

February 14, 2020

**VIA HAND DELIVERY**

Arizona Board of Regents  
Attn: Kate Linder, Secretary of the Board  
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Office of the Attorney General  
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Arizona State University  
Office of General Counsel  
300 East University Drive, Suite 335  
Tempe, Arizona 85281

**Re: Notice of Claim filed by David Cohen Against the State of Arizona**

To Whom It May Concern:

This is a Notice of Claim pursuant to A.R.S. § 12-821. Our law firm represents David and Kathy Cohen in connection with the failure of Arizona State University (“ASU”) to timely investigate and address multiple instances of assault and sexual harassment by a prominent ASU athletics booster, Bart Wear<sup>1</sup>, and the termination of Mr. Cohen after he repeatedly demanded ASU investigate and address Mr. Wear’s assaults and sexual harassment.<sup>2</sup>

As conceded by ASU, no fewer than five (5) senior ASU administrators were aware of the predatory conduct of Mr. Wear by April 2019, including a member of the Arizona Board of Regents, and nothing was done to protect those whom entrusted their

<sup>1</sup> In mid-August 2019, ASU retained an outside law firm to investigate the allegations against Bart Wear. In mid-November, ASU’s own investigation concluded that on three separate occasions, against three separate women: 1) “There is sufficient evidence to conclude that Kathy Cohen was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence.”; 2) “There is sufficient evidence to conclude that [REDACTED] was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence.”; and, 3) “There is sufficient evidence to conclude that [REDACTED] was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence.”

<sup>2</sup> A sexual assault is defined as an unwanted touching of an intimate part of another person. (see California Penal Code section 243.4.) In many jurisdictions the definition of a sexual assault utilizes the terms “sexual assault”, “sexual battery”, “lewdness”, and/or “sexual harassment” interchangeably. An assault is universally defined as an unwanted touching or the intentional creation of reasonable apprehension of harm upon another person.

safety, and the safety of their children, to the university.<sup>3</sup> Only after Mr. Cohen was fired for his constant and persistent complaints to ASU Athletic Director Ray Anderson about Bart Wear's illegal actions, and only after ASU was contacted by this law firm, did the university finally initiate an investigation into the criminal allegations against Mr. Wear.

Unfortunately, ASU's investigation was biased from the outset and ASU clearly intended to sweep the Wear complaints under the rug. In fact, after the Cohens were permitted to review the results of the agenda-driven ASU report, the Cohens provided ASU with a 9-page letter outlining the deficiencies of the investigation on Thursday evening, December 5, 2019. (Letter to ASU attached hereto.) Instead of following up on even a single shortfall of the investigation (e.g., the Cohens suggested that ASU interview *at least* one of more than 18 key witnesses with whom ASU had failed to meet), ASU ignored the Cohens once again, finalized its report two business days later (on Tuesday, December 10), and then ASU did exactly what it intended to do from the outset. ASU formally terminated Mr. Cohen on Wednesday, December 11.<sup>4</sup>

### Nature of the Claim

On March 14, 2019, Bart Wear assaulted and sexually harassed Mrs. Kathy Cohen at an ASU basketball game in Las Vegas, Nevada. During that same game, he inappropriately touched at least one other woman. This was consistent with Bart Wear's pattern and practice of inappropriately touching, assaulting and sexually harassing women at ASU functions. ASU's own investigation found that on three separate occasions, against three separate women:

1. "There is sufficient evidence to conclude that Kathy Cohen was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence.";
2. "There is sufficient evidence to conclude that [REDACTED] was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence."; and,

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<sup>3</sup> Jay Heiler (Arizona Board of Regents), Ray Anderson (ASU Athletic Director), Jean Boyd (Deputy Athletics Director), Scott Nelson (ASU Senior Associate Athletic Director) and R.F. "Rick" Shangraw Jr. (ASU Enterprise Partners) all admittedly knew of the assault and sexual harassment allegations against Bart Wear by or before April 2019. Only Rick Shangraw took significant steps to report those claims to Ray Anderson, and only Rick Shangraw persisted after ASU's Athletic Director did nothing in response to the credible allegations.

<sup>4</sup> ASU denied on numerous occasions that Mr. Cohen was fired on August 15, 2019, but somehow concluded in its December 11, 2019 letter: "Now that the investigation has concluded, the university will implement the termination decision announced to Mr. Cohen in August." ASU wants to have its cake and eat it too. However, the facts demonstrate that Mr. Cohen was fired in August *before* the credible allegations against Mr. Wear were investigated.

3. "There is sufficient evidence to conclude that [REDACTED] was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence."

Mr. Cohen reported Bart Wear's conduct to ASU Athletics Director Ray Anderson on March 25, 2019. Mr. Anderson did nothing. Five months later, after terminating Mr. Cohen for reporting the assault and sexual harassment of his wife and two other women, ASU finally investigated the allegations and determined ASU had failed to properly respond to credible complaints of sexual harassment. ASU's delay put members of the ASU community at risk and cost Mr. Cohen his job.

This letter details Mr. Wear's assaults and sexual harassment, ASU's abject failure to investigate the multiple credible complaints of assault and sexual harassment, and ASU's retaliation against Mr. Cohen.

**Bart Wear Assaults and Sexually Harasses At Least Three Women;**  
**ASU Does Nothing in Response**

Mr. Bart Wear attended and played football at ASU. Mr. Wear moved back to Arizona in 2013 and, at that time, reengaged with the university. By ASU's own account, Bart Wear was a major donor to ASU athletics and has made "generous contributions to ASU" since September 2013. In particular, Mr. Wear supported ASU football, basketball and swimming. He frequently attended ASU sporting events and ASU team practices. He also attended many other ASU events such as the annual Sun Devil Club's Devil's Ball. In short, Mr. Wear enjoyed the benefits of his contributions by receiving great access to ASU students, staff, coaches and ASU events.

By ASU's own account, "Mr. Wear has a reputation for excessive drinking ... and subsequently engaging in inappropriate behavior." Moreover, ASU's investigator noted that Mr. Wear "lacked judgment" when intoxicated. Indeed, on one occasion, Mr. Wear was purportedly evicted from an ASU basketball game by PAC-12 officials for being drunk and belligerent.

On Thursday, March 14, 2019, the ASU Men's Basketball team played a game against the University of California, Los Angeles at the PAC-12 tournament in Las Vegas, Nevada. Bart Wear attended the game and sat in ASU-provided V.I.P. seats, as was often the case. The Sun Devils beat the Bruins 83-72. During halftime, Mrs. Cohen left her seat to use the restroom. Mrs. Cohen had to walk by Mr. Wear to reach the stairs and exit to the restroom. While she was trying to pass Mr. Wear in the aisle, he put his hands on her waist, moved his hands up the side of her body to the sides of her breast, held his hands on the sides of her breasts and said, "Dave is lucky to have you." This was not the first time Mr. Wear had touched Mrs. Cohen inappropriately, but it certainly was the most offensive given the entirety of the circumstances.

Following the game, [REDACTED] told both Mrs. Cohen and [REDACTED] that Bart Wear inappropriately touched her. During the game, [REDACTED] sat next to Mr. Wear behind the team bench. Throughout the game, Mr. Wear rubbed her back and asked inappropriate personal questions.

During this conversation between the three women (i.e., Mrs. Cohen, [REDACTED] and [REDACTED]), Mrs. Cohen disclosed Mr. Wear's assault and sexual harassment which victimized her during that same game.

[REDACTED] then explained how Mr. Wear often made her feel uncomfortable. She said that Mr. Wear would frequently approach her during ASU games (where she had a seat [REDACTED]), and he would inappropriately put his hand on her leg while talking with her. [REDACTED] went so far as to ask other people sitting with her to stand in front of her when Mr. Wear approached so as to prevent him from touching her.

As a result of Bart Wear's sexual harassment of [REDACTED], she was so upset by this that she asked Mr. Cohen to ensure she did not sit next to Mr. Wear at the basketball game the following night against Oregon.

During this conversation between the three victims, Mr. Cohen joined the group and he was informed of Mr. Wear's predatory actions that evening. Mr. Cohen also learned for the first time of Mr. Wear's prior inappropriate and unlawful actions.

After hearing of these three instances of assault and sexual harassment by Mr. Wear, Mr. Cohen was angered and saddened. He wanted to address the issue immediately. However, all three women asked Mr. Cohen not to raise the issue with Mr. Wear or report it to either Mr. Anderson or Mr. Hurley until after the basketball season ended. Mr. Cohen honored their wishes. Mr. Cohen, however, ensured that Mr. Wear was seated far from the women during Friday's semi-final game against the University of Oregon and kept a close eye on Bart Wear throughout the game. The Sun Devils lost to the Ducks in the PAC-12 semi-finals, earned an 11 seed in the West Regional in Tulsa, Oklahoma, and lost their first-round game against Buffalo on Friday, March 22, 2019, ending their season.

On March 18, 2019, within four days of first learning of Mr. Wear's assaults and sexual harassment, Mr. Cohen told Scott Nelson (Senior Associate Athletic Director, Executive Director of the Sun Devil Club) that Mr. Wear assaulted and sexually harassed multiple women on March 14, 2019. Mr. Nelson admits to learning of the misconduct and admits that he believed Mr. Wear's conduct was "inappropriate." This triggered a duty on the part of Mr. Nelson and ASU to report and investigate Mr. Wear's conduct. Unfortunately, Mr. Nelson did not report Mr. Wear's assault and sexual harassment, and ASU did not initiate an investigation at that time.

On Monday, March 25, 2019, Mr. Cohen reported Mr. Wear's assault and sexual harassment to Mr. Anderson. Mr. Cohen asked Mr. Nelson to join the meeting. Mr. Cohen believed Mr. Nelson should be involved because the Sun Devil Club has a stated mission of "*promoting and protecting* Arizona State through Sun Devil Athletics." (Emphasis added.) Certainly, Mr. Nelson would want to remain in the loop and investigate the inappropriate and unlawful conduct of a Sun Devil Club member.

It was also important for Mr. Cohen that Mr. Nelson be at the March 25 meeting with Ray Anderson because Mr. Cohen and everyone associated with ASU athletics was acutely aware that Mr. Wear and Mr. Anderson shared a close relationship. Mr. Wear supported Mr. Anderson throughout his tenure as Vice President of University Athletics and Mr. Anderson told Mr. Cohen to grant Mr. Wear great access to ASU athletics programs because he "writes checks."

Mr. Anderson has acknowledged that on March 25 he learned Mr. Wear "inappropriately touched" Mrs. Cohen at the March 14 ASU basketball game. Mr. Anderson directed Mr. Nelson to have a discussion with Rick Shangraw (CEO of ASU Enterprise Partners) regarding Bart Wear's conduct. Mr. Anderson also told Mr. Cohen that Mr. Wear's conduct was unacceptable, and he would address it immediately. However, Mr. Anderson did not initiate an investigation at that time nor report the assault to any other department within ASU.

At the time Mr. Anderson received the March 25 complaint, ASU was already aware that Mr. Wear inappropriately touched women when he consumed alcohol. As mentioned, Mr. Wear had already been removed from at least one ASU basketball game for his belligerent conduct.

In early April 2019, Rick Shangraw learned of Mr. Wear's assaults and sexual harassment. Mr. Shangraw had a conversation with Mr. Anderson at that time and told Mr. Anderson that Mr. Wear's conduct was inappropriate and unacceptable. Mr. Anderson agreed but, inconceivably, Mr. Anderson still had not and did not initiate an investigation against Mr. Wear at that time nor report the assault and sexual harassment to any other department at ASU.

On mid-April, Jay Heiler, a member of the Arizona Board of Regents, was informed of Mr. Wear's assault and sexual harassment. Mr. Heiler acknowledged that Mr. Wear's conduct was reprehensible. At that time, Mr. Heiler was also informed that Ray Anderson had been told of the incident and Anderson had failed to investigate or respond appropriately. This came as no surprise to Mr. Heiler. Mr. Heiler was aware of Bart Wear, knew his reputation for drinking and being inappropriate, and knew of

Mr. Wear's close relationship with Mr. Anderson. Mr. Heiler did not report Mr. Wear's assault and sexual harassment to the Arizona Board of Regents.<sup>5</sup>

On April 22, 2019, Jean Boyd (Deputy Athletics Director) was informed of Mr. Wear's assault and sexual harassment. Mr. Boyd acknowledged that he had a mandatory duty to report Mr. Wear's conduct. Mr. Boyd did not report Mr. Wear's assault and sexual harassment, and ASU did not initiate an investigation in April 2019.

On Friday, May 3, 2019, the ASU baseball team played a home game against UCLA. ASU lost 2-3. Mr. Cohen sat with Mr. Anderson at the game. With the upcoming Devil's Ball, Mr. Cohen reminded Mr. Anderson of Mr. Wear's assault and sexual harassment, and voiced his concern that when Mr. Wear drinks, he is a danger to those around him. Rather than address Mr. Wear's conduct or take any steps to protect people in the ASU community, including the athletes and other students in his department, Mr. Anderson told Mr. Cohen to stay away from the event if he felt uncomfortable. No investigation was conducted into Mr. Wear's assault and sexual harassment in May 2019 and he was allowed to attend the Devil's Ball after ASU received multiple credible reports of assault and sexual harassment.

On May 13, Mr. Anderson, Mr. Wear, Mr. Jean Boyd and ASU Head Football Coach Herm Edwards went on a golfing trip together to the San Francisco Bay Area using Mr. Wear's private jet service. It had been more than six weeks since ASU received credible allegations of assault and sexual harassment against Mr. Wear, and rather than initiate an investigation, Mr. Anderson chose to go on a golfing trip with Bart Wear because he was a prominent university booster, using Mr. Wear's private jet service, and Mr. Anderson included ASU's Head Football Coach on the junket.

On May 20, Mr. Cohen discussed with Mr. Boyd the allegations of assault and sexual harassment by Bart Wear which victimized Kathy Cohen, [REDACTED] and [REDACTED]. Mr. Boyd noted that Mr. Cohen "expressed anger" over Mr. Anderson's failure to report or investigate the assault and sexual harassment. Remarkably, Mr. Cohen's anger has been used against him in ASU's termination decision. In other words, ASU has chosen to characterize Mr. Cohen's anger as unreasonable instead of branding Mr. Wear's assaults and sexual harassment as reprehensible and urgent.

The following day, May 21, as a result of his meeting with Mr. Cohen, Mr. Boyd confronted Mr. Anderson about his failure to initiate an investigation into Mr. Wear's assault and sexual harassment at the PAC-12 tournament more than two months prior. Mr. Boyd allegedly told Mr. Anderson that he had a duty to "respond and report."

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<sup>5</sup> Upon learning in June 2019 that Mr. Anderson had still not conducted an investigation or reported the incident, Mr. Heiler was disappointed. However, he still did not report the incident to the Arizona Board of Regents. Finally, after learning of Mr. Cohen's unlawful termination on August 15, 2019, Mr. Heiler spoke to ASU President Michael M. Crow.

Mr. Anderson confirms that Mr. Cohen reported the conduct, as Mr. Cohen was required to do, and agreed to initiate an investigation at that time. Tragically, Mr. Anderson did nothing, and no investigation was conducted in May 2019.

At this point, it had been over two months since Bart Wear assaulted and sexual harassed at least three women at ASU basketball games. Mr. Wear's assaults and sexual harassment had been reported at least seven times to four different people within ASU, and a fifth person who was a member of Arizona's Board of Regents. ASU did not initiate an investigation into Bart Wear's assaults and sexual harassment in May 2019.

On June 1, Mr. Wear left for vacation. Inexplicably, Mr. Anderson said he could not report the assault and sexual harassment, or initiate an investigation until Mr. Wear returned from vacation.<sup>6</sup> As was the case throughout this ordeal, ASU showed more concern for the convenience and reputation of a prominent booster than the victims of assault and sexual harassment. Mr. Anderson's duty to report is legally independent of his ability to warn Mr. Wear. Indeed, law enforcement and prosecutors alike will confirm that telling the accused predator in advance of any investigation is likely to lead to the destruction of evidence. Regardless, notwithstanding the numerous people who had reported the allegations, Mr. Anderson wanted to wait until Mr. Wear returned from vacation so as not to inconvenience the prominent donor.

On Friday, June 7, 2019, Mr. Shangraw and Mr. Cohen again discussed Mr. Wear's assaults and sexual harassment. Later in June, Mr. Shangraw met with Mr. Anderson again and Mr. Anderson again acknowledged that he received a credible report of assault and sexual harassment which occurred at an ASU basketball game in March. Mr. Shangraw also confronted Mr. Anderson about his golf trip with Mr. Wear and Coach Herm Edwards on Mr. Wear's private jet service and told Mr. Anderson the trip "was inappropriate." Mr. Anderson said he would report Mr. Wear's conduct and "take care of it" when he returned from vacation "at the end of the summer." Mr. Anderson apparently did not want his vacation to be impacted by what he viewed as a tedious and unnecessary assault and sexual harassment investigation.

On June 19, Mr. Cohen again met with Mr. Boyd. Mr. Boyd admits that he was reminded of the assault and sexual harassment by Bart Wear. No investigation was initiated, nor report was made to anyone in June 2019. Another month passed with ASU being more concerned about protecting a donor than the women in the ASU community.

On July 5, Mr. Cohen again met with Mr. Anderson. He reminded Mr. Anderson of Mr. Wear's assaults and sexual harassment in March. Mr. Cohen details the assault on his wife, Mrs. Kathy Cohen, at that time . . . again.

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<sup>6</sup> Throughout ASU's own investigation it remains clear that Mr. Anderson felt his primary duty was to protect Mr. Wear rather than protecting the victims and potential new victims at ASU.

On July 24, Mr. Cohen again met with Mr. Anderson and reminded him of Mr. Wear's assaults and sexual harassment in March. Mr. Anderson admits the meeting occurred and admits that he was reminded in July that "Mr. Wear inappropriately touched Mrs. Cohen." Still, no investigation was initiated in July 2019.

On August 15, Mr. Cohen was told he was terminated. The following week, ASU received a letter from this law firm detailing the multiple reports of assault and sexual harassment and clear retaliation against Mr. Cohen. Only after terminating Mr. Cohen and receiving an August letter from the Cohens' attorneys did ASU begin investigating Mr. Wear's assaults and sexual harassment.

In September 2019, Mr. Wear flew to Michigan for the football game against Michigan State University. This trip was a "perk" for ASU donors based on a person's contribution level. The trip is organized by the Sun Devil Club, and the entire trip is orchestrated to cater to those donors (e.g., the plane ride, the hotel accommodations, the game tickets, etc.). By that time in September, ASU had received more than 10 credible reports of Mr. Wear's assaults and sexual harassment six months prior and was allegedly investigating Mr. Wear's conduct as a result of this law firm contacting ASU about the assaults and sexual harassment of three women. Nonetheless, Mr. Wear continued to enjoy the benefits of being a prominent ASU donor.

For all practical purposes, ASU had concluded its investigation into the allegations against Bart Wear on or about November 15, 2019. The ASU report determined that on three separate occasions, against three separate women: 1) "There is sufficient evidence to conclude that Kathy Cohen was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence."; 2) "There is sufficient evidence to conclude that [REDACTED] was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence."; and, 3) "There is sufficient evidence to conclude that [REDACTED] was sexually harassed by Mr. Wear based on the credibility of the witnesses and the weight of the evidence." Albeit extremely untimely, ASU's own factual determination was decisive. However, notwithstanding this clear finding, on December 7, 2019 (weeks after ASU's conclusion was reported), Bart Wear was given courtside, V.I.P. seats to the ASU v. Louisiana basketball game *by ASU!* In other words, even though ASU knew of Bart Wear's assaults and sexual harassment, ASU continued to prioritize its relationship with a prominent donor over the safety of its students and faculty member. Notwithstanding all the evidence in its possession, the privileges afforded to prominent university donors continued to flow to Bart Wear.

### **ASU Violates Its Own Policies**

ASU completely disregarded its own policies and failed to investigate the many credible reports of Bart Wear's assaults and sexual harassment it received. Academic Affairs Manual (ACD) 401 is an ASU policy titled, "Prohibition Against Discrimination,



Harassment, and Retaliation.” According to ACD 401, ASU “is committed to providing an environment free of discrimination, harassment, or retaliation for the entire university community, including all students, faculty members, staff employees, and guests. ASU expressly prohibits discrimination, harassment, and retaliation by employees, students, contractors, or agents of the university based on any protected status: race, color, religion, sex....” Under the “Required Reporting” section of ACD 401, it states: “Unless a person is restricted by law from doing so, any employee who is informed of or has a reasonable basis to believe that sexual harassment has occurred, shall immediately report all information regarding the occurrence(s) to the Office of University Rights and Responsibility or the Title IX Coordinator or the Dean of Students office.” “Failure to report and/or inaction may be cause for disciplinary action.” As described above, ASU received several credible threats of assaults and sexual harassment by Bart Wear. ASU’s abject failure to investigate these reports is a clear violation of its own policy.

ASU’s conduct also violated President Crow’s stated position on the matter. According to President Crow, ASU supposedly had “zero tolerance” for inappropriate sexual behavior. Indeed, in an interview with the Arizona Republic, President Crow stated:

“Here [at ASU] it’s this notion we build into our culture of maximum diligence for the safety of our athletes,” Crow said. “*It’s zero tolerance.* You can’t always prevent something from happening, *but you can take immediate action the second you hear about it.* My reaction to the facts of the Penn State case going all the way back to the incident that was reported by the assistant coach (Mike McQueary) to the head coach (Joe Paterno) to the athletic director (Tim Curley) was that the assistant coach and the head coach were remiss in their duty. I would have fired both of them, I don’t care who they are. And if I got fired after that, they’d still be fired.” . . . If we heard from someone complaints of physical abuse, *sexual abuse, inappropriate conduct, the first thing we would do is investigate,*” Crow said. “If it turns out these things were true, all those people would be turned over to the police or fired.” (Emphasis added.)

Rather than follow its own policies and statements from its President, ASU’s primary concern was to protect a donor. Even now, the only person who has been disciplined or fired in the ASU “family” is the man who repeatedly reported the assaults and sexual harassment. There have been no consequences for the men who chose to do absolutely nothing in response to the credible allegations of a potential predator on campus.

### **ASU Retaliates Against Mr. Cohen**

Mr. Cohen was a model employee. Under his watch, ASU ticket sales increased and the Men’s Basketball Team became an NCAA Tournament regular. Everything at work was fine until he reported Mr. Wear’s assault and sexual harassment of his wife and

two other women, then had the audacity to demand ASU do something about it. For repeatedly raising ASU's failure to investigate and address Bart Wear's conduct, Mr. Cohen was labeled "not a team player," his bonus structure was changed, his responsibilities were reassigned, he was demoted, and ultimately fired. The facts of the retaliation cannot be more clear.

On July 11, 2018, Mr. Cohen received a tremendous review from Mr. Anderson, confirming Mr. Cohen's "Strong and significant overall performance." Beginning in March 2019 (eight months later), Mr. Cohen repeatedly reported Bart Wear's assault and sexual harassment on Mrs. Cohen and two other women at ASU basketball games.

On June 13, 2019, Mr. Cohen had his annual performance review. Mr. Boyd and Frank Ferrara (Senior Associate Athletic Director, Chief Financial Officer) were also present in this review. The review was generally positive. In fact, Mr. Cohen's reviews have always been positive, and he has received the highest bonuses in his department for four straight years at ASU, including the Spring of 2019. This evidences ASU's true satisfaction with Mr. Cohen's employment.

During his annual review, Mr. Cohen was informed that he would no longer be an administrator for the ASU swimming program. Immediately prior to this review, Mr. Cohen's responsibilities included overseeing all ticketing for ASU athletics, and he was the primary administrator responsible for the men's basketball and swimming programs. The stated reason for this change was to allow Mr. Cohen to focus more on ticketing. At the time, however, revenue from ticketing across all sports was up, and the football team played to 91% capacity despite being mired in four straight six-loss seasons during a four-year stadium renovation. This reason was clear pretext for ASU's first retaliatory adverse employment action against Mr. Cohen.

After the performance review and after Mr. Cohen had received his bonus, Mr. Cohen exchanged text messages with Mr. Anderson, thanking him for the bonus. Thereafter, Mr. Anderson referenced "changes" being made to the athletic department. Mr. Cohen asked Mr. Ferrara about those "changes" and whether Mr. Cohen would report to Mr. Ferrara. Mr. Ferrara said that if Mr. Cohen reported to him, he would fire him the next day.

On June 19, 2019, Mr. Cohen was called into a meeting with Mr. Anderson, Mr. Boyd and Mr. Ferrara. At that meeting, Mr. Anderson informed Mr. Cohen his new bonus structure would be completely at Mr. Anderson's discretion. He was told that he could either agree to this change or start looking for a new job. Mr. Cohen signed the new bonus plan which represented a significant change in Mr. Cohen's compensation structure. With this change, Mr. Cohen no longer had any guaranteed bonus pool, and nearly 40% of his overall compensation was completely at Mr. Anderson's discretion.

On Monday, August 12, 2019, Mr. Cohen was called into a meeting with Mr. Anderson and Mr. Ferrara. At this meeting, Mr. Anderson informed Mr. Cohen that

he would now be reporting to Mr. Ferrara instead of Mr. Anderson. Mr. Cohen told Mr. Anderson that he viewed this, along with the change in bonus structure and stripping of responsibilities for the swimming program, as retaliation for reporting Mr. Wear's inappropriate and unlawful conduct.

When challenged, Mr. Anderson lied. He said Mr. Cohen didn't say anything about the physical assault and sexual misconduct of Bart Wear until three months after the basketball season ended. Mr. Cohen reminded Mr. Anderson that he first reported the conduct the Monday after the season concluded on March 25, 2019, and Mr. Nelson was in the room when the initial complaint was made. Mr. Anderson then asked Mr. Cohen why he didn't "do anything" about the complaint and Mr. Cohen reminded Mr. Anderson that he reported the complaint to the head of the athletic department (i.e., Mr. Anderson) who asked Mr. Cohen to let him handle it. He then said that neither Mr. Cohen nor Mr. Shangraw was going to tell him how or when to "talk to a fucking donor."

Mr. Cohen next met with Amy Schramm (Senior Associate Athletics Director, Human Resources) to discuss his complaint and ASU's retaliation. This was the first time Ms. Schramm, the head of human resources for the athletic department, heard about Mr. Wear's inappropriate and unlawful conduct. She told Mr. Cohen to meet with Kevin Salcido (Vice President of Human Resources and Chief HR Officer). Mr. Cohen met with Mr. Salcido on August 12, 2019 at 2:00 p.m. in Mr. Salcido's office. Mr. Salcido acknowledged that it sounded like Mr. Cohen was being retaliated against for reporting Mr. Wear's conduct and demanding Mr. Anderson investigate and address the issue.

Next, Mr. Cohen met with James Rund (Senior Vice President of Education Outreach and Student Services) on Monday, August 12 and Mr. Shangraw on Tuesday, August 13. Both Mr. Rund and Mr. Shangraw acknowledged the obvious retaliation and asked if Mr. Cohen's relationship with Mr. Anderson was irreparable. Mr. Cohen told both of them he wanted to keep his job and find a way to move forward with ASU.

Two days later, on August 15, 2019, ASU terminated Mr. Cohen's employment effective immediately. Mr. Anderson told Mr. Cohen he wasn't a "team player" or "cultural fit." Clearly, this was a reference to Mr. Cohen's insistence that ASU investigate and address Mr. Wear's inappropriate and unlawful conduct.

On the morning of his termination, Mr. Cohen spoke with [REDACTED] about his complaint and subsequent retaliation. Ms. [REDACTED] said, "This is why women don't come forward – nothing ever happens." Sadly, she is correct. With its mishandling of the allegations against Bart Wear and subsequent retaliation against Mr. Cohen, ASU shows it learned nothing from the "Me Too" movement. It does not believe women and would rather protect its own monetary self-interest and avoid confronting a donor than root out people who use their positions of power, influence and access to demean and degrade women.

Further adding insult to injury, Mr. Anderson, acting in his role as Vice President of University Athletics, contacted people in the sports community bragging about his role in terminating Mr. Cohen and claiming the reason for the termination was that Mr. Cohen was a bad employee. Multiple sources will confirm Mr. Anderson's braggadocious remarks relating to private personnel decisions involving Mr. Cohen's termination which were made to third parties outside of ASU. Further investigation will likely uncover additional conversations in which Mr. Cohen's reputation was maligned by the entity who retaliated against him for reporting the inappropriate conduct of a significant athletics booster. Mr. Anderson's conduct makes it very difficult if not impossible for Mr. Cohen to find substitute employment in his chosen field. This legal action is the only recourse available to Mr. Cohen.

In addition to violating state and federal whistleblower protection laws, ASU's decision to terminate Mr. Cohen violates its own policy for the "Protection of Employees from Reprisal for Whistleblowing" (Policy No. 6-914). The purpose of the policy is "to prohibit supervisory personnel from taking adverse personnel action against an employee ... as a result of the employee's good faith disclosure of alleged wrongful conduct to a public body. ... An employee who discloses and subsequently suffers an adverse personnel action as a result is subject to the protection of this Policy."

### Damages

As a direct and proximate result of ASU's conduct, the Cohens suffered and continue to suffer serious and permanent harm including but not limited to lost past and future wages, diminution of earning capacity, pain and suffering, and emotional harm. A.R.S. § 12-821.01 requires the Cohens to include in this Notice of Claim a specific dollar amount for which their respective claims can be settled. Based on the facts stated in this Notice of Claims and the damages the Cohens continue to experience, the Cohens will accept \$1,500,000 to resolve all outstanding claims against all parties. Based on a reasonable calculation of damages to include lost past and future wages and the statutory award of attorneys' fees, it is very likely a jury verdict will exceed this proposed amount.

Very truly yours,



Michael J. Pérez

of


PEREZ VAUGHN & FEASBY Inc.

Enclosure

**Exhibit**

**December 5, 2019 Letter to  
Arizona State University**

December 5, 2019

**VIA ELECTRONIC MAIL AND U.S. MAIL**

Kimberly A. Demarchi, Esq.  
Arizona State University  
Office of General Counsel  
300 East University Drive, Suite 335  
Tempe, Arizona 85281

**Re: Response to Investigation and Memorandum re Bart Wear  
Sexual Assaults at Arizona State University Athletic Events**

Dear Ms. Demarchi:

Thank you for the opportunity to review the Memorandum (“Memo”) created by the attorney retained and paid for by Arizona State University (“ASU”), Carrie Love of Armstrong Teasdale. This letter responds to the allegations and statements made therein. This letter will acknowledge the areas of the report with which we agree, identify the misstatements and fabrications, and identify the glaring deficiencies in the investigation conducted by Ms. Love. Given the misstatements, character attacks and flaws in the investigation and subsequent Memo, we expect and hereby formally request that ASU incorporates this letter into any final report created or issued in this matter.

**1. The Memo is Incomplete**

The Memo is woefully deficient and incomplete. The Memo goes out of its way to attack Mr. Cohen’s character and work performance but fails to include statements from key members of the ASU community that can speak directly to relevant issues including but not limited to Mr. Cohen’s character and his work performance. Specifically, the Memo fails to include statements from key witnesses, including Jay Heiler (Arizona Board of Regents), Rashon Burno (ASU Men’s Basketball), Ken Landphere (Senior Associate Athletics Director), Kate Jancqewski (Senior Associate Athletics Director), Alonzo Jones (Associate Athletics Director), Mike Meitin (Associate Athletics Director), Steve Webb (Senior Associate Athletics Director), Dan Wakely (Associate Athletics Director), Derrick Wrobel (Director of Operations, Men’s Basketball), Tim Cassidy (Senior Associate Athletics Director, Football), Bob Bowman (Head Coach, Swimming), Zeke Jones (Head Coach, Wrestling), Tracy Smith (Head Coach, Baseball), Sanja Tomasevic (Head Coach, Volleyball), Trisha Ford (Head Coach, Softball), Brad Chandler (Director, Compliance), Jessica Richardson (Associate Director), and JD Loudabarger (Associate Athletics Director). Each and every person mentioned above can speak directly to Mr. Cohen’s job performance and contradict the circuitous route Ms. Love has undertaken to find “support” for her pre-determined conclusion. In fact, most of the above were direct reports either to or from Mr. Cohen. If Ms. Love did not interview these people, her

investigation is incomplete. If she did interview them but did not include their statements in the Memo, the Memo is incomplete.

The Memo concludes that the adverse employment action Mr. Cohen received after reporting his wife's sexual assault was a result of his poor performance and character. The absence of statements from these witnesses speaks to the Memo's overall incompleteness and the failings of Ms. Love's investigation.

The report also lacks any discovery or reference to communications, text messages or otherwise which Mr. Anderson sent or received regarding Bart Wear's sexual assaults, ASU's response to Mr. Wear's sexual assaults, or Mr. Anderson's decision to terminate Mr. Cohen's employment after he reported Mr. Wear's sexual assaults. There are also no communications to or from Mr. Wear, Mr. Hurley or Mr. Shangraw, all of whom were in communication with Mr. Anderson shortly after Mr. Cohen's termination. If no such emails or text messages exist, which is difficult to imagine, that should be noted in the Memo. If those communications exist and were left out of the Memo, that is further evidence of the incompleteness of the Memo.

Ultimately, the Memo manages to conclude that Mr. Cohen's termination was performance based without addressing the elephants in the room, including the lingering and unreported sexual assault claims, Ray Anderson's overriding concern to speak with Mr. Wear *before* fulfilling his duty to report the sexual assault, and the glaring gap between: Mr. Cohen's glowing July 11, 2018 employee evaluation; Mr. Cohen's receipt of 'high mark' bonuses on July 11, 2018 and again on June 13, 2019; the absolute absence of employee performance evaluations that back-up the statements of individuals such as [REDACTED] and Mr. Cohen's termination on August 15, 2019. (See Timeline below.)<sup>1</sup> This Memo was not neutral but biased from the outset.<sup>2</sup> There was a clear agenda which is obvious and evidenced by what was left out of the report and what was put into the report.<sup>3</sup>

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<sup>1</sup> However, the Report strains to find it "significant" to cite to a February 2018 teambuilding exercise wherein the ASU Athletics Department team *was required* to identify who you would like in your "lifeboat" as an example of Mr. Cohen's poor performance. Knowing this exercise might be used against them, one could imagine the negative "teambuilding" impact it would have.

<sup>2</sup> We notified you of these facts shortly after Mr. and Mrs. Cohen were interviewed (See September 23, 2019 letter) and again in emails dated October 7 and October 16 (See attached).

<sup>3</sup> One of many examples relates to the statement Mr. Cohen made when he met with Mr. Frank Ferrara in June 2019 in connection with "changes" being made within the Athletics Department. At that time, Mr. Cohen had received a positive performance evaluation and he had received the highest bonus in the department. When Mr. Cohen spoke to Mr. Ferrara, Mr. Ferrara told Cohen that if he reported to Ferrara he would fire Cohen the next day. That is exactly what happened. This and many other critical facts were strategically left out of the Memo.

## **2. The Investigation's Outcome Was Predetermined.**

The Memo confirms that the outcome of Ms. Love's investigation was predetermined. When Ms. Love interviewed the Cohens, it became clear that the outcome of this investigation was predetermined. Ms. Love asked several inappropriate questions, forced Mrs. Cohen to relive and reenact her sexual assault multiple times, and even questioned why Mrs. Cohen would continue to interact with Mr. Wear after the first time he made her feel "uncomfortable" (implying Mrs. Cohen played some role in her own sexual assault while simultaneously implying that it was just "discomfort" that Mrs. Cohen had suffered). Ms. Love even went so far as to broach settlement negotiations directly with Mrs. Cohen by asking what it would take for ASU to make Mrs. Cohen "whole."

As referenced in footnote 2 above, we sent you three communications outlining the severe deficiencies in Ms. Love's investigation. The Memo makes clear that no changes were made in response to our communications. Key facts, of which Ms. Love was well aware, are missing from the Memo. The Memo also includes unsupported and hearsay statements from [REDACTED], who were both promoted following Mr. Cohen's termination. The Memo makes no mention of their potential bias. This is a glaring oversight.

At the same time, the Memo avoids the obvious question as to the adverse employment actions taken against Mr. Cohen and takes as "true" the fact that Mr. Cohen was terminated on August 15. Though ASU has attempted to take corrective action by putting Mr. Cohen on Administrative Leave, there is no question that he was told he was fired, his office keys were taken away from him, and moments later he was escorted by security to his office then immediately escorted by security out of the building. Mr. Cohen was also offered a severance package. These are not acts taken as a function of Administrative Leave, and Ms. Love as an employment lawyer knows full well that this attempt to recast the termination is suspicious *at best*. Yet, there was no mention of this fact in the Memo.

Immediately after Ms. Love was asked to investigate Mr. Wear's sexual assault, Mr. Cohen's reporting of that sexual assault, and Mr. Cohen's subsequent termination, my clients and I were concerned the outcome was predetermined. The Memo confirms our suspicions.

## **3. ASU More Concerned About Protecting Mr. Wear Than His Victims**

From the moment Mr. Cohen reported Mr. Wear's sexual assaults on March 18 and March 25, 2019 to the production of the Memo in November 2019, ASU has been more concerned about protecting Mr. Wear's reputation, and his donations, than his victims. When Mr. Cohen first reported Mr. Wear's sexual assault, Mr. Anderson said he would take care of it, and did nothing. After being confronted several more times, Mr. Anderson finally told Mr. Cohen that no one was going to tell him "how to talk to a fucking donor."



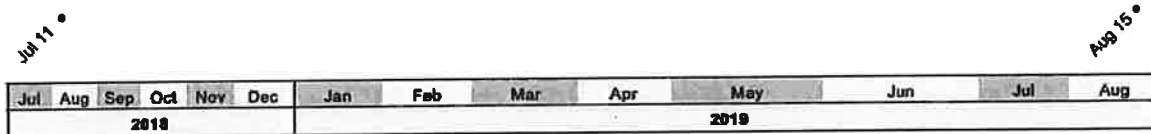
On at least two occasions, Mr. Anderson stated that he had not found an “appropriate” opportunity to speak to Mr. Wear, and later stated that he would speak to Mr. Wear upon his return from summer vacation!<sup>4</sup> Shortly after these events unfolded, Mr. Cohen was told his employment was terminated. This attitude toward protecting Mr. Wear and cavalier attitude regarding Mr. Anderson’s duty to report is unimaginable in this day and age.

There are other examples of ASU’s primary concern being for Mr. Wear and Mr. Anderson. For example, during the investigation, Ms. Love interviewed Mr. Wear before she interviewed all of his victims, and allowed Mr. Wear to review the Memo before the Cohens or any other victims had an opportunity to review the Memo. The same is true for Mr. Anderson.

From the outset, ASU’s primary concern was protecting Mr. Wear to the detriment of Mr. Wear’s victims.<sup>5</sup>

**4. ASU Acknowledges It Failed to Investigate Bart Wear’s Sexual Harassment**

Even though the outcome was predetermined, the Memo acknowledges that: (1) ASU received multiple credible reports of sexual assault; (2) ASU failed to investigate Mr. Wear’s sexual assault until August 2019; and (3) ASU took adverse employment action against Mr. Cohen after he continually reported Mr. Wear’s sexual assault. The Memo identifies the following facts that evidence ASU’s violations of its internal policies and applicable law. When put in the framework of a timeline, it is clear the Memo fails to address the full implications of Wear’s sexual assault on Mrs. Cohen in connection with Mr. Cohen’s excellent work performance in July 2018 to his August 2019 termination:

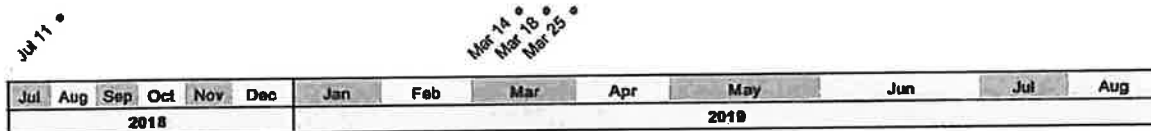


1. On July 11, 2018 – Mr. Cohen gets a tremendous review from Ray Anderson confirming that Mr. Cohen’s, “Strong and significant overall performance.” One year later, on August 15, 2019, Mr. Cohen is fired for his performance.

<sup>4</sup> Apparently neither Mr. Anderson nor Ms. Love are prepared to accept that the duty to report is owed to ASU for the purpose of protecting those people within ASU’s oversight and guardianship. God forbid that during this period of time when Mr. Anderson could not find a “good opportunity” to speak to Mr. Wear, another victim was harmed by Wear who could have been protected.

<sup>5</sup> The obvious question is, were Mr. Wear not a significant ASU donor, would the University have provided the same courtesies to the accused predator? The clear answer is no.

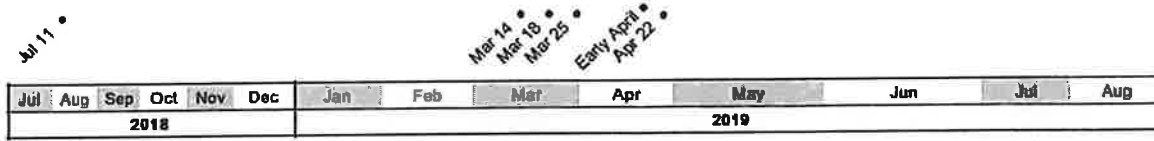
2. On March 14, 2018, Mrs. Cohen is sexually assaulted by Mr. Wear. At the same time, it is discovered that Mr. Wear has also assaulted [REDACTED] and [REDACTED]
3. On March 18, 2019, Mr. Cohen tells Mr. Nelson that Mr. Wear sexually assaulted multiple women at the PAC-12 tournament game in Las Vegas and at other ASU sporting events. Scott Nelson admits the “inappropriate remarks or passes.” This triggered a duty to report and investigate. Mr. Nelson did not report Mr. Wear’s sexual assault and ASU did not initiate an investigation at that time.
4. On March 25, Mr. Cohen informed Mr. Anderson of Mr. Wear’s sexual assault at the PAC-12 tournament game in Las Vegas and at other ASU sporting events. Though Mr. Anderson does not recall the specifics of what Mr. Cohen told him, he admits learning that Mrs. Cohen had been “inappropriately touched” by Bart Wear at ASU’s PAC-12 tournament game in Las Vegas. Mr. Anderson did not initiate an investigation at that time nor report the assault to any other department in the University.
5. ASU was aware that Mr. Wear inappropriately touched women when he consumed alcohol.<sup>6</sup> Mr. Anderson told Mr. Cohen that ASU would not tolerate that behavior because it was not consistent with their culture. Notwithstanding Mr. Anderson’s statements, Mr. Wear was granted access to ASU functions, including women’s athletics events, and allowed to consume alcohol, even after Mr. Cohen reported Mr. Wear’s sexual assault.



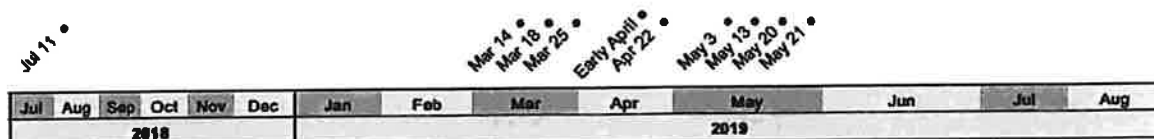
6. In early April, Mr. Rick Shangraw learned of Wear’s assault on Mrs. Cohen, [REDACTED] and [REDACTED]. Mr. Shangraw admits that he had a conversation with Mr. Anderson at that time. During that conversation, Mr. Shangraw states that he told Mr. Anderson about the inappropriate behavior of Bart Wear. This again was sufficient to trigger an investigation. Mr. Anderson did not initiate an investigation at that time nor report the assault to any other department in the University.
7. On April 22, Mr. Boyd was informed of Mr. Wear’s sexual assault. He acknowledged that he had a mandatory duty to report that allegation.

<sup>6</sup> The Memo concedes that Mr. Wear had been removed from an ASU game for his bad conduct.

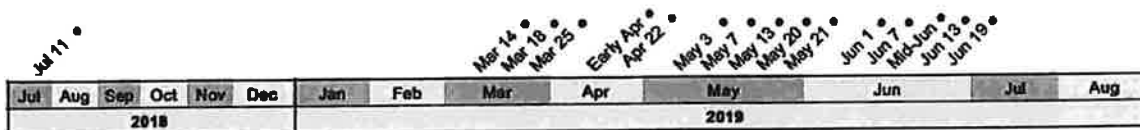
Mr. Boyd did not report Mr. Wear’s sexual assault, and no investigation was initiated in April 2019.



8. On May 3, shortly before the 2019 Devil’s Ball, Mr. Cohen reminded Mr. Anderson of Mr. Wear’s sexual assault and voiced his concern that when Mr. Wear drinks, he is a danger to those around him. Rather than address Mr. Wear’s conduct or take any steps to protect people in the ASU community, including the athletes in his department, Mr. Anderson told Mr. Cohen to stay away from the event if he felt uncomfortable. (Again, demonstrating a complete lack of appreciation for who his Duty to Report was intended to protect.) No investigation was conducted into Mr. Wear’s sexual assault in May 2019 and he was allowed to attend the Devil’s Ball after ASU received multiple credible reports of sexual assault.
9. On May 13, Mr. Anderson, Mr. Wear, and Mr. Herm Edwards go on a golfing trip together using Mr. Wear’s private jet. It had been more than six weeks since ASU received a credible sexual assault allegation involving Mr. Wear, and rather than initiate an investigation, Mr. Anderson chose to go on a golfing trip with a prominent university booster using the booster’s private jet. Presumably Mr. Edwards had no knowledge of the sexual assault allegations. Based on experience, alcohol was consumed on this trip.
10. On May 20, Mr. Boyd speaks with Mr. Cohen who again raises the Wear assault on his wife and two other women. Mr. Boyd admits that Mr. Cohen “expressed anger” over Mr. Anderson’s failure to report.
11. On May 21, as a result of his meeting with Mr. Cohen, Mr. Boyd confronts Mr. Anderson about his failure to initiate an investigation into Mr. Wear’s sexual assault at the PAC-12 tournament more than two months prior. Mr. Boyd tells Mr. Anderson that he has a duty to “respond and report.” Mr. Anderson confirms that Mr. Cohen reported the conduct, as Mr. Cohen was required to do, and agrees to initiate an investigation. No investigation was conducted in May 2019.

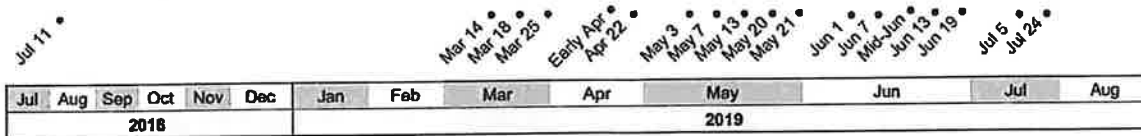


12. On June 1, Mr. Wear leaves for vacation. Mr. Anderson said he could not report the sexual assault or initiate an investigation until Mr. Wear returned from vacation. Again, ASU showed more concern for the convenience and reputation of a prominent booster than the victims of sexual assault. Mr. Anderson’s duty to report is legally independent of his ability to warn Mr. Wear. Indeed, law enforcement and prosecutors alike will confirm that telling the accused predator in advance of any investigation is likely to lead to the destruction of evidence. Regardless, notwithstanding his numerous discussions, Mr. Anderson does nothing. No investigation was initiated in June 2019.
  
13. On June 7, Mr. Cohen meets again with Mr. Rick Shangraw and the two discuss Mr. Anderson’s failure to report Wear’s sexual assault. Mr. Shangraw does not remember what was discussed precisely, but he expressly recalls that Mr. Cohen reiterated that Mrs. Cohen had been “inappropriately touched” by Bart Wear. Nevertheless, no investigation was initiated in June 2019.
  
14. Following his meeting with Mr. Cohen, in “mid-June”, Mr. Shangraw meets with Mr. Anderson who acknowledges that he received a credible report of sexual assault at the PAC-12 tournament in March. Mr. Shangraw confronts Mr. Anderson about his golf trip with Mr. Wear on Mr. Wear’s private jet and tells Mr. Anderson the trip “was inappropriate.” Mr. Anderson says he will report Mr. Wear’s conduct and “take care of it” when he returns from vacation “at the end of the summer.” Mr. Anderson did not report Mr. Wear’s sexual assault to any other department or his superiors at that time or at any point in June 2019.
  
15. On June 13, Mr. Cohen received his performance report. It was a generally positive review. Shortly thereafter, bonuses are issued to ASU Athletic Department staff. Mr. Cohen receives the largest bonus in the department.
  
16. On June 19, Mr. Cohen again meets with Mr. Boyd. Mr. Boyd admits that he was reminded of the sexual assault on Mrs. Cohen by Bart Wear. No investigation is initiated or report is made to anyone in June 2019.



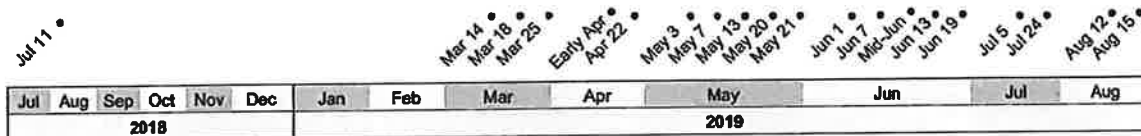
17. On July 5, Mr. Cohen again meets with Mr. Anderson. He reminds Mr. Anderson of Mr. Wear’s sexual assault in March. Mr. Cohen details the assault on his wife, Mrs. Kathy Cohen, at that time . . . again.

18. On July 24, Mr. Cohen again meets with Mr. Anderson and reminds him of Mr. Wear’s sexual assault on Mrs. Cohen in March. Mr. Anderson admits the meeting occurred and admits that he was reminded that “Mr. Wear inappropriately touched Mrs. Cohen.” No investigation was initiated in July 2019.



19. On August 12, Mr. Cohen was reassigned to report directly to Mr. Ferrara. Shortly before his reassignment, Mr. Ferrara had told Mr. Cohen he would fire him “on day one” if Mr. Cohen ever reported to Mr. Ferrara.

20. On August 15, three days later, Mr. Cohen was told he was terminated.



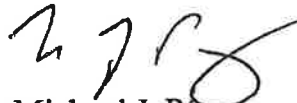
21. In September 2019, Mr. Wear flies to Michigan for the football game against Michigan State University. By that time, ASU had received multiple credible reports of Mr. Wear’s sexual assault six months prior and was allegedly investigating Mr. Wear’s conduct as a result of our law firm contacting ASU about the sexual assault of three women and ASU’s retaliatory termination of Mr. Cohen.

ASU’s predetermined investigation was incomplete. The Memo has glaring absences. Notwithstanding the shortcomings, the Memo acknowledges that ASU received several credible reports of Mr. Wear’s sexual assault that it did not investigate until after it placed Mr. Cohen (the initial reporter and husband of one of Mr. Wear’s victims) on administrative leave, stripped him of responsibilities, and took away several of his benefits. Notwithstanding these facts as conceded in the Memo, the purportedly neutral investigation makes no connection between Mr. Wear’s assaults and Mr. Cohen’s termination. Instead the Memo selectively refers to watercooler conversations, hearsay events, and biased witnesses which are not supported by any ASU performance evaluations but for the after-the-fact notations of Mr. Anderson on June 24, 2019 made three months after Mr. Wear’s sexual assault was first report to him.

The Memo is a damning indictment of the culture around ASU athletics. The Memo confirms that there is credible and sufficient evidence that Mr. Bart Wear sexually assaulted three separate women, on three separate occasions, all at ASU basketball games. Knowing (as ASU now concedes) that a sexual predator was roaming campus events for several months, the Memo fails horrifically to connect the dots that underline the institutional failure – ASU had and has a duty to protect its students, employees, their families and the public, and ASU failed to do so notwithstanding numerous credible reports (now confirmed) of Mr. Wear’s sexual assaults. Instead, the Memo confirms that Mr. Ray Anderson, ASU’s Athletics Director, was more focused on speaking to the predator “at the appropriate time” than fulfilling his duty to report the assaults.

The Memo references on several occasions that Mr. Cohen was “angry.” Hopefully, now that ASU has read these findings, ASU is also angry. This institutional failure to report is unconscionable. The Cohens hope that this Memo serves as a wake-up call to the University community and spurs real change in the department.

Very truly yours,



Michael J. Perez

of

PEREZ VAUGHN & FEASBY Inc.

Enclosures

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September 23, 2019

**VIA ELECTRONIC MAIL AND U.S. MAIL**

Kimberly A. Demarchi, Esq.  
Arizona State University  
Office of General Counsel  
P.O. Box 877405  
Tempe, Arizona 85287-7405

**Re: Investigation of Bart Wear**

Dear Ms. Demarchi:

I am writing to determine the status of your investigation of Bart Wear. In particular, we are hopeful that you are nearing the conclusion of your initial efforts to uncover the facts related to Bart Wear's egregious conduct. Frankly, we were surprised to learn that, unlike any other investigation I've been involved in, ASU elected to speak to the accused predator first, before the victims. I also know that your investigator has spoken to Ray Anderson, the person we believe covered up Bart Wear's conduct. The order of ASU's interviews is quite unorthodox. Still, we are hopeful that you have now had an opportunity speak to all three victims, as well as uncover new facts.

As for Wear's response, it comes as no surprise to me (or any prosecutor) that the accused predator would deny the allegations. In my experience as a federal prosecutor, every culprit caught denies the allegations, even if there is a smoking gun. Congressman Duncan Hunter in San Diego is a prime example of that *modus operandi*. Jerry Sandusky is another example. Likewise, I have never known a person accused of retaliatory conduct to admit the retaliation unless or until that person is forced to do so by his superiors or a jury.

Ultimately, it would be helpful to know approximately when you anticipate concluding your investigation. We are also hopeful that the University will share the results of the investigation with the victims.

Very truly yours,



Michael J. Pérez  
of  
PEREZ VAUGHN & FEASBY Inc.

**Re: Cohen v. ASU - Haller Article in The Athletic**

1 message

**Michael Perez** <perez@pvflaw.com>

Wed, Oct 16, 2019 at 3:54 PM

To: Kimberly Demarchi &lt;Kimberly.Demarchi@asu.edu&gt;

Cc: Christopher Rowlett &lt;rowlett@pvflaw.com&gt;

Bcc: Jose de Jesus Rivera &lt;josedejesusrivera@mpfmlaw.com&gt;, Michael Perez &lt;perez@pvflaw.com&gt;

Kim,

Thank you for getting back to me. Although I appreciate your perspective, I will assume that you have never been placed on administrative leave. The mere fact a person is placed on AL suggests that something is awry. This in and of itself is not problematic once explained, but as Mr. Cohen seeks employment elsewhere, he is unable to adequately explain the AL or why someone who seemingly was hitting all reasonable performance metrics had his responsibilities reassigned. The negative impact that Mr. Cohen must overcome (if he is even afforded an opportunity for a job interview!) is devastating. In other words, our efforts to work with ASU, to keep this termination/work reassignment off the radar, and the opportunity for Mr. Cohen to mitigate his damages, has been destroyed by this article and other statements from ASU personnel (e.g., statements Ray Anderson made to the Atlanta Falcons and/or statements Ray Anderson made to the entire Athletic Department on or around August 15, 2019).

As for the conduct of the investigator, I will not attempt to cover the many problems we encountered. However, here are a few examples:

- Ms. Love asked directly and insinuated several other times that Mrs. Cohen might have misinterpreted Bart Wear sexually assaulting her;
- Ms. Love asked directly and insinuated several times that Mrs. Cohen placed herself in the position of being assaulted by Bart Wear and then willingly returned to the company of Bart Wear after the sexual assault;
- Ms. Love required Mrs. Cohen to "act out" the sexual assault on several occasions after she had already explained it to Ms. Love in painful detail;
- Ms. Love asked Mrs. Cohen the question, "Is there anything ASU can do to make you whole for Mr. Wear's actions?" (Curious if ASU prompted this compromise effort.);
- Ms. Love asked and insinuated several other times that Mr. Cohen was responsible for this matter not being dealt with under some 'failure to report' theory; and,
- Ms. Love asked and insinuated on several occasions that Mr. Cohen was the one who put his wife in the circumstance that led to the sexual assault on his wife.

I would like to discuss these things with you, and I am happy to explain why we did not come to you sooner.

Finally, you did not address our concerns regarding access and full visibility into the report (including an opportunity to comment on the report before it is finalized). I look forward to your thoughts with respect to that question.

Thank you.

Mike

**Michael J. Pérez** | Partner

PEREZ VAUGHN &amp; FEASBY Inc.





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This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

On Mon, Oct 7, 2019 at 6:03 PM Kimberly Demarchi <Kimberly.Demarchi@asu.edu> wrote:

Mike,

Thanks for sending the article from The Athletic.

The university generally does not comment on personnel matters and has taken this approach regarding Mr. Cohen's current status, as reflected in the article you have shared. However, preparations for the start of the basketball season are underway, and Mr. Cohen's previous responsibilities as sport administrator have been assigned to someone else, so I would expect that his absence would be noticed. I will nonetheless pass on your concerns, as I have done in the past.

With regard to this article in particular, I'm not sure I understand your position that it damages Mr. Cohen's reputation. All that it says is that he is "on leave." It does not even indicate that the leave was the university's decision, rather than Mr. Cohen's. And the article follows the information about Mr. Cohen's leave status with a complimentary description of his contributions to the basketball program.

In addition, this is the first that I'm hearing of any concerns about the conduct of our investigator, despite the fact that your clients met with her weeks ago at the start of her interviews and that you and I have both spoken and corresponded in the intervening time. If you have additional information that you believe you were not able to submit during your meeting with her, I would encourage you to come forward with it as soon as possible so that it can be considered along with the other information gathered in her investigation. If you would like to discuss your concerns about Ms. Love more specifically so that I can understand and attempt to address any issues, I would be happy to schedule a time to talk.

Ms. Love completed additional interviews in Tempe last week, as anticipated, and I understand she is in the final stages of her analysis. I will let you know when her investigation is complete, which I expect will be late next week or early in the following week. We can discuss next steps at that time, though I am available if you would like to talk sooner.

Best wishes,  
Kim

**Kim Demarchi**  
Senior Associate General Counsel  
Office of General Counsel  
Arizona State University  
office: 480-965-1247  
email: kimberly.demarchi@asu.edu

On Oct 7, 2019, at 5:25 PM, Michael Perez <perez@pvflaw.com> wrote:

Kim,

The following article was recently published in The Athletic. As you may know, The Athletic is an online sports news subscription service that has over 500,000 subscribers and boasts that it is read by every NCAA program and professional sports team in the United States. The article is pasted below and clearly references information obtained from a source inside of ASU's athletics department (e.g., the phrase Administrative Leave was never once used by my client and only first learned by us in your September 9, 2019 letter that Mr. Cohen had been placed on "paid administrative leave."). The continued leaking of information regarding Mr. Cohen's employment status, without referencing both the investigation of Mr. Wear and/or the retaliation claims of Mr. Cohen, are causing irreparable harm to our client. As we await the conclusion of ASU's investigation, please know that we are reassessing whether or not silence and patience are the best approach going forward.

Moreover, during the course of the Carrie Love investigation, we have been convinced that the ASU investigation is neither unbiased nor neutral. Ms. Love had a clear agenda during her interview of our clients, and we experienced a 'blame the victim' strategy throughout our several hours cooperating fully and completely with Ms. Love. We cannot speak to the remainder of Ms. Love's interviews, but we are not satisfied that the approach taken by Ms. Love was the most effective means at uncovering the truth of Mr. Wear and Mr. Anderson's conduct. Notwithstanding our growing concerns with ASU's investigation, we remain hopeful that our client will be permitted access to whatever report is ultimately created by Ms. Love.

We will be speaking with our client about next steps. It would be helpful to know when the investigation will be concluded and if we will have access to the report. Indeed, it would certainly make sense for our client to have an opportunity to comment on the draft report but, whatever approach is taken by ASU, we intend to shift our strategy in light of the below and other reports about Mr. Cohen's employment at ASU -

## Four things to know as Arizona State opens Bobby Hurley's fifth season

Basketball practice just started, yet Bobby Hurley already feels behind.

By opening the season Nov. 8 in China, the Arizona State coach figures the Sun Devils will lose about a week of preparation. That means they'll have to make the most of each day before they face Pac-12 foe Colorado in a game that won't count as a conference contest.

“It’s going to be a great experience,” Hurley said, “but at the same time, from a coaching standpoint, you’re a little short-handed with time to get the team ready.”

Hurley on Wednesday spoke to reporters for the first time since practice started. The highlights:

### **1. There’s change within the program.**

In addition to six new scholarship players, Hurley added two coaches to his staff. Eric Brown, a 20-year veteran, coached the past three seasons at UNLV. He has strong ties to the West. Rasheen Davis has connections in the New York-New Jersey area and most recently coached at Massachusetts.

Senior associate athletic director David Cohen, the lead administrator for the basketball program, also is gone. Officially, Cohen is on administrative leave for reasons that have yet to be publicly disclosed. His name no longer appears on the school’s web site.

Cohen made a significant impact on the program. He helped boost home attendance and worked with Hurley on scheduling. From the start, he was involved in Hurley’s hire and grew close to the ASU coach, sitting with Hurley’s family at road games.

Asked about Cohen’s absence, a school spokesman referred to ASU’s policy of not publicly commenting on personnel matters. Cohen has not returned messages. Hurley declined comment.

Senior associate athletic director Ken Landphere is positioned to oversee the basketball program.

### **2. This team’s firepower reminds Hurley of 2017-18.**

In Hurley's third season, guards Tra Holder, Shannon Evans and Kodi Justice were a handful, combining to average 47.4 points. This team has a similar feel.

"There may not be a team that I've had that I'm more confident about putting points on the board," Hurley said.

To complement junior point guard Remy Martin (12.9 points per game) and senior Rob Edwards (11.1), Hurley brought in junior-college transfer Alonzo Verge and freshman Jaelen House. Although it's Martin's team, Hurley has raved about the 6-foot-3 Verge since the combo guard arrived on campus.

"(He's) had some days this summer that I've rarely seen, just from a guard standpoint," Hurley said. "You can't teach some of the things he has. His instincts, his feel for the game and just his ability to create something, whether it's a shot for himself or a teammate. He's a city guard and he has that edge to him."

The 6-2 House, son of program legend Eddie House, has impressed with his energy and intensity, qualities he showcased at Phoenix Shadow Mountain High. More than once, the coaching staff has used the freshman as an example of how to "get after it." In offseason conditioning, House ran the team mile in a team-best five minutes, 15 seconds, "and he really didn't take a deep breath doing it," Hurley said.

Over the summer, Hurley watched ASU's wins over Kansas and Xavier from two seasons ago. He shared the stats of the Kansas game with his team: the 58 second-half points, the 57.6 second-half field-goal percentage, the 25 points off turnovers.

“All of these things that were reflective of just being in great condition and being able to play the style where we could be more aggressive and attack,” Hurley said.

This team could play the same way.

### **3. Romello White will have to play a key role.**

Despite the crowded backcourt, Hurley likes his lineup flexibility. Junior Kimani Lawrence (6-8) and junior-college transfer Khalid Thomas (6-9) add perimeter length. Sophomore Taeshon Cherry, who last season just scratched the surface of his potential, can play both inside and out. (The 6-8 forward ran the preseason mile in 5:25, impressive for a player his size.)

But White likely will have to carry an inside load.

The 6-8, 235-pound junior is ASU’s only true post player with experience. Last season he averaged 8.7 points, shooting 59.8 percent on limited touches. With leading rebounder Zylan Cheatham gone, White this season will have to be a bigger presence on the boards. Last year he averaged 5.2

“Romello has been here a couple years,” Hurley said. “I think he knows how much we need him down there and how he can take a bigger responsibility on our team. He’s kind of proven to us that he’s going to be a focal point of what we do.”

Senior forward Mickey Mitchell, who missed nearly all of last season, is coming off minor back surgery. Hurley said he's never been more optimistic about Mitchell's return, but emphasized that this still is not a short-term turnaround. In addition, freshman big man Jalen Graham is recovering from a minor ankle issue.

#### **4. The standard is in place.**

Last December, after ASU had rallied from 18 down to beat Georgia on the road, associate head coach Rashon Burno told Hurley as they walked to the locker room, "This is a program win."

His meaning: "When you're starting over, you hope to get in those situations," Burno recently explained. "Where you're down 18 on the road, nothing's going your way and somehow you figure it out — that's what good programs do."

ASU has had several moments like that the past two years. As Hurley approaches his fifth season, the Sun Devils have to take the next step, not only making the NCAA Tournament but advancing to the second weekend.

"I feel like we've positioned ourselves well," Hurley said. "No one in the Pac-12's going to care that we're the only Pac-12 school to go to the (NCAA) tournament the last two years. It's a clean slate as far as I'm concerned, but I do take a lot of pride in that. It's been a big climb. We have a bunch of guys in the

locker room that know how to do that and expect to do that.  
That's kind of the standard now.”



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