increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous
12 argument for extending, modifying, or reversing existing law; (3) the factual
13 contentions have evidentiary support or, if specifically so identified, will likely have
14 evidentiary support after a reasonable opportunity for further investigation or
15 discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.
16
17

18 DATED this 18th day of January, 2024.

19 WILLIAM G. WALKER, P.C.

20
21 By: /s/ William G. Walker
22 Attorney for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2024, a copy of the foregoing was electronically transmitted to the Clerk’s Office using the CM/ECF system for filing and transmittal of Notice of Electronic filing to the following CM/ECF registrants.

Patricia V. Waterkotte, Esq.
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Tucson, AZ 85718
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By: /s/ Lauren A. Bryant