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9  
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 League, Ltd.

11 UNITED STATES DISTRICT COURT  
 12  
 13 NORTHERN DISTRICT OF CALIFORNIA

14 INTERNATIONAL SWIMMING LEAGUE,  
 15 LTD.,

16 Plaintiff,

17 vs.

18 FÉDÉRATION INTERNATIONALE DE  
 19 NATATION,

20 Defendant.

CASE NO. \_\_\_\_\_

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

**JURY DEMAND**

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1 Plaintiff International Swimming League, Ltd. (“ISL”) alleges as follows:

2 **I. INTRODUCTION**

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

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

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

28

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

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

26           6. FINA's insistence that the world's best swimmers may compete only on FINA's  
27 terms and its efforts to enforce that rule are nakedly anti-competitive. The European Commission  
28 has already found that a similar "unauthorised relations" rule wielded by FINA's counterpart for

1 ice skating violates the European Union’s competition laws. Such rules, the Commission ruled in  
2 its Commission Decision of December 8, 2017, “inherently aim at preventing athletes from  
3 participating in events not authorised [by the rulemakers], resulting in the foreclosure of  
4 competing event organisers . . . [who] could potentially harm the economic interests” of the  
5 entrenched governing body. *See* Provisional Non-Confidential Version of Decision ¶¶ 168-69  
6 (available at [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40208/40208\\_1384\\_5.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/40208/40208_1384_5.pdf)).

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

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

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

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

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

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

27           13.       FINA tried to explain to the world that its conduct was necessary to safeguard  
28 FINA’s own schedule of competitions. That explanation itself is proof of FINA’s anti-competitive

1 motive. But the circumstances leading up to its threatened swimmer ban laid bare a more  
2 disturbing picture of its anti-competitive aims.

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

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

28



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

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

## 14 **II. JURISDICTIONAL STATEMENT**

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

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

1 U.S. companies that have entered into such agreements include TYR Sport, Inc., of Huntington  
2 Beach, California, and AgonSwim of Nashville, Tennessee. Finally, FINA promulgates various  
3 rules and regulations governing the conduct of its membership, which includes national  
4 federations such as United States Aquatic Sports, Inc. (“USAS”), members of those national  
5 federations such as USA Swimming, and all U.S. swimmers who seek to compete in FINA-  
6 sanctioned competitions. Thus FINA has, for example, controlled the conduct of Thomas Shields,  
7 a class representative plaintiff in the related Class Action against FINA, who lives in Berkeley,  
8 California. Specifically, as discussed above, FINA directly threatened its swimming federation  
9 members and swimmers, including those in the United States, with sanctions if they entered into  
10 any relationships with, or competed in events organized by, ISL. Thus FINA’s conduct aimed at  
11 Shields among other swimmers, directly caused antitrust injury to ISL.

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

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

### 23 **III. PARTIES**

#### 24 **A. FINA**

##### 25 **1. FINA Derives Its Power From The Structure Of The Modern** 26 **Olympiad.**

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

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

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

8           25. The first group is nation-focused, comprising 206 National Olympic Committees  
9 (“NOCs”). The IOC has exclusive authority to recognize NOCs, including the U.S. Olympic  
10 Committee. The NOCs are tasked generally with promoting the Olympics and identifying and  
11 recommending host cities for the games. They retain exclusive authority for representing their  
12 respective nations at the Olympic Games and any other competitions sanctioned by the IOC.

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

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

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

8           29.     FINA is thus technically a collection of national member federations that actually  
9 compete horizontally with one another and with FINA itself, in that individual federations and  
10 FINA separately organize and promote top-tier international swimming competitions. But by  
11 virtue of its governance structure and the practicalities of its day-to-day operations, FINA’s  
12 decision-making and enforcement authority are in the hands of a small group of FINA officials  
13 who cannot be easily checked by member federations.

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

24           31.     By design and under the FINA Constitution, the General Congress moves slowly.  
25 It meets only every two years. A federation can call for a special session on matters that arise  
26 between those biennial meetings. But doing so requires written request of one third of all 209  
27 members. Effectively, then, FINA is run by the FINA Bureau. And between the Bureau’s own  
28

1 meetings, its executive committee handles all day-to-day business and accordingly retains the  
2 majority of the real decision-making and rules-influencing power over FINA.

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

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

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

25 35. Given the structure of FINA’s governance and its gatekeeper role in the Olympics,  
26 there is practically little that a given member federation—to say nothing of an individual  
27 swimmer—can do other than comply with FINA’s demands. This gives FINA the ability to harm  
28

1 competition in non-Olympic swimming, and it has exercised that power to cause anti-competitive  
2 harm to swimmers, event hosts, swimming competition consumers, and other industry  
3 participants.

4         36. Each of the member federations primarily is concerned with identifying the athletes  
5 who will represent the home country in the Olympic Games and ensuring they have sufficient  
6 training and other support to prepare for the Olympics. Also, when necessary, the member  
7 federations are the athletes' representatives regarding issues relating to FINA's qualifying events,  
8 the format of such competitions, FINA acceptance of their own planned competitions, technical  
9 regulations, and more. The Olympic Games are, in effect, the sole reason these organizations  
10 exist, usually pursuant to a statutory dictate recognized by the law of their country as solely  
11 responsible for identifying Olympic athletes in their sport—in the case of the United States, for  
12 example, to obtain “the most competent amateur representation possible in each of the Olympic  
13 Games, the Paralympic Games, and Pan-American Games.” *See* 36 U.S.C. § 220503(4).

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

19         38. Member federations (or their specific-sport designees) also frequently host their  
20 own events, sometimes including top-tier international competitions. For example, USA  
21 Swimming organized a biennial series called Duel in Pool from 2003 through 2015, a competition  
22 that pitted U.S. swimmers against their Australian or European counterparts. Likewise, the  
23 Luxembourg federation organizes the yearly Euro Meet series. And the Italian federation hosts  
24 the yearly Sette Colli Trophy. FINA allows such events to exist, but the members organize them  
25 and, on information and belief, reap all (or most) of the financial benefit from putting them on.  
26 The federation-organizers of these and the many other swimming competitions, international or  
27 otherwise, must negotiate with FINA over several issues, including scheduling and if or when the  
28

1 meets might constitute qualifying events for FINA's own competitions. For example, the 21st  
2 Euro Meet, set for January 25-27, 2019, is a qualifying event for the 2019 FINA World  
3 Championships.

4 39. The fact that member federations frequently disagree among themselves and with  
5 FINA on various rules and scheduling relating to the Olympic Games, FINA competitions, and/or  
6 member-federations events, combined with FINA's power structure, means that any given  
7 member federation—and more particularly any given designee focused on a specific sport (*e.g.*,  
8 USA Swimming)—retains limited political capital with which to negotiate with FINA. And given  
9 their legal mandate back home, member federations understandably must choose to expend that  
10 capital with FINA on matters pertaining to the Olympic Games. Other battles, including over  
11 FINA dictates that have nothing to do with preparing for or holding the Games, are therefore  
12 simply not worth it for the members to fight, or to risk fighting, even though they fall outside of  
13 the specific Olympic mandate over which FINA has any actual authority from the IOC or from  
14 anyone else.

15 **2. FINA Leverages Its Market Dominance To Extract And Enjoy—And**  
16 **Largely Keep For Itself—Substantial Revenues From The Labor Of**  
**The World's Best Swimmers.**

17 40. By law, FINA is a non-governmental, putatively not-for-profit organization. In  
18 reality it is big business.

19 41. No longer a small band of idealistic sport enthusiasts who would be stunned by the  
20 monolith that today's Olympic Games have become, FINA sits atop one of the world's most  
21 popular grouping of sporting events. Its role as aquatics gate-keeper to the Olympic Games allows  
22 it effectively to control every major aspect of the development of, and profit from, aquatic sports,  
23 in every corner of the globe.

24 42. It is a lucrative perch. While numbers deriving specifically from swimming  
25 competitions are not yet available to ISL, FINA overall enjoys a substantial share of IOC revenue  
26 from selling broadcasting rights, sponsorships, ticketing, and other income derived from the  
27  
28

1 Olympic Games. In all, FINA in 2016 and 2017 earned from the 2016 Rio de Janeiro Olympic  
2 Games more than \$31.9 million above its Games-related expenses.<sup>1</sup>

3 43. Regardless of any exclusivity that FINA may enjoy over aquatic sports in the  
4 Olympics, nothing gives FINA exclusive rights to control non-Olympic swimming for the entire  
5 world. But FINA nonetheless has leveraged its rights to organize Olympic swimming—rights  
6 which ISL does not here challenge—to dictate the terms on which any international swimming  
7 competition must be based.

8 44. FINA earns major revenue from its own non-Olympic events. It draws scores of  
9 millions of dollars per year from member-affiliation fees, event fees from cities that FINA allows  
10 to host its FINA-branded competitions, television broadcasting rights, licensing revenues, and  
11 sponsorships. In 2017, for example, and setting aside in-kind contributions, FINA took in more  
12 than \$57 million from its own events, well over half of that coming from host-city tribute and  
13 television rights to FINA-branded events, including: the FINA Swimming World Cup, a year-long  
14 series of short-course<sup>2</sup> events held across the globe; the FINA World Swimming Championships  
15 (25 meters), a single short-course championship held every even-numbered year; and the FINA  
16 World Championships, biennial competitions involving all the aquatics disciplines held every odd-  
17 numbered year. In short, aquatics in general, and swimming in particular, are money-making  
18 machines for FINA.

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

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23  
24 <sup>1</sup> FINA reports its finances in Swiss francs, which at the time of this Complaint exchange roughly  
25 1:1 with the U.S. dollar. All FINA financial figures discussed in this Complaint are derived from  
26 FINA's 2017 financial report, available at [https://www.fina.org/sites/default/files/audit\\_report\\_fina\\_-\\_2017\\_-\\_swiss\\_co\\_with\\_2\\_signatures-1.pdf](https://www.fina.org/sites/default/files/audit_report_fina_-_2017_-_swiss_co_with_2_signatures-1.pdf).

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



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

9           47.       Further, much of FINA’s prize money is spread thinly to the upper-tier of the top-  
10 tier competitors. The 2018 FINA Swimming World Cup is illustrative. In all, FINA awarded \$2.5  
11 million in prizes for athletes’ performances over the course of that seven-meet series. Based on  
12 the announced awards and FINA’s announced medals table at the end of the series, and excluding  
13 swimmer bonuses for setting new world records, about 60 percent of the prize money (roughly  
14 \$1.5 million) went to only 10 swimmers. The top two male and top two female swimmers took in  
15 a combined \$1 million. In contrast, FINA announced that 385 swimmers participated in the final  
16 meet.

17           48.       In short, and on the backs, legs, arms, and shoulders of the world’s aquatic athletes,  
18 FINA earned \$118 million in 2016 and 2017 revenues, excluding in-kind contributions. It gave  
19 12.5 percent—less than \$15 million of that—back to the athletes in prize money. This ratio is  
20 substantially lower than that enjoyed by athletes who compete in sports with competitive markets.

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

1           **B.       International Swimming League**

2           50.       ISL is a corporation organized and existing under the laws of Switzerland. It  
3 intends to create a worldwide, club-based swimming league and thereby to expand the competitive  
4 and financial opportunities of the world’s best swimmers.

5           51.       ISL’s primary goal is to promote swimming around the world by organizing and  
6 promoting competitions featuring an innovative team-based format at events around the world.

7           52.       ISL has extensively planned for the development of a worldwide league of  
8 swimming teams comprised of top-tier swimmers.

9           53.       ISL’s principals have spent nearly a decade organizing international events and  
10 honing the ISL club model. Its chief sponsor and promoter is Konstantin Grigorishin, a Ukrainian  
11 businessman who is a leading shareholder of the Energy Standard Group (“ESG”). ESG, which  
12 maintains its own swimming club (the “ESG Club”), remains active in supporting ISL and seeking  
13 to get the league up and running. ESG played a central role in planning the Turin Event and  
14 entered into key contracts—including with both the Italian Swimming Federation and with many  
15 of the top-tier swimmers who were to compete—for that event to go forward.

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

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

23           56.       By 2017, and at substantial expense of energy, time, and money, Mr. Grigorishin  
24 and others who would lead ISL had gained extensive experience in organizing and hosting  
25 international swimming competitions. Their efforts enjoyed increased recognition and standing in  
26 the international swimming community.

27           57.       For example, in August 2017, ESG hosted its first “Energy for Swim” competition.  
28 That event, held in Rome and organized by the Italian Swimming Federation, featured competition

1 between several top-tier swimmers from ESG's Club and athletes from the United States, Italian,  
2 and Australian national swimming federations. ESG provided athletes with about \$411,000 in  
3 appearance fees and charity contributions based on the athletes' performances. FINA was aware  
4 of ESG's 2017 event, but not yet considering it a threat, FINA limited its response to only token,  
5 unofficial opposition.

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

13 59. As further detailed below, this case arises from FINA's efforts to thwart those  
14 plans, including its successful measures to scuttle the Turin Event, and FINA's ongoing effort to  
15 prevent ISL from organizing and promoting its 2019 competitions. These efforts impacted the  
16 United States which is a potential host to these events, and which is home to many of the world's  
17 best swimmers and the residence of numerous top-tier swimmers who had signed up for the  
18 December 2018 before FINA forced its cancellation.

19 **IV. FINA'S UNLAWFUL COLLUSION TO UNREASONABLY RESTRICT**  
20 **COMPETITION**

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

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

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

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

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

19           64. Meanwhile, on April 28-29, 2018, and with cooperation from the Italian Swimming  
20 Federation, the ESG Club organized a junior meet in Lignano Sabbiadoro, Italy, drawing nearly  
21 100 swimmers from Italy, Hungary, Slovenia, and Serbia. FINA had approved that competition in  
22 advance as a qualifying meet for the 3rd Youth Olympic Games in Buenos Aires.

23           65. Focusing on its plans for a December 2018 competition that would use ISL’s  
24 innovative team-based format, ISL worked to obtain the support of FINA’s member federations.  
25 To that end, and on May 4, 2018, ISL entered into a memorandum of understanding with Ligue  
26 Européenne de Natation, the FINA-recognized “continental federation” comprising the European

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1 national federations. ISL also, during a May 23-24, 2018, meeting in Turkey, presented its plans  
2 to representatives of the federations from the United States, Australia, United Kingdom, Brazil,  
3 France, Russia, and Ukraine.

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

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

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

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

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

3           69. By mid-summer, ISL returned to FINA, seeking to salvage what it could. On or  
4 around August 17, 2018, ISL CEO Ali Khan wrote to FINA, explaining the details of the  
5 competition, disclosing more than \$2 million in combined appearance fees and prize money for  
6 the swimmers, and promising that ISL would of course hold the meet “according to FINA  
7 technical and doping control rules.” Mr. Khan also explained that ISL would work through a  
8 federation partner and seek FINA approval for the competition, which would aid in the  
9 “development of the sport of swimming to the mutual benefit of all the swimming community.”

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

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

24           72. In fact, and on information and belief, FINA was more than merely disappointed in  
25 ISL’s promotional video. FINA, on information and belief, instructed its agent to submit a  
26 “takedown notice” to YouTube under the DMCA to have three ISL videos removed from  
27 SwimSwam’s YouTube channel. That notice necessarily required FINA’s agent to assert that the  
28 ISL videos infringed on FINA’s copyright. That was false. Nonetheless, and pursuant to standard

1 YouTube procedures, YouTube initially removed the three ISL videos from the SwimSwam  
2 channel, only to allow them back up after SwimSwam established that the ISL content was not  
3 infringing.

4 **4. ISL And Italian Swimming Federation Develop Plan For December**  
5 **2018 Event.**

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

9 74. Thus, on or about October 17, 2018, the Italian Swimming Federation notified  
10 FINA that it intended to host the Turin Event, officially named Energy for Swim 2018, shortly  
11 before Christmas.

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

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1 necessary. And, in any event, regardless of how the rule is interpreted, FINA’s restriction against  
2 any member or swimmer participating in an unauthorized event is anti-competitive, with the intent  
3 and effect of eliminating competition.

4 76. ISL, through its counsel, responded by trying to revive the prior MOU that FINA  
5 and ISL were negotiating before FINA’s unreasonable demands. If nothing else, ISL sought a  
6 standstill truce so that ISL and the Italian Swimming Federation could carry out the Turin Event  
7 and not lose their respective investments in it, with FINA and ISL to resume discussions, after the  
8 Turin Event, over future competitions. FINA refused to enter the standstill arrangement.

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

15 **5. FINA Threatens Swimmers And Compels The Aid Of Member**  
16 **Federations To Boycott The Turin Event And Thereby To Force Its**  
17 **Cancellation.**

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



1 last-minute vote request was unstated in the October 26 e-mail calling for a vote. But it was  
2 unmistakably clear: the rules needed to be revised by FINA’s “interpretation” to prevent ISL’s  
3 event from going forward.

4 79. Thus, on October 30, the same day that the Bureau purportedly ratified FINA’s rule  
5 interpretation revision, FINA’s Mr. Marculescu circulated a letter to all FINA members, notifying  
6 them that the Turin Event “[was] not recognised by FINA.” He also explained that, pursuant to  
7 the newly interpreted rules, FINA should have been notified of the competition more than six  
8 months in advance. Of course, FINA had long been on notice of the Turin Event and had been  
9 negotiating with ISL over terms for its production, so this six-month notice excuse was a sham.  
10 Moreover, even if FINA had been given no notice, which it had, FINA’s 11th-hour rule  
11 interpretation revision was purposefully designed to make timely notice impossible. FINA further  
12 explained that because no notice was given (which was not true), FINA had not approved the  
13 competition. Mr. Marculescu warned that all of the world’s member federations should maintain  
14 “a clear and mutual understanding of FINA’s competence and jurisdiction in respect to  
15 international competitions.” And he warned the dozens of swimmers who had entered contracts to  
16 appear in the Turin Event that “FINA will further assess the development of this matter and will  
17 consider consequences in application of [FINA punitive sanctions], as and where appropriate.”

18 80. ISL, in a letter sent by its counsel, urged FINA to rescind the vote and return to  
19 discussions regarding a standstill truce that would allow the Turin Event to proceed as planned.  
20 ISL’s counsel further explained in that letter that FINA’s 11th-hour attempt to rewrite its rules  
21 was both contrary to the letter and spirit of the FINA rules and, independently, in obvious  
22 violation of U.S. and EU competition law. At that point there was still time for the Turin Event to  
23 proceed.

24 81. FINA refused to cease its illegal, anti-competitive conduct. It instead doubled  
25 down on its strategy to block the Turin Event and to destroy ISL. Mr. Marculescu separately  
26 wrote to the Italian Swimming Federation on the same day in an e-mail bearing the subject line:  
27 “NON APPROVED EVENT – UNAUTHORISED RELATIONSHIPS.” The Turin Event, he  
28 assured the federation, required FINA approval. He noted also that, given that the competition

1 was set for December 21-22, 2018, and that the FINA rules required six months' advance notice,  
2 any request for approval "would be clearly late."

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

6 83. FINA did not just leave it to its successful coercion of member federations to  
7 convey FINA's threats against swimmers' participation in the ISL event. FINA also directly  
8 confronted top swimmers or their coaches. During the fifth stage of FINA's World Cup series,  
9 held November 2-4, 2018, in Beijing, Mr. Marculescu, accosted world-renowned swimmer  
10 Katinka Hosszú's coach while she was warming up before a race. He warned: if Ms. Hosszú  
11 insisted on participating in ISL's event, she would be banned from competing in the upcoming  
12 FINA World Swimming Championships.

13 84. Over the half a dozen years since her first FINA World Cup series win in 2012, Ms.  
14 Hosszú had become the exclamation mark in FINA's headline swimming competitions. By the  
15 time Mr. Marculescu threatened her coach in Beijing over ISL, FINA had thrice named Ms.  
16 Hosszú "Swimmer of the Year." In addition to her victory in 2012, Ms. Hosszú had won the  
17 2013, 2014, 2015, and 2016 World Cup series and finished second in 2017 (which she went on to  
18 do again in 2018). She had won 12 individual gold medals at FINA's biennial World Swimming  
19 Championships, including six in 2016. Along the way, Ms. Hosszú had become the sport's top  
20 prize-earner, the first to break \$1 million.

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

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

25 87. There was no doubt that the federations would support FINA's command and give  
26 force to FINA's threat of sanctions. The national federations exist primarily, if not exclusively, to  
27 prepare and present swimmers for competition in the Olympic Games. Their relationship with  
28 FINA is necessarily delicate and subservient to FINA's demands: FINA, through its Bureau, has

1 sole authority to recognize national federations, and it may terminate any member “for significant  
2 violation of FINA Rules.” *See* FINA Rule C 10.3. Given FINA’s repeated missives against ISL’s  
3 efforts, there was no mistaking that allowing swimmers to participate would constitute a  
4 “significant violation.” And, in any event, FINA had just displayed its willingness and ability to  
5 re-interpret and revise its rules as it saw fit to keep out any competition and to keep the swimmers  
6 in FINA’s thrall.

7 88. So, the federations did what FINA told them to do.

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

13 90. Likewise, a lawyer for the Russian Olympic Committee advised on November 12,  
14 2018, the nation’s swimming federation members that in light of the FINA directive, athletes  
15 participating in the Turin Event would be disqualified from competing in FINA and federation  
16 events for one to two years. Thus, both the Swiss and Russian federation felt compelled to  
17 threaten sanctions beyond banning swimmers from just FINA events and the Olympics.

18 91. USA Swimming representatives held a conference call with national team members  
19 to discuss the December 2018 Event and FINA’s threat. Swimmers were told by those  
20 representatives that in light of FINA’s power over the sport—and particularly access to the  
21 Olympic Games—the national federation was in a difficult position. Reluctantly, it informed the  
22 swimmers that it would have no choice but to comply with any FINA directive to punish  
23 swimmers who participated in the Turin Event.

24 92. Federations around the world sent similar e-mails, letters, and had similar  
25 conference calls with their swimmers, underscoring the impossible position that FINA had put  
26 them in. *See, e.g.* Julian Linden, *Our golden girls unite for swimmers’ rights*, Daily Telegraph,  
27 Dec. 4, 2018 (quoting Australian federation chief executive: “[W]e’re the meat in the  
28 sandwich. . . . We support our athletes but at the same time we are also a part of FINA so we’re

1 pretty much in the middle.”). Critically, the federations, or at least several of the key federations,  
2 specifically discussed the issue with each other before determining and agreeing that FINA left  
3 them no choice but to put muscle behind FINA’s threats. *See id.* (Australian federation executive:  
4 “We’ve discussed the issue with the US, South Africa, the UK and so on[.]”).

5 93. Given that the national member federations (and/or their designee for the sport of  
6 swimming) exist to promote the interests of their athletes, however, there is no legitimate  
7 explanation for why they would agree among themselves and with FINA to help enforce FINA’s  
8 threat to ban swimmers from the Olympics if they participated in the Turin Event. The only  
9 logical explanation for their doing so was to help ensure that only FINA and its member  
10 federations would remain the only entities able to organize and promote top-tier international  
11 swimming competitions and thereby profit from those events.

12 94. While plans for the Turin Event crumbled under FINA’s pressure, ISL and its allies  
13 nonetheless tried again to salvage it.

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

24 96. But, having so successfully waged its war of intimidation against the federations  
25 and swimmers—both personally and through member federations with no real choice but to  
26 comply—FINA refused. Thus, given the real threat to the livelihoods and dreams of the  
27 swimmers facing FINA’s threat of suspension, the Italian Swimming Federation and ISL canceled  
28 the Turin Event on November 15, 2018, under protest. The Italian Swimming Federation notice,

1 sent out via letter over the federation president’s signature, bemoaned “the absence of any  
2 explanation or evidence to genuinely justify FINA’s actions,” concluding “that FINA’s true  
3 motive is to safeguard its dominant position as the sole and exclusive license holder of aquatics  
4 sports.”

5 97. News of the cancellation at FINA’s hands spread across the sports world. Athletes  
6 criticized FINA on social media. Adam Peaty, an Olympic gold medal winner and five-time  
7 World Champion, reported on Twitter that he was “incredibly disappointed” that the Turin Event  
8 was cancelled and suggested that swimmers “need to ask why.” *See Adam Peaty criticises*  
9 *decision to scrap International Swimming League*, BBC, Nov. 15, 2018,  
10 <https://www.bbc.com/sport/swimming/46224766>. On the other side of the globe, Olympic gold  
11 medalist Cate Campbell complained that FINA was clearly “putting swimmers at the bottom of its  
12 priority list.” *See Julian Linden, Our golden girls unite for swimmers’ rights*, Daily Telegraph,  
13 Dec. 4, 2018. She added “I can guarantee that just about any athlete in the world would have said  
14 that this ISL is a good thing . . . but FINA’s worried that it’s going to cut down on its revenue.”  
15 *Id.* News outlets, meanwhile, noted the obvious: the Turin Event evaporated only because of  
16 FINA’s threat. *See, e.g., Graham Dunbar, Swim meet canceled after FINA’s threat to ban*  
17 *athletes*, Associated Press, Nov. 15, 2018, [https://www.washingtonpost.com/sports/swim-meet-](https://www.washingtonpost.com/sports/swim-meet-canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-1ff263609a31_story.html?utm_term=.fb66362c322c)  
18 [canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-](https://www.washingtonpost.com/sports/swim-meet-canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-1ff263609a31_story.html?utm_term=.fb66362c322c)  
19 [1ff263609a31\\_story.html?utm\\_term=.fb66362c322c](https://www.washingtonpost.com/sports/swim-meet-canceled-after-world-bodys-threat-to-ban-athletes/2018/11/15/8c4241d4-e8e8-11e8-8449-1ff263609a31_story.html?utm_term=.fb66362c322c).

20 98. For its part, having been called out for its failure to justify its anti-competitive  
21 squeeze against ISL, FINA created after-the-fact pretexts for its nakedly anti-competitive conduct,  
22 dissembling in a November 16, 2018, statement that its conduct was necessary to maintain a  
23 “coherent” and “healthy” event calendar consistent with FINA’s “long-standing agreements and  
24 precedents.” The Turin Event, FINA said, “adds an extra layer of complexity.” *See FINA*  
25 *Statement*, Nov. 16, 2018, at <http://www.fina.org/news/fina-statement-2>. What that meant,  
26 exactly, remained unexplained. Neither did FINA provide any further detail or rationale for its  
27 anti-competitive conduct in a December 3, 2018, letter to FINA members. In that letter, sent over  
28 Mr. Marculescu’s signature, FINA reiterated its vague concern for the “harmonious development

1 of the calendar,” and suggested that was the reason it exerted its overwhelming power to crush the  
2 Turin Event. Further, and highlighting the fact that FINA intends to limit competition and keep  
3 itself, alone, atop the market, he wrote that “FINA will resist any challenges to its status as the  
4 international non-governmental organisation governing the sport of swimming at the world  
5 level[.]”

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

18 100. Meanwhile, ISL, through Mr. Grigorishin’s letter to swimmers, vowed to pay the  
19 dozens of swimmers who had signed up for the Turin Event with appearance-fee contracts half of  
20 their fees even though FINA forced its cancellation. Despite the setback, he said, ISL will  
21 continue to plan similar competitions: “Our ambitious plans for 2019 remain undiminished.” The  
22 world’s top-tier swimmers would be able to participate in such future events without interference  
23 from FINA.

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1 **V. FINA'S UNLAWFUL MONOPOLY AND MONOPSONY**

2 **A. FINA's Unlawful Monopoly Power In The Market For Top-Tier International**  
3 **Swimming Competitions**

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

6 101. The relevant product market for ISL's monopoly claim is the market for the  
7 organization and promotion of top-tier international swimming competitions.

8 102. FINA itself and other entities that FINA approves organize and promote  
9 international competitions featuring the world's top swimmers. These events are held in venues  
10 around the world. The event organizers sell tickets to these events. These events also generate or  
11 are able to generate broadcast rights, merchandise, sponsorships, and collection of royalties or  
12 other income derived from FINA, or from event-related intellectual property rights.

13 103. A commercially successful promotion of a top-tier international swimming  
14 competition requires multiple events of different styles and distances. It necessarily requires the  
15 participation of top-tier swimmers. Such athletes are generally deemed to be swimmers who have  
16 reputations for winning international competitions or specific events at such competitions,  
17 including but not limited to the Olympic Games, the FINA Swimming World Cup, the FINA  
18 World Swimming Championships, and the FINA World Championships. The top-tier swimmers  
19 are often, but not necessarily, athletes who swam for NCAA Division I collegiate teams and/or are  
20 members or prior members of their country's national team. Top-tier swimmers are also those  
21 who have either set national or world records in their respective events, or have closely competed  
22 with or defeated those swimmers who have. Such swimmers are well-known in the swimming  
23 community and can and do attract a large audience of fans. These athletes have almost universally  
24 trained intensively since they were children.

25 104. Top-tier swimmers enjoy brief careers. The youngest are most likely to be in their  
26 mid- to late teenage years, and those in their late twenties are generally considered to be in the  
27 twilight of their careers. Thus, even a two-year ban from FINA-approved competitions can cause  
28 top-tier swimmers to lose significant earning potential and brand-development opportunities for a

1 substantial portion—as much as one-fifth or one-quarter—of their careers. The mere threat of  
2 such a ban is sufficient to coerce most or all swimmers not to defy FINA.

3 105. The organization and promotion of top-tier international swimming competitions is  
4 not reasonably interchangeable with the promotion of any other sporting event. Consumers who  
5 attend top-tier international sporting events do so because of their dedication to, and appreciation  
6 of, the sport and its best athletes. Given that dedication and appreciation, as well as the many  
7 differences between competitive swimming and other sports, such as soccer, American football,  
8 baseball, and the like, other sporting events—including other *aquatic* events, such as high-diving  
9 and artistic swimming—are not interchangeable with top-tier international swimming  
10 competitions. For similar reasons, the organization and promotion of top-tier international  
11 swimming competitions is not reasonably interchangeable with the promotion of any other form of  
12 entertainment. Similarly, the highly specialized skills required to participate in the market as a  
13 supplier of talent—*i.e.*, a swimmer—means that other aquatic events are not substitute uses of  
14 swimmers skills and generally cannot serve as a viable competitor for their services. This means  
15 that any firm that is able to exclude other organizers of competitive swimming events effectively  
16 has both monopoly control over consumers (as well as ancillary participants in event production)  
17 and monopsony control over swimmers.

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

23 107. The relevant geographic product market is the entire world. Top-tier international  
24 swimming competitions are held in cities across the globe. Competitions may be organized, in  
25 effect, anywhere a sufficiently sized pool exists or may be installed, which means events can be  
26 and are held without regard for climate or topography of any particular location. Specifically,  
27 several FINA events or FINA-approved events featuring top-tier swimmers from multiple  
28 countries occur in cities around the world every year. Further, top-tier international swimming



1 competitions are governed generally by the same technical rules and types of races, regardless of  
2 where such competitions are held. The existing top-tier international swimming competitions also  
3 draw audiences and patrons from around the world.

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

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

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

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

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

1           112. As alleged below, FINA’s power to so control and restrict access to the Olympic  
2 Games constitutes monopsony power over the market for top-tier swimmer services. That  
3 unlawful power grants FINA the means to force all top-tier swimmers to deal exclusively with  
4 FINA and thereby to foreclose competition in the market for the organization and promotion of  
5 top-tier international swimming competitions. It is this simple: If FINA tells top-tier swimmers  
6 that they cannot compete for the Olympic Games if they provide their services to ISL events, those  
7 swimmers are effectively *forced under economic coercion to back out of their contracts* with ISL  
8 and/or with ISL-affiliated entities to compete at ISL events. FINA’s anti-competitive strategy thus  
9 results in a complete restriction of the supply of top-tier swimmers, without which ISL and others  
10 cannot compete in the market for organizing and promoting such competitions. It also serves to  
11 enforce a monopsony of that related labor market, giving FINA a 100 percent share, or nearly a  
12 100 percent share, of all world-class swimmers. The result is that FINA has a 100 percent share,  
13 or near 100 percent share, of top-tier international swimming events.

14           113. FINA’s exercise of such power is not merely theoretical. Among other examples,  
15 FINA’s suppression of the planned Turin Event constitutes direct evidence of FINA’s monopsony  
16 power.

17           114. In the alternative, FINA’s conduct as described in this Complaint constitutes  
18 attempted monopolization. Its efforts to prevent ISL from promoting and organizing an  
19 independent top-tier international swimming competition and to restrict the ability of top-tier  
20 swimmers from competing in ISL events were at a minimum likely to result in the monopolization  
21 of the market for promoting and organizing such events. FINA intended to acquire such power  
22 over the market, as evidenced by, among other facts alleged above, its multiple statements  
23 regarding ISL’s non-recognition and its overt threats to member federations and top-tier swimmers  
24 who might have otherwise participated in hosting or competing in ISL events. FINA’s conduct  
25 effectively prevented ISL from organizing its events and, if left unchecked, will continue to  
26 prevent ISL and others from competing in the market, such that FINA’s attempted  
27 monopolization—if not already achieved—will be permanently realized.

28

1           **B.     FINA’s Unlawful Monopsony Power In The Market For The Services Of Top-**  
2           **Tier Swimmers**

3                   **1.     The Services Of Top-Tier Swimmers Constitutes The Relevant Input**  
4                   **Market.**

5           115.    The relevant input market for ISL’s monopsony claim is the market for the  
6 organization and promotion of top-tier international swimming competitions.

7           116.    As alleged above, top-tier swimmers are generally deemed to be athletes who have  
8 won international competitions or specific events at such competitions, including but not limited  
9 to the Olympic Games, the FINA Swimming World Cup, the FINA World Swimming  
10 Championships, and the FINA World Championships. The top-tier swimmers are often, but not  
11 necessarily, athletes who swam for NCAA Division I collegiate teams and/or are members or prior  
12 members of their country’s national team. Top-tier swimmers are also or alternatively those who  
13 have either set national or world records in their respective events or have closely competed with  
14 or defeated those swimmers who have. Such swimmers are well-known in the swimming  
15 community and can, and do, attract a large audience of fans. These athletes have almost  
16 universally trained intensively since they were children.

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

22           118.    Top-tier swimmers are compensated in various ways. Those who are members of  
23 their national teams frequently enjoy some level of stipend or other direct financial support. Up to  
24 60 members of the U.S. national team who have exhausted or have agreed to forego their  
25 eligibility to swim for collegiate teams, for example, are paid a monthly stipend of up to \$3,000  
26 per month. Beyond that, top-tier swimmers earn prize money depending on their level of success  
27 at international competitions, sponsorships or endorsements that to a significant extent depend on  
28 the swimmers’ success in the pool.

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

10 120. The relevant geographic market for the services of top-tier swimmers is the entire  
11 world. There are only a few hundred such swimmers across the entire world, and while large  
12 proportions of these swimmers reside in a few countries (*e.g.*, the United States), top-tier  
13 swimmers can compete and earn reasonable compensation for their services only in a market that  
14 allows them to compete with the best swimmers, wherever they may reside. Necessarily, top-tier  
15 international swimming competitions that rely on the swimmers' services include swimmers from  
16 multiple nations and are held throughout the world.

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

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

24 122. FINA's control over and power in the market for the services of top-tier swimmers  
25 is so complete that it constitutes a monopsony. FINA obtained and maintains, or attempts to  
26 obtain and maintain, that power over the market through the anti-competitive conduct alleged in  
27 this Complaint. FINA's exclusive ability to control access to the Olympic Games, among other  
28 high-profile and potentially lucrative competitions, grants it immense power and control over the

1 world's swimmers. Further, FINA's rules against unauthorized relationships serve, intentionally,  
2 to prevent top-tier swimmers from offering their services to organizers and promoters of top-tier  
3 international swimming competitions that are not FINA-approved.

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

13 124. FINA's power and control grants it the means to foreclose top-tier swimmers'  
14 ability to service non-FINA competitions, and specifically ISL, and to suppress the non-FINA  
15 demand for those swimmers' services. FINA's exercise of such power is not merely theoretical.  
16 Among other examples, FINA's crackdown against the December 2018 Event unlawfully  
17 prevented top-tier swimmers *who already had contracts to participate* from proceeding in that  
18 event. FINA thus with its boycott unlawfully deprived ISL of the opportunity to pay top-tier  
19 swimmers for their services.

20 125. In direct response to the Turin Event, and on the heels of forcing its cancellation  
21 by leveraging its monopsony power to restrict the supply of top-tier swimmers available to  
22 compete in that event, FINA on November 6, 2018, announced that it would increase the total  
23 prize money available at the FINA World Swimming Championships, set for December 11-16,  
24 2018. Just days before announcing that increase, FINA had confirmed that prizes for its  
25 championship competition would remain at just below \$1.2 million. But it had since sabotaged  
26 the Turin Event, drawing criticism from swimmers and fans around the world. In a sop to  
27 swimmers, FINA now increased the total prize money from about \$1.2 million to about \$2  
28 million. Even in raising prize money, FINA demonstrated its market power: the ability to control

1 price, independent of any changes in market conditions. This is a textbook definition of market  
2 power.

3 126. Moreover, FINA's conduct as described in this Complaint constitutes attempted  
4 monopsonization of the market for the services of top-tier swimmers. Its rules and efforts to  
5 prevent top-tier swimmers from competing in ISL events—or in any other unauthorized event—  
6 are at a minimum likely to result in the monopolization of this market. FINA has intended to  
7 acquire such power over the market, as evidenced by, among other facts alleged above, its  
8 unambiguous market-restricting rules, its multiple statements regarding ISL's non-recognition,  
9 and its overt threats to member federations and top-tier swimmers who might have otherwise  
10 hosted or competed in ISL events. FINA's conduct precluded dozens of top-tier swimmers from  
11 participating in the Turin Event. If left unchecked, FINA will continue to prevent top-tier  
12 swimmers from offering their services to competing buyers in the market, such that FINA's  
13 attempted monopsonization—if not already achieved—will be permanently realized.

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

### 21 **FIRST CAUSE OF ACTION**

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

23 128. ISL incorporates and re-alleges the foregoing allegations as if set forth fully in this  
24 paragraph.

25 129. FINA successfully compelled the support of multiple national federations to agree  
26 among themselves and with FINA to carry out FINA's conduct described above. Those national  
27 federations are economic actors independent from each other and from FINA. Because the  
28 member federations and FINA are competitors in the market for the promotion and organization of

1 top-tier international swimming competitions, the resulting agreements to act as described above  
2 constitute a horizontal agreement. In the alternative, and as the result of its framework as set forth  
3 above, FINA is the instrumentality of its member federations and its conduct therefore is  
4 necessarily the result of a horizontal agreement. Alternatively, even if the federations and FINA  
5 are not viewed as competitors, FINA's power over, and intimidation of, the federations, also  
6 establishes that FINA has organized a horizontal boycott.

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

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

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

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

1 such, the FINA-driven agreement, combination, or conspiracy constitutes an unlawful boycott  
2 against ISL that effectively deprived ISL of the supply of labor from the world's best swimmers.  
3 The anti-competitive nature of this conduct is manifest. And FINA cannot provide any plausible  
4 pro-competitive or other justification. As such, the conduct constitutes a *per se* violation of  
5 Section 1 of the Sherman Act.

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

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

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

24 137. Moreover, even if FINA were allowed to try to justify the conduct described in this  
25 Complaint, FINA would fail. There remain reasonably less-restrictive means to promote any such  
26 conceivable alleged purpose behind FINA's conduct. Accordingly, even under a rule-of-reason  
27 analysis, the FINA-driven agreement, combination, or conspiracy violates Section 1 of the  
28 Sherman Act.



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

11 139. Pursuant to section 16 of the Clayton Act, 15 U.S.C. § 26, ISL seeks issuance of an  
12 injunction against FINA, preventing and restraining the violations alleged herein.

### 13 **SECOND CAUSE OF ACTION**

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

15 140. ISL incorporates and re-allege the foregoing allegations as if set forth fully in this  
16 paragraph.

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

24 142. In the alternative, FINA, either acting alone or with its co-conspirators as set forth  
25 above, specifically intended to and tried to obtain for FINA the monopoly and monopsony power  
26 by engaging in the conduct described above. Such conduct is likely to result in the  
27 monopolization and/or monopsonization of the relevant markets alleged in this Complaint. If not  
28 stopped, FINA's goal of monopoly and monopsony power will be achieved, to the detriment of

1 swimmers, competing event organizers, and consumers of top-tier international swimming  
2 competitions (including fans, broadcasters, media outlets, sponsors and licensees).

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

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

9 145. Pursuant to section 16 of the Clayton Act, 15 U.S.C. § 26, ISL seeks issuance of an  
10 injunction against FINA, preventing and restraining the violations alleged herein.

11 **THIRD CAUSE OF ACTION**

12 **Tortious Interference With Prospective Economic Relations**

13 146. ISL incorporates and re-allege the foregoing allegations as if set forth fully in this  
14 paragraph.

15 147. With regard to the Turin Event, ISL was in several economic relationships that  
16 probably would have resulted in ISL's economic benefit. Not least of these relationships were  
17 ISL's dealings with the Italian Swimming Federation, prospective buyers of event broadcasting  
18 rights, and prospective event licensees. ISL stood to gain financially from these relationships in  
19 the form of ticketing, broadcast, and licensing revenue, among others.

20 148. FINA, itself very much steeped in the relationships required to organize, host,  
21 sponsor, and/or earn revenue from top-tier international swimming competitions, knew of or had  
22 reason to know of ISL's relationships and the financial benefits which would flow from those  
23 relationships.

24 149. Despite knowing of ISL's relationships and ISL's potential to gain from those  
25 relationships, FINA engaged in the conduct set forth above. That conduct, *by FINA's unlawful*  
26 *design*, was intended to disrupt ISL's relationships. At a minimum, FINA understood that its  
27 conduct would result in circumstances making it substantially likely that ISL's relationships would  
28 be disrupted.

1 150. FINA's conduct, as described above, forced the cancellation of the Turin Event,  
2 thereby disrupting ISL's economic relationships related to and/or arising from that event. That  
3 disruption caused ISL financial harm in an amount to be proved at trial.

4 **PRAYER FOR RELIEF**

5 Accordingly, ISL prays:

6 A. That FINA's conduct as described above be declared a violation of Sections 1 and  
7 2 of the Sherman Act, 15 U.S.C. §§ 1, 2;

8 B. That the Court issue a preliminary injunction prohibiting FINA from unlawfully  
9 interfering in any way with the ability of ISL or any other person or entity from organizing or  
10 promoting swimming competitions, including but not limited to an injunction prohibiting FINA  
11 from unlawfully enforcing any sanctions against either swimmers or FINA member federations  
12 who participate in such competitions;

13 C. That the Court issue a permanent injunction prohibiting FINA from unlawfully  
14 interfering in any way with the ability of ISL or any other person or entity from organizing or  
15 promoting swimming competitions, including but not limited to an injunction prohibiting FINA  
16 from unlawfully enforcing any sanctions against either swimmers or FINA member federations  
17 who participate in such competitions;

18 D. That the Court enjoin FINA from any further violations of the antitrust laws;

19 E. That judgment be entered for ISL and against FINA, including, as allowed by law,  
20 the award of reasonable costs and reasonable attorneys' fees incurred;

21 F. That ISL be awarded treble damages, as allowed by law;

22 G. That ISL be awarded such other, further, or alternative relief as the facts and law  
23 may allow and/or that the Court may deem just and proper.

24 Dated: December 7, 2018

FARELLA BRAUN + MARTEL LLP

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

28 Attorneys for Plaintiff International Swimming League,  
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**JURY DEMAND**

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

Dated: December 7, 2018

FARELLA BRAUN + MARTEL LLP

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

Attorneys for Plaintiff International Swimming League,  
Ltd.