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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

**STEVEN APILADO, LARON
CHARLES, AND JON RUSS,**

Plaintiffs,

v.

**THE NORTH AMERICAN GAY
AMATEUR ATHLETIC ALLIANCE,**
Defendant.

No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES BASED
ON VIOLATIONS OF RCW 49.60
et seq., BREACH OF CONTRACT,
AND TORTIOUS CONDUCT**

JURY DEMANDED

COME NOW STEVEN APILADO, LARON CHARLES, AND JON RUSS
(collectively, "Plaintiffs"), by and through their attorneys, K&L Gates LLP¹, who
complain and allege as follows:

I. PRELIMINARY STATEMENT

1. Plaintiffs Steven Apilado, LaRon Charles, and Jon Russ, current and
former softball players with the North American Gay Amateur Athletic Alliance

¹ It is anticipated that counsel from the National Center for Lesbian Rights will appear *pro hac vice*.

1 (“NAGAAA” or “Defendant”), bring this action against NAGAAA based on its
2 discriminatory rules and practices, including NAGAAA’s conduct against them during
3 the Gay Softball World Series held in Seattle, Washington, in August 2008.

4 2. NAGAAA’s stated mission is to promote “amateur sports competition,
5 particularly softball, for all persons regardless of age, sexual orientation or preference,
6 with special emphasis on the participation of members of the gay, lesbian, bisexual and
7 transgender community.”

8 3. Specifically, Plaintiffs allege the following causes of action against
9 NAGAAA, including, but not limited to, in its status (1) as a “public accommodation” as a
10 sports club/league or related club, organization, or entity² and (2) in its role as the
11 “operator of a place of public accommodation” when it rented, operated, and controlled
12 municipal softball fields that separately constitute places of public accommodation:
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- 14
- 15 a. violations of Washington’s public accommodations laws, RCW
16 49.60.215, based on distinctions, restrictions, or discrimination, or
17 the refusing or withholding from Plaintiffs access to public
18 accommodations based on or motivated by, their sexual orientation
19 or race/national origin, including, without limitation, discrimination
20 based on stereotypes about such status;
 - 21 b. violations of Washington’s laws prohibiting discrimination in
22 public accommodations, RCW 49.60.030, and denying the full
23 enjoyment of public accommodations, on the basis of, or motivated
24 by, sexual orientation or race/national origin including, without
25 limitation, discrimination based on stereotypes about such status;
 - c. aiding and abetting, encouraging, or inciting the commission of
 unfair practices, or attempting to obstruct or prevent any other
 person from complying with the public accommodations and
 discrimination laws of Washington based on sexual orientation or
 race/national origin, in violation of RCW 49.60.220;

² See, e.g., *Tenino Aerie v. Grand Aerie*, 148 Wash.2d 224, 247, 59 P.3d 655 (2002).

- d. unfair or deceptive acts or practices occurring in trade or commerce in violation of RCW 19.86;
- e. breach of implied or express contract and covenant of good faith and fair dealing;
- f. intentional infliction of emotional distress;
- g. negligent infliction of emotional distress; and
- h. tortious intrusion on seclusion of privacy and public disclosure of private facts.

4. As described in more detail below, for the first time in Plaintiffs' softball careers, their team, D2, advanced through the 2008 Gay Softball World Series tournament in Seattle, Washington, ("Seattle World Series") to the championship game. In the middle of the championship game, play was stopped on multiple occasions because another team that D2 had beaten in an earlier game protested that D2 was in violation of a NAGAAA rule permitting no more than "two heterosexual players" to play on a World Series team. Following the championship game, which D2 ultimately lost, Plaintiffs Steven Apilado, LaRon Charles, and Jon Russ were each separately called into a conference room in front of over twenty-five people for a "hearing" by NAGAAA to determine whether each Plaintiff was "heterosexual" or "gay" according to binary definitions prepared by NAGAAA. In this hearing, NAGAAA's agents asked each Plaintiff a series of highly personal and intrusive questions about his predominant sexual interests, in addition to seeking other private facts. NAGAAA ultimately ruled that Plaintiffs were "non-gay" (a term NAGAAA Softball rules do not use or define) and that D2 therefore was in violation of the rule limiting teams to two heterosexual players. NAGAAA also determined that one of the Plaintiffs, who is African American, was "non-gay"³ even though he provided

³ This Complaint uses the words "gay" and "non-gay" because those are the terms used by the NAGAAA Protest Committee at the hearing.

1 answers that were identical to those of another protested player, who is Caucasian, and
2 who was deemed to be “gay.” The other Plaintiffs are also men of color who were treated
3 disparately than were similarly situated Caucasian players. NAGAAA stripped D2 and
4 Plaintiffs of their World Series second place victory and recommended that the NAGAAA
5 Ethics Committee suspend Plaintiffs for a minimum of one year from participating in the
6 Gay Softball World Series.
7

8 5. As described more fully below, by implementing and enforcing the “two
9 heterosexuals per team” cap and due to its disparate treatment based on race/national
10 origin during the Seattle World Series, NAGAAA violated and aided in the violation of
11 Washington’s laws governing discrimination by public accommodations, and state
12 consumer protections, among others, and has damaged Plaintiffs as a result. Moreover, by
13 enforcing the “two heterosexuals per team” cap through asking Plaintiffs a series of
14 invasive questions about their sexual interests or attractions, purportedly to determine
15 their sexual orientations in front of more than twenty-five people, most of whom were
16 strangers, NAGAAA subjected Plaintiffs to discriminatory, tortious, and other wrongful
17 conduct. Separately, through these same acts and omissions, as the operator of a place of
18 public accommodation, NAGAAA discriminated against Plaintiffs and aided others in
19 doing so in violation of Washington’s discrimination laws governing public
20 accommodations.
21
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23 II. JURISDICTION AND VENUE

24 6. Plaintiffs are each citizens of California.
25

1 14. NAGAAA is a 501(c)(3) non-profit organization and is incorporated in
2 Wisconsin. NAGAAA organizes the Gay Softball World Series, which is held annually in
3 a North American city selected by NAGAAA. NAGAAA engaged, in substantial part, in
4 the acts and omissions described herein in King County, Washington, within the Western
5 District of Washington. NAGAAA also rented, and therefore controlled and operated,
6 additional public facilities in Kent, Washington, which constitute places of public
7 accommodation, for the Seattle World Series, and as further alleged herein, both in its role
8 as a sports league/club, and in its distinct role as the operator of a public accommodation,
9 caused, allowed, and aided in discrimination at such places of public accommodations.
10

11 15. NAGAAA offers membership to local softball leagues in the United States,
12 including Washington, and Canada, which in turn offer membership to individuals
13 wishing to participate in competitive to less-competitive divisions and tournaments. Any
14 individual who is a member of a NAGAAA league is considered a member of NAGAAA.
15 Upon information and belief, NAGAAA currently has 10,000 individual members across
16 the United States and Canada, who play with nearly 700 different teams in thirty-six
17 NAGAAA member leagues. NAGAAA also engages in interstate and international
18 commerce. Individual players pay to join NAGAAA member leagues, and member
19 leagues pay to join NAGAAA. Beyond paying the membership fee, criteria for joining
20 NAGAAA, if any, are quite limited. NAGAAA maintains a website at
21 <http://nagaasoftball.org>, which, among other things, seeks to actively recruit members.
22
23

24 16. NAGAAA's stated mission is to promote "amateur sports competition,
25 particularly softball, for all persons regardless of age, sexual orientation or preference,

1 with special emphasis on the participation of members of the gay, lesbian, bisexual and
2 transgender community.”

3
4 17. NAGAAA plans, promotes, and carries out activities that are intended to
5 serve the welfare of the public at large. NAGAAA also sells or offers for sale
6 merchandise as part of those activities, including in the State of Washington.

7 18. NAGAAA expressly solicits businesses and other sponsors, including
8 public accommodations, to support its operations, including in the State of Washington.

9 19. NAGAAA offers trainings and workshops, at least some of which are open
10 to the general public, including to residents of the State of Washington.

11 20. NAGAAA at times rents, operates, and controls public municipal facilities
12 that are places of public accommodation for the purpose of sponsoring softball
13 tournaments to which the general public is invited. It specifically did so for the Seattle
14 World Series in August 2008.

15 21. NAGAAA leagues must send at least one team to the Gay Softball World
16 Series. While NAGAAA provides optional rules that local leagues may use during their
17 local seasons, the Gay Softball World Series Bylaws require that the World Series
18 tournaments are governed by NAGAAA rules.
19

20 21 IV. FACTS

22 22. In August 2008, Plaintiffs LaRon Charles, Steven Apilado, and Jon Russ
23 traveled with their softball teammates from San Francisco, California, to Seattle,
24 Washington, to participate in the Seattle World Series, which was held from August 22 to
25 August 30, 2008. The team held fundraisers to defray the costs of the trip, but all of the

1 players on the team, including Plaintiffs, had to pay for most of their own travel and hotel
2 expenses.

3 23. Almost 180 teams from across the United States and Canada came to
4 Seattle to play in the Seattle World Series. Plaintiffs were members of “D2,” a team from
5 the San Francisco Gay Softball League (“SFGSL”). Plaintiffs were playing in Division A
6 of the tournament, which is the highest ranking division within NAGAAA and is reserved
7 for the most skilled players.
8

9 24. As described above, Plaintiffs and D2 advanced to the Division A
10 championship game at the Seattle World Series. To do so, D2 defeated the Atlanta
11 “Mudcats” in a semi-final game on August 30, 2008. D2’s championship game against
12 the Los Angeles “Vipers” was played later that same day. During the championship
13 game, play was stopped, and the players were informed that the Atlanta Mudcats had filed
14 a Protest against D2 after losing to them in the semi-final game. The Protest alleged that
15 D2 was ineligible to compete in the Seattle World Series because D2’s roster included
16 more than two “heterosexual” players.
17

18 25. NAGAAA rented public municipal softball field(s) in Kent, Washington,
19 for the games at issue here, including the championship game. When many of the acts
20 and omissions alleged herein occurred, NAGAAA controlled and operated the public
21 field(s).
22

23 26. Section 7.05 of NAGAAA’s Softball Code, which governs the Gay
24 Softball World Series, purports to limit the number of “heterosexual” players on a Gay
25

1 Softball World Series roster to a reverse quota of no more than two “heterosexual”
2 players. Section 7.05 of NAGAAA’s Softball Code states in part:

3 Heterosexual players – A maximum of two Heterosexual players are permitted on
4 a [Gay Softball World Series] roster.

5 a) A team in violation of the Heterosexual player guidelines shall be
6 subject to disciplinary action that may include but is not limited to:

- 7 1) Permanent suspension of the Heterosexual player from future [Gay
8 Softball World Series] and Open Division events.
- 9 2) Disqualification and forfeiture of all the offending team’s games.
- 10 3) One year’s suspension of the team’s Manager.
- 11 4) A minimum \$100.00 fine imposed against the team’s Association.

12 27. Sections 1.15 and 1.18 of NAGAAA’s Softball Code provide the following
13 definitions:

14 **[g]ay** – means having a predominant sexual interest in a member or
15 members of the same sex and includes both gay men and lesbians

16 and

17 **[h]eterosexual** – means having a predominant sexual interest in a member
18 or members of the opposite sex.

19 28. Washington’s Law Against Discrimination, RCW 49.60, does not define
20 “gay” or “heterosexual,” though it defines “sexual orientation” as:

21 heterosexuality, homosexuality, bisexuality, and gender expression or identity. As
22 used in this definition, ‘gender expression or identity’ means having or being
23 perceived as having a gender identity, self-image, appearance, behavior, or
24 expression, whether or not that gender identity, self-image, appearance, behavior,
25 or expression is different from that traditionally associated with the sex assigned to
that person at birth. RCW 49.60.040 (26).

The statutory definition of sexual orientation is not based on “sexual interest” or “sexual
attraction,” but is instead based on “expression or identity.”

1 29. The Mudcats' Protest challenged the eligibility of Plaintiffs LaRon Charles
2 (player and D2 manager), Steven Apilado, Jon Russ, and three other players, claiming that
3 those players' sexual orientation was "heterosexual." The Mudcats later withdrew their
4 protest as to one of the three additional players, leaving Plaintiffs and two other players
5 who were protested on the basis of their alleged heterosexual orientation.
6

7 30. After the championship game was interrupted and the teams informed that
8 D2's eligibility had been challenged, play initially resumed. However, the game was
9 interrupted at least once more for further discussion of the challenge to D2's eligibility.
10

11 31. D2 lost the championship game.

12 32. Immediately following their championship loss, Plaintiffs and the two
13 additional protested players were summoned to a hearing room to answer questions about
14 their sexual interests or attractions, purportedly to determine their sexual orientations, in
15 front of a group of more than twenty-five people, many of whom Plaintiffs did not know.

16 33. Among the people in the room were a Protest Committee comprised of five
17 voting delegates to NAGAAA, as required by the NAGAAA Softball Code. Other people
18 in the room included several non-voting observing delegates to NAGAAA.

19 34. The "hearing" process did not comport with NAGAAA's own rules on
20 hearings.
21

22 35. Plaintiffs were directed to wait outside the hearing room. One by one, each
23 was summoned into the hearing room and asked personal and intrusive questions about his
24 interests or attractions, purportedly to determine their sexual orientations (based on
25 NAGAAA's binary definition), including direct questions about his private sexual

1 attractions and desires. This intrusive questioning about Plaintiffs' sexuality and the
2 perceived sexual orientation of their D2 teammates took place before all of the
3 approximately twenty-five delegates and observers present in the room.

4 36. Plaintiffs were asked to state whether they were "predominantly" sexually
5 attracted to men or to women. During the hearing, both Protest Committee members and
6 Plaintiffs expressed uncertainty and confusion about the meaning of the terms
7 "heterosexual" and "gay" as defined by NAGAAA. At least one player answered "yes"
8 both when asked if he was "predominantly attracted to the same sex" and when asked if
9 he was "predominantly attracted to the opposite sex," replied that he was attracted to both
10 men and women.
11

12 37. As NAGAAA's questioning of each Plaintiff proceeded, one or more of the
13 Plaintiffs' initial responses were deemed unsatisfactory and did not end the inquisition.
14 Each of those Plaintiffs was then pressured to give the NAGAAA committee additional
15 responses as to his sexual interest in men and in women.
16

17 38. Plaintiff LaRon Charles asked whether he could say that he was bisexual
18 and was told by a member of the Protest Committee that "this is the Gay World Series, not
19 the Bisexual World Series."
20

21 39. Immediately after each player had been questioned, the Protest Committee
22 voted on whether that player was "gay" or "non-gay," although neither the Softball Code
23 nor any NAGAAA Instrument of Governance use the term "non-gay," purport to limit the
24 number of "non-gay" players, or define the term "non-gay."
25

1 40. The Protest Committee voted more than once on whether Plaintiff LaRon
2 Charles was “gay” or “non-gay.” After an initial vote that Plaintiff LaRon Charles was
3 “gay,” the Committee voted at least two more times, reaching different results on each
4 vote until the majority had voted that he was “non-gay.”

5 41. A Caucasian D2 player who had also been protested, N.P., gave the same
6 response(s) as to his “sexual orientation” as Plaintiff Jon Russ, who is African American.
7 Both N.P. and Plaintiff Jon Russ responded that they did not believe they should have to
8 answer personal questions about their sexuality and that they refused to do so. Although
9 N.P.’s and Plaintiff Jon Russ’s responses were the same, NAGAAA’s Protest Committee
10 voted that Plaintiff Jon Russ, an African American player, was “non-gay,” while it found
11 that N.P., a Caucasian player, was “gay.”

12 42. At the end of the hearing, the Protest Committee announced, publicized
13 and published to all present its findings that three of D2’s players, Plaintiffs LaRon
14 Charles, Steven Apilado, and Jon Russ, were “non-gay,” and that the two remaining
15 protested players were “gay.” The results were subsequently publicized, published or re-
16 published to a broader audience. For example, others at the tournament learned of the
17 findings; the events complained of herein have also been widely “blogged” about around
18 the country.

19 43. The Protest Committee then disqualified D2 from the Seattle World Series
20 and ordered forfeiture of D2’s victories and its second place win at the Seattle World
21 Series, based on the committee’s finding that D2 had violated the Gay Softball World
22 Series rules by having too many “non-gay” players. The committee also recommended
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1 that the Plaintiffs be suspended for a minimum of one year from participation in World
2 Series and NAGAAA Open Division events.

3 44. In January 2009, NAGAAA held its annual meeting in Milwaukee,
4 Wisconsin. SFGSL Commissioner Vincent Fuqua attended and proposed that NAGAAA
5 Rule 7.05 be changed to eliminate the cap on heterosexual players. After a lengthy
6 debate, NAGAAA decided to retain Rule 7.05. NAGAAA also decided to withdraw the
7 suspension of the D2 players, but to put SFGSL on probation, with the consequence that if
8 a San Francisco team is found to have too many “non-gay” players on its roster again,
9 SFGSL will be permanently expelled from NAGAAA.
10

11 45. Plaintiffs have exhausted NAGAAA’s “administrative remedies,” to the
12 extent such exhaustion was required. The National Center for Lesbian Rights represented
13 Plaintiffs in the administrative appeal process. NAGAAA refused to change its
14 determination that Plaintiffs and their team had violated NAGAAA’s rules and were
15 ineligible to compete in the Seattle World Series. NAGAAA refused to restore to
16 Plaintiffs and their team the second place finish in the Seattle World Series that they
17 earned. NAGAAA also refused to change Rule 7.05 limiting the number of
18 “heterosexual” players to two per team during any World Series.
19

20 46. NAGAAA’s enforcement of its discriminatory Rule 7.05 has continued.
21 On information and belief, during the 2009 Gay Softball World Series in Milwaukee,
22 Wisconsin, NAGAAA conducted another protest hearing against another team based on
23 alleged violations of the cap on only two “non-gay” or “heterosexual” players per team.
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1 or withholding from any person access to public accommodations on the basis of, among
2 other things, sexual orientation or race/national origin.⁴

3 51. Under the Washington Law Against Discrimination, all persons are within
4 a protected status based on their sexual orientation, whether gay, bisexual, or heterosexual
5 or based on gender identity. Plaintiffs are or were alleged or perceived to be members of
6 a protected status based on their sexual orientation (“heterosexual” as defined by
7 NAGAAA), as determined by NAGAAA’s Protest Committee. Specifically, each was
8 determined by NAGAAA to be in violation of Section 7.05 of NAGAAA’s Softball Code,
9 which purports to define “gay” and “heterosexuality” in a binary manner and limits the
10 number of “heterosexual” players on a World Series team. Sexual orientation and
11 race/national origin are protected statuses pursuant to RCW 49.60 *et seq.*

12 52. Plaintiffs LaRon Charles and Jon Russ are African American, and Plaintiff
13 Steven Apilado is African American and Filipino; pursuant to RCW 49.60 *et seq.* all three
14 plaintiffs are thus members of protected classes based on their actual or perceived
15 race/national origin.

16 53. NAGAAA deprived Plaintiffs of the full right of enjoyment of public
17 accommodations, and otherwise unlawfully discriminated against Plaintiffs, and aided in
18 unlawful discrimination, by its acts and omissions as alleged herein, including through its
19 discriminatory Rules and practices, such as by challenging Plaintiffs’ participation in the
20 Seattle World Series Division A championship game and other NAGAAA events due to
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25 ⁴ Engaging in such conduct on the basis of “race, creed or color” is a violation of RCW
9.91.010.

1 NAGAAA's discriminatory rules, and the NAGAAA Protest Committee's process and
2 findings that the Plaintiffs were "non-gay."

3 54. NAGAAA directly treated Plaintiff Jon Russ, who is African American,
4 disparately based on his race/national origin by depriving him of the full right of
5 enjoyment of public accommodations at the Seattle World Series and other NAGAAA
6 events even though he answered the Protest Committee's questions identically to another
7 protested player who is Caucasian.
8

9 55. None of the Plaintiffs are Caucasian. On information and belief, all
10 Plaintiffs were discriminated against, at least in part, based on or motivated by their race
11 or national origin, including based on stereotypes regarding such statuses. Both of the
12 other two protested players, who were voted to be "gay" and thus not excluded, are
13 Caucasian. On information and belief, all or all but one of NAGAAA's Protest
14 Committee members were Caucasian.
15

16 56. NAGAAA's acts directly or indirectly interfered with the full enjoyment of
17 public accommodations and restricted or discriminated against Plaintiffs in violation of
18 RCW 49.60.030 and 49.60.215 due to perceptions, bias, or stereotypes regarding sexual
19 orientation or race/national origin, or a combination of those factors.
20

21 57. Separately, when NAGAAA rented, controlled, and operated public
22 accommodation fields from a municipality to hold the Seattle World Series, NAGAAA
23 constituted the operator of a place of public accommodation, and as such, was obligated to
24 operate, control, and use such public accommodations in compliance with, among other
25 provisions, RCW 49.60 *et seq.*, including the prohibitions on sexual orientation and

1 race/national origin discrimination in the use or enjoyment of public accommodations.
2 NAGAAA violated RCW 49.60.030 and 49.60.215 when it expressly allowed and
3 sanctioned sexual orientation discrimination, and directly or indirectly allowed
4 discrimination based on race/national origin at places of public accommodation, resulting
5 in the interference of Plaintiffs' rights of full enjoyment and to be free of discrimination in
6 places of public accommodation.
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8 58. Each Plaintiff was, has been, and continues to be harmed by NAGAAA's
9 acts and omissions. Plaintiff Steven Apilado suffered emotional distress because of
10 NAGAAA's acts and omissions, for which he is entitled to be compensated to the fullest
11 extent allowed by law. Mr. Apilado's emotional distress includes, but is not limited to,
12 vivid flashbacks of his interrogation, loss of sleep, humiliation, embarrassment, anger, and
13 stress that prevented him from participating in any SFGSL softball for approximately a
14 year and a half following the hearing. Plaintiff LaRon Charles suffered emotional distress
15 because of NAGAAA's acts and omissions, for which he is entitled to be compensated to
16 the fullest extent allowed by law. Mr. Charles's emotional distress includes, but is not
17 limited to, loss of sleep, loss of interest in activities he had previously enjoyed, difficulty
18 focusing at work, increased frustration with his employees at work, and being emotionally
19 withdrawn at home. Additionally, he did not participate in softball for approximately
20 eight months following the Seattle World Series. Plaintiff Jon Russ suffered emotional
21 distress because of NAGAAA's acts and omissions, for which he is entitled to be
22 compensated to the fullest extent allowed by law. Mr. Russ's emotional distress includes,
23 but is not limited to, loss of sleep, recurring memories of the interrogation into his sexual
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1 orientation, and related feelings of anger and helplessness that have persisted from
2 September 2008 to the present day, humiliation, embarrassment, and anger that affected
3 his interactions with co-workers. Additionally, he did not participate in softball
4 tournaments for approximately eight months following the Seattle World Series because
5 he feared encountering anyone who had been in the hearing room on the day he was
6 interrogated regarding his sexual orientation.
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8 59. Each Plaintiff is entitled to recover general and special damages, including,
9 without limitation, economic and emotional distress damages, and out-of-pocket cost
10 damages, liquidated damages to the extent allowed, injunctive relief, and statutory or
11 equitable attorneys' fees and costs.

12 **SECOND CAUSE OF ACTION: AIDING VIOLATION OF RCW 49.60**

13 60. Plaintiffs reallege paragraphs 1 through 59 above.

14 61. NAGAAA, through the acts described above, aided and abetted,
15 encouraged or incited the commission of unfair practices, or attempted to obstruct or
16 prevent any other person from complying with RCW 49.60.030 and 49.60.215, thus
17 violating RCW 49.60.220. For example, as a sports league/club or related club,
18 organization, or entity, NAGAAA's discriminatory rules aided, abetted, encouraged, or
19 incited the commission of unfair practices, or attempted to obstruct or prevent any other
20 person from complying with RCW 49.60 *et seq.* By allowing individuals or team(s) to
21 protest based on such rules, and to hold and sanction a "hearing" and punish Plaintiffs
22 based on such rules, NAGAAA unlawfully aided in violations of RCW 49.60 *et seq.*
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1 62. Separately, when NAGAAA rented, controlled, and operated public
2 accommodation fields from the City of Kent, to hold the Seattle World Series, NAGAAA,
3 as the operator of that place of public accommodation, was obligated to operate it in
4 compliance with, among other provisions, RCW 49.60 *et seq.*, and was obligated to
5 require compliance with RCW 49.60 *et seq.* by those using the places of public
6 accommodations, including the prohibitions on sexual orientation and race/national origin
7 discrimination in the use or enjoyment of public facilities. NAGAAA's actions and
8 omissions aided and interfered with such prohibitions, thus unlawfully aiding and
9 abetting, encouraging, or inciting the commission of unfair practices in the use of public
10 accommodations in violation of Washington's public accommodations laws, RCW
11 49.60.030 and 49.60.220. NAGAAA also attempted to obstruct or prevent other person or
12 persons from complying with the public accommodation provisions of RCW 49.60 *et seq.*

15 63. Each Plaintiff was, has been, and continues to be harmed by NAGAAA's
16 acts and omissions. Plaintiff Steven Apilado suffered emotional distress because of
17 NAGAAA's acts and omissions, for which he is entitled to be compensated to the fullest
18 extent allowed by law. Mr. Apilado's emotional distress includes, but is not limited to,
19 vivid flashbacks of his interrogation, loss of sleep, humiliation, embarrassment, anger, and
20 stress that prevented him from participating in any SFGSL softball for approximately a
21 year and a half following the hearing. Plaintiff LaRon Charles suffered emotional distress
22 because of NAGAAA's acts and omissions, for which he is entitled to be compensated to
23 the fullest extent allowed by law. Mr. Charles's emotional distress includes, but is not
24 limited to, loss of sleep, loss of interest in activities he had previously enjoyed, difficulty
25

1 focusing at work, increased frustration with his employees at work, and being emotionally
2 withdrawn at home. Additionally, he did not participate in softball for approximately
3 eight months following the Seattle World Series. Plaintiff Jon Russ suffered emotional
4 distress because of NAGAAA's acts and omissions, for which he is entitled to be
5 compensated to the fullest extent allowed by law. Mr. Russ's emotional distress includes,
6 but is not limited to, loss of sleep, recurring memories of the interrogation into his sexual
7 orientation, and related feelings of anger and helplessness that have persisted from
8 September 2008 to the present day, humiliation, embarrassment, and anger that affected
9 his interactions with co-workers. Additionally, he did not participate in softball
10 tournaments for approximately eight months following the Seattle World Series because
11 he feared encountering anyone who had been in the hearing room on the day he was
12 interrogated regarding his sexual orientation.
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15 64. Each Plaintiff is entitled to recover general and special damages, including,
16 without limitation, economic and emotional distress damages, and out-of-pocket cost
17 damages, liquidated damages to the extent allowed, injunctive relief, and statutory or
18 equitable attorneys' fees and costs.

19 **THIRD CAUSE OF ACTION: VIOLATION OF WASHINGTON'S**
20 **CONSUMER PROTECTION ACT**

21 65. Plaintiffs reallege paragraphs 1 through 64 above.

22 66. NAGAAA's acts or omissions as set forth herein, including its violations
23 of RCW 49.60 *et seq.* constitute an unfair or deceptive act or practice occurring in trade or
24 commerce under RCW 19.86.
25

1. 67. NAGAAA's acts impacted and continue to impact the public interest.

2. 68. Each Plaintiff was injured in his property because of NAGAAA's acts.

3. Each Plaintiff is entitled to be compensated for such injury.

4. **FOURTH CAUSE OF ACTION: BREACH OF IMPLIED OR EXPRESS**
5. **CONTRACT AND COVENANT OF GOOD FAITH AND FAIR DEALING**

6. 69. Plaintiffs reallege paragraphs 1 through 68 above.

7. 70. Through membership and participation in NAGAAA, Plaintiffs and
8. NAGAAA were parties to a valid implied or express contract.

9. 71. NAGAAA breached that contract and the covenant of good faith and fair
10. dealing by engaging in the acts and omissions detailed herein, including by the failure to
11. follow NAGAAA's own procedural rules and safeguards. NAGAAA's acts were
12. procedurally unconscionable.

14. 72. Each Plaintiff has been damaged by NAGAAA's breach of contract and the
15. covenant of good faith and fair dealing.

16. 73. Each Plaintiff is entitled to an award of all damages suffered as a result of
17. NAGAAA's breach in an amount to be proven at trial, and to the fullest extent allowed by
18. law or equity, an award of attorneys' fees and costs.

20. **FIFTH CAUSE OF ACTION: INTENTIONAL INFLICTION OF EMOTIONAL**
21. **DISTRESS (TORT OF OUTRAGE)**

22. 74. Plaintiffs reallege paragraphs 1 through 73 above.

23. 75. NAGAAA's conduct as detailed herein was extreme and outrageous.
24. NAGAAA owed a duty/duties to each Plaintiff not to engage in such conduct.
25. NAGAAA's acts and omissions violated such duty/duties.

1 76. NAGAAA intentionally or recklessly inflicted emotional distress on each
2 Plaintiff.

3 77. Each Plaintiff was, has been, and continues to be harmed by NAGAAA's
4 acts and omissions. Plaintiff Steven Apilado suffered emotional distress because of
5 NAGAAA's acts and omissions, for which he is entitled to be compensated to the fullest
6 extent allowed by law. Mr. Apilado's emotional distress includes, but is not limited to,
7 vivid flashbacks of his interrogation, loss of sleep, humiliation, embarrassment, anger, and
8 stress that prevented him from participating in any SFGSL softball for approximately a
9 year and a half following the hearing. Plaintiff LaRon Charles suffered emotional
10 distress because of NAGAAA's acts and omissions, for which he is entitled to be
11 compensated to the fullest extent allowed by law. Mr. Charles's emotional distress
12 includes, but is not limited to, loss of sleep, loss of interest in activities he had previously
13 enjoyed, difficulty focusing at work, increased frustration with his employees at work, and
14 being emotionally withdrawn at home. Additionally, he did not participate in softball for
15 approximately eight months following the Seattle World Series. Plaintiff Jon Russ
16 suffered emotional distress because of NAGAAA's acts and omissions, for which he is
17 entitled to be compensated to the fullest extent allowed by law. Mr. Russ's emotional
18 distress includes, but is not limited to, loss of sleep, recurring memories of the
19 interrogation into his sexual orientation, and related feelings of anger and helplessness that
20 have persisted from September 2008 to the present day, humiliation, embarrassment, and
21 anger that affected his interactions with co-workers. Additionally, he did not participate
22 in softball tournaments for approximately eight months following the Seattle World Series
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1 because he feared encountering anyone who had been in the hearing room on the day he
2 was interrogated regarding his sexual orientation.

3 78. Each Plaintiff has been damaged as a result of NAGAAA's acts and
4 omissions. Each Plaintiff is entitled to an award of general and special damages,
5 including, without limitation, economic, emotional distress, and out-of-pocket cost
6 damages, and to the fullest extent allowed by law or equity, an award of attorneys' fees
7 and costs.
8

9 **SIXTH CAUSE OF ACTION: NEGLIGENT INFLICTION OF EMOTIONAL**
10 **DISTRESS**

11 79. Plaintiffs reallege paragraphs 1 through 78 above.

12 80. NAGAAA owed a duty/duties to each Plaintiff not to engage in negligent
13 conduct as is alleged herein.

14 81. NAGAAA breached such duty/duties by engaging in the conduct detailed
15 herein.

16 82. NAGAAA's breach of such duty/duties caused Plaintiffs emotional
17 distress.
18

19 83. Plaintiff Steven Apilado has suffered emotional distress that is evidenced
20 by objective symptomatology, including vivid flashbacks of his interrogation, loss of
21 sleep, humiliation, embarrassment, anger, and stress.

22 84. Plaintiff LaRon Charles has suffered emotional distress that is evidenced
23 by objective symptomatology, including loss of sleep, loss of interest in activities he had
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1 previously enjoyed, difficulty focusing at work, increased frustration with his employees
2 at work, and being emotionally withdrawn at home.

3 85. Plaintiff Jon Russ has suffered emotional distress that is evidenced by
4 objective symptomatology, including loss of sleep, recurring memories of the
5 interrogation into his sexual orientation and related feelings of anger and helplessness that
6 have persisted from September 2008 to the present day, humiliation, embarrassment, and
7 anger that affected his interactions with co-workers.
8

9 86. Each Plaintiff has been damaged as a result of NAGAAA's acts and
10 omissions. Each Plaintiff is entitled to an award of general and special damages,
11 including, without limitation, economic, emotional distress, and out-of-pocket cost
12 damages, and to the fullest extent allowed by law or equity, an award of attorneys' fees
13 and costs.
14

15 **SEVENTH CAUSE OF ACTION: PUBLIC DISCLOSURE OF PRIVATE**
16 **FACTS**

17 87. Plaintiffs reallege paragraphs 1 through 86 above.

18 88. By engaging in the acts and omissions described herein, NAGAAA gave
19 unreasonable and unwanted publicity to matters in Plaintiffs' private lives as set forth
20 herein, including by forcing Plaintiffs to answer questions about their sexual interests or
21 attractions, purportedly to determine their sexual orientations in front of a large group of
22 people, some of whom they did not know, including questions about to whom Plaintiffs
23 are attracted and with whom they are or have been engaged in romantic or sexual
24
25

1 relationships. NAGAAA owed a duty/duties to each Plaintiff not to engage in such
2 conduct. NAGAAA's acts and omissions violated such duty/duties.

3 89. Under these circumstances, the matters publicized and the nature of the
4 intrusion are of a kind that would be highly offensive to a reasonable, ordinary person.

5 90. The matters (Plaintiffs' sexual interests or attractions) are not of legitimate
6 concern to the public.

7
8 91. Each Plaintiff was, has been, and continues to be harmed by NAGAAA's
9 acts and omissions. Plaintiff Steven Apilado suffered emotional distress because of
10 NAGAAA's acts and omissions, for which he is entitled to be compensated to the fullest
11 extent allowed by law. Mr. Apilado's emotional distress includes, but is not limited to,
12 vivid flashbacks of his interrogation, loss of sleep, humiliation, embarrassment, anger, and
13 stress that prevented him from participating in any SFGSL softball for approximately a
14 year and a half following the hearing. Plaintiff LaRon Charles suffered emotional distress
15 because of NAGAAA's acts and omissions, for which he is entitled to be compensated to
16 the fullest extent allowed by law. Mr. Charles's emotional distress includes, but is not
17 limited to, loss of sleep, loss of interest in activities he had previously enjoyed, difficulty
18 focusing at work, increased frustration with his employees at work, and being emotionally
19 withdrawn at home. Additionally, he did not participate in softball for approximately
20 eight months following the Seattle World Series. Plaintiff Jon Russ suffered emotional
21 distress because of NAGAAA's acts and omissions, for which he is entitled to be
22 compensated to the fullest extent allowed by law. Mr. Russ's emotional distress includes,
23 but is not limited to, loss of sleep, recurring memories of the interrogation into his sexual
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1 orientation, and related feelings of anger and helplessness that have persisted from
2 September 2008 to the present day, humiliation, embarrassment, and anger that affected
3 his interactions with co-workers. Additionally, he did not participate in softball
4 tournaments for approximately eight months following the Seattle World Series because
5 he feared encountering anyone who had been in the hearing room on the day he was
6 interrogated regarding his sexual orientation.
7

8 92. Each Plaintiff has been damaged as a result of NAGAAA's acts and
9 omissions. Each Plaintiff is entitled to an award of general and special damages,
10 including, without limitation, economic, emotional distress, and out-of-pocket cost
11 damages, and to the fullest extent allowed by law or equity, an award of attorneys' fees
12 and costs.
13

14 **EIGHTH CAUSE OF ACTION: INTRUSION ON
15 SECLUSION OF PRIVACY**

16 93. Plaintiffs reallege paragraphs 1 through 92 above.

17 94. By engaging in the acts and omissions described herein, NAGAAA
18 deliberately invaded and intruded upon the privacy, solitude, seclusion, or private affairs
19 of each Plaintiff. NAGAAA owed a duty/duties to each Plaintiff not to engage in such
20 conduct. NAGAAA's acts and omissions violated such duty/duties.

21 95. Under these circumstances, the nature of the intrusions are of a kind that
22 would be highly offensive to a reasonable, ordinary person.
23
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1 96. The matters (Plaintiffs' sexual interests and attractions) are not of
2 legitimate concern to the public, and the invasion or intrusion was into matters which the
3 general public would not be free to view.

4 97. Each Plaintiff was, has been, and continues to be harmed by NAGAAA's
5 acts and omissions. Plaintiff Steven Apilado suffered emotional distress because of
6 NAGAAA's acts and omissions, for which he is entitled to be compensated to the fullest
7 extent allowed by law. Mr. Apilado's emotional distress includes, but is not limited to,
8 vivid flashbacks of his interrogation, loss of sleep, humiliation, embarrassment, anger, and
9 stress that prevented him from participating in any SFGSL softball for approximately a
10 year and a half following the hearing. Plaintiff LaRon Charles suffered emotional distress
11 because of NAGAAA's acts and omissions, for which he is entitled to be compensated to
12 the fullest extent allowed by law. Mr. Charles's emotional distress includes, but is not
13 limited to, loss of sleep, loss of interest in activities he had previously enjoyed, difficulty
14 focusing at work, increased frustration with his employees at work, and being emotionally
15 withdrawn at home. Additionally, he did not participate in softball for approximately
16 eight months following the Seattle World Series. Plaintiff Jon Russ suffered emotional
17 distress because of NAGAAA's acts and omissions, for which he is entitled to be
18 compensated to the fullest extent allowed by law. Mr. Russ's emotional distress includes,
19 but is not limited to, loss of sleep, recurring memories of the interrogation into his sexual
20 orientation, and related feelings of anger and helplessness that have persisted from
21 September 2008 to the present day, humiliation, embarrassment, and anger that affected
22 his interactions with co-workers. Additionally, he did not participate in softball
23
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25

1 tournaments for approximately eight months following the Seattle World Series because
2 he feared encountering anyone who had been in the hearing room on the day he was
3 interrogated regarding his sexual orientation.

4 98. Each Plaintiff has been damaged as a result of NAGAAA's acts and
5 omissions. Each Plaintiff is entitled to an award of general and special damages,
6 including, without limitation, economic, emotional distress, and out-of-pocket cost
7 damages, and to the fullest extent allowed by law or equity, an award of attorneys' fees
8 and costs.
9

10 VI. PRAYER FOR RELIEF

11 WHEREFORE, Plaintiffs pray for the following relief:

- 12
- 13 A. For judgment against NAGAAA on each of the Causes of Action alleged
herein;
- 14 B. For damages against NAGAAA in an amount to be determined;
- 15 C. For preliminary and permanent injunctive relief to:
- 16 i. suspend the enforcement of Rule 7.05 and the use or application of
17 the definitions of "gay" and "heterosexual" in Title 1 of the Softball Code and/or
eliminate the Rule and any references to it in all NAGAAA Instruments of Governance;
- 18 ii. eliminate the definitions of "gay" and "heterosexual" in Title 1 of
19 the Softball Code and the use of those or similar definitions in all NAGAAA Instruments
of Governance;
- 20 iii. specifically determine that the findings as to the Plaintiffs' sexual
21 orientations were invalid and rule them void, or overturn them, and remove the
disqualifications of the D2 team and all of its players;
- 22 iv. dismiss and pay back any penalties including fines,
23 disqualifications, or suspensions imposed against Plaintiffs, D2, and Plaintiff LaRon
Charles as manager of D2;
- 24 v. reinstate the SFGSL team D2 to its rightful place in the standings of
25 the 2008 Seattle Gay World Series, which is second place (runners-up to the Los Angeles
Vipers); and ensure that D2 receives a team trophy for 2nd place winner of A Division (as

1 specified in 3.03(c)) and that D2 individual team awards be given to the rostered D2
2 players (as specified in 3.03(d));

3 D. For the right to amend the pleadings based on additional discovery and the
4 right to amend the pleading to conform to the evidence presented;

5 E. For such other order of remedies as the Court may deem necessary to ensure
6 that a fair and equitable result is reached in this matter;

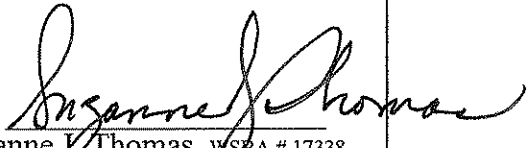
7 F. For an award of Plaintiffs' attorneys' fees and costs incurred by Plaintiffs to
8 the fullest extent allowed by law and equity;

9 G. For such further relief as this Court may deem just, lawful, and equitable;
10 and

11 H. Plaintiffs Apilado, Laron Charles and Jon Russ, as provided by Rule 38 of
12 the Federal Rules of Civil Procedure, each request/demand trial by jury in the above-
13 entitled matter.

14 DATED this 20th day of April, 2010.

15 K&L GATES LLP

16 By 
17 Suzanne Thomas, WSBA # 17338
18 Cristin J. Kent, WSBA # 39224
19 Attorneys for Plaintiff