

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street, Room 256, Denver, CO 80202</p>	<p>DATE FILED December 16, 2024 8:45 AM FILING ID: EF9A5B70C9CF5 CASE NUMBER: 2024CV33874</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs:</p> <p>THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, a body corporate of the State of Colorado, for the benefit of COLORADO STATE UNIVERSITY; and UTAH STATE UNIVERSITY, a Utah public institute of higher education,</p> <p>v.</p> <p>Defendant:</p> <p>THE MOUNTAIN WEST CONFERENCE, a Colorado nonprofit corporation.</p>	<p>Case No.</p> <p>Div.: Ctrm.:</p>
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COMPLAINT	

Plaintiffs the Board of Governors of the Colorado State University System, for the benefit of Colorado State University (“Colorado State”), and Utah State University (“Utah State” and collectively with Colorado State, “Plaintiffs”), through their undersigned counsel, allege as follows:

NATURE OF THE ACTION

1. Plaintiffs are voting members of Defendant The Mountain West Conference (the “Mountain West” or “Conference”), a National Collegiate Athletics Association (“NCAA”) Division I conference organized as a nonprofit corporation under Colorado law.

2. Over the past several months, the Mountain West and its Commissioner Gloria Nevarez have taken extraordinary and unauthorized actions in violation of Plaintiffs’ membership rights and Colorado law. In a desperate attempt to prevent further membership departures, the Mountain West and Commissioner Nevarez have willfully disregarded the Conference’s bylaws (the “Bylaws”) to take actions that the Board did not and would never have approved. The Conference and Commissioner have also covertly and impermissibly purported to amend the Bylaws in an attempt to justify their unilateral actions. And they now are threatening to withhold tens of millions of dollars due to Plaintiffs and other departing members, including refusing to reimburse the departing members for travel and other expenses incurred in connection with postseason football games. This flouting of the Bylaws and Colorado law is not new. It is part of the Mountain West’s ongoing efforts to restrict its members’ ability to freely explore the

best options in the marketplace for their student-athletes and penalize certain members for announcing their intent to withdraw from the Conference.

3. Plaintiffs bring this action to protect their universities, and the hundreds of student-athletes who compete for them, from the Mountain West's willful breaches of its Bylaws, efforts to deprive Plaintiffs of their rights under those Bylaws, and attempts to force Plaintiffs to each pay tens of millions of dollars in unlawful penalties if they resign their membership in the Conference to join the Pac-12 Conference (the "Pac-12") effective June 30, 2026, at the conclusion of the Mountain West's current media rights agreement.

4. Pursuant to its Articles of Incorporation, the Mountain West is "operated, exclusively for the benefit of, to perform the functions of, and to carry out the purposes of" its member institutions, including Plaintiffs. Nevertheless, the Mountain West and Commissioner Nevarez have repeatedly put their own interests above the best interests of the Conference's members, to Plaintiffs' and other members' detriment. These actions include, *inter alia*:

- (i) holding clandestine meetings of the Mountain West's Board of Directors (the "Board") without providing sufficient notice, as required under the Bylaws and Colorado law;
- (ii) conducting business at Board meetings without the quorum required under the Bylaws to permit the Board to act;
- (iii) prematurely stripping Plaintiffs and other member schools of their right to have a representative on the Board by excluding Plaintiffs and those member schools from voting on items and taking actions as Board members;
- (iv) secretly amending the Bylaws the day after Plaintiff Colorado State and three other member schools announced that they had accepted an invitation to join the Pac-12, without first calling a meeting of the Board and providing notice, as required under the Bylaws;
- (v) seeking to require Plaintiffs and other resigning members to each pay exorbitant and ill-defined "Exit Fees" as a penalty for resigning from the Conference (the "Exit Penalty"), equal to three or six times the average distribution the Mountain West paid to its members in the preceding year, which could range from \$19 million to \$38 million per resigning member, despite the fact that such Exit Penalty bears no relationship to the purported harm from Plaintiffs' withdrawal from the Conference;

- (vi) threatening to withhold tens of millions of dollars due to Plaintiffs and other resigning members and refusing to reimburse them for expenses, including travel and other costs incurred in connection with postseason football games, to purportedly satisfy the Exit Penalty;
- (vii) entering into unauthorized side deals designed to enrich certain Conference members at the expense of Plaintiffs and other departing members; and
- (viii) refusing to provide members with access to Conference books and records in an attempt to further conceal these improper actions against Plaintiffs and other departing members.

5. These actions have harmed Plaintiffs, harmed the market for membership in athletic conferences in the relevant market, and threaten to cause even greater harm to Plaintiffs and their student-athletes if not promptly remedied.

6. At the heart of this matter is the “realignment” of collegiate athletic conferences—schools departing one conference to join another—which has proliferated in recent years with dozens of schools changing conferences in search of the best fit for their athletic departments and student-athletes in the rapidly evolving college-sports landscape.

7. The Mountain West is no stranger to conference realignment. The Conference was formed by eight institutions that departed another conference. In its 25-year history, numerous schools have joined as new members while others have left to pursue other opportunities. Further, just last year, the Mountain West watched as the Pac-12, one of the preeminent NCAA Division I collegiate athletic conferences, was reduced to just two schools—Oregon State University (“Oregon State”) and Washington State University (“Washington State”), as ten of its member schools announced their departure and joined other conferences to pursue their best interests.

8. Following that exodus from the Pac-12, in December 2023, Commissioner Nevarez negotiated and entered a scheduling agreement between the Mountain West and the Pac-12 pursuant to which Oregon State and Washington State would play football games against Mountain West member schools (the “Scheduling Agreement”). Commissioner Nevarez negotiated multi-million dollar “withdrawal fees” into the Scheduling Agreement that the Pac-12 must pay to the Mountain West for any Mountain West member school that accepted an offer to join the Pac-12 at any point during the next three years. The Mountain West and Commissioner Nevarez expressly acknowledged and agreed that these “withdrawal fees” were fair and reasonable estimates of any harm the Conference may suffer should a member depart for the Pac-12 and that these

“withdrawal fees” would be the Conference’s sole and exclusive remedy should a member accept an offer to join the Pac-12.

9. As discussed further herein, the “withdrawal fees” are paid for a Mountain West member departing for the Pac-12 and, as the Mountain West itself acknowledged, sufficiently compensate the Conference for any harm it may suffer from a member’s departure. Accordingly, there is no justifiable or legal basis for the Conference to also collect an additional \$19 million to \$38 million Exit Penalty from the departing member. This attempt to “double-dip” by seeking two recoveries for the same purported injury would result in an impermissible windfall to the Mountain West, which the law rightfully prohibits.

10. Moreover, the Exit Penalty itself is excessive, punitive, and bears no reasonable relationship to the estimated harm that the Mountain West may suffer should a member elect to resign from the Conference. Indeed, the “withdrawal fees” and the Exit Penalty cannot both be reasonable estimates of harm to the Mountain West from a member’s departure to the Pac-12 when the two fees are vastly different and calculated by entirely different means. Nor is the Exit Penalty a reasonable estimate of any harm the Mountain West may suffer here, where Plaintiffs and other members are departing at the end of the Mountain West’s media rights agreement. It is also an unlawful restraint on trade under Colorado law.

11. Around the same time the Mountain West entered the Scheduling Agreement, the Mountain West modified its Bylaws to clarify both the process by which a member can resign from the Conference and when a member’s representative on the Board will be stripped of any rights following such resignation. Specifically, to resign from the Mountain West, a member is required to deliver both a written notice of resignation (an “Exit Notice”) and a \$5,000 payment (an “Exit Deposit”). The Bylaws are explicit that both the Exit Notice and the Exit Deposit are prerequisites for the resignation to be effective, and a member’s representative will only be removed from the Board once both prerequisites are satisfied.

12. On September 12, 2024, Plaintiff Colorado State, along with Boise State University (“Boise State”), California State University, Fresno (“Fresno State”), and San Diego State University (“San Diego State” and together with Boise State and Fresno State, the “Other Resigning Members”) informed Commissioner Nevarez that they had accepted invitations to join the Pac-12 beginning July 1, 2026. While these future departures were also publicly announced, none of these schools delivered an Exit Notice or paid an Exit Deposit as required for their resignation to become effective. Nonetheless, Commissioner Nevarez issued a letter informing these schools that they owed the Exit Penalty and that any payments due to them would be withheld. The

Mountain West thereafter promptly called a Board meeting, without sufficient notice, and sought to discourage Colorado State, Boise State, Fresno State, and San Diego State from voting on items at that meeting. Upon inquiry from Colorado State and the Other Resigning Members about the purposes of that meeting and after clarifying that they had not delivered an Exit Notice or paid an Exit Deposit, the Conference subsequently cancelled that meeting. Upon information and belief, the Commissioner then held a meeting with those Conference members that had not accepted invitations to the Pac-12. All of this was done in violation of the plain language of the Bylaws.

13. Plaintiffs subsequently learned that the Mountain West also apparently published amended bylaws (the “New Bylaws”) on September 13, 2024—the day *after* Colorado State and the Other Resigning Members announced that they had accepted an invitation to join the Pac-12. Plaintiffs were provided no notice of a meeting to consider and adopt these New Bylaws. If valid, these New Bylaws could materially impact Plaintiffs’ interests as current members of the Mountain West.

14. On September 23, 2024, Plaintiff Utah State announced that it, too, intended to accept an invitation to join the Pac-12 beginning July 1, 2026. Like Colorado State and the Other Resigning Members, Utah State has not delivered an Exit Notice or an Exit Deposit as required for its resignation to become effective, but it similarly has been precluded from voting on Board items or taking actions at Board meetings.

15. Media outlets have since reported that the remaining Mountain West member schools have agreed to remain in the Conference in exchange for certain signing bonuses that would be paid from the Exit Penalty collected from each of Plaintiffs and the Other Resigning Members, with two member schools—the United States Air Force Academy (“Air Force”) and the University of Nevada, Las Vegas (“UNLV”)—purportedly set to receive potential bonuses of \$25 million to \$30 million each. Plaintiffs and the Other Resigning Members received no notice of any Board meeting related to this agreement, were not permitted to vote on such issues, and received no communications about them despite remaining members of the Conference.

16. Plaintiffs and the Other Resigning Members have attempted to work with the Mountain West over the last several months in the hopes that the Mountain West would comply with its obligations under the Bylaws and Colorado law. The Mountain West, however, has resisted all such efforts and stonewalled Plaintiffs and the Other Resigning Members in their attempts to obtain information about the Conference’s actions. The Conference has continued to call Board meetings without proper notice, has continued to preclude Plaintiffs and the Other Resigning Members from voting on items at such improperly noticed meetings, and has refused to turn over minutes and other

corporate records to Plaintiffs and the Other Resigning Members as required by the Bylaws and Colorado law.

17. For all these reasons, judicial intervention is required to stop the Mountain West's abuses and protect Plaintiffs' rights. Plaintiffs seek a declaration that the Exit Penalty is invalid and unenforceable as a matter of law, a declaration that the Mountain West cannot withhold millions due to Plaintiffs to satisfy the Exit Penalty, and other injunctive and declaratory relief, as detailed herein.

THE PARTIES

18. Plaintiff the Board of Governors of the Colorado State University System is a body corporate of the State of Colorado headquartered in Denver and composed of Colorado State University, Colorado State University Pueblo, Colorado State University Global, and their constituent agencies, institutes, and services. The Colorado State "Rams" compete in 17 varsity intercollegiate sports. The school's teams have won nine Mountain West tournament championships, including three football titles.

19. Plaintiff Utah State University is a public land-grant research university with its main campus in Logan, Utah. The Utah State "Aggies" compete in 16 varsity intercollegiate sports. The Aggies have won 37 conference championships and three national championships, including in women's volleyball and softball.

20. Defendant The Mountain West Conference is a nonprofit corporation organized under the laws of Colorado with its headquarters and principal place of business in Colorado Springs, Colorado. It currently has thirteen member schools.

JURISDICTION AND VENUE

21. Jurisdiction is proper in this Court because it has general subject matter jurisdiction. Colo. Const., Art. VI, Sec. 9.

22. This court has general and specific personal jurisdiction over the Mountain West as its place of incorporation and principal place of business are Colorado, and it transacts business in this state giving rise to the claims herein. C.R.S. § 13-1-124.

23. Venue is proper in Denver County under C.R.S. § 6-4-110 because, among other reasons, the effect of Defendant Mountain West's anticompetitive conduct was suffered in this county.

FACTUAL ALLEGATIONS

A. The Mountain West Conference and Conference Realignment

24. Most colleges and universities with athletic departments belong to an NCAA collegiate athletic conference. The Mountain West is a Division I collegiate athletic conference that is part of the NCAA. Other NCAA Division I conferences that have Football Bowl Subdivision (“FBS”) programs, such as the Mountain West and Pac-12, include the Atlantic Coast Conference (“ACC”), the Big Ten Conference (“Big Ten”), the Big 12 Conference (“Big 12”), and the Southeastern Conference (“SEC”)—which together are frequently referred to as the “Power 4 Conferences”—and the American Athletic Conference (“AAC”), Conference USA, Mid-American Conference, and Sunbelt Conference—which, with the Mountain West, are frequently referred to as the “Group of Five.”

25. Membership in an athletic conference provides a variety of benefits for both schools and their student-athletes. For instance, conferences enable schools to better and more efficiently schedule games and matches for their teams; provide a means for schools to pool resources for various events and expenses; provide pathways to better enable teams to compete for championships; and permit schools to collectively bargain for media deals with television networks or other media outlets, exerting greater leverage in such negotiations than if a school negotiated individually.

26. For top conferences at the Division I level, media rights deals can provide member schools tens of millions of dollars annually. For example, in December 2020, the SEC and ESPN announced that they had reached a \$3 billion broadcast deal under which ESPN would pay the SEC \$300 million per season for the right to broadcast SEC football games over a 10-season term.¹ Not to be left out, the Big Ten signed a seven-year, \$7 billion media rights agreement with Fox, CBS, and NBC in August 2022.²

27. Media-rights deals like these not only bring in revenue for the schools, but also increase national exposure for both the schools and their student-athletes, which can increase a student-athlete’s prospects of turning professional and the value of his or her name, image, and likeness rights. As such, schools desire and are incentivized to find the best conference fit for their school and student-athletes, which is ultimately based on a variety of factors, including geography. The conferences likewise do their best to attract

¹ Emily Caron, *ESPN Signs \$3 Billion Deal for SEC Football as CBS Era Nears End*, Yahoo! (December 10, 2020), <https://perma.cc/MPF4-XM4Q>.

² Adam Rittenberg, *Big Ten Completes 7-Year, \$7 Billion Media Rights Agreement with Fox, CBS, NBC, ESPN* (August 18, 2022), <https://perma.cc/UCR5-MK9K>.

and keep member schools who enhance the value of their conference.

28. For these reasons, competition among collegiate athletic conferences and their member schools is important. This competition has only grown more important in recent years with expanding media-rights deals, leading many schools—including many who were historically affiliated with a certain conference—to switch conferences when it is in their best interests.

29. For instance, in 2021, it was reported that the University of Texas and the University of Oklahoma, each longtime members of the Big 12, would be departing for the SEC effective as of 2024. A year later, in 2022, the University of California, Los Angeles (“UCLA”) and the University of Southern California (“USC”) announced that they would be leaving the Pac-12 for the Big Ten effective as of 2024.

30. These announcements led to a series of additional departures and rounds of conference realignment throughout 2022 and 2023. By September 2023, eight additional schools had announced that they would be departing the Pac-12 in 2024, leaving Washington State and Oregon State as the only remaining members of the Pac-12.³ Outside the Pac-12, Southern Methodist University departed the AAC to join the ACC, and ten other schools switched conferences for the 2024-25 season.⁴

31. The Mountain West is itself a product of realignment. The Conference was formed in 1998, when Air Force, Brigham Young University (“BYU”), Colorado State, the University of New Mexico (“New Mexico”), San Diego State, UNLV, the University of Utah, and the University of Wyoming (“Wyoming”) decided to depart the Western Athletic Conference to form a new NCAA Division I athletic conference.

32. Since its formation, the Mountain West has seen many member schools come and go. Texas Christian University (“TCU”) joined the Mountain West in 2005 only to depart in 2012; founding members the University of Utah and BYU both departed in 2011; Boise State joined the Mountain West in 2011; Fresno State and the University of Nevada, Reno (“Nevada”) joined in 2012, and the University of Hawaii (“Hawaii”) became a football-only member that same year; San José State University and Utah State joined in 2013; and Colorado College became a women’s soccer-only member in 2014.

³ The eight additional departing schools were: the University of Washington and the University of Oregon (to the Big Ten); the University of Arizona, Arizona State University, the University of Colorado, and the University of Utah (to the Big 12); and Stanford University and the University of California, Berkeley (to the ACC).

⁴ See Lawrence Price, *College Football Conference Realignment Breakdown for 2024-25: Teams in New Conferences*, NCAA (September 8, 2024), <https://perma.cc/ACW3-2ECN>.

33. Today, the Mountain West has thirteen member schools, including Hawaii (men’s football only) and Colorado College (women’s soccer only), both of which have limited membership and thus limited voting rights.⁵

B. The Mountain West Enters a Scheduling Agreement with the Pac-12

34. On December 1, 2023, and in the wake of the aforementioned departures from the Pac-12, the Mountain West entered into a Scheduling Agreement with the Pac-12, Oregon State, and Washington State, permitting Oregon State and Washington State to compete against Mountain West member schools in football for the 2024-25 season, with an option for the parties to extend the agreement to include the 2025-26 season. *See Exhibit 1*, Scheduling Agreement.

35. On information and belief, at the time the Scheduling Agreement was negotiated, Commissioner Nevarez was aware of the state of conference realignment. Commissioner Nevarez nevertheless negotiated certain “withdrawal fees” into the Scheduling Agreement with the Pac-12 that would require the Pac-12 to pay the Mountain West if a Mountain West member school accepted an offer to join the Pac-12 at any point before August 1, 2027.

36. The “withdrawal fees” started at \$10 million per Mountain West member school that accepted an offer to join the Pac-12 and escalated up to \$15 million per school depending on the number of schools that accepted offers to join the Pac-12. As relevant here, the “withdrawal fees” for the first five Mountain West member schools that accepted an offer to join the Pac-12 ranged from \$10 million to \$12 million per member school. In the Scheduling Agreement, Commissioner Nevarez, on behalf of the Mountain West, expressly acknowledged and agreed that these “withdrawal fees” were “fair, reasonable and appropriate approximations of the losses that [the Mountain West] may incur as a result of [the Mountain West’s] loss of any [Mountain West] Member Institution to [the] Pac-12” and that such fees are paid “for each Accepting Member Institution” and would be the Mountain West’s “sole and exclusive remedy” in the event a Mountain West member accepted an offer to join the Pac-12. *Id.* § 7.02, sched. 7.

37. On information and belief, Commissioner Nevarez did not fully inform the Conference’s Board of the extent of these “withdrawal fees” before entering into the Scheduling Agreement, which necessarily harmed Plaintiffs’ and the other members’

⁵ Hawaii can vote only on issues pertaining to men’s football. Colorado College can vote only on issues pertaining to women’s soccer.

ability to exercise their right to freely compete in the market for collegiate athletics, especially at a time of heightened realignment.⁶

C. The Mountain West Bylaws

38. The Bylaws govern the rights and duties of the member schools—both as between themselves and the Conference. In or about December 2023, around the same time the Scheduling Agreement was entered, the Mountain West modified its Bylaws, including to clarify the procedure by which a member may resign from the Conference.

39. Specifically, Section 1.04(a) of the Bylaws provides that:

Any Member Institution may resign from membership in the Conference . . . June 30th of each year (the “Effective Date”) by delivering (i) written notice (the “Exit Notice”) to the Conference and the other Member Institutions on or before June 1st of the preceding year (the “Resignation Deadline”) and (ii) a non-refundable \$5,000 payment by wire transfer of immediately available funds to an account specified by the Conference (the “Exit Deposit” and, together with the Exit Notice, the “Notice of Resignation”) that will be applied to the Exit Fee (as defined below).

Exhibit 2, Bylaws § 1.04(a).

40. The Bylaws further specifically state that “[b]oth the Exit Notice and the Exit Deposit must be received for the Notice of Resignation to become effective.” *Id.* (emphasis added). And, the Bylaws confirm that a resigning member’s official “Resignation Date” is “the date the Resigning Member delivers the Notice of Resignation”—*i.e.*, the date the member delivers both the Exit Notice and the Exit Deposit. *Id.*

⁶ The Pac-12 filed suit against the Mountain West on September 24, 2024, in the Northern District of California, raising various claims related to the Scheduling Agreement, including that the “withdrawal fees” are an unlawful restraint on trade and an unlawful penalty under California law. *See The Pac-12 Conference v. The Mountain West Conference*, No. 4:24-cv-06685 (N.D. Cal. 2024). The Mountain West continues to seek the “withdrawal fees” from the Pac-12 in that lawsuit and has maintained that such withdrawal fees are “fair, reasonable and appropriate approximations of the losses that [the] MWC may incur” as a result of a member(s) departing the Mountain West for the Pac-12. *See Mountain West Conference’s Motion to Dismiss, The Pac-12 Conference v. The Mountain West Conference*, No. 4:24-cv-06685 (N.D. Cal. Nov. 25, 2024).

41. Section 1.04(b) of the Bylaws sets forth the Exit Penalty in the event a member elects to resign from the Conference:

The Resigning Member shall pay to the Conference as an exit fee an amount equal to three (3) times the average per Member Institution Conference distribution payment for the year preceding the Effective Date (the “Timely Notice Exit Fee”). If a Resigning Member delivers a Notice of Resignation after the Resignation Deadline, the Resigning Member shall pay to the Conference as an exit fee an amount equal to double the Timely Notice Exit Fee (the “Late Notice Exit Fee” and, together with the Timely Notice Exit Fee, each an “Exit Fee”).

Id. § 1.04(b).

42. A member school’s decision to resign from the Mountain West carries other implications as well. For instance, if a Member Institution decides to resign from the Conference, it loses its seat on the Board once it delivers its Notice of Resignation—*i.e.*, once it delivers its Exit Notice and Exit Deposit. *Id.* § 1.04[d] (“Effective as of the Resignation Date, any person appointed by a Resigning Member that is serving on the Board of Directors, any committee of the Conference or otherwise serving as an officer of the Conference shall be deemed to have resigned in such capacity.”). Each Plaintiff is represented on the Conference’s Board of Directors by its president.

43. The Bylaws also require that the Board be provided seven days’ notice of any Board meeting, *id.* § 2.08, and that the Board have a quorum—equal to three-fourths of all members of the Board—to act, *id.* § 2.10.

44. The Bylaws further require the Mountain West to maintain books and records of its account and minutes of all proceedings of the Board and any committees exercising the power of the Board in written form (or other form that can be converted into written form within a reasonable time) for inspections. *Id.* § 7.01.

45. Finally, while the Board can amend or alter the Bylaws, it can do so only at a meeting specifically “called for that purpose” and by a three-fourths vote of all members of the Board. *Id.* at Art. VI.

D. Colorado State, Boise State, Fresno State, and San Diego State Announce Acceptance of an Invitation to Join the Pac-12 in 2026

46. On September 12, 2024, Plaintiff Colorado State called Commissioner Nevarez as a courtesy and informed her that Colorado State, Boise State, Fresno State, and San Diego State accepted invitations to join the Pac-12 and that an announcement to

that effect would be forthcoming. That same day, Colorado State called the Chairman of Mountain West’s Board, Keith E. Whitfield, and delivered the same message. Colorado State, Boise State, Fresno State, and San Diego State each also issued a press release announcing their intention to join the Pac-12 for the 2026-27 season.

47. Although they provided a courtesy oral notice of their intentions to the Commissioner and Chairman of the Board, none of the schools delivered a written Exit Notice to the Mountain West and each of the other Member Institutions, as required under Section 1.04(a) of the Bylaws to begin the resignation process. Nor did they pay the \$5,000 Exit Deposit that Section 1.04(a) requires for a Member Institution’s Notice of Resignation to become effective.

48. Nevertheless, Commissioner Nevarez immediately sent letters to Colorado State, Boise State, Fresno State, and San Diego State informing them that the provisions in the Bylaws applicable to resigning Member Institutions applied to them, including the Exit Penalty, and that, “as of the notice date,” the Mountain West would withhold all distributions owed to each school until it satisfied the Exit Penalty. Commissioner Nevarez also emailed the presidents of the universities to let them know that they need not attend a Board meeting that was scheduled on short notice to discuss “issues relating to membership and the future of the conference.”

49. On September 13, 2024, Colorado State, Boise State, Fresno State, and San Diego State responded to Commissioner Nevarez, stating that none of the four schools had officially resigned from the Mountain West because none had delivered the required Exit Notice or paid the required Exit Deposit. They also reminded Commissioner Nevarez that they each remained a full voting member of the Board under the Bylaws until their resignation and that they retained the right to attend, participate in, and vote at Board meetings. **Exhibit 3**, Sept. 13, 2024 Letter to Commissioner Nevarez.

E. The Mountain West Impermissibly Amends its Bylaws

50. Plaintiffs thereafter became aware that New Bylaws were uploaded to the Mountain West’s website, which contain material changes and appear to be dated September 13, 2024—the day *after* Colorado State, Boise State, Fresno State, and San Diego State announced their intent to depart the Mountain West for the Pac-12.

51. On information and belief, Plaintiffs received no notice of any annual or special meeting of the Board that was called for the purpose of altering or amending the Bylaws, as required. Moreover, without the Board members from Colorado State, Boise State, Fresno State, and San Diego State participating in whatever meeting was called to adopt these New Bylaws, the Board would not have had the quorum necessary to conduct business or the three-fourths majority needed to alter or amend the Bylaws.

52. The New Bylaws, if valid, include many revised terms that could detrimentally impact Plaintiffs. Among other changes, rather than a member institution losing its seat on the Board as of the “Resignation Date”—*i.e.*, when the resigning member delivered its Exit Notice and Exit Deposit—the New Bylaws provide that a member institution loses its Board seat “effective on the Notice Date,” which is an undefined term. *Compare Exhibit 2*, Bylaws § 1.04(d), *with Exhibit 4*, New Bylaws § 1.04(d).

53. The New Bylaws also removed from Section 1.07(b) the requirement that “[t]he Conference shall make annual regular distributions to Member Institutions no later than June 30th of each year.” *Compare Exhibit 4*, New Bylaws § 1.07(b) *with Exhibit 2*, Bylaws § 1.07(b).

F. The Board Meets in Violation of the Bylaws and Over the Objection of Plaintiff Colorado State and the Other Resigning Members

54. On September 17, 2024, Conference Board Chairman Whitfield emailed the Member Institutions informing them that a special meeting of the Board of Directors was scheduled for later that same evening. According to Chairman Whitfield’s email, the stated purpose of the special meeting was to vote “to establish a special committee under Mountain West Bylaw 2.12 whose purpose will be to facilitate strategic discussions, evaluations, and decisions regarding the future strategy and direction of the Mountain West Conference from July 1, 2026 forward.” Chairman Whitfield declared in his email that Board members representing Colorado State, Boise State, Fresno State, and San Diego State had a conflict of interest and were not permitted to vote on the special committee, and, accordingly, need not attend the meeting.

55. Colorado State, Boise State, Fresno State, and San Diego State objected to the improperly noticed meeting and requested that it be postponed in order to comply with the Bylaws’ notice requirements. They each also reiterated that they remained full voting members until their Resignation Date and requested a “complete agenda for the proposed special meeting” to permit the schools to evaluate whether a conflict of interest exists and a copy of “any proposed resolution purporting to form the committee, its scope and purpose, and its authority to recommend or take action.” Notwithstanding their objection and the plain language of the Bylaws, on information and belief, the special meeting proceeded.

G. Utah State Announces It Accepted an Invitation to Join the Pac-12 in 2026

56. On September 23, 2024, Plaintiff Utah State announced it accepted an invitation to join the Pac-12, effective July 1, 2026.

57. Like Colorado State and the Other Resigning Members, Utah State has not delivered a written Exit Notice to the Mountain West and each of the other Member Institutions, as required under Section 1.04(a) of the Bylaws to begin the resignation process. Nor has Utah State paid the \$5,000 Exit Deposit that Section 1.04(a) requires for a Member Institution's Notice of Resignation to become effective.

H. Other Schools Purportedly Agree to Remain in the Mountain West in Exchange for Signing Bonuses

58. On September 25, 2024, media outlets reported that Air Force and UNLV agreed to remain in the Mountain West in exchange for a "signing bonus" payment of \$25 million to \$30 million per school.⁷

59. On September 26, 2024, it was reported that New Mexico, Nevada, San José State, Wyoming, and Hawaii also agreed to remain in the Mountain West in exchange for a signing bonus.⁸ These public reports disclosed that all of the schools that decided to remain in the Conference would receive a signing bonus as a percentage of the Exit Penalty to be collected from each of Plaintiffs and the Other Resigning Members.

60. It has also since been publicly reported that as part of the agreement these schools signed to remain in the Mountain West there would not be an Exit Penalty should a remaining school depart the Mountain West to join a Power 4 Conference.⁹

61. Plaintiffs received no notice of any meeting regarding the payment of signing bonuses to these schools, were not part of any conversation related thereto, and did not vote on any such items.

I. Plaintiffs and the Other Resigning Members Work to Ensure Compliance with the Bylaws and the Law but the Mountain West's Violations Continue

62. Over the past several months and in the face of the Mountain West's repeated violations of the Bylaws and Colorado law, Plaintiffs and the Other Resigning Members have reminded the Mountain West of their rights under the Bylaws and Colorado law and sought to protect their respective rights and interests. The Mountain

⁷ See, e.g., Brett McMurphy (@Brett_McMurphy), *The Action Network HQ*, X (Sept. 25, 2024), <https://perma.cc/5NFR-G6WR>.

⁸ See, e.g., Kyle Bonagura, *Mountain West Conference Gets Commitments From 7 Remaining Members*, ESPN (September 26, 2024), <https://perma.cc/M673-WASM>.

⁹ See Geoff Grammer, *All in the Details: Examining the Deal that Kept the Mountain West Alive, Including Previously Unreported Items*, Albuquerque Journal (Oct. 4, 2024), <https://perma.cc/2MXT-7CTB>.

West, however, has continued to willfully violate Plaintiffs' and the Other Resigning Members' rights and Colorado law.

63. The Mountain West has failed to provide adequate notice of numerous additional meetings and unilaterally precluded Plaintiffs and the Other Resigning Members from voting on items at such meetings. For instance, on September 28, 2024, Chairman Whitfield emailed the members to inform them that a special meeting of the Board had been scheduled for just one hour later, in clear violation of the Bylaws, which demand seven-days' notice. Chairman Whitfield also declared in his email that Plaintiffs and the Other Resigning Members "are not entitled to vote on the matters to be discussed at the meeting" and were thus not required to attend. Chairman Whitfield called additional special meetings of the Board on one hour's notice on October 3, 2024, October 20, 2024, and December 9, 2024, and unilaterally excluded Plaintiffs and the Other Resigning Members from voting on any items at those meetings.

64. Similarly, on September 26, 2024, Plaintiffs and the Other Resigning Members were informed that a written consent was being sent only "to the disinterested members of the Board of Directors," and that Plaintiffs and the Other Resigning Members had a "conflict of interest with respect to the matters contemplated by such written consent and, thus, will not be necessary parties for the adoption of such written consent." On October 5, 2024, Chairman Whitfield again issued a written consent to only certain Board members for adoption, excluding Plaintiffs and the Other Resigning Members.

65. In an effort to understand what transpired at these improper Board meetings and the extent to which their rights had been infringed, on October 1, 2024, Plaintiffs and the Other Resigning Members requested that Commissioner Nevarez and Chairman Whitfield provide them copies of certain Conference records, including the current and past versions of the Conference bylaws, the minutes of all Board or special committee meetings in the past couple years, and all Board resolutions and written consents for that same period. *See Exhibit 5*, Oct. 1, 2024 Letter to Chairman Whitfield and Commissioner Nevarez. The Mountain West failed to provide such documents within five business days as required under Colorado law. When the Conference later did respond, it refused to produce the majority of the documents requested, including any minutes from Board meetings or special committee meetings since June 2024—leaving Plaintiffs and the Other Resigning Members with no visibility into the Board's actions over the last several months.

66. Plaintiffs and the Other Resigning Members have also made clear their position that the Exit Penalty, should they formally resign from the Conference, is unenforceable, that the Mountain West cannot "double-dip" by recovering both the Exit

Penalty from a departing member and the separate “withdrawal fees” from the Pac-12, and that the Mountain West has no right to withhold distributions due to Plaintiffs and the Other Resigning Members. *See Exhibit 6*, Nov. 22, 2024 Letter to Commissioner Nevarez. The Mountain West has ignored this letter and maintained its position that it is entitled to collect the Exit Penalty and withhold distributions due to Plaintiffs and the Other Resigning Members to satisfy the Exit Penalty. The Conference has also refused to reimburse Plaintiff Colorado State and Other Resigning Members for travel and other costs incurred in connection postseason football games.

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF
(The “Exit Fee” Is an Unenforceable Penalty)

67. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

68. There presently exists a justiciable controversy between Plaintiffs and the Mountain West concerning whether Plaintiffs and Other Resigning Members are required to pay an Exit Penalty upon their resignation from the Mountain West on June 30, 2026, and, if so, the amount of such Exit Penalty.

69. The Bylaws state that if a member delivers its Notice of Resignation by June 1 of the year preceding the withdrawal date, the “Resigning Member shall pay to the Conference as an exit fee an amount equal to three (3) times the average per Member Institution Conference distribution payment for the year preceding the Effective Date.” If a member delivers its Notice of Resignation after June 1 of the year preceding the withdrawal date, the Resigning member must pay double the exit fee.

70. Plaintiffs contend that these fees are an unenforceable penalty. The Exit Penalty bears no relationship to any harm that the Mountain West may suffer by a member electing to depart the Conference. The fact that an Exit Penalty is doubled if it is delivered one day later (*i.e.*, on June 1 vs. June 2 of the year preceding the withdrawal date) makes clear that the Exit Penalty is designed to be punitive and to coerce members to remain in the Mountain West rather than serve as a reasonable alternative to conference membership or a reasonable estimate of actual harm the Mountain West may suffer from a member’s decision to resign from the Conference.

71. The penalty-nature of the fees is further reinforced by the fact that (i) the Exit Penalty is the same for every member school regardless of how valuable a given member is to the Conference, (ii) the Exit Penalty is the same regardless of whether a member leaves the Conference in the middle of the Conference’s media rights agreement or at the end of such agreement, and (iii) the amount of the Exit Penalty is tied to the distribution payments the Mountain West makes to member schools, and not to any

estimate of revenues the Mountain West would lose from a particular member's departure. Such penalty provisions in an agreement are unenforceable and void on public policy grounds.

72. The Mountain West's agreement with the remaining member schools is further evidence that the exit fees are intended as a penalty and to restrict movement to other similar conferences. In that agreement, the Mountain West purportedly agreed that the remaining members would not have to pay the Exit Penalty should they depart for a Power 4 Conference. But, of course, the Mountain West would be just as harmed if a member left for a Power 4 Conference as if a member departed for the Pac-12 or another conference.

73. Moreover, the Mountain West negotiated separate "withdrawal fees" into the Scheduling Agreement to compensate the Mountain West in the event any members elected to depart for the Pac-12. As discussed *supra*, the "withdrawal fees" range from \$10 million to \$12 million per school for Plaintiffs and the Other Resigning Members, and the Mountain West expressly acknowledged and agreed that such amounts represented a "fair, reasonable and appropriate approximation[]" of the losses" that the Mountain West may incur as a result of a member's exit to the Pac-12 and that such "withdrawal fees" were the "sole and exclusive remedy" in the event a member accepted an offer to join the Pac-12.

74. The fact that the Mountain West negotiated specific "withdrawal fees" of \$10 million to \$12 million per school in the Scheduling Agreement as a purported means to compensate the Mountain West for a member's departure to the Pac-12 confirms that the Exit Penalty—which is significantly higher and calculated by an entirely different metric—is not a reasonable estimate of harm from a member's departure or any other financial losses. Indeed, both numbers cannot be reasonable estimates of the harm the Mountain West would suffer.

75. Further, even if one of the "withdrawal fees" or the Exit Penalty were a reasonable estimate of financial losses from a member's departure, the Mountain West would receive an impermissible windfall if it were permitted to recover *both* amounts for a member's departure to the Pac-12. The law does not permit such a double or duplicative recovery.

76. The Mountain West has also waived its right to enforce and/or should be estopped from enforcing the Exit Penalty given its representations and agreement that the "withdrawal fees" would be the Conference's "sole and exclusive remedy" for a member's departure to the Pac-12. Plaintiffs relied on the Conference's representations in deciding to accept their offers to join the Pac-12.

77. Pursuant to C.R.S. § 13-51-105, Plaintiffs seek a determination and declaration that the Exit Penalty is an unenforceable penalty, void on public policy grounds, and/or that the Mountain West is precluded from collecting both the Exit Fees and the separate “withdrawal fees.” Plaintiffs also seek a declaration that the Mountain West cannot withhold distributions, payments, or reimbursements due to Plaintiffs to recover the Exit Penalty. Such a declaration is necessary and appropriate to protect Plaintiffs’ rights.

**SECOND CAUSE OF ACTION FOR VIOLATION OF THE COLORADO
ANTITRUST ACT, C.R.S. § 6-4-104**

78. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

79. The Colorado Antitrust Act is codified at C.R.S. § 6-4-101, *et seq.* (“CAA”). Section 6-4-104 of the CAA mandates that entering into a contract “in restraint of trade or commerce is illegal.”

80. The Mountain West’s Bylaws constitute a contract between the Conference and its members.

81. Section 1.04(b) of the Bylaws, which establishes the Exit Penalty, is an agreement in restraint of trade that harms competition and, as implemented by the Mountain West in this case, provides no pro-competitive benefits. It is a violation of section 6-4-104 of the CAA.

82. The Exit Penalty harms competition in various product and geographic markets, including the market for membership in non-Power 4 NCAA Division I collegiate football conferences in the western United States (the “Western Non-Power-4 Conference Market”). There are six non-Power 4 NCAA Division I football conferences. Of those six, only two are in the western half of the United States—the Pac-12 and the Mountain West.

83. Universities compete with one another to secure membership in the athletic conference that best positions their athletic programs and student-athletes for success. Rivalry for such conference membership is highly competitive given the limited membership spots in each conference. Because conference members regularly compete against each other in sporting events throughout the year, geography is an important factor that impacts conference membership decisions. Indeed, outside the Power 4 Conferences (which generally have more valuable media rights deals, which can cover extended travel costs for football and other Division I teams), all football conferences are generally comprised of members from the same geographic region. This limits travel

costs for the members, makes scheduling games easier and more efficient, and has historically created numerous other benefits and efficiencies for the conferences and their members.

84. The conferences outside the Western Non-Power-4 Conference Market are not reasonable alternatives for the Plaintiffs (or for other schools in the Western Non-Power-4 Conferences) and are not in the relevant market. The other conferences in the Group of Five, which are predominantly comprised of schools that are not in the western half of the United States, are not reasonable alternatives because joining these conferences would require, among other things, extensive cross-country travel for all of Plaintiffs' athletic teams. While such travel may be justified for Power 4 Conference members given the media rights deals for those conferences, it is not practical for schools outside the Power 4 Conferences.

85. Industry participants recognize the Power 4 Conferences as being distinct from non-Power 4 Conferences. The Power 4 Conferences generally have larger media rights deals, higher revenue and greater distributions to member schools, larger athletic budgets, and, with respect to football, greater access to the College Football Playoffs.¹⁰

86. The Western Non-Power-4 Conference Market has a rational relation to interchangeability and cross-elasticity of demand. For the reasons stated in ¶¶ 83–85, other conferences that are not in the western half of the United States are not reasonably interchangeable with the Western Non-Power-4 Conferences from the perspective of universities within the Western Non-Power-4 Conferences. And cross-elasticity between Western Non-Power-4 Conferences and other conferences is low, such that a conference that was a hypothetical monopolist in the Western Non-Power-4 Conference Market could impose a small but significant non-transitory worsening of terms without losing a significant number of universities to conferences outside the Western Non-Power-4 Conference Market.

¹⁰ See *Current College Sports Television Contracts*, Business of College Sports (last updated Mar. 19, 2024) (based on available reports, the current conference television contracts for the Big 12, Big Ten, SEC, and ACC are worth approximately \$220 million, \$1.15 billion, \$740 million, and \$240 million per year, respectively), <https://perma.cc/4M5E-TX9F>; Margaret Fleming, *The Huge Money Behind College Football's Wild Realignment*, Front Office Sports (last updated Aug. 30, 2024) (discussing annual payouts to member schools of up to \$90 million in the Big Ten and \$50.3 million in the SEC, but only about \$750,000 to non-Power 4 Conference-USA member schools), <https://perma.cc/D72R-RU9H>.

87. As one of two conferences in the Western Non-Power-4 Conference Market and with twelve of the fourteen universities that have football programs in this market, the Mountain West has significant market power.

88. The Mountain West's market power is evident from its negotiations with the Pac-12 resulting in the Scheduling Agreement. When ten members departed the Pac-12 leaving only Oregon State and Washington State, the Pac-12 needed to find schools that were willing to play football games with Oregon State and Washington State for the 2024-25 season. The Mountain West ultimately agreed to schedule six football games with Oregon State and Washington State. However, as the only other non-Power 4 Conference in the western half of the United States, the Mountain West was able to demand and negotiate rates that were viewed as significantly above market for such games, with the Pac-12 paying the Mountain West \$14 million for those six games.¹¹ As set forth above, the Mountain West also was able to demand and negotiate certain multi-million dollar "withdrawal fees" that the Pac-12 would have to pay should any Mountain West member depart for the Pac-12 prior to August 1, 2027.

89. The Mountain West's market power in the Western Non-Power-4 Conference Market is protected by substantial barriers to entry. It is difficult, costly, and impractical for schools to form a new conference, including because a conference needs at least eight FBS member teams to be a viable NCAA Division-I FBS conference, among other reasons.

90. The Exit Penalty, as implemented by the Mountain West in this case, has no pro-competitive benefits. To the extent the Mountain West claims the Exit Penalty has a legitimate purpose in compensating the Mountain West for harm caused by the departure of any member, the Mountain West already accomplished that goal by negotiating "withdrawal fees" to be paid by the Pac-12 for every member that leaves the

¹¹ Chris Vannini, *Pac-12, Mountain West Conference miss deadline for 2025 football schedules: What's next?*, The Athletic (The New York Times) (Sept. 2, 2024) (scheduling deal was take it or leave it and "[t]he \$14 million this year comes out to \$2.3 million per home game, which is above the going rate for a nonconference home game"), <https://perma.cc/7MX4-KHYA>; Nick Daschel, *Oregon State's Piecemeal 2025 Football Schedule Costs Millions Less Than Mountain West Agreement*, The Oregonian: Oregon Live (last updated Nov. 1, 2024) (Oregon State paid ~\$3 million to schedule six games for 2025 season—a \$4 million savings from what it paid under its scheduling agreement with the Mountain West), <https://perma.cc/E7S6-4DLY>; Chris Murray, *What's Next for the Mountain West After Football Scheduling Alliance with Pac-2 Not Extended*, Nevada Sports Net (Sept. 3, 2024), <https://perma.cc/V6FP-MDFX>; David Rumsey, *College Football's Guarantee Games: High Risks and Higher Payouts*, Front Office Sports (Aug. 30, 2024) (discussing rising cost of guarantee games, but that no one has crossed the \$2 million threshold yet for a single game), <https://perma.cc/GG8V-PM4X>.

Mountain West for the Pac-12. Even if there were potential pro-competitive justifications for the Exit Penalty (and Plaintiffs do not concede there are any), there would have been reasonable, less restrictive alternatives for accomplishing these pro-competitive goals, such as policies incentivizing members to stay in the Mountain West that do not include excessive penalties for leaving.

91. The Exit Penalty that the Mountain West imposes on its members increases the cost for a member, including Plaintiffs, to resign from the Conference and join another conference, such as the Pac-12. This, in turn, increases the cost for Mountain West members to acquire membership in a substitute athletic conference by tens of millions of dollars. The Exit Penalty makes it prohibitively expensive for many members of the Mountain West to acquire membership in another Division I collegiate athletic conference in the market. This harms competition in the Western Non-Power-4 Conference Market, including in Colorado, by imposing a significant and artificial restraint on a university's ability to affiliate with the conference that offers the best fit and opportunities for its athletic programs and student-athletes. While Plaintiffs have elected to depart the Conference, the Exit Penalty continues to restrict competition in the market and prohibit other members from freely making decisions about which Conference to join.

92. The Exit Penalty also hurts the member institutions that elect to depart the Conference, including Plaintiffs, and their student-athletes by limiting the resources those members have to spend on their athletic programs. Even if a university chooses to pay the excessive Exit Penalty and leave the Mountain West, the Exit Penalty harms the university's competitive standing and ability to compete in the relevant market by reducing the amount of money the university has to invest in its athletic program, and the quality of a university's athletic program is an important factor in the competition to secure membership in athletic conferences.

93. The Exit Penalty also harms competition in the market for attracting and retaining member institutions. Just as universities compete with one another to secure membership in athletic conferences, the conferences themselves compete to secure member institutions that will bring the most prestige and revenue to their conferences, including in Colorado. Because the Exit Penalty disincentivizes members of the Mountain West from withdrawing from the Conference by making it prohibitively expensive to do so, the Exit Penalty decreases the number of member institutions available for collegiate athletic conferences in the market to acquire. And even if a university pays the excessive Exit Penalty to leave the Mountain West, the Exit Penalty still harms the competitive standing of the university's destination conference, because having a member with a reduced ability to invest in its athletic program makes the conference less attractive for other present and prospective members.

94. Plaintiffs have been injured, and continue to be injured, in their business and property by the illegal and anticompetitive Exit Penalty. The Mountain West's conduct has directly and proximately caused the Plaintiffs' injury. Plaintiffs' injuries flow from that which makes the Exit Penalty unlawful and are of the type of injury that section 6-4-104 was specifically enacted to prevent.

95. Pursuant to C.R.S. § 6-4-114, Plaintiffs are entitled to injunctive relief to prevent and restrain the Mountain West from enforcing the Exit Penalty.

THIRD CAUSE OF ACTION FOR BREACH OF THE BYLAWS

96. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

97. The Conference's Bylaws constitute a contract between the Conference and its members governing the rights, duties, and obligations between the members and the Conference.

98. Under Bylaw 2.08, "[n]otice of each meeting of the Board of Directors stating the place, date and time of the meeting shall be delivered . . . to all Directors at least seven (7) days before the date of the meeting."

99. In addition, under Bylaw 2.12, while the Board of Directors may delegate authority to a special committee or advisory council, the "members, terms and authority of such bodies" are required to be "established by resolution of the Board of Directors."

100. Under Bylaw 2.13, an action required to be taken at a meeting of the Board may be taken without a meeting "if a written consent, setting forth the action so taken is signed by all of the Directors . . . entitled to vote."

101. Further, under Article VI, the Bylaws may only be amended or approved at a meeting of the Board that is "called for that purpose" and by the vote of three-fourths of the members of the Board.

102. As detailed herein, the Mountain West has breached at least the four aforementioned Bylaws in the past several months, including by calling numerous Board meetings without proper notice, unilaterally excluding Plaintiffs and the Other Resigning Members from voting on items at such meetings, purporting to act by written consent without the approval of all the Directors, and surreptitiously amending the Bylaws without proper notice or procedure. On information and belief, Plaintiffs believe the Mountain West has committed additional breaches as well, all to Plaintiffs' detriment.

103. Plaintiffs have been and continue to be harmed by the aforementioned breaches.

**FOURTH CAUSE OF ACTION FOR VIOLATION OF THE COLORADO
REVISED NONPROFIT CORPORATION ACT, C.R.S. § 7-127-104**

104. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

105. The Mountain West is a Colorado nonprofit corporation and therefore subject to the Colorado Revised Nonprofit Corporation Act (“CRNCA”), which is codified at C.R.S. § 7-121-101, *et seq.*, and explicitly adopted by Bylaw 7.04.

106. Section 7-127-104(1) of the CRNCA mandates that a “nonprofit corporation shall give to each member entitled to vote at [a] meeting notice consistent with its bylaws . . . in a fair and reasonable manner.” Section 7-127-104(3)(a) states that notice of a meeting is presumptively fair and reasonable if provided “no fewer than ten days . . . before the meeting date.”

107. As set forth herein, on September 17, 2024, Chairman Whitfield called a special meeting of the Board for that very same day, and on September 28, 2024, October 3, 2024, October 20, 2024, and December 9, 2024, Chairman Whitfield called special meetings of the Board with only an hour’s notice. These acts not only violated the Bylaws but also violated section 7-127-104 of the CRNCA because such notice was not fair and reasonable.

108. The Mountain West’s violation of section 7-127-104 of the CRNCA harmed Plaintiffs and infringed on their rights as members of a Colorado nonprofit corporation.

**FIFTH CAUSE OF ACTION FOR VIOLATION OF THE COLORADO REVISED
NONPROFIT CORPORATION ACT, C.R.S. §§ 7-136-101, 7-136-102**

109. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

110. The Mountain West is a Colorado nonprofit corporation and therefore subject to the CRNCA, which is codified at C.R.S. § 7-121-101, *et seq.*, and explicitly adopted by Bylaw 7.04.

111. Section 7-136-101(1) of the CRNCA mandates that a “nonprofit corporation shall keep as permanent records minutes of all meetings of its members and

board of directors, a record of all actions taken by the members or board of directors without a meeting, a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation, and a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.”

112. Section 7-136-101(5) of the CRNCA mandates that a “nonprofit corporation shall keep a copy of each of the following records at its principal office: . . . c. Resolutions adopted by its board of directors . . . ; d. The minutes of all members’ meetings, and records of all action taken by members without a meeting, for the past three years; e. all written communications within the past three years to members generally as members; . . . h. All financial statements prepared for periods ending during the last three years”

113. Section 7-136-102(1) of the CRNCA further provides that upon written demand of at least five business days, a “member is entitled to inspect and copy, during regular business hours at the nonprofit corporation’s principal office, any of the records of the nonprofit corporation described in section 7-136-101(5).” Under sections 7-136-102(2) & (3), a member, who has been a member for the preceding three months, may also inspect and copy any of the other records of the nonprofit corporation, if the demand is made in good faith and for a proper purpose, that purpose is explained with reasonable particularity, and the records are connected to that purpose.

114. As set forth herein, Plaintiffs made a written demand on October 1, 2024 to copy Conference records within five business days of the demand. Plaintiffs made the demand in good faith for the stated purpose of ensuring that their interests as current members of the Mountain West have not been infringed upon, are not being infringed upon, and are being properly protected. The requested records were directly related to protecting Plaintiffs interests as members.

115. The Mountain West failed to make the requested records available for inspection or copying by October 8, 2024 in violation of CRNCA section 7-136-102 and the Bylaws. When the Mountain West did later respond, it refused to turn over the majority of the document requested in further violation of CRNCA section 7-136-102 and the Bylaws. On information and belief, Plaintiffs also believe the Mountain West has violated section 7-136-101 of the CRNCA and Bylaw 7.01 by failing to maintain all Conference books and records in a written form or form capable of conversion into written form within a reasonable time.

116. The Mountain West’s violation of sections 7-136-101 and 7-136-102 of the CRNCA harmed Plaintiffs and infringed on their rights as members of a Colorado nonprofit corporation.

SIXTH CAUSE OF ACTION FOR DECLARATORY RELIEF
(Plaintiffs Maintain Their Board Seats Until Their Resignation Date)

117. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

118. There presently exists a justiciable controversy between Plaintiffs and the Mountain West concerning Plaintiffs’ right to serve on the Board until their respective Resignation Dates. Under the Bylaws, a member must deliver an Exit Notice and pay an Exit Deposit before a member’s resignation is deemed to be effective. Once a member has delivered both the Exit Notice and the Exit Deposit, the member’s “Resignation Date” is set and any person appointed by that resigning member to the Board or any committees is deemed to have resigned.

119. To date, Plaintiffs have not delivered an Exit Notice or paid an Exit Deposit to the Mountain West. Having not satisfied either prerequisite to resign, Plaintiffs contend that they presently have not resigned from the Mountain West and are permitted to maintain their seats on the Board and any committees until their Resignation Dates. The Mountain West has nevertheless taken repeated actions to restrict Plaintiffs from participating in Board Meetings, including by unilaterally excluding Plaintiffs from voting on certain items and failing to inform Plaintiffs of actions the Board is taking.

120. Pursuant to C.R.S. § 13-51-105, Plaintiffs seek a determination and declaration that they each maintain their respective seats on the Board and any committees until their respective Resignation Dates. Such a declaration is necessary and appropriate to protect Plaintiffs’ rights under the Bylaws.

SEVENTH CAUSE OF ACTION FOR DECLARATORY RELIEF
(The New Bylaws Are Invalid)

121. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

122. There presently exists a justiciable controversy between Plaintiffs and the Mountain West concerning the governing bylaws. Under Article VI of the Bylaws, the Bylaws may only be amended or approved at a meeting of the Board that is “called for that purpose” and by the vote of three-fourths of the members of the Board.

123. Plaintiffs never received notice of a meeting called for the purpose of amending the Bylaws and, on information and belief, believe three-fourths of the members of the Board did not vote in favor of the New Bylaws. Accordingly, the New Bylaws are invalid and void.

124. Pursuant to C.R.S. § 13-51-105, Plaintiffs seek a determination and declaration that the Bylaws remain the operative bylaws and that the New Bylaws are invalid and void. Such a declaration is necessary and appropriate to protect Plaintiffs' rights under the Bylaws.

EIGHTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF

125. Plaintiffs allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though they were set forth here in full.

126. If the Mountain West is allowed to continue violating the Bylaws and to enforce an unlawful Exit Penalty, Plaintiffs will suffer immediate and irreparable harm.

127. Plaintiffs have no adequate remedy at law to protect against further breach of the Bylaws and the unwarranted denial of their rights as members of the Mountain West, including the withholding of distributions due to them by the Conference.

128. The benefits of Plaintiffs obtaining injunctive relief outweighs the potential harm to the Mountain West if the Court grants the requested injunctive relief.

129. The public's interest is best served by granting the requested injunctive relief to ensure that the Mountain West does not restrict the rights of a Colorado public university and other public universities to participate in the athletic conference that is in their best interest and the best interests of their student-athletes.

130. Plaintiffs seek injunctive relief to preclude the Conference from: calling any meeting of the Board without proper notice to Plaintiffs; removing Plaintiffs from the Board until their respective Resignation Dates; enforcing the New Bylaws; withholding any payments or distributions due to Plaintiffs under the Bylaws; and enforcing the Exit Penalty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. A judicial determination and declaration that the exit fees in the Bylaws are an unenforceable penalty and void on public policy grounds;

2. A judicial determination and declaration that the Mountain West is precluded from collecting both the exit fees and the separate “withdrawal fees” in the Scheduling Agreement;
3. A judicial determination that the Mountain West has violated section 6-4-104 of the CAA;
4. A judicial determination and declaration that, pursuant to the Bylaws, Plaintiffs maintain their seats on the Board of the Mountain West and any committees until their respective Resignation Dates;
5. A judicial determination and declaration that the Bylaws remain operative and that the New Bylaws are invalid and void;
6. A judicial determination that the Mountain West has violated section 7-127-104 of the CRNCA;
7. A judicial determination that the Mountain West has violated section 7-136-102 of the CRNCA and that Plaintiffs are entitled to inspect and copy Conference books and records;
8. Preliminary and permanent injunctive relief to preclude the Mountain West from calling any meeting of the Board without proper notice to Plaintiffs;
9. Preliminary and permanent injunctive relief to preclude the Mountain West from removing Plaintiffs from the Board until their respective Resignation Dates;
10. Preliminary and permanent injunctive relief against the enforcement of the New Bylaws;
11. Preliminary and permanent injunctive relief against the Mountain West’s withholding of any payments or distributions due to Plaintiffs;
12. Preliminary and permanent injunctive relief against the Mountain West’s enforcement of the Exit Penalty;
13. An award of attorneys’ fees and costs; and
14. Such other and further relief as the Court may deem just and proper.

Dated this 16th day of December, 2024.

PHILIP J. WEISER
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/s/ Lauren K. Peach

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