

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division**

JAYE FLOOD)
813 Central Avenue)
Naples, FL 34102,)

HOLLY VAUGHN)
2671 Citrus Lake Drive, #101)
Naples, FL 34102,)

Plaintiffs)

v.)

BOARD OF TRUSTEES OF THE)
FLORIDA GULF COAST UNIVERSITY,)
AND DOES 1 through 13,)
10501 FGCU Boulevard South)
Fort Myers, FL 33965,)

Defendants.)

CIVIL ACTION NO.
2:08-cv-30-FtM-34-MMH-DNF

**FIRST AMENDED
COMPLAINT
JURY TRIAL DEMAND
INJUNCTIVE RELIEF SOUGHT**

**(Retaliation Under Title IX;
Defamation)**

FIRST AMENDED COMPLAINT

COME NOW the Plaintiffs, Jaye Flood and Holly Vaughn, by and through their attorneys, and for their First Amended Complaint in the above-captioned action state to this Honorable Court as follows:

PRELIMINARY STATEMENT

1. Jaye Flood, former Head Volleyball Coach for the women’s volleyball program at Florida Gulf Coast University (“FGCU”), brings this action against FGCU for (a) retaliating against her after she complained about sex discrimination and advocated for gender equity in FGCU’s Athletic Department and (b) defaming her by making false public statements intended to damage

Coach Flood's professional reputation. Flood brings this case against FGCU under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), and the implementing regulations promulgated under Title IX, as well as Florida common law prohibiting defamation. Despite the fact that Coach Flood has the best win-loss record in FGCU's history and was unanimously named "Coach of the Year" by the Atlantic Sun Conference the 2007-08 academic year, FGCU subjected Flood to a continuing series of retaliatory acts, as a result of her exercising her protected rights to advocate for gender equity in FGCU's Athletic Department. Among other things, FGCU appraised her performance as "below expectations" despite having no objective basis for doing so, placed her on probation for her job performance, placed her on indefinite administrative leave and removed her from her daily coaching duties and responsibilities, denied her a salary increase or bonus for the 2007-2008 academic year, initiated three separate investigations leading to the unjustified termination of her employment, and made defamatory statements intended to damage her professional reputation.

2. Holly Vaughn, former Head Golf Coach for the women's golf program at FGCU, brings this action against FGCU for retaliating against her after she complained about sex discrimination and advocated for gender equity in FGCU's Athletic Department. Vaughn brings this case against FGCU under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), and the implementing regulations promulgated under Title IX. FGCU subjected Vaughn to a continuing series of retaliatory acts, as a result of her exercising her protected rights to advocate for gender equity in FGCU's Athletic Department. Among other things, FGCU appraised her performance as "marginally meets expectations" despite having no objective basis for doing so, ignored her concerns, ostracized her, and publicly misrepresented her communication skills, her

coaching skills and her efforts to promote the women's golf program.

PARTIES

3. Plaintiff Jaye Flood is an adult female resident of the State of Florida. At all times relevant hereto, Plaintiff was an employee of the State of Florida at Florida Gulf Coast University.

4. Plaintiff Holly Vaughn is an adult female resident of the State of Florida. At all times relevant hereto, Plaintiff was an employee of the State of Florida at Florida Gulf Coast University.

5. Defendant Board of Trustees of Florida Gulf Coast University was and is a public entity and the duly empowered governing authority for FGCU. FGCU is a public institution of higher education located in Fort Myers, Florida, and is a recipient of federal funding.

6. Defendants Does 1 through 13 were at all relevant times employees, agents, representatives, and/or members of the Defendant Board of Trustees of FGCU. Flood and Vaughn do not know the true names and capacities of Does 1 through 13 and therefore sue these defendants by fictitious names. Upon information and belief, Does 1 through 13 are residents of the State of Florida.

JURISDICTION

7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and the common law pendent jurisdiction doctrine.

8. Venue is proper as all or most of the acts complained of herein occurred in Lee County, Florida.

FACTS GIVING RISE TO RELIEF

Plaintiff Jaye Flood

9. Plaintiff Flood began her employment as FGCU's Head Volleyball Coach in 2003.

10. Prior to coming to FGCU, Flood had 22 years of coaching experience. In addition to her experience as a collegiate volleyball coach, Flood is the Founder and Director of the USA South Volleyball Club, an elite volleyball program designed to promote volleyball, sportsmanship and collegiate opportunity among Southwest Florida student-athletes.

11. Coach Flood designed and developed the FGCU volleyball program from its inception. Under Coach Flood's leadership, in the first three years of the program, FGCU compiled an overall record of 80 wins and 13 losses (.860). This is the best win-loss record of any coach in FGCU's history. Coach Flood's team earned a berth in post-season play in each of the first three years of the program, including three appearances in the National Collegiate Athletic Association (NCAA) Division II South Regional tournament and two appearances in the NCAA Division II South Regional Finals. During the 2007 season, the team compiled a record of 23 wins and 3 losses and won the Atlantic Sun Conference title in its first year of Division I play.

12. Coach Flood actively advocated for gender equity within FGCU's Athletic Department, but FGCU rebuffed her at every turn. Through its Athletic Director, Carl McAloose ("McAloose"), and others, FGCU rejected Coach Flood's efforts to build and promote the volleyball program at a level equal to men's athletic programs at FGCU. For example, Coach Flood:

- (a) pressed for better marketing of the volleyball program in the community commensurate with the marketing of men's sports at FGCU;
- (b) objected to the pooling of Booster Club donations, instead of allowing volleyball-specific donations to be used for the volleyball team;
- (c) complained about a prolonged period when there was no hot water in the volleyball team's locker room; and

- (d) complained about the fact that male coaches have been granted multi-year contracts while female coaches, including Flood, have been granted only one-year contracts.

13. In the 2007-2008 academic year, FGCU moved from NCAA Division II to Division I play. The volleyball program was one of only two sports at FGCU (the other was baseball) that were “fast-tracked” for Division I post-season play to begin in the 2009-2010 academic year. Other FGCU sports will not be eligible for Division I post-season play until the 2011-2012 academic year. In 2006 and into early 2007, as part of her effort to ensure that the volleyball program was fully staffed and fully funded to be ready for FGCU’s competition in full Division I play, Coach Flood requested that the volleyball program be provided, among other things:

- (a) additional funds to hire a second assistant coach;
- (b) “guarantee money” to encourage other schools’ teams to come to FGCU for home matches, which was made available to the men’s athletic programs at FGCU; and
- (c) a higher salary for her than current assistant coach, so that it would be comparable with similarly situated male assistant coaches at FGCU.

14. Coach Flood’s requests for gender equity in FGCU’s Athletic Department, and for the volleyball program in particular, were rebuffed by Athletic Director McAloose and by Associate Athletic Director and Senior Woman Administrator Kathleen Peterson (“Peterson”).

15. Upon information and belief, soon after Coach Flood had requested additional funds to increase her assistant coach’s salary, McAloose undertook efforts to replace Coach Flood.

16. Because Flood advocated for gender equity within the Athletic Department, and

specifically for the volleyball program, FGCU retaliated against her by subjecting her to closer scrutiny and treating her less favorably than employees who did not advocate gender equity.

17. For example, among other things, FGCU rated Coach Flood's performance more harshly than employees who did not advocate gender equity, criticizing her ability to get along with others, characterizing her communication skills as "gruff", claiming she showed a lack of sensitivity to others' needs and displayed disruptive or antagonistic behavior, challenging her ethical standards/sportsmanship, and scrutinizing her observance of NCAA rules and adherence to university policies regarding travel authorization requests.

18. Coach Flood encountered such open disrespect from McAloose that her players asked her, "Why doesn't the Athletic Director like you?"

Plaintiff Holly Vaughn

19. Plaintiff Vaughn began her employment as FGCU's Head Women's Golf Coach in 2000.

20. Prior to coming to FGCU, Vaughn was a professional tour player, with experience in both the Futures tour and the LPGA tour. Vaughn was a finalist in the 1994 U.S. Women's Open.

21. Coach Vaughn designed and developed the FGCU women's golf program from its inception. Under Coach Vaughn's direction, in its first four years, the women's golf program accumulated 11 tournament wins and was ranked as high as third in the nation in Division II, even though FGCU was not eligible for post-season play because of the University's NCAA probationary status as a new university.

22. When FGCU became eligible for post-season play beginning in 2004, the women's golf program was represented two out of three years by an FGCU female golfer.

23. Coach Vaughn advocated for gender equity within FGCU's Athletic Department, but was bluntly rebuffed by McAloose. For example, Coach Vaughn learned that FGCU had offered male part-time coaches additional job duties to make them full-time employees. When Vaughn asked McAloose why no one had mentioned these types of positions to her, McAloose, although he had never discussed the matter with her, claimed surprise that she would be interested in such a full-time position.

24. Similarly, and in the same conversation, Coach Vaughn inquired why the female coaches' offices were located down at the opposite end of the department, while the male coaches' offices were near the front office. Vaughn also noted that several months into Head Coach Flood's tenure, Flood still had not been provided with an office, while assistant coaches had offices.

25. In response to Coach Vaughn's concerns, McAloose rebuffed her, stating, "If you don't like it here, you can get the hell out." McAloose's response left Vaughn feeling intimidated, threatened and vulnerable.

26. Although male head coaches selected their assistant coaches, Vaughn was not permitted to select her own assistant coach. Instead, McAloose and Butch Perchan hired J.P. Meyer to assist FGCU's men's and women's golf programs. Coach Vaughn did not have any role in hiring J.P. Meyer as an assistant coach. On more than one occasion, when Vaughn told McAloose that she did not want Meyer as her assistant, he told her, "Just give him things to do."

27. Among other actions, in June 2006, when three male coaches were hired into the Athletic Department, McAloose directed Vaughn to move her office out of Alico Arena and into an outdoor trailer. Vaughn was the only head coach relegated to the trailer, and was forced to share the trailer with the assistant men's golf coach, the academic advisor, and the construction crew for the

soccer fields and field house. Coaches who did not advocate gender equity had clerical support, a printer, and a copier, but Vaughn did not.

28. Except for a single tournament that Coach Vaughn hosted in 2003, FGCU administrators did not attend women's golf team events or competitions, leaving Vaughn and her female student-athletes unappreciated and undervalued. No FGCU administrator attended the two NCAA regional golf tournaments at which FGCU was represented.

29. Coach Vaughn's salary was substantially lower than the salaries of other coaches who did not advocate gender equity.

30. Because Vaughn advocated for gender equity within the Athletic Department, and specifically for the women's golf program, FGCU retaliated against her by subjecting her to closer scrutiny and treating her less favorably than employees who did not advocate gender equity.

31. For example, among other things, FGCU rated Coach Vaughn's performance more harshly than employees who did not advocate gender equity, criticizing her ability to get along with others, falsely characterizing her communication skills with her co-workers and department staff, falsely characterizing her coaching skills, unjustifiably criticizing her interactions with the public and her efforts to promote the golf program, and falsely accusing her of hiring unqualified staff.

The Baker Letter

32. In May 2007, Coach Flood and Coach Vaughn joined with the other two female coaches then at FGCU to express their concerns about gender equity in FGCU athletics to Merrily Dean Baker ("Baker"), FGCU's former Interim Athletic Director. On May 24, 2007, Baker, in turn, submitted a letter (the "Baker Letter") summarizing these concerns to FGCU Interim President Richard Pagnetter.

33. Among other things, the Baker Letter complained that FGCU's Athletic Department was violating Title IX by engaging in practices that provide male student-athletes with greater athletic opportunities than female student-athletes, and discriminating against female student-athletes, their coaches and programs. According to the Baker Letter, these discriminatory practices included, among other things, withholding adequate support for female student-athletes and their programs, failing to hire assistant coaches for female athletic programs, failing to provide female coaches with compensation equal to that of comparable male coaches, failing to provide two assistant coaches for each female program as was done for the male programs, and limiting female coaches to one-year contracts while providing multi-year contracts for male coaches.

34. After receiving the Baker Letter, President Pegnetter sent an e-mail dated June 8, 2007, to the entire FGCU faculty and staff, and to student government leaders, informing them that allegations had been made about Title IX and other issues in the Athletic Department and that an internal audit would be conducted into the matter.

35. President Pegnetter's June 8, 2007 e-mail asserted that the Title IX allegations were "unsubstantiated," although FGCU had not yet compiled facts to support such a statement.

36. On June 8, 2007, Chief of Staff and University Spokesperson Susan Evans sent an e-mail to the entire Athletic Department staff, asserting that "unsubstantiated allegations about Title IX and other issues involving FGCU's Athletics Department have been made."

37. The fact that the only four female coaches in FGCU's Athletic Department had a role in expressing the concerns outlined in the Baker Letter became common knowledge within the Athletic Department.

38. Thereafter, Internal Auditor Carol Slade ("Slade"), together with outside counsel,

commenced an internal audit of FGCU's compliance with Title IX, which included interviews with and requests for data from the head coaches of the Athletic Department.

39. After June 8, 2007, FGCU's retaliation against Coach Flood intensified, and FGCU began to retaliate against Vaughn.

40. Following FGCU's receipt of the Baker Letter, and despite objective facts to the contrary, Coach Flood's performance was appraised as "below expectations," in retaliation for her complaining about gender inequities in FGCU's Athletic Department. This was the first time in Coach Flood's tenure at FGCU that her performance had been appraised as "below expectations."

41. On or about July 8, 2007, Slade issued her report of the internal audit of FGCU's Title IX compliance. The internal audit and investigation report concluded that FGCU was in compliance with Title IX and met with public skepticism, as reflected by local news media reports.

42. On or about July 11, 2007, FGCU put Coach Flood on probation and placed her on a performance improvement plan during that probationary period. She continued to be the target of closer scrutiny than any coach in the department who did not complain about gender inequity.

43. On or about July 11, 2007, McAloose asked Flood to meet with him to discuss staff salaries, the hiring process, and other issues that were raised in the Baker Letter. In that meeting, when the Athletic Director asked Coach Flood whether she thought she should be paid as much as the (male) baseball coach, she responded, "Why not?" He laughed at her.

44. Following FGCU's receipt of the Baker Letter, in retaliation for her complaining about gender inequities in FGCU's Athletic Department, Coach Vaughn's performance was appraised as "marginally meets expectations," despite objective facts to the contrary. The only other time that Coach Vaughn's performance had been appraised during her then seven-year tenure at

FGCU, her performance was appraised as “outstanding.”

45. FGCU’s appraisal of Coach Vaughn’s performance was not justified because Peterson had never attended a golf team practice conducted by Coach Vaughn, and had never attended a team tournament or any team meeting. Peterson had never seen Vaughn teach, coach, recruit, or mentor her student-athletes, and had never seen her run a golf tournament or perform any of her other job responsibilities.

46. Peterson refused to discuss the false performance appraisal with Coach Vaughn.

47. When Coach Vaughn asked McAloose to meet with her to discuss the negative performance evaluation ratings she had received related to assistant coach J.P. Meyer, McAloose refused to meet with her.

48. After the Slade internal audit was released, McAloose ignored and ostracized Coach Vaughn, making it difficult for her to fulfill her responsibilities in the Athletic Department.

49. Shortly after the Slade internal audit was released, Women’s Assistant Basketball Coach LeAnn Freeland (“Freeland”) resigned her position. Upon information and belief, Freeland explained that prior to her participation in the discussions that led to the Baker Letter, she had not formally complained to the Athletic Department administration because she “was already familiar with the inequitable reprimands distributed among ‘friends’ and foes of the athletics administration.”

50. Upon information and belief, during Freeland’s tenure at FGCU, among other things, she was regularly addressed by a male coach with terms of disrespect, like “baby” and was shown sexually explicit material by a male coach in the FGCU Athletic Department.

51. McAloose consistently rated coaches who did not complain about gender equity issues as “Outstanding” on their performance appraisals in 2007.

52. On September 7, 2007, Coach Flood submitted to FGCU an internal Complaint of Inequity/Discrimination, incorporating by reference the Baker Letter. In that Complaint, she alleged that FGCU was discriminating against her based on sex and retaliating against her for complaining about gender inequities in the Athletic Department.

53. Similarly, on or about September 13, 2007, Coach Vaughn filed an internal Complaint of Inequity/Discrimination, incorporating by reference the Baker Letter. In that Complaint, she alleged that FGCU was discriminating against her based on sex and retaliating against her for complaining about gender inequities in the Athletic Department. Vaughn announced her resignation on or about October 1, 2007, at the beginning of the golf season, saying, "I've been growing tired of the situation and it was time to make a change."

54. When Coach Vaughn handed her letter of resignation to McAloose, he said, "Good."

55. FGCU's retaliation against Coach Vaughn, resulting from her complaints about Title IX gender equity issues, took many forms, including but not limited to the following:

- (a) In 2007, Peterson and McAloose issued a false performance appraisal that rated Coach Vaughn's performance as "marginally meets expectations," based on subjective criteria, and cited deficiencies that reflect closer scrutiny than was given to coaches who did not complain about gender inequity. The false performance appraisal also reflects criticisms about Vaughn's communication skills and other criteria that reflect gender stereotyping on the part of FGCU;
- (b) After McAloose learned about the Baker Letter, he called Vaughn into his office for a private meeting, during which he questioned Vaughn about the

specific issues raised in the Baker Letter and directed an unpleasant barrage at her, saying, “I’ve always trusted you until this point. . . . I’ve always liked you until this point.”; and

- (c) FGCU released information in Coach Vaughn’s personnel file to the media, including the retaliatory performance appraisal that contained knowingly false and misleading information, in a manner that cast doubt about her reputation for professionalism and competence as a golf coach.

56. FGCU’s retaliation against Coach Flood, resulting from her complaints about Title IX gender equity issues, took many forms, including but not limited to the following:

- (a) In 2006, Athletic Director McAloose downgraded Flood’s performance appraisal from “outstanding” to “meets expectations,” despite her great success with the volleyball program during the 2005-2006 academic year;
- (b) FGCU paid Flood a lower salary than male coaches;
- (c) FGCU failed to grant Flood a multi-year contract, although male coaches were provided with multi-year contracts;
- (d) FGCU failed to provide clear budget information for the volleyball program, placing Coach Flood in a position to be blamed for exceeding the limits of her budget;
- (e) In 2007, Peterson and McAloose issued a false performance appraisal that rated Coach Flood’s performance as “below expectations,” based on subjective criteria, and cited deficiencies that reflect closer scrutiny than was given to coaches who did not complain about gender inequity. The false

performance appraisal also reflects criticisms about her communication skills and other criteria that reflect gender stereotyping on the part of FGCU;

- (f) The “below expectations” rating rendered Coach Flood ineligible for an annual base salary increase or bonus for the 2007-2008 academic year;
- (g) FGCU failed to acknowledge Flood’s exemplary job performance, including the great success of her teams and her student-athletes; and
- (h) In July or August, 2007, Peterson waved Flood’s personnel file in front of a reporter, disclosing among other things, that she had “a year’s worth of information” that allegedly justified the negative performance appraisal. The media then demanded release of the file and FGCU released information in Coach Flood’s personnel file to the media, including the retaliatory performance appraisals that contained knowingly false and misleading information, in a manner that cast doubt about her reputation for professionalism and competence as a volleyball coach.

57. Upon information and belief, Associate Athletic Director Butch Perchan publicly stated to a non-FGCU employee that it was “just a matter of time before they got Jaye Flood” because she did not “play by the rules.”

58. Several weeks after Flood and Vaughn filed their internal complaints of discrimination and retaliation with FGCU, on or about October 1, 2007, FGCU undertook a second Title IX compliance review, conducted by an outside agent, Robert Clayton (“Clayton”) of the law firm of Littler Mendelson. The head coaches in the Athletic Department were requested to provide information as part of that second Title IX compliance review.

59. The second Title IX compliance review by an outside agent was designed to counter the public criticism that the initial review had received and to generate the appearance of neutrality.

60. On January 22, 2008, FGCU released and published on its website four reports regarding the internal complaints of discrimination and retaliation filed by Coach Flood and Coach Vaughn, and the Baker Letter.

61. President Bradshaw's Statement accompanying the issuance of the reports announced that the investigators found "NO evidence of disparate treatment of female and male coaches or female and male student-athletes."

62. A timeline accompanying President Bradshaw's Statement announced that there was not sufficient FGCU documentation to support the 2006-07 performance evaluations of Coach Flood or Coach Vaughn and that McAloose and Peterson would be reprimanded in writing for negligence in violation of FGCU rules.

63. The events set forth in paragraphs 64 through 83 below constitute further acts of retaliation by FGCU against Coach Flood for complaining about Title IX gender inequities in FGCU's Athletic Department.

FGCU Launches Three Investigations Against Coach Flood

64. On October 15, 2007, FGCU placed Coach Flood on administrative leave for alleged "issues involving student welfare"—effectively disciplining her—without informing her of the specific nature of the allegations, and before speaking with Coach Flood, the student whose welfare allegedly was at issue, or the assistant volleyball coach to evaluate whether there was any merit to the allegations. Indeed, Coach Flood was not even informed of the nature of the allegations directed against her until October 17, when FGCU told Flood that the allegation was that she had

inappropriately tugged the shirt of one of her volleyball players during a practice session.

65. FGCU told Coach Flood that, while on administrative leave, she was not allowed to perform any duties as Head Volleyball Coach, she was not to initiate communications with other Athletic Department employees or with the student-athletes on the volleyball team, and she was not allowed to return to her office.

66. On October 17, 2007, and before he had interviewed Coach Flood about the alleged “shirt-tugging” incident, FGCU’s outside investigator, Clayton, informed Coach Flood that he “kn[e]w the facts [were] not in dispute,” he had proposed a resolution to FGCU, and FGCU had accepted his recommendation. Based on Clayton’s recommendation, FGCU demanded that Coach Flood issue a written apology to the team in order to be reinstated to her duties. Because Coach Flood did not believe her conduct was inappropriate she declined to do so.

67. Upon information and belief, the student involved in the “shirt-tugging” incident reported to Clayton that she did not take offense to the incident.

68. Although FGCU’s investigators never interviewed Coach Flood about the “shirt-tugging” incident, on or about October 26, 2007, Clayton and FGCU’s General Counsel informed Coach Flood that the investigation into the incident giving rise to the October 15, 2007, notice placing her on administrative leave had been concluded. FGCU failed to provide Coach Flood with any final conclusion or investigative report and has left her status uncertain through the conclusion of the volleyball season, and until January 22, 2008.

69. On or about October 26, 2007, after FGCU told her that the investigation had been concluded, Coach Flood requested that she be returned to her normal duties as Head Volleyball Coach, but FGCU refused to reinstate her.

70. After the conclusion of the investigation of the “student welfare issues” that gave rise to FGCU placing Coach Flood on administrative leave, in further retaliation, FGCU and Clayton continued to engage in a series of “investigations” designed to discredit Coach Flood and justify FGCU’s retaliatory decision to place her on administrative leave, and to manufacture grounds for her removal.

71. Upon information and belief, throughout each investigation, Clayton rejected the responses of persons interviewed during the course of his investigations, put words in their mouths, and lectured and argued with them over their accounts of events.

72. In further retaliation for complaining about Title IX gender inequities, after placing Coach Flood on administrative leave, FGCU’s agents initiated an investigation of Coach Flood for potential violations of FGCU rules and policies, including the Florida Administrative Code. However, FGCU failed to inform Coach Flood of the specific facts underlying the allegations that were under investigation, including what actions she allegedly took and when.

73. In further retaliation against Coach Flood for advocating gender equity in FGCU’s Athletic Department, when the Atlantic Sun Conference announced on November 14, 2007, that Flood had been unanimously elected Coach of the Year, FGCU directed its sports information officer not to recognize Coach Flood’s accomplishment and not to include her in a press release issued by FGCU. The same evening, Athletic Director McAloose prohibited Coach Flood from participating with her team in a mid-court program honoring the team.

74. On or about November 26, 2007, Clayton informed Coach Flood that FGCU had already decided that it would not renew her contract when it expires in 2008, even though he had not even interviewed Coach Flood about these allegations and had not completed the investigation into

her alleged violations of FGCU's rules and policies.

75. In light of Clayton's statement that Coach Flood's contract would not be renewed, it was apparent that the investigation of allegations against Coach Flood was not in good faith and was not a neutral inquiry.

76. Upon information and belief, before January 18, 2008, FGCU had begun speaking to a male volleyball coach about replacing Coach Flood as the Head Volleyball Coach at FGCU.

77. Upon information and belief, Clayton's investigation was still ongoing as of January 18, 2008.

78. On January 18, 2008, Coach Flood filed the original Complaint in this matter.

79. On January 22, 2008, FGCU President Wilson G. Bradshaw announced that Coach Flood was being given notice of termination from her position as Head Coach for the FGCU women's volleyball program.

80. With his announcement, President Bradshaw issued three "investigative reports" to the entire FGCU community and to the media, entitled "Report on Jaye Flood Investigation #1," "Report on Jaye Flood Investigation #2," and "Report on Jaye Flood Investigation #3" (the "Reports"). The Reports were dated January 18, 2008.

81. President Bradshaw's Statement accompanying the issuance of the Reports included a link to the FGCU website, <http://www.fgcu.edu/investigations>, where all of the Reports were published for the world to review or download electronically.

82. Following five months and three investigations initiated by FGCU, President Bradshaw granted Coach Flood a one hour conference, at which Coach Flood was allowed to respond to the "investigative reports" and notice of termination.

83. Although the “investigative reports” did not justify the action, on March 7, 2008, FGCU gave Coach Flood final notice that her employment would be terminated effective March 14, 2008.

84. Coach Flood is the Founder and Director of the USA South Volleyball Club. USA South is a club that strives to promote volleyball, pride, self-confidence, and sportsmanship to prepare Southwest Florida volleyball athletes to compete for college scholarship opportunities.

85. By 2006, the USA South program enrolled approximately 80 junior volleyball players.

86. In the fall of 2007, after FGCU’s retaliatory actions against Flood, and as a result of FGCU’s public disclosure of incomplete information regarding the inquiries into her gender equity concerns addressed in the Baker Letter and the investigation of alleged “issues involving student welfare,” enrollment in Coach Flood’s USA South Volleyball Club had decreased to approximately 50 players.

87. Coach Flood and the public at large have no adequate remedy at law for many of the harms they and the volleyball program are suffering as a result of FGCU’s retaliation against Flood. Damages for loss of Flood’s professional reputation, and harm to FGCU’s volleyball program while Coach Flood’s status remained in limbo during FGCU’s ongoing investigations, and after her employment was terminated without justification, are difficult if not impossible to ascertain and will continue without this Court’s intervention.

COUNT I

(Plaintiff Flood – Retaliation in Violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and 34 C.F.R. § 100.7)

88. Plaintiff Flood incorporates by reference and re-alleges each of the allegations contained in paragraphs 1-87 of this First Amended Complaint with the same force and vigor as if set out here in full.

89. FGCU gave Flood false “meets expectations” and “below expectations” ratings on her performance appraisals, denied her a base salary increase or bonus, placed her on probation and a performance improvement plan, placed her on indefinite administrative leave, and ultimately terminated her employment because of Coach Flood’s complaints about Title IX gender inequities in FGCU’s Athletic Department.

90. FGCU initiated three investigations of Coach Flood in which FGCU scrutinized her performance more closely than any coaches who had not complained about gender equity issues, and searched for information to discredit Coach Flood and damage her professional reputation.

91. As a direct and proximate result of FGCU’s unlawful acts, Coach Flood suffered and continues to suffer lost earnings and benefits, emotional pain, suffering, professional and personal embarrassment, humiliation, loss of enjoyment of life, and inconvenience.

COUNT II

(Plaintiff Flood – Defamation)

92. Plaintiff Flood incorporates by reference and re-alleges each of the allegations contained in paragraphs 1-87 of this First Amended Complaint with the same force and vigor as if set out here in full.

93. FGCU made false public statements regarding Coach Flood's performance as head coach, including falsely calling into question her communication skills and behavior toward others, her sensitivity to others' needs, her ethical standards/sportsmanship, her observance of NCAA rules and adherence to university policies regarding travel authorization requests. FGCU personnel knew the statements to be false when they made them and made these false statements in bad faith, with malice toward Coach Flood, and with an intention to cast her in a false light.

94. Specifically, Peterson invited publication of the false information in the performance appraisal by waving Flood's personnel file in front of a reporter, disclosing among other things, that she had "a year's worth of information" that allegedly justified the negative performance appraisal, intending to expose Flood to ridicule and to damage her professional reputation.

95. Additionally, FGCU issued "investigative reports" containing gossip and innuendo that intentionally characterized Coach Flood in a false light and did not justify the termination of her employment.

96. As a direct and proximate result of FGCU's unlawful acts, Coach Flood suffered and continues to suffer lost earnings and benefits, emotional pain, suffering, professional and personal embarrassment, humiliation, loss of enjoyment of life, and inconvenience.

COUNT III

(Plaintiff Vaughn – Retaliation in Violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and 34 C.F.R. § 100.7)

97. Plaintiff Vaughn incorporates by reference and re-alleges each of the allegations contained in paragraphs 1-87 of this First Amended Complaint with the same force and vigor as if set out here in full.

98. In July 2007, FGCU gave Vaughn a false "marginally meets expectations" rating on

her performance appraisal because of Coach Vaughn's complaints about Title IX gender inequities in FGCU's Athletic Department.

99. Following her participation in the Baker Letter, FGCU scrutinized Coach Vaughn's employment more closely than any coaches who had not complained about gender equity issues.

100. As a direct and proximate result of FGCU's unlawful acts, Coach Vaughn suffered and continues to suffer emotional pain, suffering, professional and personal embarrassment, humiliation, loss of enjoyment of life, and inconvenience.

PRAYER FOR RELIEF

WHEREFORE, the premises considered, each Plaintiff respectfully prays that this Honorable Court:

1. Enter judgment on behalf of each Plaintiff against Defendant FGCU;
2. Order preliminary and permanent injunctive relief to reinstate Plaintiff Flood into the position of Head Volleyball Coach with all attendant benefits;
3. Award Plaintiff Flood lost back pay and front pay, and compensatory damages;
4. Award Plaintiff Vaughn compensatory damages;
5. Award each Plaintiff her court costs and expenses, including attorneys' fees;
6. Award each Plaintiff pre-judgment interest and post-judgment interest;
7. Declare that Defendant's conduct is in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulations;
and
8. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

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JURY DEMAND

Plaintiff demands a trial by jury on all issues contained herein.

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