

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED
at Santa Fe, NM

OCT 21 1997 *(ML)*

ROBERT M. MARCH, Clerk
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Case No.

GALEN PATON, individually;)
JOANN WOLF, individually;)
PETER COSMIANO, individually;)
MARK LOERA, individually; ROBERT)
BRASWELL, individually; and)
JODIE ROBERTS, RANDA BARBER,)
APRIL CLAIRMONT, and ERICA)
TRAVELSTEAD, individually and on)
behalf of all others similarly)
situated,)

Plaintiffs,)

v.)

NEW MEXICO HIGHLANDS UNIVERSITY;)
BOARD OF REGENTS OF NEW)
MEXICO HIGHLANDS UNIVERSITY;)
WAYNE BINGHAM, in his official)
capacity as a REGENT; S. PETER)
BICKLEY, JR., in his official)
capacity as REGENT; THOMAS KEESING,)
in his official capacity as REGENT;)
JOE ROMERO, JR., in his official)
capacity as REGENT; MICHELLE)
CONCHA, in her official capacity)
as REGENT; SELIMO RAEI,)
individually and in his official)
capacity as president; JOE)
SINGLETON, individually and in his)
official capacity as athletic)
director; and CINDY ROYBAL,)
individually and in her official)
capacity as senior woman)
administrator,)

Defendants.)

CV 97 0 1360 JC

DCW 10/21/97

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Jodie Roberts, Randa Barber, April Clairmont, and Erica Travelstead file Claims One through Four of this complaint individually and on behalf of all others similarly situated ("Students") against Defendants NEW MEXICO HIGHLANDS UNIVERSITY ("NMHU"); WAYNE BINGHAM, S. PETER BICKLEY, JR., THOMAS KEESING, JOE ROMERO, JR., and MICHELLE CONCHA, in their

official capacities as members of THE BOARD OF REGENTS OF NMHU; SELIMO RAEL, individually and in his official capacity as president of NMHU; JOE SINGLETON, individually and in his official capacity as athletic director at NMHU; and CINDY ROYBAL, individually and in her official capacity as senior woman administrator in the athletic department at NMHU ("Defendants"),

Plaintiffs Galen Paton, Joann Wolf, Peter Cosmiano, Mark Loera, and Robert Braswell ("Coaches") file Claims Five through Ten of this complaint against Defendants individually and in their official capacities.

Plaintiff Peter Cosmiano files Claim Eleven for defamation against Defendant Joe Singleton individually and in his official capacity as athletic director of NMHU.

Plaintiffs allegations, the veracity of which is attested to in the Verifications attached as Exhibit A, are as follows:

STATEMENT OF THE CASE

1. Claims 1 through 4 of this action are posed as a class action for declaratory and injunctive relief brought on behalf of female students at New Mexico Highlands University in Las Vegas, New Mexico. The named Plaintiffs also seek compensatory damages in their individual capacities.

2. Defendants have violated (1) Title IX of the Education Amendment of 1972, 20 U.S.C. §1681 et seq. ("Title IX") and the regulations adopted thereto, (2) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983, and (3) Article II, Section 18 of the New Mexico State Constitution by

intentionally denying the female students at NMHU (a) equitable athletic scholarship funding and (b) the equal treatment and benefits that necessarily accompany an equal opportunity to participate in intercollegiate athletics.

3. Defendants' denial of equitable athletic scholarship funding and equal treatment and benefits constitutes intentional discrimination against the named Student Plaintiffs and all members of the class based solely on their gender.

4. Defendants have discriminated against NMHU's female students by failing to provide them with equitable athletic scholarship funding compared to that provided to male students.

5. Defendants have discriminated against NMHU's female students in the following areas of treatment and benefits (among others): (1) equipment and supplies; (2) locker rooms; (3) travel; (4) opportunity to receive qualified coaching; (5) assignment and compensation of coaches; (6) provision and maintenance of facilities for both practice and competition; and (7) publicity.

6. This action seeks to redress the deprivation of the named Plaintiffs' rights and the rights of the class to receive equitable scholarship funding and to receive equal treatment and benefits. Accordingly, this action seeks a declaratory judgment that Defendants have violated the rights of NMHU's female students under federal law, the United States Constitution, and the New Mexico State Constitution. This action further seeks an injunction requiring that Defendants

immediately cease their discriminatory practices and remedy the effects of their discriminatory conduct.

7. Students seek injunctive relief which, among other things, requires that Defendants fund more athletic scholarships for female students.

8. Students further seek injunctive relief which requires that Defendants provide female athletes and their teams at NMHU with equal treatment and benefits as NMHU already provides to its male athletes and teams.

9. The named Plaintiffs, in their individual capacities, seek monetary relief in order to compensate them for their damages resulting from Defendants' discrimination in its intercollegiate athletics program, including, among other things, (1) the actual out-of-pocket costs incurred to attend NMHU absent equitable athletic scholarship funding, (2) the damages associated with providing their own uniforms, equipment, facilities maintenance, and other items; and (3) the emotional distress and other damages resulting from their receiving inequitable scholarships and their being subjected to unequal treatment and benefits in athletics on the basis of their gender.

10. In addition, Coaches seek declaratory, injunctive, and monetary relief (including emotional distress damages) in their capacity as current or former employees of NMHU, for retaliation under 34 C.F.R. §106.71 (which incorporates 34 C.F.R. §1007(e) of Title VI).

11. Defendants retaliated against Coaches in their employment by, among other things, (1) firing Mr. Paton, (2)

cutting the contract of Ms. Wolf, (3) cutting the contract and then firing Mr. Cosmiano (replacing him with a football coach's wife), (4) limiting Coaches' professional development, and (5) manipulating their teams' budgets after they complained about NMHU's Title IX violations to Defendants Roybal, Singleton, and Rael.

12. Coaches further seek relief for breach of contract, breach of the covenant of good faith and fair dealing, and wrongful discharge in violation of public policy, while certain individual coaches seek relief on grounds of promissory estoppel, intentional infliction of emotional distress, and defamation.

JURISDICTION AND VENUE

13. The first claim arises under 20 U.S.C. §1681, et seq and its interpreting regulations. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

14. The second claim also arises under 20 U.S.C. §1681 et seq. and its interpreting regulations. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

15. The third claim arises under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

16. The fourth claim arises under Article II, Section 18 of the New Mexico Constitution. Supplemental jurisdiction is conferred on this court by 28 U.S.C. §1367(a).

17. The fifth claim arises under 20 U.S.C. §1681 et seq. and its interpreting regulations, particularly 34 C.F.R. § 106.71, as it incorporates Title VI, 34 C.F.R. § 100.7(e). Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

18. The sixth claim arises from Defendants' breach of the covenant of good faith and fair dealing. Supplemental jurisdiction is conferred on this court by 28 U.S.C. §1367(a).

19. The seventh claim arises from the New Mexico common law doctrine against wrongful discharge in violation of public policy. Supplemental jurisdiction is conferred on this court by 28 U.S.C. §1367(a).

20. The eighth claim arises as a breach of contract claim prompted by Coaches' Title IX complaints. Supplemental jurisdiction is conferred on this court by 28 U.S.C. §1367(a).

21. The ninth claim arises as a promissory estoppel claim prompted by Coaches' Title IX complaints. Supplemental jurisdiction is conferred on this court by 28 U.S.C. §1367(a).

22. The tenth claim arises out of Defendants' intentional and outrageous behavior with respect to the retaliation and wrongful discharge of Plaintiffs Galen Paton and Peter Cosmiano. Supplemental jurisdiction is conferred on this court by 28 U.S.C. §1367(a).

23. The tenth claim arises from the defamatory statements made by Defendant Singleton to the media regarding the termination of Plaintiff Cosmiano's employment at NMHU. Supplemental jurisdiction is conferred on this court by 28

U.S.C. §1367(a).

24. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201 and 2202.

25. Venue is proper pursuant to 28 U.S.C. § 1391(b). These claims arose in Las Vegas, New Mexico, which is within the jurisdiction of this court.

THE PARTIES

26. Plaintiff Jodie Roberts is a female student at NMHU. Ms. Roberts is a varsity soccer player at NMHU who has (1) received inequitable scholarship funding and (2) endured the unequal treatment and benefits directed by NMHU toward its female athletes. Ms. Roberts currently resides in Las Vegas, New Mexico, which is within the jurisdiction of this court.

27. Plaintiff Randa Barber is a female student at NMHU. Ms. Barber is a varsity softball player at NMHU who has (1) received inequitable scholarship funding and (2) endured the unequal treatment and benefits directed by NMHU toward its female athletes. Ms. Barber currently resides in Las Vegas, New Mexico, which is within the jurisdiction of this court.

28. Plaintiff April Clairmont is a female student at NMHU. Ms. Clairmont is a varsity volleyball player at NMHU who has (1) received inequitable scholarship funding and (2) endured the unequal treatment and benefits directed by NMHU toward its female athletes. Ms. Clairmont currently resides in Las Vegas, New Mexico, which is within the jurisdiction of this court.

29. Plaintiff Erica Travelstead is a female student at NMHU. Ms. Travelstead is a varsity volleyball player at NMHU

who has (1) received inequitable scholarship funding and (2) endured the unequal treatment and benefits directed by NMHU toward its female athletes. Ms. Travelstead currently resides in Las Vegas, New Mexico, which is within the jurisdiction of this court.

30. Plaintiff Galen Paton was the head softball coach at NMHU until he was unlawfully fired in April, 1997, in retaliation for his Title IX complaints. Mr. Paton was a resident of Las Vegas, New Mexico, during the time period covered by the facts in this complaint. Mr. Paton now resides in Tucson, Arizona.

31. Plaintiff Joann Wolf is the head soccer coach at NMHU. Her coaching contract was unlawfully reduced to four months in April, 1997, in retaliation for her Title IX complaints. Ms. Wolf is a resident of Las Vegas, New Mexico, which is within the jurisdiction of this court.

32. Plaintiff Peter Cosmiano was the head volleyball coach at NMHU. His coaching contract was unlawfully cut to four months after the 1996-97 academic year, and later terminated before completion of his contract, in retaliation for his Title IX complaints. Mr. Cosmiano is a resident of Las Vegas, New Mexico, which is within the jurisdiction of this court.

33. Plaintiff Mark Loera was an assistant volleyball coach at NMHU. His coaching contract was unlawfully terminated with that of head coach Peter Cosmiano in retaliation for the Title IX complaints. Mr. Loera is a resident of Las Vegas, New Mexico, which is within the

jurisdiction of this Court.

34. Plaintiff Robert Braswell was an assistant volleyball coach at NMHU. His coaching contract was unlawfully terminated with that of head coach Peter Cosmiano in retaliation for the Title IX complaints. Mr. Braswell was a resident of Las Vegas, New Mexico at the time of the unlawful conduct described herein and has since returned to Tennessee.

35. Defendant NMHU is a state university under Article XII, Section 11 of the New Mexico State Constitution. It is controlled by the members of its Board of Regents, who are authorized by Article XII, Section 13 of the New Mexico State Constitution to operate and control NMHU's athletic program, where the Student Plaintiffs are athletes. Therefore, NMHU's conduct is state action under 42 U.S.C. §1983. NMHU is located in Las Vegas, New Mexico, which is within the jurisdiction of this court.

36. Since the passage of Title IX, NMHU has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at NMHU, including athletics, are subject to the requirements of Title IX.

37. Defendant Wayne Bingham is a member of the Board of Regents of NMHU. Mr. Bingham is a resident of the state of New Mexico and thus is subject to the jurisdiction of this Court.

38. Defendant S. Peter Bickley, Jr. is a member of the Board of Regents of NMHU. Mr. Bickley is a resident of the

state of New Mexico and thus is subject to the jurisdiction of this Court.

39. Defendant Thomas Keesing is a member of the Board of Regents of NMHU. Mr. Keesing is a resident of the state of New Mexico and thus is subject to the jurisdiction of this Court.

40. Defendant Joe Romero, Jr. is a member of the Board of Regents of NMHU. Mr. Romero is a resident of the state of New Mexico and thus is subject to the jurisdiction of this Court.

41. Defendant Michelle Concha is a member of the Board of Regents of NMHU. Ms. Concha is a resident of the state of New Mexico and thus is subject to the jurisdiction of this Court.

42. Defendant Selimo Rael is the president of NMHU. Mr. Rael is a resident of the state of New Mexico and thus is subject to the jurisdiction of this Court.

43. Defendant Joe Singleton is the athletic director at NMHU. Mr. Singleton is a resident of the state of New Mexico and thus is subject to the jurisdiction of this Court.

44. Defendant Cindy Roybal is the senior women's administrator in the athletic department at NMHU. Ms. Roybal is a resident of the state of New Mexico and thus is subject to the jurisdiction of this Court.

CLASS ALLEGATIONS

45. The named Student Plaintiffs bring Claims 1 through 4 on their own behalf, and, pursuant to Rule 23(A) and B(2) of the Federal Rules of Civil Procedure, for declaratory and

injunctive relief, on behalf of all present and future female students enrolled at NMHU who participate, seek to participate, or are deterred from participating in varsity intercollegiate athletics at NMHU.

46. Ms. Roberts is both (1) the recipient of inequitable athletic scholarship funding and (2) a current varsity athlete who is subjected to NMHU's unequal treatment and benefits.

47. Ms. Barber is both (1) the recipient of inequitable athletic scholarship funding and (2) a current varsity athlete who is subjected to NMHU's unequal treatment and benefits.

48. Ms. Clairmont is both (1) the recipient of inequitable athletic scholarship funding and (2) a current varsity athlete who is subjected to NMHU's unequal treatment and benefits.

49. Ms. Travelstead is both (1) the recipient of inequitable athletic scholarship funding and (2) a current varsity athlete who is subjected to NMHU's unequal treatment and benefits.

50. In bringing this lawsuit, Students seek to require that Defendants comply with Title IX, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the New Mexico State Constitution by ending their discriminatory policies and practices towards female athletes and female athletic programs at NMHU. Accordingly, Students seek injunctive relief requiring NMHU to fund athletic scholarships for female athletes on an equitable basis with male athletes. In addition, Students seek declaratory and injunctive relief requiring NMHU to provide

current and future female athletes at NMHU treatment and benefits comparable to those provided to male athletes.

51. The class is so numerous that joinder of all members is impractical. There are nearly 1,600 female students enrolled at NMHU, including more than 70 of whom participate in intercollegiate athletics. It is unknown how many of these current female students or how many future female students would seek to participate in intercollegiate varsity athletics if more scholarship opportunities or more equitable treatment were available. Moreover, joinder of all members is impractical because members of the class who may suffer future injury are not capable of being identified at this time.

52. There are many questions of law and fact common to the class, including: (a) whether female students at NMHU are being deprived of equitable scholarship funding, (b) whether female students at NMHU are receiving unequal treatment and benefits in comparison to the men's athletic program, and (c) whether Defendants have been and are discriminating against women in NMHU's intercollegiate athletic program in violation of Title IX, the U.S. Constitution, and the New Mexico State Constitution.

53. The claims of the named Student Plaintiffs are typical of the claims of the class. The types of discrimination which they have suffered as a result of their gender, including, (1) inequitable athletic scholarship funding and (2) receipt of inequitable treatment and benefits in NMHU's intercollegiate athletics program, are typical of the gender discrimination which members of the class have

suffered, are suffering, and, unless this Court grants relief, will continue to suffer.

54. The named Student Plaintiffs will fairly and adequately represent and protect the interests of the class. They intend to prosecute this action rigorously in order to secure remedies for the entire class. Counsel of record for the Plaintiffs are experienced in federal civil rights litigation and class actions.

55. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

GENERAL ALLEGATIONS

THE REQUIREMENTS OF TITLE IX

56. Title IX, enacted in 1972, provides in relevant part:

No person in the United States shall, on the basis of sex, be 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). The Civil Rights Restoration Act of 1987 made Congress' intent plain that "program or activity," as used in Title IX, applies to any program or activity so long as any part of the educational institution receives federal financial assistance. 20 U.S.C. § 1687. Thus, NMHU is subject to Title IX even if none of the funding for either its women's or men's athletic programs comes from federal sources.

57. In 1975, the Department of Health, Education and Welfare (the predecessor of the United States Department of Education ("DOE")) adopted regulations interpreting Title IX. These regulations are codified at 34 C.F.R. Part 106 (The DOE regulations adopting the HEW regulations are at 45 C.F.R. Part 86) (the "Regulations").

58. With regard to athletic programs, Section 106.41(a) of 34 C.F.R. provides that intercollegiate athletics are included within the "program or activity" requirements of Title IX:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and the recipient shall provide any such athletics separately on such basis.

59. According to the Regulations, to the extent that an educational institution provides scholarship funding, "it must provide reasonable opportunities for such awards for members of each sex in proportion to the numbers of students of each sex participating in...intercollegiate athletics". 34 C.F.R. § 106.37(c).

60. 34 C.F.R. § 106.41(c) specifies ten (10) factors that may be considered in the determination of equal athletic opportunity:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. The provision of equipment and supplies;

3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

Another factor to be considered is a school's "failure to provide necessary funds for teams for one sex". Id.

61. In 1979, DOE's Office of Civil Rights ("OCR") issued a policy interpretation of Title IX and the Regulations. This policy interpretation is found at 44 Federal Register 71,413 (1979) (the "Policy Interpretation").

62. The Policy Interpretation provides that, in order to comply with Title IX and 34 C.F.R. § 106.41(c), schools must provide equal athletic opportunities in three general areas: (1) scholarships, (2) equivalent participation opportunities (including both the number of opportunities and whether the selection of sports and the level of competition effectively accommodate the interests and abilities of members of both sexes), and (3) equal treatment and benefits. The first and third items are at issue in this case.

63. Under both the Regulations and the Policy Interpretation, compliance in the area of equal treatment and

benefits is assessed based on an overall comparison of the male and female athletic programs, including an analysis of factors (2) through (10) of 34 C.F.R. § 106.41(c) listed above and the provision of necessary funds for teams of both sexes.

64. The Regulations require that sponsors of intercollegiate athletics (such as NMHU) take such remedial actions as are necessary to overcome the effects of gender discrimination in violation of Title IX. See 34 C.F.R. §106.3(a). On information and belief, NMHU has not taken any recent remedial actions and any remedial actions which NMHU has taken in the past twenty (20) years have been insufficient to satisfy NMHU's obligations under Title IX.

65. The Regulations further require that sponsors of intercollegiate athletics comply with the Regulations within three years of their effective date (which was July 21, 1975). Now, more than twenty (20) years later, NMHU has still not fully complied with Title IX.

THE U.S. CONSTITUTION

66. The Fourteenth Amendment to the United States Constitution requires that a state shall not "deny to any person within its jurisdiction the full protection of the laws".

67. Under 42 U.S.C. § 1983, Defendants may be held liable for their actions in violating Students' rights under the Fourteenth Amendment, namely by treating female students less favorably than male students.

NEW MEXICO CONSTITUTION

68. Article II, Section 18 of the New Mexico Constitution provides that:

No person shall be deprived of life, liberty, or property, without due process of law, nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person.

69. Defendants have denied the female students at NMHU equal protection by failing to provide them with equitable scholarship funding or with equitable treatment and benefits in their athletic programs.

INJUNCTIVE RELIEF

70. Students are entitled to injunctive relief to end Defendants' unequal, discriminatory, and unlawful treatment of female student athletes. Because of Defendants' acts and omissions, Students continue to be deprived of the rights guaranteed to them by federal law, the U.S. Constitution, and the New Mexico State Constitution. Failure to grant the injunctive relief requested will result in irreparable harm to Students in that Students' Fourteenth Amendment rights will be violated and Students will never be able to participate in intercollegiate athletics on an equal basis with their male classmates, if at all, especially given their limited tenure as student-athletes. Accordingly, Students do not have an adequate remedy at law for this harm. This threatened harm far outweighs any possible harm that granting injunctive relief might cause Defendants. Finally, the injunctive relief sought would in no way disserve the public interest but, on

the contrary, would prevent discrimination based on gender and would promote the goal of full equality before the law.

71. Coaches also are entitled to injunctive relief to end Defendants' discriminatory and retaliatory employment practices. Because of Defendants' unlawful acts, Coaches Paton, Cosmiano, Loera, and Braswell are unemployed and Coach Wolf had her coaching position cut from a full academic year to four months, thus depriving them of the rights guaranteed to them by federal law, the U.S. Constitution, and the New Mexico State Constitution. Failure to grant the injunctive relief requested will result in irreparable harm to Coaches in that their rights will be violated, their reputations will be defamed, and they will be denied an opportunity to practice their chosen profession. Coaches do not have an adequate remedy at law for this harm. This threatened harm far outweighs any possible harm that granting injunctive relief might cause Defendants. Finally, the injunctive relief sought would in no way disserve the public interest but, on the contrary, would benefit the Students and would promote compliance with and full equality before the law.

ATTORNEYS' FEES

72. Students and Coaches have been required to retain the undersigned attorneys to prosecute this action. They are entitled to recover reasonable attorneys' fees pursuant to 42 § 1988. They are entitled to recover costs under FRCP 54(d).

FIRST CLAIM FOR RELIEF: TITLE IX
(Unequal Scholarship Funding)

(Class action against NMHU and Board of Regents)

73. Students reallege and incorporate herein by this reference paragraphs 1 through 72 inclusive of this Complaint.

74. By offering athletic scholarship funding to male students, NMHU has demonstrated its determination that athletics provide educational benefits that should be supported by the university. Students agree with this determination that athletic scholarships provide valuable educational benefits. For this very reason, Students contend that they should have equal access to scholarship funding and should receive the same benefits that the male students at NMHU already have.

75. The named Student Plaintiffs have the desire and skill to participate in intercollegiate athletics and presently do so, but are not provided equitable athletic scholarship funding.

76. NMHU historically has not provided and currently does not provide its female students with such equitable athletic scholarship funding.

77. Defendants have intentionally violated Title IX by knowingly and deliberately discriminating against female students at NMHU, including Students, by, among other things, failing to provide equitable scholarship funding for female students to participate in intercollegiate athletics.

78. Students and Coaches have on numerous occasions informed Defendants that their actions discriminate against

Students and that these actions constitute violations of their Title IX rights. Despite the fact that Students and Coaches have drawn these inequities to the attention of Defendants, Defendants have knowingly and intentionally continued to fail to and refuse to take any of the necessary actions to remediate any existing violations, even though the Regulations mandate that they do so. Defendants' actions demonstrate their intentional and conscious failure to comply with Title IX.

79. Defendants' conduct has persisted despite the information provided by and the requests made by Students and Coaches and despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) & 106.41(d).

80. Defendants' conduct violates 20 U.S.C. § 1681 et seq., as interpreted by 34 C.F.R. §§ 106.31 and 106.41 and the Policy Interpretation thereof.

81. As a result of Defendants' conduct, the named Student Plaintiffs have incurred extensive damages, including, among other things, (1) the actual out-of-pocket costs incurred to attend NMHU without adequate athletic scholarship funding and (2) the emotional distress and other damages resulting from their being subjected to unequal treatment and benefits in athletics on the basis of their gender.

SECOND CLAIM FOR RELIEF: TITLE IX
(Unequal Treatment and Benefits)

(Class action against NMHU and the Board of Regents)

82. Students reallege and incorporate herein by this reference paragraphs 1 through 81 inclusive of this Complaint.

83. Defendants, by their conduct, have intentionally violated Title IX by knowingly and deliberately discriminating against female students, including the named Student Plaintiffs, by, among other things, failing to provide female athletes at NMHU with the same treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

84. Students and Coaches have on numerous occasions informed Defendants that their actions constitute violations of Students' Title IX rights, as do their failure and refusal to take actions to remediate any existing violations.

85. On information and belief, Students allege that Defendants have failed to comply with Title IX by failing to provide female athletes with comparable treatment and benefits in the following areas:

- (1) Defendants provide the male athletes with newer equipment and supplies that are of better quality than those provided to the female athletes. Defendants also provide the male athletes with new uniforms on a more frequent basis than they provide such uniforms to the female athletes.
- (2) Defendants unfairly discriminate against female athletes in the scheduling of their practice times. They further discriminate in the scheduling of the quality and location of opponents that the women's teams play.
- (3) The male athletes receive better travel accommodations than the female athletes.
- (4) The female athletes have fewer opportunities to receive coaching because several of NMHU's female teams have fewer coaches and more players per coach than the male teams.
- (5) Defendants compensate the coaches of female teams less than the coaches of male teams, thus making coaching positions on women's teams less

attractive to the most qualified coaching candidates.

- (6) Defendants have failed to pay the coaches of the female athletic teams in a timely manner, while Plaintiffs are not aware of any coach of any male athletic team who has not been paid on time. The disparate payment practices discourage qualified coaches from applying for positions at NMHU.
- (7) The women's locker facilities are inferior to the men's locker facilities.
- (8) Defendants provide female athletes with inequitable medical and training facilities, services, and personnel.
- (9) Defendants provide female athletes with inequitable transportation, including transportation that is too small and uncomfortable for the number of athletes transported.
- (10) The travel arrangements for the female athletic teams are not given the same priority and are not handled as promptly or efficiently as the arrangements for the male athletic teams.
- (11) Defendants impose rules regarding the housing of female athletes that they do not have for male athletes.
- (12) Defendants provide female athletes with inequitable meal access. For example, the female athletes on the volleyball team are assigned a practice time of 5:00 p.m. to 8:00 p.m. This time period covers the entire evening meal schedule in the dorms, and thus prevents the female athletes from obtaining any evening meals whatsoever every single day that they practice. Their only alternative is to spend their own limited resources on meals off-campus. Male athletes are not denied their evening meals.
- (13) Defendants consistently provide less publicity for their female athletic teams than for their male athletic teams, including no media guides or brochures, no cheerleaders, untrained sports information statisticians and other personnel, limited public address access, and overall promotion.

- (14) Defendants excluded the female athletes on the volleyball team from team picture day. No male team was excluded in this manner.
- (15) Defendants provide female athletes and their teams with poorer, unlighted facilities and poorer facilities maintenance than they provide male athletes and their teams.
- (16) Defendants provide fundraising assistance and promotion to male athletic teams, but not to female teams.
- (17) Defendants permit the disparate funding of men's and women's athletic programs through the disparate collection and allocation of booster funds.
- (18) Defendants provide the women's athletic teams and their coaches with less favorable recruiting budgets and opportunities.
- (19) Defendants have taken money from the women's athletic budgets to pay for cost overruns on the men's teams -- even though the men's teams already receive a disproportionate amount of the overall athletic budget.

86. The gross imbalance in the treatment of female and male athletes at NMHU, as detailed above, demonstrates Defendants' intentional and conscious failure to comply with Title IX.

87. Defendants' conduct has persisted despite the information provided by and the requests made by Students and Coaches and despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) & 106.41(d), and the Policy Interpretation.

88. Defendants' conduct violates 20 U.S.C. § 1681 et seq., as interpreted by 34 C.F.R. §§106.31 and 106.41 and the Policy Interpretation thereof.

THIRD CLAIM FOR RELIEF: EQUAL PROTECTION

(Class action against all Defendants)

89. Students reallege and incorporate herein by this reference paragraphs 1 through 88 inclusive of this Complaint.

90. Defendants, by their (1) failure to provide equitable athletic scholarship funding for female students and (2) failure to provide female athletes with the same treatment and benefits that they provide the male athletes (as detailed above), have purposely discriminated against female students, including the named Plaintiffs, on the basis of sex and have intentionally deprived them of their rights to equal protection secured by the Fourteenth Amendment to the Constitution.

91. Defendants Bingham, Bickley, Keesing, Romero, and Concha, as members of the Board of Regents at NMHU, have failed to remedy the inequitable scholarship funding and the inequitable treatment and benefits received by NMHU's female athletes -- despite the numerous complaints of the named Plaintiffs and Coaches. Therefore, the actions of the Defendant regents constitute a knowing disregard for Students' constitutional rights.

92. Defendant Selimo Rael, as president of NMHU, has failed to remedy the inequitable scholarship funding and the inequitable treatment and benefits received by NMHU's female athletes -- despite the numerous complaints of the named Plaintiffs and Coaches and despite a meeting in which Coaches set forth the violations in detail. Therefore, Defendant Rael's actions constitute a knowing disregard for Students'

constitutional rights.

93. Defendant Singleton, as the athletic director at NMHU, has failed and refused to remedy the inequitable scholarship funding and the inequitable treatment and benefits received by NMHU's female athletes -- despite the numerous complaints of the named Plaintiffs and Coaches and despite a meeting with Defendant Rael and Defendant Singleton in which Coaches set forth the violations in detail. Therefore, Defendant Singleton's actions constitute a knowing disregard for Students' constitutional rights.

94. Defendant Roybal, as the senior women's administrator at NMHU, has failed and refused to remedy the inequitable scholarship funding and the inequitable treatment and benefits received by NMHU's female athletes -- despite the numerous complaints of the named Plaintiffs and Coaches and despite an April 15 meeting in which Coaches set forth the violations in detail. Therefore, Defendant Roybal's actions constitute a knowing disregard for Students' constitutional rights.

95. Section 1983 of Title 42 of the United States Code provides, in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

96. When Defendants engaged in the improper actions described above, they were acting under color of law for purposes of the Equal Protection Clause and 42 U.S.C. § 1983. Under this section, each of the individual Defendants is liable on an individual basis for his violation of the Students' constitutional rights under the Fourteenth Amendment.

97. The knowing and intentional actions of each of the individual Defendants created an intimidating and inhospitable environment for the female athletes at NMHU in that the Defendants consistently conveyed the message to male athletes that they provided value to NMHU, whereas female athletes did not and were instead merely a burden on NMHU's budget. Defendants have consistently relegated the female athletes to a second class status.

98. Defendants' participation in this pattern of demeaning conduct has made it acceptable for other coaches and male athletes to repeat the discriminatory behaviors and actions of Defendants by, among other things, heckling and harassing the female athletes on the basis of their gender. This hostile environment has caused and continues to cause severe emotional distress for female athletes at NMHU, including, but not limited to, a reduction in their confidence and self-esteem. This environment also discourages female athletes from speaking out, demanding equal treatment, and enforcing their rights, because of the widespread fear of being subjected to public humiliation, ridicule, and general retaliation. The male athletes do not face this same

hostility and harassment.

99. The above-described actions and the creation of the above-described environment has caused the named Plaintiffs emotional distress and other damages for which they seek monetary relief.

FOURTH CLAIM FOR RELIEF: NEW MEXICO CONSTITUTION

(Class action against all Defendants)

100. Students reallege and incorporate herein by this reference paragraphs 1 through 100 inclusive of this Complaint.

101. Article II, Section 18 of the New Mexico State Constitution provides that no state actor such as NMHU shall discriminate on the basis of sex. This mandates includes the denial of equitable athletic scholarship funding and equitable treatment and benefits. Through the conduct described above in Claims 1, 2, and 3, Defendants have intentionally discriminated against Students.

102. The named Plaintiffs and Coaches notified Defendants numerous times about NMHU's violation of New Mexico's prohibition of sex discrimination.

103. Defendants persistently ignored the complaints and requests of Students and Coaches. In doing so, each Defendant knowingly and intentionally violated the New Mexico Constitution and is liable to the named Plaintiffs herein for the damages caused by these violations.

FIFTH CLAIM FOR RELIEF: RETALIATION

(By Coaches against all Defendants)

106. Coaches reallege and incorporate herein by this reference paragraphs 1 through 104 inclusive of this Complaint.

107. This claim is brought by Coaches in their capacities as current or former employees of NMHU, for retaliation under 34 C.F.R. §106.71 (which incorporates 34 C.F.R. §1007(e) of Title VI).

108. Coaches met with Defendant Roybal in April, 1997, to complain about NMHU's Title IX violations and their impact on Students. Immediately thereafter, once Defendant Roybal notified Defendant Singleton of Coaches' complaints, Defendants retaliated against Coach Paton by firing him and retaliated against Coach Wolf and Coach Cosmiano by cutting their 1997-98 coaching from a full academic year to four months. Defendants later fired Coach Cosmiano as soon as the athletic director could convince a football coach's wife to take his job.

109. Defendants also retaliated against Coaches Wolf and Cosmiano by restricting their recruiting time and budgets, by restricting their professional development efforts, and by creating a hostile and unbearable environment within which to work. None of the coaches of any of the men's athletic teams is subjected to these actions and restrictions.

110. Defendants' actions against Coaches were a direct response to and were intended to retaliate against them for

making Title IX complaints. Defendants' actions were in violation of 34 C.F.R. §106.71 (which incorporates 34 C.F.R. §1007(e) of Title VI).

111. Coaches were damaged by Defendants' actions in that they lost or were limited in their employment, lost compensation and benefits, lost professional status and reputation, lost funding for their teams, and were subjected to a hostile and unbearable environment that has caused them pain, humiliation, and emotional distress.

SIXTH CLAIM FOR RELIEF:
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(Coaches against Defendants)

112. Coaches reallege and incorporate herein by this reference paragraphs 1 through 110 inclusive of this Complaint.

113. Coaches' employment contracts include an implied covenant of good faith and fair dealing.

114. Defendants' actions described herein constitute a breach of the implied covenant of good faith and fair dealing.

115. Most egregiously, Defendants entered into contracts with Coaches Cosmiano, Loera, and Braswell, but then immediately terminated them once Defendant Singleton was able to convince the football coach's wife to replace them. Thus, by misleading Coaches into believing they had a job (only to fire them after the season started, making it then impossible to find other coaching positions) Defendants breached the implied covenant of good faith and fair dealing.

116. As a result of Defendants' wrongful conduct, Coaches

have suffered and will continue to suffer actual monetary damages, including but not limited to, past and future lost compensation and benefits, pain, humiliation, and emotional distress in a sum to be proven at trial.

117. Defendants' acts were done willfully, maliciously, and with callous disregard and reckless indifference to and disregard for Coaches' rights and, as such, warrant an award of punitive damages in a sum to be proven at trial.

SEVENTH CLAIM FOR RELIEF:
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

**(By Coaches Cosmiano, Loera, and Braswell
against Defendants)**

118. Coaches reallege and incorporate herein by this reference paragraphs 1 through 116 inclusive of this Complaint.

119. At all times relevant hereto, Defendants received state and federal funds, the use and allocation of which were governed by federal and state laws prohibiting gender discrimination.

120. Coaches Cosmiano, Loera, and Braswell were terminated in their employment in retaliation for Coaches' complaints about the unlawful use and allocation of those federal and state funds between the men's and women's athletic programs.

121. Coaches' termination in retaliation for making complaints about the unlawful use of the federal and state funds, as set forth above, violates a clear mandate of public policy and, as such, is actionable under Vigil v. Arzola, 102 N.M. 682, 699 P.2d 613 (N.M.Ct.App. 1983).

122. Defendants who retaliated against Coaches and Defendants who failed to reverse the decision to terminate Coaches breached and failed to perform the duties of their office. Their failure to perform their duties constitutes both willful misconduct and recklessness.

123. As a result of Defendants' wrongful conduct, Coaches have suffered and will continue to suffer actual monetary damages, including but not limited to, past and future lost compensation and benefits, pain, humiliation, and emotional distress in a sum to be proven at trial.

EIGHTH CLAIM FOR RELIEF: BREACH OF CONTRACT

**(By Coaches Wolf, Cosmiano, Loera, and Braswell
against Defendants)**

124. Coaches reallege and incorporate herein by this reference paragraphs 1 through 122 inclusive of this Complaint.

125. NMHU enters into at least academic-year contracts with its head coaches.

126. As acknowledged by Defendants, the coaches are entitled to the automatic renewal absent good cause.

127. Under this right, Coaches Wolf and Cosmiano were promised contracts for the 1997-98 academic year for their positions as women's soccer and volleyball coaches.

128. After Coach Wolf complained about the Title IX violations endured by her women's soccer team, her written contract for the 1997-98 academic year was unilaterally set at four months.

129. In unilaterally breaking Coach Wolf's contract and

imposing a four month limit, Defendants breached its original contract with Coach Wolf.

130. As a result of Defendants' breach, Coach Wolf is entitled to continue to receive her full salary and benefits for the entire academic year period of her contract and to have her contract renewed thereafter.

131. After Coach Cosmiano complained about the Title IX violations endured by his women's volleyball team, his contract for the 1997-98 academic year was also unilaterally set at four months.

132. In unilaterally breaking Coach Cosmiano's academic year contract and imposing a four month limit, Defendants breached their original contract with Coach Cosmiano.

133. After Coach Cosmiano began practices with his volleyball players in August, 1997, Defendants breached their contract with him by terminating him.

134. As a result of Defendants' breach, Coach Cosmiano is entitled to continue to receive his full salary and benefits for the term of his original contract and to have it renewed thereafter.

135. In a writing dated May 15, 1997, Defendants entered into contracts with Coaches Loera and Braswell to serve as assistant volleyball coaches for the 1997-98 academic year.

136. Defendants breached these contracts when they terminated Coaches Loera and Braswell without cause.

137. Coaches Wolf, Cosmiano, Loera, and Braswell are entitled to monetary damages in the amount of their lost compensation and benefits for the period of their original

contracts.

NINTH CLAIM FOR RELIEF: PROMISSORY ESTOPPEL

(By Plaintiffs Braswell and Loera against Defendants)

138. Coaches reallege and incorporate herein by this reference paragraphs 1 through 136 inclusive of this Complaint.

139. Defendants entered into a contract with Coaches Loera and Braswell to serve as assistant volleyball coaches for the 1997-98 academic year.

140. Defendants promised to employ Coach Braswell as an assistant volleyball coach if he moved to Las Vegas, New Mexico.

141. In reliance on this promise, Coach Braswell left his home and family in Tennessee in order to accept the position as assistant volleyball coach at NMHU.

142. After making these promises, and after Coaches Braswell and Loera relied thereon by turning down other employment and/or moving to Las Vegas, New Mexico, Defendants terminated Coaches Loera and Braswell without cause.

143. Coaches Loera and Braswell were damaged by Defendants' breach of their promise in the amount of lost compensation, benefits, and moving expenses.

**TENTH CLAIM FOR RELIEF:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

(By Plaintiffs Paton and Cosmiano against Defendants)

144. Coaches Paton and Cosmiano reallege and incorporate herein by this reference paragraphs 1 through 142 inclusive of this Complaint.

145. When Plaintiffs confronted Defendant Singleton about the violations, he threatened their jobs and took even more steps to make their lives miserable at work. He cut their recruiting budgets, refused to approve recruiting trips, refused to approve expense reimbursements, intimidated them, referred to them as disloyal in front of other NMHU employees, and isolated them within the athletic department and the NMHU community.

146. When Plaintiffs raised their civil rights concerns and their fears about the behavior of Defendant Singleton to Defendants Roybal, Rael, and Concha, Defendants failed to intervene, but instead, permitted Defendant Singleton to continue his daily harassment and intimidation of Plaintiffs.

147. Defendants' conduct toward Coach Paton was particularly extreme and outrageous in that they fired him soon after he complained about Defendants' Title IX civil rights violations. When they did so, Defendants knew that at such a late date, Coach Paton would not likely be able to find new employment as a softball coach.

148. On information and belief, Defendants' conduct and comments have prevented Coach Paton from obtaining other work in his profession.

149. Defendants' conduct toward Coach Cosmiano was also extreme and outrageous in that they promised him a year long contract, then unilaterally reduced it to four months, and then after he already hired assistant coaches and began volleyball practice in the fall, Defendants fired him as soon as they were able to convince one of the football coaches'

wives to take his place.

150. Defendants essentially used Coach Cosmiano until they could convince a person more favorable to football (and less concerned about Title IX) to take his place. Defendants then fired Coach Cosmiano at a time when no school in the country was hiring, because the season had already started.

151. Defendants knew that Coach Cosmiano would be unable to find work in his profession at that time or in the near future because of the timing of the termination and the outrageousness of their conduct.

152. Defendants also failed to pay Coach Cosmiano under his contract and even for the weeks that he actually worked for quite some time. They even threatened not to pay him at all (a violation of the labor laws) unless he signed a waiver of all his claims against them.

153. By holding Coach Cosmiano's pay check hostage for so many weeks, Defendants knowingly and intentionally caused great financial and emotional harm to him.

154. Defendants then began a campaign to discredit Coach Cosmiano on campus and in the media, by suggesting that he was fired for embezzlement. Defendants made these statements even though they knew at the time that not even they believed that Coach Cosmiano had engaged in such illegal activity.

155. Nonetheless, in order to squelch the uproar caused by firing Coach Cosmiano, Defendants sought to destroy his integrity and reputation in the press. In doing so, Defendants knew that they would also damage Coach Cosmiano's chances of finding a new job in coaching, business, or

athletic administration.

156. Defendants knew the consequences of their conduct and proceeded anyway with the intent to inflict severe emotional distress or with knowledge there was a high probability that their conduct would cause such severe distress to Plaintiffs.

157. Defendants' conduct has, in fact, caused severe emotional distress to both Coaches Paton and Cosmiano. Both remain unemployed and believe that they have been black-balled from future coaching opportunities because of the outrageous conduct and statements by Defendants. Coach Paton was even forced to move out of state with his wife and children to move in with relatives.

158. Defendants' conduct and statements overall were extreme and outrageous, Defendants intentionally engaged in such conduct despite knowledge of its consequences, and in doing so caused severe emotional distress to Coaches Paton and Cosmiano.

ELEVENTH CLAIM FOR RELIEF: DEFAMATION

(By Plaintiff Cosmiano against Defendant Singleton)

159. Coach Cosmiano realleges and incorporates herein by this reference paragraphs 1 through 159 inclusive of this Complaint.

160. After Defendants unlawfully terminated Coach Cosmiano, Defendant Singleton made defamatory statements to the news media about Coach Cosmiano and his performance as a coach and business manager. Defendant Singleton's comments implied that Coach Cosmiano was dismissed because of

embezzlement in the business manager's office.

161. On information and belief, Defendant Singleton wrongfully and intentionally made these defamatory statements with the intent to further damage Coach Cosmiano's career and to prevent him from obtaining another coaching or business manager position.

162. On information and belief, Defendant Singleton wrongfully and intentionally made these defamatory statements in order to distract attention from his own management of the athletic department at NMHU.

163. The statements made by Defendant Singleton were and are completely false. Coach Cosmiano has not been officially accused of and has never engaged in embezzlement or any other form of criminal activity.

164. The statements were published in that Defendant Singleton made them to the news media and the statements were printed in newspapers such as The Las Vegas Optic.

165. After the publication of Defendant Singleton's statements, people approached Coach Cosmiano to ask him if he had been dismissed for embezzlement. Their questions demonstrate that Defendant Singleton's public comments were published to others and that they left a false and defamatory impression with the public regarding the character and abilities of Coach Cosmiano.

166. The publication of these statements damaged Coach Cosmiano's reputation and his ability to obtain other employment.

167. Coach Cosmiano is entitled to compensation and to a clearing of his name by Defendants.

RELIEF REQUESTED

WHEREFORE, on their First, Second, Third, and Fourth class action claims, Students respectfully pray that this Court:

- A. Certify claims 1 through 4 as a class action for declaratory and injunctive relief on behalf of all present and future female students at NMHU who participate, seek to participate, or are deterred from participating in varsity intercollegiate athletics at NMHU.
- B. Enter an order declaring that Defendants have engaged in a past and continuing pattern and practice of discrimination against female students on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including both inequitable athletic scholarship funding and inequitable treatment and benefits), the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the New Mexico State Constitution.
- C. Issue a permanent injunction (a) restraining Defendants and their officers, agents, employees, successors, and any other persons acting in concert with them, from continuing to maintain practices and policies of discrimination against female students on the basis of gender, and (b) requiring

Defendants, immediately upon issuance of the injunctive order, to adopt and implement a budget and plan which corrects and remediates Defendants' violation of Title IX, the Fourteenth Amendment, and the New Mexico State Constitution. Such a plan should include, among other things, (1) allowing female students equal access to athletic scholarship funding and (2) providing female athletes with treatment and benefits comparable to those provided to male athletes.

- D. Grant an expedited hearing and ruling on the permanent injunction request in C above.
- E. Award the named Plaintiffs monetary relief as permitted by Title IX, 42 U.S.C. § 1983, and other applicable law, including but not limited to, (1) the actual out-of-pocket costs incurred to attend NMHU without sufficient athletic scholarship funding, (2) the damages associated with providing their own uniforms, equipment, facilities maintenance, and other items; and (3) the emotional distress and other damages resulting from their being subjected to unequal treatment and benefits in athletics on the basis of their gender.
- F. Award Students punitive damages for Defendants' violation of their civil rights.
- G. Award Students their reasonable attorneys' fees and costs.

H. Order such other and further relief as the Court deems appropriate.

WHEREFORE, on Coaches' Fifth Claim for Relief (retaliation):

- A. Enter an order declaring that Defendants have engaged in a past and continuing pattern and practice of retaliation against Coaches as a consequence of making Title IX complaints on behalf of Students.
- B. Issue a permanent injunction restraining Defendants and their officers, agents, employees, successors, and any other persons acting in concert with them, from retaliating against or taking any other adverse action against Coaches as a result of making Title IX complaints.
- C. Issue a permanent injunction reinstating Coaches Paton and Cosmiano as coaches at NMHU, and reinstating Coach Wolf under the terms of her original contract.
- D. Award Coaches monetary relief as permitted by Title IX and other applicable law, including damages for lost compensation and benefits, pain, humiliation, and the emotional distress suffered by Coaches as a result of Defendants' retaliatory actions.
- E. Award Coaches punitive damages for Defendants' violation of their civil rights and the civil

rights of their players.

- F. Award Coaches their reasonable attorneys' fees and costs.
- G. Order such other and further relief as the Court deems appropriate.

WHEREFORE, on Coaches' Sixth Claim for Relief (breach of covenant of good faith and fair dealing):

- A. Issue a permanent injunction reinstating Coaches to their former coaching positions and under their former contract terms at NMHU.
- B. Award Coaches monetary relief, including damages for lost compensation and benefits, pain, humiliation, and the emotional distress suffered as a result of Defendants' wrongful actions.
- C. Award Coaches Paton, Cosmiano, Loera, and Braswell punitive damages for Defendants' wrongful discharge of their employment.
- D. Award Coaches their reasonable attorneys' fees and costs.
- E. Order such other and further relief as the Court deems appropriate.

WHEREFORE, on Coaches' Seventh Claim for Relief (wrongful discharge):

- A. Issue a permanent injunction reinstating Coaches Paton, Cosmiano, Loera, and Braswell to their former coaching positions and under their former contract terms at NMHU.

- B. Award Coaches Cosmiano, Loera, and Braswell monetary relief, including damages for lost compensation and benefits, pain, humiliation, and the emotional distress suffered as a result of Defendants' wrongful actions.
- C. Award Coaches Cosmiano, Loera, and Braswell punitive damages for Defendants' wrongful discharge of their employment.
- D. Award Coaches their reasonable attorneys' fees and costs.
- E. Order such other and further relief as the Court deems appropriate.

WHEREFORE, on Coaches' Eighth Claim for Relief (breach of contract):

- A. Issue a permanent injunction reinstating Coaches in their coaching positions at NMHU for the remainder of their one-year contract period.
- B. Award Coaches monetary relief for such items as lost compensation and benefits.
- C. Order such other and further relief as the Court deems appropriate.

WHEREFORE, on Coaches' Ninth Claim for Relief (promissory estoppel):

- A. Issue a permanent injunction reinstating Coaches Loera and Braswell to their coaching positions at NMHU,

B. Award Coaches Loera and Braswell monetary relief for such items as lost compensation, benefits, and moving expenses.

C. Order such other and further relief as the Court deems appropriate.

WHEREFORE, on Coach Paton's and Coach Cosmiano's Tenth Claim for Relief (intentional infliction of emotional distress):

A. Issue a permanent injunction reinstating Coaches to their former coaching positions and under their former contract terms at NMHU.

B. Award Coaches monetary relief, including damages for lost compensation and benefits, pain, humiliation, and the emotional distress suffered as a result of Defendants' wrongful actions.

C. Award Coaches Paton and Cosmiano punitive damages for Defendants' intentional infliction of emotional distress.

D. Award Coaches their reasonable attorneys' fees and costs.

E. Order such other and further relief as the Court deems appropriate.

WHEREFORE, on Coach Cosmiano's Eleventh Claim for Relief (defamation):

A. Award Coach Cosmiano monetary relief, including damages for pain, humiliation, emotional distress, lost reputation, and lost

opportunities for other employment suffered as a result of Defendants' wrongful actions.

- B. Order Defendants to make a complete retraction of their defamatory statements in order to prevent further injury to Coach Cosmiano.
- C. Order such other and further relief as the Court deems appropriate.

Dated: October 21, 1997

GALEN PATON, ET. AL.,
Plaintiffs.

BY:



Nancy Kantrowitz
N.M. Bar No.6676
Simon & Oppenheimer
208 Griffin Street
P.O. Box 9612
Santa Fe, NM 87504-9612
1-505-988-7420

Co-counsel to be admitted pro hac vice:

Kristen M. Galles, Esq.
Equity Legal
10 Rosecrest Avenue
Alexandria, VA 22301
(703) 683-4491