



STETSON LAW

**2015
EIGHTH ANNUAL
NATIONAL PRETRIAL COMPETITION**

The Competition will be held on October 9–11, 2015
at Stetson University College of Law,
Gulfport, Florida,
in cooperation
with

 *The Center for Excellence in*
ADVOCACY
STETSON UNIVERSITY COLLEGE OF LAW

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETSON**

**OVER-ARMOR, INC., a California
corporation,**

Plaintiff,

v.

**COALITION AGAINST FOOTBALL
CORRUPTION, INC., a Stetson corporation,
and NELLIE KICKWOOD, individually,**

Defendants.

Case No. _____

VERIFIED COMPLAINT

Plaintiff, Over-Armor, Inc., a California corporation (“O-A” or “Plaintiff”), sues Defendants, Coalition Against Football Corruption, Inc., a Stetson corporation (“CAFC”), and Nellie Kickwood (“Kickwood”), and alleges as follows.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff O-A is a corporation organized under the law of the State of California with its principal place of business in San Diego, California. O-A is in the business of manufacturing and selling athletic apparel used primarily by organized sports teams at the high school, college and professional levels.

2. Defendant CAFC is a corporation organized under the law of the State of Stetson with its principal place of business in Libby Town, Stetson. Libby Town is located in the Middle District of Stetson. CAFC is a non-profit corporation whose mission is purportedly to rid professional soccer (called “football” in most of the world outside the United States) from all forms of perceived corruption.

3. Defendant Kickwood is not a citizen of California. Upon information and belief, Kickwood is a citizen and resident of Stetson.

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a), because the parties are of diverse citizenship and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

5. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a)(1).

6. All conditions precedent to the commencement or maintenance of the action alleged have occurred.

NATURE OF ACTION

7. This is a defamation action to recover substantial economic damages (and other relief specified herein) that Plaintiff suffered as a result of the Defendants' libelous statements.

GENERAL ALLEGATIONS

8. Plaintiff O-A is in the business of manufacturing and selling athletic apparel for use by organized sports teams. O-A's business model has been to focus its efforts on organized sports teams for the sales of its products. O-A's principal sports market is soccer.

9. O-A's President and founder is Mr. Charles Striker. Mr. Striker was a former college soccer player who began coaching club soccer teams after college. Striker formed O-A in 2001.

10. Striker's strategic plan for O-A was to develop the business by having O-A build its brand with America's youth. Accordingly, the business first focused on high school and club soccer teams. The theory was that younger players would be loyal to the

O-A brand as they moved up the competitive soccer chain. As these younger players grew, so did O-A, expanding into the collegiate arena. Ultimately, the company moved into the American professional soccer market.

11. O-A has been extraordinarily successful breaking into the athletic apparel market. O-A's next business step was to market its products at the international level.

12. The most significant international soccer association is the Federation Internationale de Football Association, more commonly known as FIFA.

13. In early 2014, FIFA announced that it would be accepting bids for manufacturers to supply jerseys and other athletic apparel for international soccer events, including future World Cups.

14. O-A saw FIFA's announcement as its opportunity to break into the international soccer market.

15. Defendant CAFC is a not-for-profit corporation whose stated mission is to "rid professional football from all forms of corruption." CAFC attempts to do so by a number of means including lobbying government officials, engaging in public relations campaigns, and pressuring businesses to engage in what CAFC perceives to be ethical practices.

16. In response to FIFA's announcement concerning accepting bids for athletic apparel, CAFC decided that it would seek to expose what it believed to be corruption in the bidding process.

17. As a part of CAFC's efforts to expose perceived corruption, CAFC began plans to prepare and disseminate a report about the bidding process and what it believed was rampant corruption.

18. At one time, Defendant Kickwood was employed by several major news organizations as an investigative reporter. Several years ago, Kickwood concluded that these organizations were not diligent enough in their investigations. Accordingly, Kickwood became an independent contractor for organizations in need of investigative journalism or similar services.

19. CAFC did not believe it had sufficient in-house resources to conduct its investigation into the FIFA clothing bidding process.

20. CAFC staff conducted research on the internet and social media sites such as Facebook seeking investigative reporters to assist with CAFC's FIFA investigation. As a result of these searches, CAFC located Kickwood.

21. CAFC and Kickwood entered into an agreement by which Kickwood would investigate the FIFA clothing bidding process and prepare a report for CAFC.

22. Upon information and belief, Kickwood's "investigation" was conducted in a grossly negligent and/or intentionally shoddy fashion.

23. After completing his/her "investigation," Kickwood submitted his/her report (the "Report") to CAFC. The Report identified Kickwood as the author and CAFC as the sponsor.

24. The Report contained numerous untrue statements of fact that Defendants knew or should have known were false.

25. CAFC posted the Report on the company's Facebook "wall" on September 1, 2014, under the caption, "TIME TO GET OVER OVER-ARMOR!!! DON'T LET YOUR KIDS WEAR A BRAND OF SHAME!!!!"

26. The Report stated that O-A had “engaged in a sustained corrupt course of dealings with FIFA officials in order to rig the bidding process for athletic apparel.” This statement was not true and Defendants knew or should have known of the statement’s falsity.

27. The Report stated that O-A officials “had offered bribes of up to \$1,000,000 to FIFA officials to disclose to O-A other companies’ bids so that O-A would be in a position to underbid all competitors.” This statement was not true and Defendants knew or should have known of the statement’s falsity.

28. Within 2 days of the publication of the Report on CAFC’s Facebook page, over 100 people posted comments on the company’s wall, all of which were extremely negative about O-A. For example, several coaches of soccer clubs and high school teams posted that they would no longer have their teams wear O-A products. Representative of such postings was the following from a user submitting a comment under the name “CoachTom”: “Soccer is great but O-A sucks. We won’t let u ruin our game!” Referring to O-A’s President, another post stated, “Let’s strike Striker.”

29. The negative postings culminated in what many commentators referred to as a “Call to Action.” The Call to Action was an effort to encourage a boycott of O-A’s products.

30. On September 4, 2014, O-A itself posted a comment on CAFC’s wall as part of the discussion thread that had started with the Report. In its response, O-A made clear that the Report was entirely false.

31. On September 5, 2014, Kickwood responded to O-A’s post in his/her own post, stating, “I wrote the Report you scum and I know it’s true. And there’s more to

come. I bet the Feds would be interested in some of the other stuff I found. Maybe they're already onto you." Kickwood also uploaded a picture of O-A President Striker that he/she had altered to superimpose prison bars over President Striker.

32. O-A responded to Kickwood's post by posting the following message: "Over-Armor stands by its commitment to ethics in sports. We reiterate that your allegations in the Report and in your post are untrue. We demand you withdraw them or the company will aggressively pursue all its legal options against you and CAFC."

33. Kickwood responded to O-A's post on the same day, stating, "Good luck with finding me. You'll never be able to do it. I'm gone with the wind. ☺"

34. By the end of September 2014, O-A experienced a significant decline in new orders. Several potential customers told O-A officials that "we just can't do business with you with all that's going on."

35. Also by the end of September 2014, O-A lost at least 50 existing accounts when teams cancelled agreements to purchase the company's products. Once again, the controversy over the FIFA bidding process was cited as the reason for the cancellations.

36. Finally, on September 30, 2014, FIFA formally notified O-A that it had been barred from bidding on FIFA contracts "while the serious allegations of unethical and perhaps unlawful conduct are being investigated." FIFA also awarded the contract on which O-A had hoped to bid to another athletic apparel company.

37. Neither CAFC nor Kickwood has withdrawn their libelous Report or other untrue statements concerning O-A.

COUNT I—DEFAMATION PER SE (Against Both Defendants)

38. Plaintiff realleges paragraphs 1 through 37, above.

39. CAFC and Kickwood published the Report (and the other statement each made) on the CAFC Facebook page in September 2014.

40. These defamatory publications were made to third-parties through CAFC's publicly available Facebook page.

41. These publications contained statements that were untrue.

42. Defendants knew or should have known the statements were not true.

43. As a result of the Defendants' publication of the defamatory statements, O-A has suffered significant economic harm.

WHEREFORE, Plaintiff, Over-Armor, Inc., requests that:

a) this Court award Plaintiff the compensatory damages caused by Defendants' actions in an amount not less than \$500,000,000;

b) this Court award Plaintiff punitive damages based on Defendants' actions;

c) this Court find Defendants jointly and severely liable for such compensatory and punitive damages;

d) this Court impose both pre- and post-judgment interest as appropriate under law;

e) this Court grant such other and further relief as it deems proper

Respectfully submitted,

Dated: October 6, 2014

s/ Mick Zuckerberg
Mick Zuckerberg, Stetson Bar No. 101010
Zuckerberg, Winklevoss & Narendra LLP
105 Boxwood Lane
Libby Town, Stetson 33602
Ph: (318) 427-7550
Fax: (318) 427-7570
mzuck@zwnlaw.com

VERIFICATION

I, Charles Striker, being duly sworn on his oath, state that I have authority from Plaintiff, Over-Armor, Inc., to sign and verify this Verified Complaint on its behalf, and that I have read the foregoing Verified Complaint and that the statements contained herein are true and accurate based on personal knowledge unless otherwise stated.

/s/ Charles Striker
Charles Striker

Subscribed and sworn to before me this 6th day of October, 2014.

/s/ Nancy Mayors
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETSON

OVER-ARMOR, INC., a California
corporation,

Plaintiff,

v.

COALITION AGAINST FOOTBALL
CORRUPTION, INC., a Stetson corporation,
and NELLIE KICKWOOD, individually,

Defendants.

Case No. 14-cv-1311-EKN-EJB

WAIVER OF SERVICE OF SUMMONS

TO: Mick Zuckerberg, Esq.
Zuckerberg, Winklevoss & Narendra
Counsel for Plaintiff Over-Armor, Inc.

I have received your request to waive service of a summons in this action along with a copy of the Verified Complaint, two copies of this waiver form, and a prepared means of returning one signed copy of the form to you.

On behalf of my client, Defendant Coalition Against Football Corruption, Inc. ("CAFC"), I agree to save the expense of serving a summons and complaint in this case. I understand that CAFC will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that CAFC waives any objections to the absence of a summons or service. I also understand that CAFC must file and serve an answer or a motion under Rule 12 of the Federal Rules of Civil Procedure within 60 days from October 6, 2014, the date when this request was sent. If CAFC fails to do so, a default judgment will be entered against it.

/s/ Susan J. Jobs

Susan J. Jobs, Stetson Bar No. 795431

Jobssj@jwwlaw.com

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*Attorneys for Defendant Coalition Against
Football Corruption, Inc.*

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETSON

OVER-ARMOR, INC., a California
corporation,

Plaintiff,

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COALITION AGAINST FOOTBALL
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Defendants.

Case No. 14-cv-1311-EKN-EJB

**DEFENDANT COALITION AGAINST FOOTBALL CORRUPTION, INC.'S ANSWER
AND DEFENSES TO PLAINTIFF'S VERIFIED COMPLAINT**

Defendant COALITION AGAINST FOOTBALL CORRUPTION INC. ("CAFC") respectfully submits its Answer and Affirmative Defenses to Plaintiff OVER-ARMOR, INC.'s ("O-A") Verified Complaint as follows:

ANSWER

PARTIES, JURISDICTION, AND VENUE

1. CAFC admits the allegations contained in Paragraph 1.
2. CAFC admits the allegations contained in Paragraph 2.
3. CAFC is without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 3 and, therefore, denies the same.
4. This Paragraph states a legal conclusion to which no response is required. To the extent a response is required, CAFC admits that subject matter jurisdiction in this Court is appropriate under 28 U.S.C. § 1332.

5. This Paragraph states a legal conclusion to which no response is required. To the extent a response is required, CAFC admits that venue is proper in this district under 28 U.S.C. § 1391(a)(1).

6. CAFC admits the allegations contained in Paragraph 6.

NATURE OF ACTION

7. CAFC denies the allegations contained in Paragraph 7.

GENERAL ALLEGATIONS

8. CAFC admits that Plaintiff O-A is in the business of manufacturing and selling athletic apparel for use by organized sports teams. CAFC is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations contained in Paragraph 8 and, therefore, denies the same.

9. CAFC is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 9 and, therefore, denies the same.

10. CAFC is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 10 and, therefore, denies the same.

11. CAFC is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 11 and, therefore, denies the same.

12. CAFC admits the allegations contained in Paragraph 12.

13. CAFC admits the allegations contained in Paragraph 13.

14. CAFC is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 14 and, therefore, denies the same.

15. CAFC admits the allegations contained in Paragraph 15.

16. CAFC admits the allegations contained in Paragraph 16.

17. CAFC admits the allegations contained in Paragraph 17.

18. CAFC is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 18 and, therefore, denies the same.

19. CAFC admits the allegations contained in Paragraph 19.

20. CAFC admits the allegations contained in Paragraph 20.

21. CAFC admits the allegations contained in Paragraph 21.

22. CAFC denies the allegations contained in Paragraph 22.

23. CAFC admits that Kickwood submitted a report to CAFC and that the report identified Kickwood as the author and CAFC as the sponsor. CAFC denies the remaining allegations contained in Paragraph 23.

24. CAFC denies the allegations contained in Paragraph 24.

25. CAFC admits the allegations contained in Paragraph 25.

26. CAFC states that the Report speaks for itself. CAFC otherwise denies the allegations contained in Paragraph 26.

27. CAFC states that the Report speaks for itself. CAFC otherwise denies the allegations contained in Paragraph 27.

28. CAFC states that the Facebook postings speak for themselves. CAFC otherwise denies the allegations contained in Paragraph 28.

29. CAFC states that the Facebook postings speak for themselves. CAFC otherwise states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 and, therefore, denies the same.

30. CAFC states that the Facebook posting speaks for itself. CAFC otherwise states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 and, therefore, denies the same.

31. CAFC states that the Facebook posting speaks for itself. CAFC otherwise states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 and, therefore, denies the same.

32. CAFC states that the Facebook posting speaks for itself. CAFC otherwise states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 and, therefore, denies the same.

33. CAFC states that the Facebook posting speaks for itself. CAFC otherwise states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 and, therefore, denies the same.

34. CAFC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 and, therefore, denies the same.

35. CAFC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 and, therefore, denies the same.

36. CAFC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 and, therefore, denies the same.

37. CAFC denies the allegations contained in Paragraph 37.

COUNT I—DEFAMATION PER SE

38. CAFC incorporates by reference its answers to Paragraphs 1 through 37 as if fully set forth herein.

39. CAFC admits it published the Report on its Facebook page in September 2014. CAFC otherwise states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 and, therefore, denies the same.

40. CAFC denies the allegations contained in Paragraph 40.

41. CAFC denies the allegations contained in Paragraph 41.

42. CAFC denies the allegations contained in Paragraph 42.

43. CAFC denies the allegations contained in Paragraph 43.

AFFIRMATIVE AND OTHER DEFENSES

CAFC further responds to the Verified Complaint by asserting the following Affirmative and Other Defenses, and, in so doing, CAFC does not undertake any burden of proof not otherwise properly upon it:

FIRST DEFENSE

(Failure to State a Claim)

The Verified Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(Denial of Claims)

CAFC denies each and every claim for relief or judgment by Plaintiff, including, but not limited to, those claims for relief contained in the WHEREFORE paragraphs contained in the Complaint.

THIRD DEFENSE

(Truth)

The statements about which Plaintiff complains are true.

FOURTH DEFENSE

(No Causation)

Plaintiff's claims are barred because CAFC did not cause Plaintiff's damages, if any.

FIFTH DEFENSE

(No Damages)

Plaintiff has not suffered any legally cognizable damages as the result of CAFC's conduct.

SIXTH DEFENSE

(Damages Too Speculative and Uncertain)

Plaintiff's claims are barred and/or limited, in whole or in part, because the alleged losses and/or damages, if any, sustained by Plaintiff are too speculative and uncertain.

SEVENTH DEFENSE

(Failure to Mitigate)

To the extent Plaintiff suffered any damages, it failed to exercise its duty to mitigate such damages. Therefore, any such damages are not recoverable.

PRAYER

WHEREFORE, CAFC, having fully responded, respectfully requests that the Court dismiss the Complaint and enter judgment in favor of CAFC, award CAFC its costs and attorneys' fees, and grant such other and further relief as this Court deems just and proper.

Dated: October 27, 2014.

Respectfully submitted,

/s/ Susan, J., Jobs

Susan J. Jobs, Stetson Bar No 795431

Jobssj@jwwlaw.com

JOBS, WOZNIAK & WAYNE LLP

1000 Huntington Avenue

Paul Center, Stetson 33604

Tel: (381) 526-7360

Fax: (381) 526-7770

*Attorneys for Defendant Coalition Against
Football Corruption, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record this 27th day of October, 2014.

Susan, J., Jobs

Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETSON

OVER-ARMOR, INC., a California
corporation,

Plaintiff,

v.

COALITION AGAINST FOOTBALL
CORRUPTION, INC., a Stetson corporation,
and NELLIE KICKWOOD, individually,

Defendants.

Case No.: 14-cv-1311-EKN-EJB

RETURN OF SERVICE

I, the undersigned process server, served a copy of the attached Summons, with a copy of the Complaint, upon the person or entity named herein in the manner set forth below:

I conducted a diligent search and inquiry to discover the name and residence of Nellie Kickwood. Specifically, I located Nellie Kickwood's Facebook page, which used the profile KickOverArmorA\$\$, and which was registered to the e-mail address: kickwood2@kmail.com. I sent an e-mail to kickwood2@kmail.com, and I received a response containing the following signature block: Nellie Kickwood, 1234 N. Paring St., Beakman Town, Stetson 23434. I went to that address on five (5) separate occasions over a two-week period of time, and a 16 year old minor child by the name of C.J. Kickwood, who claimed to be Nellie Kickwood's (son/daughter), and who stated that he/she did not reside at that address. I was not able to personally serve Nellie Kickwood. Despite diligent search efforts, I am not aware of any other residence at which Nellie Kickwood resides.

I then converted the service documents to natural language text using the automatic content extraction software recently patented by my company and posted the complete text of the summons and complaint on the Facebook "wall" of Defendant Coalition Against Football Corruption, Inc. In an abundance of caution, I also sent a personal message, attaching .pdf copies of the service documents, to Nellie Kickwood's Facebook account at the user profile "KickOverArmorA\$\$.

At the time of service I was at least 18 years of age and not a party to this action.

Process Server must list below:

Name: Peyton Brady
Address: 678 S. Fairway Dr.
Beakman Town, Stetson 23434
Telephone No.: (413) 840-2323

STATE OF Stetson
COUNTY OF Pencilillas

Personally appeared before me, the undersigned authority in and for the state and county aforesaid, the within named Peyton Brady, who being first by me duly sworn states on oath that the matters and facts set forth in the foregoing "Return of Service" are true and correct as therein stated.

/s/ Peyton Brady
PROCESS SERVER

SWORN TO AND SUBSCRIBED BEFORE ME, this the 15th day of November, 2014.

/s/ WilsonRussell
NOTARY PUBLIC

My Commission Expires: August 14, 2017

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETSON

OVER-ARMOR, INC., a California
corporation,

Plaintiff,

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COALITION AGAINST FOOTBALL
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Defendants.

Case No. 14-cv-1311-EKN-EJB

**NOTICE, CONSENT AND REFERENCE OF A CIVIL ACTION TO A UNITED
STATES MAGISTRATE JUDGE**

Notice of a United States Magistrate Judge's availability. A United States Magistrate Judge is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States Court of Appeals for the Fourteenth Circuit like any other judgment of this Court. A magistrate judge may only exercise this authority if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a United States Magistrate Judge's Authority. The following parties consent to have a United States Magistrate Judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceeding.

| <i>Parties Printed Names</i> | <i>Signatures of Parties of Attorneys</i> | <i>Date</i> |
|--|---|-------------|
| Over-Armor, Inc. | /s/ Mick Zuckerberg | 12/1/14 |
| Coalition Against Football Corruption, Inc. | /s/ Susan J. Jobs | 12/1/14 |

Note: The above consenting parties state that named Defendant Nellie Kickwood has been held to be in default pursuant to Federal Rule of Civil Procedure 55.

Reference Order

IT IS ORDERED: This case is referred to United States Magistrate Judge Ethan J. Benjamin to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73.

Dated: December 5, 2014

/s/ Elena K. Noah

ELENA K. NOAH
United States District Judge for the
Middle District of Stetson

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETSON**

**OVER-ARMOR, INC., a California
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**COALITION AGAINST FOOTBALL
CORRUPTION, INC., a Stetson
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Defendants.

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Case No.: 14-cv-1311-EKN-EJB

**ORDER DIRECTING ENTRY OF FINAL JUDGMENT AGAINST COALITION
AGAINST FOOTBALL CORRUPTION, INC. and NELLIE KICKWOOD**

THIS MATTER came before the Court based upon the consent of Plaintiff Over-Armor, Inc. (“O-A”), and Defendant Coalition Against Football Corruption, Inc. (“CAFA”).¹ Following a bench trial against CAFA and the entry of default against Nellie Kickwood, the Court made certain findings of fact and reached conclusions of law, finding the defendants jointly and severally liable and awarding money damages to O-A against CAFA and Nellie Kickwood in the amount of \$750,000,000.

IT IS ORDERED that Plaintiff shall recover from defendants, jointly and severally, the principal amount of \$750,000,000, for which let execution issue forthwith. The Clerk of Court is directed to enter Final Judgment according to the terms of this order and close this case.

Dated: June 14, 2015

/s/ Ethan J. Benjamin
ETHAN J. BENJAMIN
United States Magistrate Judge for the
Middle District of Stetson

¹ Defendant Nellie Kickwood did not give express consent, but she/he was properly served and failed to appear or otherwise object to this Court’s jurisdiction. *See Baker v. Socialist People’s Libyan Arab Jamahiriya*, 810 F. Supp. 2d 90 (D.D.C. 2011).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETSON

OVER-ARMOR, INC., a California
corporation,

Plaintiff,

v.

COALITION AGAINST FOOTBALL
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and NELLIE KICKWOOD, individually,

Defendants.

Case No.: 14-cv-1311-EKN-EJB

ORDER PERMITTING LIMITED DISCOVERY, ORDERING
ADDITIONAL BRIEFING, AND SETTING HEARING ON
DEFENDANT NELLIE KICKWOOD'S MOTION TO VACATE JUDGMENT

This matter is before the Court on Defendant Nellie Kickwood's Motion to Vacate Judgment Pursuant to Rule 60(b)(4) and Plaintiff's response. *See* (ECF Nos. 412, 413).

Defendant Kickwood ("Kickwood") argues that the final judgment entered by Magistrate Judge Ethan Benjamin is void as a matter of law for two reasons. First, Kickwood argues that she/he was not properly served with process pursuant to Federal Rule of Civil Procedure 4 and thus was not a party to this action subject to the entry of judgment. Plaintiff acknowledges that it was unable to effect personal service on Kickwood even though reasonable efforts were allegedly made to do so. Rather, Plaintiff served process by posting the complete text of the service documents on the Facebook® wall of Kickwood's co-defendant Coalition Against

Football Corruption, Inc. (“CAFC”) and also by sending a private Facebook® message to the profile maintained by Kickwood.

Second, Kickwood argues that the judgment is void because she/he did not consent to Magistrate Judge Benjamin’s jurisdiction to enter final judgment. In response, Plaintiff argues that 28 U.S.C. § 636 does not require the express consent of a defaulted party who was properly served and who does not appear to contest jurisdiction prior to entry of default, so long as all other parties in the action properly consent. Here, both Plaintiff and CAFC expressly consented in writing to having this matter tried before Magistrate Judge Benjamin. *See* (ECF No. 41).

Having read the parties’ submissions and considered the arguments, it is

ORDERED that

- (1) The parties may conduct limited discovery on issues relating to service of process on Nellie Kickwood;
- (2) The parties shall submit additional briefing addressing the following issues:
 - a. Whether publication by posting the text of the service documents on CAFC’s Facebook® wall and/or attaching the service documents to a private Facebook® message to Nellie Kickwood’s user profile comports with Federal or Stetson state law for service of process. *See* Fed. R. Civ. P. 4(e)(1); Stetson Stat. §§ 120.01, *et seq.*
 - b. Whether, assuming service of process was proper, Nellie Kickwood’s failure to consent to having this matter tried before Magistrate Judge Benjamin renders the final judgment the Magistrate Judge entered void pursuant to Rule 60(b)(4). *See, e.g., United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). “Adjudication by consent is nothing new. Indeed, ‘[d]uring the early

years of the Republic, federal courts, with the consent of the litigants, regularly referred adjudication of entire disputes to non-Article III referees, masters, or arbitrators, for entry of final judgment in accordance with the referee's report.” *Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1942 (2015) (internal citations omitted); *but see Henry v. Tri-Services, Inc.*, 33 F.3d 931 (8th Cir. 1994).

- (3) The parties shall appear for a hearing on October 9, 2015 at 9:00 a.m.

/s/ Elena K. Noah

ELENA K. NOAH
United States District Judge for the
Middle District of Stetson

APPLICABLE STETSON STATUTES
(statutes current as of 2015)

Stetson Statutes § 120.11

(1) As a condition precedent to service by publication, a statement shall be filed in the action executed by the plaintiff, the plaintiff's agent or attorney, setting forth substantially the matters hereafter required, which statement may be contained in a verified pleading, or in an affidavit or other sworn statement.

(2) As used in this chapter:

(a) The word "plaintiff" means any party in the action who is entitled to service of original process on any other party to the action or any person who may be brought in or allowed to come in as a party by any lawful means.

(b) The word "defendant" means any party on whom service by publication is authorized by this chapter, without regard to his or her designation in the pleadings or position in the action.

(c) The word "publication" includes the posting of the notice of action as provided for in ss. 120.80 and 120.81.

Stetson Statutes § 120.80—Notice of Pending Lawsuit, Publication

(1) All notices of action shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in some newspaper published in the county where the court is located. The newspaper shall meet such requirements as are prescribed by law for such purpose.

(2) Proof of publication shall be made by affidavit of the owner, publisher, proprietor, editor, business manager, foreman or other officer or employee of the newspaper having knowledge of such publication. The affidavit shall set forth or have attached a copy of the notice, shall set forth the dates of each publication and otherwise comply with the requirements of law.

Stetson Statutes § 120.81—Notice of Pending Lawsuit, Posting

If there is no newspaper published in the county, three copies of the notice shall be posted at least 28 days before the return day thereof in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notices, which affidavit shall include a copy of the notice posted and the date and places of its posting.

Stetson Statutes § 120.21

The sworn statement of the plaintiff, his or her agent or attorney, for service of process by publication against a natural person, shall show:

- (1) That diligent search and inquiry have been made to discover the name and residence of such person, and that the same is set forth in said sworn statement as particularly as is known to the affiant; and
- (2) Whether such person is over or under the age of 18 years, if his or her age is known, or that the person's age is unknown; and
- (3) In addition to the above, that the residence of such person is, either:
 - (a) Unknown to the affiant; or
 - (b) In some state or country other than this state, stating said residence if known; or
 - (c) In the state, but that he or she has been absent from the state for more than 60 days next preceding the making of the sworn statement, or conceals himself or herself so that process cannot be personally served , and that affiant believes that there is no person in the state upon whom service of process would bind said absent or concealed defendant.