Apilado et al	v. North American	Gay Amateur Athletic Alliance
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1 2	The Honorable John C. Coughenour		
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7 8	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE		
9	STEVEN APILADO, LARON CHARLES,) AND JON RUSS,)		
10) No. C10-00682 JCC Plaintiffs,)		
11	 DEFENDANT NAGAAA'S v. ANSWER TO PLAINTIFFS' 		
12 13) COMPLAINT AND THE NORTH AMERICAN GAY AMATEUR) AFFIRMATIVE DEFENSES ATHLETIC ALLIANCE,)		
14	Defendant.		
15	Defendant The North American Gay Amateur Athletic Alliance ("NAGAAA" or		
16	"Defendant"), hereby answers and responds to the Complaint of plaintiffs Steven Apilado,		
17	LaRon Charles, and Jon Russ as follows, following the paragraph numbering in plaintiffs'		
18	Complaint.		
19	INTRODUCTION		
20	NAGAAA is a nonprofit organization that seeks to create a safe environment where		
21	members of the lesbian, gay, bisexual, and transgender ("LGBT" or "GLBT") community		
22	can associate with pride and without fear of humiliation or persecution. NAGAAA hosts		
23	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 During the sector of		
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families, and friends an opportunity to gather, compete, and work toward common goals for their community. NAGAAA's members are local sports leagues from across North America who serve their local LGBT community. Local leagues run their regular seasons and adopt eligibility requirements for the regular seasons independently of NAGAAA. Each local league also selects teams to send to the Gay Softball World Series, and agrees that the teams it sends meet the eligibility requirements specified in the NAGAAA Gay Softball World Series Code ("NAGAAA's Softball Code"). NAGAAA conducts the Gay Softball World Series. Because NAGAAA's purpose includes promoting the participation of the LGBT community, it has adopted rules that ensure LGBT representation on all teams playing in the Gay Softball World Series.

I. RESPONSE TO PRELIMINARY STATEMENT

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

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

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

ANSWER TO PLAINTIFFS' COMPLAINT AND AFFIRMATIVE DEFENSES (C10-00682 JCC) — 2 DWT 15135016v3 0092100-000001

1	4. NAGAAA admits that plaintiffs were on a team that advanced through the
2	Gay Softball World Series tournament in 2008 to the championship game, and that D2
3	ultimately lost. NAGAAA denies that another team filed a protest against D2. NAGAAA
4	admits that the game stopped temporarily after the Commissioner from the Atlanta league
5	filed a protest, and that the protest alleged that the D2 team violated Rule 7.05 of the
6	Softball Code. NAGAAA admits that Rule 7.05 of NAGAAA's Softball Code provides
7	that teams competing in the Gay Softball World Series may not have more than two
8	heterosexual players per team. NAGAAA admits that after the game, the NAGAAA
9	Protest Committee held a hearing pursuant to NAGAAA's Softball Code. NAGAAA
10	denies that twenty-five people were present in the room during the hearing. NAGAAA
11	admits that the Protest Committee found that D2 had violated Rule 7.05 of NAGAAA's
12	Softball Code, and that D2's second-place title was revoked. NAGAAA denies the
13	remaining allegations in this paragraph.
14	5. To the extent that this paragraph contains any factual allegation rather than
15	legal conclusions, NAGAAA denies the allegations in this paragraph.
16	II. JURISDICTION AND VENUE
17	6. NAGAAA lacks sufficient information to respond the allegations in this
18	paragraph and therefore denies them.
19	7. NAGAAA admits the allegations in this paragraph.
20	8. Plaintiffs' complaint speaks for itself. To the extent that this paragraph
21	contains any factual allegations rather than legal conclusions, NAGAAA denies the
22	allegations in this paragraph.
23	
	ANSWER TO PLAINTIEES' COMPLAINT AND

ANSWER TO PLAINTIFFS' COMPLAINT AND AFFIRMATIVE DEFENSES (C10-00682 JCC) — 3 DWT 15135016v3 0092100-000001

9. Plaintiffs' complaint speaks for itself. To the extent that this paragraph 2 contains any factual allegations rather than legal conclusions, NAGAAA denies the 3 allegations in this paragraph. 4 10. Plaintiffs' complaint speaks for itself. To the extent that this paragraph 5 contains any factual allegations rather than legal conclusions, NAGAAA denies the 6 allegations in this paragraph. 7 11. This paragraph states legal conclusions to which no answer is required. 8 12. NAGAAA admits that venue is proper in this Court, and denies all 9 remaining allegations in this paragraph. III. **PARTIES** 10 13. NAGAAA lacks sufficient information to respond to the allegation that 11 12 plaintiffs are residents of California, and therefore denies this allegation. NAGAAA 13 denies the remaining allegations in this paragraph. 14 14. NAGAAA admits that it is a 501(c)(3) non-profit organization incorporated 15 in Wisconsin. NAGAAA admits that it organizes the Gay Softball World Series, held annually in a North American host city. NAGAAA admits that the 2008 Gay Softball 16 17 World Series was held in King County, Washington, and that some of the games occurred 18 at rented softball fields in Kent, Washington. NAGAAA denies the remaining allegations 19 in this paragraph. 20 15. NAGAAA admits that its membership consists of local leagues who 21 organize their own teams under their own regular season rules, and that local leagues pay 22 fees to NAGAAA. NAGAAA denies that plaintiffs and/or any other individual who is a 23 member of a local league is a member of NAGAAA. NAGAAA admits that it maintains a ANSWER TO PLAINTIFFS' COMPLAINT AND AFFIRMATIVE DEFENSES Davis Wright Tremaine LLP LAW OFFICES (C10-00682 JCC) — 4 Suite 2200 · 1201 Third Avenue Seattle, Washington 98101-3045 (206) 622-3150 · Fax: (206) 757-7700 DWT 15135016v3 0092100-000001

website at http://nagaaasoftball.org. NAGAAA denies the remaining allegations in this paragraph. 16. NAGAAA admits the allegations in this paragraph. 17. NAGAAA admits that it plans, promotes, and carries out activities intended to serve the LGBT community. NAGAAA denies the remaining allegations in this paragraph. NAGAAA denies the allegations in this paragraph. 18. 19. NAGAAA denies the allegations in this paragraph. 20. NAGAAA admits that it rents facilities for the annual Gay Softball World Series, and that it did so for the 2008 Seattle World Series. NAGAAA denies the remaining allegations in this paragraph.

21. NAGAAA admits that its Softball Code provides that local leagues mustsend at least one team to the Gay Softball World Series, and that the Gay Softball WorldSeries is governed by NAGAAA's Softball Code. NAGAAA denies the remainingallegations in this paragraph.

IV. FACTS

22. NAGAAA admits that the opening ceremonies for the Gay Softball WorldSeries were held on August 25, 2008, and the Series ended on August 30, 2008.NAGAAA lacks sufficient information to respond to the remaining allegations in this

paragraph, and therefore denies those allegations.

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

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24. NAGAAA denies that the Atlanta Mudcats filed a protest against D2. NAGAAA admits that the game temporarily stopped when the Atlanta Commissioner filed

a protest. NAGAAA admits the remaining allegations in this paragraph.

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

NAGAAA denies that NAGAAA's Softball Code purports to be a "reverse 26. quota." NAGAAA admits the remaining allegations in this paragraph.

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

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

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

> 30. NAGAAA denies the allegations in this paragraph.

31. NAGAAA admits the allegations in this paragraph.

ANSWER TO PLAINTIFFS' COMPLAINT AND AFFIRMATIVE DEFENSES (C10-00682 JCC) — 6 DWT 15135016v3 0092100-000001

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

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

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

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

ANSWER TO PLAINTIFFS' COMPLAINT AND AFFIRMATIVE DEFENSES (C10-00682 JCC) — 8 DWT 15135016v3 0092100-000001

1	46. NAGAAA admits that Rule 7.05 continues to be part of NAGAAA's
2	Softball Code, and that a protest occurred during the 2009 Gay Softball World Series.
3	NAGAAA denies the remaining allegations in this paragraph.
4	47. NAGAAA admits that it did not change Rule 7.05 at the January 2010
5	meeting. NAGAAA denies the remaining allegations in this paragraph.
6	48. NAGAAA denies the allegations in this paragraph.
7	V. CAUSES OF ACTION
8	FIRST CAUSE OF ACTION: VIOLATION OF RCW 49.60.030 AND 49.60.215
9	49. NAGAAA incorporates by reference its responses to paragraphs 1 through
10	48 above, in response to the reallegations in this paragraph.
11	50. To the extent that this paragraph contains any factual allegation rather than
12	legal conclusions, NAGAAA denies the allegations in this paragraph.
13	51. To the extent that this paragraph contains any factual allegation rather than
14	legal conclusions, NAGAAA denies the allegations in this paragraph.
15	52. To the extent that this paragraph contains any factual allegation rather than
16	legal conclusions, NAGAAA lacks sufficient information to respond to the allegations in
17	this paragraph, and therefore denies the allegations in this paragraph.
18	53. To the extent that this paragraph contains any factual allegation rather than
19	legal conclusions, NAGAAA denies the allegations in this paragraph.
20	54. NAGAAA denies the allegations in this paragraph.
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23	ANSWER TO PLAINTIFFS' COMPLAINT AND AFFIRMATIVE DEFENSES (C10-00682 JCC) — 9 DWT 15135016v3 0092100-000001 DUBLE DWT 15135016v3 0092100-000001 DDB DUBLE DWT 15135016v3 0092100-0000001 DDB DUBLE DWT 151350000000000000000000000000000000000

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: AIDING VIOLATION OF RCW 49.60
9	60. NAGAAA incorporates by reference its responses to paragraphs 1 through
10	59 above, in response to the reallegations in this paragraph.
11	61. To the extent that this paragraph contains any factual allegation rather than
12	legal conclusions, NAGAAA denies the allegations in this paragraph.
13	62. To the extent that this paragraph contains any factual allegation rather than
14	legal conclusions, NAGAAA denies the allegations in this paragraph.
15	63. NAGAAA denies the allegations in this paragraph.
16	64. NAGAAA denies the allegations in this paragraph.
17	THIRD CAUSE OF ACTION:
18	VIOLATION OF RCW 19.86
19	65. NAGAAA incorporates by reference its responses to paragraphs 1 through
20	64 above, in response to the reallegations in this paragraph.
21	66. NAGAAA denies the allegations in this paragraph.
22	67. NAGAAA denies the allegations in this paragraph.
23	68. NAGAAA denies the allegations in this paragraph.
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1 2	FOURTH CAUSE OF ACTION: BREACH OF IMPLIED OR EXPRESS CONTRACT AND COVENANT OF GOOD FAITH AND FAIR DEALING		
3	69. NAGAAA incorporates by reference its responses to paragraphs 1 through		
4	68 above, in response to the reallegations in this paragraph.		
5	70. NAGAAA denies the allegations in this paragraph.		
6	71. NAGAAA denies the allegations in this paragraph.		
7	72. NAGAAA denies the allegations in this paragraph.		
8	73. NAGAAA denies the allegations in this paragraph.		
9	FIFTH CAUSE OF ACTION:		
10	INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (TORT OF OUTRAGE)		
11	74. NAGAAA incorporates by reference its responses to paragraphs 1 through		
12	73 above, in response to the reallegations in this paragraph.		
13	75. To the extent that this paragraph contains any factual allegation rather than		
14	legal conclusions, NAGAAA denies the allegations in this paragraph.		
15	76. NAGAAA denies the allegations in this paragraph.		
16	77. NAGAAA denies the allegations in this paragraph.		
17	78. NAGAAA denies the allegations in this paragraph.		
18	SIXTH CAUSE OF ACTION: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS		
19			
20	79. NAGAAA incorporates by reference its responses to paragraphs 1 through		
21	78 above, in response to the reallegations in this paragraph.		
22	80. To the extent that this paragraph contains any factual allegation rather than		
23	legal conclusions, NAGAAA denies the allegations in this paragraph.		
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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: PUBLIC DISCLOSURE OF PRIVATE FACTS
8	87.	NAGAAA incorporates by reference its responses to paragraphs 1 through
9	86 above, in	response to the reallegations in this paragraph.
10	88.	To the extent that this paragraph contains any factual allegation rather than
11	legal conclus	sions, NAGAAA denies the allegations in this paragraph.
12	89.	NAGAAA denies the allegations in this paragraph.
13	90.	NAGAAA denies the allegations in this paragraph.
14	91.	NAGAAA denies the allegations in this paragraph.
15	92.	NAGAAA denies the allegations in this paragraph.
16		EIGHTH CAUSE OF ACTION:
17		INTRUSION ON SECLUSION OF PRIVACY
18	93.	NAGAAA incorporates by reference its responses to paragraphs 1 through
19	92 above, in	response to the reallegations in this paragraph.
20	94.	To the extent that this paragraph contains any factual allegation rather than
21	legal conclus	sions, NAGAAA denies the allegations in this paragraph.
22	95.	NAGAAA denies the allegations in this paragraph.
23	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:	
	ANSWER TO PLAINTIFFS' COMPLAINT AND AFFIRMATIVE DEFENSES (C10-00682 JCC) — 13 DWT 15135016v3 0092100-000001 DUBLESS Suite 2200 · 1201 Third Avenue Seattle, Washington 98101-3045 (206) 622-3150 · Fax: (206) 757-7700	

1	A. Dismissal of plaintiffs' Complaint, and all related claims, with prejudice;		
2	B. Entry of judgment in favor of defendant on all claims;		
3	C. An award of NAGAAA's costs and reasonable attorneys' fees incurred in		
4	the defense of the claims as permitted by law and in such amount as the Court shall		
5	determine;		
6	D. Other and further relief as the Court may deem equitable and just under the		
7	circumstances.		
8	DATED this 5th day of August, 2010.		
9	Davis Wright Tremaine LLP		
10	Attorneys for Defendant NORTH AMERICAN GAY AMATEUR		
11	ATHLETIC ALLIANCE		
12	By <u>/s/ Roger A. Leishman</u> Michael Reiss, WSBA #10707		
13	Roger Leishman, WSBA #19971 Rebecca Francis, WSBA #41196		
14	1201 Third Avenue, Suite 2200 Seattle, Washington 98101-3045		
15	Telephone: (206) 622-3150 Fax: (206) 757-7700		
16	E-mail: mikereiss@dwt.com E-mail: rogerleishman@dwt.com		
17	E-mail: rebeccablasco@dwt.com		
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1	CERTIFICATE OF SERVICE
2	I hereby certify that on August 5, 2010, I electronically filed NAGAAA's Answer
3	with the Clerk of the Court using the CM/ECF system which will send notification of such
4	filing to the following:
5	 Amy K. Todd-Gher, attorney for plaintiffs, at <u>atoddgher@nclrights.org</u>
6	 Melanie S. Rowen, attorney for plaintiffs, at <u>mrowen@nclrights.org</u>
7	 Suzanne J. Thomas, attorney for plaintiffs, at <u>suzanne.thomas@klgates.com</u>
	 Cristin J. Kent, attorney for plaintiffs, at <u>cristin.kent@klgates.com</u>
8	Beth A. Allen, attorney for defendant, at <u>beth@bethallenlaw.com</u>
9	 Michael Reiss, attorney for defendant, at <u>mikereiss@dwt.com</u>
10	 Roger A. Leishman, attorney for defendant, at <u>rogerleishman@dwt.com</u>
11	 Rebecca J. Francis, attorney for defendant, at <u>RebeccaFrancis@dwt.com</u>
12	There are no non-CM/ECF participants.
13	DATED this 5th day of August, 2010.
14	
15	/s/ Roger A. Leishman Roger Leishman, WSBA #19971
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