JEREMY J. GRAY (SBN 150075)
*jgray@zuberlaw.com*
JEFFREY J. ZUBER (SBN 220830)
*jzuber@zuberlaw.com*
**ZUBER LAWLER & DEL DUCA LLP**
777 S. Figueroa Street, 37th Floor
Los Angeles, California 90017
Telephone: (213) 596-5620
Facsimile: (213) 596-5621

Attorneys for Plaintiffs
Haley Videckis and Layana White

PAULA TRIPP VICTOR (SBN 113050)
*ptv@amclaw.com*
PETER B. RUSTIN (SBN 181734)
*pbr@amclaw.com*
**ANDERSON, McPHARLIN & CONNERS LLP**
444 South Flower Street 31st Floor
Los Angeles, California 90071-2901
Telephone: (213) 688-0080
Facsimile: (213) 622-7594

Attorneys for Defendant Pepperdine University

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

| | |
|---|---|
| HALEY VIDECKIS and LAYANA WHITE, individuals,<br><br>Plaintiffs,<br><br>v.<br><br>PEPPERDINE UNIVERSITY, a corporation doing business in California,<br><br>Defendant. | CASE NO. 2:15-CV-00298-DDP (JCx)<br><br>**F.R.C.P. Rule 26(f) Joint Report**<br><br>Scheduling Conference<br>Date: March 10, 2016<br>Time: 3:00 p.m.<br>Place: Courtroom 3<br><br>Trial Date: none set |

Pursuant to the Court's December 29, 2015 Order Setting a Rule 26(f) Scheduling Conference and in accordance with Federal Rules of Civil Procedure 16 and 26(f), Counsel for Plaintiffs Haley Videckis And Layana White (collectively referred to as "Plaintiffs") and Defendant Pepperdine University ("Defendant") met and conferred on February 12, 2016, and thereafter, and now jointly submit the following Joint Scheduling Report.

**A. Brief Statement of the Case**

The Plaintiffs, two former members of the Pepperdine Women's Basketball team allege that they were discriminated against, and otherwise mistreated by the administration, coaches and staff of Pepperdine University on account of their sexual orientation and gender. Pepperdine denies any such alleged wrongdoing.

**B. Key Legal Issues**

**1. Claim One[1]. Violation of Right of Privacy Under California Constitution Art. 1, Section 1.** The key legal issues arising under this claim are (1) have Plaintiffs articulated a legally protected privacy interest; (2) have Plaintiffs established a reasonable expectation of privacy under the circumstances at issue; (3) did Defendant engage in conduct which constitutes a serious invasion of such privacy; and (4) were Plaintiffs injured and/or damaged as a consequence and in what ways.

**2. Claim Two. Violation of California Educational Code Section 220, 66251 and 66270.** The key legal issues arising under this Claim are (1) did Defendant commit acts prohibited by these sections of the Education Code; (2) did Defendant act with deliberate indifference in the face of knowledge of the

---

[1] This Joint Report uses the term "Plaintiffs." For ease of reading, the Report avoids using the convention "or either or them." However, the parties recognize that in some cases the individual plaintiffs may have individualized issues or damages.

alleged prohibited acts; (3) did the alleged prohibited acts effectively deprive Plaintiffs of equal access to educational benefits and opportunities; and (4) were Plaintiffs injured and/or damaged as a consequence and in what ways.

**3. Claim Three. Violation of Title IX (Deliberate Indifference).** The key legal issues arising under this Claim are (1) is Defendant an educational institution subject to Title IX; (2) did Plaintiffs possess a right under Title IX not to be discriminated against on account of their sexual orientation; (3) did Plaintiffs possess a right under Title IX not to be discriminated against on account of their gender; (4) were Plaintiffs discriminated against on the basis of their sexual orientation; (5) were Plaintiffs discriminated against on the basis of their gender; (6) did Plaintiffs report that they were harassed and discriminated against on account of their actual or perceived sexual orientation; (7) did Plaintiffs report that they were harassed and discriminated against on account of their gender; (8) did Plaintiffs report such harassment and discrimination to an appropriate person with authority to take corrective action; (9) did Defendant fail or refuse to take corrective action; and (10) were Plaintiffs injured and/or damaged as a consequence and in what ways.

**4. Claim Four. Violation of Title IX (Intentional Discrimination).** The key legal issues arising under this Claim are (1) is Defendant an educational institution subject to Title IX; (2) did Plaintiffs possess a right under Title IX not to be discriminated against on account of their sexual orientation; (3) did Plaintiffs possess a right under Title IX not to be discriminated against on account of their gender; (4) were Plaintiffs discriminated against on the basis of their sexual orientation; (5) were Plaintiffs discriminated against on the basis of their gender; and (6) were Plaintiffs injured and/or damaged as a consequence and in what ways.

**5. Claim Five. Violation of Title IX (Retaliation).** The key legal issues arising under this Claim are (1) is Defendant an educational institution subject to Title IX; (2) did Plaintiffs possess a right under Title IX not to be discriminated

against on account of their sexual orientation; (3) did Plaintiffs possess a right under Title IX not to be discriminated against on account of their gender; (4) did Plaintiffs complain to Defendant about being harassed or discriminated against on account of their sexual orientation; (5) did Plaintiffs complain to Defendant about being harassed or discriminated against on account of their gender; (6) did Defendant retaliate against Plaintiffs on account of their complaints of sexual orientation discrimination; (7) did Defendant retaliate against Plaintiffs on account of their complaints of gender discrimination; and (8) were Plaintiffs injured and/or damaged as a consequence and in what ways.

**6. Claim Six. Violation of the Unruh Act (California Civil Code sections 51 et seq.** The key legal issues arising under this Claim are (1) is Defendant a "business establishment" covered by the Unruh Act; (2) did Defendant discriminate against Plaintiffs in the provision of full and equal accommodations, advantages, facilities, privileges and/or services based on Plaintiffs' sexual orientation; and (3) were Plaintiffs injured and/or damaged as a consequence and in what ways.

**7. Claim Seven. Intentional Infliction of Emotional Distress.** The key legal issues arising under this claim are (1) did Defendant engage in outrageous conduct; (2) was Defendant's conduct malicious or oppressive; (3) did Defendant intentionally cause Plaintiffs emotional distress, or did Defendant act with reckless disregard of the substantial certainty that Plaintiffs would suffer emotional distress as a result of Defendant's conduct; (4) did Defendant employ the person(s) who engaged in the outrageous malicious or oppressive conduct with advance knowledge of the unfitness of the employee(s) and employed him or her with a conscious disregard of the rights or safety of others, or did an officer, director or managing agent of Defendant ratify the outrageous malicious or oppressive conduct, or did an officer, director or managing agent of Defendant personally commit such conduct; (5) did Plaintiffs suffer severe emotional distress; (6) was

Defendant's conduct a substantial factor in causing this emotional distress; and (7) were Plaintiffs injured and/or damaged as a consequence and in what ways.

**8. Issues Raised by Affirmative Defenses:** (1) was any of Defendant's alleged conduct privileged or justified under the law or by virtue of its motive being based on legitimate, non-discriminatory considerations; (2) did Plaintiffs consent to some or all of Defendant's alleged conduct or waive their rights to bring some or all of the claims asserted in this action by virtue of their being student-athletes; (3) was Defendant entitled to rely on Plaintiffs' alleged failure to report sexual orientation or gender discrimination at all or sooner than they did.

**9. Additional issues:** (1) are Plaintiffs entitled to prejudgment interest; (2) the Parties reserve the right to assert additional issues that may arise during discovery in this matter.

**C. Initial Disclosure of Witnesses and Documents**

**1. Plaintiffs' Initial Disclosure of Witnesses and Documents.**

**(a) Plaintiffs' Initial Disclosure of Witnesses.** Plaintiffs will identify witnesses in accordance with their initial disclosure obligations.

**(b) Plaintiffs' Initial Disclosure of Documents.** Plaintiffs will produce, in their initial disclosures, documents in the following categories: (1) text messages and emails; (2) documents relating to the Title IX complaint and investigation; (3) medical records and doctor notes; (4) handbooks and policies from Pepperdine and the NCAA; (5) documents relating to Ms. White's appeal to play as a transfer; and (6) the declaration prepared by Krista Pettepier.

**2. Defendant's Initial Disclosure of Witnesses and Documents.**

**(a) Defendant's Initial Disclosure of Witnesses**. Defendant will identify witnesses in accordance with its initial disclosure obligations.

**(b) Defendant's Initial Disclosure of Documents**. Defendant will produce, in its initial disclosures, documents in the following categories: (1) text messages, emails and other documents relevant to the facts and

issues raised in this action; (2) documents relating to the Title IX complaint and investigation; (3) medical records and doctor notes; (4) handbooks and policies from Pepperdine and the NCAA relating to the various facts and issues raised in this action; (5) documents relating to Ms. White's appeal to play as a transfer; (6) documents reflecting the subject matter of the Leadership Council meetings; (7) documents regarding Plaintiffs' attendance and activities at prior universities; (8); documents reflecting other incidents relevant to the veracity and motive of Plaintiffs.

**D. Damages**

**1. Plaintiffs' Damages.** Plaintiffs will seek the following categories of damages (1) lost scholarships and related costs and expenses; (2) lost income; (3) medical and related expenses compensation; (4) compensation for emotional distress; and (5) punitive damages.

**2. Defendant's Comment on Damages.**

**E. Insurance**

**1. Plaintiffs' Comments on Insurance.** Plaintiffs are unaware of any insurance relevant to their claims.

**2. Defendant's Comments on Insurance.** Defendant is insured for claims presented in this action under a policy of insurance through United Educators.

**F. Adding Parties or Amending the Pleadings**

The parties do not anticipate adding any parties to this matter.

**G. Discovery**

**1. Phasing of discovery/Scope of Discovery.** Other than discovery relating to net worth with respect to the claim of punitive damages, the parties do not presently see the need for phasing or limiting the scope of discovery in this matter. The parties agree that depositions may commence after the initial disclosures are completed.

**2. Request For The Scheduling Order To Address The Order In Which The First Four Depositions Will Proceed.** The parties have a disagreement regarding the order of depositions that they request this Court resolve in the Scheduling Order. Plaintiffs' position is that they will produce either Ms. Videckis or Ms. White as the first party to be deposed. However, thereafter, Plaintiffs request that Defendant produce a witness for deposition. Defendant's position is that it is proper that both Plaintiffs be deposed before any Defendant witness is deposed.

**(a) Plaintiffs Position.** There is no requirement under the Federal Rules of Civil Procedure that any particular party first produce a witness for deposition. Nonetheless, in the spirit of cooperation, Plaintiffs have agreed that Defendant may select one of them to have their deposition taken first. Plaintiffs simply seek, in turn, that Defendant then produce a witness for deposition. Plaintiffs agree that they will next produce the non-deposed Plaintiff for her deposition, and ask that Defendant, in turn produce a witness for deposition. Thereafter, Plaintiffs agree that all further depositions will be set according to the schedule of deponents and counsel.

**(b) Defendant's Position**. This court has wide discretion in fashioning discovery orders "for the convenience of parties and witnesses and in the interests of justice." *Maciere v. Pennsylvania College of Podiatry Medicine*, 1995 WL 676419 (E.D. Pa. 1995)(citing FRCP 26(d)). In *Maciere*, the plaintiff and defendant served deposition notices on the same day. The court held that the plaintiff's deposition should be taken first, and the depositions of the defendants should be held later.

*Brady v. Grendene USA, Inc.*, 2014 WL 4925578 (S.D. Cal. 2014) is especially instructive. In *Brady*, the court recognized that there is no inflexible rule of deposition priority. The court recognized, however, that because "the **plaintiffs are the moving party** in the lawsuit, they should be prepared to be **deposed first** to

demonstrate the bases for their claims." *Id*. at 3 (emphasis added). A similar result should be reached in this case.

Insofar as Plaintiffs are the moving parties in this lawsuit, Defendant is entitled to depose both of them first to ascertain the bases for their claims. The "alternating witness" approach advocated by Plaintiffs would deprive Defendant of this opportunity, has no rational basis, and would be prejudicial to Defendant's defense of the case. Plaintiffs concede that it is reasonable for one of them to be deposed first, but unreasonable for both of them to be deposed before Defendant's first witness is deposed. Defendant respectfully submits that, under the circumstances of this case, Plaintiffs' proposal makes no sense. While Plaintiffs have made the same discrimination claims against Defendant, many of the claims are based on somewhat different facts as to each Plaintiff and each Plaintiff has different damages. Thus, since Defendant is entitled to explore Plaintiffs' claims first, it makes no sense for Defendant to be permitted to depose only one of the Plaintiffs before submitting its witnesses for deposition.

**3. Limits On Depositions.**

**(a) Number of Depositions.** The parties agree that there should be no limits on the number of individuals deposed in this matter.

**(b) Modification regarding FRCP 30(d)(2).** The parties agree that they will abide by the seven (7) hour limit for each deposition with the following exception: Absent a subsequent agreement by the parties, each party may conduct two (2) depositions in which the time limit will be expanded to fourteen (14) hours, provided, however, that such fourteen-hour depositions must be completed over the course of two consecutive days.

**4. Increase In The Number Of Interrogatories**. Absent a subsequent agreement by the parties, the parties agree that each party to this action may serve 50 interrogatories.

**5. Discovery Of Electronically Stored Information**. The parties

recognized that each side possesses "text messages" stored on individual telephones. The parties have agreed that each side will initially produce printed versions of these messages. Should it be determined that such production is insufficient, the parties have agreed to meet and confer regarding additional steps that may be required.

**6. Protective Order For Private Information**. The parties recognize that this matter implicates private medical information as well as private information regarding the sexual orientation of certain witnesses. Accordingly, the parties will submit to the Court a proposed Protective Order.

**7. Discovery Cut-off.** The parties have agreed on a non-expert discovery cut-off date of February 6, 2017.

**8. Expert Discovery.** The parties have agreed to disclose experts on February 20, 2017; to disclose rebuttal experts on March 13, 2017; and to complete expert discovery by March 27, 2017.

**J. Motion Cut-Off Date**

The parties have set a motion cut-off date for April 3, 2017. The parties are not yet in a position to anticipate the nature, need or certainty of any motions but Defendant anticipates it will likely file a Motion for Summary Judgment as to some or all of the claims presented.

**K. Settlement**

The parties engaged in two pre-litigation private mediation sessions and a settlement conference with Your Honor on April 15, 2015. The parties do not believe that, at this juncture, another settlement conference would be productive, but remain open and willing to engage in settlement discussions in the future, as appropriate.

**L. Anticipated Length of Trial**

The parties have agreed on a Trial Date of May 22, 2017. This date has been chosen to accommodate the end of the Pepperdine Women's basketball season, which concludes in March, and also Plaintiffs' academic year which will end in

early May, 2017. Due to the numerous witnesses who have knowledge of the facts at issue in this case, the voluminous facts and events alleged by Plaintiffs and the need for several expert witnesses, the parties anticipate the trial in this matter will require 12 to 15 full court days.

**M. Proposed Dates**

See chart attached as Exhibit A.

**Q. Related Cases**

There are no known related cases pending in the Central District of California.

**R. Complex Litigation**

This is not a complex case and does not require a reference to the procedures set forth in the Manual on Complex Litigation.

**S. Severance, Bifurcation, or Other Ordering of Proof**

The parties agree that the punitive damage phase of the trial should be bifurcated. Otherwise, they do not presently believe there will be a need for severance, bifurcation, or other ordering to proof.

Dated: March 3, 2016

Respectfully submitted:

**ZUBER LAWLER & DEL DUCA LLP**
JEREMY J. GRAY
JEFFREY J. ZUBER

By: s/Jeremy J. Gray
Attorneys for Plaintiffs Haley Videckis and Layana White

Dated: March 3, 2016

Respectfully submitted:

**ANDERSON, McPHARLIN & CONNERS LLP**
PAULA TRIPP VICTOR
PETER B. RUSTIN

By: s/Paula Tripp Victor
Attorneys for Defendant Pepperdine University

## PROOF OF SERVICE

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 777 S. Figueroa Street, 37th Floor, Los Angeles, California 90017 USA.

On March 3, 2016, I served true copies of the following document(s) described as **F.R.C.P. RULE 26(F) JOINT REPORT** on the interested parties in this action as follows:

Paula Tripp Victor
ptv@amclaw.com
Peter B. Rustin
pbr@amclaw.com
ANDERSON, McPHARLIN &
CONNERS LLP
444 South Flower Street 31st Floor
Los Angeles, California 90071-2901
Telephone: (213) 688-0080
Facsimile: (213) 622-7594
Attorneys for Defendant Pepperdine
University

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I caused said document(s) to be served by means of this Court's electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities, to the parties and/or counsel who are registered CM/ECF Users set forth in the service list obtained from this Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 3, 2016, at Los Angeles, California.

s/Debbie J. Ellis
Debbie J. Ellis

# EXHIBIT A

# EXHIBIT A

| Event | Time | Agreed Upon Schedule | Court Order |
|---|---|---|---|
| Trial date | | 5/22/17 | |
| Final Pretrial Conference; Hearing on Motions in Limine; File Agreed Upon Set of Jury Instructions and Verdict Forms and Joint Statement re Disputed Instructions and Verdict Forms; File Proposed *Voir Dire* Qs and Agreed-to Statement of Case | | 5/8/17 | |
| Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit List; Witness List; Status Report re Settlement | | 5/1/17 | |
| Last Day for hand-serving Motions in Limine | | 4/10/17 | |
| Last day for hearing motions | | 4/3/17 | |
| Expert discovery cut-off | | 3/27/17 | |
| Last day for hand-serving and filing motions (other than Motions in Limine). | | 3/13/17 | |
| Rebuttal Expert Witness Disclosure | | 3/13/17 | |
| Last day to conduct Settlement Conference | | 2/15/17 | |
| Non-expert Discovery cut-off | | 2/6/17 | |
| Opening Expert Witness Disclosure [See F.R.Civ.P. 26(a)(2)] | | 2/20/17 | |
| Last day to amend pleadings or add parties | | 11/30/16 | |