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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

KATINKA HOSSZU,

Plaintiff,

v.

CASEY BARRETT, an individual; SPORTS  
PUBLICATIONS INTERNATIONAL, INC.  
(dba SWIMMING WORLD MAGAZINE and  
SWIMMINGWORLDMAGAZINE.COM), an  
Arizona corporation, and DOES I through 20,  
inclusive,

Defendants.

NO.

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

**INTRODUCTION AND BACKGROUND**

1. Plaintiff Katinka Hosszu (“Hosszu”), for her Complaint against defendants

Casey Barrett (“Barrett”), Sports Publications International, Inc. (“SPI”), and Does 1-20, alleges as follows:

### **NATURE OF THE ACTION**

2. This lawsuit comes in response to libelous and defamatory statements of the most damaging variety that can possibly be made about a professional athlete: Claiming that she is taking performance enhancing drugs, and therefore cheating, as the explanation for her remarkable success over the last three years in vigorous competition around the globe. The defendants’ accusations are false. Nevertheless, their impact has been undeniably palpable, harmful, and distressing, whether taken alone or in the context of the story of Hosszu’s return to competition and renewed determination in the sport she has always loved.

3. Katinka Hosszu is one of the most versatile and accomplished professional swimmers in the world, as well as one of the world’s most respected and admired athletes. With unparalleled strength, determination and perseverance, Hosszu has competed on the world stage since 2004, with progressively increasing success. She is undeniably accomplished in a variety of swimming events, and has often competed vigorously and remarkably in several swimming events within a limited time period in the course of a single competition. Through her endurance and success at such competitions, Hosszu has undeniably earned the title “Iron Lady,” as she is now commonly known.

4. Today, Hosszu is a three-time Olympian, five-time World Champion, and world-record holder. Over the past three years of competition, and as a result of fierce training and a hardened resolve to move past her disappointment at her most recent Olympic Games, Hosszu has competed at numerous events around the world, with considerable success—success which she has clearly earned, and which she hopes to continue at the 2016 Summer Olympics in Rio de Janeiro, Brazil. She enjoys the generous backing and support of several corporate and athletic equipment sponsors, as well as a devoted fan base. Indeed, in her native Hungary, Hosszu is a fan favorite and a

1 source of national pride, and has been named several times as Hungarian Sportswoman of  
2 the Year. Prior to the events giving rise to this lawsuit, Hosszu enjoyed an unblemished  
3 reputation. She had never been accused of cheating in any way.

4           5. Nevertheless, on May 20, 2015, the defendants published and widely  
5 distributed a scathing news article accusing Hosszu of taking performance enhancing  
6 drugs as the explanation for her recent and remarkable success in competition.  
7 Defendants levied their accusations against Hosszu, admittedly, with no factual basis.  
8 The accusations nevertheless appear in text replete with false factual assertions, innuendo,  
9 and crass analogy clearly calculated to create controversy, sensationalism and readership,  
10 without regard for the predictable harm to Hosszu.

11           6. Compounding the damage inflicted by their harmful accusations, the  
12 defendants are conspicuously regarded as authoritative sources about swimming and about  
13 professional swimmers. Defendant Casey Barrett, who wrote the article, is himself a  
14 former Olympic swimmer and longtime commentator on the sport. Defendant SPI's  
15 magazine Swimming World and website [www.SwimmingWorldMagazine.com](http://www.SwimmingWorldMagazine.com) (the  
16 online version of SPI's venerable print publication) is publicly regarded as the most  
17 contemporaneous and reliable publication wholly devoted to the sport of swimming,  
18 boasting monthly hard copy readership of over 200,000 persons and an exponentially  
19 larger online following. This audience includes Hosszu's fans, peers, sponsors,  
20 competitors, and friends around the world.

21           7. The defendants, collectively and individually and by virtue of their unique  
22 position within the sport of swimming, were admittedly aware of the suspicion and  
23 disrepute that would flow from their baseless accusations. They were likewise undeniably  
24 aware that when a professional athlete is accused of "doping"—especially by authoritative  
25 peers in the sport—the accusation permanently stains the reputation of the professional  
26 athlete who is the target of such epithets in a way that can never be fully remedied. In the  
27 words of Mr. Barrett and SPI/ Swimming World Magazine: "To be lumped in with those  
28 you condemn, accused of sins that you'd sooner die than commit? It's a horror to

1 consider. It's a stain that can never be scrubbed away, no matter how innocent you may  
2 be.”<sup>1</sup> Remarkably, Mr. Barrett and SPI have cavalierly subjected Hosszu to precisely the  
3 unwarranted stigma they profess to abhor.

#### 4 PARTIES

5 8. Plaintiff Katinka Hosszu (“Hosszu” or “Plaintiff”) is, and at all times herein  
6 mentioned was, an individual with her primary residence in Hungary.

7 9. Hosszu is informed and believes, and on that basis alleges, that defendant  
8 Casey Barrett (“Barrett”) is, and at all times herein mentioned was, an individual with his  
9 primary residence in the State of New York.

10 10. Hosszu is informed and believes, and on that basis alleges, that defendant  
11 Sports Publications International, Inc. (“SPI”) is, and at all times herein mentioned was, a  
12 corporation existing under the laws of the State of Arizona with its principal offices in  
13 Phoenix, Arizona. Hosszu is further informed and believes that SPI does business as  
14 Swimming World Magazine and SwimmingWorldMagazine.com (hereafter, “Swimming  
15 World”).

16 11. On information and belief, Defendants “Does 1-20” are in some manner  
17 responsible for the wrongs and damages alleged below, and in so acting were functioning,  
18 at least at times, as the agent, servant, partner, alter ego, and/or employee of the other  
19 defendants, and in doing and/or not doing the actions mentioned below was acting within  
20 the course and scope of his or her authority as such agent, servant, partner, and/or  
21 employee with the permission, consent, or ratification of the other defendants.

22 12. On information and belief, the defendants have acted and are acting in  
23 concert with respect to the allegations herein, and have together conspired to undertake  
24 the unlawful activities alleged herein. (Barrett, SPI/ Swimming World and Does 1-20 are  
25 referred to collectively herein as “Defendants.”)

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<sup>1</sup> Casey Barrett, *Doping: How Not To Get Caught*, July 20, 2015, available at  
28 <http://www.swimmingworldmagazine.com/news/doping-how-not-get-caught>

## **JURISDICTION AND VENUE**

13. This Court has jurisdiction of this matter pursuant to 28 U.S.C. section 1332(a) because Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest, attorney fees, and costs.

14. Venue is proper in this District pursuant to 28 U.S.C. section 1391(b), because Defendants are subject to personal jurisdiction in this District by virtue of their residency (Swimming World), Defendants have had substantial, deliberate and systematic contacts with this District (all Defendants), and because a substantial part of the events giving rise to this action occurred in this District.

## **ALLEGATIONS COMMON TO ALL CLAIMS**

### **Katinka Hosszu**

15. Katinka Hosszu is a Hungarian professional swimmer, world champion, and Olympian, and her story is one of drive, courage, and perseverance. At twenty-six years old, she has competed three times in the Olympic Games. She has competed and continues to compete in competitions and circuits worldwide, including (most recently) at the Federation Internationale De Natation (International Swimming Federation, or “FINA”) World Championships in Kazan, Russia, where she won gold in the 400m individual medley, bronze in the 200m backstroke, and gold in the 200m individual medley. For the 200m individual medley, Hosszu also broke a 2009 world record previously regarded as untouchable. She is a favorite for the 2016 Olympic Games in Rio De Janeiro, and has aspirations to compete in the 2020 Tokyo Olympics and 2024 Olympics.

16. Hosszu has been a competitive swimmer her whole life. Beginning before she could walk, she trained with her grandfather in Hungary at a 25-meter swimming pool until age thirteen. At fifteen years old, she competed in her first Olympic Games at Athens in 2004, after which she competed in the European Championships and first qualified for the FINA World Championships. She competed collegiately at the University

1 of Southern California, and simultaneously continued competing in the European  
2 Championships and other competitions worldwide. In college she met Shane Tusup, a  
3 fellow competitive swimmer who would later become her husband and swim coach.

4 17. In 2008 Hosszu swam in her second Olympic Games, which were held in  
5 Beijing, China. As in 2004, Hosszu failed to win a medal, but thereafter continued  
6 competing collegiately and in competitions abroad.

7 18. In mid-2012, Hosszu failed at her third Olympic Games to win a medal.  
8 Greatly disheartened, Hosszu hit a low point and considered leaving the sport of  
9 swimming entirely. However, Hosszu instead picked herself up and devoted herself with  
10 new and reinforced vigor to training and competition. Mere months later, in November  
11 2012, Hosszu competed in a World Cup competition in Beijing, and earned five medals in  
12 two days. Referring to Hosszu's strength and resilience through eight separate events,  
13 Chinese media jokingly asked if she was "made of iron," and the headline "Hungary's  
14 Iron Lady" made its first appearance in print media the next day. The title has since stuck  
15 with (and adroitly described) the reinvented and fiercely goal-oriented Hosszu. Since  
16 2012—and through rigorous training, discipline, and the unwavering support of her  
17 husband and coach—Hosszu has consistently been a top contender in swimming  
18 competitions worldwide.

19 19. Over the years, Hosszu has received numerous accolades as an athlete and  
20 sportswoman. In 2009, and after winning a World Championship title in the 400m IM,  
21 Hosszu was selected as the Hungarian Sportswoman of the Year. In 2011, she won the  
22 Honda Sports Award, and was nominated for ESPN's ESPY Awards for Best Female  
23 College Athlete. In both 2013, and 2014—to that point, her most stellar years in  
24 competition—Hosszu was again named the Hungarian Sportswoman of the Year, and her  
25 husband, Shane Tusup, was named Coach of the Year. In 2014, Hosszu was named the  
26 Female European Swimmer of the Year, after setting 17 Hungarian records that year  
27 alone. FINA (the worldwide governing body for the sport of swimming) also named  
28 Hosszu the overall Female Swimmer of the Year.

1           20. In her native Hungary, Hosszu is widely regarded as a hero and role model.  
2 Swimming is among Hungary's most successful Olympic sports, and Budapest will be  
3 hosting the 2017 FINA World Championship. Hosszu is held in high regard by the  
4 Hungarian Swimming Association, and Hosszu's accomplishments are publicly regarded  
5 by members of Hungary's government as a source of national pride.

6           21. Hosszu is a true sportswoman both in and out of the pool. She strives to use  
7 her fame and accomplishments to inspire others. In 2014 she released a motivational  
8 book in Hungary with the hope of inspiring others to rise above and overcome  
9 disappointment, as she did in 2012. Hosszu is releasing a second motivational book in  
10 November 2015, which she hopes will inspire her fans and readers to push their limits and  
11 strive without fear to be the best versions of themselves, in sports and otherwise.

12           22. Swimming is Hosszu's livelihood as well as her passion. She earns her  
13 living by appearing and/or competing at swim circuits, and thereby boosting their  
14 popularity and public allure. Moreover, "Iron Lady" is now a commercial brand  
15 embraced by Hosszu. In 2015, Hosszu and competitive swimwear company Arena (a  
16 sponsor of Hosszu) collaborated to create a mini-collection of swim essentials bearing the  
17 name and graphic logo of Hosszu, and to market the collection as reflecting Hosszu's  
18 spirit and ethos. In association with BiotechUSA (an international retailer of fitness and  
19 dietary supplements) Hosszu is also releasing a specialty collection consisting of her new  
20 motivational book, a meal replacement protein, and a shaker bottle.

21           23. Until the events giving rise to this lawsuit, Hosszu's reputation was  
22 unblemished. Hosszu has at all times undergone random drug testing, particularly in  
23 competition, and has never tested positive for any performance enhancing drug. She had  
24 never been accused of cheating in any way.

#### 25                           **Casey Barrett and Swimming World**

26           24. Casey Barrett is a Canadian swimmer, and a 1996 Olympian. At the 2004,  
27 2006, and 2008 Olympics, he served as one of Bob Costas' primetime writers, and has  
28 won several Emmy awards for his work on NBC's broadcasts of the Olympic Games. He



1 is also the co-founder and co-CEO of Imagine Swimming, a large swimming school in  
2 New York City.

3 25. Barrett is the sole operator of Cap & Goggles ([www.capandgoggles.com](http://www.capandgoggles.com)).  
4 Since at least January 2014, Barrett has been a regular contributor of content to  
5 Swimming World, for which he receives compensation in the form of (at least) advertising  
6 for, and permission to link, his own blog to Swimming World's website, greatly  
7 increasing his own traffic and readership.

8 26. Casey Barrett holds himself out as an authority on the abuse of performance  
9 enhancing drugs in competitive sports, including swimming. He has authored several  
10 articles on the subject. He has also written a documentary entitled "The Last Gold" which  
11 examines the systemic doping by the East German women at the 1976 Montreal  
12 Olympics. Barrett has repeatedly trumpeted his authorship of the documentary in print  
13 media, including Swimming World. Barrett maintains that "[o]ne driving narrative of our  
14 film is the failure of the press to speak up in the face of such obvious corruption. In  
15 retrospect, and even in the present tense, it was beyond obvious what was going on."<sup>2</sup>

16 27. Swimming World is a monthly swimming magazine that was first published  
17 in hard copy in 1960, and has been in continuous publication ever since. Its online  
18 iteration, [www.SwimmingWorldMagazine.com](http://www.SwimmingWorldMagazine.com), was launched in July 1996.

19 28. Swimming World is the swimming community's most venerable, respected,  
20 and authoritative publication wholly devoted to the sport of swimming and swimming  
21 events, including open water swimming, diving, synchronized swimming and water polo.  
22 Swimming World features results, records, and personality features for competitive  
23 swimmers. Swimming World correspondents provide on-site coverage of The Olympic  
24 Games, World Championships, Pan Pacific Games, Pan American Games, Goodwill  
25 Games, European Championships, USS International Team Selection, NCAA  
26 Championships, Senior Nationals, Junior Nationals, Sectional Meets, YMCA Nationals,

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27 <sup>2</sup> Casey Barrett, *The Smell of Smoke*, May 20, 2015, available at  
28 [www.capandgoggles.com/2015/05/20/the-smell-of-smoke/#more-1917](http://www.capandgoggles.com/2015/05/20/the-smell-of-smoke/#more-1917).



High School Championships, and Age Group Championships. The magazine is endorsed by the American Swim Coaches Association (ASCA) and the Australian Swim Coaches and Teachers Association (ASCTA), and is the official publication of the College Swim Coaches Association of America (CSCAA), the National Interscholastic Swim Coaches Association (NISCA), and the United States Swim School Association.

29. Swimming World touts itself as committed to bringing the swimming community and swimming fans contemporaneous and accurate news coverage from around the world about the sport of swimming and competitive swimmers. Swimming World CEO and Publisher Brent Rutemiller repeated Swimming World's commitment to complete and accurate news coverage in an interview he gave in September 2014, in which he stated:

- “[Getting it right] has to be the most important thing. If not, our credibility is zero . . . I credit our editor, Jason Marsteller (former Sports Information Director at Indiana), with that—our level of ethics is very high. We have to make sure we’re not writing on a level to be sensational or social-media driven.”

- Anything we get, we double check with a second party. One of the challenges of SwimInfo.com (the Website that preceded SwimmingWorldMagazine.com) in the early days was dealing with rumors. You have to have the ability and ethics to take on those issues and deal with people.”<sup>3</sup>

30. Jason Marsteller and Shane Tusup were friendly acquaintances, and would often converse informally about Hosszu, the sport of swimming, and media coverage of swimmers and swimming events. These conversations sometimes occurred via Facebook Chat. In one such exchange, on September 8, 2014, Mr. Masteller represented to Shane Tusup that (purportedly unlike other swimming publications), it was important to

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<sup>3</sup> Peter H. Bick, *Swimming World Publisher Brent Rutemiller Details Company's Past, Present and Future in USA Swimming "20 Questions Today," September 17, 2014*, available at [www.swimmingworldmagazine.com/news/swimming-world-publisher-brent-rutemiller-details-companys-past-present-and-future-in-USA-swimming-20-question-today](http://www.swimmingworldmagazine.com/news/swimming-world-publisher-brent-rutemiller-details-companys-past-present-and-future-in-USA-swimming-20-question-today)

1 Swimming World to be cautious about publishing any content accusing anyone of abusing  
2 performance enhancing drugs:

3 **Jason Marsteller:** not that I'd be the first to say it, but at least be fucking fair  
4 and balanced on attacks.

5 **Shane Tusup:** Yeah that's actually what I told k (Katinka Hosszu) last time  
6 she read stuff.

7 **Jason Marsteller:** and, what's disgusting is that before swimswam came along,  
8 we actually moderated that shit.

9 **Jason Marsteller:** we had a rule that you could only comment doping stuff on  
10 someone who actually got tagged or came from a country with history

11 **Jason Marsteller:** so we deleted shit with dara torres, etc.

12 **Jason Marsteller:** but now that swimswam cornered the market for  
13 commenting, because they allow whatever, its' like well, there ya go.

14 31. In this same exchange (which occurred before publication of the Article  
15 about Hosszu as described below), Marsteller referenced Hosszu and noted that people  
16 "talk shit about Katinka." Shane Tusup told Mr. Marsteller that seeing unfounded  
17 accusations that swimmers were "doping" was very upsetting to Hosszu. Marsteller went  
18 on to admit that he had consulted with Nathan Jendrick, the author of the book *Dunks,*  
19 *Doubles, Doping: How Steroids are Killing American Athletics*, regarding rumors  
20 concerning Hosszu. Marsteller further admitted that Jendrick had a bias in believing  
21 athletes cheat, but that Jendrick had nevertheless told him that there was "no way in hell"  
22 that Hosszu was cheating; that the amount of Hosszu's travel made it logistically  
23 impossible and prohibitively expensive. Marsteller also clearly admitted that he discussed  
24 Jendrick's statements to Swimming World editor Brent Rutenmiller. The chat continued, in  
25 part, as follows:

26 **Jason Marsteller:** ppl talk shit about Katinka

27 **Jason Marsteller:** john leonard goes nuts about ye shiwen  
28

1  
2 **Jason Marsteller:** here's my thing, it's only anti-international

3 **Jason Marsteller:** usually nate explains how someone would do it

4 **Jason Marsteller:** brent was like, wow

5 **Jason Marsteller:** and when i told brent nate said no way and explained

6 **Jason Marsteller:** someone even got brent to ask me ,that's why i asked nate

7  
8 **Shane Tusup:** K always gets so upset when she sees comments about the  
9 doping bs

10 **Shane Tusup:** That's a good point

11 **Shane Tusup:** Hahahahaha

12 **Jason Marsteller:** and nate thinks EVERYONE dopes dude

13 **Jason Marsteller:** or else get caught with the shit while traveling

14 **Jason Marsteller:** you'd have to have a connection everywhere you travel

15 **Jason Marsteller:** and i was like, i'm confused. he said to dope with her schedule  
16 would be more money that it is worth

17 **Jason Marsteller:** you can't travel that much and dope

18  
19 **Casey Barrett And Swimming World Publicly Accuse Hosszu Of “Doping.”**

20 32. On May 20, 2015, and despite Swimming World’s purported commitment to  
21 accurate and responsible journalism as set forth above, Swimming World published an  
22 article written by its regular contributor, Casey Barrett, titled “Are Katinka Hosszu’s  
23 Performances Being Aided?” (The May 20, 2015 publication in its original form is  
24 attached hereto as **Exhibit A**, and is hereafter referred to as the “Article.”) The Article  
25 was presented as a “news” piece, and unambiguously accused Hosszu of abusing  
26 performance enhancing drugs as the explanation for her accomplishments as an athlete.  
27 Barrett also published the Article on his Website, [www.capandgoggles.com](http://www.capandgoggles.com).  
28

33. The Article was rife with assertions of fact, presented in a crass and scathing manner clearly intended to create sensationalism and readership without regard for the truth. Specifically and by way of example:

- Katinka Hosszu is the best all-around swimmer on earth right now... **What everyone is talking about, but no one wants to say...**;

- **There is no proof. There never is, not when it matters, not when it's needed most.** So, this is what happens: the coaches grumble; the experts roll their eyes; the athletes offer lukewarm congrats at the end of each eye-popping race. **Everyone talks, but no one speaks up.** She has never failed a drug test, and without that proof positive test it's all just jealous hearsay.

- **Except the chatter can often be true, and the visual evidence – on the body and the scoreboard – generally doesn't lie...**;

- **Our latest Exhibit A: Hungary's "Iron Lady" Katinka Hosszu.** FINA's reigning World Swimmer of the Year; three-time world champion; holder of five short course meter world records; and the woman who, last fall, became the [first swimmer ever to surpass \\$1 million](#) earned solely in prize money in the pool. **She did this, of course, by globe-trotting the World Cup circuit and swimming a superhuman number of races at almost every stop.;**

- Consider last weekend at the Charlotte Arena Pro Swim Series. Hosszu raced in seven individual events...It was that last double on the third day that caught many eyes. Within a sixteen minute span, Hosszu posted the top time in the world this year in the 200 IM (2:08.66) and returned after a gasp of a warm-down later with a 200 back in 2:07.79, the third fastest time on earth this year. **Not bad for an in-season meet that witnessed most of the superstars in attendance plodding through some very tired, in-training swims.**

- **No one competes, consistently, at a higher level than she does. Repeat – no one, ever. Not Michael Phelps or Katie Ledecky and certainly not Ryan Lochte,** who's always tended to look like a beaten slow sack of chiseled flesh when he races while immersed in heavy training. **But not Hosszu. Her consistency, her ability to recover, and her never-flagging form continues without breakdown, regardless of when or where the race is going down.**

- Since London, this has been a pretty standard meet's showing for Hosszu. She's always entered in a bounty of events and **she always tends to deliver incredible performances every time she touches water.**

1           ● I understand the whole Ultra-Short Race-Pace Training (USRPT)  
2 philosophy now in vogue, being popularized and questioned through the exploits of young  
3 Michael Andrew, yet Hosszu's travel-the-world-collect-the-cash training program  
4 **stretches the limits of even that dubious science.**

5           ● **No one wants to come out and point fingers. But I'm not alone, and past  
6 signposts point down some dark roads.**

7           ● For the last year or so, I've been immersed in writing a documentary called  
8 "The Last Gold." It's a film about the tragedy of the 1976 Olympics in Montreal, when  
9 the last of the innocent days of Olympic sport were lost. **A doped East German team of  
10 women appeared on the Olympic landscape and they forever corrupted the  
11 sport...we've never viewed athletic performance in quite the same way again.**

12           ● One driving narrative of our film is the failure of the press to speak up in the  
13 face of such obvious corruption. In retrospect, and **even in the present tense, it was  
14 beyond obvious what was going on.**

15           ● **We were witnessing female bodies be distorted to unnatural strength  
16 and power, and they were delivering performances that could not be explained by  
17 any rational observer. Those in the know knew what was going on, but there was no  
18 proof...[I]n fact, these were the truth tellers, the ones outraged by the ugly facts  
19 hiding in plain sight...Nothing has changed....**

20           ● **Forty years later, it continues to happen, in every sport, every time  
21 there's a champion who stretches plausible achievement in ways that don't quite  
22 pass the bullshit test for anyone paying attention. For years I reveled as the  
23 blasphemous bastard who loved to incense my Lance-loving friends (especially those who  
24 liked to ride bikes) by calling Lance Armstrong a liar and a cheat and the worst kind  
25 of athlete scum ever to compete in any sport. That's what he was, and is, and  
26 sometimes it's a damn shame to be right.**

27           ● **[T]here's a distinct smokey aroma around Katinka Hosszu's  
28 performances these last two years. And where there's smoke... Hell, finish the cliché  
29 yourself. Instead, I'll share this indelicate comment made by a close friend when I first  
30 told him I was thinking of addressing this. Said he: "Being surprised that Hosszu might  
31 be doping is like going to a strip club and being surprised that the strippers have  
32 fake tits!" Apologies if that offends anyone's delicate sensibilities. Sometimes the best  
33 similes are the crude ones.**

34           ● **For all of Hosszu's incredible achievements there is one rather glaring  
35 omission from her resumé. She has never won an Olympic medal...Curious for an  
36 athlete so utterly dominant in her sport for years on end.**

- Yet, here's one thing that we've learned in producing a documentary that centers around doping and the dark clouds that circle it. There is one prerequisite for athletes who dope: They must convince themselves that their competition is doing it. That is the only thing that can validate crossing this line. In 2012, Katinka Hosszu's spirit was crushed by a performance achieved through dubious means. **Ever since, she has been the one standing atop every podium.**

34. Defendants knew that there was no evidence to substantiate their accusations, and that they were in fact false according to their own go-to expert, Nate Jendrick. In callous disregard for Hosszu’s reputation (and in the case of Swimming World, its professed devotion to ethics and accuracy in journalism), Defendants nevertheless published the Article to advance their own social and financial ends with knowledge of its falsity—for Barrett, to garner media attention and increased returns for the impending release of his documentary on “doping” (unabashedly referenced throughout the Article), and perhaps to explain his own lack of success at the elite level of swimming; and for Swimming World, to attempt to attract readership through creating controversy.

## The Harm To Hosszu

35. Public reaction to Defendants' Article was immediate. Swimming World readers viewing the Article generally fell into two distinctly identifiable camps: On one hand, many were swift to condemn Defendants, expressing shock, outrage and disappointment at their unfounded accusations levied against Hosszu, whose reputation was (until then) untarnished and beyond scrutiny. On the other hand, many readers expressed their view that Swimming World and Barrett, as authoritative sources, provided validation for their unjustified charges and that Defendants should otherwise be believed.

36. On May 21, 2015 and in the midst of growing public attention, Tamas Gyarfás, President of the Hungarian Swimming Federation, publicly voiced the Federation’s “utmost dismay” at Defendants’ election to defame Hosszu without any evidence proving the points of Mr. Barrett:

We cannot understand why such a prestigious media platform finds it necessary

1 to give floor for these humiliating accusations (speculations). This is absolutely not in line  
2 with the approach we have experienced in the past from Swimming World which ensured  
3 international recognition for your website and magazine.

4 As the President of the Hungarian Swimming Association, I hereby declare that  
5 we would never question any achievement by any great swimmers, let alone from the  
6 United States, even if many of them often seem to be superhuman—still, all admired by  
7 us forever.

8 37. In the middle of a rigorous year of training and competition and on the eve  
9 of several important competitions abroad, Hosszu suddenly found herself the target of  
10 scandalous accusations and the center of public controversy. On May 26, 2015 and upon  
11 her return to Hungary, Hosszu called a press conference in effort to abate the damage and  
12 suspicion that Defendants had suddenly brought upon her. At the conference, Hosszu  
13 unequivocally denied Defendants' accusations, and expressed appreciation to her family,  
14 friends, fans and sponsors for their unflagging support and confidence.

15 38. Since Defendants' statements, Hosszu has been forced to endure  
16 unprecedented suspicion and stigma in competition in the United States and abroad. On  
17 May 26, 2015—the same day as Hosszu's press conference—the organizers of the Rome  
18 swimming competition Trofeo Citta di Roma suddenly reneged on a sponsorship deal by  
19 which Hosszu would have received compensation for an appearance. To that point, no  
20 event organizer had ever suddenly withdrawn such an offer to Hosszu. Thereafter,  
21 Hosszu has been invariably subjected to repeat testings at odd hours, on a scale she has  
22 never experienced. For example, while swimming at a meet in Santa Clara, California  
23 shortly after the article was published, Hosszu was tested by the USADA six times in  
24 competition—an unprecedented number of "random" tests in the course a single  
25 competition, in which Hosszu competed in only seven races. These tests, as always, have  
26 proven negative for performance enhancing substances.

27 39. As a result of the Article, public comment and speculation about Hosszu is  
28 ongoing. The suspicion levied against her by officials and others in competition is  
likewise ongoing. To this day and at every interview following Hosszu's recent triumphs



abroad in competition, the media invariably bring up and question Hosszu about Defendants' "doping" allegations. Hosszu's attempts to focus media attention on her accomplishments has thus proven futile. Hosszu's ability to earn the highest level of endorsements and other contracts has been irreparably harmed, and her unblemished reputation has been irreversibly tarnished.

### **Defendants Refuse To Withdraw Their Accusations**

40. Several days after widely releasing the Article, and no doubt in response to the controversy and public backlash brought about by Defendants' unfounded accusations, Swimming World modified the online version of the Article in effort to recharacterize it as an "opinion piece" by Mr. Barrett, no doubt in effort to provide itself with legal cover for the blatantly defamatory nature of the article. To that end, Swimming World attempted to distance itself from Barrett's defamatory article by attempting to retroactively add the following disclaimer, which was not present at publication, at the close of the Article's text: "The above commentary is the opinion of the author and does **not necessarily** reflect the views of Swimming World Magazine nor its staff." A copy of the Article, with Swimming World's post hoc modifications, is attached hereto as **Exhibit B**.

41. On May 26, 2015, Hosszu (by counsel) directed letters to Swimming World and to Barrett demanding that each of them issue a retraction and apologize publicly to Hosszu—a step that might have reduced the damages and stigma that Hosszu would otherwise invariably endure, and has endured. Copies of the letters to Swimming World and to Barrett are attached hereto as **Exhibits C and D**, respectively. Receiving no response after several weeks, Hosszu repeated her demand to both Defendants.

42. Swimming World and Barrett eventually responded. Each refused to move away from their accusations in the Article, to apologize to Hosszu, or to otherwise take any step in effort to abate the harm to Hosszu from their unfounded accusations. In its letter response, Swimming World misrepresented that the Article was at all times published as an "opinion piece" and with a disclaimer that the views set forth therein were

1 “not those of Swimming World Magazine.” This was untrue. As set forth above, in fact  
2 this disclaimer was added later, and states that the accusations set forth in the Article are  
3 “not *necessarily*” those of Swimming World Magazine.

4 43. Barrett, similarly, refused to withdraw or qualify the Article. Like  
5 Swimming World, however, Barrett substantially modified the Article as it appeared on  
6 his Website [www.capandgoggles.com](http://www.capandgoggles.com), to include the following *post hoc* attempt to  
7 recharacterize his accusations as personal opinion—clearly in response to Hosszu’s  
8 demand for a retraction: “I hope I’m wrong, and to be clear *—to any litigious minded folks*  
9 *out there—I realize I’m trafficking in currently unprovable conjecture*. But I’m not alone,  
10 and past signposts point down some dark roads.” In fact, Barrett’s reference to “currently  
11 unprovable” conjecture, coupled with his professed experience in the specific area of  
12 performance enhancing drug abuse in professional sports, operated to repeat his  
13 defamatory claim that (1) Hosszu is in fact abusing performance enhancing drugs, and (2)  
14 while evidence of that abuse had not yet been uncovered, such evidence (in Barrett’s  
15 expertise) invariably existed and would be uncovered in the future.

16 44. Further, on August 3, 2015, Barrett caused to be published on his website  
17 [www.capandgoggles.com](http://www.capandgoggles.com) a new article titled *Women Rule the Worlds*. (The August 3<sup>rd</sup>  
18 article is attached hereto as **Exhibit E.**) In this article, Barrett initially purported to  
19 objectively report the performance of a number of male and female swimmers from  
20 around the world, including Hosszu, at the recent World Championships at Kazan.  
21 However, Barrett concluded the article by gratuitously republishing his defamatory  
22 statements and accusations against Hosszu (though these renewed accusations were a  
23 conspicuous *non sequitur* to the preceding text), linking the original Article to this new  
24 publication. Barrett again acknowledged that Hosszu had never failed a drug test, but  
25 asserted that this lack of objective proof did not belie his accusations. Finally (and clearly  
26 in response to Hosszu’s demand for a retraction and public denial of Defendants’  
27 accusations), Barrett taunted that he was free to continue with his malicious accusations  
28 and vendetta against Hosszu, because he had retained “world class counsel” to defend his

misconduct.

45. In furtherance of their ongoing and malicious attack upon Hosszu, Barrett and Swimming World have collaborated to publish at least two other articles on the subject of performance enhancing drug abuse, both of which are reasonably understood to refer to Hosszu: *Doping: How Not To Get Caught*, published July 20, 2015; and *Suspicious Minds And The Doping Rumor Mill*, published August 14, 2015. In both articles, Barrett and Swimming World specifically argue that the absence of a positive drug test is not tantamount to factual innocence of performance enhancing drug abuse:

- The next time you hear someone proclaim innocence by point to all the drug tests they have passed, try not to laugh. If a cheater is versed in the latest in the dark art of doping then there's little chance of ever testing positive. Casey Barrett, *Doping: How Not To Get Caught* (July 20, 2015), available at [www.swimmingworldmagazine.com/news/doping-how-not-get-caught/](http://www.swimmingworldmagazine.com/news/doping-how-not-get-caught/)

- Take them at night, before bed, and by the time you wake for morning workout they'll be out of your system. Officially, the World Anti-Doping Agency can test you in the middle of the night, but they don't. In fact, it requires 'specific justification'—ie they'll tip you off before they do. *Ibid.*

- **Note:** Swimming World has consistently asked FINA to find better ways to test athletes to ensure a clean sport. This article simply points out how FINA test results are not reliable. *Id.*, Swimming World comment.

- Maybe drug tests will catch a few, but it won't be many. Casey Barrett, *Suspicious Minds And The Doping Rumor Mill* (August 14, 2015), available at [www.swimmingworldmagazine.com/news/suspicious-minds-and-the-doping-rumor-mill/](http://www.swimmingworldmagazine.com/news/suspicious-minds-and-the-doping-rumor-mill/)

46. Through these same publications, Barrett and Swimming World acknowledge that even unfounded and completely false accusations of “doping” carry considerable and far-reaching consequences for the athlete, who is thereafter forced to defend herself indefinitely at every competition, and every day in the Court of public opinion. Swimming World and Barrett continued to publish these false allegations concerning Hosszu, even after Hosszu publicly denied them and otherwise knowing them to be untrue.

**FIRST CAUSE OF ACTION**

(Defamation *Per Se* Against All Defendants)

47. Hosszu restates and re-alleges the allegations contained in Paragraphs 1 through 46, inclusive, as though fully set forth herein.

48. Defendants, and each of them, have made and endorsed the making of statements that Hosszu has used and is using performance enhancing drugs as the explanation for her success, in violation of swimming regulations. In doing so Defendants acted on behalf of and as agents of one another. These statements of fact are false, and are defamatory *per se*.

49. Defendants' statements have harmed Hosszu's reputation, incited derogatory opinions about her, and caused the public and others to hold Hosszu in contempt. They also impute the commission of a crime, and call into question Hosszu's honesty, integrity, and fitness to perform in her trade, business, and profession.

50. Defendants' statements were conspicuously and intentionally disseminated in a writing known and calculated to reach tens of thousands of swimming fans and enthusiasts, and specifically Hosszu's fans, acquaintances, friends, peers, competitors and sponsors, as well as news reporters and other public outlets.

51. Given Hosszu's spotless record with drug tests and otherwise over the course of her career, as well as the absence of any evidence suggesting her use of performance enhancing drugs, Defendants issued these statements maliciously with actual knowledge that such statements were false or, at least, in reckless disregard for their falsity. Defendants issued these statements with the specific intent of harming Hosszu, and to advance their own social and financial ends at her significant expense.

52. On May 26, 2015, and immediately upon learning of Defendants' defamatory publication, Hosszu caused service upon Defendants of a notice plainly identifying the Article as false and defamatory, and demanding the Article's retraction as well as a public apology. Hosszu also publicly denied Defendants' accusations.

Defendants ignored the notice and demand for retraction. Hosszu renewed her demand several weeks later, and Defendants flatly refused to comply. In the interceding period and thereafter, Defendants continued to republish and otherwise direct the public to the Article and its unfounded accusations against Hosszu, through (among other means) links to the original Article on other webpages, and subsequent publications on “doping” in sports which made thinly-veiled reference to Hosszu. Further, on August 3, 2015 Barrett gratuitously and maliciously republished his defamatory statements in a separate article on unrelated subject matter, taunting that he could continue defaming Hosszu with impunity because he is defended by “world class counsel.”

53. As a direct and proximate result of Defendants’ statements, Hosszu has been and continues to be damaged in an amount to be proven at trial, but which is in any event not less than \$5,000,000. Furthermore, because Defendants’ conduct was undertaken in bad faith and with fraud, malice, and/or oppression, Hosszu is entitled to punitive damages. Defendants are jointly and severally liable for all the conduct and damages alleged herein.

## **SECOND CAUSE OF ACTION**

(Portrayal In False Light, Against All Defendants)

54. Hosszu restates and re-alleges the allegations set forth in Paragraphs 1 through 53, inclusive, as though fully set forth herein.

55. Through the Article and otherwise, Defendants publicized and endorsed the publication of statements that Hosszu has used and is using performance enhancing drugs as the explanation for her success. In doing so, Defendants acted on behalf of and as agents of one another. These statements of fact are false.

56. The false light created by Defendants’ publication of their accusations and statements about Hosszu would be highly offensive to a reasonable person, and particularly to one in Hosszu’s position as one who has decidedly earned her success and reputation through hard work, discipline, and fair play. This truth was well-known to

1 Defendants, who had expressly acknowledged the harm and disrepute that invariably  
2 befalls a professional athlete who is the target of such accusations, no matter how  
3 unfounded they might be.

4 57. Defendants knew that their publications would create a false and highly  
5 unfavorable impression of Hosszu in the eyes of her peers, friends, sponsors, fans, and the  
6 public at large. Defendants nevertheless published their accusations in the Article and  
7 elsewhere, in conscious disregard of the truth. Defendants also disregarded the  
8 foreseeable harm to Hosszu, opting instead to attempt to further their own financial and  
9 social ends at Hosszu's considerable expense.

10 58. As a direct and proximate result of Defendants' statements, Hosszu has  
11 been and continues to be damaged in an amount to be proven at trial, but which is in any  
12 event not less than \$5,000,000. Furthermore, because Defendants' conduct was  
13 undertaken in bad faith and with fraud, malice, and/or oppression, Hosszu is entitled to  
14 punitive damages. Defendants are jointly and severally liable for all the conduct and  
15 damages alleged herein.

16 WHEREFORE, Plaintiff Katinka Hosszu prays for judgment against Defendants,  
17 and each of them, as follows:

- 18 1. General and special damages in an amount to be proven at trial, in  
19 excess of \$5,000,000.
- 20 2. Presumed damages based on, among other factors, harm to Hosszu's  
21 reputation.
- 22 3. Punitive damages.
- 23 4. Attorney's fees where permitted by law.
- 24 5. All costs of suit herein.
- 25 6. Such other relief as this Court deems just and proper.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff demands a trial by jury for all issues so triable.  
28

1 DATED this 12<sup>th</sup> day of November, 2015.

2 JONES, SKELTON & HOCHULI, P.L.C.

3  
4 By/s/ ***Sanford K. Gerber***

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