

DAN E. CHAMBERS, Bar No. 156853
dan.chambers@troutmansanders.com
THOMAS H. PROUTY, Bar No. 238950
thomas.prouty@troutmansanders.com
PADRIG W.E. BROWNE, Bar No. 287642
paddy.browne@troutmansanders.com
TROUTMAN SANDERS LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614-2545
Telephone: 949.622.2700
Facsimile: 949.622.2739

JANE DOLKART, *pro hac vice pending*
jdolkart@lawyerscommittee.org
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1401 New York Avenue, NW, Suite 400
Washington DC 20005
Telephone: 202.662-8391
Facsimile: 202.783-0857

Attorneys for Plaintiff
DOMINIC HARDIE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOMINIC HARDIE,

Plaintiff,

v.

THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION, a
nonprofit association;
INTERNATIONAL GIRLS
BASKETBALL ORGANIZATION,
a Washington nonprofit corporation;
ALLIANT INTERNATIONAL
UNIVERSITY, a nonprofit
educational institution; and TOWN
AND COUNTRY HOTEL, LLC, a
California limited liability company,

Defendants.

Case No.

COMPLAINT

1 Plaintiff Dominic Hardie, ("Plaintiff"), an African American male, alleges
2 upon personal knowledge as to himself and upon information and belief as to other
3 matters, as follows:

4 **SUMMARY OF THE CLAIM**

5 1. This is an action against the National Collegiate Athletic Association
6 ("NCAA"), International Girls Basketball Organization ("IGBO"), Town and
7 Country Hotel, LLC ("Town & Country"), and Alliant International University
8 ("Alliant") (collectively, the "Defendants") under Title II of the Civil Rights Act of
9 1964, 42 U.S.C. § 2000a et seq. ("Title II") for the Defendants' unlawful racial
10 discrimination in places of public accommodation. The Defendants have devised
11 and implemented a policy that denies Plaintiff the full and equal enjoyment of
12 places of public accommodation in violation of Title II by permanently denying
13 coaching certification to him and all other persons with felony convictions without
14 regard to the time passed since conviction, type of conviction, extent of
15 rehabilitation, or the relatedness of the conviction to any legitimate business or
16 organizational purpose. Plaintiff has a single felony conviction from eleven years
17 ago and is barred from coaching in NCAA-certified high school basketball events
18 including the MidSummer Night's Madness Western Tournament ("MSNM
19 Western Tournament") to be held in San Diego, California from July 28-31, 2013.

20 2. This policy is promulgated by the NCAA and enforced by tournament
21 organizer IGBO and venue operators Alliant and Town & Country, all of whom
22 agree to adhere to the NCAA's policy and practice of denying coaching
23 certification to all persons with felony convictions. This policy has a disparate
24 impact on African Americans and therefore constitutes an unlawful, racially
25 discriminatory policy. Further, the NCAA's actions in adopting the policy
26 constitute intentional discrimination. From 2006-2010, the NCAA had a policy
27 which excluded persons with violent felonies but certified those with a non-violent
28 felony over seven years old. Plaintiff was certified to coach under the old policy.

1 In 2011 the NCAA intentionally adopted the present policy with knowledge that it
2 would screen out a disproportionate number of African American coaches and
3 without any business justification.

4 **PARTIES**

5 3. Plaintiff, Dominic Hardie, is a 35 year old African-American male
6 who resides in Houston, Texas. In 2009 Plaintiff co-founded and began coaching
7 with Triple D Hoops, a Houston, Texas organization that works to positively impact
8 the lives of young athletes by developing self-esteem, confidence, and motivation
9 through sport.

10 4. Defendant National Collegiate Athletic Association ("NCAA") is a
11 voluntary association of over 1,200 member institutions, conferences,
12 organizations, and individuals that administers the athletic programs of its member
13 colleges and universities, including the enforcement of guidelines for the
14 recruitment of high school athletes into participating college athletic programs. The
15 NCAA's headquarters are in Indianapolis, Indiana.

16 5. Defendant International Girls Basketball Organization ("IGBO") is a
17 third party operator of NCAA-certified high school aged girls' basketball
18 tournaments. IGBO has its principal place of business in Edmonds, Washington
19 and is a nonprofit corporation duly organized and existing under the laws of the
20 State of Washington. It organizes and operates NCAA-certified girls' basketball
21 tournaments in several cities in Washington and California, including the MSNM
22 Western Tournament in San Diego, California.

23 6. Defendant Town and Country Hotel, LLC ("Town & Country") is a
24 limited liability company duly organized and existing under the laws of the State of
25 California. Town & Country owns and operates a resort and convention center that
26 has its principal place of business in San Diego, California. Town & Country
27 provides lodging to guests and hosts various events of exhibition and entertainment,
28 including the 2013 MSNM Western Tournament.

1 7. Defendant Alliant International University (“Alliant”) is a private non-
2 profit university with six campuses in California and three international campuses,
3 headquartered in San Diego, California. Alliant is one of the venues where MSNM
4 Western Tournament games will be held.

5 8. At all times relevant to this complaint, Defendants have engaged in
6 business affecting commerce.

7 **PLAINTIFF’S FACTUAL ALLEGATIONS**

8 **Plaintiff’s Background**

9 9. Dominic Hardie is a 35-year-old African-American male resident of
10 Houston, Texas. Mr. Hardie was a star basketball player at Lincoln High School in
11 Port Arthur, Texas during the early 1990s. He was recruited by Division I college
12 basketball programs and played Division I basketball for the University of Houston
13 and the University of North Texas. He went on to play professionally in the
14 Dominican Republic during the summer of 1999.

15 10. In 2000, at age 23, Mr. Hardie was arrested and charged with
16 possession with intent to distribute less than one gram of cocaine. In 2001, Mr.
17 Hardie pled guilty to the charge and received five years of probation. This was and
18 remains Mr. Hardie’s only arrest or conviction. Over 11 ½ years have passed since
19 the conviction and Mr. Hardie has fully rehabilitated himself.

20 11. Following his arrest, Mr. Hardie immediately obtained full-time
21 employment and has since remained gainfully employed. Mr. Hardie recently
22 returned to college and graduated from the University of North Texas in August
23 2011. He is presently working as a social worker in the child foster care system.

24 12. In 2009, Mr. Hardie co-founded Triple D Hoops, a non-profit
25 organization that works to positively impact the lives of young athletes by
26 developing self-esteem, confidence, and motivation through sport. As part of Mr.
27 Hardie’s work with Triple D Hoops, he coaches two high school aged girls’
28 basketball teams, one for girls age sixteen and under (“16U”) and one for girls age

seventeen and under ("17U"). These teams travel to elite NCAA-certified basketball tournaments throughout the country, providing the players with national exposure to college recruiters.

The NCAA Certification Process

13. Defendant NCAA is a voluntary association of over 1,200 member institutions, conferences, organizations, and individuals that administers the athletic programs of member colleges and universities, including the enforcement of guidelines for recruitment of high school athletes into participating college athletic programs. The NCAA imposes academic and test score requirements for high school aged students, limits the total number of students who can receive scholarships in each athletic program, regulates the terms and conditions of financial aid and benefits, and creates and enforces parameters on the recruitment of prospective student-athletes.

14. NCAA Division I coaches are allowed to attend only certain high school events outlined in NCAA Bylaws. The Bylaws allow coaches to attend NCAA-certified events organized by third-parties, and only during dates identified during specific recruiting time periods. These events, attended by college recruiters, allow prospective student-athletes to maximize exposure to Division I coaching staff.

15. The NCAA certifies nearly 200 high school girls' basketball events each year that NCAA Division I coaches may attend for recruitment purposes.

16. NCAA "legislation" grants to itself sole responsibility for authorizing approval of third-party tournament and event operators and participant coaches at NCAA certified events. In 2002, the NCAA began implementing requirements for high school aged men's coaching certification. The coaching certification policy expanded to women's events and leagues in 2006, and beginning in spring 2009, the NCAA required all event and league activity operators to submit to the NCAA Participant Approval process.

1 17. All individuals involved in coaching activities at NCAA-certified
2 events are required to obtain participant approval. Coaches are required to submit
3 an informational form for their teams on the NCAA participant approval website,
4 pay an entry fee, and complete a Release and Waiver of Liability Indemnity
5 Agreement form. Every team must have a complete "NCAA Roster" with the
6 home address and phone number of every registered coach and player.

7 18. NCAA event producers such as IGBO must register a given
8 tournament or event with the NCAA by filing an application regarding the
9 particular activity, participants, and the location and facilities, and pay entry fees in
10 order to obtain the NCAA designation. Tournament operators are required to verify
11 NCAA participant approval for all individuals in coaching activities. Additionally,
12 it is mandatory that each player attend an "NCAA Educational Session" either
13 before or right after her first game at the game site venue. Every team must also
14 adhere to the "NCAA Adjoining States" rule or be denied entry into the event. This
15 rule states that all teams participating in NCAA-certified events must be made up of
16 individuals that reside either within the same state as the team's official address or
17 within a geographically adjoining state, with not more than three prospects from
18 adjoining states participating on any one team.

19 19. The coaching approval process includes a criminal background check
20 administered by LexisNexis. Approval is valid for two years: the year approval is
21 granted and the following year.

22 20. Coaches submitting an NCAA participant approval form through the
23 NCAA's website must agree to the authorization and release of criminal
24 background check results. From 2006-2010, the NCAA participant approval
25 standard prohibited individuals with a violent felony conviction from obtaining
26 certification; those with a non-violent felony conviction were eligible for approval
27 if the conviction was older than seven years.
28

1 21. In January 2011, the distinction between violent and non-violent
2 felonies was eliminated, and a new policy was implemented which permanently
3 denies approval of all applicants with any felony conviction. If the criminal
4 background check returns a felony adjudication for any reason at any time in the
5 applicant's history, that individual is permanently barred from receiving approval
6 and cannot coach at any NCAA-certified event.

7 **Plaintiff's Application to Become an NCAA Certified Coach**

8 22. Pursuant to the NCAA's 2010 certification policy, Mr. Hardie applied
9 for and received NCAA coaching certification in 2010 for the 2010 and 2011
10 basketball seasons. Mr. Hardie coached his 16U and 17U teams in NCAA-certified
11 tournaments, including MSNM Western Tournament, in both 2010 and 2011. He
12 was allowed to continue coaching in 2011, even after the NCAA changed its policy
13 to prohibit certification of all persons with felony convictions. Mr. Hardie's
14 certification expired at the end of 2011.

15 23. On February 22, 2012, Mr. Hardie re-applied for certification to
16 participate in coaching activities at NCAA-certified basketball events in 2012 and
17 2013. Mr. Hardie intended to coach his team at the 2012 MSNM Western
18 Tournament, among others. On March 13, 2012, Plaintiff received an email
19 notification signed by Sandra C. Parrott, the Associate Director of Basketball
20 Certification for the NCAA, stating that he was denied coaching certification
21 because of his past felony conviction. Mr. Hardie is now barred for life from
22 coaching, or otherwise interacting with his teams, at NCAA-certified basketball
23 tournaments.

24 **The MSNM Western Tournament**

25 24. IGBO has been producing NCAA-certified basketball tournaments for
26 high school aged girls in Washington State and California for the past 16 years and
27 exerts control over participant access. The MSNM Western Tournament touts the
28 attendance of a multitude of Division I college women's basketball coaches, and

1 attracts hundreds of participants every year, each vying for recognition from college
2 coaching staff for recruitment and consideration for the limited number of athletic
3 scholarships, as provided for in NCAA recruitment regulations.

4 25. IGBO tournaments strictly adhere to and promote NCAA guidelines
5 governing the operation of tournament events. IGBO includes a prominent notice
6 on the front page of its website notifying all participating coaches of the mandatory
7 NCAA participant approval requirement for both coaches and players and
8 providing instructions for completion of the approval process. Each year, IGBO
9 contracts with venues with athletic facilities to host tournament events. IGBO
10 leases and operates these facilities and enforces all rules pursuant to NCAA
11 guidelines. IGBO operators are responsible for checking certification status of
12 coaching staff and barring individuals who have not obtained participant approval
13 from sitting on the bench and coaching during tournament games.

14 26. The 16th annual MSNM Western Tournament is scheduled to be held
15 at Alliant and Town & Country in San Diego, California, from July 27-30, 2013.
16 Players in the tournament are required to stay at the Town & Country Hotel. IGBO
17 will operate nine basketball courts at Town & Country and six basketball courts at
18 Alliant during the 2013 tournament.

19 27. Plaintiff will be unable to coach his girls' basketball teams at the 2013
20 MSNM Western Tournament or any other NCAA-certified tournament unless
21 Defendants are enjoined from enforcing the NCAA's blanket felony ban policy.

22 **JURISDICTION AND VENUE**

23 28. This court has jurisdiction under 28 U.S.C §§1331 and 1343(a)(4), as
24 this claim arises under the Constitution and laws of the United States, and under
25 §§2000a of Title II, 42 U.S.C. 2000a (et. seq).

26 29. Venue is proper in this Court pursuant to 28 U.S.C §1391(b)(2) &
27 (c)(2) because Defendants' unlawful acts of exclusion were and will be committed
28 in San Diego. Plaintiff would have coached in the 2012 MSNM tournament in San

1 Diego but for Defendants' unlawful exclusionary practices and desires to coach in
2 the 2013 MSNM tournament in San Diego.

3 **EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

4 30. Pursuant to 42 U.S.C. §2000a-3(c), Plaintiff filed a notice and
5 complaint with the California Department of Fair Employment and Housing against
6 the NCAA, IGBO, Alliant, and Town & Country on November 26, 2012. The
7 notice and complaint alleged unlawful discrimination in a place of public
8 accommodation under Title II of the Civil Rights Act of 1964 and the Unruh Civil
9 Rights Act under California state law. Mr. Hardie has met the 30 day exhaustion
10 requirement of Title II.

11 31. Any and all other pre-requisites to the filing of this suit have been met.

12 **CLAIM FOR RELIEF**

13 32. As owners of the athletic facilities that will host the MSNM
14 tournament, Defendants Alliant and Town & Country are places of public
15 accommodation pursuant to 42 U.S.C. § 2000a-(b) which covers any "sports arena,
16 stadium or other place of exhibition or entertainment." Town and Country is also a
17 hotel under section 2000a-(b)(1). The 2013 MSNM Western Tournament will be
18 held at six basketball courts at Alliant University's Sol City SportsCenter
19 ("SportsCenter"), a sports arena where sporting events and games are regularly
20 held. The SportsCenter is a multi-purpose facility open to the public. Tournament
21 games will also be held at Town & Country. The convention center will function as
22 a sports arena, with nine basketball courts set up for the purposes of the 2013
23 MSNM Western Tournament. Alliant and Town & Country are legally obligated to
24 provide equal access to their facilities under Title II because they are places of
25 public accommodation.

26 33. Pursuant to NCAA rules, defendants Alliant and Town & Country will
27 bar persons with felony convictions from coaching in its sports arenas during the
28 MSNM Western Tournament.

1 34. Defendants NCAA and IGBO are subject to Title II's prohibition
2 against racial discrimination because they are organizations that control participant
3 access to Alliant and Town & Country, both places of public accommodation, and
4 are dependent on their affiliation with Alliant and Town & Country in order to
5 produce their sporting events.

6 35. The NCAA controls the event certification process for women's
7 basketball tournaments. It determines which event organizers will receive
8 certification and governs the rules by which they may operate. It also governs high
9 school student-athletes and their coaches' participation in NCAA-certified women's
10 basketball events. Without event certification, NCAA Division I coaches may not
11 attend and observe high school student-athletes for recruitment purposes.

12 36. As an NCAA-certified tournament operator, IGBO is required to
13 follow rules and standards set forth by the NCAA. The NCAA determines who
14 may participate in its certified tournaments and to what extent parties may
15 participate. IGBO is responsible for the enforcement of NCAA rules.

16 37. IGBO leases and operates facilities for the tournament games,
17 manages events, sells tickets, and enforces rules pursuant to NCAA guidelines.
18 IGBO operators are responsible for checking the certification status of coaching
19 staff and barring individuals who have not obtained participant approval from
20 sitting on the bench and coaching during tournament games. Participants, coaches,
21 and operators must be certified by the NCAA in order to obtain the full enjoyment
22 of the benefit of coaching.

23 38. IGBO also determines the terms by which members of the public may
24 attend its tournaments by setting ticket prices and selling tickets.

25 39. Pursuant to NCAA rules, IGBO will bar persons with felony
26 convictions from coaching in its tournaments.

27 40. All Defendants affect commerce within the meaning of Title II by
28 presenting athletic teams and entertainment that move within commerce.

Discriminatory Impact

41. Plaintiff incorporates by reference the allegations in all proceeding paragraphs as if fully set forth herein.

42. Defendant NCAA's policy of banning individuals with felony convictions from coaching certification in NCAA-certified tournaments has a discriminatory impact on African Americans and deprives Plaintiff of the full use and enjoyment of a place of public accommodation.

43. Defendants IGBO, Alliant, and Town & Country enforce the NCAA policy of banning individuals with felony convictions from coaching by requiring that all coaches in the MSNM Western Tournament receive certification from the NCAA in order to coach.

44. Policies that categorically exclude individuals with felony convictions are known to have a disparate impact on African Americans. Nationwide, African Americans are overrepresented in nearly every stage of the criminal justice process. African Americans are arrested at higher rates, convicted at higher rates, and incarcerated at disproportionate levels compared with their representation in the general population. National studies have linked disparities in criminal processing to race-based differentials in policing and arrests. African Americans are represented among those with felony convictions at a rate 4.5 times higher than the rate for Whites. While African Americans comprised 12% of the adult population in 2006, they comprised 38% of convicted felons. In 2010, according to a recent Department of Labor Directive that relies on 2010 Census and FBI data, African Americans constituted approximately 28% of those arrested and 40% of the incarceration population despite only comprising 13% of the overall general population. African Americans are arrested, charged, and convicted of drug crimes at greater rates than Whites, even though usage rates are similar.

45. In the juvenile system, African American youth are arrested, adjudicated delinquent, convicted, and confined at higher rates than White youth.

1 practice of banning all individuals with any felony conviction records from
2 coaching without regard to the length of time since the conviction, type of
3 conviction, extent of rehabilitation, or the relation of the conviction to any
4 legitimate business or organizational purpose. The Defendants have implemented
5 this policy without providing an opportunity for an individualized assessment. This
6 practice has denied Plaintiff the full and equal enjoyment of the services, facilities,
7 privileges, advantages, and accommodations provided by these public tournaments,
8 has harmed and continues to harm Plaintiff, and constitutes unlawful discrimination
9 on the basis of race in violation of 42 U.S.C. §2000a et. seq.

10 51. Plaintiff has no plain, adequate, or complete remedy at law to redress
11 the wrongs alleged herein, and the injunctive relief sought in this action is the only
12 means of securing complete and adequate relief. The policy and practices identified
13 above have been in place since January 2011. Plaintiff is now suffering irreparable
14 injury from Defendants' discriminatory acts and omissions, and he will continue to
15 suffer such injury unless Defendants are enjoined from future discriminatory
16 conduct.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff respectfully requests the following relief:

- 19 1. A declaratory judgment that the practices complained of herein are
20 unlawful and violate Title II of the Civil Rights Act of 1964;
- 21 2. A preliminary and permanent injunction against Defendants and all of
22 their officers, directors, agents, associates, affiliates, successors, employees,
23 representatives, and any and all persons acting in concert with any or all of them,
24 enjoining them from implementing the felony exclusion policy and practice as set
25 forth herein and providing Plaintiff with participant approval allowing him to coach
26 at the MSNM Western Tournament and all other NCAA certified tournaments;
- 27 3. Attorneys' fees and costs of suit;
- 28 4. Pre-judgment and post-judgment interest, as provided by law;

1 5. Such other and further legal and equitable relief as this Court deems
2 necessary, just, and proper.

3 Dated: February 13, 2013

TROUTMAN SANDERS LLP

4
5 By: /s/ Dan E. Chambers

6 Dan E. Chambers
7 Thomas H. Prouty
8 Paddy Browne

9 Attorneys for Plaintiff
10 DOMINIC HARDIE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28