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**COUNSEL FOR THE PLAINTIFFS IN THE MOUNTAIN WEST CONFERENCE
LAWSUIT ISSUES REBUTTAL TO LEAKED AND WHOLLY INSUFFICIENT
MOUNTAIN WEST CONFERENCE INVESTIGATION CLOSE-OUT LETTER**

The undersigned is legal counsel to San Jose State University (SJSU) women's volleyball student-athlete Brooke Slusser and SJSU Women's Volleyball Associate Head Coach Melissa Batie-Smoose, who are Plaintiffs in a lawsuit filed on Wednesday, November 13, 2024, against the Mountain West Conference. Recently, the undersigned received media inquiries concerning a one-page letter dated November 15, 2024, from Mountain West Conference (MWC) Deputy Commissioner **Bret A. Gilliland** that was leaked to news media.

Deputy Commissioner Gilliland's letter claims that the MWC conducted "a thorough investigation into . . . serious assertions" arising from the October 2, 2024, women's volleyball match between SJSU and Colorado State University (CSU) and "the Conference office has determined no disciplinary action is warranted and considers this matter closed."

However, because the MWC's investigation was inadequate, and anything but thorough, and because the MWC's close-out letter is riddled with errors, the undersigned is issuing this rebuttal and demands that the MWC immediately and publicly release: (1) the investigative report prepared by its investigator(s), and (2) all documents connected to the MWC's claimed "thorough investigation" and upon which the MWC's decision not to proceed further was based.

The MWC claims it has reviewed and evaluated "extensive information gathered during the investigation." All such evidence should be immediately and publicly disclosed along with the full written investigative report of the MWC's investigator.

**The MWC Never Sent the Investigation Close-Out Letter or Its Investigative Report to the
Whistleblower Coach Batie-Smoose or to Brooke Slusser, the Victim of Threats Made
Concerning the SJSU-CSU Game**

Not mentioned in Deputy Commissioner Gilliland's close-out letter is that on October 2, 2024, a teammate of Brooke Slusser received a threat via direct message at 8:25

p.m. stating, “please distance yourself from brooke.tomorrow at the game, it will not be good for her[.]” This threat has unsurprisingly caused Brooke Slusser great stress and concern during the weeks since it was made.

As reported by Coach Batie-Smoose, October 4, 2024, the day after the October 3, 2024, SJSU-CSU volleyball game is when Brooke Slusser’s teammate Chandler Manusky came forward and told her teammates and coaches that she personally witnessed a plot on October 2, 2024, in the evening hours (and around 8:25 p.m.) by SJSU player Blaire Fleming and CSU player Malaya Jones to attempt to injure Slusser during the October 3, 2024 SJSU-CSU game to be held the next day

It is stunning therefore that the MWC never sought to advise either Coach Batie-Smoose, the whistleblower, or Brooke Slusser, the victim, that the MWC had concluded its investigation and “consider[s] the matter closed.” Despite the stress on Brooke Slusser as the focus of a direct threat and upon Coach Batie-Smoose as a whistleblower, the MWC has done nothing to attempt to relieve the emotional stress of this matter for them.

Instead, the close-out letter, which the undersigned obtained only because it was leaked to the media, purports to have been sent to only four (4) individuals: **John Weber** CSU Director of Athletics; **Jeff Konya** SJSU Director of Athletics, **Gloria Nevarez** MWC Commissioner and **Sean Harris** MWC Associate Commissioner for Sports Administration & Championships. The failure to include the whistleblower or victim on the distribution of the letter closing out investigation of admittedly “serious assertions” is a concerning breach of best practices regarding whistleblower matters and the protection of victims.

Lack of Independence of the MWC’s Investigator

On November 13, 2024, more than two weeks after Coach Batie Smoose filed her whistleblower complaint, both Coach Batie-Smoose and Brooke Slusser sued SJSU over Title IX retaliation, in part in connection with the events of October 2-4, 2024, and sued the MWC over its failure to comply with the requirements of Title IX and the First and Fourteenth Amendments. *See Slusser, et al. v. Mountain West Conference, et al.*, Case No. 1:24-cv-03155 (Dist. Ct. Colo. Nov. 13, 2024) (the “Lawsuit”).

The MWC is being defended in the Lawsuit by the law firm of Wilkie, Farr & Gallagher. Both Batie-Smoose and Slusser received written notifications from SJSU on the same day the Lawsuit was filed (and two days after Plaintiffs’ legal counsel reached out to the MWC to advise of pending litigation) notifying them that they were being requested to sit for interviews *on the very next day* with the MWC’s investigator, which was none other than a lawyer for the law firm of Wilkie, Farr & Gallagher.

Given that Wilkie, Farr & Gallagher is defending the MWC in a lawsuit brought by Batie-Smoose, Slusser and other Plaintiffs, it is clear that the MWC's investigator, Wilkie, Farr & Gallagher, is not fully independent of the MWC.

The MWC's Leaked Letter Appears to Confirm that SJSU and its Head Coach Todd Kress Did Not Comply with MWC Rule 4.3 But Has Apparently Not Been Investigated for this Conference Rule Violation

MWC Rule 4.3 requires that allegations of potential misconduct are to “be reported to the Commissioner (or designee) within 24 hours of the incident.” Deputy Commissioner Gilliland’s leaked letter tracks the MWC’s alleged investigation regarding the events of October 2-4, 2024, and the October 3, 2024, SJSU-CSU volleyball game from the October 29, 2024, whistleblower report made by Coach Batie-Smoose. Thus, the leaked letter appears to confirm that neither SJSU nor Coach Todd Kress reported these “serious assertions” to the MWC by October 5, 2024, as required.

However, given that Deputy Commissioner Gilliland states “the Conference office has determined no disciplinary action is warranted and considers this matter closed,” it appears that the MWC has simply decided to overlook the potential culpability of SJSU and Coach Kress for not complying with MWC Rule 4.3. The failure by the MWC to follow up on potential rule violations by SJSU could be an indication of bias by the MWC in favor of SJSU and against Coach Batie-Smoose and Brooke Slusser.

It is Clear that the MWC’s Investigation Was Rushed, Sloppy, Incomplete, and Infected with Bias

The MWC’s leaked investigation close-out letter reports five bulleted elements of the investigation the MWC claims to have undertaken. However, as explained below, analysis of these five elements confirms that any investigation by the MWC was rushed, sloppy, incomplete, and infected with bias.

1. The first investigative element listed is “*Conversations with head coaches and student-athletes initiated by both institutions.*” Thus, the first element acknowledges the active participation in the investigation of “both institutions” whose players were reported to have engaged in misconduct, rather than the MWC conducting the investigation entirely through a neutral third party. Both SJSU and CSU are candidates for post season play as they are currently the first and second ranked teams in the conference. Thus, SJSU and CSU have an evident reason for bias and should not have been relied upon by the MWC to investigate themselves and their own players.

The reference to “conversations” rather than “interviews” or “sworn testimony” is also concerning. There is no indication that any investigator(s) employed proper interview techniques, such as requiring that testimony be sworn, taken under oath and before a

court reporter, all practices that help to ensure accuracy and promote a thorough investigation. If there are interview transcripts they should be produced, and if written transcripts of under oath interviews by a neutral investigator cannot be produced, this is a major problem.

2. The second investigative element listed is "**Review of the match video by both head coaches.**" This second element again clearly and unequivocally confirms the lack of objectivity in the "investigation" the MWC claims to have conducted. Indeed, it confirms that the MWC did not even conduct major elements of what it claims was a "thorough investigation." Instead, the head coaches of the two teams that had a huge stake in the outcome of the "investigation" were relied upon by the MWC to investigate themselves and their own players. This was totally inappropriate and a gross deviation from proper investigative techniques.

3. The third investigative element listed is "**Review of the match video and statistical analysis by multiple third-party volleyball subject matter experts engaged by the Conference.**" If statistical analysis was conducted by subject matter experts, then this information should be quickly disclosed to the media and the public and to Coach Batie-Smoose and to Brooke Slusser, and the MWC should promptly do so in order that the statistics and suitability of the "experts" can be assessed.

However, it must be noted that any statistical analysis that may have been conducted would at best likely be an indirect and minor factor in a robust investigation. The key issue here, of course, was not match fixing. Indeed, match fixing was not alleged by the whistleblower or the victim. Rather, what was alleged was a possible motive of revenge and an effort to set up a player to be injured.

Thus, more helpful would likely have been forensic testing and analysis of the electronic devices and social media accounts of Fleming and Jones. Yet, it appears that the MWC did not even attempt to conduct this sort of analysis and investigative spadework in its so-called "thorough investigation" despite the existence of a potentially relevant direct threat to Brooke Slusser made through a social media account. Apparently, this key piece of evidence, possibly the most critical piece of evidence that we know of that was available to the MWC, appears to have been entirely ignored.

4. The fourth investigative element listed is "**Multiple interviews conducted by a third-party investigator engaged by the Conference in consultation with the Mountain West's legal counsel.**" This fourth element underscores two big misses by the MWC. First, as discussed above, it appears likely that the third-party investigator engaged by the Conference in consultation with the Mountain West's legal counsel" was the law firm representing the MWC in ongoing litigation and thus not a fully independent investigator. Second, it appears clear from the wording of this element, as well as the first element, that all persons communicated with were not interviewed by an independent investigator and

that any formal interviews that were conducted may not have been properly transcribed and taken under oath to ensure the testimony was as trustworthy and reliable as possible.

5. The fifth investigative element listed is “**Consultation with the Conference’s sports wagering compliance partner with regard to contest manipulation considerations, as well as vetting sports wagering activity around the match in question.**” This last element is simply a red herring. The whistleblower report did not raise concerns with match fixing based on sports wagering. Rather, the report raised concerns about a motive of revenge or retaliation and an attempt to physically injure Brooke Slusser. Thus, there is no basis upon which to believe that “sports wagering activity around the match in question” was likely to be relevant. This element as well appears to add little if anything to the investigation of retaliation.

Thus, for the reasons discussed above, the MWC’s own leaked letter demonstrates that its investigation was apparently rushed, incomplete, sloppy and infected by bias.

The MWC Investigation Did Not Include Interviews of the Whistleblower, Coach Melissa Batie-Smoose, or of the Victim, Brooke Slusser

Incredibly, the MWC has claimed to have completed an investigation of “serious assertions,” involving a plot to interview Brooke Slusser, without conducting an interview of either the Whistleblower, Coach Melissa Batie-Smoose, or of the Victim, Brooke Slusser. The failure to interview Coach Melissa Batie-Smoose and Brooke Slusser is notwithstanding the fact that the undersigned as their legal counsel in the Lawsuit volunteered that Coach Batie-Smoose and Brooke Slusser could be deposed under oath and before a court reporter who would prepare a written transcript in the Lawsuit.

Yet, the MWC evidently cared so little about getting to the bottom of what actually happened that it was unwilling to even wait to conclude its investigation until after these key witnesses could be interviewed. Rather, it appears that the MWC has rushed to a contrived and premature end to its investigation, possibly precisely because had it waited for Batie-Smoose and Slusser to be deposed in the Lawsuit the MWC would have had to find that the “serious assertions” which it has recently found to be “insufficient[ly] . . . corroborate[d]” are, in fact, corroborated. Thus, at best the MWC’s refusal to interview Batie-Smoose and Slusser is more evidence of a rushed investigation, at worst it is evidence of the MWC’s bias.

Rebuttal to MWC's Leaked Close-Out Letter

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For the foregoing reasons, even the November 15, 2024, one-page leaked letter sent by MWC Deputy Commissioner Gillibrand makes clear that the supposed MWC investigation was insufficient, unprofessional, incomplete, rushed, and biased.

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