

STATE OF NORTH CAROLINA
 MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR DIVISION

15-CVS 3720

3:08

C.S.C.

JAMES ARNOLD and LEAH METCALF,)
 individually, and on behalf of all others similarly)
 situated,)

Plaintiffs,)

v.)

THE UNIVERSITY OF NORTH CAROLINA)
 AT CHAPEL HILL,)

Defendant.)

CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

I. INTRODUCTION

Plaintiffs James Arnold and Leah Metcalf, by and through their attorneys, file this complaint against Defendant University of North Carolina at Chapel Hill ("UNC") on behalf of themselves and others similarly situated, and state as follows:

1. Between 1993 and at least 2011, UNC entered into scholarship agreements with student-athletes under which the student-athletes agreed to become students at, and participate in athletics for, UNC. UNC coaches, academic counselors, and other representatives enticed these student-athletes to sign the agreements with promises of a UNC education, which is widely regarded as one of the best public university educations available in the United States. They did so through gaining the student-athletes' trust and confidence and assuring that the student-athletes would be cared for as part of the UNC Tar Heel Family, not only while in college but for life. UNC, however, did not provide the promised education. Instead, through a system encouraged and supported by UNC

administrators, academic counselors, faculty members, and Athletic Department staff, 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 Court has personal jurisdiction over Plaintiffs and Defendant pursuant to N.C. Gen. Stat. § 1-75.4. Plaintiffs James Arnold and Leah Metcalf are natural persons domiciled in North Carolina, and Defendant UNC is engaged in substantial activity within North Carolina. Additionally, the claims arise out of acts and omissions by UNC that occurred within North Carolina.

16. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-82. Defendant UNC resides in Orange County, North Carolina.

17. This class action involves more than \$10,000.00 in damages and arises under the General Statutes of North Carolina and North Carolina common law.

III. PARTIES

18. Plaintiff Leah Metcalf is domiciled in North Carolina and was a student-athlete at UNC in 2001, 2002, 2003, 2004, and 2005.

19. Plaintiff James Arnold is domiciled in North Carolina and was a student-athlete at UNC in 2005, 2006, 2007, 2008, and 2009.

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. Concerns 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

LEAH METCALF

49. Leah Metcalf was an honors and AP student at Charlotte Christian High School in Charlotte, North Carolina. She was also a standout basketball player, earning all-state honors as a senior. She was heavily recruited by many universities and made clear to those recruiting her, including coaches at UNC, that she aspired to be a physician like her father.

50. When UNC Women's Basketball Head Coach Sylvia Hatchell visited Ms. Metcalf's home in the fall of 2000 to recruit her, Coach Hatchell explained that UNC offered an excellent combination of great academics and great basketball. Sitting with Ms. Metcalf and her parents, Coach Hatchell emphasized UNC's academic prestige and rigor and spoke about the opportunities that a UNC degree would afford Ms. Metcalf. Coach Hatchell emphasized the same points during Ms. Metcalf's official visit to UNC later in the fall of 2000. During that visit, Ms. Metcalf met Jan Boxill, a UNC ASPSA counselor who would later become Ms. Metcalf's academic counselor as well as Chair of the UNC Faculty. Ms. Boxill, knowing that Ms. Metcalf was interested in becoming a doctor, raved about UNC's medical school and the accolades it had received. Ms. Boxill and Coach Hatchell assured Ms. Metcalf that she would be well cared for as a part of the Tar Heel Family if she accepted UNC's scholarship offer.

51. Throughout Ms. Metcalf's recruitment, Coach Hatchell as well as her assistant coaches consistently stressed the extent to which Ms. Metcalf would be gaining a new family if she played for UNC. For instance, in weekly "check-in" calls while UNC was recruiting Ms. Metcalf, Assistant Coach Tracey Williams took a motherly tone,

expressing concern for Ms. Metcalf's best interests and assuring Ms. Metcalf that she could trust, and put confidence in, her and the university. Coach Williams took a similar tone in hand-written greeting cards she periodically sent Ms. Metcalf. For example:

Leah! It was so great to talk with you last night. We are excited about you and about your family becoming a part of our family. As a matter of fact I am thinking about jumping in the car to come see you right now. Leah, you are special and we want you as a part of our family. God Bless,
Coach Williams.

52. Ms. Metcalf was persuaded as to the merits of playing basketball at UNC in exchange for the excellent education she was assured she would receive. Indeed, Ms. Metcalf was so enthusiastic about the academic and athletic excellence UNC purportedly offered that she committed to UNC by early decision. She rejected the scholarship offer she had received from Virginia Tech, withdrew from the recruiting process before she could receive any other offers, and signed a scholarship agreement with UNC. If not for the promise of a good education and a second family to care for her at UNC, Ms. Metcalf would not have signed the scholarship agreement to attend UNC.

53. Ms. Metcalf's coaches continued to emphasize her inclusion in the Tar Heel Family once she arrived on campus. Coach Williams invited Ms. Metcalf and her teammates to her home to cook for them and consistently told them they could trust her. Ms. Boxill told her the same, referencing the bond formed as members of the Tar Heel Family.

54. Ms. Metcalf initially planned to study biology, but she eventually concluded mathematics would be more to her liking. Either way, her plan was to pursue medicine in graduate school.

55. However, during a first-year academic advising session with Ms. Boxill, which included the women's basketball team's five freshmen, Ms. Metcalf realized that pursuing her academic aspirations would be extremely difficult, because she and her teammates were advised against choosing a major that would involve courses that would conflict with basketball.

56. Notwithstanding the pressure to pursue a light workload, Ms. Metcalf committed to major in mathematics. Ms. Boxill did not try to dissuade Ms. Metcalf, but insisted that outside of the courses required for the mathematics major, Ms. Metcalf should take relatively easy courses. Ms. Boxill explained that mathematics is a challenging discipline and that Ms. Metcalf should balance out her schedule with less challenging courses, namely AAAS courses.

57. Ms. Metcalf completely trusted Ms. Boxill's counsel, and so she accepted the advice. And when Ms. Boxill advised Ms. Metcalf to continue taking AAAS courses such that she could major in AAAS, in addition to mathematics, Ms. Metcalf did so. Even then, Ms. Boxill and Ms. Metcalf's coaches advised Ms. Metcalf to delay officially declaring her mathematics major for as long as possible, upon information and belief to delay application of a rule requiring that students take fifty percent of their classes in their major, once declared.

58. Ms. Metcalf was confident that as a member of the Tar Heel Family, the advice she received from Ms. Boxill and others was sound and in her best academic interests.

59. Upon graduating in 2006, Ms. Metcalf worked in a clerical position in Charlotte, North Carolina at US Sports Management, Inc., and as a camp counselor for

youth at the YMCA before deciding to play basketball in Europe, which she has been doing since. She has abandoned her plans to be a physician and is uncertain what she will do when she stops playing.

JAMES ARNOLD

60. James Arnold was a strong student and a high school all-state football player on both offense and defense at Davie High School in Mocksville, North Carolina. He was widely recruited and received scholarship offers from Clemson University, Auburn University, Wake Forest University, and UNC. Of the four universities, all of which boasted strong football teams, UNC was, in Mr. Arnold's view, easily the strongest academic institution. Moreover, Mr. Arnold aspired to study computer programming, and he was pleased that UNC offered a major in computer science.

61. Mr. Arnold had been interested in computers for years. In high school, he spent time whenever he could helping the school's IT specialist with the school's computers. She helped Mr. Arnold build his first computer, and he soon became quite proficient at building computers. Mr. Arnold intended to pursue computer programming at UNC.

62. When UNC Defensive Coordinator Marvin Sanders visited Mr. Arnold's home during the fall of 2004 to recruit him, Coach Sanders intensified Mr. Arnold's interest in attending UNC. Mr. Arnold told Coach Sanders that he wanted to major in computer science, and Coach Sanders told Mr. Arnold and his parents that UNC would be an excellent choice for him. Coach Sanders stressed that "UNC is a great place to get an education" and that "it is one of the nation's top-ranked schools." In addition, Coach

Sanders made clear that Mr. Arnold would have a good chance of earning playing time on the football field.

63. At the time, Wake Forest was recruiting Mr. Arnold heavily, and after Coach Sanders' visit, Wake Forest coaches called Mr. Arnold in hopes that they could sign him. Like UNC, Wake Forest offered Mr. Arnold the chance to earn playing time, but based on conversations with UNC and Wake Forest coaches and recruiters, Mr. Arnold believed he would receive a better education in computer science at UNC. Mr. Arnold declined Wake Forest's offer and signed a scholarship agreement with UNC.

64. During Mr. Arnold's recruitment and once he arrived on UNC's campus, his coaches and academic counselors impressed upon him that he was a part of the Tar Heel Family and that he could trust them.

65. At the beginning of his freshman year, Mr. Arnold was given a pre-assigned course schedule that featured "shadow curriculum" courses in the AAAS department. He asked his academic counselor, Ms. Reynolds, about the courses, noting that he had not expressed an interest in African or African-American Studies, and she explained that as a football player it was important that he take the courses. Because he had placed trust in Ms. Reynolds and UNC generally, he accepted her counsel.

66. When Mr. Arnold asked how the courses in which he was enrolled would impact his desire to major in computer science, Ms. Reynolds explained that majoring in computer science would not be a possibility. She explained that the labs required as a part of computer science classes would conflict with football obligations.

67. Mr. Arnold was extremely disappointed, but as a second choice, he opted to major in business management, which also interested him. Ms. Reynolds disapproved

of that academic track as well, again stating that it would interfere with football. She explained: "It would be better for you if we put you in African American studies."

68. Ms. Reynolds made clear that as a football player Mr. Arnold should follow the prescribed academic track. Mr. Arnold wanted to play football, was reliant on his football scholarship to finance his education, and trusted that Ms. Reynolds, as his academic counselor, had his academic best interests in mind, so he complied. He took the assigned classes and majored in African and African-American Studies, graduating in 2009.

69. After graduating, Mr. Arnold was unable to get a job requiring a collegiate degree. He worked at a steel warehouse, briefly played Arena Football, and then worked at a Rent-A-Center location. He now works in Durham, North Carolina as a manager in training at H.H. Gregg, which does not require a college degree.

VI. CLASS ACTION ALLEGATIONS

70. Plaintiffs bring this action pursuant to N.C. Gen. Stat. § 1A-1, Rule 23 on behalf of all persons who attended UNC on athletic scholarships between 1993 and at least 2011.

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

72. 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.

73. Plaintiffs' claims are typical of the claims of each Class member.

74. 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.

75. 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.

76. 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.

77. 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.

78. Class action status is warranted under N.C. Gen. Stat. § 1A-1, Rule 23 because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

79. Class action status is also warranted under N.C. Gen. Stat. § 1A-1, Rule 23 because the prosecution of separate actions by or against 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.

80. Class action status is also warranted under N.C. Gen. Stat. § 1A-1, Rule 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.

81. Class action status is also warranted under N.C. Gen. Stat. § 1A-1, Rule 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

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

83. Under North Carolina law, the elements for 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).

84. 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)).

85. In offering an athletic scholarship 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

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

87. 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).

88. 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 the university. 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.

89. 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.

90. 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.

91. 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

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

93. 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).

94. 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.

95. 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.

96. 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.

97. 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

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

99. 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).

100. 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.

101. 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

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

103. 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)).

104. 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.

105. 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.

106. 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.

107. 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

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

109. 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)).

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

111. 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.

112. 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.

113. 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 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.

114. 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 N.C. Gen. Stat. § 1A-1, Rule 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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