

UNC funneled student-athletes into non-rigorous courses designed to provide virtually no education but high grades, all the while assuring the student-athletes that the curricula they followed served their overall best interests.

2. In this manner, UNC maximized the number of student-athletes who remained eligible to engage in intercollegiate athletics, thus improving the chances of athletic success and increasing the University's revenues and reputation.

3. National Collegiate Athletic Association rules prohibit student-athletes from receiving remuneration from their schools, so revenue earned from athletic events and from the sponsorship and advertising related to those events goes exclusively to UNC. The UNC student-athletes' reward for their athletic participation was supposed to lie in the UNC education they were promised in exchange for their athletic efforts; an education held out by UNC over and over again since its founding through the present to be excellent, thorough, and imbued with integrity.

4. In 1789, the North Carolina General Assembly committed through the Act Establishing the University of North Carolina that UNC would serve each "rising generation, and endeavor to fit them for an honorable discharge of the social duties of life, by paying the strictest attention to their education."

5. UNC's Mission Statement builds upon the promise of its charter:

The University of North Carolina at Chapel Hill, the nation's first public university, serves North Carolina, the United States, and the world through teaching, research, and public service. We embrace an unwavering commitment to excellence as one of the world's great research universities. Our mission is to serve as a center for research, scholarship, and creativity and to teach a diverse community of undergraduate, graduate, and professional students to become the next generation of leaders. Through the efforts of our exceptional faculty and staff, and with generous support from North Carolina's citizens, we invest our knowledge and resources to

enhance access to learning and to foster the success and prosperity of each rising generation.”

6. UNC publicity materials, in turn, build on the promise of its mission, detailing the intellectual experience and journey at the heart of a UNC education. For instance, as of January 26, 2015, the “Academics” tab of UNC’s website read:

Whether students come here undecided or with a major in mind, Carolina opens the door to a universe of knowledge. Students take the classes they’ve always wanted to take, or they delve into something unknown. Some students invest time in groundbreaking research while others dive into history books. Some try a little of everything. Carolina offers classes abroad, on campus or online. Whatever path our students may choose, the academic experience at Carolina prepares them to make a difference in the world.

7. UNC takes extra steps, through letters from the Director of Athletics, to assure student-athletes that they will receive the same quality of education promised to all UNC students through its Mission Statement and its website. The 2011-2012 letter, signed by Director of Athletics Richard A. Baddour, reads, in relevant part:

Our program is committed to excellence and integrity While our athletics program is one of the largest in the country, fielding 28 varsity teams, be aware that we care about you and want your experience here to be a positive one. Each Department of Athletics staff member is interested in your welfare and is here to assist you so that when you leave the University of North Carolina, you leave with a degree and as a future leader.

8. The UNC Department of Athletics Principles of Operation, which is a subcomponent of UNC’s Student-Athlete Handbook, guarantees the same:

The growth and development of student-athletes in all aspects of college life is of primary importance. The Department will initiate and maintain support programs that will focus on the total development of its student-athletes. The Department will recruit students who are committed to obtaining a degree from the institution, and it will provide the necessary resources and institute and maintain policies and procedures that will encourage the fullest development of the academic potential of student-athletes.

9. The education described in UNC's charter, its Mission Statement, its publicity materials, communications from its Director of Athletics, and its Student-Athlete Handbook is the education UNC promised Plaintiffs and Class members.

10. UNC, however, systematically deprived Plaintiffs and Class members of that UNC education, providing them an empty shell of an education instead, while at the same time reaping substantial profits from their athletic performance for the school. UNC has denied Plaintiffs and Class members the benefit of their bargain and as such has breached its contract with Plaintiffs and Class members, in violation of North Carolina common law.

11. The challenged practices also violate North Carolina's consumer protection statute, N.C. Gen Stat. § 75, Article 1, which declares unlawful "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

12. In addition, UNC has engaged in fraud in the inducement, constructive fraud, and fraudulent concealment and has breached its fiduciary duty to Plaintiffs and Class members by creating a relationship of trust and confidence with Plaintiffs and Class members and using that relationship to recruit Plaintiffs and Class members by falsely representing that they would receive a legitimate UNC education if they enrolled as student-athletes at UNC.

13. These violations of law caused injury to Plaintiffs and Class members. As such, Plaintiffs and Class members are entitled to actual and punitive damages as well as injunctive relief including, but not limited to, a court appointee reviewing the curriculum

and course selection for all student-athletes and the provision of four-year guaranteed scholarships to all student-athletes going forward.

14. UNC should not be allowed to profit from the athletic performance of its student-athletes without providing them the education they were promised and deserve.

II. JURISDICTION AND VENUE

15. This class action arises under the General Statutes of North Carolina and North Carolina common law.

16. This action is appropriately filed in federal district court pursuant to 28 U.S.C § 1332, which states “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” Plaintiff Michael McAdoo is a citizen of Maryland, and Plaintiff Kenya McBee is a citizen of South Carolina. Defendant is a citizen of North Carolina. The amount in controversy in this matter, without interest and costs, exceeds the sum of \$75,000.

17. Pursuant to 28 USCS § 1391(b), venue is proper in the United States District Court for the Middle District of North Carolina as Defendant is a citizen of Chapel Hill, Orange County, North Carolina, and a substantial part of the events or omissions giving rise to the claim occurred in this District.

III. PARTIES

18. Plaintiff Michael McAdoo is domiciled in Maryland and was a student-athlete at UNC in 2008, 2009, and 2010.

19. Plaintiff Kenya McBee is domiciled in South Carolina and was a student-athlete at UNC in 2001, 2002, 2003, 2004, and 2005.

20. Defendant is the University of North Carolina at Chapel Hill, the state of North Carolina's flagship institution of higher education, and is a citizen and resident of North Carolina.

IV. FACTUAL ALLEGATIONS

21. For at least eighteen years, from 1993 through at least 2011, UNC, widely regarded as one of the nation's elite public institutions of higher education, systematically and purposely failed to educate many of its students, and particularly its student-athletes, by enrolling them in hundreds of sham courses – sometimes in the guise of lecture courses and sometimes in the guise of independent study courses – that involved no professorial involvement, offered little rigor and no real education.

22. Student-athletes were disproportionately funneled into a “shadow curriculum” of bogus courses offered through in the Department of African and Afro-American Studies (the “AAAS Department”), which were not part of a legitimate UNC education. Indeed, student-athletes accounted for nearly 50% of enrollments in these courses, although they comprise roughly 4% of the UNC student body.

23. UNC falsely represented these “shadow curriculum” courses to be legitimate college courses and fraudulently concealed the true academically bereft nature of the courses through listing and promoting them in university course directories and schedules. The courses were listed side by side with legitimate courses and, like

legitimate courses, were represented as being supervised by faculty members. Plaintiffs and Class members reasonably relied on UNC's representations.

24. Throughout the Class period, when the UNC administration was confronted with indicia of potential academic impropriety, it dismissed it or failed to adequately investigate it.

25. For instance, in 2002, the UNC Faculty Advisory Committee learned of concerning trends in student-athlete enrollment in independent study courses, but it did not investigate the matter on the grounds that the independent study courses were departmentally approved and therefore "academically legitimate."

26. Concern regarding independent study courses were raised again in 2007, and the UNC Faculty Advisory Committee again dismissed the concerns and failed to investigate, explaining only that instructors are "given wide latitude in how they teach approved course content."

27. Even in 2011, when information about the "shadow curriculum" began to leak out through media reports, UNC failed to disclose material details about, and failed to accept responsibility for, the academic improprieties, representing instead that any improprieties were limited and perpetuated solely by the AAAS Department in rogue fashion. It insisted that the scandal involved neither the Athletics Departments nor the university's administration or other departments, and refused media requests for documents that revealed otherwise.

28. It was not until June of 2013, after nearly a year of refusing information requests from North Carolina's second largest newspaper, The News & Observer, that UNC released email messages revealing a close working relationship between AAAS

Department Chair Julius Nyang'oro and the UNC Academic Support Program for Student Athletes (“UNC ASPSA”) that could be construed to have enabled the system that deprived Plaintiffs and Class members of the UNC education for which they bargained. Still, UNC insisted the academic impropriety was restricted in all respects to the AAAS Department and was not forthcoming with evidence to the contrary, leading Bloomberg Businessweek journalist Paul M. Barrett in January of 2014 to write “UNC’s administration for years has obfuscated the core elements of what’s gone wrong at Chapel Hill, and that pattern continues.”

29. On January 23, 2014, three days after publication of the Bloomberg Businessweek article, UNC’s administration for the first time expressed the university’s accountability for the systematic academic fraud into which student-athletes were steered. Chancellor Carol Folt stated “we absolutely feel accountable” and “[a]ll of those students who were involved in those courses deserved better from us.” Notwithstanding this acknowledgement of accountability, Chancellor Folt did not diverge from UNC’s long-held stance that the AAAS Department acted alone.

30. In October of 2014, after a lengthy independent investigation commissioned by UNC, the law firm of Cadwalader, Wickersham & Taft issued a 131-page report (the “Cadwalader Report or “Report”) that made clear the academic scandal was far worse and far more widespread than Chancellor Folt recognized or admitted in January of 2014.

31. The Report, authored by current Cadwalader partner and former Department of Justice official Kenneth Wainstein, found that UNC administrators and

professors created, administered, and covered up a “shadow curriculum” devoid of academic rigor from 1993 until 2011.

32. The Report revealed, for the first time, that UNC’s knowledge, condonation, and concealment of academic impropriety reached up into high levels of the university administration.

33. Specifically, the Report found that in 2005 or 2006 Senior Associate Dean for Undergraduate Education Roberta “Bobbi” Owen learned that Dr. Nyang’oro was on record as supervising an incredibly large number of independent study courses – sometimes in excess of 300 per year – which is by any academic standard a gross and glaring indication of impropriety. Obviously aware that Deborah Crowder, the AAAS Department’s Student Services Manager, was intricately involved in effectuating the hundreds of independent study courses, Dean Owen simply told Dr. Nyang’oro during a lunch meeting to “get [Crowder] under control.” Dr. Nyang’oro returned from the lunch meeting, did as ordered, and Ms. Crowder followed the instructions, reducing independent study enrollments. Upon learning of the reduced enrollments some months later, Dean Owen sent Dr. Nyang’oro an email titled “Ind Studies,” noting that “it has gotten a lot quieter from your side of campus” and expressing her appreciation.

34. Dean Owen’s failure to investigate the remarkable phenomenon of a professor allegedly supervising over 300 independent study courses in one year and to instead order that the Department be “quieter” indicates her knowledge of the purpose behind the phenomenon and intent to conceal it.

35. The Cadwalader Report also definitively revealed what UNC had long denied: the Athletics Department and UNC ASPSA were parties to the academically fraudulent system through which student-athletes were funneled.

36. Indeed, the Athletics Department and UNC ASPSA worked together in a consistent and calculated effort to deprive student-athletes of the UNC education they were promised so as to keep them playing their sports for the university. Indeed, the Cadwalader Report found that UNC ASPSA academic counselors were “always under pressure to maintain student-athlete eligibility” and that they enabled, supported, and relied on the “shadow curriculum.”

37. As such, Plaintiffs and Class members did not take sham courses by happenstance. Rather, they were funneled into the courses by their coaches, UNC ASPSA academic counselors, and other UNC representatives, whom they were implored to trust as part of the Tar Heel Family, and whom they did trust.

38. These coaches, academic counselors, and other UNC representatives explained that student-athletes’ team-related responsibilities were so time-intensive that certain courses, including “shadow curriculum” courses – which they insisted were academically sound even if less challenging than some other UNC courses – were necessary both for the good of the team and the good of the student-athletes.

39. All told, student-athletes accounted for nearly 2,000 enrollments in these sham courses. The Cadwalader Report revealed that the sham courses were typically designed as follows:

- a. At the beginning of the semester student-athletes selected, or were given, a topic on which to write a paper. When given a topic, they

were generally informed of it by a UNC ASPSA academic counselor, who received the topic from an administrator in the AAAS Department -- usually Ms. Crowder.

- b. Throughout the semester, there were no class meetings, there was no supervision, no drafts of papers were reviewed, and no faculty feedback was given. Students had no communication whatsoever with the course's listed professor or any other professor about the paper.
- c. At the end of the semester, each student submitted a paper.
- d. Several weeks later, a grade appeared on the student's transcript. Ms. Crowder, whose duties were officially limited to secretarial and administrative work, assigned grades in the "shadow curriculum" courses – sometimes with Dr. Nyang'oro's acquiescence and occasionally through forging signatures – until Ms. Crowder retired in 2009. After her retirement, Dr. Nyang'oro took over managing the "shadow curriculum." On some occasions, UNC ASPSA academic counselors told their AAAS Department contacts the particular grades the student-athletes would have to receive in order to remain athletically eligible. Even the weakest papers and papers featuring long passages of unoriginal text received passing grades.

40. UNC was so committed to student-athletes taking the "shadow curriculum" courses that, upon learning in 2009 of Ms. Crowder's impending retirement, UNC ASPSA Associate Director Cynthia Reynolds sounded alarm bells warning of the impending crisis that would unfold if the "shadow curriculum" was discontinued.

41. The consequent crisis-control effort with respect to the football program is illustrative. The UNC ASPSA's immediate plan was to have as many papers as possible submitted before Ms. Crowder retired to ensure that the student-athletes received grades high enough to remain eligible to play. To that end, Ms. Reynolds sent an email to Andre Williams, who was a Football Operations Coordinator, stating, "Ms. Crowder is retiring at the end of July. . . if the guys papers are not in . . . I would expect D's or C's at best. Most need better than that . . ."

42. Getting as many papers in as possible before Ms. Crowder's retirement, however, was not enough. The UNC ASPSA sought to implement a plan to keep the "shadow curriculum" going. To reinforce the need for such a plan, UNC ASPSA academic counselors called a meeting with all of the UNC football coaches and presented a document they had drafted, which set out the ramifications of Ms. Crowder's retirement. The document explained that without the "shadow curriculum" courses, it was not clear how the football program would funnel football student-athletes into courses "that met degree requirements in which [the football players] didn't go to class . . . didn't take notes [or] have to stay awake . . . didn't have to meet with professors [and] didn't have to pay attention or necessarily engage with the material." The UNC ASPSA academic counselors followed the presentation of this document with the presentation of two additional documents that juxtaposed eight players' GPAs in their AAAS classes (on average, 3.61) with their GPAs in their other classes (on average, 1.917).

43. The UNC ASPSA's plan to avert the crisis was to convince Dr. Nyang'oro to carry on the "shadow curriculum" in Ms. Crowder's stead, which he ultimately agreed to do.

44. Until the Cadwalader Report was issued in October of 2014, Plaintiffs and Class members did not know and had no reasonable means of discovering the academic impropriety to which they were subjected by UNC through the concerted efforts of the AAAS Department, the Athletic Department, and the UNC ASPSA and the condonation and encouragement of UNC's central administration. UNC administrators, faculty members, coaches, and ASPSA counselors possessed knowledge of higher education, academic planning, and curricular offerings that was far superior to that possessed by Plaintiffs and Class members. Moreover, throughout the process of recruiting Plaintiffs and Class members and once Plaintiffs and Class members enrolled at UNC, UNC administrators, faculty members, coaches, and ASPSA counselors systematically gained Plaintiffs' and Class members' confidence and trust such that Plaintiffs and Class members believed they would be cared for, and educated, as family. Plaintiffs and Class members, therefore, reasonably relied on the academic counsel they received and could not have reasonably come to know, among other things: the extent or absence of Ms. Crowder's interaction with faculty members in assigning grades to papers; the extent of UNC ASPSA and UNC Athletic Department staff involvement in determining paper and course grades; and whether attendance of class sessions could permissibly be waived by professors or administrators.

45. Moreover, the Cadwalader Report, while thorough, was limited in its scope. Several individuals who had critical knowledge of, and are alleged to have participated in, UNC's practice of steering student-athletes into the "shadow curriculum" and other courses designed not to educate refused to cooperate with Mr. Wainstein's investigation. These individuals include former Associate Dean and Director of

Academic Advising in the College of Arts & Sciences Carolyn Cannon, former ASPSA Associate Director Cynthia Reynolds, former ASPSA counselor Octavus Barnes, and former Interim Head Football Coach Everett Withers. The nature and extent of UNC's academic impropriety, therefore, continues to be concealed and Plaintiffs and Class members have no reasonable means of uncovering it.

46. Additionally, the Cadwalader Report was, by design, limited to one academic department at UNC, as evidenced by its title: "Investigation of Irregular Classes in the Department of African and Afro-American Studies at the University of North Carolina at Chapel Hill." It centered on the AAAS department and essentially excluded review of other academic departments.

47. Upon information and belief, the academic impropriety UNC perpetuated and into which it steered student-athletes for at least eighteen years was not restricted to the AAAS Department. Rather, it took root in other academic departments and through the use of one-on-one tutorials masquerading as meaningful courses. In some cases, these one-on-one tutorials were used as "substitute" courses to fulfill student-athletes' distribution requirements even though the tutorial had nothing to do with the requirement.

48. Upon information and belief, the nature and scope of the academic impropriety to which Plaintiffs and Class members were subjected through the coordinated or singular efforts of UNC's central administration, the UNC Athletic Department, the UNC ASPSA, and *other academic departments* remains fraudulently concealed. Until now, Plaintiffs and Class members have had no reasonable means of uncovering the nature and scope of the impropriety.

V. PLAINTIFF FACTS

MICHAEL McADOO

49. Mr. McAdoo was an all-state football player as a high school senior at Antioch High School in Nashville, Tennessee. In addition, he was a solid student and active member of the school community. He graduated high school with a 2.9 grade point average and served as Student Council President during his senior year. Mr. McAdoo was a committed student-athlete in high school and was widely recruited by universities. He ultimately received dozens of scholarship offers from universities across the country.

50. UNC was one of the schools that aggressively recruited Mr. McAdoo. Members of the UNC Football coaching staff visited Mr. McAdoo's home to recruit him on multiple occasions during Mr. McAdoo's final two years of high school. Assistant Coach Charlie Williams visited Mr. McAdoo's home in January and February of 2007, during his junior year, and Head Coach Butch Davis, together with Coach Williams and Assistant Coach John Blake, visited Mr. McAdoo's home in December of 2007, during his senior year. During each of the visits, the coaches stressed UNC's stellar academic reputation and strength as well as the UNC football program's commitment to its student-athletes' academics.

51. Indeed, during the December 2007 visit, Mr. McAdoo remembers Head Coach Davis telling Mr. McAdoo's mother, grandmother, and grandfather, "I can't guarantee that Michael will play in the NFL, but one thing I can guarantee is that he will get a good education at the University of North Carolina." Also during the December 2007 visit, the coaches stressed a theme that was consistent throughout their recruitment

of Mr. McAdoo: that Mr. McAdoo would be cared for as family if he signed with UNC. Coach Davis explained to Mr. McAdoo's mother and grandparents that they understood he would be far away from home with no family close by and explained that UNC and the UNC football program, in particular, would be his new family. They further explained that Mr. McAdoo would be part of the Tar Heel Family for life. To end the visit, the coaches asked if they could initiate a prayer. The coaches, Mr. McAdoo, his mother, and his grandparents then stood together in the McAdoo living room, held hands, and prayed together.

52. When Mr. McAdoo made his official visit to UNC a month later in January of 2008, he was again assured that he would be cared for at UNC. All of the visiting recruits and their accompanying family members were taken to an on-campus auditorium where representatives of the UNC ASPSA, including Beth Bridger and Cynthia Reynolds, met with them. Mr. McAdoo and his mother attended the session. Ms. Bridger and Ms. Reynolds told the recruits' parents that they could "trust" UNC with their children – that UNC was "opening its arms to" their children and that they would be in good hands.

53. The "good education" that Head Coach Davis guaranteed Mr. McAdoo would receive at UNC cost tens of thousands of dollars per year. Mr. McAdoo, raised in a low income household, was persuaded as to the merits of playing football at UNC in exchange for such an education, which he could not have otherwise afforded. In addition, after the assurances from the coaches and academic counselors, he was convinced that he could trust UNC to care for him as family. Mr. McAdoo, therefore,

accepted UNC's scholarship offer over numerous other offers from universities including Vanderbilt, Notre Dame, and Duke.

54. In 2008, almost immediately after arriving at UNC to begin his freshman year, Mr. McAdoo was shifted away from his desired academic track. Although Mr. McAdoo had expressed interest in criminal justice when being recruited, once on campus he was told that he should consider only one of three options for a major: Exercise Sport Science, Communications, or African and African-American Studies. When Mr. McAdoo asked why he should not pursue other majors, he was told those three were the only majors that would accommodate his football practice and playing schedule, and that the football program had "relationships" with professors in those departments.

55. At a team meeting just before the start of school, Ms. Bridger gave Mr. McAdoo and his teammates pre-assigned course schedules. Mr. McAdoo's schedule included "shadow curriculum" courses. Mr. McAdoo had no role in selecting the courses. The same thing happened every semester Mr. McAdoo attended UNC.

56. Mr. McAdoo questioned his enrollment in the "shadow curriculum" courses, but UNC ASPSA academic counselors and representatives of the football program assured him that his course schedule was designed in his best interests, athletically and academically. They also indicated that following the prescribed schedule was part and parcel of being on the team, and not doing so would signal lack of commitment.

57. From selection of a major to selection of courses, the UNC football program controlled Mr. McAdoo's academic track, with the sole purpose of ensuring that he was eligible to participate in athletics, rather than actually educating him. Mr.

McAdoo proceeded along the educational track his Tar Heel Family had designed for him, trusting that the coaches and academic counselors who promised to care for him had his best interests at heart.

58. Mr. McAdoo did not graduate from UNC. He played professional football briefly in the National Football League and the Canadian Football League. He is now out of work and unable to secure employment.

KENYA McBEE

59. Kenya McBee was a standout basketball player for her entire tenure at Wade Hampton High School in Greenville, South Carolina and was vigorously recruited to play basketball in college. She was offered scholarships by many of the nation's top universities, including Notre Dame, the University of Virginia, and Rutgers University.

60. Ms. McBee was passionate about playing college basketball, but her career ambition was to become a sports journalist, so she desired to go to a school where she could play high-level basketball and also build the foundation of a journalism career. At every step as UNC doggedly recruited Ms. McBee, university representatives told her that UNC was the ideal place to pursue both ambitions.

61. Indeed, when UNC Women's Basketball Head Coach Sylvia Hatchell and Assistance Coach Tracey Williams visited Ms. McBee's home to recruit her in the fall of 2000, they stressed academics. With Ms. McBee's mother and Ms. McBee's high school basketball coaches in attendance, Coach Hatchell and Coach Williams expressed great interest in Ms. McBee's academic goals, and Coach Hatchell specifically asked Ms. McBee what she wanted to major in and what she wanted to pursue as a career. Ms.

McBee answered that she wanted to major in journalism and mass communications and that she wanted to be a sports journalist. Coach Hatchell responded that UNC would be a great place for her, as the university was among the nation's best and it offered a journalism / mass communications major. Coach Hatchell guaranteed that Ms. McBee would receive an excellent education if she accepted UNC's scholarship offer.

62. In addition to discussing UNC academics and, of course, the UNC basketball program, Coach Hatchell and Coach Williams emphasized that accepting UNC's scholarship offer meant Ms. McBee would become a part of the Tar Heel family. They emphasized that they would care for her as they would a family member and assured Ms. McBee's mother and high school coaches that they could trust the Tar Heel Family to protect Ms. McBee's best interests.

63. When Ms. McBee made her official visit to UNC during the fall of her senior year of high school, Coach Hatchell and Coach Williams again emphasized UNC's prestigious academic pedigree and the opportunities she would have in the journalism field after graduating. They also continued to stress that Ms. McBee would gain a second family at UNC.

64. In addition, during Ms. McBee's official visit she and her mother spent several hours with Jan Boxill, at the time a UNC women's basketball academic counselor and later Chair of the UNC Faculty. Ms. Boxill explained to Ms. McBee and her mother that she would ensure Ms. McBee was well-educated. She spoke of the Tar Heel Family and Ms. McBee's potential membership in it, and she asked for Ms. McBee and her family to trust her to watch over and protect Ms. McBee's interests.

65. This family theme carried throughout the remainder of Ms. McBee's recruitment. Virtually every communication Ms. McBee had with UNC representatives during her recruitment referenced the Tar Heel Family that was waiting to embrace her and the extent to which she would be cared for at UNC.

66. UNC seemed the perfect fit, and Ms. McBee agreed to attend and play basketball for UNC.

67. Soon after arriving at UNC to begin her freshman year, Ms. McBee was told that majoring in journalism and mass communications would not be possible. Ms. McBee's coaches and Ms. Boxill explained that Ms. McBee would not be able to both play basketball and pursue that major, as the journalism courses would conflict with team practices. Ms. McBee was perplexed by this, as she had clearly articulated her journalistic ambitions to Coach Hatchell when being recruited. Still, Ms. McBee trusted that Coach Hatchell, her other coaches, and Ms. Boxill were acting in her best interests, because of their commitment to care for her as family. Ms. McBee put total trust in them, relied on their counsel, and felt she had no choice but to pursue a different academic path if she wanted to play basketball and keep her scholarship, without which she could not afford to attend UNC.

68. Ms. McBee, therefore, followed the path prescribed for her which included a schedule featuring many AAAS courses. Ms. McBee had never expressed an interest in African or African-American Studies and did not select the courses, but Ms. Boxill told her it was important that she take them, as they would help her balance out other courses that might be more challenging. Trusting that Ms. Boxill and those

overseeing Ms. Boxill had her best interests in mind, Ms. McBee accepted the counsel and the courses she was enrolled in, many of which were “shadow curriculum” courses.

69. In some cases, Ms. McBee was enrolled in courses that were not AAAS courses, but were nonetheless designed to skirt academic rigor. For instance, knowing that Ms. McBee was required to take a mathematics course while at UNC, Ms. Boxill had her enrolled in a musical keyboarding class with Mary Willingham, a former UNC academic adviser. Ms. Boxill explained that the course was a “substitute” mathematics course and would fulfill the mathematics distribution requirement. Ms. McBee was the only student in the course and met with Ms. Willingham periodically over the course of the semester to learn keyboarding techniques. Upon completion of the course, Ms. McBee’s mathematics requirement was satisfied.

70. Having been told a major of journalism / mass communications was out of the question, and with her options constrained by the “shadow curriculum” and other empty courses in which she and other basketball players were automatically enrolled, Ms. McBee followed her coaches’ and academic counselors’ advice to pursue a specialization in interpersonal communications, which dealt with communication in the workplace. Ms. McBee was not enthusiastic about this course of study, but her coaches approved it because it was less rigorous than mass communications and did not interfere with basketball, so Ms. McBee tried to make it work. She focused on courses within the major that she hoped would equip her with the knowledge and skills to be a credible candidate for a job in journalism upon graduating. In the end, they did not. Her double major in interpersonal communications and AAAS – the latter of which she essentially defaulted

into having been enrolled in so many AAAS courses – would prove to be useless in the job market.

71. Since graduating from UNC in 2006, Ms. McBee has held a series of short term jobs – as an assistant basketball coach, as a sales person at a shoe store, and, in hopes that it would strengthen her journalism credentials, as an assistant with UNC’s football team doing some video and film work – and has played basketball on short contracts for various teams in Europe.

72. Ms. McBee has concluded that based on her education, journalism is not a realistic career ambition, and she has continued to play basketball for lack of other realistic options.

VI. CLASS ACTION ALLEGATIONS

73. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons who attended UNC on athletic scholarships between 1993 and at least 2011.

74. The Class is so numerous that joinder of all members is impracticable.

75. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. This class action will be subject to common proof, with common key witnesses, common experts, and common damages methodology.

76. Plaintiffs’ claims are typical of the claims of each Class member.

77. There are questions of law and fact common to each Class member, including but not limited to:

- a. Whether UNC systematically deprived student-athletes of a genuine education as outlined in the Cadwalader Report;
- b. Whether UNC engaged in unfair or deceptive acts in recruiting Plaintiffs and Class members to be student-athletes at the university;
- c. Whether UNC's athletic program's recruiting activities involved or affected commerce;
- d. Whether UNC's athletic program's recruiting activities involved false representations reasonably calculated, and made with intent to, deceive, and which did deceive;
- e. Whether Plaintiffs and Class members sustained actual injury consequent to UNC's recruiting methods;
- f. Whether Plaintiffs and Class members were parties to scholarship agreements that explicated or implied provision of a legitimate UNC education;
- g. Whether UNC's representatives created a relationship of trust and confidence when recruiting Plaintiffs and Class members and while Plaintiffs and Class members attended UNC; and
- h. Whether UNC owed Plaintiffs and Class members a duty of care.

78. These and other questions of law and/or fact are common to each Class member and predominate over any questions affecting only individual Class members.

79. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs do not have any claims antagonistic to those of the Class.

80. Plaintiffs have retained counsel competent and experienced in complex class action litigation. Plaintiffs' counsel will fairly, adequately and vigorously protect the interests of the Class.

81. Class action status is warranted under Federal Rule of Civil Procedure 23 because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

82. Class action status is also warranted under Federal Rule of Civil Procedure 23 because the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

83. Class action status is also warranted under Federal Rule of Civil Procedure 23 because Defendant has acted or refused to act on grounds generally applicable to each Class member, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

84. Class action status is also warranted under Federal Rule of Civil Procedure 23 because, as noted above, questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

VII. CLAIMS FOR RELIEF

COUNT I

BREACH OF CONTRACT

85. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

86. Under North Carolina law, the elements for a breach of contract are: the existence of a valid contract and a breach of the contract terms. *Wollard v. Davenport*, 601 S.E. 2d 319, 322 (N.C. Ct. App. 2004).

87. UNC entered into scholarship agreements with Plaintiffs and Class members under which Plaintiffs and Class members agreed to be student-athletes at UNC. In exchange, Plaintiffs and Class members were promised a UNC education, either explicitly or implicitly. Under North Carolina law, an implied in fact contract is a valid, enforceable contract, even if its particular terms are not expressed in words. *Putnam v. CIT Small Bus. Lending Corp.*, 509 Fed. Appx. 195, 196 (4th Cir. 2013) (citing *Creech v. Melnik*, 495 S.E.2d 907, 911 (N.C. 1998)).

88. In offering athletic scholarships to Plaintiffs and Class members, UNC promised to provide Plaintiffs and each Class member with a legitimate UNC education – characterized by the assurances set out in the UNC charter, the UNC mission statement, UNC publicity materials, and the UNC Student-Athlete Handbook – and not a bogus education funneled through a “shadow curriculum.” By failing to provide the promised education, UNC breached its contract with Plaintiffs and each member of the Class.

COUNT II

BREACH OF FIDUCIARY DUTY

89. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

90. Under North Carolina law, a breach of fiduciary duty claim requires the existence of a fiduciary relationship, a breach of the fiduciary duty, and actually incurred damages consequent to the breach. *Toomer v. Branch Banking & Trust Co.*, 614 S.E.2d 328, 337 (N.C. Ct. App. 2005); *Laws v. Priority Tr. Servs. of N. Carolina, LLC*, 375 F. Appx. 345, 348-49 (4th Cir. 2010) (citing *Dove v. Harvey*, 608 S.E.2d 798, 801 (N.C. Ct. App. 2005) (citing *Piedmont Inst. of Pain Mgmt. v. Staton Found.*, 581 S.E.2d 68, 76 (2003))). A fiduciary relationship is “one in which there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and due regard to the interests of the one reposing confidence[.]” *Dalton v. Camp*, 548 S.E.2d 704, 708 (N.C. 2001) (citation and internal quotation marks omitted).

91. UNC coaches, academic counselors and other representatives implored Plaintiffs and Class members to place their trust and confidence in UNC to care for them and their academic needs upon enrolling at UNC. Indeed, the assurance that Plaintiffs and Class members would become part of the Tar Heel Family and would be protected and cared for as family was a standard recruiting theme. In creating a relationship of trust and confidence with Plaintiffs and Class members, UNC coaches, academic counselors and other representatives created a fiduciary relationship with them.

92. Plaintiffs and Class members did put their trust in their coaches and academic counselors, relying on the coaches’ and academic counselors’ superior knowledge of higher education and academic planning and the coaches’ and academic counselors’ greater information regarding UNC’s curricular offerings.

93. UNC coaches and academic counselors breached their fiduciary duty to Plaintiffs and Class members by acting against their interests through funneling them into non-rigorous courses designed to produce high grades but not to educate. UNC coaches and academic counselors took advantage of their superior information and dominance over Plaintiffs and Class members to benefit UNC at the cost of Plaintiffs and Class members.

94. UNC's breach of its fiduciary duty has injured Plaintiffs and Class members, causing them economic losses and other general and specific damages.

COUNT III

VIOLATION OF N.C. GEN STAT. § 75-1.1, WHICH PROHIBITS UNFAIR AND DECEPTIVE TRADE PRACTICES

95. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

96. N.C. Gen Stat. § 75-1.1 is a comprehensive statute designed to provide procedures and remedies for practices that injure consumers. To prevail under N.C. Gen Stat. § 75-1.1, a plaintiff must prove a defendant engaged in "1) an unfair or deceptive act or practice . . . 2) in or affecting commerce, 3) which proximately caused actual injury to the plaintiff." *McInerney v. Pinehurst Area Realty*, 590 S.E.2d 313, 316 (N.C. Ct. App. 2004).

97. UNC violated N.C. Gen. Stat. § 75-1.1 in representing that it would provide a legitimate UNC education to Plaintiffs and the Class, when in fact it did not.

98. In recruiting Plaintiffs and Class members and enticing them to enter scholarship agreements, UNC engaged in unfair and deceptive acts and practices. When

recruiting student-athletes, UNC competes with other universities inside and outside of the state of North Carolina. Competition is fierce, because the teams with the most talented student-athletes are thought to have the highest likelihood of on-field success. In this recruiting competition, UNC emphasized the excellent academic instruction student-athletes would receive at UNC, but when the student-athletes arrived on campus they were funneled into UNC's "shadow curriculum" and other classes designed not to educate them.

99. UNC's recruitment of student-athletes is "in or affecting commerce." Collegiate athletics is big business, with universities spending, and making, millions of dollars on their athletics programs annually. UNC's athletic program has a practice of recruiting throughout the nation. Moreover, UNC's athletic teams, like other universities' athletic teams, travel nationally and sometimes internationally to compete. UNC's recruitment of student-athletes who will ultimately represent the university in intercollegiate competition and contribute to the sale of tickets, athletic jerseys, team paraphernalia, and game programs, certainly affects commerce.

100. UNC's deception in recruiting Plaintiffs and Class members and enticing them to enter scholarship agreements has proximately caused them actual injury. The "shadow curriculum" educations they received have lifelong consequences, hampering their cognitive strength and limiting their post-university career prospects. Absent UNC's misrepresentations and deceit, Plaintiffs and Class members would have been aware that accepting a scholarship to UNC meant a sub-standard education comprised of "shadow curriculum" courses and other meaningless courses and would have been able to

pursue opportunities at educational institutions true to their promises of a legitimate education.

COUNT IV

FRAUD IN THE INDUCEMENT

101. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

102. Under North Carolina law, the elements of fraud in the inducement are: “1) false representation or concealment of a material fact, 2) reasonably calculated to deceive, 3) made with intent to deceive, 4) which does in fact deceive, 5) resulting in damage to the injured party.” *Tradewinds Airlines, Inc. v. C-S Aviation Servs.*, 733 S.E.2d 162, 168 (N.C. Ct. App. 2012) (citation omitted).

103. In recruiting Plaintiffs and Class members to become student-athletes at UNC, UNC coaches, UNC academic counselors, and other UNC representatives represented that Plaintiffs and Class members would receive a UNC education. Indeed, UNC’s reputation as excelling in both academics and athletics was one of the school’s major selling points. This representation was calculated to deceive and made with the intent to deceive, and it did deceive, resulting in Plaintiffs and Class members accepting scholarship offers from UNC and enrolling at UNC with expectations of a legitimate UNC education.

104. In funneling Plaintiffs and Class members into the “shadow curriculum” and other non-rigorous courses rather than providing them a legitimate UNC education, UNC deprived Plaintiffs and Class members of the education UNC represented they

would receive. This caused them injury by stunting their intellectual and academic growth and hampering their future career options.

COUNT V

CONSTRUCTIVE FRAUD

105. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

106. Under North Carolina law, constructive fraud is born of “circumstances ‘(1) which created the relation of trust and confidence, and (2) led up to and surrounded the consummation of the transaction in which defendant is alleged to have taken advantage of his position of trust’” *State Ex Rel. Long v. Petree Stockton, L.L.P.*, 499 S.E.2d 790, 798 (N.C. Ct. App. 1998) (quoting *Rhodes v. Jones*, 61 S.E.2d 725, 726 (N.C. 1950)).

107. UNC encouraged Plaintiffs and Class members to view their coaches and academic counselors as well as other representatives as family from the very beginning of the university’s relationship with Plaintiffs and Class members. Indeed, the familial theme was critical to UNC’s recruitment of Plaintiffs and Class members.

108. Whether during coaches’ recruitment visits to Plaintiffs’ and Class members’ homes or during Plaintiffs’ and Class members’ recruitment visits to UNC to meet with coaches, academic counselors, and other UNC representatives, the theme was consistent: if you accept UNC’s scholarship offer, UNC will care for you as family and will look after your best interests.

109. This commitment to care for Plaintiffs and Class members as family with respect to academics as well as other aspects of college life was fundamental to Plaintiffs' and Class members' decisions to accept their UNC scholarship offers.

110. UNC's expressed commitment to embracing Plaintiffs and Class members as part of the Tar Heel Family continued through Plaintiffs' and Class members' time at UNC and beyond.

COUNT VI

FRAUDULENT CONCEALMENT

111. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

112. Under North Carolina law, “[i]n addition to the elements for fraud, a claim for fraudulent concealment requires that the Defendant have a duty to disclose material information to [Plaintiff]...” *Jacobson v. Walsh*, No. 10 CVS 9619, 2014 NCBC LEXIS 2, at *15-16 (N.C. Super. Ct. Jan. 22, 2014). A duty to speak may arise: (1) in the context of a fiduciary relationship, (2) where “a party has taken affirmative steps to conceal material facts from the other,” or (3) “where one party has knowledge of a latent defect in the subject matter of the negotiations about which the other party is both ignorant and unable to discover through reasonable diligence.” *Id.* at *16 (quoting *Harton v. Harton*, 344 S.E.2d 117, 119 (N.C. Ct. App. 1986)).

113. UNC had a fiduciary duty to care for to Plaintiffs and Class members.

114. UNC representatives, including coaches and academic counselors, consistently reaffirmed and articulated this duty of care as they recruited Plaintiffs and Class members and while Plaintiffs and Class members were in school at UNC.

115. Notwithstanding this duty of care, UNC representatives induced Plaintiffs and Class Members to accept scholarship agreements to UNC with promises of a UNC education. In doing so, UNC representatives did not disclose their intent to funnel Plaintiffs and Class members into academic tracks that benefitted the university at the expense of Plaintiffs and Class members. Plaintiffs and Class members were ignorant of UNC's intent and could not have through reasonable diligence discovered it.

116. Once Plaintiffs and Class members accepted their scholarships and began school at UNC, UNC coaches, academic counselors, and other representatives relied on the trust and confidence that Plaintiffs and Class members placed in them to conceal from Plaintiffs and Class members the detriment they would suffer from being funneled as such. Further, UNC did not disclose to Plaintiffs and Class members that UNC was funneling Plaintiffs and Class members as such pursuant to a university-wide scheme to achieve institutional athletic gains at their academic expense.

117. On the contrary, UNC concealed that information from Plaintiffs and Class members and ensured Plaintiffs and Class members that the academic tracks they were compelled to follow were selected with Plaintiffs' and Class members' best interests in mind and would not disadvantage them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendant and in favor of Plaintiffs and the Class and award the following relief:

- A. An order certifying this action as a class action pursuant to Federal Rule of Civil Procedure 23, declaring Plaintiffs as representatives of the defined Class and Plaintiffs' counsel as counsel for such Class;

- B. An order granting Plaintiffs and the Class actual and punitive damages for breach of contract, breach of fiduciary duty, fraud, and violations of N.C. Gen. Stat. § 75-1.1(a);
- C. An order granting Plaintiffs and the Class costs of suit, reasonable attorney's fees and expenses;
- D. An order granting Plaintiffs and the Class appropriate injunctive and declaratory relief, including but not limited to:
 - 1) A court appointee reviewing the curriculum and course selection for all student-athletes going forward for five years; and
 - 2) Provision of four-year guaranteed scholarships to all student-athletes going forward.
- E. An order granting Plaintiffs and the Class such other, further and different relief as the nature of the case may require or as may be determined to be just, equitable and proper by this Court.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a jury trial on all issues.

This 24th day of February, 2015.

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