

1 Neil A. Goteiner (State Bar No. 083524)
 ngoteiner@fbm.com
 2 C. Brandon Wisoff (State Bar No. 121930)
 bwisoff@fbm.com
 3 Matthew S.L. Cate (State Bar No. 295546)
 mcate@fbm.com
 4 Aviva J. Gilbert (State Bar No. 300091)
 agilbert@fbm.com
 5 Hilary C. Krase (State Bar No. 318762)
 hkrase@fbm.com
 6 FARELLA BRAUN + MARTEL LLP
 235 Montgomery Street, 17th Floor
 7 San Francisco, California 94104
 Telephone: (415) 954-4400
 8 Facsimile: (415) 954-4480

9 Richard M. Heimann (State Bar No. 063607)
 rheimann@lchb.com
 10 Eric B. Fastiff (State Bar No. 182260)
 efastiff@lchb.com
 11 Valerie D. Commenencia Ortiz (State Bar No. to be assigned)
 vcomenenciaortiz@lchb.com
 12 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
 275 Battery Street, 29th Floor
 13 San Francisco, California 94111
 Telephone: (415) 956-1000
 14 Facsimile: (415) 956-1008

15 Attorneys for Plaintiffs and the Proposed Class

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UNITED STATES DISTRICT COURT

18

NORTHERN DISTRICT OF CALIFORNIA

19

20 THOMAS A. SHIELDS, MICHAEL C.
 ANDREW, and KATINKA HOSSZÚ, on
 21 behalf of themselves and all others similarly
 22 situated,

Plaintiffs,

23

vs.

24

FÉDÉRATION INTERNATIONALE DE
 25 NATATION,

26

Defendant.

27

28

Case No. 3:18-CV-7393

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE SHERMAN ACT,
15 U.S.C. §§ 1, 2, AND THE COMMON
LAW**

JURY DEMAND

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1 Thomas A. Shields, Michael C. Andrew, and Katinka Hosszú, on behalf of themselves and
2 all others similarly situated, allege as follows:

3 **I. INTRODUCTION**

4 1. Plaintiffs bring this action against Fédération Internationale de Natation (“FINA”)
5 to prevent and address clear antitrust violations arising from FINA’s complete control, by
6 unlawful means, over the promotion and organization of international swimming competitions and
7 its efforts to ensure that FINA, and only FINA, can determine what swimming athletes will be
8 paid for their efforts.

9 2. FINA calls itself the world’s governing body for all aquatic sports. As the
10 authorized gatekeeper to the Olympic Games’ aquatic events, there can be no doubt that, as it
11 boasts on its own website, FINA “controls the development” of competitive swimming and diving
12 disciplines.

13 3. This case is specifically about swimming. It is about whether FINA’s control over
14 swimming opportunities—at least as exercised outside of the Olympic Games and FINA’s own
15 competitions—amounts to an unlawful restraint of the ability of the athletes, on whose bodies
16 FINA’s income and power depend, to earn what they would command in a market free of FINA’s
17 iron grip. This case is also about whether FINA—entrenched in and fearful of losing total control
18 over lucrative swimming competitions—unlawfully wields its dominant influence to prevent
19 outside organizations from expanding opportunities for hundreds of world-class swimmers and
20 their millions of fans across the world. FINA does so in a manner that not only restricts FINA’s
21 competitors in the market for the promotion of top-tier international swimming competitions from
22 entering the market, but also restricts opportunities for sponsors, event broadcasters, licensees, and
23 other related ancillary businesses that would benefit from an increased number of top-tier
24 international swimming competitions. And this case is about whether FINA’s unreasonable
25 market restraints and consolidated market power have unlawfully restricted the ability of the
26 world’s top-tier swimmers from enjoying expanded opportunities to exploit their own hard work,
27 rather than having to continue to suffer the FINA-controlled exploitation of their lifetimes’ worth
28 of training and labor.

1 4. FINA has total control, or nearly total control, of the market for the promotion and
2 organization of top-tier international swimming competitions. It also has total control, or nearly
3 total control, of the market for the purchase of top-tier swimmer services, rendering it, in effect,
4 the sole buyer of the market supply. The International Swimming League (“ISL”) has sought to
5 enter both markets, as an organizer, innovator, and promoter of top-tier international swimming
6 competitions and as a buyer of the swimmer services necessary to put on such events. ISL seeks
7 to expand these market opportunities in order to provide the world’s top-tier swimmers more
8 opportunities to compete against each other and for increased pay for their services. Among other
9 goals, ISL intends to roll out in 2019 a 15-match, team-based series of meets featuring more than
10 300 top-tier swimmers. It also plans, and has taken significant steps toward establishing, a
11 permanent league that would feature similar competitions. The league also offers, among other
12 things, higher potential compensation for the world’s top-tier swimmers.

13 5. FINA, however, is determined to prevent ISL from entering the market. FINA
14 understands that a free market for top-tier international swimming competitions would preclude it
15 from continuing to keep for itself the lion’s share of profits earned from the swimmers’ skills and
16 efforts and the entertainment value it provides to spectators. And FINA’s power over the
17 swimming world is so strong that it will crush ISL, and destroy the careers of swimmers who want
18 to compete in ISL meets, absent the relief that ISL seeks in its own lawsuit against FINA and that
19 Plaintiffs seek in this action. FINA’s source of power derives predominantly from its control over
20 access to competition in the Olympic Games, which FINA has lorded over member national
21 federations and the world’s swimmers by implementing rules that: (1) prohibit athletes and
22 member federations from having “any kind of relationship”—including “unauthorised relations”
23 with other swimming events and organizers—with any entity FINA does not approve, and (2)
24 threatens rule-breakers with a ban of up to two years from participation in FINA or FINA-
25 approved events, including events used to qualify for the Olympic Games. *See* FINA Rule GR
26 4.1; FINA Rule GR 4.5.

27 6. FINA’s insistence that the world’s best swimmers may compete only on FINA’s
28 terms and its efforts to enforce that rule are nakedly anti-competitive. The European Commission

1 has already found that a similar “unauthorised relations” rule wielded by FINA’s counterpart for
2 ice skating violates the European Union’s competition laws. Such rules, the Commission ruled in
3 its Commission Decision of December 8, 2017, “inherently aim at preventing athletes from
4 participating in events not authorised [by the rulemakers], resulting in the foreclosure of
5 competing event organisers . . . [who] could potentially harm the economic interests” of the
6 entrenched governing body. *See* Provisional Non-Confidential Version of Decision ¶¶ 168-69
7 (available at http://ec.europa.eu/competition/antitrust/cases/dec_docs/40208/40208_1384_5.pdf).

8 7. The same reasoning applies in this case, where FINA has implemented and
9 enforced rules in a manner that serves FINA’s intent to foreclose competitors like ISL from
10 entering the market and prevent swimmers from effectively selling their services to entities other
11 than FINA or those that FINA explicitly approves.

12 8. Indeed, FINA already has flexed its muscles to block ISL from hosting—and
13 swimmers like Plaintiffs from participating in—a competing event. In early 2018, ISL began
14 planning a top-tier international competition that would feature a version of its team-based
15 competition, ideally to take place in the United States, home to many of the world’s best
16 swimmers. ISL had enjoyed early and enthusiastic support of USA Swimming, the sport’s
17 governing body for the United States. Thus, USA Swimming worked closely with ISL in spring
18 2018 to plan a competition for December 2018, with both ISL and USA Swimming considering
19 Las Vegas’s Mandalay Bay Resort and Casino or the University of Southern California as
20 potential venues. But, in response to pressure from FINA, USA Swimming pulled out of
21 negotiations for hosting the December 2018 competition in either location, or anywhere else.

22 9. ISL accordingly had to seek other partners. First it tried to pair with British
23 Swimming to host the competition in London. But, like its American counterpart, British
24 Swimming folded under pressure from FINA to stop coordinating with ISL. As explained by
25 USA Swimming’s chief operating officer in a letter dated June 13, 2018, FINA “sees this
26 December event as a challenge.” As a result, he concluded, USA Swimming could not commit to
27 taking any part in ISL’s plans, even as a non-host, passive participant, until it received “assurance
28 from ISL and FINA (in writing) that FINA is on board with the concept of the ISL and approves

1 of the concept” and, in short, “whether the ISL can actually exist alongside FINA.”

2 10. Ultimately, ISL teamed up with the Italian Swimming Federation. The Italian
3 federation had previously worked with Energy Standard Group, whose president is the driving
4 force behind ISL, to host junior meets in 2017 and in April 2018. Given its support for ISL’s
5 proposed format and dedication to expanding opportunities for the world’s swimmers, the Italian
6 Swimming Federation agreed to host the December competition in Turin, Italy (the “Turin
7 Event”).

8 11. Despite the extensive planning and expenditure of resources by ISL and the Italian
9 Swimming Federation, and despite their having entered into participation and appearance-fee
10 agreements with more than 50 swimmers from around the world, FINA coerced its member
11 federations into agreeing to, and participating in, an overt effort to shut down the Turin Event by
12 threatening the swimmers with a ban from FINA events—including the competitions that would
13 serve as the qualifying meets for the 2020 Olympic Games—if swimmers participated in the Turin
14 Event. FINA made its threats only to prevent competition and to maintain its grip on both its
15 monopoly power in the market for top-tier international swimming competitions and its
16 monopsony power in the market for the supply of top-tier swimmer services. FINA has never
17 offered, and cannot truthfully offer, any legitimate pro-competitive justification for its actions.

18 12. Some of the world’s top swimmers openly criticized FINA for its crackdown on the
19 Turin Event, and some of FINA’s national swimming federation partners, including USA
20 Swimming, still expressed support for ISL’s efforts. *See, e.g., Adam Peaty criticises decision to*
21 *scrap International Swimming League*, BBC, Nov. 15, 2018,
22 <https://www.bbc.com/sport/swimming/46224766>; Julian Linden, *Our golden girls unite for*
23 *swimmers’ rights*, Daily Telegraph, Dec. 4, 2018. But after discussing among and between
24 themselves, the federations reluctantly warned their respective swimmers that they risked
25 sanctions by FINA and/or by the federations themselves if the swimmers participated in the ISL
26 event. The Italian Swimming Federation and ISL were thus forced to cancel the Turin Event, for
27 which swimmers from all over the world had already signed up, and ISL lost its investment.

28 13. FINA tried to explain to the world that its conduct was necessary to safeguard

1 FINA’s own schedule of competitions. That explanation itself is proof of FINA’s anti-competitive
2 motive. But the circumstances leading up to its threatened swimmer ban laid bare a more
3 disturbing picture of its anti-competitive aims.

4 14. Specifically, FINA had been in direct negotiations with ISL for much of 2018 over
5 how FINA might allow ISL to co-exist. FINA made it clear, however, that such co-existence—
6 *i.e.*, FINA’s agreement not to threaten the world’s swimmers against participating in ISL events—
7 would come only at a steep price: FINA demanded \$50 million from ISL and complete control
8 over most of the facets of the ISL league, including its name. Not once during the negotiations
9 with ISL did FINA express concerns that, as it later claimed, that ISL’s events would “add[] a
10 layer of complexity” to the calendar of swimming competitions such that the calendar could not
11 both allow for the Turin Event and also remain “coherent” and “healthy.” *See FINA Statement*,
12 Nov. 16, 2018, at <http://www.fina.org/news/fina-statement-2>. Nor did it express to ISL any
13 concern over “[t]he harmonious development of the calendar,” as FINA did in a December 3,
14 2018, letter to its member federations seeking further to justify its unlawful conduct. Instead, it is
15 quite obvious that FINA’s primary concern, as it explained in that December 3 letter, was over any
16 “challenges to its status.” FINA’s purported “complexity” justification is precisely the type of
17 excuse that courts properly view with suspicion as nothing more than anti-competitive pretext.

18 15. ISL refused to give in to FINA’s extortionate demands that ISL pay FINA not to
19 engage in unlawful conduct. FINA accordingly leveraged its overwhelming and absolute power to
20 impose, through its control over the Olympics, a group boycott of the Turin Event. That episode
21 not only showcased FINA’s complete power over the relevant markets, it also caused significant
22 financial harm, and threatened additional future harm, to ISL and the swimmers with whom ISL
23 and/or its affiliates had contracts, as well as co-hosting organizations (*e.g.*, allied federations such
24 as the Italian Swimming Federation), potential event sponsors, broadcast-rights holders, and other
25 business and licensing partners. It also harmed the markets for both the organization of top-tier
26 international swimming competitions and for the provision of top-tier swimmer services. And by
27 its explicit anti-competitive conduct, FINA clarified to the entire swimming community that FINA
28 will continue to do whatever it takes to protect its stranglehold on non-Olympic events.

1 16. Recognizing the damage its actions caused to the swimmers that FINA depends
2 upon and apparently attempting to assuage swimmers' anger, FINA suddenly announced it would
3 increase prize money available to swimmers competing in the FINA World Swimming
4 Championships (25m), a short-course competition set for December 11-16, 2018, featuring top-
5 tier swimmers competing in the type of races most similar to those planned by ISL. In other
6 words, the mere threat of ISL's market entry has already increased pay for swimmers in the
7 market in which FINA has been unlawfully suppressing competition, which demonstrates one
8 element of anti-competitive harm— depressed swimmer compensation—that FINA's illegal
9 stranglehold has imposed on the market.

10 17. Plaintiffs accordingly have filed this action, seeking both injunctive relief against
11 FINA's enforcement of its anti-competitive "unauthorised relations" (sic) rules and damages to
12 compensate them for the real financial harm FINA's efforts already have caused.

13 **II. JURISDICTIONAL STATEMENT**

14 18. This Court has subject-matter jurisdiction over this case under section 4 of the
15 Sherman Act, 15 U.S.C. § 4, and under 28 U.S.C. §§ 1331, 1337.

16 19. This Court has personal jurisdiction over FINA pursuant to section 12 of the
17 Clayton Act, 15 U.S.C. § 22 and *Go-Video, Inc. v. Akai Electric Company, Limited*, 885 F.2d 1406
18 (9th Cir. 1989). In particular, FINA's contacts with the United States are deep and wide. On
19 information and belief, FINA has registered multiple trademarks with the U.S. Patent and
20 Trademark Office. It regularly organizes major international aquatics competitions in the United
21 States. Since January 2017, FINA has hosted the following multi-day competitions: the FINA
22 Artistic Swimming World Series 2018 (Los Angeles), the Women's Intercontinental Tournament
23 2018 (Davis, California), the Synchro America Open Long Island (New York), and the 6th FINA
24 World Junior Swimming Championships (Indianapolis). Meanwhile, on information and belief,
25 FINA has entered into multiple agreements with U.S. swimwear manufacturers by which those
26 manufacturers must adhere to FINA's strict regulations governing the design and manufacture of
27 swimwear and related accessories in exchange for the right to be deemed FINA-approved articles.
28 U.S. companies that have entered into such agreements include TYR Sport, Inc., of Huntington

1 Beach, California, and AgonSwim of Nashville, Tennessee. Finally, FINA promulgates various
2 rules and regulations governing the conduct of its membership, which includes national
3 federations such as United States Aquatic Sports, Inc. (“USAS”), members of those national
4 federations such as USA Swimming, and all U.S. swimmers who seek to compete in FINA-
5 sanctioned competitions. Thus FINA has, for example, controlled the conduct of Plaintiff Thomas
6 Shields, who lives in Berkeley, California. Specifically, as discussed above, FINA directly
7 threatened its swimming federation members and swimmers, including those in the United States,
8 with sanctions if they entered into any relationships with, or competed in events organized by,
9 ISL.

10 20. Further, on information and belief and as further described below, FINA
11 specifically and purposefully availed itself of the benefits and protections provided in this state
12 and district when it ordered, in October 2018 and in furtherance of its anti-competitive conduct,
13 the submission of a false Digital Millennium Copyright Act (“DMCA”) copyright-infringement
14 notice to YouTube, LLC, an entity located in this district. On information and belief, the false
15 submission asserted that three ISL-produced videos featuring only ISL material, interviews, and
16 information somehow infringed on FINA’s copyright. So FINA improperly leveraged U.S. law to
17 prevent further ISL promotion by demanding that YouTube pull down the material. YouTube, at
18 least temporarily, did so.

19 21. Venue is proper in this district under 28 U.S.C. § 1391(c)(3) because FINA is not a
20 resident in the United States and therefore may be sued in any judicial district.

21 **III. PARTIES**

22 **A. Plaintiffs**

23 22. Thomas A. Shields is a world-champion swimmer and Olympic gold medalist. He
24 remains a professional swimmer and lives in Berkeley, California.

25 23. Michael C. Andrew has been swimming professionally since 2013, when at 14
26 years old he became the youngest swimmer to do so. He has set more than 100 national age-group
27 records, and he won the gold medal in the 100-meter individual medley at the 2016 FINA Short
28 Course World Championships. He lives in Encinitas, California. .

1 24. Katinka Hosszú is a three-time Olympic gold medalist who has set or holds
2 multiple world records. A three-time FINA Swimmer of the Year, Ms. Hosszú is a resident of
3 Hungary.

4 25. Plaintiffs bring this case on behalf of themselves and other swimmers similarly
5 situated. These are swimmers who comprise the input market of top-tier swimmers who have
6 competed on the sport's highest stages or have otherwise performed at a high-enough level that
7 they can earn invitations to premiere competitions and draw lucrative sponsorships. The Proposed
8 Class is defined below.

9 26. As alleged in more detail below, this case arises from FINA's efforts to thwart the
10 ability of ISL to enter and expand the market for the type of competitions that draw Plaintiffs and
11 the Proposed Class to enter and compete, including FINA's successful measures to scuttle the
12 Turin Event, and FINA's ongoing effort to prevent ISL from organizing and promoting its 2019
13 competitions. These efforts impacted the United States which is a potential host to these events,
14 and which is home to many of the world's best swimmers and the residence of numerous top-tier
15 swimmers who had signed up for the Turin Event before FINA forced its cancellation.

16 **B. FINA**

17 **1. FINA Derives Its Power From The Structure Of The Modern**
18 **Olympiad.**

19 27. FINA is an association organized and existing in accordance with the laws of
20 Switzerland, and more particularly under article 60, *et seq.*, of the Swiss Civil Code.

21 28. FINA traces its founding from the beginnings of the modern Olympic Movement,
22 and its role in international aquatics competition today depends on its connection with how the
23 Olympic Games are structured and governed.

24 29. At the top of that structure stands the International Olympic Committee ("IOC"), a
25 not-for-profit organization based in Lausanne, Switzerland. In short, the IOC puts on and
26 promotes the Olympic Games. It does so primarily through coordination with two technically
27 separate groups of entities.

28 30. The first group is nation-focused, comprising 206 National Olympic Committees

1 (“NOCs”). The IOC has exclusive authority to recognize NOCs, including the U.S. Olympic
2 Committee. The NOCs are tasked generally with promoting the Olympics and identifying and
3 recommending host cities for the games. They retain exclusive authority for representing their
4 respective nations at the Olympic Games and any other competitions sanctioned by the IOC.

5 31. The second group is sport-focused, made up of dozens of International Sports
6 Federations. As with NOCs, only the IOC has the authority to recognize these federations. And
7 the federations, like the NOCs, must comply with the IOC’s governing Olympic Charter. The
8 International Sports Federations administer their respective sports and establish and organize the
9 types and rules of competitions held at the Olympic Games. Accordingly, these federations
10 “monitor the everyday administration of their sports and guarantee the regular organization of
11 competitions as well as respect for the rules of fair play.” *See* The International Olympic
12 Committee, “International Sports Federations,” accessible at [https://www.olympic.org/ioc-](https://www.olympic.org/ioc-governance-international-sports-federations)
13 [governance-international-sports-federations](https://www.olympic.org/ioc-governance-international-sports-federations). Among many others, IOC-recognized international
14 federations include the likes of Fédération Internationale de Football Association (“FIFA”), the
15 International Basketball Federation (“FIBA”), the International Skating Union, and FINA.

16 32. Accordingly, and as far as the IOC is concerned, FINA governs *Olympic*
17 swimming, diving, high diving, water polo, artistic swimming, masters and open-water swimming.
18 More particularly, athletes in those disciplines can compete in the Olympic Games only if they
19 meet or beat qualifying criteria that FINA sets for the athletes. And, in the cases of swimmers,
20 FINA will recognize only those qualifying times that are met at FINA-approved qualifying events.

21 33. Formed in 1908 as a collection of eight national aquatics organizations during that
22 year’s Olympiad in London, FINA now comprises 209 member federations. These member
23 federations are themselves national umbrella groups involving representatives of the various
24 aquatic-sports disciplines. The national federations may (and do) delegate sub-group entities to
25 manage the FINA relationship as it pertains to the disciplines. Thus, the United States’ member
26 federation is United States Aquatic Sports, Inc. (“USAS”), which designates USA Swimming,
27 Inc., which is the—the “national governing body” of swimming in the United States.

28 34. FINA is thus technically a collection of national member federations that actually

1 compete horizontally with another and with FINA itself, in that individual federations and FINA
2 separately organize and promote top-tier international swimming competitions. But by virtue of
3 its governance structure and the practicalities of its day-to-day operations, FINA’s decision-
4 making and enforcement authority fall into the hands of a small group of FINA officials who
5 cannot be easily checked by member federations.

6 35. FINA and its 209 member federations are governed primarily by a 25-member
7 Bureau. The Bureau’s day-to-day power, in turn, is vested in an eight-member executive
8 committee. Bureau decisions and rule interpretations can be—but not always—appealed to the
9 FINA General Congress. The voting members of that General Congress, which technically under
10 the FINA governing rules is “the highest authority of FINA,” comprise two delegates from each
11 member federation to represent its national interests in *all* aquatic sports. *See* FINA Rule C 15.1;
12 FINA Rule C 15.2. Thus, for example, China has a population of more than 1.3 billion people and
13 sent 45 swimmers to compete in the 2016 Olympic Games. It is allowed two representatives in
14 the General Congress. So, too, is Maldives, an island nation of 436,000 that sent two swimmers to
15 the 2016 Games.

16 36. By design and under the FINA Constitution, the General Congress moves slowly.
17 It meets only every two years. A federation can call for a special session on matters that arise
18 between those biennial meetings. But doing so requires written request of one third of all 209
19 members. Effectively, then, FINA is run by the FINA Bureau. And between the Bureau’s own
20 meetings, its executive committee handles all day-to-day business and accordingly retains the
21 majority of the real decision-making and rules-influencing power over FINA.

22 37. Beyond the fact that its governing structure effectively empowers FINA leadership
23 to exercise coercive influence over member federations, such heavy-handedness is cemented in the
24 FINA rules themselves. Every FINA member must “acknowledge in its national rules that FINA
25 *is the only recognized body in the world*” that may govern international aquatics. *See* FINA Rule
26 C 7.5 (emphasis added). FINA’s Constitution forbids any member to set rules that conflict with
27 FINA’s rules. FINA Rule 7.3. And, if and when FINA so requires, members must insert FINA
28 rules into their own governing documents. FINA Rule 8.2.5.

1 38. Among the various rules approved by the General Congress and Bureau is FINA’s
2 prohibition against “unauthorised relations.” Thus, no FINA Member can “have *any kind of*
3 *relationship* with a non-affiliated or suspended body.” FINA Rule GR 4.1 (emphasis added).
4 Further, a member cannot hold competitions with any non-affiliated body, nor can swimmers
5 compete in events that FINA has not approved. FINA bylaws also govern international
6 competition and require any member that hosts, assists with the hosting, or affiliates in any way
7 with the hosting of such a competition to first obtain FINA approval. *See generally* FINA Rule
8 GR 4. This extends far beyond the run up to the Olympics and the Olympics Games themselves.

9 39. These rules must be obeyed. Member federations and swimmers alike face severe
10 punishment for violating FINA rules against unauthorized relationships or hosting international
11 competitions that FINA does not bless in advance. Among other sanctions, FINA wields the
12 power to suspend the member federation or its swimmers, for up to two years, from participating
13 in any FINA events. *See* FINA Rule GR 4.5. For swimmers who participate in non-sanctioned
14 competitions, that could mean banishment from the slate of competitions FINA sets as qualifying
15 events for the Olympic Games, and thus a ban from the Olympics itself.

16 40. Given the structure of FINA’s governance and its gatekeeper role in the Olympics,
17 there is practically little that a given member federation—to say nothing of an individual
18 swimmer—can do other than comply with FINA’s demands. This gives FINA the ability to
19 harm competition in non-Olympic swimming, and it has exercised that power to cause anti-
20 competitive harm to swimmers, event hosts, swimming competition consumers, and other industry
21 participants.

22 41. Each of the member federations primarily is concerned with identifying the athletes
23 who will represent the home country in the Olympic Games and ensuring they have sufficient
24 training and other support to prepare for the Olympics. Also, when necessary, the member
25 federations are the athletes’ representatives regarding issues relating to FINA’s qualifying events,
26 the format of such competitions, FINA acceptance of their own planned competitions, technical
27 regulations, and more. The Olympic Games are, in effect, the sole reason these organizations
28 exist, usually pursuant to a statutory dictate recognized by the law of their country as solely

1 responsible for identifying Olympic athletes in their sport—in the case of the United States, for
2 example, to obtain “the most competent amateur representation possible in each of the Olympic
3 Games, the Paralympic Games, and Pan-American Games.” *See* 36 U.S.C. § 220503(4).

4 42. Each member federation’s chief focus on the Olympic Games necessarily leads to
5 members constantly engaging in multiple ongoing negotiations with FINA over issues pertaining
6 only to the Olympic Games (*e.g.*, timing of the meets that constitute qualifying events, the format
7 of such competitions, FINA acceptance of their own planned competitions). Moreover, those
8 negotiations with FINA are occurring across all of the aquatic sports disciplines.

9 43. Member federations (or their specific-sport designees) also frequently host their
10 own events, sometimes including top-tier international competitions. For example, USA
11 Swimming organized a biennial series called Duel in Pool from 2003 through 2015, a competition
12 that pitted U.S. swimmers against their Australian or European counterparts. Likewise, the
13 Luxembourg federation organizes the yearly Euro Meet series. And the Italian federation hosts
14 the yearly Sette Colli Trophy. FINA allows such events to exist, but the members organize them
15 and, on information and belief, reap all (or most) of the financial benefit from putting them on.
16 The federation-organizers of these and the many other swimming competitions, international or
17 otherwise, must negotiate with FINA over several issues, including scheduling and if or when the
18 meets might constitute qualifying events for FINA’s own competitions—for example, the 21st
19 Euro Meet, set for January 25-27, 2019, is a qualifying event for the 2019 FINA World
20 Championships.

21 44. The fact that member federations frequently disagree among themselves and with
22 FINA on various rules and scheduling relating to the Olympic Games, FINA competitions, and/or
23 member-federations events, combined with FINA’s power structure, means that any given
24 member federation—and more particularly any given designee focused on a specific sport (*e.g.*,
25 USA Swimming)—retains limited political capital with which to negotiate with FINA. And given
26 their legal mandate back home, member federations understandably must choose to expend that
27 capital with FINA on matters pertaining to the Olympic Games. Other battles, including FINA
28 dictates that have nothing to do with preparing for or holding the Games, are therefore simply not

1 worth it for the members to fight, or to risk fighting, even though they fall outside of the specific
2 Olympic mandate over which FINA has any actual authority from the IOC or anyone else.

3 **2. FINA Leverages Its Market Dominance To Extract And Enjoy—And**
4 **Largely Keep For Itself—Substantial Revenues From The Labor Of**
5 **The World’s Best Swimmers.**

6 45. By law, FINA is a non-governmental, putatively not-for-profit organization. In
7 reality it is big business.

8 46. No longer a small band of idealistic sport enthusiasts who would be stunned by the
9 monolith that today’s Olympic Games have become, FINA sits atop one of the world’s most
10 popular grouping of sporting events. Its role as aquatics gate-keeper to the Olympic Games allows
11 it, in effect, control of effectively every major aspect of the development of, and profit from,
12 aquatic sports, in every corner of the globe.

13 47. It is a lucrative perch. While numbers deriving specifically from swimming
14 competitions are not yet available to plaintiffs, FINA overall enjoys a substantial share of IOC
15 revenue from selling broadcasting rights, sponsorships, ticketing, and other income derived from
16 the Olympic Games. In all, FINA in 2016 and 2017 earned from the 2016 Rio de Janeiro Olympic
17 Games more than \$31.9 million above its Games-related expenses.¹

18 48. Regardless of any exclusivity that FINA may enjoy over aquatic sports in the
19 Olympics, nothing gives FINA exclusive rights to control non-Olympic swimming for the entire
20 world. But FINA nonetheless has leveraged its rights to organize Olympic swimming—rights
21 which Plaintiffs do not here challenge—to dictate the terms on which any international swimming
22 competition must be based.

23 49. FINA earns major revenue from its own non-Olympic events. It draws scores of
24 millions of dollars per year from member-affiliation fees, event fees from cities that FINA allows
25 to host its FINA-branded competitions, television broadcasting rights, licensing revenues, and

26 ¹ FINA reports its finances in Swiss francs, which at the time of this Complaint exchange roughly
27 1:1 with the U.S. dollar. All FINA financial figures discussed in this Complaint are derived from
28 FINA’s 2017 financial report, available at https://www.fina.org/sites/default/files/audit_report_-_fina_-_2017_-_swiss_co_with_2_signatures-1.pdf.

1 sponsorships. In 2017, for example, and setting aside in-kind contributions, FINA took in more
2 than \$57 million from its own events, well over half of that coming from host-city tribute and
3 television rights to FINA-branded events, including: the FINA Swimming World Cup, a year-long
4 series of short-course² events held across the globe; the FINA World Swimming Championships
5 (25m), a single short-course championship held every even-numbered year; and the FINA World
6 Championships, biennial competitions involving all the aquatics disciplines held every odd-
7 numbered year. In short, aquatics in general, and swimming in particular, are money-making
8 machines for FINA.

9 50. FINA keeps much of the wealth for itself. In 2016, and across all aquatics events,
10 FINA awarded less than \$5 million in prize money to the athletes who make it all possible. Prizes
11 amounted to about \$10 million in 2017, an increase owing at least in part to the blockbuster FINA
12 World Championships.

13 51. During the same two-year period, FINA spent nearly the same amount on those
14 swimmer prizes as it did on its 30-40 administrators and employees: payroll charges averaged
15 about \$6.2 million each year. And FINA spent a similar amount on “FINA Family” expenses—
16 mostly meaning travel and per diems for certain FINA-appointed dignitaries. All the while, FINA
17 kept \$18 million bottled up for maintenance on its new, lavish 43,000-square-foot headquarters.
18 That is just part of the more than \$108 million FINA has set aside in dedicated reserves, including
19 for event cancellation. Another \$11.6 million remains in reserve without FINA earmarking it for
20 any purpose.

21 52. Further, much of FINA’s prize money is spread thinly to the upper-tier of the top-
22 tier competitors. The 2018 FINA Swimming World Cup is illustrative. In all, FINA awarded \$2.5
23 million in prizes for athletes’ performances over the course of that seven-meet series. Based on
24 the announced awards and FINA’s announced medals table at the end of the series, and excluding
25 swimmer bonuses for setting new world records, about 60 percent of the prize money (roughly

26 _____
27 ² A “short course” event is held in a 25-meter or 25-yard pool, the latter of which is common in
28 NCAA and U.S. high school competitions. “Long course” events are held in 50-meter pools, the
size used for aquatic events during the Olympic Games.

1 \$1.5 million) went to only 10 swimmers. The top two male and top two female swimmers took in
2 a combined \$1 million. In contrast, FINA announced that 385 swimmers participated in the final
3 meet.

4 53. In short, and on the backs, legs, arms, and shoulders of the world's aquatic athletes,
5 FINA earned \$118 million in 2016 and 2017 revenues, excluding in-kind contributions. It gave
6 12.5 percent—less than \$15 million of that—back to the athletes in prize money. This ratio is
7 substantially lower than that enjoyed by athletes who compete in sports with competitive markets.

8 54. As described herein, FINA is now attempting to prevent anyone but FINA from
9 organizing or controlling top-tier non-Olympic international swimming events, including events
10 where swimmers are competing only in their individual capacities or on teams that are not part of
11 the swimmers' FINA member national federations. Nothing gives FINA the right to: (1) dictate
12 the terms of competition or compensation of swimmers who want to compete outside the
13 Olympics as individuals or as part of a team not affiliated with FINA national federations, or
14 (2) prevent others from organizing and profiting from such additional events for which there is
15 lucrative current or potential demand.

16 **IV. FINA'S UNLAWFUL COLLUSION TO UNREASONABLY RESTRICT**
17 **COMPETITION**

18 55. FINA, in concerted action with its member federations and other entities, has
19 engaged in unlawful and unreasonable anti-competitive conduct to strangle competition in the
20 market for top-tier international swimming competitions. FINA's concerted action with member
21 federations and other entities also has unreasonably restrained competition for access to the supply
22 of top-tier swimmers' services (*i.e.*, appearances and participation in swimming competitions).

23 **1. ISL Principals And Their Innovative League Idea Emerge As Threats**
24 **To FINA Dominance.**

25 56. ISL's principals have spent nearly a decade organizing international events and
26 honing the ISL club model. Its chief sponsor and promoter is Konstantin Grigorishin, a Ukrainian
27 businessman who is a leading shareholder of the Energy Standard Group ("ESG"). ESG, which
28 maintains its own swimming club (the "ESG Club"), remains active in supporting ISL and seeking

1 to get the league up and running. ESG played a central role in planning the Turin Event and
2 entered into key contracts—including with both the Italian Swimming Federation and with many
3 of the top-tier swimmers who were to compete—for that event to go forward.

4 57. As a result of Mr. Grigorishin’s influence and dedication to the development of the
5 sport across the globe, ESG began sponsoring and hosting swimming competitions in Ukraine,
6 Russia and Italy for junior athletes in 2013. These events generally applied and developed the
7 team-based competition format that ISL would later adopt for its own planned events and league.

8 58. By 2016, ESG was hosting the Energy Standard Cup, which featured events for
9 older athletes. Many of these athletes have become prize-winners and record-holders at major
10 international swimming competitions beyond those organized by ISL.

11 59. By 2017, and at substantial expense of energy, time, and money, Mr. Grigorishin
12 and others who would lead ISL had gained extensive experience in organizing and hosting
13 international swimming competitions. Their efforts enjoyed increased recognition and standing in
14 the international swimming community.

15 60. For example, in August 2017, ESG hosted its first “Energy for Swim” competition.
16 That event, held in Rome and organized by the Italian Swimming Federation, featured competition
17 between several top-tier swimmers from ESG’s Club and athletes from the United States, Italian,
18 and Australian national swimming federations. ESG provided athletes with about \$411,000 in
19 appearance fees and charity contributions based on the athletes’ performances. FINA was aware
20 of ESG’s 2017 event, but not yet considering it a threat, FINA limited its response to only token,
21 unofficial opposition.

22 61. On the heels of that event’s success, and with growing support from swimmers,
23 coaches, and others in the competitive-swimming industry, Mr. Grigorishin and ESG began to
24 move forward with their plans for ISL to organize and promote three events in 2018, with the
25 expectation of granting and awarding \$842,400 in total appearance fees and prizes. They also
26 began laying the foundation to organize and promote ISL team-based competitions throughout the
27 late summer and fall of 2019 featuring a dozen teams of 12 men and 12 women each—just under
28 290 swimmers—and more than \$3.1 million in total prizes.

1 62. FINA did not initially consider ESG's Energy for Swim competition in 2017 to be
2 a threat. But that event's success, combined with word that ISL wanted to build on that success,
3 caught FINA's attention. The nascent plans for what became ISL were now fully on FINA's
4 radar. By September 2017, ISL-predecessor representatives were meeting with FINA Executive
5 Director Cornel Marculescu to discuss a path forward that would allow them to organize
6 international events featuring top-tier swimmers organized by teams that would compete in short-
7 course events. After learning of ISL's intentions for future Energy for Swim events, FINA
8 initially expressed general support for ISL moving forward.

9 63. ISL and FINA spent several weeks negotiating new terms with ISL from late
10 September 2017 through December 2017 over ISL's plans for a 2018 event. ISL sought at a
11 minimum to secure FINA's agreement to stand aside and not to block ISL from hosting that single
12 event. Those negotiations, however, broke down.

13 64. ISL nonetheless moved forward. By spring, ISL was in discussions with USA
14 Swimming for that national governing body to host, manage, and organize the ISL event in
15 December 2018. As the result of these negotiations, ISL began planning to host its event in Las
16 Vegas.

17 65. Meanwhile, on April 28-29, 2018, and with cooperation from the Italian Swimming
18 Federation, the ESG Club organized a junior meet in Lignano Sabbiadoro, Italy, drawing nearly
19 100 swimmers from Italy, Hungary, Slovenia, and Serbia. FINA had approved that competition in
20 advance as a qualifying meet for the 3rd Youth Olympic Games in Buenos Aires.

21 66. Focusing on its plans for a December 2018 competition that would use ISL's
22 innovative team-based format, ISL worked to obtain the support of FINA's member federations.
23 To that end, and on May 4, 2018, ISL entered into a memorandum of understanding with Ligue
24 Européenne de Natation, the FINA-recognized "continental federation" comprising the European
25 national federations. ISL also, during a May 23-24, 2018, meeting in Turkey, presented its plans
26 to representatives of the federations from the United States, Australia, United Kingdom, Brazil,
27 France, Russia, and Ukraine.

28

1 **2. FINA Threatens Member Federations Who Might Cooperate With**
2 **ISL.**

3 67. In response to ISL's outreach effort, however, and on or about June 5, 2018,
4 FINA's Mr. Marculescu circulated a letter to every FINA member designed to cripple ISL's plans.
5 ISL, he noted, "is neither recognised by nor affiliated to [sic] FINA." FINA would monitor the
6 matter closely, he warned, and sanction anyone who violated FINA's rule on unauthorized
7 relations. In closing, Mr. Marculescu expressed his hope that all who received it would come
8 away from his message with "a clear and mutual understanding of FINA's competence and
9 jurisdiction in respect to international competitions." No mention was made of any assessment of
10 scheduling conflicts or other excuses later advanced as cover stories for this anti-competitive
11 conduct.

12 68. The threats worked. By around June 13, 2018, USA Swimming notified ISL via a
13 letter of that date that it could not help ISL organize any competition until it received
14 "assurance . . . that FINA is on board with the concept of the ISL and approves of the concept."
15 By this point ISL had already begun looking for alternative partners, including British Swimming.
16 But the USA Swimming representative warned that such a workaround would merely "postpon[e]
17 the important decision of whether the ISL can actually exist alongside FINA." USA Swimming
18 also expressed its deep concern that a December 2018 event without FINA's direct blessing would
19 put U.S. swimmers "at risk"—especially if "FINA sees this December event as a challenge."
20 Fearful of how FINA would react, USA Swimming explained that "we want the assurance that
21 FINA is willing to work with ISL before we commit."

22 69. Within weeks, and in direct response to Mr. Marculescu's June 5 letter, British
23 Swimming likewise distanced itself from ISL's planned December 2018 competition.

24 **3. FINA Offers To Drop Opposition To ISL In Exchange For \$50 Million**
25 **And Works To Undermine ISL Promotional Efforts.**

26 70. By mid-summer, ISL returned to FINA, seeking to salvage what it could. On or
27 around August 17, 2018, ISL CEO Ali Khan wrote to FINA, explaining the details of the
28 competition, disclosing more than \$2 million in combined appearance fees and prize money for

1 the swimmers, and promising that ISL would of course hold the meet “according to FINA
2 technical and doping control rules.” Mr. Khan also explained that ISL would work through a
3 federation partner and seek FINA approval for the competition, which would aid in the
4 “development of the sport of swimming to the mutual benefit of all the swimming community.”

5 71. FINA responded about a week later, in a letter sent by its outside counsel. In that
6 letter, FINA insisted that Mr. Khan’s direct request was invalid; the host federation was required
7 to seek FINA approval “for any international event that they intend to organize.” As nothing had
8 yet been submitted by that organization, the matter was effectively closed: “FINA is neither bound
9 nor willing to consider and discuss applications submitted by a sponsor” such as ISL.

10 72. Mr. Grigorishin of ISL and Mr. Marculescu of FINA resumed direct negotiations
11 over the ensuing weeks. FINA insisted on unreasonable terms: event ownership and FINA-
12 naming rights, plus payment of \$50 million to FINA from ISL over 10 years. ISL refused to give
13 everything to FINA in exchange for FINA doing nothing more than agreeing to halt its anti-
14 competitive threats. Negotiations thus ended by mid-October. By then FINA was complaining to
15 ISL for trying to promote itself to the swimming community, noting in an e-mail by its top officers
16 to Mr. Grigorishin on October 16, 2018, that ISL was releasing promotional videos and explaining
17 that such material, and in particular a video appearing on the website www.SwimSwam.com, a
18 swimming-industry news site, shouldn’t be published because “FINA cannot recognize ISL.”

19 73. In fact, and on information and belief, FINA was more than merely disappointed in
20 ISL’s promotional video. FINA, on information and belief, instructed its agent to submit a
21 “takedown notice” to YouTube under the DMCA to have three ISL videos removed from
22 SwimSwam’s YouTube channel. That notice necessarily required FINA’s agent to assert that the
23 ISL videos infringed on FINA’s copyright. That was false. Nonetheless, and pursuant to standard
24 YouTube procedures, YouTube initially removed the three ISL videos from the SwimSwam
25 channel, only to allow them back up after SwimSwam established that the ISL content was not
26 infringing.

27
28

1 **4. ISL And Italian Swimming Federation Develop Plan For December**
2 **2018 Event.**

3 74. ISL had one final option. Given ESG's prior experience putting on the April 2018
4 junior meet with the Italian Swimming Federation, ISL again turned to the Italian organization for
5 help coordinating its planned December competition.

6 75. Thus, on or about October 17, 2018, the Italian Swimming Federation notified
7 FINA that it intended to host the Turin Event, officially named Energy for Swim 2018, shortly
8 before Christmas.

9 76. As explained to FINA in a letter from the federation dated October 17, 2018, the
10 competition would include swimmers from countries other than Italy. But, the Italian federation
11 president explained, under FINA's rules the Turin Event would not constitute the type of
12 "international competition" that required FINA approval because those swimmers would not be
13 formally representing their member federations. The distinction mattered under FINA's rules.
14 Under the relevant FINA rules, an "international competition" is "any competition organised or
15 sanctioned by FINA, any Continental or Regional Organisation or any Member Federation in
16 which other recognised Federations, clubs or individuals participate." *See* FINA Rule BL 12.1.
17 Such competitions require six months' minimum notice to FINA and must be approved by FINA.
18 Even if this rule passed muster under antitrust law, the plain language of the FINA rules also
19 provides that an "international competition" organized by a member federation, such as the Italian
20 Swimming Federation, does not need FINA approval if the competition is one "in which foreign
21 clubs or individuals *not representing their Member Federation* participate." FINA Rule BL 12.3
22 (emphasis added). Swimmers in the ISL event would not be competing as representatives of their
23 member federation. Thus, FINA approval was, under the plain terms of FINA's own rules, not
24 necessary. And, in any event, regardless of how the rule is interpreted, FINA's restriction against
25 any member or swimmer participating in an unauthorized event is anti-competitive, with the intent
26 and effect of eliminating competition.

27 77. ISL, through its counsel, responded by trying to revive the prior MOU that FINA
28 and ISL were negotiating before FINA's unreasonable demands. If nothing else, ISL sought a

1 standstill truce so that ISL and the Italian Swimming Federation could carry out the Turin Even
2 and not lose their respective investments in it, with FINA and ISL to resume discussions, after the
3 Turin Event, over future competitions. FINA refused to enter the standstill arrangement.

4 78. The Turin Event was to be held shortly before Christmas. Despite long being on
5 FINA's radar—ISL had notified FINA of its intent for a late-December 2018 event no later than in
6 a letter to FINA dated August 17, 2018—FINA insisted at the last minute that its approval was
7 nevertheless necessary, knowing that its last-minute demand would make it impossible for ISL to
8 give six months' notice and would therefore allow FINA to threaten athletes, and ban them from
9 future events if necessary, for “unauthorised relations” if they participated in the meet.

10 **5. FINA Threatens Swimmers And Compels The Aid Of Member**
11 **Federations To Boycott The Turin Event And Thereby To Force Its**
12 **Cancellation.**

13 79. That is what happened. Aware that the letter of its rules did not support its desired
14 outcome, and citing the “urgency of the matter,” FINA's top officers on October 26, 2018,
15 circulated via e-mail a letter calling for its 25-member Bureau to vote to reinterpret the FINA
16 rules. FINA now wanted to interpret the rules to mean that any competition involving
17 international swimmer participation needs FINA approval even if swimmers are competing solely
18 as individuals or on teams that are not part of their FINA national federations. That interpretation,
19 of course, effectively makes swimmers, including U.S. swimmers like Plaintiffs, worldwide
20 indentured servants of FINA. As FINA's captives, swimmers can never compete in any event to
21 earn money for themselves without FINA's advance approval. FINA's interpretation, given
22 FINA's market power derived from its designation as the sole IOC-recognized international
23 swimming federation, on its face is thus as blatantly anti-competitive as it is astonishingly brazen.
24 The purpose behind FINA's last-minute vote request was unstated in the October 26 e-mail calling
25 for a vote. But it was unmistakably clear: the rules needed to be revised by FINA's
26 “interpretation” to prevent ISL's event from going forward.

27 80. Thus, on October 30, the same day that the Bureau purportedly ratified FINA's rule
28 interpretation revision, FINA's Mr. Marculescu circulated a letter to all FINA members, notifying
them that the Turin Event “[was] not recognised by FINA.” He also explained that, pursuant to

1 the newly interpreted rules, FINA should have been notified of the competition more than six
2 months in advance. Of course, FINA had long been on notice of the Turin Event and had been
3 negotiating with ISL over terms for its production, so this six-month notice excuse was a sham.
4 Moreover, even if FINA had been given no notice, which it had, FINA's 11th-hour rule
5 interpretation revision was purposefully designed to make timely notice impossible. FINA further
6 explained that because no notice was given (which was not true), FINA had not approved the
7 competition. Mr. Marculescu warned that all of the world's member federations should maintain
8 "a clear and mutual understanding of FINA's competence and jurisdiction in respect to
9 international competitions." And he warned the dozens of swimmers who had entered contracts to
10 appear in the Turin Event that "FINA will further assess the development of this matter and will
11 consider consequences in application of [FINA punitive sanctions], as and where appropriate."

12 81. ISL, in a letter sent by its counsel, urged FINA to rescind the vote and return to
13 discussions regarding a standstill truce that would allow the Turin Event to proceed as planned.
14 ISL's counsel further explained in that letter that FINA's 11th-hour attempt to rewrite its rules
15 was both contrary to the letter and spirit of the FINA rules and, independently, in obvious
16 violation of U.S. and EU competition law. At that point there was still time for the Turin Event to
17 proceed.

18 82. FINA refused to cease its illegal, anti-competitive conduct. It instead doubled
19 down on its strategy to block the Turin Event and to destroy ISL. Mr. Marculescu separately
20 wrote to the Italian Swimming Federation on the same day in an e-mail bearing the subject line:
21 "NON APPROVED EVENT – UNAUTHORISED RELATIONSHIPS." The Turin Event, he
22 assured the federation, required FINA approval. He noted also that, given that the competition
23 was set for December 21-22, 2018, and that the FINA rules required six months' advance notice,
24 any request for approval "would be clearly late."

25 83. Through its clear threats to the world's top-tier swimmers, FINA now stood firmly
26 between member federations supportive of ISL's approach generally, and the Turin Event in
27 particular, and the swimmers seeking to expand their opportunities.

28 84. FINA did not just leave it to its successful coercion of member federations to

1 convey FINA's threats against swimmers' participation in the ISL event. FINA also directly
2 confronted top swimmers or their coaches. During the fifth stage of FINA's World Cup series,
3 held November 2-4, 2018, in Beijing, Mr. Marculescu, accosted world-renowned swimmer
4 Katinka Hosszú's coach while she was warming up before a race. He warned: if Ms. Hosszú
5 insisted on participating in ISL's event, she would be banned from competing in the upcoming
6 FINA World Swimming Championships.

7 85. Over the half a dozen years since her first FINA World Cup series win in 2012, Ms.
8 Hosszú had become the exclamation mark in FINA's headline swimming competitions. By the
9 time Mr. Marculescu threatened her coach in Beijing over ISL, FINA had thrice named Ms.
10 Hosszú "Swimmer of the Year." In addition to her victory in 2012, Ms. Hosszú had won the
11 2013, 2014, 2015, and 2016 World Cup series and finished second in 2017 (which she went on to
12 do again in 2018). She had won 12 individual gold medals at FINA's biennial World Swimming
13 Championships, including six in 2016. Along the way, Ms. Hosszú had become the sport's top
14 prize-earner, the first to break \$1 million.

15 86. But at the prospect of seeing Ms. Hosszú swimming in an "unauthorized" event
16 hosted by a competitor, FINA threatened to cut her off completely and to destroy her career.

17 87. Shortly after Mr. Marculescu's poolside pressure, and in light of FINA's despotic
18 command, member federations around the world fell in line.

19 88. There was no doubt that the federations would support FINA's command and give
20 force to FINA's threat of sanctions. The national federations exist primarily, if not exclusively, to
21 prepare and present swimmers for competition in the Olympic Games. Their relationship with
22 FINA is necessarily delicate and subservient to FINA's demands: FINA, through its Bureau, has
23 sole authority to recognize national federations, and it may terminate any member "for significant
24 violation of FINA Rules." *See* FINA Rule C 10.3. Given FINA's repeated missives against ISL's
25 efforts, there was no mistaking that allowing swimmers to participate would constitute a
26 "significant violation." And, in any event, FINA had just displayed its willingness and ability to
27 re-interpret and revise its rules as it saw fit to keep out any competition and to keep the swimmers
28 in FINA's thrall.

1 89. So, the federations did what FINA told them to do.

2 90. On November 6, 2018, the Swiss federation sent out an e-mail in which it
3 “explicitly propose[d]” to its swimmers “**to not participate in the “Energy for Swim” [ISL]**
4 **Event 2018!**” If Swiss swimmers ignored that directive, “the Swiss Swimming Federation, as a
5 FINA member organization, would be forced by FINA, [sic] to ban you for at least 1 year from all
6 competition measures.”

7 91. Likewise, a lawyer for the Russian Olympic Committee advised on November 12,
8 2018, the nation’s swimming federation members that in light of the FINA directive, athletes
9 participating in the Turin Event would be disqualified from competing in FINA and federation
10 events for one to two years. Thus, both the Swiss and Russian federation felt compelled to
11 threaten sanctions beyond banning swimmers from just FINA events and the Olympics.

12 92. USA Swimming representatives held a conference call with national team members
13 to discuss the December 2018 Event and FINA’s threat. Swimmers were told by those
14 representatives that in light of FINA’s power over the sport—and particularly access to the
15 Olympic Games—the national federation was in a difficult position. Reluctantly, it informed the
16 swimmers that it would have no choice but to comply with any FINA directive to punish
17 swimmers who participated in the Energy for Swim Turin Event.

18 93. Federations around the world sent similar e-mails, letters, and had similar
19 conference calls with their swimmers, underscoring the impossible position that FINA had put
20 them in. *See, e.g.* Julian Linden, *Our golden girls unite for swimmers’ rights*, Daily Telegraph,
21 Dec. 4, 2018 (quoting Australian federation chief executive: “[W]e’re the meat in the
22 sandwich. . . . We support our athletes but at the same time we are also a part of FINA so we’re
23 pretty much in the middle.”). Critically, the federations, or at least several of the key federations,
24 specifically discussed the issue with each other before determining and agreeing that FINA left
25 them no choice but to put muscle behind FINA’s threats. *See id.* (Australian federation executive:
26 “We’ve discussed the issue with the US, South Africa, the UK and so on[.]”).

27 94. Given that the national member federations (and/or their designee for the sport of
28 swimming) exist to promote the interests of their athletes, however, there is no legitimate

1 explanation for why they would agree among themselves and with FINA to help enforce FINA's
2 threat to ban swimmers from the Olympics if they participated in the Turin Event. The only
3 logical explanation for their doing so was to help try to ensure that only FINA and its member
4 federations would remain the only entities able to organize and promote top-tier international
5 swimming competitions and thereby profit from those events.

6 95. While plans for the Turin Event crumbled under FINA's pressure, ISL and its allies
7 nonetheless tried again to salvage it.

8 96. Although, FINA's last-minute rule reinterpretation was patently unreasonable,
9 USA Swimming, in an e-mail sent on or around November 6, 2018, urged ISL and the Italian
10 Swimming Federation nevertheless to accept FINA's determination that the Turin Event would be
11 an "international competition" and instead seek an "exception" to the six-month notice
12 requirement. Such exceptions had been granted before, USA Swimming's representative noted.
13 And granting it again would allow ISL to develop its league approach—which USA Swimming
14 "continue[s] to believe is an excellent concept." Absent FINA mercy, however, the picture was
15 dire, because "USA Swimming is also bound by FINA rules, and we (our athletes and USA
16 Swimming) are caught in a predicament." FINA's positive reaction "would help solve this
17 immediate challenge for athletes and federations."

18 97. But, having so successfully waged its war of intimidation against the federations
19 and swimmers—both personally and through member federations with no real choice but to
20 comply—FINA refused. Thus, given the real threat to the livelihoods and dreams of the
21 swimmers facing FINA's threat of suspension, the Italian Swimming Federation and ISL canceled
22 the Turin Event on November 15, 2018, under protest. The Italian Swimming Federation notice,
23 sent out via letter over the federation president's signature, bemoaned "the absence of any
24 explanation or evidence to genuinely justify FINA's actions," concluding "that FINA's true
25 motive is to safeguard its dominant position as the sole and exclusive license holder of aquatics
26 sports."

27 98. News of the cancellation at FINA's hands spread across the sports world. Athletes
28 criticized FINA on social media. Adam Peaty, an Olympic gold winner and five-time World

1 Champion, reported on Twitter that he was “incredibly disappointed” that the Turin Event was
2 cancelled and suggested that swimmers “need to ask why.” *See Adam Peaty criticises decision to*
3 *scrap International Swimming League*, BBC, Nov. 15, 2018,
4 <https://www.bbc.com/sport/swimming/46224766>. On the other side of the globe, Olympic gold
5 medalist Cate Campbell complained that FINA was clearly “putting swimmers at the bottom of its
6 priority list.” *See Julian Linden, Our golden girls unite for swimmers’ rights*, Daily Telegraph,
7 Dec. 4, 2018. She added “I can guarantee that just about any athlete in the world would have said
8 that this ISL is a good thing . . . but FINA’s worried that it’s going to cut down on its revenue.”
9 *Id.* News outlets, meanwhile, noted the obvious: the Turin Event evaporated only because of
10 FINA’s threat. *See, e.g., Graham Dunbar, Swim meet canceled after FINA’s threat to ban*
11 *athletes*, Associated Press, Nov. 15, 2018, [https://www.washingtonpost.com/sports/swim-meet-](https://www.washingtonpost.com/sports/swim-meet-canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-1ff263609a31_story.html?utm_term=.fb66362c322c)
12 [canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-](https://www.washingtonpost.com/sports/swim-meet-canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-1ff263609a31_story.html?utm_term=.fb66362c322c)
13 [1ff263609a31_story.html?utm_term=.fb66362c322c](https://www.washingtonpost.com/sports/swim-meet-canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-1ff263609a31_story.html?utm_term=.fb66362c322c).

14 99. For its part, having been called out for its failure to justify its anti-competitive
15 squeeze against ISL, FINA created after-the-fact pretexts for its nakedly anti-competitive conduct,
16 dissembling in a November 16, 2018, statement that its conduct was necessary to maintain a
17 “coherent” and “healthy” event calendar consistent with FINA’s “long-standing agreements and
18 precedents.” The Turin Event, FINA said, “adds an extra layer of complexity.” *See FINA*
19 *Statement*, Nov. 16, 2018, at <http://www.fina.org/news/fina-statement-2>. What that meant,
20 exactly, remained unexplained. Neither did FINA provide any further detail or rationale for its
21 anti-competitive conduct in a December 3, 2018, letter to FINA members. In that letter, sent over
22 Mr. Marculescu’s signature, FINA reiterated its vague concern for the “harmonious development
23 of the calendar,” and suggested that was the reason it exerted its overwhelming power to crush the
24 Turin Event. Further, and highlighting the fact that FINA intends to limit competition and keep
25 itself, alone, atop the market, he wrote that “FINA will resist any challenges to its status as the
26 international non-governmental organisation governing the sport of swimming at the world
27 level[.]”

28 100. Finally, on December 5, 2018, FINA revealed its true motives. In response to

1 swimmer criticism (and awareness of this inevitable lawsuit), FINA announced that it would itself
 2 be launching an “innovative” new competition in 2019 to attract “the best athletes” in the sport.
 3 See Nick Hope, *Adam Peaty criticism leads to FINA promising to ‘modernise,’* BBC, Dec. 5,
 4 2018, <https://www.bbc.com/sport/swimming/46449762>. FINA again maneuvered that the ISL
 5 event was sprung on FINA at the last minute and allegedly could not be approved due to “short
 6 notice.” *Id.* But repeating this misdirection did not make it true. And FINA could not hide
 7 reality: Having just three weeks before rationalized its crackdown against ISL because the
 8 additional ISL meets would unduly disrupt the FINA calendar, FINA now intended to add *its*
 9 *own* contests to the race calendar—and, on information and belief—in a format that will closely
 10 follow, if not outright copy, the team-based, short-course innovations that ISL and its affiliates
 11 have developed for years.

12 101. Meanwhile, ISL, through Mr. Grigorishin’s letter to swimmers, vowed to pay the
 13 dozens of swimmers, including Plaintiffs, who had signed up for the Turin Event with appearance-
 14 fee contracts half of their fees even though FINA forced its cancellation. Despite the setback, he
 15 said, ISL will continue to plan similar competitions: “Our ambitious plans for 2019 remain
 16 undiminished.” Plaintiffs, and other swimmers like them, would like to be able to participate in
 17 such future events without interference from FINA.

18 **V. FINA’S UNLAWFUL MONOPOLY AND MONOPSONY**

19 **A. FINA’s Unlawful Monopoly Power In The Market For Top-Tier International** 20 **Swimming Competitions**

21 **1. The Organization And Promotion Of Top-Tier International** 22 **Swimming Competition Constitutes The Relevant Product Market.**

23 102. The relevant product market for Plaintiffs’ monopoly claims is the market for the
 24 organization and promotion of top-tier international swimming competitions.

25 103. FINA itself and other entities that FINA approves organize and promote
 26 international competitions featuring the world’s top swimmers. These events are held in venues
 27 around the world. The event organizers sell tickets to these events. These events also generate or
 28 are able to generate broadcast rights, merchandise, sponsorships, and collection of royalties or
 other income derived from FINA, or from event-related intellectual property rights.

1 104. A commercially successful promotion of a top-tier international swimming
2 competition requires multiple events of different styles and distances. It necessarily requires the
3 participation of top-tier swimmers. Such athletes are generally deemed to be swimmers who have
4 reputations for winning international competitions or specific events at such competitions,
5 including but not limited to the Olympic Games, the FINA Swimming World Cup, the FINA
6 World Swimming Championships, and the FINA World Championships. The top-tier swimmers
7 are often, but not necessarily, athletes who swam for NCAA Division I collegiate teams and/or are
8 members or prior members of their country's national team. Top-tier swimmers are also those
9 who have either set national or world records in their respective events, or have closely competed
10 with or defeated those swimmers who have. Such swimmers are well-known in the swimming
11 community and can and do attract a large audience of fans. These athletes have almost universally
12 trained intensively since they were children.

13 105. Top-tier swimmers enjoy brief careers. The youngest are most likely to be in their
14 mid- to late teenage years, and those in their late twenties are generally considered to be in the
15 twilight of their careers. Thus, even a two-year ban from FINA-approved competitions can cause
16 top-tier swimmers to lose significant earning potential and brand-development opportunities for a
17 substantial portion—as much as one-fifth or one-quarter—of their careers. The mere threat of
18 such a ban is sufficient to coerce most or all swimmers not to defy FINA.

19 106. The organization and promotion of top-tier international swimming competitions is
20 not reasonably interchangeable with the promotion of any other sporting event. Consumers who
21 attend top-tier international sporting events do so because of their dedication to, and appreciation
22 of, the sport and its best athletes. Given that dedication and appreciation, as well as the many
23 differences between competitive swimming and other sports, such as soccer, American football,
24 baseball, and the like, other sporting events—including other *aquatic* events, such as high-diving
25 and artistic swimming—are not interchangeable with top-tier international swimming
26 competitions. For similar reasons, the organization and promotion of top-tier international
27 swimming competitions is not reasonably interchangeable with the promotion of any other form of
28 entertainment. Similarly, the highly specialized skills required to participate in the market as a

1 supplier of talent—*i.e.*, a swimmer—means that other aquatic events are not substitute uses of
2 swimmers skills and generally cannot serve as a viable competitor for their services. This means
3 that any firm that is able to exclude other organizers of competitive swimming events effectively
4 has both monopoly control over consumers (as well as ancillary participants in event production)
5 and monopsony control over swimmers.

6 107. Indeed, if FINA or FINA-approved event organizers were to raise ticket prices,
7 increase sponsorship or host-city fees, and impose other higher costs related to the organization
8 and promotion top-tier international swimming events by a small, but significant amount over a
9 non-transitory period of time, those increases would not decrease the net income or profit that
10 FINA or the FINA-approved organizers enjoy from exploitation of this market.

11 108. The relevant geographic product market is the entire world. Top-tier international
12 swimming competitions are held in cities across the globe. Competitions may be organized, in
13 effect, anywhere a sufficiently sized pool exists or may be installed, which means events can be
14 and are held without regard for climate or topography of any particular location. Specifically,
15 several FINA events or FINA-approved events featuring top-tier swimmers from multiple
16 countries occur in cities around the world every year. Further, top-tier international swimming
17 competitions are governed generally by the same technical rules and types of races, regardless of
18 where such competitions are held. The existing top-tier international swimming competitions also
19 draw audiences and patrons from around the world.

20 109. Moreover, FINA's conduct has caused obvious and actual anti-competitive effects.
21 Not least of these was the forced cancellation of the Turin Event, a result that necessarily reduced
22 output of the market by depriving customers of a top-tier international swimming competition—a
23 group that includes fans, broadcasters, media, sponsors, and licensees—the opportunity to attend,
24 view or profit from such competitions. The blatantly anti-competitive effects are so obvious that
25 the general contours of a market defined as set forth above are more than sufficient to allow the
26 jury to determine the scope and legality of FINA's monopoly power.

27
28

1 **2. FINA Has Unlawfully Monopolized Or Attempted To Monopolize The**
2 **Market For Top-Tier International Swimming Competitions.**

3 110. FINA's control over and power in the market for top-tier international swimming
4 competitions is so complete that FINA constitutes a monopoly.

5 111. FINA obtained and maintains that monopoly power over the market through anti-
6 competitive conduct as alleged in this Complaint. FINA's exclusive ability to control access to
7 the Olympic Games, among other high-profile and potentially lucrative competitions, grants it
8 immense power over the world's swimmers. Further, FINA's rules against unauthorized
9 relationships serve, intentionally, to restrict competitors' access to the necessary inputs—chiefly,
10 the services of top-tier swimmers—to enter into and compete in the market.

11 112. Specifically, and as set forth above, FINA grants itself complete authority under its
12 rules to ban a swimmer from participating in events that serve as the Olympic Games qualifying
13 events for no reason other than the swimmer competed in a top-tier international swimming event
14 that FINA did not itself organize or approve. Whether FINA does or does not actually ban such a
15 swimmer, the threat is real and severe enough to devastate competitive swimming. Because of the
16 importance of the Olympic Games to participants in the labor market, this threat essentially gives
17 FINA monopsony control over the labor market, which in turn provides its monopoly power over
18 the non-Olympic portion of the output market.

19 113. As alleged below, FINA's power to so control and restrict access to the Olympic
20 Games constitutes monopsony power over the market for top-tier swimmer services. That
21 unlawful power grants FINA the means to force all top-tier swimmers to deal exclusively with
22 FINA and thereby to foreclose competition in the market for the organization and promotion of
23 top-tier international swimming competitions. It is this simple: If FINA tells top-tier swimmers
24 that they cannot compete for the Olympic Games if they provide their services to ISL events, those
25 swimmers are effectively *forced under economic coercion to back out of their contracts* with ISL
26 and/or with ISL-affiliated entities to compete at ISL events. FINA's anti-competitive strategy thus
27 results in a complete restriction of the supply of top-tier swimmers, without which ISL and others
28 cannot compete in the market for organizing and promoting such competitions. It also serves to

1 enforce a monopsony of that related labor market, giving FINA a 100 percent share, or nearly a
 2 100 percent share, of all world-class swimmers. The result is that FINA has a 100 percent share,
 3 or near 100 percent share, of top-tier international swimming events.

4 114. FINA's exercise of such power is not merely theoretical. Among other examples,
 5 FINA's suppression of the planned Turin Event constitutes direct evidence of FINA's monopsony
 6 power.

7 115. In the alternative, FINA's conduct as described in this Complaint constitutes
 8 attempted monopolization. Its efforts to prevent ISL from promoting and organizing an
 9 independent top-tier international swimming competition and to restrict the ability of top-tier
 10 swimmers from competing in ISL events were at a minimum likely to result in the monopolization
 11 of the market for promoting and organizing such events. FINA intended to acquire such power
 12 over the market, as evidenced by, among other facts alleged above, its multiple statements
 13 regarding ISL's non-recognition and its overt threats to member federations and top-tier swimmers
 14 who might have otherwise participated in hosting or competing in ISL events. FINA's conduct
 15 effectively prevented ISL from organizing its events and, if left unchecked, will continue to
 16 prevent ISL and others from competing in the market, such that FINA's attempted
 17 monopolization—if not already achieved—will be permanently realized.

18 **B. FINA's Unlawful Monopsony Power In The Market For The Services Of Top-**
 19 **Tier Swimmers**

20 **1. The Services Of Top-Tier Swimmers Constitutes The Relevant Input**
 21 **Market.**

22 116. The relevant input market for Plaintiffs' monopsony claims is the market for the
 23 organization and promotion of top-tier international swimming competitions.

24 117. As alleged above, top-tier swimmers are generally deemed to be athletes who have
 25 won international competitions or specific events at such competitions, including but not limited
 26 to the Olympic Games, the FINA Swimming World Cup, the FINA World Swimming
 27 Championships, and the FINA World Championships. The top-tier swimmers are often, but not
 28 necessarily, athletes who swam for NCAA Division I collegiate teams and/or are members or prior
 members of their country's national team. Top-tier swimmers are also or alternatively those who

1 have either set national or world records in their respective events or have closely competed with
2 or defeated those swimmers who have. Such swimmers are well-known in the swimming
3 community and can, and do, attract a large audience of fans. These athletes have almost
4 universally trained intensively since they were children.

5 118. As noted above, top-tier swimmers enjoy only brief careers that generally end by
6 the time they reach 30 years old. They accordingly must do what they can to maximize their
7 potential during the limited swimming career they can enjoy. Even aside from being barred from
8 the Olympic Games, a two-year ban from FINA-approved events can be expected to result in
9 major income loss for a substantial portion of their life as a top-tier swimmer.

10 119. Top-tier swimmers are compensated in various ways. Those who are members of
11 their national teams frequently enjoy some level of stipend or other direct financial support. Up to
12 60 members of the U.S. national team who have exhausted or have agreed to forego their
13 eligibility to swim for collegiate teams, for example, are paid a monthly stipend of up to \$3,000
14 per month. Beyond that, top-tier swimmers earn prize money depending on their level of success
15 at international competitions, sponsorships or endorsements that to a significant extent depend on
16 the swimmers' success in the pool.

17 120. Athletes who are considered top-tier swimmers cannot reasonably switch to other
18 non-swimming sports and perform at or near the same level. Top-tier swimmers have generally
19 spent their entire lives training their skill set and preparing their bodies for prowess in the pool.
20 While the level of athleticism that top-tier swimmers inherited and developed is necessary for any
21 crossover success in other, non-swimming sports, it is not sufficient for such crossover endeavors.
22 Top-tier swimmers could not transition to other sports in materially sufficient numbers to prevent
23 a buyer of their services from obtaining and exploiting monopsony power for top-tier swimmer
24 services or to prevent that monopsonist from artificially suppressing the compensation paid to
25 those swimmers by even a large amount for a long period of time.

26 121. The relevant geographic market for the services of top-tier swimmers is the entire
27 world. There are only a few hundred such swimmers across the entire world, and while large
28 proportions of these swimmers reside in a few countries (*e.g.*, the United States), top-tier

1 swimmers can compete and earn reasonable compensation for their services only in a market that
2 allows them to compete with the best swimmers, wherever they may reside. Necessarily, top-tier
3 international swimming competitions that rely on the swimmers' services include swimmers from
4 multiple nations and are held throughout the world.

5 122. Moreover, FINA's conduct has caused obvious and actual anti-competitive effects.
6 Not least of these is the complete restriction on swimmers' participation in the Turin Event. The
7 anti-competitive effects of FINA's restriction of the input market are so obvious that the general
8 contours of the input market defined as set forth above are more than sufficient to allow the jury to
9 determine the scope and legality of FINA's monopsony power.

10 **2. FINA Has Unlawfully Monopsonized Or Attempted To Monopsonize**
11 **The Market For The Services Of Top-Tier Swimmers.**

12 123. FINA's control over and power in the market for the services of top-tier swimmers
13 is so complete that it constitutes a monopsony. FINA obtained and maintains, or attempts to
14 obtain and maintain, that power over the market through the anti-competitive conduct alleged in
15 this Complaint. FINA's exclusive ability to control access to the Olympic Games, among other
16 high-profile and potentially lucrative competitions, grants it immense power and control over the
17 world's swimmers. Further, FINA's rules against unauthorized relationships serve, intentionally,
18 to prevent top-tier swimmers from offering their services to organizers and promoters of top-tier
19 international swimming competitions that are not FINA-approved.

20 124. Specifically, and as set forth above, FINA enjoys complete authority under its
21 rules—as set, interpreted, and enforced by FINA and its member federations—to ban a swimmer
22 from participating in events that serve as the Olympic Games qualifying events for no reason other
23 than the swimmer competed in a top-tier international swimming event that FINA did not itself
24 organize or approve. Whether FINA does or does not actually ban such a swimmer, the threat is
25 real and severe enough to prevent swimmers from participating in non-FINA events on the
26 swimmers' hope that FINA will not enforce its rules and will not follow through with its ban
27 threat. The threat is also sufficiently credible that countries' federations warn swimmers not to
28 participate in non-FINA events on pain of being banned, as alleged above.

1 125. FINA’s power and control grants it the means to foreclose top-tier swimmers’
2 ability to service non-FINA competitions, and specifically ISL, and to suppress the non-FINA
3 demand for those swimmers’ services. FINA’s exercise of such power is not merely theoretical.
4 Among other examples, FINA’s crackdown against the December 2018 Event unlawfully
5 prevented top-tier swimmers *who already had contracts to participate* from proceeding in that
6 event. FINA thus with its boycott unlawfully deprived ISL of the opportunity to pay top-tier
7 swimmers for their services.

8 126. In direct response to the Turin Event, and on the heels of forcing its cancellation
9 by leveraging its monopsony power to restrict the supply of top-tier swimmers available to
10 compete in that event, FINA on November 6, 2018, announced that it would increase the total
11 prize money available at the FINA World Swimming Championships, set for December 11-16,
12 2018. Just days before announcing that increase, FINA had confirmed that prizes for its
13 championship competition would remain at just below \$1.2 million. But it had since sabotaged
14 the Turin Event, drawing criticism from swimmers and fans around the world. In a sop to
15 swimmers, FINA now increased the total prize money from about \$1.2 million to about \$2
16 million. Even in raising prize money, FINA demonstrated its market power: the ability to control
17 price, independent of any changes in market conditions. This is a textbook definition of market
18 power.

19 127. Moreover, FINA’s conduct as described in this Complaint constitutes attempted
20 monopsonization of the market for the services of top-tier swimmers. Its rules and efforts to
21 prevent top-tier swimmers from competing in ISL events—or in any other unauthorized event—
22 are at a minimum likely to result in the monopolization of this market. FINA has intended to
23 acquire such power over the market, as evidenced by, among other facts alleged above, its
24 unambiguous market-restricting rules, its multiple statements regarding ISL’s non-recognition,
25 and its overt threats to member federations and top-tier swimmers who might have otherwise
26 hosted or competed in ISL events. FINA’s conduct precluded dozens of top-tier swimmers from
27 participating in the Turin Event. If left unchecked, FINA will continue to prevent top-tier
28 swimmers from offering their services to competing buyers in the market, such that FINA’s

1 attempted monopsonization—if not already achieved—will be permanently realized.

2 128. As a result of FINA’s unlawful monopsony over the input market, swimmers see
3 lower compensation levels than they would earn in a competitive market. They also suffer a
4 reduction in opportunities to compete. Further, it diminishes the sport generally by dynamically
5 lowering the incentive for future top-tier swimmers to dedicate the significant energy and
6 resources into becoming the best and entering the market, an outcome that, by the fact of reduced
7 competition, makes it less likely that records will be broken or threatened by more swimmers,
8 which in turn lowers interest in the sport.

9 **CLASS ALLEGATIONS**

10 129. Plaintiffs bring this action on behalf of themselves and all others similarly situated
11 (the “Proposed Class”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).
12 The Proposed Class is defined as:

13 All natural persons who are eligible to compete in swimming world
14 championship and Olympic Game competitions. Excluded from
15 this class are members of the boards of directors, boards of trustees,
16 boards of governors, and senior executives of FINA and its member
federations, and any and all judges and justices, and chambers’
staff, assigned to hear or adjudicate any aspect of this litigation.

17 **A. Numerosity**

18 130. Plaintiffs do not, as yet, know the exact size of the Proposed Class, because such
19 information is in the exclusive control of FINA and its co-conspirators. Upon information and
20 belief, based upon the nature of the trade and commerce involved, there are hundreds of members
21 of the Proposed Class residing in multiple countries. Joinder of all members of the Proposed
22 Class, therefore, is not practicable.

23 **B. Commonality**

24 131. The questions of law or fact common to the Proposed Class include but are
25 not limited to:

- 26 a. whether FINA’s conduct violates the Sherman Act;
27 b. whether FINA’s conspiracy and associated agreements restrains trade,
28 commerce, or competition for elite swimmers;

- 1 c. whether Plaintiffs and the Proposed Class are suffering antitrust injury or
- 2 have been threatened with injury;
- 3 d. whether injunctive relief is necessary for Plaintiffs and the Proposed Class
- 4 to be able to swim in any international competition free from FINA's
- 5 threats of banishment from other international competitions, including the
- 6 FINA World Championships and the Olympic Games;
- 7 e. whether FINA and its co-conspirators have acted or are acting on grounds
- 8 generally applicable to the Proposed Class, thereby making final injunctive
- 9 relief appropriate with respect to the Proposed Class as a whole;
- 10 f. the difference between the compensation Plaintiffs and the Proposed Class
- 11 receive from FINA and its co-conspirators, and the potential compensation
- 12 Plaintiffs and the Class would receive from FINA and its co-conspirators in
- 13 the absence of the illegal acts, contracts, combinations, and conspiracy
- 14 alleged herein;
- 15 g. whether FINA and its co-conspirators has engaged or is engaging in a
- 16 combination and conspiracy among themselves to agree to prevent Plaintiffs
- 17 and the Proposed Class from swimming in competitions of their choice in
- 18 the United States and around the world;
- 19 h. whether FINA and its co-conspirators has engaged or is engaging in a
- 20 combination and conspiracy among themselves to agree to threaten to ban
- 21 Plaintiffs and the Proposed Class from swimming in FINA World
- 22 Championships and the Olympic Games if they participated in swimming
- 23 competitions in the United States and around the world that FINA had not
- 24 approved; and
- 25 i. the type and measure of damages suffered by Plaintiffs and the Proposed
- 26 Class.

27 132. These and other questions of law and fact are common to the Proposed Class, and
28 predominate over any questions affecting only individual members of the Proposed Class.

1 **C. Typicality**

2 133. Plaintiffs' claims are typical of the claims of the Proposed Class. Like all members
3 of the Proposed Class, Plaintiffs have been harmed by FINA's unlawful conduct in that FINA has
4 prevented and continues to prevent them from participating in ISL events, or other top-tier
5 international swimming competitions that FINA does not formally approve, by threatening to ban
6 them from future FINA events. Likewise, like all members of the Proposed Class, Plaintiffs have
7 been harmed by FINA's unlawful conduct in that FINA effectively forced the cancellation of the
8 Turin Event, thereby depriving them (and all members of the Proposed Class) from competing in
9 that event. Further, Plaintiffs' damages, in the form of unrealized appearance fees, are typical of
10 those suffered by all of the Proposed Class members. The factual bases for the claims of the
11 Proposed Class are common to all members, and their claims arise from a common course of
12 unlawful conduct.

13 **D. Adequacy of Representation**

14 134. Plaintiffs will fairly and adequately represent the interests of the Proposed Class
15 and have no conflict with the interests of the Proposed Class.

16 135. Plaintiffs have retained counsel experienced in antitrust and class action litigation
17 to represent themselves and the Proposed Class.

18 **E. Superiority**

19 136. This class action is superior to the alternatives, if any, for the fair and efficient
20 adjudication of this controversy. Prosecution as a class action will eliminate the possibility of
21 repetitive litigation. There will be no material difficulty in the management of this action as a
22 class action. By contrast, prosecution of separate actions by individual members of the Proposed
23 Class would create the risk of inconsistent or varying adjudications, and be inefficient and
24 burdensome to the parties and the Court.

25 **FIRST CAUSE OF ACTION**

26 **Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1**

27 137. Plaintiffs incorporate and re-allege the foregoing allegations as if set forth fully in
28 this paragraph.

1 138. FINA successfully compelled the support of multiple national federations to agree
2 among themselves and with FINA to carry out FINA's conduct described above. Those national
3 federations are economic actors independent from each other and from FINA. Because the
4 member federations and FINA are competitors in the market for the promotion and organization of
5 top-tier international swimming competitions, the resulting agreements to act as described above
6 constitute a horizontal agreement. In the alternative, and as the result of its framework as set forth
7 above, FINA is the instrumentality of its member federations and its conduct therefore is
8 necessarily the result of a horizontal agreement.

9 139. Those national federations, through promulgation and interpretation of FINA rules
10 and FINA's threats to those federations, have entered into a continuing agreement, combination, or
11 conspiracy in restraint of trade.

12 140. The agreement, combination, or conspiracy is driven by the intent to restrain, and it
13 certainly has the effect of restraining, competition in the market for both the supply of labor of
14 world-class swimmers and the prices which those swimmers can command at international
15 competitions.

16 141. As a result of the FINA-compelled agreement, combination, or conspiracy between
17 itself and its economically independent member federations, FINA enjoys exclusive control over
18 top-tier international swimming competitions. FINA either hosts such events itself or requires
19 entities seeking to host such competitions to obtain FINA approval before those events may
20 effectively be held.

21 142. The FINA-driven agreement, combination, or conspiracy and in particular the
22 conduct that resulted in the cancellation of the Turin Event, had the specific intent of suppressing
23 ISL's efforts to enter the market and to broaden the opportunities for the world's top swimmers.
24 FINA and its conspirators control the market for international swimming competitions completely,
25 and the successful plan to block ISL from entering the market is a naked attempt to maintain that
26 control and deprive swimmers of additional opportunities, thereby depressing the prices the
27 swimmers may command for their participation and successes in international competitions.
28 Further, the concerted refusal to deal with ISL absent ISL's total capitulation to FINA's demand

1 for tribute, directly prevented ISL and the world's top swimmers from forming relationships or, in
2 some cases, to see the relationships that have been formed, from bearing commercial fruit. As
3 such, the FINA-driven agreement, combination, or conspiracy constitutes an unlawful boycott
4 against ISL that effectively deprived ISL of the supply of labor from the world's best swimmers.
5 The anti-competitive nature of this conduct is manifest. And FINA cannot provide any plausible
6 pro-competitive or other justification. As such, the conduct constitutes a *per se* violation of
7 Section 1 of the Sherman Act.

8 143. Further, the FINA-driven agreement, combination, or conspiracy has resulted in an
9 agreement, understanding, or concerted action between and among FINA and FINA's co-
10 conspirators that results in competitive and economic advantages to FINA over all other non-
11 FINA entities that are located in the United States or, like ISL, that intend to organize for
12 commercial purposes international competitions in the United States.

13 144. The FINA-driven agreement, combination, or conspiracy has resulted in an
14 agreement, understanding, or concerted action between and among FINA and FINA's co-
15 conspirators that results in FINA having firm, anti-competitive control over the prices that the
16 world's top swimmers may command for their services. Such control reduces compensation and
17 the number of opportunities to compete.

18 145. The FINA-driven agreement, combination, or conspiracy is facially anti-
19 competitive and inherently suspect. In particular, it is the result of concerted action that denies
20 ISL and other entities the ability to organize international swimming competitions featuring the
21 world's best swimmers unless they first obtain FINA approval under FINA's onerous,
22 extortionate, and anti-competitive terms. The anti-competitive nature of the FINA-driven
23 agreement, combination, or conspiracy is obvious. Anyone can see it without resort to an in-depth
24 analysis of the industry. So, FINA's conduct should be found to constitute a *per se* violation of
25 Section 1 of the Sherman Act.

26 146. Moreover, even if FINA were allowed to try to justify the conduct described in this
27 Complaint, FINA would fail. There remain reasonably less-restrictive means to promote any such
28 conceivable alleged purpose behind FINA's conduct. Accordingly, even under a rule-of-reason

1 analysis, the FINA-driven agreement, combination, or conspiracy violates Section 1 of the
2 Sherman Act.

3 147. The FINA-driven agreement, combination, or conspiracy occurred in and
4 reasonably restrained interstate commerce. It has prevented ISL already from holding a planned
5 event in the United States, as well as in Europe. It has already deprived the top-tier swimmers
6 who contracted with ISL for the Turin Event from realizing the full amount of their appearance
7 fees and benefitting from the market exposure that their participation would engender. And the
8 continuing nature of the FINA-driven collusive conduct means that these U.S. swimmers—and
9 others—will continue to be deprived of the ability to maximize their commercial value. Further,
10 the challenged conduct deprives millions of U.S. fans of swimming competition the ability to
11 enjoy an expanded competition calendar. All of these injuries to competition will continue to be
12 suffered until FINA is enjoined from further engaging in that activity.

13 148. Pursuant to section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiffs and the
14 Proposed Class seek the issuance of an injunction against FINA, preventing and restraining the
15 violations alleged herein.

16 **SECOND CAUSE OF ACTION**

17 **Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2**

18 149. Plaintiffs incorporate and re-allege the foregoing allegations as if set forth fully in
19 this paragraph.

20 150. FINA, either acting alone or with its co-conspirators as set forth above, has
21 obtained for FINA: (1) a monopoly in the market for top-tier international swimming competitions
22 and (2) a monopsony in the market for the supply of the services of top-tier swimmers. FINA has
23 willfully maintained that power by the anti-competitive conduct set forth above, not least by
24 shutting out ISL from the market for hosting international swimming competitions and destroying
25 ISL as a potential competitor to FINA-sponsored or FINA-sanctioned international competitions.

26 151. In the alternative, FINA, either acting alone or with its co-conspirators as set forth
27 above, specifically intended to and tried to obtain for FINA the monopoly and monopsony power
28 by engaging in the conduct described above. Such conduct is likely to result in the

1 monopolization and/or monopsonization of the relevant markets alleged in this Complaint. If not
2 stopped, FINA's goal of monopoly and monopsony power will be achieved, to the detriment of
3 swimmers, competing event organizers, and consumers of top-tier international swimming
4 competitions (including fans, broadcasters, media outlets, sponsors and licensees).

5 152. FINA's conduct, whether alone or with its co-conspirators as set forth above,
6 occurred in and unreasonably restrained interstate commerce.

7 153. Further, FINA's efforts, whether alone or with its co-conspirators as set forth
8 above, to obtain and maintain its monopoly power has harmed Plaintiffs and competition in the
9 relevant market as set forth above and will continue to do so until FINA is enjoined from further
10 engaging in conduct to preserve and protect its monopoly power.

11 154. Pursuant to section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiffs and the
12 Proposed Class seek the issuance of an injunction against FINA, preventing and restraining the
13 violations alleged herein.

14 **THIRD CAUSE OF ACTION**

15 **Tortious Interference With Contractual Relations**

16 155. Plaintiffs incorporate and re-allege the foregoing allegations as if set forth fully in
17 this paragraph.

18 156. Members of the Proposed Class each had a contract under which they were to
19 receive compensation for their participation in the Turin Event.

20 157. FINA knew about the existence of these contracts and the nature of their terms. It
21 accordingly knew that the members of the Proposed Class stood to benefit from their respective
22 appearances at the Turin Event.

23 158. Nonetheless, and as described above, FINA rendered it impossible for the Proposed
24 Class to perform their obligations to ISL and/or the ISL-affiliated clubs.

25 159. As set forth above, FINA had every intention to prevent the members of the
26 Proposed Class from participating in the Turin Event and took measures necessary to fulfill that
27 intention—in particular by threatening to ban the members of the Proposed Class from
28 participation in future FINA events, up to and including the Olympic Games.

1 160. As a result of FINA’s interference, the members of the Proposed Class could not
2 recover half of their guaranteed appearance fees. But for FINA’s intentional efforts to prevent the
3 December 2018 Event from proceeding, the class members would have enjoyed the full payment
4 promised in their respective appearance-fee contracts.

5 **PRAYER FOR RELIEF**

6 Plaintiffs pray that this Court enter judgment on their behalves and that of the Proposed
7 Class by adjudging and decreeing that:

8 A. This action may be maintained as a class action, with Plaintiffs as the designated
9 Class representatives and their counsel as Class counsel;

10 B. Defendant and its co-conspirators have engaged in a trust, contract, combination, or
11 conspiracy in violation of Sections 1 and 2 of the Sherman Act, and that Plaintiffs and the
12 members of the Proposed Class have been damaged and injured in their business and property as a
13 result of this violation;

14 C. The alleged combinations and conspiracy be adjudged and decreed to be *per se*
15 violations of the Sherman Act;

16 D. Plaintiffs and the members of the Proposed Class they represent recover threefold
17 the damages determined to have been sustained by them as a result of the conduct of Defendant
18 and its co-conspirators, complained of herein, and that judgment be entered against Defendant
19 FINA for the amount so determined;

20 E. For prejudgment and post-judgment interest;

21 F. For injunctive relief, enjoining FINA from unlawfully interfering in any way with
22 the ability of ISL or any other person or entity from organizing or promoting swimming
23 competitions, including but not limited to an injunction prohibiting FINA from unlawfully
24 enforcing any sanctions against either swimmers or FINA member federations who participate in
25 such competitions;

26 G. For equitable relief, including a judicial determination of the rights and
27 responsibilities of the parties;

28 H. For attorneys’ fees;

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- I. For costs of suit; and
- J. For such other and further relief as the Court may deem just and proper.

Dated: December 7, 2018

FARELLA BRAUN + MARTEL LLP

By: /s/ Neil A. Goteiner
Neil A. Goteiner

Attorneys for Plaintiffs and the Proposed Class

Dated: December 7, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Eric B. Fastiff
Eric B. Fastiff

Attorneys for Plaintiffs and the Proposed Class

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a jury trial for all claims and issues so triable.

Dated: December 7, 2018

FARELLA BRAUN + MARTEL LLP

By: /s/ Neil A. Goteiner
Neil A. Goteiner

Attorneys for Plaintiffs and the Proposed Class

Dated: December 7, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Eric B. Fastiff
Eric B. Fastiff

Attorneys for Plaintiffs and the Proposed Class