

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV017715-910

MEMBERS OF NORTH CAROLINA
STATE UNIVERSITY'S 1983 NCAA
MEN'S BASKETBALL NATIONAL
CHAMPIONSHIP TEAM, aka THE
"CARDIAC PACK,"

including

THURL BAILEY;
ALVIN HARRELL BATTLE;
WALT DENSMORE;
TOMMY DINARDO;
TERRENCE PATRICK GANNON;
GEORGE CALVIN MCCLAIN;
COZELL MCQUEEN;
WALTER PROCTOR;
HAROLD LEWIS THOMPSON; and
MIKE WARREN,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION aka NCAA; and CLC fka
COLLEGIATE LICENSING COMPANY,

Defendants.

COMPLAINT
(Jury Trial Demanded)

NOW COME Plaintiffs, the "Cardiac Pack," members of North Carolina State University's 1983 NCAA Men's Basketball Championship team, including THURL BAILEY; ALVIN HARRELL BATTLE; WALT DENSMORE; TOMMY DINARDO; TERRENCE PATRICK GANNON; GEORGE CALVIN MCCLAIN; COZELL MCQUEEN; WALTER PROCTOR; HAROLD LEWIS THOMPSON; and MIKE WARREN, by and through the undersigned counsel, and bring this action against

defendants National Collegiate Athletic Association (NCAA) and Collegiate Licensing Company (CLC), alleging as follows:

INTRODUCTION

1. The 1983 NC State Men’s Basketball Team, the “Cardiac Pack,” survived the post-season tournaments by winning nine games in overtime or by a single point, to advance to the National Championship game, which it won at the buzzer by a single basket.

2. That feat made the Cardiac Pack “one of the biggest underdogs ever.”¹

3. The game was **“possibly the best college basketball game in history—ending with one of the most well-known plays of all time.”**²

4. For more than 40 years, the NCAA and its co-conspirators have systematically and intentionally misappropriated the Cardiac Pack’s publicity rights—including their names, images, and likenesses—associated with that game and that play, reaping scores of millions of dollars from the Cardiac Pack’s legendary victory.

5. The NCAA has used the images and videos of the members of Cardiac Pack to advertise its March Madness tournament, as well as for other commercial purposes, without the players’ consent and while paying them nothing.

¹ ESPN Films, *Survive and Advance*, IMDB, <https://www.imdb.com/title/tt2751904/> (last visited June 1, 2024).

² *Id.* (emphasis added).

6. Even as the NCAA has appropriated one-time student-athletes' images and likenesses without compensation, the NCAA Tournament, now officially known as "March Madness," has generated nearly one billion dollars each year for the NCAA and its co-conspirators, with broadcast rights alone worth nearly \$20 billion over the next decade.³

7. Indeed, NCAA.com currently hosts videos of the Cardiac Pack, which can be viewed only after the viewer watches a commercial advertisement, from which the NCAA profits.

8. Yet, the NCAA has never paid one cent to Plaintiffs for using their names, images, and likenesses.

9. In 2021, the United States Supreme Court noted that the NCAA "enjoy[s] monopsony [(i.e., buyer-side monopoly)] power in the market for student-athlete services, such that its restraints can (and in fact do) harm competition." *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 90 (2021). The NCAA admitted as much in its briefing for *Alston*. *Id.* at 86.

10. The NCAA has for decades leveraged its monopoly power to exploit student-athletes from the moment they enter college until long after they end their collegiate careers. It has conspired with conferences, colleges, licensing companies, and apparel companies to fix the price of student-athlete labor near zero and make student-athletes unwitting and uncompensated lifetime pitchmen for the NCAA.

³ Associated Press, *NCAA Generates Nearly \$1.3 billion in Revenue for 2022–23*, ESPN.com, Feb. 1, 2024, https://www.espn.com/college-sports/story/_/id/39439274/ncaa-generates-nearly-13-billion-revenue-2022-23.

11. Since the founding of our country, use of a person's image in an advertisement without valid consent has been illegal.

12. "[T]he NCAA is not above the law." *Id.* at 112 (Kavanaugh, J., concurring).

13. Ultimately, the NCAA is an admitted monopolist that has unreasonably and illegally utilized its monopoly power to pay nothing to the people whose names, images, and likenesses it uses without their consent in support of its multibillion-dollar enterprise.

14. This conduct constitutes:

- a. Unreasonable restraint of trade,
- b. Illegal monopolization,
- c. Unfair and deceptive trade practice,
- d. Unjust enrichment, and
- e. Tortious misappropriation of publicity rights.

15. The NCAA's illegal profit scheme is carried out through various partners and co-conspirators, some of whom are named as defendants here.

16. Plaintiffs now seek reasonable compensation for the appropriation of their names, images, and likenesses by the NCAA and its partners and co-conspirators.

17. Furthermore, since the NCAA's illegal conduct continues to this day— notwithstanding the clear notice of the unlawfulness of its behavior provided by

Alston and an increasing number of cases throughout the country—it needs to be stopped by way of a permanent injunction.

PARTIES AND JURISDICTION

18. The parties in this litigation are the members of the North Carolina State University Division I men’s basketball team that won the 1983 national championship tournament, collectively known as the “Cardiac Pack,” and the entities that have misappropriated their publicity rights.

The Plaintiffs

19. As students at North Carolina State University, all Plaintiffs were residents of Raleigh, Wake County, North Carolina, in 1983.

20. In 1983, **Thurl Bailey** was a senior forward who wore number 41. Mr. Bailey is now a resident and citizen of Highland, Utah County, Utah.

21. In 1983, **Alvin Harrell Battle** was a junior forward wearing number 33. Mr. Battle is now a resident and citizen of Archdale, Randolph County, North Carolina.

22. In 1983, **Walt Densmore** was a freshman forward who wore number 40. Mr. Densmore is now a resident and citizen of Myrtle Beach, Horry County, South Carolina.

23. In 1983, **Tommy DiNardo** was a junior forward wearing number 10. Mr. DiNardo is now a resident and citizen of Clayton, Johnston County, North Carolina.

24. In 1983, **Terrance Patrick Gannon** was a sophomore guard wearing number 24. Mr. Gannon is now a resident and citizen of Los Angeles, Los Angeles County, California.

25. In 1983, **George Calvin McClain** was a sophomore guard wearing number 12. Mr. McClain is now a resident and citizen of Rocky Mount, Nash County, North Carolina.

26. In 1983, **Cozell McQueen** was a sophomore center who wore number 45. Mr. McQueen is now a resident and citizen of Cary, Wake County, North Carolina.

27. In 1983, **Walter “Dinky” Proctor** was a sophomore forward wearing number 15. Mr. Proctor is now a resident and citizen of Greensboro, Guilford County, North Carolina.

28. In 1983, **Harold Lewis Thompson**, was a junior forward who wore number 30. Mr. Thompson is now a resident and citizen of Grand Prairie, Tarrant County, Texas.

29. In 1983, **Mike Warren** was a sophomore forward who wore number 42. Mr. Warren is now a citizen and resident of Raleigh, Wake County, North Carolina.

The Defendants

30. Defendant **NCAA** is an unincorporated association with more than 1,100 member schools, conferences, and other organizations across the United

States, Puerto Rico, and parts of Canada. It is headquartered in Indianapolis, Indiana.

31. The NCAA has member schools and a member conference based in North Carolina. Accordingly, it is a citizen of North Carolina. *See Staggs v. Nat'l Collegiate Athletic Ass'n*, No. 18-CV-1981, 2018 WL 4092104, at *1 (S.D. Cal. Aug. 28, 2018) (“Citizenship of an unincorporated entity such as NCAA is determined by the citizenship of all of its members.” (citing *Carden v. Arkoma Assoc.*, 494 U.S. 185, 195–96 (1990))).

32. Defendant **CLC** is a for-profit corporation organized under Georgia law as a domestic limited liability company. Its registered agent is CT Corporation System, 289 S. Culver St., Lawrenceville, GA 30046. Its principal office is located at 1075 Peachtree Street, Ste 3300, Atlanta, GA 30309.

33. In this complaint, reference to “Defendants” without further definition refers to all defendants, collectively and individually, and to their affiliates or subsidiaries. Allegations that defendants engaged in an act or transaction mean that the defendant engaged in the act or transaction by or through its officers, directors, agents, employees, or representatives who were actively engaged in the management, direction, control, or transaction of the defendant’s business or affairs.

Jurisdiction and Venue

34. The Court has jurisdiction in this matter because the incidents and transactions from which Plaintiffs' claims arose largely occurred in Wake County, North Carolina.

35. The Court has personal jurisdiction over the NCAA (1) under N.C.G.S. § 1-75.4(1)(d) because the NCAA engages in substantial activity within North Carolina, including by retaining member institutions in the state, hosting events in the state, including Division I Basketball Tournament games, and enforcing its rules on North Carolina institutions, including state universities; and (2) under N.C.G.S. 1-75.4(3), because acts or omissions that gave rise to Plaintiffs' claims largely occurred in North Carolina.

36. The Court has personal jurisdiction over CLC (1) under N.C.G.S. § 1-75.4(1)(d) because CLC has, as an agent of the NCAA and otherwise, engaged in substantial activity within North Carolina, including by licensing NCAA footage and images of individuals, teams, and events within North Carolina, creating archival footage and images of residents and citizens of the state, and offering footage and images for sale or license to citizens and residents of North Carolina; and (2) under N.C.G.S. § 1-75.4(3), because acts or omissions that gave rise to Plaintiffs' claims occurred in North Carolina.

37. Venue is appropriate in Wake County under N.C.G.S. § 1-82 because several Plaintiffs reside in Wake County.

FACTS

38. The NCAA and its named and unnamed co-conspirators have illegally agreed to exploit student-athletes by using their monopoly power to force student-athletes to give up their legal right of publicity and control of their name, image, and likeness; asserting a perpetual license of student-athletes' NIL rights; and appropriating those rights for decades, long after the athletes have completed their collegiate careers.

The NCAA

39. The NCAA was founded in 1906 in reaction to the brutality of college football games, in which players were regularly killed and permanently injured. At its founding, 62 institutional members signed on. The association's initial purpose was to impose rules that would protect student-athletes' health and safety.

40. After World War II, the organization shifted focus to protecting "amateurism" in college athletics by imposing rules and limits on recruitment, financial aid, and academic performance standards.

41. Today, the NCAA has more than 1,200 member schools and oversees more than half a million student-athletes across its three competitive divisions; it sponsors more than 90 national championships in 24 sports.

42. In its Notes to Consolidated Financial Statements for August 31, 2023, the NCAA identifies itself as "the organization through which colleges and universities of the nation speak and act on athletic matters at the national level." The organization claims its mission is to "[p]rovide a world-class athletics and

academic experience for student-athletes that fosters lifelong well-being.” Among its “core values” is “to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body.”

43. On its website, NCAA acknowledges that one of two major sources of revenue is “television and marketing rights for the Division I Men’s Basketball Championship”—the tournament known as “March Madness.”

44. In Article 2.9 of its constitution,⁴ the NCAA declares that “ student-athletes should be protected from exploitation by professional and commercial enterprises.”

45. Yet, the NCAA has exploited the Cardiac Pack, as it has other former student-athletes, for more than forty years, first by requiring them as young athletes to cede their NIL rights to the NCAA and then by appropriating those rights, without consent or compensation, long after they had graduated.

46. That exploitation has had as its primary purpose the generation of profit for the NCAA.

47. Elsewhere, the NCAA constitution allows that acceptance of “athletically related financial aid” up to the school’s published cost of attendance does not compromise the student’s “amateurism,” but prohibits athletes from accepting any other financial assistance.

⁴ The NCAA constitution was amended in 2022. This discussion refers to the earliest version of the NCAA constitution and bylaws we could locate, dated 2000–2001. On information and belief, this version is substantially the same as the rules in force when Plaintiffs were student-athletes.

48. In support of the principle of amateurism, Bylaw 12 defines “pay” and identifies sources of payment students may and may not accept and activities they may and may not participate in.

49. Section 12.5 of that bylaw, which addresses athletes’ participation in “promotional activities,” forbids the use of student-athletes’ name, image, or likeness for any commercial purpose and defines an institution’s improper use of a student-athlete’s name or image without the student’s knowledge or consent as an institutional violation.

50. Section 12.5.1.10 creates an exception to the limitations on use of student-athletes’ images or names for posters promoting NCAA or conference championships.

51. Section 12.5.2.2 places the onus for stopping unauthorized commercial use of a student-athlete’s name or image on the student-athlete.

52. Under NCAA Bylaw 14.1.3.1, student-athletes are required to sign a form titled “Student-Athlete Statement” each academic year before their athletic season begins.⁵

53. The form asks the student for information related to financial aid, amateur status, drug tests, involvement in gambling, and other issues that may affect an athlete’s eligibility for participation in NCAA sports.

⁵ The full name of the form includes a number that changes each academic year.

54. The form is absolutely required. According to the bylaws, “Failure to complete and sign the statement shall result in the student-athlete’s ineligibility for participation in all intercollegiate competition.”

55. Although the provision has evidently been eliminated on recent versions of the form, older versions included a requirement that the student-athlete agree to the following statement:

You authorize the NCAA [or a third party acting on behalf of the NCAA] to use your name or picture to generally promote NCAA championships or other NCAA events, activities or programs.

On information and belief, the Student-Athlete Statements signed by Plaintiffs included this provision or one substantially similar to it.

56. The NCAA has interpreted this simple statement, presented as part of a form student-athletes—most of them very young adults with little or no legal sophistication—are told they *must* complete if they want to play, **to confer a license in perpetuity** for the use of images and likenesses created during the athlete’s collegiate career.

57. Furthermore, the form is generally presented by a person the athlete recognizes an authority figure, a coach or Athletic Director.

58. In this way, the NCAA exploits its gross disparity in bargaining power to **coerce student-athletes to give up legal rights they may not even realize they have.**

59. The NCAA controls virtually all collegiate sports, especially at the elite levels, and it controls access to scholarship funds for Division I student-athletes. Further, NCAA Division I schools provide the only pathway to professional sports for most student-athletes.

60. Thus, a student-athlete who refuses to sign the statement gives up not only his or her collegiate athletic career, but any prospect of continuing to the professional level.

61. Further, because refusing to sign would also mean foregoing athletic scholarships, resisting NCAA rules would, for many student-athletes, also mean losing the opportunity for a college education.

The Collegiate Sports Market

62. The NCAA and its members control the collegiate sports market in the United States, including licensing rights for players' names and likenesses, game footage, and team logos and trademarks. All of these elements are used in a range of products, including on-demand game films, stock footage or imagery for commercial or editorial use, replay of "classic" games on streaming and television outlets, posters and photographs, and other merchandise.

63. NCAA has delegated most of its licensing activity to Defendant CLC. The association otherwise exploits its considerable resources through a network of unnamed co-conspirators, including Getty Images, CBS, TNT, and other licensees, affiliates, and participants in the NCAA's various programs and merchandising efforts.

64. CLC was founded as the Collegiate Licensing Company by Bill Battle in 1981. Collegiate Licensing was eventually acquired by IMG, which then merged the company with Learfield Licensing Partners to create CLC.

65. CLC describes itself as “a dynamic, innovative collegiate licensing agency” dedicated to “connecting passionate fans to college brands.” Its mission is “[t]o elevate college brands through insight and innovation.”⁶

66. CLC provides a conduit through which the NCAA connects with potential consumers of its archive of footage and images, including Getty Images, CBS, and TNT.

67. These outlets produce significant income. The NCAA brings in roughly \$1 billion each year, the bulk of it from “March Madness,” the Division I Men’s and Women’s Basketball Championship. Media contracts for March Madness, recently extended to 2032, are worth nearly \$20 billion.

68. In addition to distributing licensed images via CLC, the NCAA also maintains a website, ncaa.com, where it provides access to results, schedules, and both current and archival images and movies. That website also includes a store where visitors can buy jerseys, t-shirts, and other “team-spirited” items, promoting a specific school or NCAA tournament.

⁶ CLC, “Our Mission,” <https://clc.com/home/about/> (last visited June 1, 2024).

The Rise of “March Madness”

69. The NCAA men’s championship basketball tournament was the brainchild of Ohio State University coach Harold Olsen. The first tournament, held in 1939 with just eight teams, was run by the National Association of Basketball Coaches.

70. The tournament maintained its eight-team format until 1951, when it was expanded to sixteen teams to allow more teams to compete and alleviate pressure created by the strict geographic selection criteria.

71. The field was expanded multiple times, to twenty-two teams in 1951, thirty-two teams in 1975 and forty teams in 1979, and forty-eight teams in 1980. The tournament first approached its contemporary form in 1985, after the excitement and momentum created by NC State’s legendary performance in 1983, when the tournament was expanded to sixty-four teams. A final expansion, in 2011, brought the field to sixty-eight teams.

72. The NCAA took early and aggressive action to make the NCAA men’s basketball tournament the premier post-season collegiate basketball event. In particular, the NCAA acted to stave off competition from the National Invitational Tournament (NIT), a competition launched by the Metropolitan Basketball Writers Association in 1938.

73. In the tournaments’ early years, the NIT often received more coverage than the NCAA tournament and teams frequently participated in both events. In 1950, City College of New York won both the NIT and the NCAA title.

74. The NCAA enacted two rule changes, one in 1951 and one in 1971, to cement its tournament's status as *the* postseason tournament. First, in 1951, the NCAA banned teams from participating in both tournaments. Second, in 1971, the NCAA made a rule banning teams that declined an NCAA invitation from participating in other post-season tournaments. As a result, the NIT now functions as a sort of consolation prize for teams not invited into the NCAA bracket.

75. Thus, by wielding its draconian rules to subjugate members and eliminate competing events from the schedule, the NCAA established its tournament as the premiere—indeed, nearly the only—postseason basketball venue.

76. In the years since, the NCAA tournament has become a cultural phenomenon, with millions tracking favorites and developing their own brackets. The final game of the tournament has often been the most watched event on television, surpassing even other landmark broadcasts, such as the Oscar Awards and the Super Bowl.

77. “March madness” was first used to refer to the tournament in 1982, by commentator Brent Musburger, who used it to describe particularly wild games and especially upsets. Musburger knew the term from his time covering high school basketball tournaments in Illinois, where it had been coined by a referee in 1939, to describe upsets and postseason games that were otherwise unconventional.⁷

⁷ Patrick Pinak, *So, Where Did the Term “March Madness” Come From Anyway?*, Fanbuzz, Mar. 16, 2023, <https://fanbuzz.com/college-basketball/march-madness-phrase-origin/>.

78. The term caught on, and in 2011, the NCAA paid the Illinois High School Association more than \$17 million for the trademark to the phrase.⁸ “March Madness” is now used by the NCAA to refer to and promote the tournament.

79. The tournament now accounts for the largest share of NCAA revenues, largely generated through media rights and merchandise sales.

80. CBS has been the association’s primary broadcast partner since its timely acquisition of broadcast rights in 1982. Throughout the 1980s, ESPN also broadcast the tournament’s early rounds, contributing to both ESPN’s rise and the soaring popularity of the tournament.

81. Under current arrangements, which have been extended through 2032, NCAA has a joint contract with CBS and Warner Bros. Discovery that splits the tournament between CBS, TBS, TNT, and truTV. Broadcasters and facilities are shared across all four outlets.

82. The current broadcast contracts funnel approximately \$900 million to the NCAA each year.

83. The NCAA tournament contributes additional funds through licensing of key images and footage, as well as licensing of logos and terms like “March Madness” for merchandise.

84. The 2023 tournament generated a total of \$1.3 billion in revenue for the NCAA.

⁸ *Id.*

85. The NCAA also has a YouTube channel, where full games can be watched anywhere at any time. That channel generates additional funds through advertising. Viewers must watch advertisements in order to access games. Games from the 1983 tournament, including the iconic championship game, are continuously available on that channel.

86. Similarly, on NCAA.com, users may view game footage, including footage of the 1983 championship game, only after watching an advertisement.

87. Players have never been paid for their participation in NCAA sports, including Division I basketball and football, although since the U.S. Supreme Court's decision in *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69 (2021), the NCAA has temporarily suspended its rules barring independent endorsement deals.

88. However, student-athletes' value to the NCAA does not end with their graduation; archival footage and other products constitute an ongoing income stream for the NCAA long after the students whose images are used have moved on from college.

89. Replays of historic moments from previous tournaments are a mainstay of the NCAA's and broadcasters' promotional activity and of other NCAA products and income streams, such as the YouTube channel.

90. Former players have never been compensated for this continuing use of their names, images, and likenesses, to the clear commercial advantage of the NCAA.

91. Among the highlights featured most often in replays over the past four decades are North Carolina State University's buzzer-beating victory over Houston in the 1983 tournament and the ensuing victory celebration.

The "Cardiac Pack"

92. The 1983 Cardiac Pack remains the stuff of Wolfpack and NCAA legend, renowned for pulling together an improbable championship victory after nearly failing to qualify for the tournament at all.

93. The North Carolina State University Wolfpack began the 1982–83 basketball season with legitimate expectations for a successful season. Coach Jim Valvano was starting his third year with the team, after a solid 22–10 season the previous year, with a strong cadre of returning players.

94. Valvano was an inspirational figure. When he arrived at North Carolina State in 1980, Wolfpack players and fans had not known quite what to make of the fast-talking Queens native who leaned hard into his Italian heritage. But Valvano had come to North Carolina with a dream: to coach a team to the national championship. At his last job, he had taken Iona to the second round of the tournament, but he was sure he could do more.

95. In his 1982–83 team, Valvano thought he had the makings of a championship team.

96. Throughout the season, he shared his dream with his players, urging them to aim for college basketball's highest honor. He even had sessions in which

the team practiced cutting down the net, as championship-winning teams traditionally do.

97. Most observers expected that if any team from the ACC made it to the NCAA final, that team would be from the University of North Carolina or the University of Virginia. Both of those teams featured future NBA legends already showing their formidable talent: Michael Jordan at North Carolina and Ralph Sampson at Virginia.

98. The Wolfpack started strong, winning seven of its first nine games. When the team faced Virginia on January 12, 1983, it appeared ready to continue that strong start, establishing a 16-point lead in the first half.

99. But then, early in the second half, starting guard Dereck Whittenburg landed on the foot of a Virginia player and went down. Rattled by the loss of a core player, the team allowed its lead to slip away, notching its sixth straight loss to Virginia.

100. After the game, Coach Valvano received the grim news: Whittenburg's right foot was broken. Team doctors said he would not play again that season; Whittenburg's collegiate career was essentially over. Many fans and commentators assumed the Wolfpack's season was over as well.

101. Indeed, the team lost three of its next four games. Its momentum was slipping away.

102. But then the team pulled itself back together around the unexpected performance of Ernie Myers. The team won eight of its next ten games. With three regular-season games to go, the Wolfpack had built a solid 16–8 record.

103. To everyone’s surprise, Whittenburg returned to the court in February, helping to bring the team to a regular season finish of 17–10, wrapping up with a 130–89 win over Wake Forest.

104. That record was good, but it wasn’t good enough to net the team an invitation to the NCAA tournament.

105. To get to the tournament, and a shot at the national championship, the team would have to win the ACC Tournament, which guaranteed its winner a slot at the NCAA tournament.

106. The Wolfpack rallied around its dream, and around Coach Valvano’s admonition to “survive and advance.” Throughout its exhilarating postseason run, North Carolina State posted buzzer-beating wins with excruciatingly narrow margins.

107. Coach Valvano was not afraid to deploy unusual tactics. For instance, in 1983, NCAA rules did not require a shot clock. Consequently, a team that was up by a few points would often attempt to slow the play, hanging on to the ball in an effort to run out the clock. When that strategy was rolled out, Coach Valvano told his players to foul someone, to bring the other team to the foul line. The intent was twofold: to get North Carolina State a chance to grab the ball and score, and to steal

the other team's momentum. Coach Valvano was willing to chance the other team widening the gap if it meant his team got an opportunity to score.

108. The tactic worked repeatedly. It worked so well that the NCAA later changed the free-throw rule. Even players with strong records at the foul line, evidently unnerved by the pressure, missed their foul shots, allowing North Carolina State to grab the ball and score at the last second.

109. The effectiveness of the tactic is evident in the scores for the ACC tournament: 71–70 over Wake Forest, 91–84 over North Carolina in overtime, 81–78 over Virginia.

110. The team continued this pattern in the NCAA tournament: the first-round game against Pepperdine went to *two* overtimes before the Wolfpack won, 69–67, and the score in the Pack's second-round game against UNLV, in which the Pack at one point trailed by 12 points, was 71–70.

111. After the UNLV game, a clever headline writer at the *Raleigh News-Observer* captured the team's vibe in a phrase: "Cardiac Pack Rallies to Stop UNLV."

112. The phrase instantly caught on: t-shirts, bumper stickers, even specialty Coke bottles bore the moniker. Over time, it became a part of the NC State story, and of North Carolina culture, instantly recognizable to anyone who follows college basketball (and many who don't).

113. The next game, against Utah, was a bit less dramatic, ending with a 75–56 Wolfpack win over Utah. The team had to go through the formidable Virginia

team, anchored by future NBA Hall of Famer Ralph Sampson, to get to the Final Four. That game ended with a 63–62 victory for North Carolina State. The Wolfpack then defeated Georgia 67–60 for a slot in the final against Houston.

114. Ultimately, the Cardiac Pack held true to its dream, and its strategy, in its championship game against the University of Houston team anchored by future NBA Hall of Famers Hakeem Olajuwon and Clyde Drexler. (Drexler would go on to appear in the Olympics as part of the 1992 “Dream Team.”) The Houston Cougars had earned the nickname “Phi Slama Jama” for their prolific dunking and aggressive, fast-paced style.

115. Houston was, to put it mildly, heavily favored. *Washington Post* sports reporter Dave Kindred reflected the prevailing view: “Trees will tap dance, elephants will drive at Indy and Orson Wells will skip lunch before State finds a way to beat Houston.”⁹

116. The Wolfpack had other ideas. Coach Valvano suggested to the press that the team might just get the score even and hang on to the ball, as other teams had tried against them. But he told his players something else entirely: “If you think we have come all this way, won all these close games, and made it to the national championship game just to hold the ball in front of 50 million people, you are out of your minds.”¹⁰

⁹ Dave Kindred, “*Midnight Nears for N.C. State*,” *Washington Post*, Apr. 3, 1983, <https://www.washingtonpost.com/archive/sports/1983/04/04/midnight-nears-for-nc-state/58b2a2fa-f6ae-471a-9ea3-b787576b5fc5/>.

¹⁰ Brett Friedlander, “*Wolfpack Flashback: The Impossible Dream Come True*,” *Fan Nation*, Apr. 4, 2020, <https://www.si.com/college/ncstate/basketball/wolfpack-flashback-april-4>.

117. The Wolfpack brought to the championship court an aggressive, active style, forcing Houston to work for its points, defying the Cougars' efforts to slow the pace of the game.

118. With just over a minute left to play, the score was tied at 52, and Houston had the ball.

119. Following the Wolfpack's tried and true playbook, Dereck Whittenburg fouled Alvin Franklin to bring the freshman guard to the free throw line.

120. Franklin missed his free throw and NC State took possession of the ball. Coach Valvano called a hasty timeout. With the players huddled around him, he outlined a play in which the team got the ball to Whittenburg so that he could take the final shot, leaving less than 10 seconds on the clock.

121. Houston had a surprise, though: in an effort to create some chance to score again and avoid overtime, the team switched from its usual man-to-man defense to a trap zone defense.

122. The Wolfpack, caught off guard, resorted to passing the ball around to avoid having it stolen as seconds rolled off the clock.

123. After a harrowing 39 seconds, and at least one near steal, Whittenburg remained far from the goal. With just 5 seconds left and few evident options, Whittenburg launched a long, arcing shot that fell short of the basket—only to be grabbed out of the air and definitively dunked by Lorenzo Charles as the buzzer sounded.

124. Final score: 54–52. The Cardiac Pack had done it.

The Legacy of the “Cardiac Pack”

125. North Carolina State’s surprise victory has resounded through the decades that followed.

126. North Carolina State’s improbable run for the NCAA championship lit a fire under college basketball fans, drawing new viewers and building new loyalties.

127. The team’s run continues to be referred to by some as “the greatest underdog story ever told.”

128. “Cardiac Pack” remains a resonant phrase, most recently recalled when the 2024 North Carolina State made its own improbable run for the NCAA title, winning five games in a row before losing to Purdue in the Final Four.¹¹

129. The 1983 team has been recognized as the original Cinderella team, the bracket-busting upstart that took the whole thing. Demonstrating what is possible, the 1983 Cardiac Pack truly put the madness in March Madness.

130. In the wake of Coach Jimmy Valvano’s death from cancer ten years after the “Cardiac Pack’s” historic win, the team’s mantra, “Survive and Advance,” has become a motivational phrase, reflecting the grit and determination of a team that found a way through every obstacle.

¹¹ One columnist suggested the 2024 Wolfpack be called the “Portal Pack,” a nod both to the 2024 team’s reliance on transfer students and the 1983 Cardiac Pack’s legacy. David Glenn, “*N.C. State’s Famous 1983 Team = ‘Cardiac Pack’; ‘Portal Pack’ May Describe 2024 Bunch Best*,” North Carolina Sports Network, <https://ncsportsnetwork.com/1983-nc-state-cardiac-pack-2024-nc-state-portal-pack/> (last visited June 1, 2024).

131. In the years since the Cardiac Pack's march to victory, the Division I Men's Basketball Tournament has grown into a media juggernaut, yielding billions of dollars in revenue for the NCAA and its affiliates and co-conspirators.

132. Those billions were made on the backs of the Cardiac Pack—and other players like them—and they continue to roll in, in large part from the uncompensated use of the players' names and likenesses, long after the players have left school.

133. The young players who stepped onto the court in 1983 should never have been coerced into signing a contract that stripped them of their legal rights.

134. Further, the NCAA had no valid legal reason to believe that a simple, understated waiver making no mention of legal rights and no suggestion that legal counsel should be sought¹² could convey a perpetual license for uncompensated use of a person's name and likeness.

Antitrust Allegations

135. The NCAA and its co-conspirators, members, and partners engaged in a contract, combination, and conspiracy, consisting of horizontal and vertical agreements that artificially depress prices in the market for student-athletes' labor, fixing those prices near zero.

136. The NCAA and its members enjoy a monopsony (*i.e.*, a buyer-side monopoly) in the market for student-athletes' labor because no reasonable

¹² In fact, NCAA rules forbid student-athletes from seeking the advice of either a lawyer or an agent.

substitute exists for the elite athletic and academic opportunities offered by Division I schools.

137. The NCAA leverages its monopsony power in the market for student-athletes' labor power to give itself a monopoly in the market for student-athletes' names, images, and likenesses.

138. By conditioning student-athletes' eligibility to play on their surrender of their publicity rights for the duration of their college careers; prohibiting student-athletes from receiving any compensation for their name, image, and likeness rights during their college careers; and continuing to appropriate those rights long after students have graduated and ostensibly moved beyond the reach of the NCAA, the NCAA has made itself the sole source for collegiate athlete names, images, and likeness—even for athletes who graduated decades ago.

139. Thus, the NCAA has acquired both monopsony power, pushing the price of student-athlete names, images, and likenesses to zero when it acquires them, and monopoly power, making itself the only seller in the market for those names, images, and likenesses.

140. These actions, which are ongoing and continue to this day, constitute an unreasonable restraint of trade that eliminated competition in the market for former student-athletes' name, image, and likeness rights.

141. Furthermore, the NCAA's conduct constitutes unlawful exercise of its monopoly power to stifle competition and unreasonably restrain trade.

FIRST CLAIM FOR RELIEF
UNREASONABLE RESTRAINT OF TRADE
(Violation of N.C. Gen. Stat. § 75-1, 75-2
Declaratory Judgment, Injunction, and Damages)

142. The foregoing paragraphs are incorporated by reference.

143. N.C. Gen. Stat. § 75-1 provides, “Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy shall be guilty of a Class H felony.”

144. N.C. Gen. Stat. § 75-2 provides, “Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of G.S. 75-1.”

145. N.C. Gen. Stat. § 75-16 provides, “If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.”

146. To establish a violation of N.C. Gen. Stat. § 75-1 and 75-2, a plaintiff must demonstrate the existence of a contract, combination or conspiracy that imposed an unreasonable restraint of trade in a relevant market.

147. The NCAA, along with its member institutions and partners, and student-athletes are, respectively, buyers and sellers in the market for Division I student-athlete services.

148. The NCAA rules and practices—including the requirements that student-athletes sign away their names, images, likenesses, and publicity rights (collectively “publicity rights”) to the NCAA—and the agreement among the NCAA and its named and unnamed co-conspirators, including its member institutions, to adhere to these rules constitute a contract or combination between the NCAA, its member institutions, and its partners and co-conspirators in restraint of trade in the market for student-athlete services.

149. The NCAA and its partners, co-conspirators, and member institutions deploy their market power, via NCAA rules, to reduce the cost of student-athletes’ publicity rights to zero.

150. As such, these rules and practices are violate N.C. Gen. Stat. §§ 75-1 and 75-2 and are illegal and unlawful.

151. The NCAA’s illegal conduct has deprived Plaintiffs of substantial profits they would otherwise have earned from their publicity rights.

152. The NCAA’s illegal conduct has damaged Plaintiffs by diminishing their opportunity to maximize their compensation for their publicity rights, including their rights related to images of “one of the most well-known plays of all time.”

153. The full amount of this damage is currently unknown, and it continues to increase as the NCAA and its affiliates and co-conspirators continue to profit from the NCAA's ongoing, uninterrupted usurpation of Plaintiffs' publicity rights.

154. The NCAA continues to damage Plaintiffs to this day by earning revenue from advertisers who pay for placements on NCAA.com that are shown to viewers before they are allowed to view videos of Plaintiffs.

155. The NCAA has used videos of Plaintiffs—without Plaintiffs' consent and without compensating Plaintiffs—in commercial advertising throughout the last four decades, up to and including this year.

156. The NCAA's requirement that student-athletes assign their publicity rights to the NCAA are not justified by any procompetitive objective. The NCAA's publicly stated goals in creating the rules are mere pretext; the rules serve only to allow the NCAA to maximize its profit from student-athletes' uncompensated labor in the only labor market available to them.

157. Even if there were any shred of procompetitive benefit to the NCAA unreasonably forcing student-athletes to assign their publicity rights to the NCAA, and to the NCAA's assumption that those rights have been surrendered in perpetuity, numerous less restrictive alternatives could accomplish any procompetitive objective the NCAA could articulate.

158. The NCAA's violations of N.C. Gen. Stat. §§ 75-1 and 75-2 have damaged Plaintiffs in an amount in excess of \$25,000, with damages to be proven at trial.

159. Under N.C. Gen. Stat. § 75-16, Plaintiffs are entitled to treble damages.

160. Under N.C. Gen. Stat. § 75-16.1, Plaintiffs are further entitled to costs and reasonable attorney fees.

161. A genuine case or controversy between Plaintiffs and the NCAA and CLC regarding the legality of the NCAA's requirement that student-athletes assign their publicity rights to the NCAA without compensation.

162. For the reasons set forth above, Plaintiffs are entitled to a declaratory judgment that any assignment of publicity rights under the circumstances in which the NCAA presents its required waiver to students is unlawful and unenforceable.

163. For the reasons set forth above, Plaintiffs are also entitled to a permanent injunction enjoining the NCAA and any person acting through it from relying on any unenforceable assignment of publicity rights.

SECOND CLAIM FOR RELIEF
MONOPOLY MAINTENANCE
(Violation of N.C. Gen. Stat. § 75-2.1
Declaratory Judgment, Injunction, and Damages)

164. The foregoing paragraphs are incorporated by reference.

165. N.C. Gen. Stat. § 75-2.1 provides, "It is unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person

or persons to monopolize, any part of trade or commerce in the State of North Carolina.”

166. The NCAA possesses monopsony power in the market for student-athlete labor and services.

167. Through its rules and practices, the NCAA wields its monopsony power willfully to quash competition and drive the cost of student-athletes’ labor down to zero.

168. The NCAA uses its monopsony power to further exploit student-athletes by forcing them to assign their publicity rights to the NCAA, and then assuming that that assignment is perpetual.

169. This practice perpetuates the NCAA’s monopoly power in the market for student-athlete labor and in other markets by consolidating relevant assets—the publicity rights of well-known athletes—under its control at zero cost.

170. Thus, the NCAA’s monopoly power is not the result of growth or development as a consequence of a superior product, business acumen, or historic accident, but rather of a deliberate course of conduct aimed at eliminating competition.

171. There is no valid procompetitive reason for the NCAA to require student-athletes to assign their publicity rights to the NCAA in perpetuity.

172. Rather, the purpose of this requirement is to allow the NCAA to extract maximum profit from the uncompensated labor of student-athletes, taking full advantage of its monopoly power to derive further profits for itself.

173. The NCAA's violation of N.C. Gen. Stat. §§ 75-2.1 has damaged Plaintiffs in an amount in excess of \$25,000, with damages to be proven at trial.

174. Under N.C. Gen. Stat. § 75-16, Plaintiffs are entitled to treble damages.

175. Under N.C. Gen. Stat. § 75-16.1, Plaintiffs are further entitled to costs and reasonable attorney fees.

176. A genuine case or controversy exists between Plaintiffs and the NCAA and CLC regarding the legality of the NCAA's requirement that student-athletes assign their publicity rights to the NCAA in perpetuity.

177. For the reasons set forth above, Plaintiffs are entitled to a declaratory judgment that any assignment of publicity rights in these circumstances is unlawful and unenforceable.

178. For the reasons set forth above, Plaintiffs are entitled to a permanent injunction enjoining the NCAA and any person acting through it from relying on any unenforceable assignment of publicity rights.

THIRD CLAIM FOR RELIEF
MONOPOLY LEVERAGING
(Violation of N.C. Gen. Stat. § 75-2.1
Declaratory Judgment, Injunction, and Damages)

179. The foregoing paragraphs are incorporated by reference.

180. The NCAA has a monopoly in the market for student-athletes' labor.

181. The NCAA has leveraged its monopoly power by unlawfully requiring that all member institutions enforce the requirement that student-athletes assign their publicity rights to the NCAA in perpetuity.

182. This requirement has allowed the NCAA to leverage its labor-side monopsony to create additional profits and power—and also monopoly power—in the separate market for media licensing of game footage, images, and accounts.

183. The NCAA's violation of N.C. Gen. Stat. §§ 75-2.1 has damaged Plaintiffs in an amount in excess of \$25,000, with damages to be proven at trial.

184. Under N.C. Gen. Stat. § 75-16, Plaintiffs are entitled to treble damages.

185. Under N.C. Gen. Stat. § 75-16.1, Plaintiffs are further entitled to costs and reasonable attorney fees.

186. A genuine case or controversy exists between Plaintiffs and the NCAA and CLC regarding the legality of the NCAA's requirement that student-athletes assign their publicity rights to the NCAA in perpetuity.

187. For the reasons set forth above, Plaintiffs are entitled to a declaratory judgment that any assignment of publicity rights is unlawful and unenforceable.

188. For the reasons set forth above, Plaintiffs are entitled to a permanent injunction enjoining the NCAA and any person acting through it from relying on any unenforceable assignment of publicity rights.

FOURTH CLAIM FOR RELIEF
UNFAIR AND DECEPTIVE TRADE PRACTICES
(Violation of N.C. Gen. Stat. § 75-1.1
Declaratory Judgment, Injunction, and Damages)

189. The foregoing paragraphs are incorporated by reference.

190. The NCAA's reliance on an assignment student-athletes' publicity rights obtained coercively in violation of N.C. Gen. Stat. § 75-1, 75-2, and 75-2.1 constitutes an unfair and deceptive act or trade practice.

191. The NCAA's usurpation and misappropriation of Plaintiffs' publicity rights also constitutes an unfair trade practice.

192. The NCAA coerces student-athletes into signing away their publicity rights in a context that makes the contracts themselves unconscionable:

- The waivers are part of a form students *must* sign if they want to play; no negotiation is allowed.
- The waivers are presented by an authority figure, making students less likely to protest.
- The waivers take advantage of young adults' lack of legal sophistication; NCAA rules prohibit athletes from consulting agents or attorneys regarding the forms.
- Young athletes just embarking on their careers can have no real idea what value their NIL rights may have.

193. Having acquired student-athletes' publicity rights through coercion, the NCAA then simply assumes that the students' tender of their rights at the very beginning of their collegiate careers represents a perpetual conveyance.

194. These practices by the NCAA are unethical, unscrupulous, oppressive, and offensive to public policy.

195. These practices of the NCAA are also deceptive. The NCAA purports to act in the best interests of student-athletes, but, in truth, it exploits them by, among other things, forcing them to give up their valuable publicity rights in perpetuity without compensation or other consideration.

196. The NCAA also deceives viewers, who are led by the NCAA's advertising to believe that Plaintiffs (and others similarly situated) have endorsed the NCAA's products, when, in truth, the NCAA is stealing the players' images for its own commercial benefit.

197. The NCAA's acts and trade practices at issue were in or affecting commerce.

198. These acts and trade practices proximately caused Plaintiffs to suffer substantial injuries.

199. The NCAA's violation of N.C. Gen. Stat. §§ 75-1.1 has damaged Plaintiffs in an amount in excess of \$25,000, with damages to be proven at trial.

200. Under N.C. Gen. Stat. § 75-16, Plaintiffs are entitled to treble damages.

201. Under N.C. Gen. Stat. § 75-16.1, Plaintiffs are further entitled to costs and reasonable attorney fees.

202. A genuine case or controversy exists between Plaintiffs and the NCAA and CLC regarding the legality of the NCAA's requirement that student-athletes assign their publicity rights to the NCAA.

203. For the reasons set forth above, Plaintiffs are entitled to a declaratory judgment that any assignment of publicity rights is unlawful and unenforceable.

204. For the reasons set forth above, Plaintiffs are entitled to a permanent injunction enjoining the NCAA and any person acting through it from relying on any unenforceable assignment of publicity rights.

FIFTH CLAIM FOR RELIEF
MISAPPROPRIATION OF NAME, IMAGE, AND LIKENESS, AND
PUBLICITY RIGHTS; INVASION OF PRIVACY
(Violation of Common Law; Damages)

205. The foregoing paragraphs are incorporated by reference.

206. The Supreme Court of North Carolina has held that “an invasion of privacy by the appropriation of a plaintiff’s photographic likeness for the defendant’s advantage as a part of an advertisement constitutes a tort giving rise to a claim for relief recognizable at law.” *Renwick v. News & Observer Pub. Co.*, 310 N.C. 312, 322, 312 S.E.2d 405, 411 (1984).

207. The NCAA and its co-conspirators misappropriated Plaintiffs’ photographic likenesses repeatedly over the last four decades, up to and including the present, for their commercial advantage, as part of advertisements and without Plaintiffs’ consent.

208. The NCAA’s continued and ongoing violation of the common law in this respect has damaged Plaintiffs in an amount in excess of \$25,000, with damages to be proven at trial.

SIXTH CLAIM FOR RELIEF
UNJUST ENRICHMENT
(Common Law; Disgorgement)

209. “An action for money had and received may be maintained as a general rule whenever the defendant has money in his hands which belongs to the plaintiff, and which in equity and good conscience he ought to pay to the plaintiff. . . . Recovery is allowed upon the equitable principle that a person should not be permitted to enrich himself unjustly at the expense of another. Therefore, the

crucial question in an action of this kind is, to which party does the money, in equity and good conscience, belong?” *Primerica Life Ins. Co. v. James Massengill & Sons Const. Co.*, 211 N.C. App. 252, 259, 712 S.E.2d 670, 676–77 (2011) (quoting *Allgood v. Wilmington Sav. & Trust Co.*, 242 N.C. 506, 512, 88 S.E.2d 825, 829 (1955)).

210. “Under a claim for unjust enrichment, a plaintiff must establish certain essential elements: (1) a measurable benefit was conferred on the defendant, (2) the defendant consciously accepted that benefit, and (3) the benefit was not conferred officiously or gratuitously.” *Id.* at 259–60.

211. The NCAA has received money from advertisements and other promotional images centered around Plaintiffs’ images; Plaintiffs’ have not consented to such use, nor have they been compensated for it.

212. Therefore, these images, and the publicity rights and benefits associated with them, belong in equity and good conscience not to the NCAA but instead to Plaintiffs.

213. But for the illegal, unethical, and unscrupulous conduct of the NCAA and its co-conspirators, described above, Plaintiffs would have been paid substantial sums for the use of their names, images, and likenesses in the NCAA’s advertisements and other promotional efforts.

214. Therefore, substantial funds that the NCAA has received—and continues to receive to this day—through the misappropriation of Plaintiffs’ names, images, and likenesses belong to Plaintiffs.

215. The NCAA must disgorge such funds to Plaintiffs under law, equity, and good conscience.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray unto the Court:

1. That Plaintiffs have and recover of Defendants, jointly and severally, a sum in excess of \$25,000.00 for compensatory damages, together with interest as allowed by law;
2. That Plaintiffs have and recover of Defendants, jointly and severally, pre- and post-judgment interest, as allowed by law;
3. That Plaintiffs have and recover of Defendants, jointly and severally, costs and attorney fees as allowed by law;
4. That Plaintiffs have a trial by jury;
5. That Plaintiffs have such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Signature page follows

This ____ day of June 2024.

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