

NATIONAL SPORTS LAW

NEGOTIATION COMPETITION 2021

ROUND TWO

“Mental Gymnastics”

GENERAL FACTS FOR BOTH TEAMS

There has been a growing movement in recent years to recognize mental health as part of athletes’ overall health and ability to perform on the largest stages. In the early 2010s, for example, the NBA Houston Rockets’ first round draft pick Royce White made headlines for his struggle to receive reasonable accommodations under the Americans with Disabilities Act from the Rockets for his generalized anxiety disorder that prevented him from being able to fly on airplanes.

Discussions of athletes’ mental health impacting their ability to compete has come to a head in the Olympic sport of gymnastics, which is still reeling from the scandal involving former USA Gymnastics (USAG) team doctor Larry Nassar, who in 2017 pled guilty to sexually abusing hundreds of girls and young women on USAG teams. The hundreds of USAG athletes who were subject to Nassar’s abuse—along with those more tangentially affected—have spoken up about their struggles to remain driven to compete for an organization they do not trust to protect their mental wellbeing, even after significant organizational changes.

Ultimately, there is still significant debate over the legitimacy of athlete mental health challenges and whether mental health challenges should be treated similarly to physical injury. During this summer’s Tokyo Olympics, Team USA gymnast Simone Biles’s decision to withdraw from the women’s gymnastics team final citing mental health issues was roundly criticized; for example, Texas deputy attorney general Aaron Reitz in a widely seen and distributed tweet called Biles a “selfish, childish national embarrassment.” Others, on the other hand, called Biles a hero for putting her mental health first and showing others that it is ok to do so, even on an international stage.

Significant questions remain over athlete mental health and their obligations to various stakeholders, including endorsers. Indeed, Biles was not alone among her USAG colleagues in

withdrawing from Olympic competition citing mental health concerns—one week before the start of the games (on July 16, 2021), Biles’s teammate Jean Engman¹ withdrew from competition, stating that she had no physical injury but that her decision was made on the advice of her therapist. While Engman, one of the younger members of the Team USA gymnastics team (at age 18), was not among those victimized by Nassar, she has spoken of the indirect impact that his actions have had on her, leading to mistrust of USAG’s commitment to the health and safety of her and her teammates. Relatedly, Engman expressed personal concerns with rising COVID-19 cases leading up to the Tokyo Games and articulated distrust of the protocols set forth by the International Olympic Committee (IOC) and the Tokyo Olympic event coordinators.

While Engman’s decision was accepted by USAG (who was able to find a replacement for her in time for her events), Engman’s choice was felt more significantly by one of her endorsement stakeholders, an upstart sports drink company called Power Potions. Engman had signed an endorsement deal with Power Potions as a high school junior in January 2020 as Engman was preparing for the (then-) 2020 Summer Olympics and for admission as a scholarship gymnast with the gymnastics powerhouse program at the University of Florida.

Power Potions—a very small company fresh off of a successful Kickstarter campaign—saw Engman as an inexpensive gateway into the burgeoning gymnastics market where they felt they could stand out from larger competitors like Gatorade. They also saw Engman as someone whose story paralleled their own. While most of her Team USA teammates had gotten their start with USAG’s Talent Opportunity Program before turning 10-years-old and had steadily worked their way up through the ranks of Junior Olympic Program, Engman had started her gymnastics career in middle school and emerged onto the gymnastics scene as a high school freshman without the resources of most of her elite competitors. Power Potions has parroted Engman’s story in their own marketing and branding, selling themselves as the upstart firebrand competitor on a sports drink scene dominated by the big names of Gatorade and Powerade.

Engman’s contract with Power Potions provided her a \$1,000 signing bonus plus \$100 per social media post featuring a Power Potions product. The contract requires Engman to make at least one sponsored post per month at minimum with a maximum of one post per week normally.

¹ The facts represented in this fact pattern are entirely fictional for the purposes of this educational exercise. Engman is an entirely made up person and is not intended to represent any actual persons, living or dead.

This maximum output is raised to up to two posts per week in the one-month period before the Summer Olympics, the one-month period after the Summer Olympics, and during the Games themselves.

While the contract signed in January 2020 had only been intended to last through the end of August 2020, the parties mutually agreed to extend the partnership agreement until Engman's start date at the University of Florida (August 23, 2021) when the Olympics were postponed in March 2020. This extension was expected to cover the postponed Games while hedging against the still uncertain NCAA rules and state law surrounding athlete endorsement opportunities.

Power Potions had also signed the deal with eyes on the rapidly moving bill in Florida that would allow collegiate athletes within the state (including Engman) to profit off of their name, image, and likeness starting in July 2021. Both Power Potions and Engman were excited about the possibility of extending the partnership to last through Engman's collegiate career, though no such deal has been signed as of yet. That bill was signed into law by Florida governor Ron DeSantis in June 2020 and came into effect on July 1, 2021, much to Power Potions' and Engman's excitement. Both Power Potions and Engman had collectively planned to use the Tokyo Olympics as a launching pad for their partnership, setting the stage for a renewed endorsement deal during her time as a college athlete with the University of Florida. However, this possibility has yet to be negotiated.

In fact, the only conversation between the two parties since Engman's withdrawal was when representatives for Power Potions reached out to Engman's representatives the day after she announced her decision to withdraw to express their dissatisfaction and a desire to reevaluate their partnership. During this conversation, the representatives for Power Potions indicated that if they could not come to terms on a significantly revised partnership agreement, they would take action to try and both get out of the deal and recoup the money paid and owed to Engman, as they feel would be within their rights under the terms of the agreement.

Representatives for Engman and Power Potions have agreed to meet today in an attempt to resolve the conflict before any litigation is filed. Both parties have given their representatives full authorization to be creative and—if possible—craft a mutually beneficial agreement that will both resolve this conflict and hopefully advance each side's interests.

Note: *The use of a calculator is permitted for this round.*

SUPPLEMENTAL MATERIAL

Section 8: Withdrawal from 2020 Summer Olympics

ENDORSER and ATHLETE understand that the principal interest of ENDORSER in entering this Agreement is promotion of product leading up to, during, and after ATHLETE's participation in the 2020 Summer Olympics. ATHLETE understands that a full withdrawal from the 2020 Summer Olympics would cause detrimental harm to ENDORSER by lowering the value of the sponsored posts that are the subject of this Agreement.

- a) If ATHLETE withdraws voluntarily from the 2020 Olympics, ENDORSER shall not be required to make compensation. Additionally, ENDORSER may elect, in its sole discretion, to terminate this Agreement upon written notice to ATHLETE (the date of such notice is hereinafter referred to as the "Termination Date.") In the event of such a termination, ATHLETE shall pay to ENDORSER, not later than thirty (30) days following the Termination Date, an amount equal to (a) the Upfront Payment, plus (b) all Per-Post Payments made by ENDORSER to ATHLETE. Additionally, ENDORSER shall no longer be required to compensate ATHLETE for any Per-Post Payments earned by ATHLETE under Section 4 but not yet paid by ENDORSER to ATHLETE.
- b) If ATHLETE withdraws from the 2020 Olympics due to injury, such withdrawal will not otherwise affect any obligations owed by ATHLETE or ENDORSER under this contract, so long as:
 - i. ATHLETE notifies ENDORSER of such withdrawal before the 2020 Summer Olympic Opening Ceremonies, as scheduled by the International Olympic Committee; and,
 - ii. Such notice is accompanied with a note from a licensed medical professional supporting such an injury-related withdrawal from the 2020 Summer Olympics by recommending that ATHLETE neither participate in nor travel to the 2020 Summer Olympics.
- c) This Section applies only if ATHLETE withdraws fully from the 2020 Summer Olympics, including both not participating in the Olympic Games and not traveling with the team to event location.

CONFIDENTIAL FACTS FOR POWER POTIONS

When Engman made the decision to withdraw from the Tokyo Olympics on July 16, 2021 (one week prior to the Opening Ceremonies), Power Potions was caught completely off-guard. Power Potions—a very small company still fresh off of a successful Kickstarter campaign—had planned on using the Tokyo Games as a kickoff for a brand-new marketing campaign centered as much around the Olympics and Engman’s participation as can be done without risking the wrath of the IOC. Without Engman, however, any marketing surrounding the Games would be too risky, and thus all of the marketing team’s plans had to be scrapped, leading to a sizeable amount of wasted marketing budget money for absolutely no pay off.

Had Engman approached Power Potions before making her decision, this could have been a different negotiation. While the parties would still have plenty to hash out, the Power Potions board feels much less sympathetic to Engman’s situation than they would have been if Engman had spoken with them first. They obviously take mental health very seriously and certainly do not feel like Engman’s decision to pull out of the Games was an incorrect one to make. Her decision not to speak with Power Potions, however, is one that leads the board to question why they targeted her for an endorsement deal in the first place.

Engman’s story is inspirational, and the board is very much drawn to her underdog status—a status they see in their own company as well. Along these lines, a successful recovery from her mental health issues leading to a fruitful collegiate career and a triumphant return to the Olympics in 2024 would cause nothing but positive headlines, imparting significant goodwill onto Power Potions as well for sticking with her. But if Engman cannot be trusted to handle her relationship with Power Potions maturely, the board is unsure if they want to risk being tied to her beyond the current deal.

Since signing her deal with Power Potions in January 2020, Engman has made 55 sponsored posts eligible for per-post compensation under the agreement. Of these, Power Potions has already paid her for 45 posts. Of the remaining 10 posts:

- Five posts were made prior to Engman’s withdrawal from the Olympics;
- One post was made after Engman’s withdrawal (and after the call between the two sets of representatives), but before the start of the Games;

- Two posts were made during the Olympics (largely in support of her teammates); and,
- Two posts were made after the Olympics (both prior to the agreement’s expiration on August 23, 2021).

The terms of the contract require Engman to be paid for these posts monthly, meaning that payment for all ten of these posts is now considered late and thus subject to accrual of interest, working out to an additional 10 percent of the total money owed.

Power Potions acknowledges that they have little contractual right to refuse to pay the money owed if Engman’s withdrawal from the Games does not constitute a breach under Section 8 of the contract. However, they believe that substantively, the ten posts were not content consistent with the performance expected when they entered into agreement. Based on Engman’s prior activity, the 10 posts do not appear to be of the same quality. When they signed the deal with Engman, Engman was extremely active on social media, frequently engaging with her numerous followers. Indeed, Power Potions was thrilled with her performance for the first fifteen months of the agreement as the sponsored posts seemed much more natural and much less forced, given that they were surrounded by plentiful personal posts from Engman about her training and life outside of gymnastics. In the past six months, however, Engman has made fewer and fewer of these personal, non-sponsored posts; in fact, the ten posts at issue are seen as almost entirely consecutive on Engman’s social feed. The only post interrupting what now appears as a constant stream of Power Potions advertisements is Engman’s announcement of her withdrawal from the games.

Of larger concern is the fact that these ten Power Potions advertisements have been met with mostly vitriolic harassment in reply due to Engman’s decision to withdraw from the Tokyo Games. While some of the replies—about 20 percent—support her decision and encourage her continued bravery on speaking out about her mental health challenges, Power Potions is worried about the continued linkage between Engman’s clearly controversial current public image and their brand. If anything, the five posts made after Engman’s announcement have *harmed* Power Potions’s brand value, rather than buoying it as was intended.

Power Potions realizes that Engman’s social media slowdown is almost certainly tied to her mental health challenges and they want to be clear that they are sympathetic to Engman’s struggles. However, Power Potions does not feel that they have gotten what they originally signed up for in the contract, which is clearly a problem. They are willing to pay what is owed for the

five posts made before Engman’s withdrawal (preferably with the added interest waived) if necessary, but they feel rather strongly that the money owed for the five posts made after Engman—and the social media backlash tied to them—should be entirely forgiven.

In many respects, the Power Potions board is worried about essentially having to choose between two angry sides should this dispute become public. Supporting Engman will anger those who are upset about her decision to withdraw from the Olympics so close to the opening ceremonies—a group that includes several Power Potions employees and investors. On the other hand, cutting ties with Engman and pursuing legal recompense will anger the mental health advocates that Engman counts as her supporters. The latter choice also creates a risk of aligning Power Potions with the bad actors who have relentlessly harassed and vilified Engman wherever she or her name has appeared on social media. As Power Potions is still a new company, the board would prefer not to potentially cut off one group of customers or another while their market share base is still undefined.

As such, the board would prefer that this dispute is resolved as quickly and quietly as possible. The chief risk in this regard would come from litigation, which certainly would be seen as attacking Engman, creating a high probability that the lawsuit would turn into something of a referendum on Engman’s decision in the greater public. The board does feel strongly that Engman has breached her contract with Power Potions, thus entitling the company to some money back via the withdrawal and clawback clauses written into Section 8 of the agreement. Getting back some of the money paid to Engman for her signing bonus and for the 45 posts already paid for would help Power Potions sign a new figurehead athlete to lead their marketing campaigns. This is a prospect that at present would not be financially possible without getting back at least \$3,000.00 from Engman.

Above all, however, the board is wary of pushing too hard and risking public exposure through litigation. The board would thus be satisfied only getting back Engman’s signing bonus of \$1,000.00. This amount—while not enough to sign a new athlete—would go a long way towards recouping the money that the company has been unable to recover from other expenses related to their planned Tokyo Olympics ambush marketing campaign.

When Power Potions signed an agreement with Engman in 2020, they signed it with eyes on an extension as soon as such a deal was legal. Power Potions has been carefully tracking developments concerning college athlete name, image, and likeness (NIL) both for Engman’s sake

and for their own, to the point where they popped bottles of champagne in the office on two occasions: when Florida governor Ron DeSantis signed the Florida NIL bill into law in June 2020 and in July 2021 when the NCAA announced that they would allow the various state NIL laws to take effect uninhibited. Power Potions sees engagement with college athletes as a major part of their eventual marketing strategy and hoped that their early deal with Engman would lead to further deals with her teammates, opponents, and fellow athletes at the University of Florida.

Since Engman’s withdrawal from the Olympics, however, the Power Potions board in internal discussions has been much more cautious about the possibility of approving an extension of the Engman agreement. They feel that while Engman is an incredibly gifted athlete, her perceived lack of maturity surrounding her willingness to communicate with the company leaves a lot to be desired. Given that Engman is an Olympic athlete with limited exposure and popularity in the years in between the summer Olympics, an additional agreement with her would have to last through 2024—a massive commitment for a partner seen by the board as unreliable.

If the partnership is to continue, Power Potions would insist on two critical changes to the agreement. The first change is in the frequency and types of social media posts that are required under the contract. As noted, the company is concerned about how their sponsored posts look when Engman is inactive on social media; without personal posts providing a buffer between Power Potions-related posts, Engman’s feed looks like just another Power Potions’ marketing feed. Indeed, Power Potions has noticed that Engman’s follower counts fell shortly after making each of the last few sponsored posts with some comments in reply complaining about how she has allegedly “sold out.”

As such, Power Potions would like to add into the agreement a minimum number (at least five) of legitimate personal posts that she would have to make between sponsored posts. Given the company’s feeling that Engman’s social media slowdown is mental health related, Power Potions would be willing to facilitate this change by easing her burden on the minimum number of posts needed per month down from one per month to one per two-month period.

While Power Potions is unwilling to directly pay on a per-post basis for these unsponsored posts, they would be willing to pay a little bit more per sponsored post—up to \$150 per post—to hopefully make this change more agreeable to Engman. If they were to increase this per-post compensation, however, they would like to not have to pay a signing bonus for the new deal. In fact, the board feels that not having a signing bonus would make the deal much more palatable

from a budgetary perspective. The absence of a signing bonus would ease the financial burden caused by the failed marketing campaign and would make restitution from Engman for her breach of the previous deal much less of a priority.

The second critical change is in the language of the withdrawal policy outlined in Section 8 of the agreement. The board would like to include mental health as an allowable “injury,” thus allowing Engman to withdraw from events with a note from her therapist without any future dispute. The board believes that having mental health included within this procedural safeguard would more clearly put Engman on notice of her requirement to communicate any withdrawals from events with Power Potions, thus limiting any disputes in the future.

The Power Potions board is ultimately flexible on the terms of a new agreement if one can be reached, though they are cognizant that Florida law and University of Florida athletic department policy forbids certain forms of NIL agreements between athletes and businesses.² They have little interest in challenging these policies and thus any agreement should be narrowly tailored within the applicable laws and policies.

Above all, however, the Power Potions board wants to ensure that this dispute is solved as expediently and efficiently as possible. It would be great if this resolution can mend the relationship with Engman, but their bigger priority by far is making sure that no negative outcomes (i.e. litigation) result from today’s negotiation. To this end, Power Potions is willing to consider any and all creative solutions that you and/or Engman’s representatives might offer that can help the two sides resolve this conflict.

² For guidance, *see* Intercollegiate Athlete Compensation and Rights, S.B. 646 (Fla. 2020), *available at* <https://www.flsenate.gov/Committees/billsummaries/2020/html/2187>; *Name, Image, Likeness*, FLORIDA GATORS (Jun. 24, 2021), <https://floridagators.com/sports/2021/6/24/name-image-likeness.aspx>. These items are incorporated by reference into this fact pattern and are thus considered part of the closed universe of the fact pattern for the purposes of NSLNC Rule 6(a) (“Outside Research”). *Note*: For the purposes of this academic exercise, please ignore the state and institutional requirement that all representatives of UF athletes “must be a member in good standing of The Florida Bar.”

CONFIDENTIAL FACTS FOR JEAN ENGMAN

Up until July, Jean was absolutely delighted to have Power Potions as her first (and to date only) sponsor. She discovered the company while it was still in its Kickstarter and had put a substantial portion of her allowance towards becoming a backer. Engman had been searching for a more effective sports drink than what she calls the “sugar water” brands of Gatorade, Powerade, and Vitamin Water, and Power Potions appeared to be just what she was looking for. Drawn to Power Potions due to its clearly video games-inspired name (her limited free time is consumed with video games), she feels strongly that the product works and is happy to tell her fans as much on social media. Indeed, even while she is upset with the people who run Power Potions, she still finds herself instinctively reaching for a bottle after her workouts and training sessions.

When pressed, Jean acknowledges that her decision to withdraw from the Tokyo Games was less than ideal in timing and wider effect. She knows that she did not technically meet the notice period set forth by her contract for a non-injury-related withdrawal, but she does not understand why her documented stress and anxiety issues would not meet that standard. For several weeks prior to her decision she was completely unable to effectively sleep, struggling with recurring nightmares of embarrassing herself on the national stage, and/or with catching COVID-19 and being suddenly unable to breathe while in the middle of her routine. In therapy, she has realized that her fears are based both around her mistrust of USAG and the various Olympic Committees to put the health of her and her teammates up front, but also in large part around her self-image as the recipient of the last spot on the bench. Whether it is true or not, she feels enormously confident that, but for the USAG sexual assault scandal and anxiety surrounding the pandemic, she would not have come even close making Team USA.

Given these issues, both Jean and her therapist feel that she made entirely the right decision in pulling out of the games, especially given her age (18) and exciting career ahead of her. Unlike many of her teammates, Jean has not been involved with gymnastics since early childhood; she took up the sport relatively recently, and with largely private training rather than with Team USA’s best coaches. She feels that with a few years training and competing with the world-class University of Florida gymnastics team she will be at the top of her game just in time for Paris

2024. And given her ethnic roots as a Frenchwoman, she knows that she will be raring to go—especially once she truly feels that she earns the opportunity.

Since signing her deal with Power Potions in January 2020, Jean has made 55 sponsored posts eligible for per-post compensation under the agreement. Of these, Power Potions has already paid her for 45 posts. Of the remaining 10 posts:

- Five posts were made prior to Jean’s withdrawal from the Olympics;
- One post was made after Jean’s withdrawal (and after the call between the two sets of representatives), but before the start of the Games;
- Two posts were made during the Olympics (in support of her teammates); and,
- Two posts were made after the Olympics (both prior to the agreement’s expiration on August 23, 2021).

The terms of the contract require Jean to be paid for these posts monthly, meaning that payment for all ten of these posts is now considered late and thus subject to accrual of interest, working out to an additional 10 percent of the total money owed. While Jean had no interest in making any sponsored posts after she withdrew from the Olympics—and especially after she was informed of the call from Power Potions’s representatives—she made these posts anyway at your advice and encouragement to show her willingness to continue with the deal.

With the exception of a post announcing her decision to withdraw from the Games, the ten sponsored Power Potions posts represent the only social media engagement from Jean in some time. Indeed, Jean has been posting less and less over the past six months or so beyond these ten posts. This is in large part based on the advice of her therapist given her mental and emotional struggles. But Jean has said that at this point she would be entirely off social media altogether but for the deal with Power Potions, especially given the immeasurable harassment she has received since she announced her withdrawal from the Games. Each of the five sponsored post that Jean has made after she announced her decision was met with mostly vitriolic harassment in reply, with about 20 percent of the replies supporting her decision and encouraging her continued bravery on speaking out about her mental health challenges.

For these reasons, Jean feels that the \$100 per post that she is owed for her continued social media engagement is money well earned. She feels that she deserves to be rewarded for powering through to continue upholding her end of the contract even though she feels she would have been

entirely justified in completely suspending her social media presence. At minimum, she sees no reason why the five posts made before her decision to withdraw from the Games continues to be uncompensated and certainly sees no reason why the contractual penalty (the interest accrual) should not attach to correct the harm caused by Power Potions' unjustifiable refusal to pay her what she is owed.

Jean feels even more strongly about the money she has already been paid. Indeed, Jean reacted quite viscerally when she was told of the clawback clause in the contract that would allow Power Potions to potentially get back not just per-post money that has yet to be paid, but money that Jean has already received as well. As she has just started college, Jean does not have much in the way of cash reserves, making any repayment quite difficult. Even more so, however, Jean is driven by a sense of right and wrong—she feels that she did absolutely nothing wrong by withdrawing from the Olympics when she did and refuses to consider that she should be required to pay for it. Still, when given a direct choice between paying some clawback money and facing litigation, she would begrudgingly pay up to \$5,000.00 to make this dispute go away.

Jean has been enrolled at the University of Florida (UF) for a few months and has been training for the start of the Spring 2022 season in January. As she has continued to train with her teammates and coaches at UF, her friends, family, and therapist have noted that she has become progressively more chipper and much closer in mood and outlook to where she was at the start of 2020. She has been told by her UF coaches that she will be participating in several events right from the start of the season, pending her physical and mental health. Jean is extremely excited about that possibility and adamant that continued time with UF (and away from the Olympics and USAG) will renew her spirits in time for her freshman season.

Jean had always planned on having her partnership with Power Potions be part of her collegiate journey, especially now that the Florida state law allowing her and her fellow UF athletes to profit off of their names, images, and likenesses is in full force and effect. But since the Olympics, she has been much more reticent about continuing the partnership. While she could certainly use the money, she feels that continuing an arrangement with Power Potions with a risk of having a similar dispute would just make her feel worse if she does have issues with her stress and anxiety in the future. This hesitation would be much more pronounced if she loses any of the money that she feels she is owed for the ten uncompensated social media posts, and would certainly

turn to outright refusal if she is forced to repay any of the money that she has already received from Power Potions.

As such, if the partnership is to continue Jean would insist on two critical changes to the terms of the agreement. First, Section 8 of the agreement must be changed to specifically include mental health as an allowable “injury,” thus allowing her to withdraw from events with a note from her therapist without any future dispute. While she feels much better now than she did in the weeks prior to the Tokyo Games, she knows that with the 2024 Olympics far in the future, any continued agreement would put more pressure on her to ensure her participation in smaller and more frequent intercollegiate and national events. Furthermore, she cannot predict the future; while she feels strongly that she will be up for competing in the 2024 Paris Games, she does not know how she will feel closer to that event—or if she’ll even make the team.

The second required change is in frequency and compensation for each social media post. As Jean is on something of a social media break, she feels like having to make a sponsored post at least once per month puts too much pressure on her in both making that monthly post, and in sharing enough of her life surrounding that post to make her social media feed feel less like a strictly commercial enterprise. Changing that requirement to one sponsored post for every two-month period would be better, given this disinclination to jump back into what she feels is a toxic social media atmosphere. With fewer posts, however, she feels that she should be paid more per post, preferably \$200 per post. After all, Jean was a member of the exclusive Team USA gymnastics team (even though she withdrew), and though her name is less than golden in that market, at the moment, her name has been in the news quite a bit in recent months as part of the still-ongoing conversation and debate over athletes’ mental health issues.

In exchange for changes in those two categories, Jean would be willing to take less money up front in a revised and continued agreement. The lower the signing bonus, however, the stronger her preference is for fewer minimum posts with higher per post compensation. If she receives nothing up front, she would prefer no minimum posting requirement with an even more significant increase in per post compensation. Along the same lines, with a less frequent minimum post requirement Jean would also be much more willing to entertain a requirement that she make more unsponsored (and presumably unpaid) personal posts to make the sponsored posts less conspicuous.

Due to her ongoing dispute with the company, however, she has not yet discussed her now-expired agreement with Power Potions with the UF compliance staff. This means that she cannot say for sure whether UF would allow the arrangement, given UF’s close ties with PepsiCo’s Gatorade brand. Regardless, the last thing that she wants to do is cause trouble at her new school, and thus insists that any ongoing deal reached with Power Potions should be narrowly tailored to be as likely as possible to be acceptable under the applicable laws and policies.³

Ultimately, Jean would prefer to have this dispute be resolved as quickly and quietly as possible. Above all, she strongly wishes to avoid litigation where she would have to relive the circumstances surrounding her withdrawal, both in court and in the media. She is justifiably wary of the motivations of Power Potions—as well as their understanding of what she has been through over the past several months—and would be much more willing to negotiate generally if they would do what they have completely failed to do to date: publicly support her. To this end, Jean is willing to consider any and all creative solutions that you and/or Power Potions might offer that can help the two sides resolve this conflict—especially if those measures help her move past this dispute without any further public scrutiny of the events of the summer.

³ For guidance, see *Intercollegiate Athlete Compensation and Rights*, S.B. 646 (Fla. 2020), available at <https://www.flsenate.gov/Committees/billsummaries/2020/html/2187>; *Name, Image, Likeness*, FLORIDA GATORS (Jun. 24, 2021), <https://floridagators.com/sports/2021/6/24/name-image-likeness.aspx>. These items are incorporated by reference into this fact pattern and are thus considered part of the closed universe of the fact pattern for the purposes of NSLNC Rule 6(a) (“Outside Research”). *Note*: For the purposes of this academic exercise, please ignore the state and institutional requirement that all representatives of UF athletes “must be a member in good standing of The Florida Bar.”