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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

WASHINGTON STATE UNIVERSITY, an institution of higher education and agency of the State of Washington; KIRK H. SCHULZ, in his official capacities as the President of Washington State University and Chair of the Pac-12 Board of Directors; OREGON STATE UNIVERSITY, an institution of higher education and agency of the State of Oregon; and JAYATHI Y. MURTHY, in her official capacities as the President of Oregon State University and Member of the Pac-12 Board of Directors,

Plaintiffs,

v.

THE PAC-12 CONFERENCE; and GEORGE KLIAVKOFF, in his official capacity as Commissioner of the Pac-12 Conference,

Defendants.

Case No.

**COMPLAINT FOR BREACH OF
BYLAWS, DECLARATORY
JUDGMENT, AND INJUNCTIVE
RELIEF**

1 For their complaint herein, Plaintiffs WASHINGTON STATE UNIVERSITY, an
2 institution of higher education and agency of the State of Washington, KIRK H. SCHULZ, in
3 his official capacity as President of Washington State University and his official capacity as
4 Chair of the Pac-12 Board of Directors, OREGON STATE UNIVERSITY, an institution of
5 higher education and agency of the State of Oregon, and JAYATHI Y. MURTHY, in her
6 official capacity as President of Oregon State University and her official capacity as Member
7 of the Pac-12 Board of Directors, allege as follows:

8 **I. INTRODUCTION**

9 1. For over 100 years, the Pac-12 Conference (the “Pac-12” or “Conference”) has
10 embodied the highest ideals of collegiate athletics. Nicknamed the Conference of Champions,
11 the Pac-12 has won over 550 NCAA team national championships—more than any other
12 conference in history, and over 200 more than the next closest conference. Today, the Pac-12
13 sponsors 11 men’s sports and 13 women’s sports. As stated in its Handbook, the Conference
14 “strive[s] to enrich and balance the athletics and educational experience of student-athletes at
15 its member institutions, to enhance athletic and academic integrity among its members, and to
16 provide leadership in support of its basic values,” which include “the well-being of student
17 athletes,” “excellence with integrity,” and “a culture of equity, diversity, inclusiveness and
18 collegiality.”

19 2. In June 2022, the University of Southern California (“USC”) and the University of
20 California, Los Angeles (“UCLA”) announced that they would leave the Pac-12, effective
21 August 2024, at the conclusion of its existing media rights deals with ESPN and Fox, to join
22 the competing Big Ten Conference. Those announcements violated the Pac-12’s Constitution
23 and Bylaws (“Bylaws”), which state that “[n]o member shall deliver a notice of withdrawal to
24 the Conference in the period beginning on July 24, 2011, and ending on August 1, 2024[.]”
25 This prohibition recognizes the substantial and irreparable harm that an early notice of
26 withdrawal causes to the Conference, including to its ability to retain other members and to
27

1 negotiate future media rights deals, which generate significant revenue for the member
2 schools and support the Conference’s mission.

3 3. The Bylaws also specify the consequence of delivering an early notice of
4 withdrawal. The Bylaws state that if a member delivers “notice of withdrawal” prior to
5 August 1, 2024, “the member’s representative to the Pac-12 Board of Directors automatically
6 shall cease to be a member of the Pac-12 Board of Directors and shall cease to have the right
7 to vote on any matter before the Pac-12 Board of Directors.” This “automatic” elimination of
8 the departing member’s Board seat and termination of its right to vote on Board matters is not
9 only dictated by the clear and unambiguous language of the Bylaws; it is also compelled by
10 basic principles of conflict of interest. A member that has announced that it is leaving the
11 Conference to join a competing conference cannot be expected to make decisions in the best
12 interest of the Pac-12.

13 4. Consistent with the Bylaws, after USC and UCLA gave notice that they would
14 withdraw from the Pac-12 in 2024 to join the Big Ten, their representatives were
15 automatically removed from the Pac-12 Board of Directors, and they were no longer allowed
16 to participate in Board meetings or to vote on Board matters.

17 5. More recently, eight other Pac-12 members have delivered notice of withdrawal
18 from the Pac-12 Conference, and announced their intention to join the Big Ten, Big 12, and
19 Atlantic Coast Conferences in 2024. The only two Pac-12 members that have *not* delivered a
20 notice of withdrawal are Washington State University (“WSU”) and Oregon State University
21 (“OSU”). WSU and OSU have each been members of the Pac-12 for more than a century,
22 and they are dedicated to promoting the Conference and its mission. In particular, they are
23 interested in exploring opportunities to preserve the Pac-12 Conference.

24 6. The ten departing members no longer share this goal. Having announced their
25 plans to leave the Pac-12 and join competing conferences next year, they have no incentive to
26 devote the resources needed to retain employees and partners, recruit new members, and take
27 the other steps necessary that would preserve the opportunity for the Pac-12 to continue

1 forward as a preeminent intercollegiate athletic conference. On the contrary, they are now
2 motivated to dissolve the Pac-12—against which their new conferences will otherwise
3 compete beginning next year—and distribute its assets.

4 7. Nevertheless, in direct contravention of the Pac-12 Bylaws, and in direct defiance
5 of the Conference’s treatment of USC and UCLA in 2022 when they delivered early notices
6 of withdrawal, and Colorado when it delivered its notice of withdrawal just over a month ago,
7 the Commissioner of the Pac-12 has now taken the position that the departing members *retain*
8 their Board seats and may continue to vote on Board matters. Among other things, the
9 Commissioner has scheduled a “Board Meeting” for September 13, 2023, at which all twelve
10 members’ Board representatives are supposed to discuss and vote on matters including an
11 employee-retention plan and a “go forward governance approach.” The Commissioner has
12 scheduled this purported “Board Meeting” after Plaintiff Kirk H. Schulz—who is the
13 President of WSU and the Chair of the Pac-12 Board of Directors—refused to call a meeting
14 that would violate the Bylaws.

15 8. The Conference’s actions have left Plaintiffs WSU and OSU, as the only
16 Conference members that have not delivered a notice of withdrawal from the Conference, and
17 Schulz and Murthy, acting in their official capacities as the Presidents of WSU and OSU and
18 as the Chair and a member of the Pac-12 Board, with no option but to bring this action for
19 breach of bylaws, declaratory judgment, and injunctive relief to prevent the Conference from
20 allowing the departing members to purport to govern the Pac-12 in violation of the Bylaws
21 and inflict irreparable damage to WSU, OSU, and the Conference.

22 II. THE PARTIES

23 9. Plaintiff Washington State University is a public research university with its
24 largest campus and athletic department in Pullman, Washington. WSU (then known as
25 Washington State College) has been a member of the Pac-12 Conference since 1916, just one
26 year after the Pac-12 Conference’s founding.

1 10. Plaintiff Kirk H. Schulz is the President of Washington State University. President
2 Schulz is WSU’s representative on the Pac-12 Board of Directors and is the 2023-2024 Board
3 Chair. He brings this action in his official capacities as President of WSU and Chair of the
4 Pac-12 Board. He is a resident of the state of Washington.

5 11. Plaintiff Oregon State University is a public research university based in Corvallis,
6 Oregon. It is a founding member of the Pac-12 Conference. OSU (then known as Oregon
7 Agricultural College) was one of the four founding members of the Pac-12 in 1915.

8 12. Plaintiff Jayathi Y. Murthy is the President of Oregon State University. President
9 Murthy is OSU’s representative on the Pac-12 Board of Directors. She brings this action in
10 her official capacities as President of OSU and Director of the Pac-12. She is a resident of the
11 state of Oregon.

12 13. Defendant Pac-12 Conference is a California unincorporated association. The Pac-
13 12, which has been known by different names throughout its history, has been the western
14 United States’ preeminent intercollegiate athletics conference since it was founded in 1915.
15 Under its Constitution and Bylaws, the current members of the Conference are the University
16 of Arizona; Arizona State University; the University of California, Berkeley; the University of
17 California, Los Angeles; the University of Colorado, Boulder; the University of Oregon;
18 Oregon State University; the University of Southern California; Stanford University; the
19 University of Utah; the University of Washington; and Washington State University. As of
20 June 2023, the Conference has given up its permanent headquarters and has moved to a
21 “remote work environment.” As an unincorporated association, the Pac-12 is a citizen of each
22 state where at least one of its members is a citizen, including Washington.

23 14. Defendant George Kliavkoff is the Commissioner of the Pac-12 Conference, and
24 he is sued here in that capacity. On information and belief, he is a resident of the state of
25 California.

1 20. The Conference can act only under the direction of its Board of Directors. *See*
2 Constitution and Bylaws, Ch. 5, Sec. 1. The Board of Directors manages or directs all
3 business and affairs of the Conference and acts as its governing body. *Id.* Each member of
4 the Conference (to the extent such member has not delivered a notice of withdrawal) has one
5 representative on the Pac-12 Board of Directors, who must be the Chancellor or President of
6 the member institution. *Id.*, Ch. 5, Sec. 2. Special meetings of the Pac-12 Board of Directors
7 may be held on call by the Chair, the Commissioner, or jointly by any two members of the
8 Pac-12 Board of Directors, with at least ten days’ notice. *Id.*, Ch. 5, Sec. 5.

9 21. Under the Constitution and Bylaws, the Commissioner is “responsible for ensuring
10 that the objectives, policies, and orders of the Pac-12 Board of Directors are implemented.”
11 Constitution and Bylaws, Ch. 6, Sec. 3. The Commissioner is also responsible for
12 “perform[ing] such other duties incident to that office and delegated by the Pac-12 Board of
13 Directors or this Constitution and Bylaws.” *Id.*

14 22. The Pac-12 Bylaws prohibit members from delivering a notice of withdrawal to
15 the Conference before August 1, 2024, and specify in clear and unambiguous terms the
16 consequences of delivering an early notice of withdrawal for the withdrawing member’s
17 ability to continue participating in the governance of the Pac-12. The Bylaws state:

18 ***“No member shall deliver a notice of withdrawal to the Conference in the period***
19 ***beginning on July 24, 2011, and ending on August 1, 2024;*** provided, that if any
20 member does deliver a notice of withdrawal prior to August 1, 2024, in violation of this
21 chapter, the Conference shall be entitled to an injunction and other equitable relief to
22 prevent such breach, and if a court of competent jurisdiction shall deny the Conference
23 such injunctive relief, the Conference shall be entitled to retain all the media and
24 sponsorship rights in the multi-player video distribution (MPVD) and
25 telecommunications/wireless categories of the member purporting to withdraw through
26 August 1, 2024, even if the member is then a member of another conference or an
independent school for some or all intercollegiate sports competitions. Additionally, if
a member delivers notice of withdrawal in violation of this chapter, the member’s
representative to the Pac-12 Board of Directors ***shall automatically cease to be a***
member of the Pac-12 Board of Directors and shall cease to have the right to vote on
any matter before the Pac-12 Board of Directors.”

27 Constitution and Bylaws, Ch. 2, Sec. 3 (the “Withdrawal provision”) (emphases added).

1 **B. USC and UCLA announce their departures from the Pac-12 and lose**
2 **their Board seats and the right to vote on Board matters.**

3 23. On June 30, 2022, USC and UCLA announced that they would leave the Pac-12
4 Conference in 2024 and would join the Big Ten Conference.

5 24. The announcement came as a shock to the Pac-12 and its members; neither USC
6 nor UCLA had disclosed that they were negotiating with the Big Ten or contemplating
7 leaving the Pac-12. Under their agreements with the Big Ten, USC and UCLA will receive an
8 even share of that conference's revenue, which is expected to approach \$100 million annually
9 for each school. An interim report issued by the University of California Office of the
10 President estimated that each of the remaining 10 member schools in the Pac-12 would lose
11 around \$13 million annually in media rights due to USC's and UCLA's withdrawals.

12 25. In accordance with the Pac-12's Bylaws, following USC's and UCLA's 2022
13 notice of withdrawal, their representatives were removed from the Pac-12 Board and were no
14 longer permitted to vote on Board matters.

15 **C. Eight other members of the Pac-12 announce their departures.**

16 26. On July 27, 2023, the University of Colorado, Boulder delivered notice of
17 withdrawal from the Pac-12 Conference, effective in 2024, to join the Big 12 Conference.
18 Colorado is projected to earn approximately \$37 million in annual television revenue as a
19 member of the Big 12.

20 27. Following Colorado's notice of withdrawal, the Pac-12 Board of Directors held
21 five special meetings between August 1, 2023 and August 4, 2023. Colorado was not invited
22 to any of those five special meetings of the Board of Directors.

23 28. On August 4, 2023, five more schools delivered notices of withdrawal. The
24 University of Oregon and the University of Washington delivered notice of withdrawal from
25 the Pac-12 Conference to join the Big Ten Conference, while the University of Arizona,
26 Arizona State University, and the University of Utah delivered notice of withdrawal from the
27 Pac-12 Conference to join the Big 12 Conference.

1 29. On September 1, 2023, UC Berkeley and Stanford delivered notice of withdrawal
2 from the Pac-12 to join the ACC.

3 **D. WSU and OSU remain committed to exploring ways to preserve the**
4 **Pac-12, while the departing members are incentivized to dissolve it.**

5 30. The ten departing members have a significant financial incentive to dissolve the
6 Pac-12 before their departures. If the Pac-12 Conference dissolved, its remaining assets and
7 property would be distributed to all twelve members of the Conference in accordance with the
8 Constitution and Bylaws:

9 “In the event of the dissolution or final liquidation of the Conference, all of the
10 remaining assets and property of the Conference shall, after paying or making provision
11 for the payment of all of the liabilities and obligations of the Conference and for
12 necessary expenses thereof, be distributed to the members of the Conference.”

13 Constitution and Bylaws, Ch. 1, Sec. 4.

14 31. For the financial year 2021-2022, the Pac-12 Conference reported record total
15 revenues of \$581 million and record distributions at \$444 million, representing an average of
16 \$37 million per member institution. The Conference ended fiscal year 2022 with \$42.7
17 million in total net assets. And that figure does *not* include the equity value of the Pac-12’s
18 ownership of Pac-12 Networks, which is a sports media company that is wholly owned and
19 operated by the Pac-12. Pac-12 Networks distributes over 800 live sporting events each
20 season, making it one of the top live-sports producers in the country. For the financial year
21 2021-2022, Pac-12 Networks reported revenues of \$117 million and operating expenses of
22 \$77 million.

23 32. Beyond receiving lucrative distributions, the departing schools have another
24 significant incentive to dissolve the Pac-12 Conference before August 1, 2024. The departing
25 members’ allegiances now lie with their new conferences—the Big Ten, Big 12, and ACC—
26 which compete with the Pac-12 for lucrative media deals from networks like ESPN and Fox,
27 for student athletes, and for viewers.

1 33. Because of these competing incentives, the departing schools' interests conflict
2 with the interests of the Conference itself and with those of WSU and OSU, the two non-
3 departing members. If the departing members are permitted to continue voting on Pac-12
4 Board matters, there is a serious risk that they will prevent the Pac-12 from devoting the
5 resources needed to protect its potential to remain a preeminent intercollegiate athletics
6 conference and will instead set it on a course to dissolution in 2024.

7 **E. The Commissioner defies the Bylaws and schedules a purported "Board**
8 **Meeting" for September 13, 2023, at which all twelve members are**
9 **supposed to vote on matters including an employee-retention plan and a**
10 **"go forward governance approach."**

11 34. On or about August 29, 2023, the Commissioner called Plaintiff Schulz to ask him
12 to call a meeting of the Pac-12 Board of Directors at which the Board would discuss matters
13 related to the departing members, proposed amendments to the Bylaws, a proposed conflicts
14 of interest plan for Pac-12 members, and an employee compensation and retention plan for the
15 Commissioner and other employees of the Pac-12. Plaintiff Schulz told the Commissioner
16 that in light of the rapidly evolving situation concerning the departing members, he was
17 unwilling to call a Pac-12 Board of Directors meeting and would not do so.

18 35. Following the Commissioner's phone call with Plaintiff Schulz, on August 29,
19 2023, the Commissioner wrote to all twelve Presidents of the Pac-12's member institutions
20 and proposed a "meeting of all Conference CEOs" to discuss "complex issues facing the
21 Conference." Of course, those same twelve Presidents previously comprised the Pac-12's
22 Board of Directors before ten of the twelve were automatically removed as Directors due to
23 their institutions' violation of the Bylaws' Withdrawal provision. On information and belief,
24 by characterizing the meeting as a "meeting of all Conference CEOs" rather than a Board
25 Meeting, the Commissioner sought to circumvent the clear language of the Withdrawal
26 provision and empower the departing members to decide matters that properly may be decided
27 only by the Board.

1 36. Despite the Commissioner’s careful choice of words, the next day, August 30,
2 2023, his assistant followed up with all Conference Presidents to schedule a “Pac-12 Board
3 Meeting” for the week of September 11, 2023. This “Board Meeting” is now scheduled for
4 September 13, 2023, at 7:00 am Pacific time.

5 37. WSU and OSU were understandably concerned that the Commissioner’s August
6 29 communication proposing a “meeting of all Conference CEOs,” and his assistant’s
7 subsequent communication describing this meeting as a “Board Meeting,” created the false
8 impression that representatives of all twelve Conference members remain eligible to serve on
9 the Pac-12 Board and to vote on Board matters. Thus, on August 31, OSU’s General Counsel,
10 Rebecca Gose, wrote to the Commissioner and to the Pac-12’s General Counsel, Scott
11 Petersmeyer, to confirm that the contemplated meeting would *not* be a meeting of the Pac-12
12 Board of Directors. Presumably concerned with the governance issues raised herein, Mr.
13 Petersmeyer failed to respond for nearly a week.

14 38. On September 5, 2023, Mr. Petersmeyer finally responded, saying: “We do
15 consider the meeting on 9/13 to be a Board meeting which is being called by [Commissioner
16 Kliavkoff] as authorized under Pac-12 bylaws. We anticipated voting on certain matters
17 including the retention plan and having a discussion and possible vote on our go forward
18 governance approach.” In other words, the Commissioner and the departing members are
19 convening a purported “Board Meeting” to enable conflicted and unauthorized “Directors” to
20 vote on matters that may determine the future of the Pac-12 Conference.

21 39. On Wednesday, September 6, 2023—one day after receiving Mr. Petersmeyer’s
22 communication stating that Conference considers the September 13 meeting to be a Board
23 Meeting—Plaintiffs Schulz and Murthy, the Presidents of WSU and OSU, and the sole Pac-12
24 Board members pursuant to the Bylaws, sent a letter to the Commissioner, the ten departing
25 members, and their Presidents or Chancellors demanding that the Commissioner and other
26 members confirm that (1) the Commissioner will cancel the purported Board meeting
27 scheduled for September 13, 2023; (2) pursuant to Chapter 2, Section 3 of the Constitution

1 and Bylaws, the representatives of the ten members that have given notice of their withdrawal
2 from the Conference have “automatically cease[d] to be a member of the Pac-12 Board of
3 Directors and shall cease to have the right to vote on any matter”; and (3) the only duly
4 authorized Board members are representatives whose member institutions have not given
5 notice of their withdrawal from the Conference, *i.e.*, the Board representatives from WSU and
6 OSU.

7 40. In an email on September 6, 2023, referring to Plaintiffs Schulz and Murthy’s
8 September 6, 2023 letter, one representative of a departing Pac-12 member threatened that the
9 departing members of the Conference were poised to take immediate action to seize control of
10 the Pac-12. The representative wrote: “It seems obvious that any 9 Members can declare the
11 fate of the Conference at any time.”

12 **FIRST CLAIM FOR RELIEF**
13 **(Breach of Bylaws)**
14 **(Against All Defendants)**

15 41. Plaintiffs reallege the preceding paragraphs and incorporate them by reference.

16 42. The Constitution and Bylaws of the Pac-12 Conference constitute a contract
17 between the Conference and its members, governing the rights and duties of the members as
18 between themselves and in their relation to Conference with reference to all matters affecting
19 its internal government and the management of its affairs.

20 43. Under the Commission and Bylaws, the Commissioner is required to “ensur[e] that
21 the objective, policies, and orders of the Pac-12 Board of Directors are implemented,” and
22 must “perform such other duties incident to that office and delegated by the Pac-12 Board of
23 Directors or this Constitution and Bylaws.” Constitution and Bylaws, Ch. 6, Sec. 3.

24 44. Under the Constitution and Bylaws, if a member “delivers notice of withdrawal,
25 the member’s representative to the Pac-12 Board of Directors shall automatically cease to be a
26 member of the Pac-12 Board of Directors and shall cease to have the right to vote on any
27 matter before the Pac-12 Board of Directors.” Constitution and Bylaws, Ch. 2, Sec. 3.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment from this Court on their claims as
3 follows:

4 1. For a declaratory judgment that representatives of the following members that have
5 delivered notice of withdrawal from the Pac-12 are no longer members of the Pac-12 Board of
6 Directors and may not vote on any matter before the Pac-12 Board of Directors: the
7 University of Arizona; Arizona State University; the University of California, Berkeley; the
8 University of California, Los Angeles; the University of Colorado, Boulder; the University of
9 Oregon; the University of Southern California; Stanford University; the University of Utah;
10 and the University of Washington;

11 2. For temporary and permanent injunctive relief;

12 3. For an award of costs; and

13 4. For such other and further relief as this Court may deem just and equitable.

14
15 DATED this 8th day of September, 2023.

<p>17 <u>/s/ Nathan E. Deen</u></p> <p>18 Nathan E. Deen, WSBA No. 39673 OFFICE OF THE ATTORNEY GENERAL 19 332 French Administration Building Pullman, Washington 99164 20 Telephone: (509) 335-2636 Email: nathan_deen@wsu.edu</p> <p>21 Andrew S. Tulumello (<i>pro hac vice application</i> <i>forthcoming</i>) 22 Arianna M. Scavetti (<i>pro hac vice application</i> <i>forthcoming</i>) 23 WEIL, GOTSHAL & MANGES LLP 24 2001 M Street NW, Suite 600 25 Washington, D.C. 20036 Telephone: (202) 682-7000 26 Email: drew.tulumello@weil.com 27 arianna.scavetti@weil.com</p>	<p>17 <u>/s/ Matthew Mensik</u></p> <p>18 Matthew Mensik, WSBA No. 44260 Max K. Archer, WSBA No. 54081 RIVERSIDE LAW GROUP, PLLC 19 905 W. Riverside Ave., Ste. 208 Spokane, WA 99201 20 Email: mam@riverside-law.com mka@riverside-law.com</p> <p>21 Eric H. MacMichael (<i>pro hac vice</i> <i>application forthcoming</i>) 22 Nicholas S. Goldberg (<i>pro hac vice</i> <i>application forthcoming</i>) 23 David J. Silbert (<i>pro hac vice application</i> <i>forthcoming</i>) 24 Taylor Reeves (<i>pro hac vice application</i> <i>forthcoming</i>) 25 Nathaniel H. Brown (<i>pro hac vice</i> <i>application forthcoming</i>) 26 KEKER, VAN NEST & PETERS LLP 27 633 Battery Street</p>
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1 Zachary A. Schreiber (*pro hac vice application*
2 *forthcoming*)

3 Mary K. Clemmons (*pro hac vice application*
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