

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

LAURA MULLEN, individually and on behalf of all others similarly situated,

*Plaintiff,*

v.

GLV, INC., d/b/a SPORTS PERFORMANCE VOLLEYBALL CLUB and GREAT LAKES CENTER, an Illinois corporation, RICKY BUTLER, an individual, and CHERYL BUTLER, an individual,

*Defendants.*

Case No. 18-cv-1465

Honorable Matthew F. Kennelly

**FIRST AMENDED AFFIRMATIVE DEFENSES TO  
PLAINTIFF’S CLASS ACTION COMPLAINT AT LAW**

Defendants GLV, Inc. d/b/a Sports Performance Volleyball Club and Great Lakes Center (“GLV”), Rick Butler (“Rick”), and Cheryl Butler (“Cheryl”), through their attorney, Danielle D’Ambrose of Angelini & Ori, LLC, submits the following for their First Amended Affirmative Defenses to Plaintiff’s Complaint at Law:

**GENERAL DENIALS**

Defendants deny, generally and specifically, each and every allegation and each purported cause of action contained in Plaintiffs’ Complaint. Defendants further deny, generally and specifically, that Plaintiffs have been damaged in any amount, or at all, by reason of any act or omission of Defendants, their employees, agents, representatives, officers, directors, or any other person acting on Defendants’ behalf. Defendants further deny, generally and specifically, that Plaintiffs have suffered any injury or are entitled to any legal or equitable relief within the jurisdiction of this Court. Defendants also deny that Plaintiffs are entitled to any recovery from Defendants for the cause of action alleged against it in the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

1. Plaintiff and members of the putative class on whose behalf she purports to sue are estopped from claiming any injury, loss or damages because Plaintiff and members of the putative class failed to make reasonable efforts to prevent or mitigate such injury, loss or damages.

2. Plaintiff and the class claim that statements regarding the program's safety and quality were misrepresented. However, the safety and quality of the program would have been apparent within a short amount of time after participating in the program. To the extent that Plaintiff and the class failed to research the programs and/or repeatedly signed up their children to participate in GLV programs despite having first-hand knowledge of the level of its safety and quality, they should be estopped from claiming any injury, loss or damages.

**SECOND AFFIRMATIVE DEFENSE**

3. Plaintiff and members of the putative class on whose behalf she purports to sue agreed to the contracts by which Plaintiff claims to have caused injury or damage and, as such participation and consent were given knowingly and voluntarily, Plaintiff's claims are invalid.

**THIRD AFFIRMATIVE DEFENSE**

4. The claims made by Plaintiff and members of the putative class on whose behalf she purports to sue are barred in whole or in part by the doctrine of res judicata.

5. Plaintiff's claims would necessarily require a trial within a trial to litigate allegations on behalf of third parties. To the extent that any of those claims have previously been litigated between those third parties and the Defendants in various other hearings and/or lawsuits, particularly as to the 1994-1995 DCFS proceedings and USA Volleyball hearings referenced in the Our Story Document attached as Exhibit A, they should be barred in whole or in part by the doctrine of res judicata.

#### **FOURTH AFFIRMATIVE DEFENSE**

6. The claims made by Plaintiff and members of the putative class on whose behalf she purports to sue are barred in whole or in part by the doctrine of collateral estoppel.

7. Plaintiff's claims would necessarily require a trial within a trial to litigate allegations on behalf of third parties. To the extent that any of those claims have previously been litigated between those third parties and the Defendants in various other hearings and/or lawsuits, particularly as to the 1995 the adoption proceedings referenced in the Our Story Document attached as Exhibit A, they should be barred in whole or in part by the doctrine of collateral estoppel.

#### **FIFTH AFFIRMATIVE DEFENSE**

8. The injury or damage suffered by Plaintiff and members of the purported class on whose behalf she purports to sue, if any there be, would be adequately compensated in an action at law for damages. Accordingly, Plaintiff and the putative class have a complete and adequate remedy at law and is not entitled to seek equitable relief.

#### **SIXTH AFFIRMATIVE DEFENSE**

9. Plaintiff and members of the putative class on whose behalf she purports to sue raise claims and theories they do not have standing to raise. Furthermore, the claims made by Plaintiff and members of the putative class are barred in whole or in part because Plaintiff and the putative class did not suffer any injury, damage, or ascertainable loss by reason of the conduct alleged, and that by reason of the foregoing, Plaintiff lacks standing and is otherwise barred from any recovery against Defendants and barred from prosecuting this action.

**SEVENTH AFFIRMATIVE DEFENSE**

10. Plaintiff's claims are barred or limited to the extent that the claims asserted require the improper extraterritorial application of various state laws.

**EIGHTH AFFIRMATIVE DEFENSE**

11. This action is barred on grounds of lack of ripeness. This action is premature because all claims made by Plaintiff and the class are hypothetical and/or speculative, as the existence of their injury depends on whether or not third party allegations of sexual assault can be proven true. The merits of Plaintiff's claims – and whether she is entitled to any relief, injunctive or otherwise – depends on whether the third party allegations are true. If the Court determines that the third party allegations are false, the Plaintiff has no injury or damage.

**NINTH AFFIRMATIVE DEFENSE**

12. This action is barred in whole or in part for failure to satisfy real-party-in-interest requirements. Plaintiff and the class lack standing and therefore is not a real party in-interest. The Plaintiff and the putative class did not suffer any injury, damage, or ascertainable loss by reason of any sexual assault allegations which comprise the majority of the Plaintiff's Complaint. Plaintiff and the class are attempting to have a trial within a trial based on the decades old allegations of third parties unrelated to the Plaintiff herself. Not only are Plaintiff and the class making allegations from the 1980s on behalf of third parties, but they also purport to recover on behalf of their children and others referred to as "youth volleyball players." (Compl. ¶ 224).

**TENTH AFFIRMATIVE DEFENSE**

13. This action is barred in whole or in part by applicable statutes of limitation. Plaintiff and the class are merely a conduit being used to pursue third party allegations well past the expiration date of the statutes of limitation on those claims. Furthermore, the class definition is not

limited to a specific time period, and all allegations of Plaintiff and the class are limited to their respective statutes of limitation. Plaintiff's claims are also barred by the statute of limitations because she purportedly entered into her first contract with Defendants in 2012 based on alleged misrepresentations regarding the safety and quality of the Defendants' training. All of the claims in the Complaint have a limitations period of five years or less, therefore, Plaintiff's claims should be barred.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

14. This action is barred in whole or in part by the doctrine of laches. The Plaintiff entered into a contract with Defendants in 2012, approximately six (6) years ago. Not only are the Plaintiff's actions barred in whole or in part by various statutes of limitations, the Plaintiff's claim should not be enforced due to the long delay in bringing the claim which has prejudiced the Defendants. Furthermore, the third party allegations asserted by Plaintiff concern alleged conduct from nearly forty (40) years ago. If this matter were allowed to proceed, the Defendants would be highly prejudiced because the Court would be forced to rely on testimony and evidence that is decades old.

#### **TWELFTH AFFIRMATIVE DEFENSE**

15. To the extent (and without admitting that) the Plaintiff's claims are legally sufficient, this action is barred in whole or in part by the doctrine of unclean hands. The Plaintiff is not entitled to relief because she herself is liable for an offense that precludes her from recovery. One example of such an offense is that the Plaintiff breached the contract between the Parties by pulling her daughters out of GLV in 2017 (Compl. ¶ 175).

**THIRTEENTH AFFIRMATIVE DEFENSE**

16. This action is barred in whole or in part by ratification. The Plaintiff and members of the class continued to have their children play volleyball for the Defendants and still continue to sign their children up for services through GLV, Inc. despite being allegedly misinformed regarding the safety and quality of GLV's programs.

**FOURTEENTH AFFIRMATIVE DEFENSE**

17. This action is barred in whole or in part by waiver.

18. When Plaintiff pulled her children out of GLV, she acknowledged that she could not recover her money and expenses paid and acquiesced to the terms of the agreement between the Parties.

19. Additionally, the Plaintiff and members of the class continued to have their children play volleyball for the Defendants and continue to sign their children up for services through GLV, Inc., and have executed waivers of all claims arising out of their children's participation in GLV programs.

**FIFTEENTH AFFIRMATIVE DEFENSE**

20. The claims made by Plaintiff and members of the class on whose behalf she purports to sue are barred in whole or in part because their own actions or omissions were the sole, proximate, and legal cause of any injuries or damage they allegedly suffered. Plaintiffs' damages arising from this cause of action(s), if any, were solely or substantially caused by Plaintiffs' own fault.

21. Plaintiffs' alleged injuries, if any, were not caused by the actions of Defendants. Plaintiff and members of the class continued to have their children play volleyball for the

Defendants after learning of the quality and safety of the program, and they still continue to sign their children up for services through GLV, Inc., even after the filing of this suit.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

22. The claims made by Plaintiff and members of the putative class on whose behalf she purports to sue are barred in whole or in part because any loss, damage, actual injury, or detriment Plaintiffs allege they and the putative classes suffered was proximately caused by the acts or omissions of persons other than Defendants and over whom Defendants had no control.

23. The Plaintiff explicitly states in her Complaint that she allowed her children to attend GLV based on the positive reviews about the program from others. (Compl. ¶ 167).

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

24. The purported claims made by Plaintiff are barred in whole or in part by Plaintiff's release.

25. When Plaintiff pulled her children out of GLV, she acknowledged that she could not recover her money and expenses paid and acquiesced to the terms of the agreement between the Parties.

26. Additionally, the Plaintiff and members of the class continued to have their children play volleyball for the Defendants and continue to sign their children up for services through GLV, Inc., and have executed waivers that release all claims arising out of their children's participation in GLV programs.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

27. The purported claims made by Plaintiff are barred in whole or in part by the doctrine of accord and satisfaction.

28. When Plaintiff pulled her children out of GLV, she acknowledged that she could not recover her money and expenses paid and acquiesced to the terms of the agreement between the Parties. To the extent that the Parties disputed the amounts paid and/or due to be paid after Plaintiff's breach, Plaintiff's claim should be barred by the doctrine of accord and satisfaction.

**NINETEENTH AFFIRMATIVE DEFENSE**

29. Plaintiff's and the proposed class's claim for damages is grossly disproportionate to the conduct alleged, constitutes an excessive fine, and violates the Defendants' due process rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution

**TWENTIETH AFFIRMATIVE DEFENSE**

30. The Complaint, and each cause of action thereof, is barred – or the damages flowing there from reduced – because Plaintiff and putative members of the purported class as set forth in the Complaint failed to notify Defendants of the alleged statutory violations at the time such violations allegedly occurred, which prevented Defendants from taking any action to remedy such alleged violations.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

31. Plaintiff's claims, and each of them, brought on behalf of herself and the putative members of the purported class as set forth in the Complaint, that seek the imposition of multiple penalties and/or exemplary damages for the same basic wrongs are unconstitutional in that such relief violates the Due Process clauses of both federal and state Constitutions.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

32. The injunctive relief sought by Plaintiff and the putative class violates the Due Process clauses of both federal and state Constitutions.



**TWENTY-THIRD AFFIRMATIVE DEFENSE**

33. The applicable statutes, including but not limited to those referenced in the Complaint, are ambiguous and unclear, and do not impart any notice on Defendants or others similarly situated that their conduct would constitute violation of the statutes and thus violate due process and other law.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

34. At all relevant times, the acts or omissions of Defendants were justified in not disclosing allegations brought against them decades earlier, and therefore Defendants cannot be liable for those acts or omissions.

35. Defendants were justified in their claims that the program provides high quality training and coaches, and they were justified in stating that the program was safe. Plaintiff even admits in her Complaint that Sports Performance is one of the most highly successful youth volleyball clubs in the nation.

36. Furthermore, Defendants were justified in not affirmatively disclosing allegations by third parties regarding alleged conduct from the 1980s, because, as Plaintiff admits, those claims are merely allegations. Until this Court decides whether the allegations are true, there is nothing for Defendants could have disclosed. Plaintiff is essentially suing the Defendants based on their failure to disclose information that did not exist at the time she entered into the contracts with them. Furthermore, USA Volleyball and the AAU did not permanently ban Defendant Rick Butler until shortly before the filing of this lawsuit, after Plaintiff had already left GLV, Inc., so Defendants could not possibly have had a duty to disclose that information which did not exist back in 2012.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

37. Plaintiff had full knowledge of the risk involved in the activity in which Plaintiffs were engaged at the time of the occurrence of the incident set forth in the Complaint.

38. Plaintiff's children played for one of the most elite youth sports programs in the country, which one would reasonably expect to employ tough coaching techniques.

39. To the extent that Plaintiff and the class claim to have been injured as a result of the program's requirements and coaching techniques, those claims should be barred because Plaintiffs voluntarily assumed the risks incident to the activity engaged in at the time and place mentioned in the Complaint, and the loss or damage, if any, sustained by Plaintiff and the putative class was caused by those risks.

**TWENTY- SIXTH AFFIRMATIVE DEFENSE**

40. Plaintiffs' and/or the putative class members' recovery of their alleged statutory damages are limited by the applicable statutory and other ceilings or limits on recoverable damages. Recovery of statutory damages on a per person basis would violate due process and other protections contained in the United States Constitution, including, but not limited to, the Eighth Amendment, and also violate the Constitution of the State of Illinois, since there are no or minimal actual damages.

WHEREFORE, having fully answered the Complaint, Defendants, GLV, Inc. d/b/a Sports Performance Volleyball Club and Great Lakes Center, Rick Butler, and Cheryl Butler respectfully pray as follows:

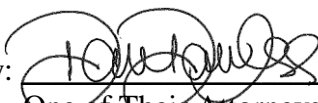
- A. That Plaintiff takes nothing by way of her Complaint;
- B. That judgment be entered in favor of Defendants and against Plaintiff on the Complaint as a whole;

- C. That Defendants be awarded attorneys' fees and costs of suit as may be appropriate under applicable statutes; and
- D. That the Court award Defendants such other relief as the Court may deem appropriate.

Dated: August 3, 2018

Respectfully Submitted,

GLV, INC., RICK BUTLER and CHERYL  
BUTLER

By:   
One of Their Attorneys

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*Attorney for Defendants*

**CERTIFICATE OF DELIVERY**

The undersigned, an attorney, certifies that pursuant to Section X (E) of the General Order on Electronic Case Filing for the Northern District of Illinois, service of Defendants' First Amended Affirmative Defenses to Plaintiff's Complaint on all attorneys of record was accomplished through the Court's Electronic Notice for Registrants on August 3, 2018.

/s/Danielle D'Ambrose