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 ALAMEDA COUNTY  
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 CLERK OF  
 THE SUPERIOR COURT  
 By Milagros Cortez, Deputy  
 CASE NUMBER:  
**RG19048474**

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

10 W.S.,

11 Plaintiff,

12 vs.

13 UNITED STATES TENNIS ASSOCIATION;  
 14 a New York Corporation; UNITED STATES  
 15 TENNIS ASSOCIATION NORTHERN  
 16 CALIFORNIA, a California corporation;  
 17 BURGOS TENNIS FOUNDATION INC., a  
 18 California corporation; NORMANDIE  
 19 BURGOS, an individual; and DOES 1-35,  
 20 inclusive

21 Defendants.

Case No. 17CV311193

**COMPLAINT FOR DAMAGES**

- (1) Sexual Assault & Battery.
- (2) Negligence.
- (3) Intentional Infliction of Emotional Distress.

[AMOUNT IN EXCESS OF \$25,000]

22 Plaintiff W.S. herein alleges against defendants UNITED STATES TENNIS  
 23 ASSOCIATION, a New York Corporation; UNITED STATES TENNIS ASSOCIATION  
 24 NORTHERN CALIFORNIA, a California corporation; BURGOS TENNIS FOUNDATION  
 25 INC., a California corporation; NORMANDIE BURGOS, an individual; and DOES 1-35,  
 26 inclusive, as follows:

**COMMON ALLEGATIONS**

27 1. Plaintiff was openly groomed and controlled by his tennis coach, NORMANDIE  
 28 BURGOS ["Burgos"], ultimately leading to Burgos' sexual abuse of him when he was only 13

1 years of age.

2           2. Defendant UNITED STATES TENNIS ASSOCIATION ["USTA"] is a New  
3 York Corporation with its primary place of business in the City of White Plains, State of New  
4 York. USTA is the National Governing Body ["NGB"] for the sport of tennis and the  
5 recognized leader in promoting and developing the sport's growth on every level in the United  
6 States. USTA has over 700,000 individual members. It collects dues from its individual  
7 members, as well as from organization members [an association or private entity that actively  
8 engages in control or supervision over tennis activities or is involved promoting tennis].

9           3. To ensure a safe and respectful environment for all its participants, USTA  
10 developed the "Safe Play" program. According to USTA's Safe Play Conduct, Policies and  
11 Guidelines, "Tennis, the sport of a lifetime, is a great way to stay fit, make friends and have fun.  
12 However, tennis, like all sports, can result in high-risk environments for misconduct, including  
13 physical, emotional, and sexual abuse. All forms of misconduct are unacceptable to the [USTA]  
14 and are indirect conflict with the USTA's values and missions as the [NGB] for the sport of  
15 tennis in the United States. The USTA is committed to creating a safe and positive environment  
16 for every athlete's development in an environment free of misconduct." All USTA members  
17 and employees must comply with USTA's Safe Play Conduct, Policies and Guidelines.  
18 USTA's Safe Play Conduct, Policies and Guidelines prohibit child abuse and sexual  
19 misconduct. To prevent said conduct, USTA has implemented proactive policies, including but  
20 not limited to, policies (1) prohibiting types of one-on-one interactions, meetings, and training  
21 sessions between adult members and minor athletes; (2) prohibiting adult members from  
22 providing gifts or special favors to minor athletes; (3) prohibiting adult members from  
23 interacting one-on-one with unrelated minor athletes in settings outside of tennis programs  
24 (including, but not limited to, one's home) unless parent/legal guardian written consent is  
25 provided for each out-of-program contact; (4) prohibiting adult members from engaging in  
26 types of physical contact with minor athletes, including lap sitting, cuddling, tickling, etc.; (5)  
27 placing restrictions on massages/rubdowns between adult members and minor athletes; (6)  
28 limiting and placing restrictions on social media and electronic communications between adult

1 members and minor athletes; and (7) placing additional rules/restrictions for travel meets.  
2 Pursuant to its Safe Play program, USTA also requires that adult USTA members complete  
3 education concerning child abuse prevention on an annual basis. Further, USTA requires its  
4 employees and those individuals it authorizes to have regular contact with minor athletes, to  
5 complete a criminal background screen at least every two years. Background screens must be  
6 completed either before regular contact with a minor athlete or within the first 45 days of initial  
7 membership, whichever occurs sooner. At any time if USTA becomes aware of any potential  
8 criminal activity concerning an adult member, whether through information received from the  
9 media, third parties or otherwise, USTA retains the right to conduct additional background  
10 screening, and to immediately withdraw the adult member's good standing status.

11 4. Defendant UNITED STATES TENNIS ASSOCIATION NORTHERN  
12 CALIFORNIA ["USTA NorCal"] is a California corporation with its principal place of business  
13 in the City of Alameda, State of California. USTA NorCal is one of seventeen Sectional  
14 Associations for USTA. It is the local representative for USTA for the Northern California  
15 region. USTA is required to operate its organization in accordance with USTA's rules  
16 governing the safety of its members, including Safe Play. USTA NorCal has approximately  
17 15,835 junior members and over 400 organization members. USTA NorCal collects  
18 membership dues from its junior members, adult members and organization members. All  
19 organization membership applications within USTA NorCal's jurisdiction are subject to USTA  
20 NorCal's approval.

21 5. According to its SafeSport Program Handbook, USTA NorCal "is committed to  
22 creating a safe and positive environment for its participants' physical, emotional, and social  
23 development and ensuring it promote an environment free from abuse and misconduct. As part  
24 of this program, [USTA NorCal] has implemented policies addressing certain type of abuse and  
25 misconduct, and certain policies intended to reduce, monitor and govern the areas where  
26 potential abuse and misconduct might occur." USTA NorCal seeks to ensure the safety of all  
27 participants, and as such, has implemented criminal background screening to: (i) Ensure a safe,  
28 secure and fun environment for participants to compete and continue to develop and enhance

1 their skills; (ii) Provide parents and legal guardians with a sense of security for their children;  
2 And (iii) Prevent individuals with ill intentions from becoming involved with its program.

3 6. Defendant NORMANDIE BURGOS ["Burgos"] is and, all times relevant herein,  
4 was a resident of the County of Alameda, State of California. At all times relevant herein, said  
5 defendant was an adult member of USTA and USTA NorCal, and a tennis coach subject to  
6 USTA and USTA NorCal's rules and policies.

7 7. In or about 2011, Burgos created the BURGOS TENNIS FOUNDATION INC.  
8 ["Burgos Foundation"], a California corporation with its principal place of business in the City  
9 of Berkeley, State of California. At all relevant times Burgos Foundation was an organization  
10 member of USTA and USTA NorCal. Plaintiff is informed and believed and thereon alleges  
11 that USTA and USTA NorCal approved Burgos Foundation as an organization member on or  
12 around 2011. At all relevant times Burgos Foundation was a private tennis clinic that trained  
13 and educated minor athletes in the sport of tennis.

14 8. Plaintiff W.S. is a California resident who at all relevant times was a member of  
15 USTA and USTA NorCal, and a Burgos Foundation client. Plaintiff is now 20-years-old.

16 9. Before USTA and USTA NorCal approved Burgos Foundation as a member  
17 organization, Burgos had a history of sexual misconduct with children. Burgos was previously  
18 employed as a physical education teacher and tennis coach by the Tamalpais Union High  
19 School District. There, multiple complaints of sexual misconduct with multiple students were  
20 lodged against him over a period of years, such as in November of 2002, November of 2004 and  
21 March of 2005. In 2006, Burgos was criminally charged with sexual battery in a high profile  
22 and widely reported case for sexual misconduct of one of his students and his teacher  
23 credentials were suspended. The student he sexually molested was a young male tennis player.

24 10. The Tamalpais Union High School District initially suspended Burgos without  
25 pay and thereon permanently dismissed him in 2008, citing the following: (1) immoral and  
26 unprofessional conduct in violation of Education Code Section 44932(a)(1); (2) dishonesty in  
27 violation of Education Code Section 44932(a)(3); and (3) persistent violation of or refusal to  
28 obey school laws or reasonable regulations in violation of Education Code Section 44932(a)(7).

1 These charges were based on the following findings of fact: (1) inappropriate touching of a  
2 student in November of 2004 during the administration of a body composition test; (2)  
3 inappropriate touching of another student during the fall semester of 2004 during the  
4 administration of a body composition test; and (3) a number of incidents from 2001 through  
5 2003 where Burgos immorally and inappropriately touched a third student on multiple  
6 occasions, including in the genital area under the pretext of a massage.

7 11. Burgos was tried before a jury in 2010 which resulted in a "hung jury" in that a  
8 vote of 8-4 was made in favor of conviction for sexual battery. Said trial as well as the jury  
9 vote in favor of a conviction of sexual battery is a matter of public record.

10 12. On or about February 10, 2011, the California Teacher Commission permanently  
11 revoked Burgos's teaching credentials, citing "misconduct". Said revocation is and was at all  
12 relevant times a matter of public record.

13 13. Burgos first started teaching plaintiff when he was approximately 7-years-old in  
14 or about 2006-2007. During all relevant times, Burgos conducted a clinic for youth with strong  
15 and direct ties to USTA NorCal. Plaintiff, under Burgos's tutelage and instruction, regularly  
16 competed in USTA NorCal leagues and tournaments both within and outside the state of  
17 California. Burgos also ran an adult clinic with similar affiliations with USTA NorCal.

18 14. Beginning in or about 2011 when plaintiff was approximately 12-years-old, he  
19 started having private lessons with Burgos. Soon thereafter, Burgos began "grooming" plaintiff  
20 for the purpose of ultimately sexually abusing him. Said grooming primarily took the form of  
21 inappropriate touching including massages. The sexual assault escalated when plaintiff was  
22 approximately 13-years-old (from in or about 2012) and continued for over a year, at which  
23 point plaintiff and/or his mother reported said abuse to both the authorities and USTA NorCal.

24 15. Plaintiff is informed and believes, and thereon alleges that USTA and USTA  
25 NorCal did not perform any background screening on Burgos or Burgos Foundation before they  
26 approved their membership status or while they were members of USTA and USTA NorCal,  
27 and/or did so in a negligent manner.

28

1           16.     The true names and/or capacities, whether individual, corporate, associate, or  
2 otherwise, of defendants named herein as DOES 1 through 35, inclusive are unknown to  
3 plaintiff at this time, and plaintiff therefore sues said defendants by such fictitious names.  
4 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when  
5 the same have been ascertained. Plaintiff is informed and believes and thereon alleges that each  
6 of the defendants designated herein as a DOE is responsible in some manner or is otherwise  
7 legally liable to plaintiff for the injuries complained of herein.

8           17.     At all times herein mentioned, each of the defendants was an agent, servant,  
9 employee, partner, joint venturer, alter ego, franchisee, aider and abetter, and/or co-conspirator,  
10 and engaged in a common or common enterprises with each of the remaining defendants herein,  
11 and was at all relevant times acting within the course and scope of said agency, service,  
12 employment, partnership, joint venture, franchise, unlawful enterprise, conspiracy and/or other  
13 lawful or unlawful conduct as herein alleged.

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15                                   **FIRST CAUSE OF ACTION**  
                                  **Sexual Assault and Battery**

16           As and for a First Cause of Action, plaintiff herein alleges against defendant  
17 NORMANDIE BURGOS, an individual; and DOES 1 through 5, inclusive, as follows:

18           18.     Plaintiff hereby incorporates all paragraphs in his Common Allegations as  
19 though set forth in full herein.

20           19.     Due to the special relationship as plaintiff's tennis coach, Burgos owed a duty to  
21 conduct himself with due care for the safety of plaintiff. This duty included, but was not limited  
22 to, an obligation to comply with all USTA and USTA NorCal rules and regulations.

23           20.     Burgos used his position of trust and authority as a tennis coach to groom  
24 plaintiff for his sexual advances and thereafter committed lewd and lascivious acts upon  
25 plaintiff and/or sexually abused, molested, and/or improperly touched plaintiff.

26           21.     As a legal result of the foregoing, plaintiff was injured in health, strength and  
27 activity, sustaining bodily injuries and shock and injury to his nervous system and person, all of  
28 which caused and continue to cause plaintiff great mental, physical and nervous pain and

1 suffering; plaintiff has thereby sustained damages in an amount in excess of the minimum  
2 jurisdictional limits of this court.

3 22. As a further legal result of the conduct of the defendants, and each of them,  
4 plaintiff was required to and did employ physicians and counselors for examination, treatment  
5 and care, and incurred, and will continue in the future to incur, medical and incidental expenses,  
6 including counseling costs, the exact amount of which is unknown to plaintiff at this time.

7 23. The acts of Burgos perpetrated upon this minor plaintiff were intentional,  
8 malicious, and/or oppressive, entitling plaintiff to punitive damages against said defendants  
9 pursuant to Civil Code §3294.

10 24. As Burgos committed a felony upon plaintiff for which he was convicted,  
11 plaintiff claims reasonable attorney's fees pursuant to Code of Civil Procedure §1021.4.

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13 **SECOND CAUSE OF ACTION**  
**Negligence**

14 As and for a Second Cause of Action, Plaintiff alleges against defendants UNITED  
15 STATES TENNIS ASSOCIATION, a New York corporation; UNITED STATES TENNIS  
16 ASSOCIATION NORTHERN CALIFORNIA, a California corporation; BURGOS TENNIS  
17 FOUNDATION INC., a California corporation; NORMANDIE BURGOS; and DOES 6  
18 through 30, inclusive.

19 25. Plaintiff hereby incorporates all paragraphs contained in his Common  
20 Allegations and First Cause of Action as though set forth in full herein.

21 26. A special relationship existed between said defendants and plaintiff, as well as a  
22 relationship of control over Burgos and his foundation, whereby said defendants owed plaintiff  
23 a duty to, *inter alia*, protect him from sexual assault by its member coach, employ or retain  
24 suitable coaches to whom they entrusted the care of their minor members, institute and enforce  
25 appropriate policies, procedures, rules, regulations, and requirements necessary to prevent  
26 inappropriate sexual conduct directed to their minor members by coaches, to adequately train  
27 and educate its members and minor members' parents on detecting indicia of predatory  
28 behaviors and/or reporting to the legal authorities any reasonable suspicion of child abuse,

1 and/or to otherwise conduct themselves with due care so as to avoid injuring plaintiff.

2 27. Said defendants, and each of them, breached said duties by, *inter alia*, failing to  
3 appropriately screen Burgos before approving his membership/coach status, permitting Burgos  
4 to coach minor athletes and operate a tennis organization geared toward instructing minors  
5 despite Burgos's history of sexual misconduct with minors; permitting Burgos's repeated  
6 violation of relevant rules, regulations, ordinances or statutes designed to protect minors from  
7 abuse; failing to detect Burgos's course of inappropriate behavior towards plaintiff and/or his  
8 preferential treatment of him; failing to appropriately educate and/or train plaintiff, his parents,  
9 and other members on detecting and/or deterring inappropriate conduct towards minors under  
10 their care; failing to report inappropriate behaviors to the authorities for proper investigation,  
11 failing to exercise control over Burgos and/or to intervene on plaintiff's behalf, and/or failing to  
12 implement and/or enforce proper policies and procedures for the protection of minors.

13 28. As a legal result of the foregoing, plaintiff was sexually groomed and molested  
14 by Burgos, causing him emotional and physical injuries. Plaintiff continues to suffer the effects  
15 of such injuries, causing his special and general damages as hereinabove alleged, and entitling  
16 him to the remedies claimed hereinabove.

17  
18 **THIRD CAUSE OF ACTION**  
**Intentional Infliction of Emotional Distress**

19 As and for a Third Cause of Action, plaintiff herein alleges against defendant  
20 NORMANDIE BURGOS, an individual; and DOES 31 through 35, inclusive.

21 29. Plaintiff incorporates all paragraphs contained in his Common Allegations and  
22 First through Second Causes of Action as through set forth in full herein.

23 30. The conduct of said defendants as herein alleged was outrageous and was so  
24 extreme as to exceed all bounds of decency usually tolerated in a civilized community.

25 31. In performing such lewd and lascivious acts upon plaintiff, said defendants acted  
26 with reckless disregard of the probability that plaintiff would suffer physical and/or emotional  
27 distress.

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32. As a legal result of the aforementioned acts, plaintiff suffered severe emotional distress, such as anxiety, humiliation and mental anguish, causing him injury to his mind, spirit and body, all to his general and special damages in an amount well in excess of the jurisdictional minimum of this Court.

**PRAYER**

WHEREFORE, as to each cause of action, plaintiff prays judgment as follows:

- 1. For all special and all other economic damages according to proof;
- 2. For general damages and other non-economic relief, according to proof;
- 3. For reasonable attorney's fees upon the conviction of NORMANDIE BURGOS for the felony perpetrated upon plaintiff pursuant to Code of Civil Procedure §1021.4;
- 4. For interest as permitted by law;
- 5. For costs of suit herein; and,
- 6. For such other and further relief as the court may deem fit and proper.

Dated: December 27, 2019

CORSIGLIA, MCMAHON & ALLARD LLP

By:   
 B. ROBERT ALLARD  
 MARK J. BOSKOVICH  
 Attorneys for Plaintiff