

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

COLLIN CRAIG)	
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)	
PLAINTIFF,)	JURY TRIAL DEMANDED
)	
vs.)	CIVIL ACTION NO. <u>1:15-CV-120-GNS</u>
)	
WESTERN KENTUCKY UNIVERSITY,)	
TODD STEWART,)	
JOHN McCAMMON,)	
CRAIG BIGGS,)	
BRUCE MARCHIONDA,)	
BRIAN THOMAS,)	
HARRISON GRIFFIN,)	
SETH MUSSER,)	
and)	
TYLER GRONECK)	
)	
)	
)	
DEFENDANTS.)	

COMPLAINT

Comes the Plaintiff, Collin Craig, by counsel, and for his Complaint against the Defendants, Western Kentucky University (hereinafter "WKU"), Todd Stewart, John McCammon, Craig Biggs, Bruce Marchionda, Brian Thomas, Harrison Griffin, Seth Musser, and Tyler Groneck, hereby states as follows:

NATURE OF ACTION

1. This is a demand for a jury trial in a civil action brought by Plaintiff against Defendants for violating 20 U.S.C. section 1681(a), 42 U.S.C. section 1983, negligence, negligent hiring, supervision, and training, battery, intentional infliction of emotional distress, assault, defamation, defamation *per se*, and tortious interference with contractual relations, and for punitive damages under Kentucky law. The tortious conduct described in this Complaint arose when the Plaintiff attended Western Kentucky University during the Fall semester of 2014 as member of the swim team. The plaintiff, Mr. Craig, was subjected to verbal, physical, mental, and emotional abuse as a result of the tortious conduct of the Defendants including discrimination on the basis of sex, not limited to violence, threats, and humiliation.

PARTIES

2. Plaintiff, Collin Craig, is an individual domiciled in California, and was, at all times relevant to this Complaint, living in Bowling Green, Kentucky while attending Western Kentucky University.

3. Defendant WKU is a public university duly organized and doing business in Kentucky.

4. Defendant Todd Stewart, the Athletic Director at WKU, is an individual domiciled in Kentucky. Mr. Stewart is a defendant in his individual capacity.

5. Defendant John McCammon, an Associate Athletic Director at WKU, is an individual domiciled in Kentucky. Mr. McCammon is a defendant in his individual capacity.

6. Defendant Craig Biggs, an Associate Athletic Director at WKU, is an individual domiciled in Kentucky. Mr. Biggs is a defendant in his individual capacity.

7. Defendant Bruce Marchionda, the former Head Coach of the WKU swimming and diving team, is an individual domiciled in either Kentucky or Florida. Mr. Marchionda is a defendant in his individual capacity.

8. Defendant Brian J. Thomas, the former Associate Head Coach of the WKU swimming and diving team, is an individual domiciled in Nevada. Mr. Thomas is a defendant in his individual capacity.

9. Defendant Harrison Griffin is an individual domiciled in Kentucky.

10. Defendant Seth Musser is an individual domiciled in either Kansas, Missouri, or Kentucky.

11. Defendant Tyler Groneck is an individual domiciled in Kentucky.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 28 U.S.C. section 1332(a) because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and the parties are citizens of different States.

13. This Court has subject matter jurisdiction of the claims pursuant to 20 U.S.C. section 1681(a) and 42 U.S.C. section 1983, under 28 U.S.C. section 1331.

14. As an alternative to subject matter jurisdiction pursuant to 28 U.S.C. section 1332(a), this Court has jurisdiction over all claims pursuant to 28 U.S.C. section 1367(a) because the claims are so related to the actions arising pursuant to 20 U.S.C. section 1681(a) and 42 U.S.C. section 1983 that they form part of the same case or controversy because they arise from the same set of operative facts.

15. Personal jurisdiction exists generally over the defendants because each have had sufficient minimum contacts with Kentucky and with this District as a result of their residence within Kentucky and within this District, and alternatively, because all of the claims alleged in this Complaint arise from their actions occurring within Kentucky and this District.

16. Venue is proper in this District under 28 U.S.C. section 1391(b) because a substantial part of the events giving rise to the claims stated herein occurred within this District.

FACTS RELEVANT TO ALL COUNTS

Plaintiff's Background

17. Plaintiff Collin Craig is currently a 19-year-old young man who, while in high school in Del Oro High School in Walnut Creek, California was an accomplished swimmer.

18. Mr. Craig is the son of Kevin and Ellen Craig, themselves both accomplished swimmers.

19. Mr. Craig chose to attend Western Kentucky University as a result of his desire to continue pursuing his athletic and academic aspirations.

20. Prior to attending WKU Mr. Craig had never consumed alcohol.

21. Mr. Craig signed athletic scholarship papers with WKU in order to be a member of the swim team and in furtherance of his academic pursuits.

22. Mr. Craig majored in biology at WKU with plans on attending medical school after graduation.

Discrimination Suffered at WKU

23. Mr. Craig's dream of athletic and academic excellence at WKU quickly turned into a nightmare when, as a male member of the WKU swim team, during the Fall semester of 2014, Mr. Craig was subjected to, among other acts, the following acts of physical, mental, emotional, and sex-based abuse, harassment, and discrimination.

24. Mr. Craig was, on numerous occasions, intimidated by threats and forced to consume alcohol, underage, and repeatedly struck in the testicles by Harrison Griffin and Tyler Groneck, among others. Defendant Seth Musser also participated in intimidating Mr. Craig. This occurred during "singing" incidents wherein a male upperclassman member of the swim team "sung" to male freshmen, such as Mr. Craig, and the freshman was required to rapidly drink, while underage, a full can of beer while having their throat "tickled," their testicles struck, and being intimidated by others to continue drinking while suffering the aforementioned abuse.

25. Defendant Harrison Griffin ordered Mr. Craig to bend over and struck Mr. Craig in the testicles after being late for a forced servitude activity wherein Mr. Craig was forced to, among other tasks, clean vomit.

26. Defendant Musser threatened Mr. Craig in order to intimidate him into humiliating personal servitude activities where he was forced to help clean the "party house" located at 1303 Chestnut Street in Bowling Green, Kentucky.

27. Mr. Craig was verbally abused throughout the named period, including being called the sexually offensive slur "pussy" on countless occasions, particularly by Defendant Groneck, in the presence of numerous third-parties.

28. On October 6, 2014, at the so-called "Freshman Fuck Around," an event organized, at least in part, by Defendants Groneck, Griffin, and Musser, Mr. Craig was forced to engage in calisthenics, including being forced to wrestle Defendant Griffin.

29. During the "wrestling" encounter on October 6, 2014 Mr. Craig was choked to point of passing out by Defendant Griffin, causing headaches, throat bruising, and pain swallowing that lasted for days.

30. On October 6, 2014, also at the "Freshman Fuck Around," Mr. Craig suffered sex-based abuse and humiliation when he was ordered to strip to his underwear and blindfolded using a horse head mask.

31. While stripped to his underwear and blindfolded using a horse head mask, Mr. Craig was taken to the darkened basement of the house where the "party" occurred on October 6, 2014. There he was ordered to drink a bottle of "soy sauce" that turned out to be cola.

32. The humiliation and fear experienced by Mr. Craig on October 6, 2014 wherein he was stripped to his underwear and forced to wear a horse head mask was videoed taped and shown to other people by Defendants Musser, Groneck, and Griffin, resulting in more humiliation. Mr. Craig was referred to as a "pussy" by the Defendants as a result of the video.

33. Mr. Craig was subjected to humiliation wherein an image was drawn on his body in permanent ink so that other members of the swim team, including the coaching staff, could see this at practice.

34. Mr. Craig was forced to see sexually inappropriate images that were drawn on other members of the swim team in permanent ink so that other members of the swim

team, including the coaching staff, could see this at practice.

35. On October 8, 2014, Defendants Groneck and Musser ordered Mr. Craig to participate in commission of a crime — vandalizing the statue of former WKU President Cherry.

36. On more than one occasion Defendants Griffin, Groneck, and Musser threatened Mr. Craig by displaying a rifle, ostensibly to keep Mr. Craig obedient to the tortious abuse and violence to which he was subjected, as well as to use the threat of violence and bodily harm to dissuade Mr. Craig from reporting the abuse.

37. On November 7, 2014, Defendant Groneck verbally abused Mr. Craig and proceeded to attempt to physically force Mr. Craig to consume alcohol while Mr. Craig was vomiting.

38. In November 2014, after the Louisville invitation swim meet, Defendant Griffin, falsely and without any basis in fact, claimed that Mr. Craig, in such a manner that it was communicated to a third party, had been charged with rape. This was meant to and did embarrass Mr. Craig, damage Mr. Craig's reputation, and negatively affect the relationship Mr. Craig had with the third party.

39. In December 2014, Defendant Groneck threatened Mr. Craig with forced sexual violence on the social meeting platform "GroupMe" when Defendant Groneck threatened to "candy bar" Mr. Craig when Mr. Craig returned to school. "Candy bar" is apparently a slang reference to anal sex followed by oral intercourse.

40. The abuse, harassment, and discrimination Mr. Craig suffered included sleep deprivation.

41. Mr. Craig was, including but not limited to the acts already specifically mentioned, subjected to systemic, pervasive, and objectively offensive abuse and harassment.

42. Mr. Craig was subjected to other acts of abuse, harassment, and discrimination not specifically mentioned herein.

43. As a result of the abuse, harassment, and discrimination Mr. Craig suffered, he did not return to WKU after the Fall semester of 2014 ended.

44. The abuse, harassment, and discrimination Mr. Craig suffered tortuously precluded Mr. Craig from enjoying the benefits of his athletic scholarship to WKU.

45. The abuse, harassment, and discrimination Mr. Craig suffered tortuously precluded Mr. Craig from enjoying the educational benefits of his scholarship to WKU and denied Mr. Craig the enjoyment of the social aspects inherent in the college experience.

46. The abuse, harassment, and discrimination Mr. Craig suffered constituted “hazing” — which is forbidden per WKU’s school policies.

47. The NCAA, the governing body for major college athletics, has policies to help prevent hazing, placing the onus on coaches and administration to work to prevent hazing.

48. Defendant WKU, as well as Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, failed to follow the advised policies of the NCAA to prevent hazing, including but not limited to taking time to educate and provide written materials to swim team members about the fallacy and criminal nature of such actions.

49. Defendant WKU, as well as Defendants Stewart, McCammon, Biggs,

Marchionda, and Thomas, in their respective individual capacities, failed to educate the members of the WKU swim team about the evils of hazing and/or sexual assault.

50. Defendant WKU, as well as Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, had notice of the inappropriate behavior of the men's swim team yet did not affirmatively act to correct all of this behavior until 2015.

51. Defendant Bruce Marchionda knew of the pervasive acts of abuse, underage alcohol use, and discrimination due to having been specifically informed of the behavior yet did not take action to end and prevent such acts.

52. Defendant Bruce Marchionda was the head coach of both male and female members of the WKU swim team.

53. The female members of the swim team were not subjected to the pervasive abuse and sex-based discrimination suffered by Mr. Craig as a male member of the swim team.

54. Defendant Bruce Marchionda, in his individual capacity, created a culture of silence and encouraged swim team members to not disclose wrongdoing.

55. Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, failed to provide support, training, and supervision of athletes under their direction, in violation of NCAA and University policy.

56. Defendant WKU, as well as Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, allowed a culture of abuse and discrimination at WKU to exist.

**COUNT I — Violation of 20 U.S.C. § 1681(a)
(Defendant WKU)**

57. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

58. The actions of Defendants described above, including but not limited to sex-based abuse and harassment, constitute discrimination on the basis of sex in violation of 20 U.S.C. section 1681(a).

59. The actions of Defendants described above constitute behavior so severe, pervasive, and objectively offense that Mr. Craig was denied equal access to education that 20 U.S.C. section 1681 was designed to protect.

60. Defendant WKU had notice of the discrimination suffered by Mr. Craig and failed to act to correct, prevent, or otherwise remedy the harm while Mr. Craig attended WKU, and is therefore liable for damages due to the harm suffered by Mr. Craig.

61. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT II — Violation of 42 U.S.C. § 1983
(Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas)**

62. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

63. Defendants Ransdell, Bailey, Miller, Stewart, McCammon, Biggs, Marchionda, and Thomas acted under color of law.

64. The physical, mental, emotional abuse, harassment, and discrimination suffered by the plaintiff at WKU was part of a clear, established, and persistent pattern and practice of abuse, including violation of Mr. Craig's right to bodily integrity.

65. Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, had notice of this pattern and practice of abuse.

66. Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas in their respective individual capacities were deliberately indifferent to this unconstitutional conduct.

67. The physical, mental, emotional abuse, harassment, and discrimination suffered by the plaintiff at WKU was the result of a custom, and Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas in their respective individual capacities failed to act to end this custom.

68. This custom was the moving force and/or direct causal link that resulted in the constitutional deprivation.

69. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT III — Violation of 42 U.S.C. § 1983
(Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas)**

70. Plaintiff realleges each and every allegation stated above as if separately pleaded in full herein.

71. Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas acted under color of law.

72. The physical, mental, emotional abuse, harassment, and discrimination suffered by the plaintiff at WKU constituted a violation of Mr. Craig's right to bodily integrity.

73. The violation of Mr. Craig's right to bodily integrity were the result of acts by Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas' subordinates.

74. Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, knew, or reasonably should have known, that their subordinates were engaging in these acts of abuse and that their conduct deprived Mr. Craig of his right to bodily integrity.

75. Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, failed to control, train, or supervise to stop and prevent their subordinates from engaging in such conduct.

76. This failure by Defendants Stewart, McCammon, Biggs, Marchionda, and Thomas, in their respective individual capacities, amounted to deliberate indifference to this unconstitutional conduct.

77. This failure was the moving force and/or direct causal link that resulted in the constitutional deprivation.

78. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT IV — Negligence
(Defendants Stewart, McCammon, Biggs, Marchionda, Thomas, Griffin,
Musser, and Groneck)**

79. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

80. The acts and omissions of Defendants Stewart, McCammon, Biggs, Marchionda, Thomas, in their respective individual capacities and/or by and through their agents and employees, as well as Defendants Griffin, Musser, and Groneck were negligent in that Defendants had a duty to Plaintiff in the circumstances to act with

ordinary care toward Mr. Craig, they failed in that duty by the manner in which they treated plaintiff, and their actions were the cause in fact and proximate cause of his injuries.

81. Plaintiff has suffered damages by reason of the above-described conduct in amount to be proved at trial.

**COUNT V — Negligent Hiring, Supervision, and Training
(Defendants Stewart, McCammon, Biggs, and Marchionda)**

82. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

83. Defendants Stewart, McCammon, Biggs and Marchionda, in their respective individual capacities and/or by and through their agents and employees, were responsible for the hiring, training, supervision and retention and conduct of the WKU swim team coaches.

84. Defendants Stewart, McCammon, Biggs, and Marchionda, in their respective individual capacities and/or by and through their agents and employees, had a duty to use reasonable care in hiring, training and/or retaining the WKU swim team coaches.

85. Defendants Stewart, McCammon, Biggs, and Marchionda, in their respective individual capacities and/or by and through their agents and employees, were negligent in hiring, training and/or retaining the WKU swim team coaches.

86. The acts and omissions of Defendants Stewart, McCammon, Biggs, and Marchionda, in their respective individual capacities and/or by and through their agents and employees, in the hiring, training, and/or retaining the WKU swim team coaches were the direct and proximate cause of harm suffered by Mr. Craig.

87. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT VI — Battery
(Defendants Griffin and Groneck)**

88. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

89. The actions of Defendants Griffin and Groneck described above involved battery against Plaintiff when, among other harmful or offensive acts of touching, Defendants Griffin and Groneck struck Mr. Craig in the testicles, “tickled” Mr. Craig’s throat while he was being forced, underage, to rapidly consume alcohol. Further, Defendant Griffin choked Mr. Craig, and forced him to “bend over” and then struck him in the testicles. Defendant Groneck also violently attempted to physically force Mr. Craig to consume alcohol while Mr. Craig was in the process of vomiting.

90. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT VII — Assault
(Defendants Musser, Groneck, and Griffin)**

91. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

92. The actions of Defendants Musser, Groneck, and Griffin described above constitutes assault against Plaintiff in that he was placed in the reasonable fear of imminent harm when, among other acts, he was intimidated into rapidly consuming alcohol, Defendant Musser threatened Plaintiff in order to facilitate forced servitude, Defendant Griffin ordered Mr. Craig to “bend over,” Defendants Griffin, Groneck, and

Musser threatened Mr. Craig by displaying a rifle, and Defendant Groneck threatened Mr. Craig with forced sexual violence on "GroupMe."

93. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT VIII — Intentional Infliction of Emotional Distress
(Defendants Marchionda, Musser, Groneck, and Griffin)**

94. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

95. The actions described in this Complaint undertaken by Defendant Marchionda, in his individual capacity, as well as Defendants Musser, Groneck, and Griffin against Plaintiff were intentional or reckless.

96. These actions were outrageous and intolerable and they offend generally accepted standards of decency and morality.

97. There was a causal relation between the actions of Defendant Marchionda, in his individual capacity, as well as Defendants Musser, Groneck, and Griffin, and the emotion distress of the Plaintiff, Collin Craig. Plaintiff's distress was severe.

98. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT IX — Negligent Infliction of Emotional Distress
(Defendants Stewart, McCammon, Biggs, Marchionda, Thomas, Griffin,
Musser, and Groneck)**

99. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

100. The acts and omissions of Defendants Stewart, McCammon, Biggs, Marchionda, Thomas, in their respective individual capacities and/or by and through their agents and employees, as well as Defendants Griffin, Musser, and Groneck were negligent in that Defendants had a duty to Plaintiff in the circumstances to act with ordinary care toward Mr. Craig, they failed in that duty by manner in which they treated plaintiff, and their actions were the cause in fact and proximate cause of his injuries.

101. Plaintiff Collin Craig suffered serious and/or severe emotional injury, such a reasonable person would not be expected to endure the mental stress engendered by the circumstances of the case.

102. Plaintiff has suffered damages by reason of the above-described conduct in amounts to be proved at trial.

**COUNT X — Defamation Per Se
(Defendant Harrison Griffin)**

103. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

104. Defendant Griffin committed defamation *per se* when he made an unprivileged, false, and defamatory statement about Defendant Craig, claiming without any basis in fact, that Mr. Craig had been accused of the morally depraved violent crime of rape.

105. This defamatory statement was published to a third party.

106. Defendant Griffin acted with malice in making the above mentioned statement.

107. Plaintiff has suffered damages, including but not limited to harm to his reputation, by reason of the above-described conduct in amounts to be proved at trial.

**COUNT XI — Defamation
(Defendant Harrison Griffin)**

108. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

109. Alternatively, Defendant Griffin committed defamation when he made an unprivileged, false, and defamatory statement about Defendant Craig, claiming without any basis in fact, that Mr. Craig had been accused of the morally depraved violent crime of rape.

110. This defamatory statement was published to a third party.

111. Defendant Griffin acted at least negligently in making the above mentioned statement.

112. Plaintiff has suffered damages, including but not limited to harm to his reputation, by reason of the above-described conduct in amounts to be proved at trial.

**COUNT XII — Tortious Interference with Contractual Relations
(Defendants Stewart, McCammon, Biggs, Marchionda, Thomas, Griffin,
Musser, and Groneck)**

113. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

114. The acts and omissions of Defendants Stewart, McCammon, Biggs, Marchionda, Thomas, in their respective individual capacities and/or by and through their agents and employees, as well as Defendants Griffin, Musser, and Groneck resulted in pervasive abuse and discrimination suffered by Plaintiff, causing him to be unable to enjoy his contract with WKU to swim and attend school, was an unjustified and intentional interference, by which Defendants Stewart, McCammon, Biggs, Marchionda, Thomas, in

their respective individual capacities and/or by and through their agents and employees, as well as Defendants Griffin, Musser, and Groneck intended to prevent Mr. Craig from enjoying the benefits of the contract.

115. Plaintiff has suffered damages by reason of the above-described conduct in the amounts to be proved at trial.

**COUNT XIII — Punitive Damages
(All Defendants)**

116. Plaintiff realleges each and every allegation stated above as if separately repleaded in full herein.

117. The actions and omissions of the Defendants constitute reckless, grossly negligent, oppressive, and malicious conduct.

118. These actions rise to a level that permits the imposition of punitive damages.

WHEREFORE, Plaintiff Collin Craig demands judgment against the Defendants, WKU, Todd Stewart, John McCammon, Craig Biggs, Bruce Marchionda, Brian Thomas, Harrison Griffin, Seth Musser, and Tyler Groneck, in an amount which will compensate them for:

1. Compensatory damages for physical and mental pain and suffering, severe emotional distress and humiliation, medical expenses, including care for physical and psychological injuries, harm to reputation, nominal damages, and all other amounts which will fairly and reasonably compensate Plaintiff for the damages incurred as a result of the Defendants' tortious actions in an amount to be determined at trial;

2. Punitive damages to punish the Defendants for their willful, wanton, oppressive, malicious, and/or grossly negligent conduct;
3. Trial by jury on all issues so triable, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure;
4. Costs expended herein, including reasonable attorneys' fees;
5. Pre-judgment and post-judgment interest; and
6. Any and all other relief to which they may be entitled.

Respectfully submitted,

s/ Vanessa B. Cantley
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Pursuant to FRCP 4, service will be made upon the following Defendants:

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and)
TYLER GRONECK)
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s/ Vanessa B. Cantley
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