

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
A. DOE,

Plaintiff,

-against-

COMPLAINT

**PLAINTIFF DEMANDS
TRIAL BY JURY**

KURT LUDWIGSEN, in his individual capacity,
KIRSTEN LAMBERTSON, in her individual capacity,
MICHAEL G. SCALES, individually and as President of
Nyack College, DAVID C. JENNINGS, individually and as
Executive Vice President of Nyack College, KEITH DAVIE,
individually and as Athletic Director for Nyack College,
AMANDA AIKENS, individually and as Assistant Athletic
Director for Nyack College, and NYACK COLLEGE,

Defendants.
-----X

Plaintiff, A. DOE, by her attorneys, LAW OFFICE OF TODD J. KROUNER,
respectfully alleges:

INTRODUCTION

1. This is a case that involves a pattern and practice of outlandish sexual harassment and sexual assault by defendant Kurt Ludwigsen (“Ludwigsen”), acting in his capacity as Head Coach of the Nyack College women’s softball team (the “Softball Team,” or the “Team”). As a result of Ludwigsen’s pattern and practice of pervasive sexual harassment, he has been charged by the Rockland County District Attorney with seven counts of felony coercion in the first degree, 94 counts of forcible touching, 94 counts of sexual assault in the third degree and two counts of harassment in the second degree. This activity took place throughout the course of the 2014-2015 academic school year at defendant Nyack College (“Nyack College”), and in connection with Nyack College-sanctioned school activities.

2. The outrageous conduct of Ludwigsen includes, without limitation, routinely licking his players' ears, kissing their lips and faces, slapping their buttocks, grabbing their breasts, directing them to sit on his lap, lying on top of them, commenting about their physical attributes, having sexually explicit conversations with them, inviting a pornographic actress known as Allie Haze to practice and directing students to life counseling sessions with her, directing an underage drinking outing where his players were instructed to dress in cocktail dresses and dance with male strangers and offering to assist players to attain employment in the adult entertainment industry.

3. Nyack College hired and retained Ludwigsen notwithstanding publicly available information which indicated that (a) he had left a coaching position with the premier women's softball program at the University of Arizona; (b) subsequently, he took a non-paying coaching position with an elite girls' softball team, ages 15 to 18, in California, known as the NorCal Assault; (c) while coaching the NorCal Assault, he was the subject of a criminal investigation for sexual assault and sexual harassment against several of his young female players; and (d) while coaching the NorCal Assault, under the alias "Kurt Vogner," he also founded and promoted a paid telephone service that linked pornography actresses (including Bree Olson, with whom he was photographed) to their "fans".

4. Nyack College markets itself as, "New York's Christian College," even though Ludwigsen admitted that he certainly was not a "typical Christian coach." Nyack College, through its administration and athletic department, discriminated against Plaintiff and members of the Softball Team on the basis of their gender and retaliated

against Plaintiff and members of the Softball Team when they complained about Ludwigsen's outrageous conduct in connection with his student athletes.

5. In addition to bringing claims for sexual discrimination arising under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et seq., ("Title IX"), Plaintiff also brings claims under common law against Ludwigsen and Nyack College for battery, intentional and negligent infliction of emotional distress, negligent hiring, negligent supervision and negligent retention.

JURISDICTION AND VENUE

6. Jurisdiction is present under 28 U.S.C. § 1331 and 28 U.S.C. § 1343. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in Nyack, Rockland County, New York.

PARTIES

8. Plaintiff A. Doe is an adult resident of the State of New Jersey and currently resides in Rockland County, New York. At the time of the incidents described in this complaint, Plaintiff was attending Nyack College and residing in Rockland County, New York. Plaintiff currently attends Nyack College. Currently, and at the time of the incidents alleged in this complaint, Plaintiff is and was a student at Nyack College. Currently, and at the time of the incidents alleged in this complaint, Plaintiff is and was a member of the Softball Team, a member team of Division II of the National Collegiate Athletic Association ("NCAA").

9. Nyack College is an educational institution receiving federal financial assistance as defined in 20 U.S.C. § 1681(c). Nyack College advertises itself on its website and promotional materials as “New York’s Christian College.”

10. At all times relevant to this action, Ludwigsen resided in Ridgewood, New Jersey, and was employed by Nyack College as Head Coach for the Softball Team. Previously, Ludwigsen was employed by the University of Arizona’s prestigious women’s softball program, under the leadership of coach Mike Candrea, who coached eight national champion softball teams and two Team USA Olympic women’s softball teams. During Ludwigsen’s tenure at the University of Arizona, the university’s women’s softball program won its first two national championships. At some point, Ludwigsen’s employment at the University of Arizona ended. Upon information and belief, during the decade or more between his tenure at the University of Arizona and his tenure at Nyack College, Ludwigsen did not hold a paid staff coaching position at any educational institution. Instead, upon information and belief, Ludwigsen founded and coached the NorCal Assault, a Petaluma, California girls’ travel softball team comprising players aged 15 to 18 years old. Upon information and belief, in or about 2013, Ludwigsen left his position as coach for the NorCal Assault amid a criminal investigation into allegations by team members that Ludwigsen subjected them to sexual harassment. The basis of such information and belief includes press reports that quote Petaluma, California Police Lieutenant Dan Fish, who said his department had contacted 12 potential victims, of whom “[f]ive or six confirmed something occurred[.]”

11. Upon information and belief, in or about 2011, under his alias, Kurt Vogner,

Ludwigsen founded phone-sex service Verified Call, which is affiliated with adult film industry celebrities, including pornography actress Bree Olson.

12. At all times relevant to this action, defendant Michael Scales (“Mr. Scales”) was and remains the President of Nyack College. As President, Mr. Scales had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

13. At all times relevant to this action, defendant David Jennings (“Mr. Jennings”) was and remains the Executive Vice President of Nyack College. As Executive Vice President, Mr. Jennings had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

14. At all times relevant to this action, defendant Keith Davie (“Mr. Davie”) was and remains Nyack College’s Athletic Director. Upon information and belief, Mr. Davie hired Ludwigsen. Mr. Davie was present for and/or witnessed Ludwigsen’s misconduct. Mr. Davie had actual knowledge of conduct that violated Title IX. As Athletic Director, Mr. Davie had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

15. At all times relevant to this action, defendant Amanda Aikens (“Ms. Aikens”)

was and remains Nyack College's Assistant Athletic Director. Upon information and belief, Ms. Aikens was present for and/or witnessed Ludwigsen's misconduct. Ms. Aikens had actual knowledge of conduct that violated Title IX. As Assistant Athletic Director, Ms. Aikens had the authority to implement corrective measures on Nyack College's behalf for violations of Title IX. Her responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

16. From approximately July 2014 through and including March 15, 2015, defendant Kirsten Lambertson ("Ms. Lambertson") was the Assistant Coach for the Softball Team. From approximately March 15, 2015, through and including July 2015, Ms. Lambertson was the Acting Head Coach for the Softball team. Ms. Lambertson was present for and/or witnessed Ludwigsen's misconduct. Ms. Lambertson had actual knowledge of conduct that violated Title IX.

FACTS

17. As Head Coach of the Softball Team, Ludwigsen enjoyed a position of authority and trust among the team members, including Plaintiff. As Head Coach, Ludwigsen had the power to grant or withhold lucrative scholarships for members of the Softball Team.

18. Beginning in or about September 2014 until in or about March 13, 2015, during the fall and spring semesters at Nyack College, Ludwigsen had constant contact with members of the Softball Team, including Plaintiff. Ludwigsen supervised the Softball Team during daily practices, hosted numerous mandatory social gatherings for

team members and made frequent after-hours contact with team members via telephone, text messages and/or internet messaging, including but not limited to Facebook Chat.

19. Ludwigsen undertook to exert, and did in fact exert, a tremendous level of control over members of the Softball Team, including Plaintiff, through a pattern and practice of intimidation, including without limitation as follows:

- (a) In or about September 2014, Ludwigsen met the members of the Softball Team in person for the first time, during the Team's first practice of the 2014-2015 Nyack College school year. At the time, Ludwigsen threatened the Team members, stating in words or in substance, that he could "make [their] lives a living hell" if they upset him. He further threatened that he knew people who could ruin their lives, beyond Nyack College, if they displeased him in any way;
- (b) During the fall and spring semesters, Ludwigsen mandated that members of the Softball Team attend a nightly study hall, often in the company of members of other Nyack College athletic teams. While members of the various athletic teams commonly mingled during study hall, Ludwigsen forbade Softball Team members from sitting with or in any way interacting with individuals who were not part of the Softball Team. On at least one occasion, Ludwigsen yelled violently at a Softball Team member for allegedly inviting another student to sit with the Softball Team during study hall;
- (c) Ludwigsen did not allow the parents of Softball Team members, many of whom lived nearby, to attend practices. Ludwigsen forbade Team members from speaking to their parents during games. In or about March of 2015,

during an eight-day tournament in Tuscon, Arizona (the “Arizona Tournament”), Ludwigsen forbade Softball Team members from having any in-person or telephonic contact with their family members who had traveled to Arizona, with the exception of a single two-hour dinner break. On one occasion, when Ludwigsen observed a Team member speaking to her father before a game, he responded by yelling violently at the Team member;

(d) On at least one occasion during the Arizona Tournament, Ludwigsen confiscated the cellular phones of all Softball Team members for a full day.

As a result of Ludwigsen’s pattern and practice of intimidation, the members of the Softball Team, including Plaintiff, feared Ludwigsen and perceived that he had immense power over their scholarships, playing time on the Softball Team, career ambitions and personal and professional futures.

20. Despite his severe restrictions on contact with persons outside of the Softball Team, Ludwigsen did encourage Team members to socialize with the pornographic actress known as Allie Haze. On at least one occasion, Ludwigsen invited Allie Haze to a Softball Team practice to bestow “life advice” upon Team members. Prior to her visit, he privately told at least two Team members, in words or substance, that they in particular would find Allie Haze’s “advice” useful. Ludwigsen introduced Allie Haze to the Softball Team as a pornographic actress. After practice, he asked at least two Team members to his office to meet privately with Allie Haze for approximately one hour, in the presence of Ms. Lambertson, where he directed the conversation to focus primarily on Allie Haze’s sexual history. On another occasion, Ludwigsen required all Team members to visit his home for a question-and-answer session with Allie Haze. He directed Team

members to prepare questions in advance, with the implication that they were to ask Allie Haze about her sexual experience.

21. While student athletes often look to their coaches for career and life advice, Ludwigsen instead offered to help Team members pursue careers in the adult entertainment industry. On at least one occasion, he asked a Team member if she had ever considered a career as a “stripper,” and told her, in words or in substance, that if she ever wanted to be a “stripper, or anything like that,” he had the resources and connections to assist her.

22. Ludwigsen perpetuated a sexually-charged atmosphere through multiple inappropriate and offensive actions and/or comments. Ludwigsen’s actions were pervasive and unwelcome by all members of the Softball Team, including Plaintiff. His inappropriate and offensive actions included, without limitation, the following:

- (a) Ludwigsen proclaimed the phrase “top tits” as the rallying cry and/or slogan for the Team;
- (b) Ludwigsen would frequently say, “Zip, thud”, while using his arm to mime removing a large, erect phallus from his pants, purportedly as a metaphor for Team dominance over opponents;
- (c) Ludwigsen asked Team members, including Plaintiff, about their sex lives on a regular basis, and demanded graphic details about the frequency and nature of their sexual activities;
- (d) Ludwigsen frequently punched Team members in the breasts, which he called, “tit punching”;

- (e) Ludwigsen held mandatory private or small group meetings with Team members and their boyfriends, during which he would inquire in graphic detail about the couples' sex lives;
- (f) On or about Friday, November 14, 2014, Ludwigsen arranged for a mandatory "team bonding" trip to New York City, and Lyndhurst, New Jersey (the "Alcohol Outing"). Prior to the Alcohol Outing, Ludwigsen told Team members that the mandatory dress code was cocktail dresses and high heels. He directed Team members who did not own cocktail attire to go to the local mall to purchase their outfits. Ludwigsen borrowed two of Nyack College's vans for transportation. The vans bore the Nyack College logo, and the slogan, "Christian Higher Education Since 1882." First, Ludwigsen took the Team to the Waldorf-Astoria hotel in Manhattan to pose for photographs. Next, Ludwigsen took the Team to a museum/lounge in downtown Manhattan, where he encouraged the Team members, the majority of whom were under the lawful age for consumption of alcoholic beverages, to order alcoholic beverages. Then, Ludwigsen took the Team to the Whiskey Café, a nightclub in Lyndhurst, New Jersey. Ludwigsen purchased buckets of beer bottles and urged the Team members to drink the beer. He directed several Team members to dance with older, male patrons while he watched. Ludwigsen himself also danced with several Team members;
- (g) In or about March 2015, for the Arizona Tournament, instead of booking hotel rooms with sufficient sleeping accommodations, Ludwigsen rented a five-bedroom house to accommodate the Team, coaches and administrators.

Several Team members were forced to sleep on couches and floors. Mr. Davie accompanied the Team, and shared a bedroom with Ludwigsen. Ms. Aikens also accompanied the team;

- (h) On or about March 10, 2015, during a game in Arizona, Ludwigsen forced a Team member to sit on his lap outside of the third-base dugout, in plain view of the Team's spectators, including Mr. Davie and Ms. Aikens.

23. On multiple occasions, Ludwigsen made unwanted verbal and/or physical sexual advances toward Plaintiff individually. These pervasive and unwanted sexual advances included, without limitation, the following:

- (a) In or about February 2014, Ludwigsen licked Plaintiff's ear as "punishment" for perceived fielding errors during practice;
- (b) On or about March 11, 2015, Ludwigsen approached Plaintiff from behind as she lay prone on a couch at the family home of a Team member, and without her consent placed himself on top of her in the prone position. He remained on top of Plaintiff for approximately a minute, during which time he repeatedly whispered in her ear, in words or in substance, "Would you like me to get off?"

24. On or about March 13, 2015, the Team members collectively confronted Mr. Davie and Ms. Aikens to complain of Ludwigsen's harassment. Mr. Davie terminated Ludwigsen's employment that evening.

25. Mr. Davie promoted and retained Ms. Lambertson for the remainder of the season and promoted to the position of Head Coach. This was despite Ms. Lambertson's longtime personal relationship with Ludwigsen, her involvement in many inappropriate

instances of harassment, including the intimate counseling sessions with pornographic actress Allie Haze and the Alcohol Outing, and her repeated failure to intervene in any of the pervasive acts of physical and verbal abuse which Ludwigsen had perpetuated against members of the Team.

26. Upon information and belief, Mr. Davie had notice of Ludwigsen's actions but turned a blind eye to the sexual harassment until he could no longer claim ignorance of Ludwigsen's behavior. Mr. Davie was personally present for a number of instances of harassment, including without limitation the following:

- (a) Mr. Davie personally approved Ludwigsen's request to use Nyack College's vans for the Alcohol Outing. Mr. Davie was present as the Team boarded the van for the trip. Ludwigsen directed several Team members to exit the van and paraded them in front of Mr. Davie in their cocktail attire;
- (b) On or about March 10, 2015, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen force a Team member to sit on his lap outside of the third-base dugout during a game in Arizona;
- (c) In or about March 2015, during the Arizona Tournament, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen force a Team member to sit in his embrace for 20 minutes outside of the Team dugout while he made sexually explicit comments towards her;
- (d) On or about the night of March 10, 2015, while a few feet away in a hot tub, Mr. Davie personally observed Ludwigsen force a Team member to sit poolside in his embrace while he made sexually explicit comments to her; and

(e) On or about March 12, 2015, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen approach a Team member from behind, wrap his arms around her and shake her breasts repeatedly.

27. Since Ludwigsen's termination, Nyack College has retaliated against Plaintiff for reporting Ludwigsen's sexual harassment. The retaliatory acts include, without limitation, restricting Plaintiff's playing time and/or forcing Plaintiff to play unfamiliar defensive positions, despite her stated discomfort, in order to facilitate retaliation against other Team members; and threatening expulsion from Nyack College and/or removal from the Softball Team.

FIRST CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR VIOLATION OF RIGHTS UNDER TITLE IX

28. Plaintiff repeats and realleges Paragraphs 1 through 27, above.

29. Nyack College is a recipient of federal funding under Title IX.

30. From in or about July 2014 through and including on or about March 13, 2015, Nyack College employed Ludwigsen as Head Coach for the Softball Team.

31. Ludwigsen harassed Plaintiff based on her sex by, without limitation, subjecting Plaintiff to sex-specific physical contact and language intended to humiliate, ridicule and/or intimidate.

32. Ludwigsen's sexual harassment of Plaintiff was sufficiently severe and pervasive to create what a reasonable person would consider a hostile environment in Nyack College's women's softball program. Ludwigsen's sexual harassment of Plaintiff so undermined and detracted from Plaintiff's experience in Nyack College's women's softball program that it effectively denied Plaintiff equal access to Nyack College's institutional resources and/or opportunities. Furthermore, Ludwigsen's harassment had a

concrete, negative effect on Plaintiff's ability to participate in Nyack College's women's softball program.

33. Plaintiff in fact found the environment created by Ludwigsen's sexual harassment to be hostile and abusive.

34. Nyack College had actual notice of Ludwigsen's sexual harassment to each of Mr. Davie, Ms. Aikens and/or Ms. Lambertson, whom had the authority to implement corrective measures on behalf of Nyack College.

35. Mr. Davie acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment and retaining Ms. Lambertson as Head Coach despite her involvement in the harassment and her longtime personal relationship with Ludwigsen.

36. Ms. Aikens acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment.

37. Ms. Lambertson acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment.

38. As a direct and proximate result of Nyack College's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SECOND CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR
RETALIATION IN VIOLATION OF TITLE IX**

39. Plaintiff repeats and realleges Paragraphs 1 through 38, above.

40. Plaintiff engaged in a protected activity by, without limitation, complaining to school officials about Ludwigsen's sexual harassment.

41. Nyack College had knowledge of the protected activity.

42. Nyack College subjected Plaintiff to adverse school-related actions, including without limitation those actions set forth above.

43. There is a causal connection between the protected activity and the adverse school-related actions, as set forth above.

44. As a direct and proximate result of Nyack College's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**THIRD CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR NEGLIGENT
HIRING**

45. Plaintiff repeats and realleges Paragraphs 1 through 44, above.

46. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

47. Nyack College was negligent in its hiring of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

48. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

49. As a direct and proximate result of Nyack College's negligent hiring, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**FOURTH CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR
NEGLIGENT SUPERVISION**

50. Plaintiff repeats and realleges Paragraphs 1 through 49, above.

51. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

52. Nyack College was negligent in its supervision of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

53. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

54. Ludwigsen's sexual harassment of Plaintiff occurred on Nyack College's campus and/or with Nyack College's chattels, in connection with activities that were sanctioned by or on behalf of Nyack College.

55. As a direct and proximate result of Nyack College's negligent supervision, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**FIFTH CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR NEGLIGENT
RETENTION**

56. Plaintiff repeats and realleges Paragraphs 1 through 55, above.

57. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

58. Nyack College was negligent in its retention of Ludwigsen. As set forth

above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

59. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

60. As a direct and proximate result of Nyack College's negligent retention, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SIXTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

61. Plaintiff repeats and realleges Paragraphs 1 through 60, above.

62. Ludwigsen engaged in extreme and outrageous conduct by his sexual harassment of Plaintiff.

63. Through his extreme and outrageous conduct, Ludwigsen intended to cause Plaintiff severe emotional distress.

64. As a result of Ludwigsen's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

65. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

66. As a direct and proximate result of Ludwigsen's extreme and outrageous conduct, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SEVENTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS FOR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

67. Plaintiff repeats and realleges Paragraphs 1 through 66, above.

68. Ludwigsen, as an employee of Nyack College, owed a duty of care to Plaintiff as a student at Nyack College.

69. Ludwigsen's extreme and outrageous conduct unreasonably endangered Plaintiff's safety and/or caused Plaintiff to fear for her safety.

70. As a result of Ludwigsen's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

71. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

72. As a direct and proximate result of Defendants' negligence, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

EIGHTH CAUSE OF ACTION: AGAINST KURT LUDWIGSEN FOR BATTERY

73. Plaintiff repeats and realleges Paragraphs 1 through 72, above.

74. On multiple occasions as alleged above, Ludwigsen intended to make bodily contact with Plaintiff.

75. On multiple occasions, Ludwigsen made harmful and/or offensive physical contact with Plaintiff without her consent.

76. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

77. As a direct and proximate result of Ludwigsen's unwanted harmful and/or offensive bodily contact, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal

humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

WHEREFORE, plaintiff prays that judgment be entered:

I. On the First Cause of Action, under Title IX, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees, and reasonable costs;

II. On the Second Cause of Action, under Title IX, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

III. On the Third Cause of Action, for negligent hiring, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

IV. On the Fourth Cause of Action, for negligent supervision, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

V. On the Fifth Cause of Action, for negligent retention, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VI. On the Sixth Cause of Action, for intentional infliction of emotional distress, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VII. On the Seventh Cause of Action, for negligent infliction of emotional distress, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VIII. On the Eighth Cause of Action, for battery, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

IX. On the above stated causes of action, awarding the plaintiff prejudgment interest, costs and such other further relief as this Court deems appropriate.

Dated: Chappaqua, New York
October 2, 2015

LAW OFFICE OF TODD J. KROUNER

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UNITED STATES DISTRICT COURT
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COMPLAINT

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Plaintiff, E. DOE, by her attorneys, LAW OFFICE OF TODD J. KROUNER,
respectfully alleges:

INTRODUCTION

1. This is a case that involves a pattern and practice of outlandish sexual harassment and sexual assault by defendant Kurt Ludwigsen (“Ludwigsen”), acting in his capacity as Head Coach of the Nyack College women’s softball team (the “Softball Team,” or the “Team”). As a result of Ludwigsen’s pattern and practice of pervasive sexual harassment, he has been charged by the Rockland County District Attorney with seven counts of felony coercion in the first degree, 94 counts of forcible touching, 94 counts of sexual assault in the third degree and two counts of harassment in the second degree. This activity took place throughout the course of the 2014-2015 academic school year at defendant Nyack College (“Nyack College”), and in connection with Nyack College-sanctioned school activities.

2. The outrageous conduct of Ludwigsen includes, without limitation, routinely licking his players' ears, kissing their lips and faces, slapping their buttocks, grabbing their breasts, directing them to sit on his lap, lying on top of them, commenting about their physical attributes, having sexually explicit conversations with them, inviting a pornographic actress known as Allie Haze to practice and directing students to life counseling sessions with her, directing an underage drinking outing where his players were instructed to dress in cocktail dresses and dance with male strangers and offering to assist players to attain employment in the adult entertainment industry.

3. Nyack College hired and retained Ludwigsen notwithstanding publicly available information which indicated that (a) he had left a coaching position with the premier women's softball program at the University of Arizona; (b) subsequently, he took a non-paying coaching position with an elite girls' softball team, ages 15 to 18, in California, known as the NorCal Assault; (c) while coaching the NorCal Assault, he was the subject of a criminal investigation for sexual assault and sexual harassment against several of his young female players; and (d) while coaching the NorCal Assault, under the alias "Kurt Vogner," he also founded and promoted a paid telephone service that linked pornography actresses (including Bree Olson, with whom he was photographed) to their "fans".

4. Nyack College markets itself as, "New York's Christian College," even though Ludwigsen admitted that he was certainly not a "typical Christian coach." Nyack College, through its administration and athletic department, discriminated against Plaintiff and members of the Softball Team on the basis of their gender and retaliated

against Plaintiff and members of the Softball Team when they complained about Ludwigsen's outrageous conduct in connection with his female student athletes.

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JURISDICTION AND VENUE

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7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in Nyack, Rockland County, New York.

PARTIES

8. Plaintiff E. Doe is an adult resident of the State of California and currently resides in Rockland County, New York. At the time of the incidents described in this complaint, Plaintiff was attending Nyack College and residing in Rockland County, New York. Plaintiff currently attends Nyack College. Currently, and at the time of the incidents alleged in this complaint, Plaintiff is and was a student at Nyack College. At the time of the incidents alleged in this complaint, Plaintiff was a member of the Softball Team, a member team of Division II of the National Collegiate Athletic Association ("NCAA").

9. Nyack College is an educational institution receiving federal financial assistance as defined in 20 U.S.C. § 1681(c). Nyack College advertises itself on its website and promotional materials as “New York’s Christian College.”

10. At all times relevant to this action, Ludwigsen resided in Ridgewood, New Jersey, and was employed by Nyack College as Head Coach for the Softball Team. Previously, Ludwigsen was employed by the University of Arizona’s prestigious women’s softball program, under the leadership of coach Mike Candrea, who coached eight national champion softball teams and two Team USA Olympic women’s softball teams. During Ludwigsen’s tenure at the University of Arizona, the university’s women’s softball program won its first two national championships. At some point, Ludwigsen’s employment at the University of Arizona ended. Upon information and belief, during the decade or more between his tenure at the University of Arizona and his tenure at Nyack College, Ludwigsen did not hold a paid staff coaching position at any educational institution. Instead, upon information and belief, Ludwigsen founded and coached the NorCal Assault, a Petaluma, California girls’ travel softball team comprising players aged 15 to 18 years old. Upon information and belief, in or about 2013, Ludwigsen left his position as coach for the NorCal Assault amid a criminal investigation into allegations by team members that Ludwigsen subjected them to sexual harassment. The basis of such information and belief includes press reports that quote Petaluma, California Police Lieutenant Dan Fish, who said his department had contacted 12 potential victims, of whom “[f]ive or six confirmed something occurred[.]”

11. Upon information and belief, in or about 2011, under his alias, Kurt Vogner,

Ludwigsen founded phone-sex service Verified Call, which is affiliated with adult film industry celebrities, including pornography actress Bree Olson.

12. At all times relevant to this action, defendant Michael Scales (“Mr. Scales”) was and remains the President of Nyack College. As President, Mr. Scales had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

13. At all times relevant to this action, defendant David Jennings (“Mr. Jennings”) was and remains the Executive Vice President of Nyack College. As Executive Vice President, Mr. Jennings had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

14. At all times relevant to this action, defendant Keith Davie (“Mr. Davie”) was and remains Nyack College’s Athletic Director. Upon information and belief, Mr. Davie hired Ludwigsen. Mr. Davie was present for and/or witnessed Ludwigsen’s misconduct. Mr. Davie had actual knowledge of conduct that violated Title IX. As Athletic Director, Mr. Davie had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

15. At all times relevant to this action, defendant Amanda Aikens (“Ms. Aikens”)

was and remains Nyack College's Assistant Athletic Director. Upon information and belief, Ms. Aikens was present for and/or witnessed Ludwigsen's misconduct. Ms. Aikens had actual knowledge of conduct that violated Title IX. As Assistant Athletic Director, Ms. Aikens had the authority to implement corrective measures on Nyack College's behalf for violations of Title IX. Her responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

16. From approximately July 2014 through and including March 15, 2015, defendant Kirsten Lambertson ("Ms. Lambertson") was the Assistant Coach for the Softball Team. From approximately March 15, 2015, through and including July 2015, Ms. Lambertson was the Acting Head Coach for the Softball team. Ms. Lambertson was present for and/or witnessed Ludwigsen's misconduct. Ms. Lambertson had actual knowledge of conduct that violated Title IX.

FACTS

17. As Head Coach of the Softball Team, Ludwigsen enjoyed a position of authority and trust among the team members, including Plaintiff. As Head Coach, Ludwigsen had the power to grant or withhold lucrative scholarships for members of the Softball Team.

18. Beginning in or about September 2014 until in or about March 13, 2015, during the fall and spring semesters at Nyack College, Ludwigsen had constant contact with members of the Softball Team, including Plaintiff. Ludwigsen supervised the Softball Team during daily practices, hosted numerous mandatory social gatherings for

team members and made frequent after-hours contact with team members via telephone, text messages and/or internet messaging, including but not limited to Facebook Chat.

19. Ludwigsen undertook to exert, and did in fact exert, a tremendous level of control over members of the Softball Team, including Plaintiff, through a pattern and practice of intimidation, including without limitation as follows:

- (a) In or about September 2014, Ludwigsen met the members of the Softball Team in person for the first time, during the Team's first practice of the 2014-2015 Nyack College school year. At the time, Ludwigsen threatened the Team members, stating in words or in substance, that he could "make [their] lives a living hell" if they upset him. He further threatened that he knew people who could ruin their lives, beyond Nyack College, if they displeased him in any way;
- (b) During the fall and spring semesters, Ludwigsen mandated that members of the Softball Team attend a nightly study hall, often in the company of members of other Nyack College athletic teams. While members of the various athletic teams commonly mingled during study hall, Ludwigsen forbade Softball Team members from sitting with or in any way interacting with individuals who were not part of the Softball Team. On at least one occasion, Ludwigsen yelled violently at a Softball Team member for allegedly inviting another student to sit with the Softball Team during study hall;
- (c) Ludwigsen did not allow the parents of Softball Team members, many of whom lived nearby, to attend practices. Ludwigsen forbade Team members from speaking to their parents during games. In or about March of 2015,

during an eight-day tournament in Tuscon, Arizona (the “Arizona Tournament”), Ludwigsen forbade Softball Team members from having any in-person or telephonic contact with their family members who had traveled to Arizona, with the exception of a single two-hour dinner break. On one occasion, when Ludwigsen observed a Team member speaking to her father before a game, he responded by yelling violently at the Team member;

- (d) On at least one occasion during the Arizona Tournament, Ludwigsen confiscated the cellular phones of all Softball Team members for a full day.

As a result of Ludwigsen’s pattern and practice of intimidation, the members of the Softball Team, including Plaintiff, feared Ludwigsen and perceived that he had immense power over their scholarships, playing time on the Softball Team, career ambitions and personal and professional futures.

20. Despite his severe restrictions on contact with persons outside of the Softball Team, Ludwigsen did encourage Team members to socialize with the pornographic actress known as Allie Haze. On at least one occasion, Ludwigsen invited Allie Haze to a Softball Team practice to bestow “life advice” upon Team members. Prior to her visit, he privately told at least two Team members, including Plaintiff, in words or substance, that they in particular would find Allie Haze’s “advice” useful. Ludwigsen introduced Allie Haze to the Softball Team as a pornographic actress. After practice, he asked at least two Team members, including Plaintiff, to his office to meet privately with Allie Haze for approximately one hour, in the presence of Ms. Lambertson, where he directed the conversation to focus primarily on Allie Haze’s sexual history. On another occasion, Ludwigsen required all Team members to visit his home for a question-and-answer

session with Allie Haze. He directed Team members to prepare questions in advance, with the implication that they were to ask Allie Haze about her sexual experience.

21. While student athletes often look to their coaches for career and life advice, Ludwigsen instead offered to help Team members pursue careers in the adult entertainment industry. On at least one occasion, he asked a Team member if she had ever considered a career as a “stripper,” and told her, in words or in substance, that if she ever wanted to be a “stripper, or anything like that,” he had the resources and connections to assist her.

22. Ludwigsen perpetuated a sexually-charged atmosphere through multiple inappropriate and offensive actions and/or comments. Ludwigsen’s actions were pervasive and unwelcome by all members of the Softball Team, including Plaintiff. His inappropriate and offensive actions included, without limitation, the following:

- (a) Ludwigsen proclaimed the phrase “top tits” as the rallying cry and/or slogan for the Team;
- (b) Ludwigsen would frequently say, “Zip, thud”, while using his arm to mime removing a large, erect phallus from his pants, purportedly as a metaphor for Team dominance over opponents;
- (c) Ludwigsen asked Team members, including Plaintiff, about their sex lives on a regular basis, and demanded graphic details about the frequency and nature of their sexual activities;
- (d) Ludwigsen frequently punched Team members, including Plaintiff in the breasts, which he called, “tit punching”;

- (e) Ludwigsen held mandatory private or small group meetings with Team members and their boyfriends, during which he would inquire in graphic detail about the couples' sex lives;
- (f) On or about Friday, November 14, 2014, Ludwigsen arranged for a mandatory "team bonding" trip to New York City, and Lyndhurst, New Jersey (the "Alcohol Outing"). Prior to the Alcohol Outing, Ludwigsen told Team members that the mandatory dress code was cocktail dresses and high heels. He directed Team members who did not own cocktail attire to go to the local mall to purchase their outfits. Ludwigsen borrowed two of Nyack College's vans for transportation. The vans bore the Nyack College logo, and the slogan, "Christian Higher Education Since 1882." First, Ludwigsen took the Team to the Waldorf-Astoria hotel in Manhattan to pose for photographs. Next, Ludwigsen took the Team to a museum/lounge in downtown Manhattan, where he encouraged the Team members, the majority of whom were under the lawful age for consumption of alcoholic beverages, to order alcoholic beverages. Then, Ludwigsen took the Team to the Whiskey Café, a nightclub in Lyndhurst, New Jersey. Ludwigsen purchased buckets of beer bottles and urged the Team members to drink the beer. He directed several Team members to dance with older, male patrons while he watched. Ludwigsen himself also danced with several Team members;
- (g) In or about March 2015, for the Arizona Tournament, instead of booking hotel rooms with sufficient sleeping accommodations, Ludwigsen rented a five-bedroom house to accommodate the Team, coaches and administrators.

Several Team members were forced to sleep on couches and floors. Mr. Davie accompanied the Team, and shared a bedroom with Ludwigsen. Ms. Aikens also accompanied the team;

(h) On or about March 10, 2015, during a game in Arizona, Ludwigsen forced a Team member to sit on his lap outside of the third-base dugout, in plain view of the Team's spectators, including Mr. Davie and Ms. Aikens.

23. On multiple occasions, Ludwigsen made unwanted verbal and/or physical sexual advances toward Plaintiff individually. These pervasive and unwanted sexual advances included, without limitation, the following:

- (a) In or about October 2014, Ludwigsen asked Plaintiff to meet privately with him in the presence of Ms. Lambertson. The sole agenda item for the meeting was to share with Plaintiff that he had heard a rumor that members of the Nyack College men's soccer team were taking bets on how many soccer players could have sex with Plaintiff;
- (b) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen frequently made comments about Plaintiff's purported sexual reputation;
- (c) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen regularly sent Plaintiff late-night Facebook messages, which frequently contained sexually graphic language;
- (d) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen frequently and without Plaintiff's consent massaged her waist with his hands;

- (e) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen frequently and without Plaintiff's consent stroked and braided Plaintiff's hair;
- (f) Between in or about October 2014, through and including on or about March 13, 2015, on at least one occasion, Ludwigsen tickled Plaintiff without her consent;
- (g) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen made frequent comments about the size of Plaintiff's breasts;
- (h) On one occasion, during practice, Ludwigsen "tit-punched" Plaintiff in the chest for perceived batting errors, and ordered Plaintiff to "show the Team how [he] punished [her]" by punching another Team member in the chest;
- (i) On one occasion, during practice, Ludwigsen asked Plaintiff and one other Team member if they knew why pornography films are shot in the early morning. He then stated, in words or in substance, that it was because, "when a man is hard [indicating to his own genitalia], when he first wakes up, that is the time to get them to have sex because then you are getting their best performance, rather than waiting until later in the day when they have already beat one out";
- (j) On or about March 10, 2015, during the Arizona Tournament, Ludwigsen approached Plaintiff in the Team's dugout during a game and began to scream at her for a perceived error. Then, Ludwigsen pulled Plaintiff close to him and stated, in words or substance, "It's okay. I can forgive you because you made

that diving play earlier.” He then stated, in words or substance, that he was going to give her her “punishment” and that she had to “stand there and take it.” Ludwigsen then licked Plaintiff’s ear for approximately 10 seconds.

24. On or about March 13, 2015, the Team members collectively confronted Mr. Davie and Ms. Aikens to complain of Ludwigsen’s harassment. Mr. Davie terminated Ludwigsen’s employment that evening.

25. Mr. Davie promoted and retained Ms. Lambertson for the remainder of the season and promoted to the position of Head Coach. This was despite Ms. Lambertson’s longtime personal relationship with Ludwigsen, her involvement in many inappropriate instances of harassment, including the intimate counseling sessions with pornographic actress Allie Haze and the Alcohol Outing, and her repeated failure to intervene in any of the pervasive acts of physical and verbal abuse which Ludwigsen had perpetuated against members of the Team.

26. Upon information and belief, Mr. Davie had notice of Ludwigsen’s actions but turned a blind eye to the sexual harassment until he could no longer claim ignorance of Ludwigsen’s behavior. Mr. Davie was personally present for a number of instances of harassment, including without limitation the following:

- (a) Mr. Davie personally approved Ludwigsen’s request to use Nyack College’s vans for the Alcohol Outing. Mr. Davie was present as the Team boarded the van for the trip. Ludwigsen directed several Team members to exit the van and paraded them in front of Mr. Davie in their cocktail attire;

- (b) On or about March 10, 2015, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen force a Team member to sit on his lap outside of the third-base dugout during a game in Arizona;
- (c) In or about March 2015, during the Arizona Tournament, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen force a Team member to sit in his embrace for 20 minutes outside of the Team dugout while he made sexually explicit comments to her;
- (d) On or about the night of March 10, 2015, while a few feet away in a hot tub, Mr. Davie personally observed Ludwigsen force a Team member to sit poolside in his embrace while he made sexually explicit comments to her; and
- (e) On or about March 12, 2015, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen approach a Team member from behind, wrap his arms around her and shake her breasts repeatedly.

27. Since Ludwigsen's termination, Nyack College has retaliated against Plaintiff for reporting Ludwigsen's sexually harassing behavior. The retaliatory acts include, without limitation, the following:

- (a) As Head Coach, Ms. Lambertson immediately restricted Plaintiff's playing time upon the Team's return from the Arizona Tournament by removing her from the batting lineup; and
- (b) Ms. Lambertson frequently and without explanation singled out Plaintiff for verbal harassment, in the presence of other Team members.

**FIRST CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR VIOLATION
OF RIGHTS UNDER TITLE IX**

28. Plaintiff repeats and realleges Paragraphs 1 through 27, above.

29. Nyack College is a recipient of federal funding under Title IX.

30. From in or about July 2014 through and including on or about March 13, 2015, Nyack College employed Ludwigsen as Head Coach for the Softball Team.

31. Ludwigsen harassed Plaintiff based on her sex by, without limitation, subjecting Plaintiff to sex-specific physical contact and language intended to humiliate, ridicule and/or intimidate.

32. Ludwigsen's sexual harassment of Plaintiff was sufficiently severe and pervasive to create what a reasonable person would consider a hostile environment in Nyack College's women's softball program. Ludwigsen's sexual harassment of Plaintiff so undermined and detracted from Plaintiff's experience in Nyack College's women's softball program that it effectively denied Plaintiff equal access to Nyack College's institutional resources and/or opportunities. Furthermore, Ludwigsen's harassment had a concrete, negative effect on Plaintiff's ability to participate in Nyack College's women's softball program.

33. Plaintiff in fact found the environment created by Ludwigsen's sexual harassment to be hostile and abusive.

34. Nyack College had actual notice of Ludwigsen's sexual harassment to each of Mr. Davie, Ms. Aikens and/or Ms. Lambertson, whom had the authority to implement corrective measures on behalf of Nyack College.

35. Mr. Davie acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment and retaining Ms. Lambertson as Head Coach despite her involvement in the harassment and her longtime personal relationship with Ludwigsen.

36. Ms. Aikens acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment.

37. Ms. Lambertson acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment.

38. As a direct and proximate result of Nyack College's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SECOND CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR
RETALIATION IN VIOLATION OF TITLE IX**

39. Plaintiff repeats and realleges Paragraphs 1 through 38, above.

40. Plaintiff engaged in a protected activity by, without limitation, complaining to school officials about Ludwigsen's sexual harassment.

41. Nyack College had knowledge of the protected activity.

42. Nyack College subjected Plaintiff to adverse school-related actions, including without limitation those actions set forth above.

43. There is a causal connection between the protected activity and the adverse school-related actions, as set forth above.

44. As a direct and proximate result of Nyack College's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**THIRD CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR NEGLIGENT
HIRING**

45. Plaintiff repeats and realleges Paragraphs 1 through 44, above.

46. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

47. Nyack College was negligent in its hiring of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

48. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

49. As a direct and proximate result of Nyack College's negligent hiring, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**FOURTH CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR
NEGLIGENT SUPERVISION**

50. Plaintiff repeats and realleges Paragraphs 1 through 49, above.

51. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

52. Nyack College was negligent in its supervision of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

53. Ludwigsen's sexual harassment of Plaintiff occurred during the course and

within the scope of his employment as Head Coach of the Softball Team.

54. Ludwigsen's sexual harassment of Plaintiff occurred on Nyack College's campus and/or with Nyack College's chattels, in connection with activities that were sanctioned by or on behalf of Nyack College.

55. As a direct and proximate result of Nyack College's negligent supervision, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**FIFTH CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR NEGLIGENT
RETENTION**

56. Plaintiff repeats and realleges Paragraphs 1 through 55, above.

57. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

58. Nyack College was negligent in its retention of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

59. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

60. As a direct and proximate result of Nyack College's negligent retention, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SIXTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

61. Plaintiff repeats and realleges Paragraphs 1 through 60, above.

62. Ludwigsen engaged in extreme and outrageous conduct by his sexual harassment of Plaintiff.

63. Through his extreme and outrageous conduct, Ludwigsen intended to cause Plaintiff severe emotional distress.

64. As a result of Ludwigsen's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

65. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

66. As a direct and proximate result of Ludwigsen's extreme and outrageous conduct, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SEVENTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS FOR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

67. Plaintiff repeats and realleges Paragraphs 1 through 66, above.

68. Ludwigsen, as an employee of Nyack College, owed a duty of care to Plaintiff as a student at Nyack College.

69. Ludwigsen's extreme and outrageous conduct unreasonably endangered Plaintiff's safety and/or caused Plaintiff to fear for her safety.

70. As a result of Ludwigsen's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

71. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

72. As a direct and proximate result of Defendants' negligence, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

EIGHTH CAUSE OF ACTION: AGAINST KURT LUDWIGSEN FOR BATTERY

73. Plaintiff repeats and realleges Paragraphs 1 through 72, above.

74. On multiple occasions as alleged above, Ludwigsen intended to make bodily contact with Plaintiff.

75. On multiple occasions, Ludwigsen made harmful and/or offensive physical contact with Plaintiff without her consent.

76. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

77. As a direct and proximate result of Ludwigsen's unwanted harmful and/or offensive bodily contact, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

WHEREFORE, plaintiff prays that judgment be entered:

I. On the First Cause of Action, under Title IX, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees, and reasonable costs;

II. On the Second Cause of Action, under Title IX, awarding Plaintiff

damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

III. On the Third Cause of Action, for negligent hiring, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

IV. On the Fourth Cause of Action, for negligent supervision, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

V. On the Fifth Cause of Action, for negligent retention, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VI. On the Sixth Cause of Action, for intentional infliction of emotional distress, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;


VII. On the Seventh Cause of Action, for negligent infliction of emotional distress, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VIII. On the Eighth Cause of Action, for battery, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

IX. On the above stated causes of action, awarding the plaintiff prejudgment interest, costs and such other further relief as this Court deems appropriate.

Dated: Chappaqua, New York
October 2, 2015

LAW OFFICE OF TODD J. KROUNER

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
K. DOE,

Plaintiff,

-against-

COMPLAINT

**PLAINTIFF DEMANDS
TRIAL BY JURY**

KURT LUDWIGSEN, in his individual capacity,
KIRSTEN LAMBERTSON, in her individual capacity,
MICHAEL G. SCALES, individually and as President of
Nyack College, DAVID C. JENNINGS, individually and as
Executive Vice President of Nyack College, KEITH DAVIE,
individually and as Athletic Director for Nyack College,
AMANDA AIKENS, individually and as Assistant Athletic
Director for Nyack College, and NYACK COLLEGE,

Defendants.
-----X

Plaintiff, K. DOE, by her attorneys, LAW OFFICE OF TODD J. KROUNER,
respectfully alleges:

INTRODUCTION

1. This is a case that involves a pattern and practice of outlandish sexual harassment and sexual assault by defendant Kurt Ludwigsen (“Ludwigsen”), acting in his capacity as Head Coach of the Nyack College women’s softball team (the “Softball Team,” or the “Team”). As a result of Ludwigsen’s pattern and practice of pervasive sexual harassment, he has been charged by the Rockland County District Attorney with seven counts of felony coercion in the first degree, 94 counts of forcible touching, 94 counts of sexual assault in the third degree and two counts of harassment in the second degree. This activity took place throughout the course of the 2014-2015 academic school year at defendant Nyack College (“Nyack College”), and in connection with Nyack College-sanctioned school activities.

2. The outrageous conduct of Ludwigsen includes, without limitation, routinely licking his players' ears, kissing their lips and faces, slapping their buttocks, grabbing their breasts, directing them to sit on his lap, lying on top of them, commenting about their physical attributes, having sexually explicit conversations with them, inviting a pornographic actress known as Allie Haze to practice and directing students to life counseling sessions with her, directing an underage drinking outing where his players were instructed to dress in cocktail dresses and dance with male strangers and offering to assist players to attain employment in the adult entertainment industry.

3. Nyack College hired and retained Ludwigsen notwithstanding publicly available information which indicated that (a) he had left a coaching position with the premier women's softball program at the University of Arizona; (b) subsequently, he took a non-paying coaching position with an elite girls' softball team, ages 15 to 18, in California, known as the NorCal Assault; (c) while coaching the NorCal Assault, he was the subject of a criminal investigation for sexual assault and sexual harassment against several of his young female players; and (d) while coaching the NorCal Assault, under the alias "Kurt Vogner," he also founded and promoted a paid telephone service that linked pornography actresses (including Bree Olson, with whom he was photographed) to their "fans".

4. Nyack College markets itself as, "New York's Christian College," even though Ludwigsen admitted that he was certainly not a "typical Christian coach." Nyack College, through its administration and athletic department, discriminated against Plaintiff and members of the Softball Team on the basis of their gender and retaliated

against Plaintiff and members of the Softball Team when they complained about Ludwigsen's outrageous conduct in connection with his female student athletes.

5. In addition to bringing claims for sexual discrimination arising under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*, ("Title IX"), Plaintiff also brings claims under common law against Ludwigsen and Nyack College for battery, intentional and negligent infliction of emotional distress, negligent hiring, negligent supervision and negligent retention.

JURISDICTION AND VENUE

6. Jurisdiction is present under 28 U.S.C. § 1331 and 28 U.S.C. § 1343. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in Nyack, Rockland County, New York.

PARTIES

8. Plaintiff K. Doe is an adult resident of the State of New York and resides in Rockland County, New York. At the time of the incidents described in this complaint, Plaintiff was attending Nyack College and residing in Rockland County, New York. Plaintiff currently attends Nyack College. Currently, and at the time of the incidents alleged in this complaint, Plaintiff is and was a student at Nyack College. Currently, and at the time of the incidents alleged in this complaint, Plaintiff is and was a member of the Softball Team, a member team of Division II of the National Collegiate Athletic Association ("NCAA").

9. Nyack College is an educational institution receiving federal financial assistance as defined in 20 U.S.C. § 1681(c). Nyack College advertises itself on its website and promotional materials as “New York’s Christian College.”

10. At all times relevant to this action, Ludwigsen resided in Ridgewood, New Jersey, and was employed by Nyack College as Head Coach for the Softball Team. Previously, Ludwigsen was employed by the University of Arizona’s prestigious women’s softball program, under the leadership of coach Mike Candrea, who coached eight national champion softball teams and two Team USA Olympic women’s softball teams. During Ludwigsen’s tenure at the University of Arizona, the university’s women’s softball program won its first two national championships. At some point, Ludwigsen’s employment at the University of Arizona ended. Upon information and belief, during the decade or more between his tenure at the University of Arizona and his tenure at Nyack College, Ludwigsen did not hold a paid staff coaching position at any educational institution. Instead, upon information and belief, Ludwigsen founded and coached the NorCal Assault, a Petaluma, California girls’ travel softball team comprising players aged 15 to 18 years old. Upon information and belief, in or about 2013, Ludwigsen left his position as coach for the NorCal Assault amid a criminal investigation into allegations by team members that Ludwigsen subjected them to sexual harassment. The basis of such information and belief includes press reports that quote Petaluma, California Police Lieutenant Dan Fish, who said his department had contacted 12 potential victims, of whom “[f]ive or six confirmed something occurred[.]”

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Ludwigsen founded phone-sex service Verified Call, which is affiliated with adult film industry celebrities, including pornography actress Bree Olson.

12. At all times relevant to this action, defendant Michael Scales (“Mr. Scales”) was and remains the President of Nyack College. As President, Mr. Scales had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

13. At all times relevant to this action, defendant David Jennings (“Mr. Jennings”) was and remains the Executive Vice President of Nyack College. As Executive Vice President, Mr. Jennings had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

14. At all times relevant to this action, defendant Keith Davie (“Mr. Davie”) was and remains Nyack College’s Athletic Director. Upon information and belief, Mr. Davie hired Ludwigsen. Mr. Davie was present for and/or witnessed Ludwigsen’s misconduct. Mr. Davie had actual knowledge of conduct that violated Title IX. As Athletic Director, Mr. Davie had the authority to implement corrective measures on Nyack College’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

15. At all times relevant to this action, defendant Amanda Aikens (“Ms. Aikens”)

was and remains Nyack College's Assistant Athletic Director. Upon information and belief, Ms. Aikens was present for and/or witnessed Ludwigsen's misconduct. Ms. Aikens had actual knowledge of conduct that violated Title IX. As Assistant Athletic Director, Ms. Aikens had the authority to implement corrective measures on Nyack College's behalf for violations of Title IX. Her responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at Nyack College.

16. From approximately July 2014 through and including March 15, 2015, defendant Kirsten Lambertson ("Ms. Lambertson") was the Assistant Coach for the Softball Team. From approximately March 15, 2015, through and including July 2015, Ms. Lambertson was the Acting Head Coach for the Softball team. Ms. Lambertson was present for and/or witnessed Ludwigsen's misconduct. Ms. Lambertson had actual knowledge of conduct that violated Title IX.

FACTS

17. As Head Coach of the Softball Team, Ludwigsen enjoyed a position of authority and trust among the team members, including Plaintiff. As Head Coach, Ludwigsen had the power to grant or withhold lucrative scholarships for members of the Softball Team.

18. Beginning in or about September 2014 until in or about March 13, 2015, during the fall and spring semesters at Nyack College, Ludwigsen had constant contact with members of the Softball Team, including Plaintiff. Ludwigsen supervised the Softball Team during daily practices, hosted numerous mandatory social gatherings for

team members and made frequent after-hours contact with team members via telephone, text messages and/or internet messaging, including but not limited to Facebook Chat.

19. Ludwigsen undertook to exert, and did in fact exert, a tremendous level of control over members of the Softball Team, including Plaintiff, through a pattern and practice of intimidation, including without limitation as follows:

- (a) In or about September 2014, Ludwigsen met the members of the Softball Team in person for the first time, during the Team's first practice of the 2014-2015 Nyack College school year. At the time, Ludwigsen threatened the Team members, stating in words or in substance, that he could "make [their] lives a living hell" if they upset him. He further threatened that he knew people who could ruin their lives, beyond Nyack College, if they displeased him in any way;
- (b) During the fall and spring semesters, Ludwigsen mandated that members of the Softball Team attend a nightly study hall, often in the company of members of other Nyack College athletic teams. While members of the various athletic teams commonly mingled during study hall, Ludwigsen forbade Softball Team members from sitting with or in any way interacting with individuals who were not part of the Softball Team. On at least one occasion, Ludwigsen yelled violently at a Softball Team member for allegedly inviting another student to sit with the Softball Team during study hall;
- (c) Ludwigsen did not allow the parents of Softball Team members, many of whom lived nearby, to attend practices. Ludwigsen forbade Team members from speaking to their parents during games. In or about March of 2015,

during an eight-day tournament in Tuscon, Arizona (the “Arizona Tournament”), Ludwigsen forbade Softball Team members from having any in-person or telephonic contact with their family members who had traveled to Arizona, with the exception of a single two-hour dinner break. On one occasion, when Ludwigsen observed Plaintiff speaking to her father before a game, he responded by yelling violently at Plaintiff;

- (d) On at least one occasion during the Arizona Tournament, Ludwigsen confiscated the cellular phones of all Softball Team members for a full day.

As a result of Ludwigsen’s pattern and practice of intimidation, the members of the Softball Team, including Plaintiff, feared Ludwigsen and perceived that he had immense power over their scholarships, playing time on the Softball Team, career ambitions and personal and professional futures.

20. Despite his severe restrictions on contact with persons outside of the Softball Team, Ludwigsen did encourage Team members to socialize with the pornographic actress known as Allie Haze. On at least one occasion, Ludwigsen invited Allie Haze to a Softball Team practice to bestow “life advice” upon Team members. Prior to her visit, he privately told at least two Team members, including Plaintiff, in words or substance, that they in particular would find Allie Haze’s “advice” useful. Ludwigsen introduced Allie Haze to the Softball Team as a pornographic actress. After practice, he asked at least two Team members to his office to meet privately with Allie Haze for approximately one hour, in the presence of Ms. Lambertson, where he directed the conversation to focus primarily on Allie Haze’s sexual history. On another occasion, Ludwigsen required all Team members to visit his home for a question-and-answer session with Allie Haze. He

directed Team members to prepare questions in advance, with the implication that they were to ask Allie Haze about her sexual experience.

21. While student athletes often look to their coaches for career and life advice, Ludwigsen instead offered to help Team members pursue careers in the adult entertainment industry. On at least one occasion, he asked Plaintiff if she had ever considered a career as a “stripper,” and told her, in words or in substance, that if she ever wanted to be a “stripper, or anything like that,” he had the resources and connections to assist her.

22. Ludwigsen perpetuated a sexually-charged atmosphere through multiple inappropriate and offensive actions and/or comments. Ludwigsen’s actions were pervasive and unwelcome by all members of the Softball Team, including Plaintiff. His inappropriate and offensive actions included, without limitation, the following:

- (a) Ludwigsen proclaimed the phrase “top tits” as the rallying cry and/or slogan for the Team;
- (b) Ludwigsen would frequently say, “Zip, thud”, while using his arm to mime removing a large, erect phallus from his pants, purportedly as a metaphor for Team dominance over opponents;
- (c) Ludwigsen asked Team members, including Plaintiff, about their sex lives on a regular basis, and demanded graphic details about the frequency and nature of their sexual activities;
- (d) Ludwigsen frequently punched Team members in the breasts, which he called, “tit punching”;

- (e) Ludwigsen held mandatory private or small group meetings with Team members and their boyfriends, during which he would inquire in graphic detail about the couples' sex lives;
- (f) On or about Friday, November 14, 2014, Ludwigsen arranged for a mandatory "team bonding" trip to New York City, and Lyndhurst, New Jersey (the "Alcohol Outing"). Prior to the Alcohol Outing, Ludwigsen told Team members that the mandatory dress code was cocktail dresses and high heels. He directed Team members who did not own cocktail attire to go to the local mall to purchase their outfits. Ludwigsen borrowed two of Nyack College's vans for transportation. The vans bore the Nyack College logo, and the slogan, "Christian Higher Education Since 1882." First, Ludwigsen took the Team to the Waldorf-Astoria hotel in Manhattan to pose for photographs. Next, Ludwigsen took the Team to a museum/lounge in downtown Manhattan, where he encouraged the Team members, the majority of whom were under the lawful age for consumption of alcoholic beverages, to order alcoholic beverages. Then, Ludwigsen took the Team to the Whiskey Café, a nightclub in Lyndhurst, New Jersey. Ludwigsen purchased buckets of beer bottles and urged the Team members to drink the beer. He directed several Team members to dance with older, male patrons while he watched. Ludwigsen himself also danced with several Team members;
- (g) In or about March 2015, for the Arizona Tournament, instead of booking hotel rooms with sufficient sleeping accommodations, Ludwigsen rented a five-bedroom house to accommodate the Team, coaches and administrators.

Several Team members were forced to sleep on couches and floors. Mr. Davie accompanied the Team, and shared a bedroom with Ludwigsen. Ms. Aikens also accompanied the team;

(h) On or about March 10, 2015, during a game in Arizona, Ludwigsen forced a Team member to sit on his lap outside of the third-base dugout, in plain view of the Team's spectators, including Mr. Davie and Ms. Aikens.

23. On multiple occasions, Ludwigsen made unwanted verbal and/or physical sexual advances toward Plaintiff individually. These pervasive and unwanted sexual advances included, without limitation, the following:

- (a) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen frequently slapped Plaintiff on her buttocks without her consent. On at least one occasion, he bragged to Plaintiff's boyfriend that that was the manner in which he greeted her;
- (b) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen frequently approached and whispered vulgar comments into her ear;
- (c) Between in or about October 2014, through and including on or about March 13, 2015, Ludwigsen frequently and without Plaintiff's consent placed his face directly against Plaintiff's face, so that their noses or cheeks touched, and proceeded to have conversations with her in this position;
- (d) On one occasion, during practice, Ludwigsen asked Plaintiff and one other Team member if they knew why pornography films are shot in the early morning. He then stated, in words or in substance, that it was because, "when

a man is hard [indicating to his own genitalia], when he first wakes up, that is the time to get them to have sex because then you are getting their best performance, rather than waiting until later in the day when they have already beat one out”;

- (e) One evening in or about February 2015, Ludwigsen called Plaintiff on her cellular telephone. He asked her, in words or in substance, whether she and her boyfriend were “official” yet. Ludwigsen also stated, in words or in substance, that no matter what, he was “still going to go home, eat a hot meal, fuck [his] wife, kiss [his] kids goodnight and go to sleep”;
- (f) During one practice in or about February 2015, in the presence of other Softball Team members, Ludwigsen slapped Plaintiff’s buttocks without her consent, and exclaimed, in words or in substance, “Damn, that shit is like a water bed! You better keep going to the gym and doing squats”;
- (g) On or about March 8, 2015, during the Arizona Tournament, Ludwigsen approached Plaintiff before a game and, without her consent, kissed both of her cheeks and her lips. When Plaintiff asked what he was doing, Ludwigsen responded, in words or in substance, “You looked like you needed a man because that [boyfriend] fella ain’t here”;
- (h) On one occasion in or about March 2015, during the Arizona Tournament, Ludwigsen pulled Plaintiff close to him and whispered to her, in words or in substance, “You’re probably the only girl here who can take it in the ass, so why don’t you smile about that?”;

- (i) In or about March 2015, during the Arizona Tournament, Ludwigsen observed Plaintiff speaking to her father prior to a game. Ludwigsen demanded that Plaintiff join him alone outside the Team's dugout, under a set of bleachers, within view of the Team's spectators. He proceeded to yell, in words or in substance, that if he caught her speaking with her father again, her "ass would be on the bench" for the remainder of the tournament. When Plaintiff began to get upset, Ludwigsen pulled her close to him. He held her close while asking her a series of pointed questions concerning her sexual history. During this conversation, Ludwigsen offered his resources and connections to help Plaintiff pursue a career as a stripper;
- (j) On or about March 10, 2015, during the Arizona Tournament, Plaintiff pitched and lost a game in extra innings. The Team ate dinner that night at a local Boston Market restaurant. Following dinner, while the rest of the Team was boarding the bus, Ludwigsen pulled Plaintiff close to him in the restaurant. He then said to her, in words or in substance, "I am going to ear fuck you. This is your punishment. You are going to stand here and take it." Ludwigsen then began to lick Plaintiff's ear. When Plaintiff tried to pull away, Ludwigsen held her tighter and said, in words or in substance, "Stop moving. I told you that you are going to stand here and take it." He continued to lick her ear. When he stopped, he slapped Plaintiff's rear end and said, in words or substance, "See, that's it. You're done. Wasn't so bad, was it?";
- (k) On or about March 10, 2015, late at night, Ludwigsen texted Plaintiff asking, in words or in substance, if she wanted to have a "philosophical"

conversation. Ludwigsen then sent a second message that read, in words or in substance, “Oh, I’m sorry, maybe you didn’t hear me. ARE YOU STILL AWAKE?” Plaintiff feared being alone with Ludwigsen but also feared what would happen to her if she refused to join him. She advised her roommates to search outside for her if she had not returned within an hour. Ludwigsen asked Plaintiff to join him on a small couch that faced the pool and hot tub, and faced away from the house. When Plaintiff sat down on the couch, Ludwigsen pulled her closer to him and held her against him. He asked her, in words or in substance, “What do I have to do to motivate you to get a win? Do I have to take you into town and find you an Arizona boy to fuck? Maybe you want to keep losing so things like what happened to you tonight will keep happening to you.” This encounter occurred in the presence of Mr. Davie, who was seated in a hot tub a few feet away from Plaintiff and Ludwigsen;

- (l) On or about March 12, 2015, following Plaintiff’s first pitching victory in the Arizona tournament, Ludwigsen gathered the Team for a meeting in right field. He asked Plaintiff to stand facing the Team, facing away from the bleachers where the Team’s family and spectators were gathered. Upon information and belief, Mr. Davie was among the spectators and was able to observe the Team’s meeting in right field. Ludwigsen then grabbed Plaintiff’s mouth guard and put it in his own mouth while he talked. Next, Ludwigsen approached Plaintiff from behind and, without her consent, placed Plaintiff’s hands on her breasts over her clothing. Then, again without her consent, Ludwigsen placed his hands over Plaintiff’s hands and shook Plaintiff’s

breasts up and down repeatedly. Ludwigsen then stated, in words or in substance, “This is what ‘top tits’ looks like.” When some Team members voiced their dismay with the obvious inappropriateness of Ludwigsen’s misconduct, Ludwigsen stated, in words or in substance, that his actions were “okay, because her [Plaintiff’s] hands were there.”

24. On or about March 13, 2015, the Team members collectively confronted Mr. Davie and Ms. Aikens to complain of Ludwigsen’s harassment. Mr. Davie terminated Ludwigsen’s employment that evening.

25. Mr. Davie promoted and retained Ms. Lambertson for the remainder of the season and promoted to the position of Head Coach. This was despite Ms. Lambertson’s longtime personal relationship with Ludwigsen, her involvement in many inappropriate instances of harassment, including the intimate counseling sessions with pornographic actress Allie Haze and the Alcohol Outing, and her repeated failure to intervene in any of the pervasive acts of physical and verbal abuse which Ludwigsen had perpetuated against members of the Team.

26. Upon information and belief, Mr. Davie had notice of Ludwigsen’s actions but turned a blind eye to the sexual harassment until he could no longer claim ignorance of Ludwigsen’s behavior. Mr. Davie was personally present for a number of instances of harassment, including without limitation the following:

- (a) Mr. Davie personally approved Ludwigsen’s request to use Nyack College’s vans for the Alcohol Outing. Mr. Davie was present as the Team boarded the van for the trip. Ludwigsen directed several Team members to exit the van and paraded them in front of Mr. Davie in their cocktail attire;

- (b) On or about March 10, 2015, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen force a Team member to sit on his lap outside of the third-base dugout during a game in Arizona;
- (c) In or about March 2015, during the Arizona Tournament, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen force a Plaintiff to sit in his embrace for 20 minutes outside of the Team dugout while he made sexually explicit comments to her;
- (d) On or about the night of March 10, 2015, while a few feet away in a hot tub, Mr. Davie personally observed Ludwigsen force Plaintiff to sit poolside in his embrace while he made sexually explicit comments to her; and
- (e) On or about March 12, 2015, while in the spectator bleachers, Mr. Davie personally observed Ludwigsen approach Plaintiff from behind, wrap his arms around her and shake her breasts repeatedly.

27. Plaintiff was one of the best players on the Softball Team. Prior to Ludwigsen's termination, she was the number one pitcher. When she did not pitch, she started at third base. Upon returning from the Arizona Tournament, she also led the team in batting percentage. Since Ludwigsen's termination, Nyack College has retaliated against Plaintiff for reporting Ludwigsen's sexually harassing behavior. The retaliatory acts include, without limitation, the following:

- (a) As Head Coach, Ms. Lambertson immediately restricted Plaintiff's playing time upon the Team's return from Arizona. First, Ms. Lambertson limited Plaintiff's pitching opportunities. On at least one occasion, Ms. Lambertson told Team member "S" to pitch, although previously, "S" had

never pitched in any softball game, did not want to pitch and cried to Ms. Lambertson in words or substance, “You are doing this to retaliate against [Plaintiff].”;

(b) Second, Ms. Lambertson limited Plaintiff’s opportunities to play in the infield.

In the Arizona Tournament, Plaintiff had no fielding errors. By contrast, the substitute whom Ms. Lambertson inserted at third base had approximately 15 fielding errors;

(c) Third, Ms. Lambertson limited Plaintiff’s opportunities to hit, despite the fact that Plaintiff had a stellar batting average;

(d) On one occasion, Ms. Lambertson sent a Team member to reprimand Plaintiff for her attitude. When Plaintiff asked Ms. Lambertson to explain why she had been reprimanded, Ms. Lambertson responded, in words or in substance, that she had heard that a number of parents had met with lawyers at Plaintiff’s residence. Ms. Lambertson then stated, in words or in substance, that Plaintiff could continue to play on her team for the moment, but that, “If the school ends up getting sued, there is nothing that I [Ms. Lambertson] can do to help you [Plaintiff].” Plaintiff reasonably perceived Ms. Lambertson’s statements as a threat.

**FIRST CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR VIOLATION
OF RIGHTS UNDER TITLE IX**

28. Plaintiff repeats and realleges Paragraphs 1 through 27, above.

29. Nyack College is a recipient of federal funding under Title IX.

30. From in or about July 2014 through and including on or about March 13, 2015, Nyack College employed Ludwigsen as Head Coach for the Softball Team.

31. Ludwigsen harassed Plaintiff based on her sex by, without limitation, subjecting Plaintiff to sex-specific physical contact and language intended to humiliate, ridicule and/or intimidate.

32. Ludwigsen's sexual harassment of Plaintiff was sufficiently severe and pervasive to create what a reasonable person would consider a hostile environment in Nyack College's women's softball program. Ludwigsen's sexual harassment of Plaintiff so undermined and detracted from Plaintiff's experience in Nyack College's women's softball program that it effectively denied Plaintiff equal access to Nyack College's institutional resources and/or opportunities. Furthermore, Ludwigsen's harassment had a concrete, negative effect on Plaintiff's ability to participate in Nyack College's women's softball program.

33. Plaintiff in fact found the environment created by Ludwigsen's sexual harassment to be hostile and abusive.

34. Nyack College had actual notice of Ludwigsen's sexual harassment to each of Mr. Davie, Ms. Aikens and/or Ms. Lambertson, whom had the authority to implement corrective measures on behalf of Nyack College.

35. Mr. Davie acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment and retaining Ms. Lambertson as Head Coach despite her involvement in the harassment and her longtime personal relationship with Ludwigsen.

36. Ms. Aikens acted with deliberate indifference to the harassment by, without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment.

37. Ms. Lambertson acted with deliberate indifference to the harassment by,

without limitation, ignoring Ludwigsen's repeated episodes of sexual harassment.

38. As a direct and proximate result of Nyack College's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SECOND CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR
RETALIATION IN VIOLATION OF TITLE IX**

39. Plaintiff repeats and realleges Paragraphs 1 through 38, above.

40. Plaintiff engaged in a protected activity by, without limitation, complaining to school officials about Ludwigsen's sexual harassment.

41. Nyack College had knowledge of the protected activity.

42. Nyack College subjected Plaintiff to adverse school-related actions, including without limitation those actions set forth above.

43. There is a causal connection between the protected activity and the adverse school-related actions, as set forth above.

44. As a direct and proximate result of Nyack College's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**THIRD CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR NEGLIGENT
HIRING**

45. Plaintiff repeats and realleges Paragraphs 1 through 44, above.

46. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

47. Nyack College was negligent in its hiring of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

48. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

49. As a direct and proximate result of Nyack College's negligent hiring, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**FOURTH CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR
NEGLIGENT SUPERVISION**

50. Plaintiff repeats and realleges Paragraphs 1 through 49, above.

51. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

52. Nyack College was negligent in its supervision of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

53. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

54. Ludwigsen's sexual harassment of Plaintiff occurred on Nyack College's campus and/or with Nyack College's chattels, in connection with activities that were sanctioned by or on behalf of Nyack College.

55. As a direct and proximate result of Nyack College's negligent supervision,

Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**FIFTH CAUSE OF ACTION: AGAINST NYACK COLLEGE FOR NEGLIGENT
RETENTION**

56. Plaintiff repeats and realleges Paragraphs 1 through 55, above.

57. At all times relevant to this action, Nyack College and Ludwigsen engaged in an employer-employee relationship.

58. Nyack College was negligent in its retention of Ludwigsen. As set forth above, Nyack College knew or should have known of Ludwigsen's propensity for tortious conduct, including without limitation sexual harassment.

59. Ludwigsen's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Softball Team.

60. As a direct and proximate result of Nyack College's negligent retention, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SIXTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

61. Plaintiff repeats and realleges Paragraphs 1 through 60, above.

62. Ludwigsen engaged in extreme and outrageous conduct by his sexual harassment of Plaintiff.

63. Through his extreme and outrageous conduct, Ludwigsen intended to cause Plaintiff severe emotional distress.

64. As a result of Ludwigsen's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

65. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

66. As a direct and proximate result of Ludwigsen's extreme and outrageous conduct, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

**SEVENTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS FOR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

67. Plaintiff repeats and realleges Paragraphs 1 through 66, above.

68. Ludwigsen, as an employee of Nyack College, owed a duty of care to Plaintiff as a student at Nyack College.

69. Ludwigsen's extreme and outrageous conduct unreasonably endangered Plaintiff's safety and/or caused Plaintiff to fear for her safety.

70. As a result of Ludwigsen's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

71. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

72. As a direct and proximate result of Defendants' negligence, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

EIGHTH CAUSE OF ACTION: AGAINST KURT LUDWIGSEN FOR BATTERY

73. Plaintiff repeats and realleges Paragraphs 1 through 72, above.

74. On multiple occasions as alleged above, Ludwigsen intended to make bodily contact with Plaintiff.

75. On multiple occasions, Ludwigsen made harmful and/or offensive physical contact with Plaintiff without her consent.

76. Nyack College is vicariously liable as Ludwigsen's employer for his conduct.

77. As a direct and proximate result of Ludwigsen's unwanted harmful and/or offensive bodily contact, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, medical costs, economic loss and alienation both academically and socially from school activities.

WHEREFORE, plaintiff prays that judgment be entered:

I. On the First Cause of Action, under Title IX, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees, and reasonable costs;

II. On the Second Cause of Action, under Title IX, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

III. On the Third Cause of Action, for negligent hiring, awarding Plaintiff

damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

IV. On the Fourth Cause of Action, for negligent supervision, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

V. On the Fifth Cause of Action, for negligent retention, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VI. On the Sixth Cause of Action, for intentional infliction of emotional distress, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VII. On the Seventh Cause of Action, for negligent infliction of emotional distress, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

VIII. On the Eighth Cause of Action, for battery, awarding Plaintiff damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

IX. On the above stated causes of action, awarding the plaintiff prejudgment interest, costs and such other further relief as this Court deems appropriate.

Dated: Chappaqua, New York
October 2, 2015

LAW OFFICE OF TODD J. KROUNER

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