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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEVEN APILADO, LARON CHARLES,	)	
AND JON RUSS,	)	
	)	No. C10-00682 JCC
Plaintiffs,	)	
	)	DEFENDANT NAGAAA’S
v.	)	ANSWER TO PLAINTIFFS’
	)	COMPLAINT AND
THE NORTH AMERICAN GAY AMATEUR	)	AFFIRMATIVE DEFENSES
ATHLETIC ALLIANCE,	)	
	)	
Defendant.	)	

Defendant The North American Gay Amateur Athletic Alliance (“NAGAAA” or “Defendant”), hereby answers and responds to the Complaint of plaintiffs Steven Apilado, LaRon Charles, and Jon Russ as follows, following the paragraph numbering in plaintiffs’ Complaint.

**INTRODUCTION**

NAGAAA is a nonprofit organization that seeks to create a safe environment where members of the lesbian, gay, bisexual, and transgender (“LGBT” or “GLBT”) community can associate with pride and without fear of humiliation or persecution. NAGAAA hosts the Gay Softball World Series each year to give LGBT athletes and their supporters,

ANSWER TO PLAINTIFFS’ COMPLAINT AND  
AFFIRMATIVE DEFENSES  
(C10-00682 JCC) — 1  
DWT 15135016v3 0092100-000001

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1 families, and friends an opportunity to gather, compete, and work toward common goals  
2 for their community. NAGAAA’s members are local sports leagues from across North  
3 America who serve their local LGBT community. Local leagues run their regular seasons  
4 and adopt eligibility requirements for the regular seasons independently of NAGAAA.  
5 Each local league also selects teams to send to the Gay Softball World Series, and agrees  
6 that the teams it sends meet the eligibility requirements specified in the NAGAAA Gay  
7 Softball World Series Code (“NAGAAA’s Softball Code”). NAGAAA conducts the Gay  
8 Softball World Series. Because NAGAAA’s purpose includes promoting the participation  
9 of the LGBT community, it has adopted rules that ensure LGBT representation on all  
10 teams playing in the Gay Softball World Series.

11 **I. RESPONSE TO PRELIMINARY STATEMENT**

12 1. NAGAAA admits that plaintiffs were part of the D2 softball team in the San  
13 Francisco Gay Softball League, that the San Francisco Gay Softball League is a member of  
14 NAGAAA, and that plaintiffs bring this action. NAGAAA denies the remaining  
15 allegations in this paragraph.

16 2. NAGAAA admits that the allegations in this paragraph quote from a portion  
17 of its mission statement, but denies that the allegations in this paragraph correctly state  
18 NAGAAA’s mission, which also includes a special emphasis on the participation of  
19 members of the gay, lesbian, bisexual and transgender community.

20 3. NAGAAA admits that plaintiffs bring this action. To the extent that this  
21 paragraph makes any factual allegation, NAGAAA denies the remaining allegations in this  
22 paragraph.





1 website at <http://nagaaasoftball.org>. NAGAAA denies the remaining allegations in this  
2 paragraph.

3 16. NAGAAA admits the allegations in this paragraph.

4 17. NAGAAA admits that it plans, promotes, and carries out activities intended  
5 to serve the LGBT community. NAGAAA denies the remaining allegations in this  
6 paragraph.

7 18. NAGAAA denies the allegations in this paragraph.

8 19. NAGAAA denies the allegations in this paragraph.

9 20. NAGAAA admits that it rents facilities for the annual Gay Softball World  
10 Series, and that it did so for the 2008 Seattle World Series. NAGAAA denies the  
11 remaining allegations in this paragraph.

12 21. NAGAAA admits that its Softball Code provides that local leagues must  
13 send at least one team to the Gay Softball World Series, and that the Gay Softball World  
14 Series is governed by NAGAAA's Softball Code. NAGAAA denies the remaining  
15 allegations in this paragraph.

#### 16 IV. FACTS

17 22. NAGAAA admits that the opening ceremonies for the Gay Softball World  
18 Series were held on August 25, 2008, and the Series ended on August 30, 2008.  
19 NAGAAA lacks sufficient information to respond to the remaining allegations in this  
20 paragraph, and therefore denies those allegations.

21 23. NAGAAA denies that almost 180 teams came to play in the Seattle Gay  
22 Softball World Series. NAGAAA admits the remaining allegations of this paragraph.

1           24.     NAGAAA denies that the Atlanta Mudcats filed a protest against D2.  
2 NAGAAA admits that the game temporarily stopped when the Atlanta Commissioner filed  
3 a protest. NAGAAA admits the remaining allegations in this paragraph.

4           25.     NAGAAA admits that it rented softball fields in Kent, Washington, for the  
5 2008 Gay Softball World Series. NAGAAA denies the remaining allegations in this  
6 paragraph.

7           26.     NAGAAA denies that NAGAAA’s Softball Code purports to be a “reverse  
8 quota.” NAGAAA admits the remaining allegations in this paragraph.

9           27.     NAGAAA denies that the definitions of “gay” and “heterosexual” are found  
10 in sections 1.15 and 1.18 of the NAGAAA Code. NAGAAA admits that the text quoted in  
11 the Complaint is found in sections 1.13 and 1.16 of the 2008 Code, and the same  
12 definitions are found in sections 1.14 and 1.17 of the current Code.

13           28.     To the extent that this paragraph contains any factual allegation rather than  
14 legal conclusions to which no response is necessary, NAGAAA denies the allegations in  
15 this paragraph.

16           29.     NAGAAA denies that the Atlanta Mudcats filed the protest at issue.  
17 NAGAAA admits that the protest filed by the Atlanta Commissioner alleged that the D2  
18 team had violated Rule 7.05 of the Code. NAGAAA admits that the protest identified  
19 Plaintiffs and three other players as the individuals whose presence on the D2 roster caused  
20 the team to be ineligible. NAGAAA denies the remaining allegations of this paragraph.

21           30.     NAGAAA denies the allegations in this paragraph.

22           31.     NAGAAA admits the allegations in this paragraph.

1           32.    NAGAAA admits that a protest hearing occurred after the championship  
2 game. NAGAAA denies the remaining allegations in this paragraph.

3           33.    NAGAAA admits that the Protest Committee consisted of five members as  
4 required by the Code. NAGAAA admits that at times other individuals affiliated with  
5 NAGAAA or its member leagues were in the hearing room, and that the San Francisco  
6 Commissioner and some members of plaintiffs’ team were present at times. NAGAAA  
7 denies the remaining allegations in this paragraph.

8           34.    NAGAAA denies the allegations in this paragraph.

9           35.    NAGAAA admits that the Protest Committee asked plaintiffs questions  
10 individually. NAGAAA denies the remaining allegations in this paragraph.

11          36.    NAGAAA admits plaintiffs were asked whether they identified their sexual  
12 orientation to be “heterosexual” as defined in NAGAAA’s Softball Code. NAGAAA  
13 denies the remaining allegations in this paragraph.

14          37.    NAGAAA denies the allegations in this paragraph.

15          38.    NAGAAA denies the allegations in this paragraph.

16          39.    NAGAAA denies the allegations in this paragraph.

17          40.    NAGAAA denies the allegations in this paragraph.

18          41.    NAGAAA denies the allegations in this paragraph.

19          42.    NAGAAA admits that the protested team, D2, the Commissioner of the San  
20 Francisco Gay Softball League, and the team members present at the hearing were  
21 informed of the Protest Committee’s conclusion that D2 was not in compliance with Rule  
22 7.05 of NAGAAA’s Softball Code, and of the Protest Committee’s identification of  
23 individuals whose presence on the D2 roster caused the team to be ineligible. NAGAAA

1 denies that it publicized, published, republished, or blogged information regarding those  
2 individuals. NAGAAA admits that the National Center for Lesbian Rights issued press  
3 releases and that public discussion and blogging subsequently occurred. NAGAAA denies  
4 the remaining allegations in this paragraph.

5 43. NAGAAA admits that the Protest Committee disqualified D2 from the  
6 Seattle Gay Softball World Series and ordered forfeiture of D2's victories as provided by  
7 NAGAAA's Softball Code. NAGAAA denies that any action was taken against Plaintiffs,  
8 and denies the remaining allegations in this paragraph.

9 44. NAGAAA admits that it held its annual meeting in Milwaukee, Wisconsin,  
10 in January 2009, and that that the organization determined not to change the provisions of  
11 Rule 7.05. NAGAAA admits that the San Francisco Gay Softball League was placed on  
12 probation for violations of the eligibility provisions of NAGAAA's Softball Code,  
13 including but not limited to Rule 7.05, and that the San Francisco Gay Softball League  
14 could be penalized as provided by NAGAAA's Softball Code. NAGAAA denies the  
15 remaining allegations in this paragraph.

16 45. NAGAAA denies that it made any determination that plaintiffs violated  
17 NAGAAA's rules, or that they were ineligible to compete in the Seattle Gay Softball  
18 World Series. NAGAAA admits that it determined the team D2 had violated the  
19 NAGAAA rules, and that NAGAAA did not change this determination upon appeal.  
20 NAGAAA admits that the National Center for Lesbian Rights has represented Plaintiffs.  
21 NAGAAA admits that it has not subsequently changed Rule 7.05. NAGAAA denies the  
22 remaining allegations in this paragraph.





1           55.     NAGAAA lacks sufficient information to admit or deny the race or national  
2 origin of the plaintiffs or any other individual referred to in this paragraph. NAGAAA  
3 denies the remaining allegations in this paragraph.

4           56.     NAGAAA denies the allegations in this paragraph.

5           57.     NAGAAA denies the allegations in this paragraph.

6           58.     NAGAAA denies the allegations in this paragraph.

7           59.     NAGAAA denies the allegations in this paragraph.

8                                   **SECOND CAUSE OF ACTION:**  
9                                   **AIDING VIOLATION OF RCW 49.60**

10          60.     NAGAAA incorporates by reference its responses to paragraphs 1 through  
11 59 above, in response to the reallegations in this paragraph.

12          61.     To the extent that this paragraph contains any factual allegation rather than  
13 legal conclusions, NAGAAA denies the allegations in this paragraph.

14          62.     To the extent that this paragraph contains any factual allegation rather than  
15 legal conclusions, NAGAAA denies the allegations in this paragraph.

16          63.     NAGAAA denies the allegations in this paragraph.

17          64.     NAGAAA denies the allegations in this paragraph.

18                                   **THIRD CAUSE OF ACTION:**  
19                                   **VIOLATION OF RCW 19.86**

20          65.     NAGAAA incorporates by reference its responses to paragraphs 1 through  
21 64 above, in response to the reallegations in this paragraph.

22          66.     NAGAAA denies the allegations in this paragraph.

23          67.     NAGAAA denies the allegations in this paragraph.

          68.     NAGAAA denies the allegations in this paragraph.

1                                   **FOURTH CAUSE OF ACTION:**  
2                                   **BREACH OF IMPLIED OR EXPRESS CONTRACT AND**  
3                                   **COVENANT OF GOOD FAITH AND FAIR DEALING**

4                   69.    NAGAAA incorporates by reference its responses to paragraphs 1 through  
5                   68 above, in response to the reallegations in this paragraph.

6                   70.    NAGAAA denies the allegations in this paragraph.

7                   71.    NAGAAA denies the allegations in this paragraph.

8                   72.    NAGAAA denies the allegations in this paragraph.

9                   73.    NAGAAA denies the allegations in this paragraph.

10                                   **FIFTH CAUSE OF ACTION:**  
11                                   **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
12                                   **(TORT OF OUTRAGE)**

13                   74.    NAGAAA incorporates by reference its responses to paragraphs 1 through  
14                   73 above, in response to the reallegations in this paragraph.

15                   75.    To the extent that this paragraph contains any factual allegation rather than  
16                   legal conclusions, NAGAAA denies the allegations in this paragraph.

17                   76.    NAGAAA denies the allegations in this paragraph.

18                   77.    NAGAAA denies the allegations in this paragraph.

19                   78.    NAGAAA denies the allegations in this paragraph.

20                                   **SIXTH CAUSE OF ACTION:**  
21                                   **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

22                   79.    NAGAAA incorporates by reference its responses to paragraphs 1 through  
23                   78 above, in response to the reallegations in this paragraph.

                  80.    To the extent that this paragraph contains any factual allegation rather than  
                  legal conclusions, NAGAAA denies the allegations in this paragraph.

1 81. NAGAAA denies the allegations in this paragraph.

2 82. NAGAAA denies the allegations in this paragraph.

3 83. NAGAAA denies the allegations in this paragraph.

4 84. NAGAAA denies the allegations in this paragraph.

5 85. NAGAAA denies the allegations in this paragraph.

6 86. NAGAAA denies the allegations in this paragraph.

7 **SEVENTH CAUSE OF ACTION:**  
8 **PUBLIC DISCLOSURE OF PRIVATE FACTS**

9 87. NAGAAA incorporates by reference its responses to paragraphs 1 through  
10 86 above, in response to the reallegations in this paragraph.

11 88. To the extent that this paragraph contains any factual allegation rather than  
12 legal conclusions, NAGAAA denies the allegations in this paragraph.

13 89. NAGAAA denies the allegations in this paragraph.

14 90. NAGAAA denies the allegations in this paragraph.

15 91. NAGAAA denies the allegations in this paragraph.

16 92. NAGAAA denies the allegations in this paragraph.

17 **EIGHTH CAUSE OF ACTION:**  
18 **INTRUSION ON SECLUSION OF PRIVACY**

19 93. NAGAAA incorporates by reference its responses to paragraphs 1 through  
20 92 above, in response to the reallegations in this paragraph.

21 94. To the extent that this paragraph contains any factual allegation rather than  
22 legal conclusions, NAGAAA denies the allegations in this paragraph.

23 95. NAGAAA denies the allegations in this paragraph.

96. NAGAAA denies the allegations in this paragraph.

1 97. NAGAAA denies the allegations in this paragraph.

2 98. NAGAAA denies the allegations in this paragraph.

3 **V. PRAYER FOR RELIEF**

4 NAGAAA denies all allegations contained in plaintiffs' Prayer for Relief, and  
5 further denies that plaintiffs are entitled to any damages from NAGAAA or any injunctive  
6 relief against NAGAAA.

7 **AFFIRMATIVE DEFENSES**

8 As further answer to the allegations of the Complaint, NAGAAA alleges the  
9 following affirmative defenses:

10 1. Plaintiffs' Complaint fails to state facts claims upon which relief may be  
11 granted against NAGAAA.

12 2. Any damages allegedly sustained by plaintiffs were the proximate result of,  
13 and caused by, the conduct or failure to act by persons or parties other than NAGAAA.

14 3. Plaintiffs' causes of action are barred by the doctrines of unclean hands,  
15 consent, contributory negligence, estoppel, waiver, justification, and/or privilege.

16 4. Plaintiffs' claims are barred for failure to mitigate damages. Plaintiffs may  
17 have knowingly and voluntarily assumed the risk of some or all of the injuries or damages  
18 they allege in the Complaint.

19 NAGAAA reserves the right to assert additional affirmative defenses as may be  
20 appropriate as discovery and investigation proceed.

21 **DEFENDANT'S REQUEST FOR RELIEF**

22 Having fully answered the allegations in plaintiffs' Complaint, NAGAAA requests  
23 that the Court grant the following relief:



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## CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2010, I electronically filed NAGAAA's Answer with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- Amy K. Todd-Gher, attorney for plaintiffs, at [atoddgher@nclrights.org](mailto:atoddgher@nclrights.org)
- Melanie S. Rowen, attorney for plaintiffs, at [mrowen@nclrights.org](mailto:mrowen@nclrights.org)
- Suzanne J. Thomas, attorney for plaintiffs, at [suzanne.thomas@klgates.com](mailto:suzanne.thomas@klgates.com)
- Cristin J. Kent, attorney for plaintiffs, at [cristin.kent@klgates.com](mailto:cristin.kent@klgates.com)
- Beth A. Allen, attorney for defendant, at [beth@bethallenlaw.com](mailto:beth@bethallenlaw.com)
- Michael Reiss, attorney for defendant, at [mikereiss@dwt.com](mailto:mikereiss@dwt.com)
- Roger A. Leishman, attorney for defendant, at [rogerleishman@dwt.com](mailto:rogerleishman@dwt.com)
- Rebecca J. Francis, attorney for defendant, at [RebeccaFrancis@dwt.com](mailto:RebeccaFrancis@dwt.com)

There are no non-CM/ECF participants.

DATED this 5th day of August, 2010.

/s/ Roger A. Leishman  
Roger Leishman, WSBA #19971