

1 WILLIAM G. WALKER, P.C.
2 1316 E. Broadway Blvd.
3 Tucson, AZ 85719
4 William G. Walker SBN 005361
5 wgwpc@aol.com
6 assistant@wgwatty.com
7 Telephone: (520) 622-3330
8 *Attorney for Plaintiff*

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 **Vs.**

17 **Arizona Board of Regents;**
18 **University of Arizona,**
19 **Frederick Lee Harvey and wife Janet**
20 **Harvey; and James Li and Jean Wang,**
21 **husband and wife.**

22 **Defendants.**

No. 4:19-cv-00460-JAS

PLAINTIFF'S THIRD
AMENDED COMPLAINT
Federal Discrimination/
Retaliation; Punitive
Damages.

(Jury Trial Requested)

Assigned to James A. Soto

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

24 **Parties**

25 1. **Plaintiff Michael Grabowski**, a single man, was a student at the University
26 of Arizona since August 14, 2017 and at all times relevant hereto.

1 8. During that time, he was named as an All-American long-distance runner and
2 was heavily recruited at a number of Division I colleges, including the University of
3 Michigan, the University of Connecticut and the University of Arizona.

4 9. In February of 2017, he took a recruiting trip, sponsored by the University
5 of Arizona.
6

7 10. During the recruiting trip, he was hosted by members of the University of
8 Arizona Cross-Country/Track & Field Team.

9 11. During the recruiting trip, he was treated well by the University of Arizona.
10

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

13 13. **Defendant Coach Harvey** also urged Plaintiff to join the team.
14

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

17 15. During the tour, he had a breakout performance in the National
18 Championship for the Under 20 Men's 3K Steeple Chase. At the U20's, **Plaintiff** placed
19 approximately .2 of a second from being on the US Team headed to Lima, Peru for the
20 Pan-American Games.
21

22 16. University of Arizona **Defendant Coaches Harvey and Li** and Assistant
23 Coach Riley saw Plaintiff's performance at the U20's and congratulated **Plaintiff**
24 **Grabowski** on his run.
25
26

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

4 18. **Plaintiff Grabowski's** roommate, upon arriving at the U of A, was Vincent
5 Huynh-Watkins who left the U of A mid-semester and moved back home to Oregon due to
6 clinical depression.

7 19. By the end of **Plaintiff's** freshman year, he was the only one of four (4)
8 distance recruits that year who would be returning to the University of Arizona for his
9 sophomore year.

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

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

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

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

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

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

10 26. **Plaintiff's** grades at school and his relationships with other students that
11 were not in the running program was always exemplary.

12 27. In 2017, **Plaintiff** was awarded the Butch Dellacave Award for excellence in
13 athletics and community service for his involvement in a combination of athletic and
14 community service. Prior to receiving the award, he had volunteered for helping the elderly
15 in addition to his athletic successes.

16 28. On August 28, 2017, Philip Grabowski, Plaintiff's father, called **Defendant**
17 **Coach Li**. When **Li** returned the call, Plaintiff's dad talked directly about an ongoing knee
18 injury which **Plaintiff** sustained at the camp.

19 29. Plaintiff's father also directly reported to **Defendant Li** the bullying to which
20 **Plaintiff** had been subjected since the pre-season camp.

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

4 31. **Plaintiff** and **Li** talked about the sexual bullying sometime within the next
5 week.
6

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

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

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

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

1 36. 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
6 37. The allegations in the video were untrue.

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

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

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

16
17 41. On November 9, 2017, **Plaintiff** turned 18.

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

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

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

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

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

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

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

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

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

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

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

1 52. **Plaintiff**, at that time, specifically named student athletes as members of the
2 team that had sexually and homophobically bullied him. **Plaintiff** reported that other
3 teammates had been bullied by them too. **Coach Li** replied: “you can’t single out the two
4 top runners on the team”.

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

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

13
14 55. At practice, Assistant Coach Peterson angrily scolded **Plaintiff** for “faking”
15 an illness.

16 56. When **Plaintiff** voluntarily saw a doctor at McKale, he was sent for blood
17 tests and diagnosed with viral illness.

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

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

26 59. Coaches **Harvey** and **Li** directly lied about their knowledge of the sexual and
homophobic bullying of Plaintiff.

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

3 61. On the evening of September 12, 2018, **Plaintiff** was brought into Coach Li's
4 office at McKale for a "meeting" with **Defendant Li**, Peterson, **Defendant Harvey**, and
5 Crawford.
6

7 62. While in the meeting, the **Defendant coach** locked the door so that no one
8 could come in or hear the discussion.
9

10 63. **Coach Li** then took **Plaintiff's** possessions away from him and placed them
11 behind Li's desk, far out of his reach.

12 64. **Defendant Harvey** then sternly stated, "there's a certain atmosphere we are
13 trying to establish on this team, and you do not fit in it". He dismissed **Plaintiff** from the
14 program, furiously and repeatedly saying that **Plaintiff's** name "kept coming up"
15 associated with "a string of things" and refused to give **Plaintiff** any specific details.
16

17 65. To the date of the filing of this Complaint, despite repeated requests,
18 **Plaintiff** has never received any written notice in any form from anyone at the University
19 of Arizona indicating that he had ever done anything wrong.
20

21 66. At the meeting, **Plaintiff** told **Defendant Harvey** that he had never done
22 anything wrong, had never violated any team rules, and asked him specifically for details.
23 **Defendant Harvey** gave no details, only insults. When **Plaintiff** brought up the sexual and
24 homophobic bullying, **Defendant Harvey** lept out of his chair, ran up to within a few
25 inches of **Plaintiff's** face, slammed his hands down hard on **Plaintiff's** arms, pressing them
26 painfully into the metal arms of the chair as he leaned in with spit hitting **Plaintiff's** face

1 and called **Plaintiff** a “fucking racist”, a “white racist”, a “fucking white racist”, a “fucking
2 liar”, and more.

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

5
6 68. **Plaintiff** woke up on the floor. As soon as he could get back into the chair,
7 **Defendant Harvey** continued insisting that **Plaintiff** was lying, that there could never be
8 any sexual, homophobic bullying on his team, that he was a “person of low character” for
9 even suggesting that bullying could ever exist on his team, and for a long string of things,
10 none of which he could describe, other than **Plaintiff’s** opposition to being sexually and
11 homophobic bullied.
12

13
14 69. On September 14, believing that his removal from the team had been a
15 misunderstanding and would be sorted out, **Plaintiff** went to cheer on his roommates at a
16 meet in Reid Park.

17
18 70. As he neared the team tent, **Defendant Coach Li** told him that Peterson had
19 complained to associate athletic director James Francis, that **Plaintiff** was at the park and,
20 although it was a public park, Francis ordered that **Plaintiff** could not speak with any of
21 his many teammates who ran out to greet **Plaintiff**.

22
23 71. At the meet, **Plaintiff’s** parents joined him and had a lengthy discussion with
24 Francis. Francis repeated **Defendant Harvey’s** mantra, that **Plaintiff’s** “name” kept
25 coming up because he was being accused by athletes of a “string of things”.
26

72. **Defendant Harvey** claimed **Plaintiff** had sexually harassed a female student
who later transferred out of the University of Arizona. Francis insisted there were

1 outstanding University of Arizona and Title IX Complaints filed against **Plaintiff** for this
2 incident.

3 73. At the beginning of the 2018 semester, **Defendant Li** told **Plaintiff** directly
4 that the female student never filed any complaint, that **Plaintiff's** name was not involved
5 in the allegations and that he should forget about the entire incident, for it never concerned
6 **Plaintiff**.
7

8 78. Other university officials confirmed **Defendant Li's** reporting.

9 79. **Defendant Harvey**, on information and belief, insisted that **Plaintiff** was
10 involved in a racial incident for which **Defendant Harvey** alleged **Plaintiff** and another
11 recruit were called together for a meeting in **Defendant Harvey's** office. This accusation
12 was a complete lie, and **Defendant Harvey's** allegation was entirely fabricated. **Plaintiff**
13 was never involved in this or any other racial incident
14
15

16 80. **Defendant Coaches Harvey** and **Li** insisted that **Plaintiff** was overheard
17 "joking" about rape with teammates and therefore had an official Title IX Complaint
18 lodged against him.
19

20 81. On September 10th, while **Plaintiff** was at practice, he softly spelled "R-A-
21 P-E" in response to a teammate while having a conversation about the importance of a
22 woman's right to say no to sex.
23

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

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

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

5 85. These were lies, as at the beginning of the 2018 semester, **Coach Li** told
6 **Plaintiff** directly that the female student never filed any complaint, and that Plaintiff's
7 name was not involved in the allegations and he should forget about the entire incident, for
8 it never concerned Plaintiff.

9 86. Other university officials confirmed.

10 87. According to **Defendant Coaches Harvey** and **Li**, teammates of the
11 **Plaintiff** filed a Title IX complaint alleging that he been "joking" about rape. "The coaches
12 claimed that that there was cause to remove **Plaintiff** from the program."

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

16 89. On September 27, 2018, **Plaintiff** and his parents met with **Defendant**
17 **Coaches Harvey** and **Li**, Associate Director of Athletics Francis and Erika Kim Hanson
18 Barnes in **Defendant Harvey's** office.

19 90. James Francis told **Plaintiff** and his parents, and **Defendant Harvey**
20 confirmed, that the purpose of this meeting was solely for **Plaintiff** and his parents to ask
21 questions about the reasons for **Plaintiff's** removal. They stated that **Plaintiff's** place on
22 the team was a privilege; that the coaches could, and did, instantly rescind at their complete
23
24
25
26

1 discretion and that there would be no opportunity for reconsideration or appeal of the
2 removal.

3 91. At the meeting, the persons there reviewed **Defendant Harvey's** "string of
4 things" and his responses.

5
6 92. **Plaintiff** and his parents stated that the Title IX and University offices had
7 no complaints against **Plaintiff**.

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

10
11 94. Ms. Barnes asked the coaches if they had ever filed anything in writing within
12 athletics about the allegations and much to her dismay, they both stated "no".

13
14 95. At the meeting, the focus became the "rape" conversation. Both **Defendant**
15 **coaches** insisted, at the meeting, that **Plaintiff's** comments in that regard were
16 "inappropriate joking", insisting that voicing support for a feminist cause with the word
17 "rape" in its name and having the audacity to spell the word "rape" was disruptive to the
18 team and reason for dismissal.

19
20 96. This, from a team with rampant depravity, abundant rule-breaking and
21 regular serious sexual and homophobic harassment, was clearly made up.

22
23 97. At the time of the meeting, team member Hunter Davila, the most active and
24 malicious bully had a "Do Not Contact Order" in place against him for his sexual
25 harassment of a female teammate.

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

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

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

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

8 102. 87.5% of recruited runners did not finish four years on the cross-country
9 team.

10 103. 75% of the recruited runners (2015-2018) were gone by 1.5 semesters.

11 104. 68.75% of recruited runners (2015 – 2018) were gone by year one.

12 105. The average retention rate for a Division I NCAA team recruiting class is
13 80% which is four times better than U of A Cross-Country's retention rate.

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

15 107. The running program at the University of Arizona is sexist and designed such
16 that the program is not susceptible to favoring or helping the students who enter. Rather,
17 the coaching staff, and ancillary persons at the University of Arizona are designed to
18 protect the coaches and favor certain runners over others.

19 108. At all relevant times hereto, Plaintiff was discriminated against and his
20 educational opportunities at the University of Arizona were significantly disrupted by the
21 sexual and homophobic rants and subsequent discrimination by his teammates.
22
23
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COUNT I
(Violations of Title IX; Board of Regents, University of Arizona)

109. Paragraphs 1 – 108 are incorporated by reference.

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

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

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

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

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

1 115. The acts of **Defendants Harvey and Li**, in expelling **Plaintiff** from the
2 program and cancelling his scholarship in discrimination against him for his reports of
3 sexual bullying constitute the office policy of the **University of Arizona** in discriminating
4 against the Plaintiff.

5
6 **COUNT II**
7 **(Liability Under 42 U.S.C. § 1983)**

8 116. Paragraphs 1 –115 are incorporated by reference.

9 117. **Defendant Coaches Fred Harvey and James Li**, acting under the color of
10 state law, discriminated against **Plaintiff** in their individual capacities to deprive **Plaintiff**
11 of his Constitutional rights to life, liberty and the pursuit of his education at the **University**
12 **of Arizona** without just cause and by discriminating against him.

13
14 118. By these actions, **Defendants Harvey and Li** have damaged **Plaintiff** and
15 are liable for emotional distress, compensatory and other damages pursuant to 42 U.S.C. §
16 1983.

17
18 **COUNT III**
19 **(Punitive Damages)**

20 119. Paragraphs 1 –118 are incorporated by reference.

21
22 120. The acts of **Defendants** recited herein were done maliciously and with intent
23 to falsely harm **Plaintiff Grabowski**.

24 121. Plaintiff was damaged by all acts alleged herein, both physically and
25 emotionally.
26

Wherefore, Plaintiff prays for the following relief:

- Compensatory damages against each **Defendant** for the acts alleged herein in an amount of \$10,000,000.00
- Attorney's fees, taxable costs;
- Punitive damages for the malicious conduct of **Defendant(s) Harvey, and Li** as aforementioned.

Certification and Closing

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

DATED this 13th day of July, 2020.

WILLIAM G. WALKER, P.C.

By: /s/ William G. Walker
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2020, a copy of the foregoing document by US mail, 1st class, and I further certify that on this day I electronically transmitted the foregoing document 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.
Rusing, Lopez & Lizardi, P.L.L.C.
636 N. Swan Road, # 151
Tucson, AZ 85718
Attorneys for Defendants
Arizona Board of Regents, University of Arizona, Fred Harvey and wife, Janet Harvey,
James Li and wife, Jean Wang.

By: /s/ Lauren McKeen