

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

ELAINE LETT, as attorney-in-fact of Earl Lett, individually and on behalf of all others similarly situated,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Defendant.

Case No. 1:19-cv-815

COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Elaine Lett, as attorney-in-fact of Earl Lett, individually and on behalf of all others similarly situated, brings this Class Action Complaint and Demand for Jury Trial against Defendant National Collegiate Athletic Association (“NCAA”) to obtain redress for injuries sustained a result of Defendant’s reckless disregard for the health and safety of generations of North Carolina A&T State University (“NCAT”) student-athletes. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, including the acts and experiences of Earl Lett, and, as to all other matters, upon information and belief.

INTRODUCTION

1. Nearly one hundred thousand student-athletes sign up to compete in college football each year, and it’s no surprise why. Football is America’s sport and Earl Lett and a Class of football players (defined below) were raised to live and breathe the game. During football season, there are entire days of the week that millions of Americans dedicate to watching the game. Hundreds of thousands of fans fill stadium seats and even more watch around the world. Before each game, these players—often mere teenagers—are riled up and told to do whatever it

takes to win and, when playing, are motivated to do whatever it takes to keep going.

2. But up until 2010, Defendant NCAA kept players and the public in the dark about an epidemic that was slowly killing college athletes.

3. During the course of a college football season, athletes absorb more than 1,000 impacts greater than 10 Gs (gravitational force) and, worse yet, the majority of football-related hits to the head exceed 20 Gs, with some approaching 100 Gs. To put this in perspective, if you drove your car into a wall at twenty-five miles per hour and weren't wearing a seatbelt, the force of you hitting the windshield would be around 100 Gs. Thus, each season these 18, 19, 20, and 21-year-old student-athletes are subjected to repeated car accidents.

4. Over time, the repetitive and violent impacts to players' heads led to repeated concussions that severely increased their risks of long-term brain injuries, including memory loss, dementia, depression, Chronic Traumatic Encephalopathy ("CTE"), Parkinson's disease, and other related symptoms.

5. For decades, Defendant NCAA knew about the debilitating long-term dangers of concussions, concussion-related injuries, and sub-concussive injuries (referred to as "traumatic brain injuries" or "TBIs") that resulted from playing college football, but recklessly disregarded this information to protect the very profitable business of "amateur" college football.

6. While in school, NCAT football players were under Defendant's care. Unfortunately, Defendant did not care about the off-field consequences that would haunt students such as Earl Lett for the rest of their lives.

7. Despite knowing for decades of a vast body of scientific research describing the danger of traumatic brain injuries ("TBIs") like those Earl Lett experienced, Defendant failed to

implement adequate procedures to protect Earl Lett and other NCAT football players from the long-term dangers associated with them. They did so knowingly and for profit.

8. As a direct result of Defendant's acts and omissions, Earl Lett and countless other former NCAT football players suffered brain and other neurocognitive injuries from playing NCAA football. As such, Plaintiff, as attorney-in-fact of Earl Lett, brings this Class Action Complaint in order to vindicate those players' rights and hold the NCAA accountable.

PARTIES

9. Plaintiff Elaine Lett is a natural person and citizen of the State of Georgia. Earl Lett is also a natural person and citizen of the State of Georgia. On June 1, 2018, Plaintiff Elaine Lett was appointed attorney-in-fact of Earl Lett. (*See* Durable Property Management Power of Attorney, attached hereto as Exhibit A.)

10. Defendant NCAA is an unincorporated association with its principal place of business located at 700 West Washington Street, Indianapolis, Indiana 46206. Defendant NCAA is not organized under the laws of any State, but is registered as a tax-exempt organization with the Internal Revenue Service. As such, Defendant NCAA is a citizen of the State of Indiana pursuant to 28 U.S.C. § 1332(d)(10).

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. § 1332(d)(2) because (a) at least one member of the Class, which consists of at least 100 members, is a citizen of a different state than Defendant, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

12. This Court has personal jurisdiction over Defendant NCAA because it conducts significant business in this District, including establishing consumer and business contracts here, and because it maintains its principal place of business in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in and/or emanated from this District, and because Defendant NCAA resides here.

FACTUAL BACKGROUND

I. Defendant Had A Duty To Protect NCAT Student-Athletes, Including Earl Lett.

14. The NCAA is the governing body of collegiate athletics that oversees twenty-three college sports and over 400,000 students who participate in intercollegiate athletics, including the football program at NCAT. According to the NCAA, more than 1,200 schools, conferences and affiliate organizations collectively invest in improving the experiences of athletes—on the field, in the classroom, and in life.

15. The NCAA brings in more than \$750 million in revenue each year and is the most significant college sports-governing body in the United States.

16. The NCAA plays a significant role in governing and regulating the NCAT football program and owes a duty to safeguard the well-being of its student-athletes.

17. In fact, since its founding in 1906, the NCAA (then the Intercollegiate Athletic Association of the United States (“IAAUS”)), has claimed to be “dedicated to safeguarding the well-being of student-athletes and equipping them with the skills to succeed on the playing field, in the classroom and throughout life.”¹ The IAAUS was specifically formed for this purpose

¹ *Who We Are*, Nat'l Collegiate Athletic Ass'n, <http://www.ncaa.org/about/who-we-are> (last visited February 25, 2019).

because, at the turn of the twentieth century, head injuries were occurring at an alarming rate in college football. In response, President Theodore Roosevelt convened a group of Ivy League university presidents and coaches to discuss how the game could be made safer. After several subsequent meetings of colleges, the NCAA was established.²

18. As such, the genesis of the NCAA was for a singular goal: “to keep college athletes safe.”³

19. The overarching principles of the NCAA, including its purported commitment to safeguarding its athletes, are contained in the NCAA Constitution. The NCAA Constitution clearly defines the NCAA’s purpose and fundamental policies to include maintaining control over and responsibility for intercollegiate sports and athletes. The NCAA Constitution states:

The purposes of this Association are:

- (a) To initiate, stimulate and improve intercollegiate athletics programs for athletes;
- (b) To uphold the principal of institutional control of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this association;

NCAA Const., Art. 1, § 1.2(a)(b).

20. The NCAA Constitution also defines one of its “Fundamental Policies” as the requirement that “[m]ember institutions shall be obligated to apply and enforce this legislation, and the enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.” NCAA Const., Art. 1, § 1.3.2.

² In 1910, the IAAUS changed its name to the National Collegiate Athletic Association.

³ *Well-Being*, Nat’l Collegiate Athletic Ass’n, <http://www.ncaa.org/health-and-safety> (last visited February 25, 2019).

21. Article 2.2 of the NCAA Constitution specifically governs the “Principle of Student-Athlete Well-Being,” and provides:

2.2 The Principle of Student-Athlete Well-Being.

Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student athletes. (Revised: 11/21/05.)

2.2.3 Health and Safety.

It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student athletes. (Adopted: 1/10/95.)

22. To accomplish this purpose, the NCAA promulgates and implements standard sport regulations and requirements, such as are the NCAA Constitution, Operating Bylaws, and Administrative Bylaws. These NCAA documents provide detailed instructions on game and practice rules, player eligibility, scholarships, and player well-being and safety. Both NCAA member institutions, including schools like NCAT, and NCAA conferences are obligated to abide by the NCAA’s rules and requirements. Specifically, according to the NCAA Constitution: “Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs . . . Members of an institution’s staff, athletes, and other individuals and groups representing the institution’s athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.” NCAA Const., Art. 2, § 2.8.1.

23. The NCAA publishes a health and safety guide termed the Sports Medicine Handbook (the “Handbook”). The Handbook, which is produced annually, includes the NCAA’s official policies and guidelines for the treatment and prevention of sports-related injuries, as well as return-to-play guidelines, and recognizes that “student-athletes rightfully assume that those who sponsor intercollegiate athletics have taken reasonable precautions to minimize the risk of

injury from athletics participation.”⁴

24. The NCAA, therefore, holds itself out as both a proponent of and authority on the treatment and prevention of sports-related injuries upon which NCAA athletes (including Earl Lett), NCAT, and all other member institutions can rely for guidance on player-safety issues.

25. Earl Lett—and other football players at NCAT—relied upon the NCAA’s authority and guidance to protect his health and safety by treating and preventing head-related injuries, including the effects of those head injuries later on in his life.

26. As compared to Earl Lett and other NCAT football players, the NCAA was in a superior position to know of and mitigate the risks of sustaining concussions and other TBIs while playing football at NCAT. It failed to do so.

II. Decades of Studies Firmly Establish the Dangers of Football-Related Concussions.

27. Throughout the twentieth century and into the twenty-first century, studies have firmly established that repetitive and violent impacts to the head can cause concussions and TBIs, with a heightened risk of long-term injuries and impacts, including—but not limited to—memory loss, dementia, depression, Alzheimer’s disease, Parkinson’s disease, and CTE.

28. Such violent impacts to the head are a one-way street for those who experience them. As Jonathan J. Russin—Assistant Surgical Director at the USC Neurorestoration Center at the Keck School of Medicine—has stated, “there’s no way to undo a traumatic brain injury,” and one’s “best bet is to avoid concussions altogether.”⁵

⁴ John T. Parsons, *2014-15 NCAA Sports Med. Handbook*, NAT’L COLLEGIATE ATHLETIC ASS’N (Aug. 2014), available at <https://bit.ly/2QD5DUx>.

⁵ Deanna Pai, *Do Concussions Increase the Risk of Stroke or Brain Cancer?*, Keck Med. of USC, <https://bit.ly/2MzSkkC> (last visited February 25, 2019).

29. To better understand the results of these studies, a brief introduction to concussions in football follows.

A. An Overview of Concussions in Football.

30. A TBI is an injury to the brain that comes as the result of the application of either external physical force or rapid acceleration and deceleration forces, which disrupts brain function in a manner that causes impairments in cognitive and/or physical function.

31. A concussion is a TBI initiated by an impact to the head, which causes the head and brain to move rapidly back and forth. The movement causes the brain to bounce around or twist within the skull, damaging brain cells and leading to harmful chemical changes in the brain.

32. The human brain is made of soft tissue, cushioned by spinal fluid, and encased in a hard skull. During everyday activity, the spinal fluid protects the brain from crashing against the skull. But relatively minor impacts—including not only direct blows to the head, but also blows to the body and movements that cause the neck to whiplash—can move the brain enough to press through the spinal fluid, knock against the inside of the skull, and cause concussions.

33. Concussions typically occur when linear and rotational accelerations impact the brain through either direct impact to the head or indirect impacts that whiplash the head. During the course of a college football season, studies have shown that athletes can receive more than 1,000 impacts greater than 10 Gs. This is slightly more force than a fighter pilot receives from performing maximal maneuvers. The majority of football-related hits to the head exceed 20 Gs, with some going well over 100 Gs.

34. Kevin Guskiewicz, of the University of North Carolina's Sports Concussion Research Program, compared the impacts sustained in a routine college football practice to crashing a car: "If you drove your car into a wall at twenty-five miles per hour and you weren't

wearing your seat belt, the force of your head hitting the windshield would be around 100 [Gs]: in effect, the player [who sustained two hits above 80 Gs] had two car accidents that morning.”⁶

i. *Concussion Symptoms.*

35. When a collegiate athlete suffers a severe impact to the head, he may experience concussion-related symptoms, including:

- “seeing stars” and feeling dazed, dizzy, or lightheaded;
- memory loss;
- nausea or vomiting;
- headaches;
- blurred vision and sensitivity to light;
- slurred speech or saying things that do not make sense;
- difficulty concentrating, thinking, or making decisions;
- difficulty with coordination or balance;
- feeling anxious or irritable for no apparent reason; and
- feeling overly tired.

36. A collegiate athlete may not recognize the signs and/or symptoms of a concussion, and, more often, the effect of the concussion itself prevents him from recognizing them. Because of that, he may put himself at risk of further injury by returning to a game after a concussion. Brains that have not had time to properly heal from a concussion are particularly susceptible to further injury.

ii. *Post-Concussion Treatment.*

⁶ Malcolm Gladwell, *Offensive Play*, *The New Yorker* (October 19, 2009) <http://www.newyorker.com/magazine/2009/10/19/offensive-play>.

37. After a concussion, the brain needs time to heal. Doctors generally prohibit individuals from returning to normal activities—certainly including contact sports—until all symptoms have subsided. They do so because, immediately after a concussion, the brain is particularly vulnerable to further injury. Even after the immediate effects have worn off, a person who has suffered a concussion is four to six times more likely to receive another concussion than a person who has been concussion-free.

38. The length of the healing process varies from person to person and from concussion to concussion. Symptoms may even last for one or two weeks.

39. Individuals who do not recover from a concussion within a few weeks are diagnosed with post-concussion syndrome. The symptoms of post-concussion syndrome can last for months, and sometimes can even be permanent. Generally, people suffering from post-concussion syndrome are referred to specialists for additional medical help.

40. Still, many people think of concussions as short-term, temporary injuries. However, decades of scientific research demonstrate the effects of concussions are anything but temporary.

B. Studies Confirm the Dangers and Long-Term Effects of Concussions.

41. Two of the leading studies of the long-term effects of concussions were conducted by Boston University's Center for the Study of Traumatic Encephalopathy and the Brain Injury Research Institute. These studies showed the "devastating consequences" of repeated concussions, including that they lead to an increased risk of depression, dementia, and suicide. These studies have also demonstrated that repeated concussions trigger progressive degeneration of the brain tissue, including the build-up of an abnormal protein called the tau protein.

42. Between 2002 and 2007, Dr. Bennett Omalu of the Brain Injury Research Institute

examined the brains of five former NFL players: Andre Waters, Mike Webster, Terry Long, Justin Strzelczyk, and Damien Nash. Waters killed himself; Nash died unexpectedly at the age of 24; Webster, homeless and cognitively impaired, died of heart failure; and Strzelczyk died driving the wrong way down a highway at 90 miles per hour. Four of the five brains showed the telltale characteristics of CTE—a progressive, degenerative disease of the brain found in people with a history of repetitive brain trauma.

43. In his early studies, Dr. Robert Cantu of the Boston University Center for the Study of Traumatic Encephalopathy found evidence of CTE in 90 of 94 (96%) autopsied brains of former NFL players. A recent update to these studies found CTE in a staggering 110 of 111 (99%) former NFL players and 48 of 53 former college players (91%).⁷

44. These more recent studies were neither aberrations nor surprises but confirmations of what was already known or readily apparent from the existing medical literature.

45. Studies like these, which establish the devastating dangers related to TBIs, date back to the early twentieth century. For example, in an article in the 1905 multi-volume medical text *A System of Medicine*, surgeon Sir William Bennett noted that the dangers from TBIs can arise just as easily when “no loss of consciousness occurs at all,” and that such injuries “may in the end have far graver results” due to their “escap[ing] treatment altogether in the first instance” given their less severe appearance.⁸ Bennett noted that the imposition of a strict treatment regimen immediately after an injury, during initial recovery, and following the initial recovery

⁷ Jesse Mez, MD, MS, *et al.*, *Clinicopathological Evaluation of Chronic Traumatic Encephalopathy in Players of American Football*, 318 JAMA 4, 360–370 (2017).

⁸ Sir William Bennett, *Some Milder Forms of Concussion of the Brain*, A Sys. of Med. Vol. 8 231-32 (2d ed. 1910).

period, was essential to the “treatment of all cases of concussion of the brain, whether they be severe or slight.”

46. Some early articles from this period began to recognize the unique dangers presented by football, specifically. The editors of the *Journal of the American Medical Association* recognized the long-term risks of such head injuries very early on, writing in 1905 that “[t]o be a cripple or lunatic for life is paying high for athletic emulation” via football.⁹ Similarly, the risks of concussion in football were discussed in a 1906 article by Dr. Edward Nichols, who observed that a concussed player might go through multiple plays before his teammates noticed his altered mental state.¹⁰

47. Beginning with studies on the brain injuries suffered by boxers in the 1920s, medical science began to clearly recognize the debilitating effects of concussions and other TBIs, connect it to contact sports (including football), and find that repetitive head impacts can cause permanent brain damage and increased risk of long-term cognitive decline and disability.

48. For instance, in 1927, Drs. Michael Osnato and Vincent Giliberti discussed a disease they called traumatic encephalitis in an article on post-concussion damage in *Archives of Neurology & Psychiatry*, concluding that brain disease could manifest in “young men knocked out in football and other games,” but noting that the issue had “not received adequate attention.”¹¹ Then, in 1928, Pathologist Dr. Harrison Martland published a study called “Punch Drunk” in the *Journal of the American Medical Association*, where he described the clinical

⁹ Editors, *The Football Mortality*, 39 JAMA 1464 (1905).

¹⁰ Edward Nichols, *The Physical Aspect of American Football*, 154 Boston Med. & Surgical J.1 (1906).

¹¹ Michael Osnato & Vincent Giliberti, *Postconcussion Neurosis-Traumatic Encephalitis*, 18 Archives of Neurology & Psychiatry 181 (1927).

spectrum of abnormalities found in nearly 50 percent of boxers who had been knocked out or who had suffered a considerable impact to the head.¹²

49. Countless studies were later conducted on boxers suffering chronic neurological symptoms as a result of repeated head injuries, and who displayed signs of dementia and impairment of motor functions.¹³ As incidents of chronic encephalopathy increased, they were often characterized as a “Parkinsonian” pattern of progressive decline. However, in a chapter of a mid-twentieth century book on brain injuries, psychiatrists Karl M. Bowman and Abram Blau coined the term “chronic traumatic encephalopathy” to explain the deterioration of a boxer’s mental state over time.¹⁴

50. In 1936, Dr. Edward J. Carroll, Jr. wrote an article further recognizing “punch-drunk syndrome’s” seriousness, stating that “no head blow is taken with impunity, and [] each knock-out causes definite and irreparable damage. If such trauma is repeated for a long enough period, it is inevitable that nerve cell insufficiency will develop ultimately, and the individual will become punch-drunk.” He also noted that in addition to boxers, punch drunk had been recognized among football players.¹⁵

51. The next year, the American Football Coaches Association published a report

¹² Dr. Harrison S. Martland, *Punch Drunk*, 91 JAMA 1103 (1928).

¹³ See, e.g., E. Guttman & C.E. Winterstein, *Disturbances of Consciousness After Head Injuries: Observations on Boxers*, 84 J. of Mental Sci. 347 (Mar. 1938); Harry L. Parker, *Traumatic Encephalopathy ('Punch Drunk') of Professional Pugilists*, 15 J. of Neurology & Psychopathology 20 (July 1934); C.E. Winterstein, *Head Injuries Attributable to Boxing*, 2 Lancet 719 (Sept. 1937).

¹⁴ K.M. Bowman & A. Blau, *Psychotic States Following Head and Brain Injury in Adults and Children*, *Injuries of the Skull, Brain and Spinal Cord: Neuropsychiatric, Surgical, and Medico-Legal Aspects* 309 (S. Brock, ed. 1940).

¹⁵ Edward J. Carroll, Jr., *Punch-Drunk*, 191 Am. J. Med. Sci. 706 (1936).

warning that players who suffer even “one concussion” should be removed from play.¹⁶

52. In 1952, an article published in *The New England Journal of Medicine* first recommended a “three-strike rule” for concussions in football, demanding that players cease to play football permanently after receiving their third concussion.¹⁷

53. Starting in the late 1960’s, the medical community began focusing on the effects of concussion-related injuries in football. In a 1967 study, Drs. John R. Hughes and D. Eugene Hendrix examined how severe impacts affected brain activity in football players by utilizing electroencephalograms (“EEGs”).¹⁸ Several years after that, a potentially fatal condition known as “Second Impact Syndrome” was identified, which is a re-injury to an already-concussed brain that triggers swelling the skull cannot accommodate.

54. In 1975, the Chief Medical Officer of the British Boxing Board of Control suggested boxers were not the only persons or athletes vulnerable to the risk of long-term brain injuries, stating:

Irreversible brain damage caused by regular excessive punching can cause a boxer to become punch drunk, a condition known euphemistically in medical terms as [Chronic] Traumatic Encephalopathy. The condition can be caused by other hazards of contact sports—taking too many falls while hunting or steep chasing or the continual use of brute force rather than skill in the rugby field or heading a football incessantly over many years. **Anything which entails intermittent trauma to the head can cause it.**¹⁹

¹⁶ Proceedings of the Seventeenth Annual Meeting of the American Football Coaches Association (Dec. 29, 1937) (“Sports demanding personal contact should be eliminated after an individual has suffered a concussion”).

¹⁷ Augustus Thorndike, *Serious Recurrent Injuries of Athletes—Contraindications to Further Competitive Participation*, 247 *New Eng. J. Med.* 554, 555-56 (1952).

¹⁸ John R. Hughes & D. Eugene Hendrix, *Telemetered EEG From A Football Player In Action*, 24 *Electroencephalography & Clin. Neurophysiology* 183 (1968).

¹⁹ J.W. Graham, *Eight, Nine, Out! Fifty Years as Boxer’s Doctor*, 56 (1975).

55. Overall, countless studies—published in prominent medical journals such as the *Journal of the American Medical Association*, *Neurology*, *The New England Journal of Medicine*, and *Lancet*—warned of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions and head injuries. These studies collectively established that:

- repetitive head trauma in contact sports, including football, has potential dangerous long-term effects on brain function;
- traumatic encephalopathy (dementia pugilistica) is caused by repeated sub-concussive and concussive blows to the head;
- acceleration and rapid deceleration of the head that results in brief loss of consciousness also results in a tearing of the axons (brain cells) in the brainstem;
- with respect to head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete’s career;
- immediate retrograde memory issues occur following concussions;
- head injuries require recovery time without risk of subjection to further injury;
- a football player who suffers a concussion requires significant rest before being subjected to further contact; and
- minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

56. As a result of these studies, medical professionals began recommending changes to the game of football and how concussion-related injuries should be handled.

57. By 1991, Dr. Robert Cantu, the American Academy of Neurology, and the Colorado Medical Society had developed return-to-play criteria for football players suspected of sustained head injuries.

58. In 2003, an NCAA concussion study concluded that football players who had previously sustained a concussion were more likely to have future concussion injuries. Another

2003 NCAA concussion study concluded that collegiate football players “may require several days for recovery of symptoms, cognitive dysfunction, and postural instability after [a] concussion,” and that concussions are “followed by a complex cascade of ionic, metabolic, and physiological events that can adversely affect cerebral function for several days to weeks.”²⁰

59. Following these studies, in 2004, the National Athletic Trainers’ Association published a position statement, recommending baseline cognitive and postural-stability testing, as well as return-to-play recommendations, including holding out athletes who exhibit symptoms of a suspected head injury.

60. Building upon that, a convention of neurological experts met in Prague in 2004 with the aim of providing recommendations for the improvement of safety and health of athletes who suffer concussive injuries in ice hockey, rugby, football, and other sports, based on the most up-to-date research. These experts recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

61. Ultimately, while the NCAA knew of the harmful effects of TBIs (and other head injuries) on athletes for decades, they ignored these facts and failed to institute any meaningful methods of warning and/or protecting the athletes, including football players like Earl Lett and other NCAT student-athletes. For the NCAA, the continued expansion and operation of college football was simply too profitable to put at risk.

III. The NCAA Breached Its Duties to its Student-Athletes, Including Earl Lett, by Ignoring the Dangers of Concussions and Failing to Implement Adequate Concussion Management Protocols.

62. For decades, the NCAA has been aware—through its own institutional

²⁰ Michael McCrea, *et al.*, *Acute Effects and Recovery Time Following Concussion in Collegiate Football Players, The NCAA Concussion Study, The Journal of the Am. Med. Ass’n* (November 19, 2003), available at <http://jama.jamanetwork.com/article.aspx?articleid=197668>.

knowledge, internal research, and current medical science, among other sources of information—that severe and/or repeated head impacts can lead to long-term brain injuries, including memory loss, dementia, depression, and CTE. Unfortunately, while the NCAA knew about the harmful and devastating effects of these sub-concussive and concussive injuries, it recklessly ignored these facts and failed to implement reasonable concussion management protocols to protect its athletes, including Earl Lett.

63. Such conduct stands in stark contrast to the NCAA’s approach in comparable contexts. For instance, in 1960, the NCAA wholly discontinued its relationship with collegiate boxing following widespread criticism of the sport’s dangers and a heightened organizational awareness of the long-term risks student boxers faced—including, but not limited to, developing “punch drunk syndrome.” But as to college football, including NCAT’s football program, the NCAA continued to govern, support, and profit from the sport without disclosing what it knew to student-athletes, including Earl Lett.

64. Since at least 1933, the NCAA has known of the serious nature of concussions and other head injuries in college football, and even recognized the need for appropriate concussion management protocols. In its 1933 Sports Medicine Handbook—which it distributed to all member institutions—the NCAA specifically recognized that head injuries warrant special attention and should not be regarded lightly.

65. The 1933 Sports Medicine Handbook then provided information for school and college doctors, coaches, and trainers to identify the signs and symptoms of concussions, as well as methods to be used on the sidelines for treating them. It discussed head injuries, stating that they “are in a category by themselves and warrant special attention,” as they “may be, and often are more severe in their immediate and remote consequences” than other injuries. Notably, the

1933 Sports Medicine Handbook recommended that, when concussion-related symptoms lasted longer than two days, players should “not be permitted to compete for 21 days or longer, if at all.” It also stated, “[t]here is definitely a condition described as ‘punch drunk’ and often recurrent concussion cases in football and boxing demonstrate this,” and that “[a]ny individual who is knocked unconscious repeatedly on slight provocation should be forbidden to play body-contact sport.”

66. The NCAA recognizes that its Sports Medicine Handbook “may constitute some evidence of the legal standard of care,” and has publicly recognized its duty and moral obligation to protect collegiate athletes. As NCAA President Mark Emmert testified to the Senate Commerce Committee in January 2014, “I will unequivocally state we have a clear moral obligation to make sure we do everything we can to protect and support student-athletes.”

67. Indeed, in the September 1968 issue of NCAA News, the NCAA published an article entitled *Dangers of Grid Head Injuries Cited by Safeguards Committee*. In the article, the NCAA Committee on Competitive Safeguards and Medical Aspects of Sport issued a statement on the dangers of repeated head injuries in football, stating:

[T]hose individuals who have been rendered unconscious, even momentarily, in a given game should never be allowed to play again in the same game and not allowed to return to contact until all symptoms have cleared up entirely and he has been checked by a competent medical authority.

68. Rather than inform Earl Lett and other NCAT athletes of these risks or implement protocols to protect and safeguard him from TBI-related injuries (as the NCAA promised to do through the NCAA Constitution, among other things), the NCAA failed to meaningfully adopt or enforce the internationally accepted guidelines regarding concussion management and return to play protocols until 2010.

69. Instead, in complete disregard of the vast body of known scientific evidence and the resources and authority that it possessed, the NCAA failed prior to 2010 to, amongst other things, do any of the following:

- implement adequate guidelines or rules to prevent repeated concussions, and failed to educate players, including Earl Lett, about the increased risk of concussive and sub-concussive injury in football, particularly under circumstances when the helmet is used as a weapon when tackling, blocking, or running with the football;
- recommend or enforce adequate return to play procedures or take action to educate athletes, including Earl Lett, about the risks of repetitive head injuries;
- conduct a football program that proactively encouraged Earl Lett and other NCAT football players to avoid head injuries, instead compelling players to ignore concussion symptoms and continue to play football within moments of experiencing concussion symptoms; and
- contact football players, including Earl Lett, after they left NCAT to inform them that they had been exposed to an increased risk of long-term brain damage by the sub-concussive and concussive blows sustained while playing football for NCAT.

70. In April 2010, under mounting public pressure, the NCAA made changes to its concussion treatment protocols, this time enacting a new policy that required its member institutions to have a Concussion Management Plan (“CMP”) in place for all sports.

71. Under that new policy, which became effective in August 2010, member schools were required to have a CMP on file “such that a student-athlete who exhibits signs, symptoms, or behaviors consistent with a concussion shall be removed from practice or competition and evaluated by an athletics healthcare provider with experience in the evaluation and management of concussions.”

72. The policy further states that students diagnosed with a concussion “shall not return to activity for the remainder of that day” and the team physician would determine that

medical clearance.

73. Finally, the policy required students to sign a statement “in which they accept the responsibility for reporting their injuries and illnesses, including signs and symptoms of concussion” to medical staff and noted that students would be provided educational materials on concussions during the signing process.

74. This policy is flawed though: due to the very nature of concussions, athletes suffering concussive injuries are in no position to police themselves or to give informed consent about whether to continue playing. For example, the types of questions used to screen players for concussions include “What’s your name?”, “What year is it?”, and “What sport are we playing?”. These types of questions are used for screening precisely because players experiencing concussions routinely fail to answer them correctly, despite their very elementary nature. Following logically on that, a player who cannot state his or her own name is in no condition to make an informed decision about whether or not to continue playing, and is entirely dependent on others, such as the NCAA and NCAT, to identify concussive injuries in real-time and take appropriate remedial actions. The NCAA has stood in the role of guardian, tasked with making decisions in his and other football players’ best interests. The NCAA failed to fulfill that role and instead acted in its own self-interest, to the detriment of its student-athletes, including Earl Lett.

75. In the end, the NCAA implemented these (still deficient) policies far too late for Earl Lett and other NCAT football players.

FACTS SPECIFIC TO EARL LETT

76. Earl Lett played football at NCAT from 1980 to 1983 as a center.

77. While playing at NCAT, Earl Lett suffered from numerous concussions, as well as countless sub-concussive hits as part of routine practice and gameplay.

78. Since the inception of NCAT's football program, through at least 2010, there were no adequate concussion management protocols or policies in place to address and treat concussions sustained by student-athletes during practice and in games. For instance, when Earl Lett and other NCAT players experienced a significant head injury or concussion, they would quickly be returned to the field of play or only be taken out of play or practice for an inadequate period of time.

79. In fact, although Earl Lett sustained repetitive serious blows to the head in practices and games for the NCAA's profit, the NCAA failed to adopt or implement adequate concussion management safety protocols or return to play guidelines during his time on NCAT's football team.

80. As a result, Earl Lett now suffers from issues including, but not limited to, anxiety, dementia, memory loss, and frontotemporal lobar degeneration.

CLASS ACTION ALLEGATIONS

81. **Class Definition:** Plaintiff Elaine Lett, as attorney-in-fact of Earl Lett, brings this action on behalf of a class of similarly situated individuals, defined as follows:

All individuals who participated in NCAT's football program between 1952 and 2010.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a

controlling interest and its current or former employees, officers, and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

82. **Numerosity:** The exact number of members of the Class is not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. Upon information and belief, hundreds of individuals fall into the definition of the Class.

83. **Commonality:** There are many questions of law and fact common to Plaintiff and the Class, and those questions predominate over any questions that may affect individual members. Common questions for the Class include, but are not limited to, the following:

- (a) Whether Defendant had a duty to adequately warn and educate players about the dangers and symptoms of concussions and concussion-related brain injuries;
- (b) Whether Defendant had a duty to enact rules and procedures to protect players from sustaining concussions and concussion-related brain injuries;
- (c) Whether Defendant's conduct as alleged herein constitutes a breach of duty;
- (d) Whether Defendant's conduct as alleged herein constitutes negligence;
- (e) Whether Defendant's conduct as alleged herein constitutes breach of contract;
- (f) Whether Defendant's conduct as alleged herein constitutes fraudulent concealment; and
- (g) Whether Plaintiff and the Class are entitled to equitable relief, including actual and compensatory damages, and other injunctive relief.

84. **Typicality:** Plaintiff's claims are typical of those of members of the Class, as Earl Lett and other Class members sustained injuries arising out of the same wrongful conduct of Defendant.

85. **Adequate Representation:** Plaintiff will fairly and adequately represent the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

86. **Predominance and Superiority:** Class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy, as joinder of all members of the Class is impracticable. Individual litigation would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

**FIRST CAUSE OF ACTION
NEGLIGENCE
(On Behalf of Plaintiff and the Class as Against Defendant)**

87. Plaintiff incorporates by reference the foregoing allegations.

88. From its inception and by virtue of its role as the governing body of college athletics, the NCAA has historically assumed a duty to protect the health and safety of all athletes at member institutions, including Earl Lett. The NCAA also assumed a duty of care by voluntarily taking steps to protect and promote the health and safety of its players, including promulgating safety handbooks and regulations. That duty included an obligation to supervise,

regulate, and monitor the rules of its governed sports, and provide appropriate and up-to-date guidance and regulations to minimize the risk of injury to its athletes.

89. The duties of the NCAA included specific obligations to supervise, regulate, and monitor the rules of the NCAT football program and provide appropriate and up-to-date guidance and regulations to minimize the risk of long-term and short-term brain damage to NCAT football players, including Earl Lett.

90. The NCAA had a duty to educate NCAT football players on the proper ways to evaluate and treat head injuries during and after football games and practices, including repetitive concussive and sub-concussive injuries. The NCAA's duties further included a duty to warn its athletes of the dangers of concussive and sub-concussive injuries and of the risks associated with football before, during, and after they played college football, and as additional information came to light.

91. The NCAA had a duty not to conceal material information from NCAT football players, including Earl Lett.

92. The NCAA breached its duties owed to NCAT student-athletes, including Earl Lett, by failing to implement, promulgate, or require appropriate and up-to-date guidelines regarding the evaluation and treatment of TBIs on the playing field, in the locker room, and in the weeks and months after they sustained TBIs, as well as providing treatment for the latent effects of TBIs. These failings included, but are not limited to:

- (a) failing to adequately recognize and monitor concussive and sub-concussive injury during football practices and games;
- (b) failing to adequately inform student football players of the dangers of concussive and sub-concussive injuries;
- (c) failing to adequately design and implement return to play regulations for student football players who sustained concussive and/or sub-concussive injuries and/or were

suspected of sustaining such injuries;

- (d) failing to adequately design and implement procedures to monitor the health of student football players after they sustained (or were suspected of sustaining) concussive and/or sub-concussive injuries;
- (e) failing to adequately inform the families of student football players who sustained concussive and/or sub-concussive injuries; and
- (f) failing to adequately provide adequate notification, warning and treatment for latent neuro-cognitive and neuro-behavioral effects of concussive and sub-concussive injuries, after the time student football players, including Earl Lett, left NCAT.

93. The NCAA breached its duties to student football players, including Earl Lett, by failing to disclose and/or failing to recognize and/or being willfully non-observant of: (a) material information regarding the long-term risks and effects of repetitive head trauma they possessed or should have possessed; (b) the dangers of concussive and sub-concussive injuries; and (c) the proper ways to evaluate, treat, and avoid concussive and sub-concussive trauma to football players, including Earl Lett.

94. As a football player at NCAT, Earl Lett and those like him relied upon the guidance, expertise, and instruction of the NCAA in understanding the risks associated with serious and life-altering concussive and sub-concussive hits in football.

95. At all times, the NCAA had superior knowledge of material information regarding the effects of repeated head injuries, including through its institutional knowledge of such effects. Because such information was not readily available to NCAT football players, including Earl Lett, the NCAA knew or should have known that they would act and rely upon its guidance, expertise, and instruction on these crucial medical issues while attending NCAT and thereafter.

96. Repetitive TBIs during college football practices and games have a pathological

and latent effect on the brain. Repetitive exposure to rapid accelerations to the head causes deformation, twisting, shearing, and stretching of neuronal cells such that multiple forms of damage take place, including the release of small amounts of chemicals within the brain, such as protein, which is a signature pathology of the same phenomenon as boxer's encephalopathy (or "punch drunk syndrome") studied and reported by Harrison Martland in 1928.

97. In addition, repetitive concussive and sub-concussive blows to the head can significantly increase a person's risk of developing neurodegenerative disorders and diseases, including but not limited to CTE, Alzheimer's disease, and other similar cognitive-impairing conditions, especially at an early age.

98. As a direct and proximate result of Defendant's negligence, student-athletes, including Earl Lett, experienced repetitive concussive and sub-concussive impacts during his college football career, which significantly increased their risk of developing neurodegenerative disorders and diseases, including but not limited to CTE, Alzheimer's disease, and other, similar cognitive-impairing conditions. And indeed, Earl Lett now suffers from, and continues to suffer from, issues including but not limited to anxiety, dementia, memory loss, and frontotemporal lobar degeneration.

99. The repetitive head accelerations and hits to which student-athletes, including Earl Lett, were exposed to presented risks of latent and long-term debilitating chronic illnesses. Absent the NCAA's negligence and concealment, the risk of harm to these student-athletes, including Earl Lett, would have been materially decreased, and they would not have developed serious mental health issues.

100. As a direct and proximate result of Defendant's negligence, Earl Lett and the Class have incurred damages in the form of permanent brain damage, emotional distress, past

and future medical costs, health care, home care expenses, other out of pocket expenses, lost time, lost future earnings, and other damages. Earl Lett and other members of the Class will likely incur future damages caused by Defendant's negligence.

101. As such, Defendant is the direct and proximate cause of Earl Lett's and the putative Class's injuries, and is liable to Plaintiff and the Class for the full measure of damages allowed under applicable law, as well as interest, reasonable attorneys' fees, expenses, and costs.

**SECOND CAUSE OF ACTION
BREACH OF EXPRESS CONTRACT
(On Behalf of Plaintiff and the Class as Against Defendant)**

102. Plaintiff incorporates by reference the foregoing allegations.

103. As a football player at NCAT, an institution governed by the NCAA, Earl Lett and other NCAT football players were required to, and did, enter into contracts with the NCAA as a prerequisite to sports participation. These contracts required Earl Lett and other NCAT football players to complete a form affirming that they had read the NCAA regulations and applicable NCAA Division manual, which expressly encompassed the NCAA Constitution, Operating Bylaws, and Administrative Bylaws, and further, that they agreed to abide by Division Bylaws.

104. In exchange for these student-athletes' agreements, the NCAA promised to perform certain services and functions, including, amongst other things:

- (a) conducting intercollegiate athletics in a manner designed to protect and enhance the physical and educational wellbeing of NCAA athletes;
- (b) requiring that each member institution protect the health of, and provide a safe environment for, each of its participating athletes; and
- (c) requiring that each member institution establish and maintain an environment in which the NCAA athletes' activities are conducted as an integral part of the athletes' educational experience.

105. By signing and agreeing to abide by NCAA rules and regulations, and thereafter participating in NCAA-sanctioned sports programs in accordance with said rules and regulations, Earl Lett and other NCAT football players fulfilled their contractual obligations to the NCAA.

106. As described in the foregoing allegations, the NCAA breached its contractual agreement by failing to ensure Earl Lett and other NCAT student-athletes were provided a safe environment in which to participate in collegiate football. The NCAA further breached its contractual agreement by concealing and/or failing to properly educate and warn Earl Lett and other NCAT football players about the symptoms and long-term risks of concussions and concussion-related traumatic injury.

107. Earl Lett and other NCAT football players entered into written agreements with the NCAA in which they committed to play football at NCAT, to attend NCAT as students, and to comply with all codes of conduct and obligations as both football players and students at NCAT.

108. Earl Lett and other NCAT football players fulfilled their contractual obligations to the NCAA.

109. The NCAA's contractual breaches caused Earl Lett and other NCAT football players to suffer injuries and damages in the form of, *inter alia*, past, ongoing, and future medical expenses, lost time, lost future earnings, and other damages.

110. As a result of its misconduct, the NCAA is liable to Plaintiff and the Class for the full measure of damages and other relief allowed under applicable law.

**THIRD CAUSE OF ACTION
FRAUDULENT CONCEALMENT
(On Behalf of Plaintiff and the Class as Against Defendant)**

111. Plaintiff incorporates by reference the foregoing allegations.

112. The NCAA has long understood that repetitive head impacts sustained while playing football created a risk of harm to student-athletes that was similar or identical to the risk boxers faced by participating in boxing practices and matches.

113. The NCAA was aware of and understood the significance of the published medical literature described herein, which detailed the serious risk of short- and long-term brain injury and disease associated with repetitive head impacts, including those which Earl Lett and other NCAT football players were exposed.

114. The NCAA knowingly concealed these risks from Earl Lett and other NCAT football players considering whether or not to participate in an NCAA football program.

115. By concealing these highly material facts, the NCAA intended to induce a false belief in Earl Lett and NCAT football players like him about the short- and long-term risks of repetitive head impacts in football. As an entity that voluntarily took on the role of governing the sport of football in colleges across the country (including NCAT), and was created and perpetuated specifically to protect player safety, the NCAA had a duty to speak about these issues—instead, it remained silent. The NCAA's intent in doing so was to induce Earl Lett and other NCAT football players to continue playing NCAA football, even after sustaining one or more concussions and even when those concussions required additional time to heal.

116. Earl Lett and other NCAT football players could not have reasonably been expected to know or discover the truth about the risks associated with concussive and sub-concussive blows to the head, or were misled from obtaining such truthful information. Earl Lett and other NCAT football players were under the care and treatment of the NCAA, and justifiably relied on the NCAA's silence as representing facts that did not exist.

117. Given the NCAA's superior and unique vantage point, Earl Lett and other NCAT

football players reasonably looked to the NCAA for guidance on head impacts—and concussions, in particular—as well as the later-in-life consequences of receiving repetitive head impacts during football games and practices at NCAT.

118. The NCAA failed to act reasonably in light of its omission, including by failing to develop and implement adequate guidelines and rules regarding return-to-play criteria, and other safety procedures. The NCAA's inaction and concealment increased the risk of long-term injury and illness in NCAT football players, including Earl Lett—and indeed, did result in them suffering from long-term brain injuries and disease.

119. As a direct and proximate result of Defendant's knowing concealment and/or willful blindness, Earl Lett and other NCAT football players suffered substantial injuries.

120. As a direct result of the NCAA's failure to reveal pertinent information, Earl Lett and NCAT football players like him incurred economic and non-economic damages in the form of pain and suffering, permanent brain damage, past and future medical costs, health care, home care expenses, other out of pocket expenses, lost time, lost future earnings, and the loss of enjoyment of life.

121. As a result, Defendant is liable to Plaintiff and the Class for the full measure of damages allowed under applicable law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Elaine Lett, as attorney-in-fact of Earl Lett, individually and on behalf of the Class, respectfully requests that the Court enter an Order providing for the following relief:

A. Certify this case as a class action on behalf of the Class defined above, appoint Plaintiff as representative of the Class, and appoint her counsel as Class Counsel;

- B. Declare that Defendant's actions, as set out above, constitute negligence, breach of contract, and fraudulent concealment;
- C. Award all economic, monetary, actual, consequential, compensatory, and punitive damages available at law and caused by Defendant's conduct, including without limitation damages for past, present, and future medical expenses, other out of pocket expenses, lost time and interest, lost future earnings, and all other damages suffered, including any future damages likely to be incurred by Earl Lett and the Class;
- D. Award Plaintiff and the Class reasonable litigation expenses and attorneys' fees;
- E. Award Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;
- F. Enter injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and
- G. Award such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

ELAINE LETT, as attorney-in-fact of Earl Lett,
individually and on behalf of all others similarly
situated,

Dated: February 25, 2019

By: /s/ Jeff Raizner
One of Plaintiff's Attorneys

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Counsel for Plaintiff and the Putative Class

*Admission to be sought.

Exhibit A

DURABLE PROPERTY MANAGEMENT
POWER OF ATTORNEY

This instrument hereby expressly revokes all other Durable Property Management Powers of Attorney heretofore made by me.

KNOW ALL MEN BY THESE PRESENTS, that I, EARL MICHAEL LETT, of Columbia County, Georgia, intend to create a General Durable Power of Attorney (herein referred to as "this Power").

This Power shall become effective immediately upon my execution of it.

I hereby appoint the first person(s) named on the following list as my Attorney(s)-in-Fact (my "Agent" or Co-Agents, as the case may be; and, unless the context indicates otherwise, any reference to my Agent herein shall also refer to any Co-Agent) and the subsequent person(s) named on said list as successor(s) to such Agent(s), each of such Agents, to act alone (unless Joint action is indicated) and successively in the priority listed upon the previously named Agent's (or each such Co-Agents', if applicable) death, incapacity, resignation, unavailability or failure or refusal to so serve or accept the office of Agent at any time for any reason:

- My wife, NORMA ELAINE GODBEE LETT
- THEN
- PAMELA Y. GODBEE
- THEN
- GAIL GODBEE WHITE

In the event that all of the foregoing individuals should die, become incapacitated, resign or should, for any reason, fail to serve or cease to act as Attorney(s)-in-Fact then the successor Attorney(s)-in-Fact shall be the individual or entity nominated in writing by the survivor of the foregoing individuals during life (without such nomination being revoked, in writing, during life) or nominated in the Will of the survivor. Such nomination may also include the nomination of successors to the individual or entity nominated as Attorney(s)-in-Fact. Failing such nomination, the successor Attorney(s)-in-Fact shall be the person nominated by the Personal Representative of the last person to serve as Attorney(s)-in-Fact.

This Power of Attorney shall not be affected by the incapacity of the principal. For the purposes of this document, incapacity shall be synonymous with incompetency and disability. Determination of incapacity shall be based upon the provisions and directions of the following paragraph:

For all purposes under this Power, a person shall be considered incapacitated in the event such person has been: (i) determined to be so by a court of competent jurisdiction; (ii) has been certified by two licensed physicians to be unable to properly handle his or her own affairs or otherwise is unable freely to communicate for a period of 90 days; (iii) has been certified by two of the members of the Disability Panel to be unable to properly handle his or her own affairs or

otherwise is unable freely to communicate for a period of 90 days; or (iv) has been certified by written documentation from appropriate law enforcement to be unable to be located for 30 consecutive days. A person shall be considered to have regained capacity upon such a determination by a court of competent jurisdiction, upon certification by two licensed physicians that the person is able to properly handle his or her own affairs and is able to freely communicate, or upon certification by the members of the Disability Panel that the person is able to properly handle his or her own affairs and is able to freely communicate. The term "incapacity" is intended to be interchangeable with the terms "disability" and "incompetency". The term "competent" in my Trust Agreement refers to a person who is not incapacitated. The term "incapacitated" also refers to any beneficiary receiving or eligible to receive government benefits. The Disability Panel shall be those individuals named in writing by the principal (the grantor of this power of attorney). The members of the Disability Panel shall be subject to amendment by the grantor of this power of attorney at any time by a similar writing.

If this original document or a duplicate original is recorded, a certified copy of the decree declaring incapacity or appointing a guardian or conservator, the physicians' certificate(s), the certificate of the Disability Panel, or the referenced certificate of the law enforcement agency shall be recorded in the same county or counties as this original or duplicate original document.

I appoint my Agent to act in my name, place and stead in any way which I myself could do, if I were personally present, (to the extent I am permitted to act through an agent) with respect to the powers as indicated in this Power, consisting of 2 Articles, with the understanding that they will be used for my benefit and on my behalf and will be exercised only in a fiduciary capacity. No person who may act in reliance upon the representations of my attorney-in-fact for the scope of authority granted to the attorney-in-fact shall incur any liability as to me or to my estate as a result of permitting the attorney-in-fact to exercise this authority; nor is any such person who deals with my attorney-in-fact responsible to determine or ensure the proper application of funds or property.

ARTICLE ONE

Powers

Section 1. Real Property Transactions

I give my Agent all of the powers listed below in this Section. All of the powers described in this Section are exercisable equally with respect to any interest in real property that I own when this Power is executed or that is acquired thereafter, whether the real property is located in this state or elsewhere.

a. Acquisition

Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property.

b. Transfer

Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to the partitioning of, subdivide, apply for zoning, rezoning, or

other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of an interest in real property or a right incident to real property.

c. Mortgages

Grant, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is asserted.

d. Management

Do an act of management or conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by me, including all of the following:

(1) Insuring against a casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with taxes or assessments.

(4) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property.

e. Improvements

Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which I have, or claim to have, an interest or right.

f. Reorganizations

Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including all of the following:

(1) Selling or otherwise disposing of them.

(2) Granting, exercising or selling an option, conversion, or similar right with respect to them.

(3) Voting them in person or by proxy.

g. Change in Form of Title

Change the form of title of an interest in or right incident to real property.

h. Public Use

Dedicate to public use, with or without consideration, easements or other real property in which I have, or claim to have, an interest or right.

Section 2. **Tangible Personal Property Transactions**

I give my Agent all of the powers listed below in this Section. All of the powers described in this Section are exercisable equally with respect to any tangible personal property that I own when this Power is executed or that is acquired thereafter, whether the personal property is located in this state or elsewhere.

a. Acquisition

Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property.

b. Transfer

Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property.

c. Security Interests

Grant, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on my behalf, with respect to tangible personal property or an interest in tangible personal property.

d. Management

Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on my behalf, including all of the following:

- (1) Insuring against casualty, liability, or loss.
- (2) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise.
- (3) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with taxes or assessments.
- (4) Moving from place to place.
- (5) Storing for hire or on a gratuitous bailment.

- (6) Using, altering, and making repairs or alterations.

Section 3. **Stock and Bond Transactions**

I give my Agent all of the powers listed below in this Section. All of the powers described in this Section are exercisable equally with respect to any interest in any stock, bond, mutual fund, and other type of security to which this Section refers, that I own when this Power is executed or that is acquired thereafter, whether located in this state or elsewhere.

a. **Acquisition and Transfer**

Buy, sell, assign and exchange stocks, bonds, mutual funds and all other types of securities and financial instruments except commodity futures contracts (other than as may be provided in Section 4 of this Article) and call and put options on stocks and stock indexes.

b. **Evidence of Ownership**

Receive certificates and other evidence of ownership with respect to securities.

c. **Voting**

Exercise voting rights with respect to securities, in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Section 4. **Commodity and Option Transactions**

I give my Agent all of the powers listed below in this Section. All of the powers described in this Section are exercisable equally with respect to any interest in any commodity futures contract or option to which this Section refers, that I own when this Power is executed or that is acquired thereafter, whether located in this state or elsewhere.

a. **Acquisition and Transfer**

Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange.

b. **Accounts**

Establish, continue, modify, and terminate option accounts with a broker.

Section 5. **Banking and Other Financial Institution Transactions**

I give my Agent all of the powers listed below in this Section. All powers described in this Section are exercisable equally with respect to any financial transaction to which this Section refers, engaged in by me when this Power is executed or that is engaged in thereafter, whether conducted in this state or elsewhere.

a. Existing Accounts

Continue, modify, and terminate an account or other banking arrangement made by me or on my behalf.

b. Opening of Accounts

Establish, modify, and terminate any type of account (including but not limited to checking, savings and certificates of deposit) or other banking arrangement with a bank, trust company, savings and loan association, credit union, Thrift Company, industrial loan company, brokerage firm, or other financial institution selected by my Agent.

c. Establishing and Closing Safe Deposit Boxes

I hereby authorize and direct my appointee or appointees as my Attorney-in-Fact in my durable power of attorney, to have free access at any time or times to any safe deposit box or vault to which I might have access; and any institution in which any such safe deposit box may be located is not required to make any inquiry, and shall not incur any liability to me or my estate as a result of permitting my appointee or appointees in this, my original durable power of attorney to exercise this power. This power is exercisable without: (I) any contact with or notice to me, my spouse, and/or any interested persons to my estate; (ii) any prior court order or authorization; (iii) any knowledge of or any prior determination as to my mental or physical capacity or incapacity; (iv) any knowledge as to my whereabouts regardless whether my whereabouts are known or unknown; or (v) any inquiry.

d. Contracting Services

Contract to procure other services available from a financial institution as my Agent considers desirable.

e. Making Withdrawals

Withdraw by check, order, or otherwise my money or property deposited with or left in the custody of a financial institution.

f. Receiving Financial Statements

Receive bank statements, vouchers, notices, and similar documents from a financial institution, and act with respect to them.

g. Entering Safe Deposit Boxes

I hereby authorize and direct my appointee or appointees as my Attorney-in-Fact in my durable power of attorney, to have access at any time or times to any safe deposit box rented by me, wherever located, in order to remove my original power of attorney; and any institution in which any such safe deposit box may be located is not required to make any inquiry, and shall not

incur any liability to me or my estate as a result of permitting my appointee or appointees in this, my original durable power of attorney to exercise this power. This power is exercisable without: (I) any contact with or notice to me, my spouse, and/or any interested persons to my estate; (ii) any prior court order or authorization; (iii) any knowledge of or any prior determination as to my mental or physical capacity or incapacity; (iv) any knowledge as to my whereabouts regardless whether my whereabouts are known or unknown; or (v) any inquiry.

h. Borrowing Money

Borrow money at an interest rate agreeable to my Agent and pledge as security my personal property as necessary in order to borrow, pay, renew, or extend the time of payment of any of my debts.

i. Checks, Drafts, and Negotiable or Nonnegotiable Paper

Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of mine, or payable to me or to my order, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon me and pay it when due.

j. Receiving Negotiable or Nonnegotiable Instruments

Receive for me and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument.

k. Letters of Credit, Credit Cards, and Travelers Checks

Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit.

l. Extensions to Pay

Consent to an extension of the time of payment, due to or from me, with respect to commercial paper or any other financial transaction with a bank or other financial institution.

Section 6. Business Operating Transactions

I give my Agent all of the powers listed below in this Section. All powers described in this Section are exercisable equally with respect to any business in which I am interested when this Power is executed or in which I become interested thereafter, whether conducted in this state or elsewhere.

a. Operation and Transfer

Operate, buy, sell, enlarge, reduce, and terminate a business interest.

b. Partnerships

Subject to the terms of any applicable partnership agreement:

(1) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that I have, may have, or claim to have under a partnership agreement, whether or not I am a partner.

(2) Enforce the terms of a partnership agreement by litigation or otherwise.

(3) Defend, submit to arbitration, settle, or compromise litigation to which I am a party because of membership, or a claim of membership, in the partnership.

c. Limited Liability Companies

Subject to any terms of any applicable LLC operating agreement:

(1) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that I have, may have, or claim to have under a LLC operating agreement, whether or not I am a member.

(2) Enforce the terms of a LLC operating agreement by litigation or otherwise.

(3) Defend, submit to arbitration, settle, or compromise litigation to which I am a party because of membership, or a claim of membership, in a LLC.

d. Bonds, Shares, and Other Instruments

Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option that I have or claim to have as the holder of a bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise litigation to which I am a party because of a bond, share, or similar instrument.

e. Sole Proprietorship

With respect to any business that I solely own:

(1) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by me or on my behalf with respect to the business before and after execution of this Power.

(2) Determine the policy of the business as to (a) the location of its operation; (b) the nature and extent of its business; (c) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation; (d) the amount and types of insurance carried; and (e) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees.

(3) Change the name or form of organization under which the business is operated, enter into a partnership agreement with other persons, create or become a member in a

limited liability company, or organize a corporation to take over all or part of the operation of the business.

(4) Demand and receive money due or claimed by me or on my behalf in the operation of the business, and control and disburse the money in the operation of the business.

f. Expansion

Put additional capital into a business in which I have an interest.

g. Reorganization

Join in a plan of reorganization, consolidation, or merger of the business.

h. Sale or Liquidation

Sell or liquidate a business or part of it at the time and upon the terms my Agent considers desirable.

i. Buy-Out Agreements

Represent me in establishing the value of a business under a buy-out agreement to which I am a party.

j. Reports

Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency or instrumentality or that my Agent considers desirable, and make related payments.

k. Taxes

Pay, compromise, or contest taxes or assessments and do any other act that my Agent considers desirable to protect me from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after this Power is executed.

Section 7. **Retirement Plan Transactions**

I give my Agent all of the powers listed below in this Section. All powers described in this Section are exercisable with respect to any retirement plan in which I am in any way interested, whether the plan is in this state or elsewhere.

a. Select Payment Options

Select payment options under any retirement plan in which I participate, including plans for self-employed individuals.

b. Beneficiary Designations

Designate beneficiaries under retirement plans and change existing designations, including designation of my Agent.

c. Voluntary Contributions

Make voluntary contributions to retirement plans.

d. Investment Powers

Exercise the investment powers available under any self-directed retirement plan.

e. Rollovers

Make rollovers of plan benefits into other retirement plans.

f. Borrow, Buy, and Sell

If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan.

g. Waiver of Spousal Rights

Waive my spouse as the required beneficiary of a joint or survivor annuity or any other benefit under any qualified plan, if I am married at the time of waiver.

h. Consent to a Waiver of Spousal Rights

Consent to a waiver of my right as the required beneficiary of a joint and survivor annuity or any other benefit under any qualified plan, if I am married at the time of consent.

i. IRA Trust

Establish an IRA trust to allow management of the IRA by the trustee of any living trust I may have established; provided that the trustee of such trust shall be subject to the provisions of any power of removal contained in my living trust.

Section 8. Estate, Trust, or Other Beneficiary Transactions

I give my Agent all of the powers listed below in this Section so that my Agent may act for me in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which I am, may become, or claim to be entitled, as a beneficiary, to a share or payment, whether such matters deal with property located in this state or elsewhere. The powers

described in this Section do not include the power to create, modify, or revoke trusts (but such powers may be provided in Section 9 of this Article).

a. Payments

Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund.

b. Claims

Demand or obtain by litigation or otherwise money or other thing of value to which I am, may become, or claim to be entitled by reason of the fund.

c. Participation in Proceedings

Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting my interest.

d. Removal of Fiduciary

Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary.

e. Investments and Disbursements

Conserve, invest, disburse, and use anything received for an authorized purpose.

f. Transfer to Trust

Transfer an interest of mine in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the Trustee of a trust created by me as Trustor (including trusts created by me through my Agent (the holder of this Power of Attorney) by exercise of the powers contained herein).

g. Contingent Interests

Convey or release any contingent or expectant interests in property, including marital property rights, and any rights of survivorship incident to joint tenancy or tenancy by the entirety.

h. Transfer any interest owned by me to any living trust I may have established or which may have been established on my behalf.

Section 9. **Power to Create, Modify, or Revoke Trusts for My Benefit and Benefit of My Dependents**

a. Establishment of Trusts

I give my Agent the power to establish and maintain any trust with my assets for my benefit or for the benefit of my issue and any other of my dependents (including but not limited to any disabled child of mine), or one or more of us, upon such terms as my Agent determines are necessary or proper; transfer, assign and convey all or any part of my assets (consisting of any property, real, personal or mixed, tangible or intangible, of whatsoever kind and wheresoever located and whensoever acquired) in which I have an interest to any such trust or trusts that I have created or as my attorney shall deem proper irrespective of whether the trust is now in existence or hereinafter established, including a trust pursuant to 42 U.S.C. § 1396p(d)(4)(A) and/or (B); and exercise in whole or in part, release, or let lapse any power I may have as an individual and not as a fiduciary under any trust whether or not created by me. My Agent may be Trustee of any trust established by my Agent and my agent shall be authorized to establish and provide for the funding of any such trust on such terms as my agent shall deem to be in my best interests.

b. **Amend, Revoke or Exercise Powers Over Existing Trusts**

Other than a power that would constitute a general power of appointment under Section 2041 of the Internal Revenue Code of 1986, as amended, I give my agent the power to amend, revoke and/or exercise any and all other powers I could exercise under the terms of any trust of which I am a Trustor.

Section 10. Resignation From Fiduciary Positions

I give my Agent the power to resign from any fiduciary position to which I have been or may be in the future named, appointed, nominated, or elected, including by way of illustration, but not of restriction, the positions of executor, administrator, personal representative, trustee, agent, guardian, director or officer of a corporation, or governmental position or office; and to take whatever steps are necessary to accomplish such resignation, for example, by rendering an accounting or appearing in court to receive approval for such action, as appropriate.

Section 11. Claims and Litigation

I give my Agent all of the powers listed below in this Section. All powers described in this Section are exercisable equally with respect to any claim or litigation existing when this Power is executed or arising thereafter, whether existing or arising in this state or elsewhere.

a. **Actions**

Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other things of value, to recover damages sustained by me, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

b. **Intervention and Interpleader**

Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae.

c. Provisional Remedies, Enforcement of Judgments and Participation in Proceedings

In connection with litigation:

(1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief, and use any available procedure to effect, enforce, or satisfy a judgment, order, or decree.

(2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding me in litigation.

d. Settlement

Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

e. Procedure

Waive the issuance and service of process upon me; accept service of process; appear for me; designate persons upon whom process directed to me may be served; execute and file or deliver stipulations on my behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

f. Bankruptcy

Act for me with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning me or some other person, or with respect to a reorganization proceeding, or with respect to an assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee, that affects an interest of mine in property or other thing of value.

g. Payments

Pay a judgment against me or a settlement made in connection with litigation, and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Section 12. Tax Matters

I give my Agent all of the powers listed below in this Section:

a. Preparation and Filing of Documents

Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, FICA returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Sections 2032A and 2057 or any successor section of the Internal Revenue Code of 1986, as amended), closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority.

b. Paying and Contesting Amounts

Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

c. Exercising Elections

Exercise any election I may have under federal, state, local, or foreign tax law.

d. Acting in Tax Matters

Act for me in all tax matters before the Internal Revenue Service and any other taxing authority.

Section 13. Personal and Family Maintenance

I give my Agent all of the powers listed below in this Section. All powers described in this Section are exercisable equally whether the acts required for their execution relate to property that I own when this Power is executed or that is acquired thereafter, and whether the acts are performed or property is located in this state or elsewhere.

a. Support

Do the acts necessary to maintain my customary standard of living and the customary standard of living of any persons legally entitled to my support to the extent such acts would not reduce the availability of government benefits to any such person, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by any such persons.

b. Domestic Help, Travel and Necessities

Provide all of the following for the individuals described in subsection (a) of this Section 13:

- (1) Normal domestic help.

(2) Usual vacations and travel expenses.

(3) Funds for shelter, clothing, food, appropriate education, and other current living costs.

c. Medical Care

Pay for necessary medical, dental, and surgical care, hospitalization, and custodial care of the individuals described in subsection (a) of this Section 13.

d. Transportation

Continue any provision made by me, for the individuals described in said subsection a., for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them.

e. Charge Accounts

Maintain or open charge accounts for the convenience of the individuals described in said subsection a. and open new accounts my Agent considers desirable to accomplish a lawful purpose.

f. Church and Organization Affiliations

Continue payments incidental to my membership in or affiliation with a church, club, society, order, or other organization and continue contributions to those organizations.

g. Religious or Spiritual Needs

Provide, in connection with my care, and in accordance with my established beliefs and customary activities, for the presence and involvement of church persons, clergy, or other persons to attend to my spiritual needs and permit them access to me, maintain or arrange for my membership in religious organizations, and permit my access to their activities and publications, including books, tapes, and similar materials.

h. Pets

House, or arrange for the housing, support, and maintenance of, any animals that I own or have custody of and pay reasonable boarding, kenneling, and veterinary fees for such animals, or if the support and maintenance of any such animal becomes unreasonably expensive, to dispose of such animal in a humane fashion, preferably by finding another home for the animal.

i. Funeral and Burial

Arrange for my funeral or other memorial service and for burial or cremation of my remains, including the purchase of a burial plot or other place for interment of my remains or ashes.

Section 14. **Government Benefits**

I give my Agent all of the powers listed below in this Section. All powers described in this Section are exercisable equally with respect to benefits from social security, Medicare, Medicaid, or other governmental programs, or civil or military service, existing when this Power is executed or accruing thereafter, whether existing or accruing in this state or elsewhere.

a. **Execution of Vouchers**

Execute vouchers in my name for allowances and reimbursements payable to me by the United States or a foreign government or by a state or subdivision of a state, including allowances and reimbursements for my transportation and transportation for any persons customarily or legally entitled to my support, and for shipment of my household effects.

b. **Possession of Property**

Take possession and order the removal and shipment of my property from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private; and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

c. **Benefits**

Prepare, file, and prosecute my claim to a benefit or assistance, financial or otherwise, to which I claim to be entitled under a statute or governmental regulation.

d. **Actions**

Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits I may be entitled to receive.

e. **Receipt of Proceeds**

Receive the financial proceeds of a claim of the type described in this Section; conserve, invest, disburse, or use anything received for a lawful purpose.

f. **Acknowledgement of Intent to Return to Any Residence**

Sign on my behalf any document necessary to reflect my intention to return to my residence after any incapacity or other condition which prevents me from currently residing in such residence.

Section 15. **Incidental Powers**

In connection with the exercise of any of the powers described in the preceding Sections, I give my Agent all of the powers listed below in this Section. All powers described in this Section are

exercisable equally with respect to any of my interests, rights, and obligations existing when this Power is executed or arising thereafter, whether in this state or elsewhere.

a. Claims

Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which I am, may become, or claim to be entitled; and conserve, invest, disburse, or use anything so received for the purposes intended.

b. Contracts

Contract in any manner with any person, on terms agreeable to my Agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by me or on my behalf.

c. Execution, Acknowledgment and Delivery

Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument my Agent considers desirable to accomplish a purpose of a transaction.

d. Actions

Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in my favor or against me or intervene in litigation relating to the claim.

e. Court Assistance

Seek on my behalf the assistance of a court to carry out an act authorized by this Power.

f. Employment

Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant.

g. Record Keeping

Keep appropriate records of each transaction, including an accounting of receipts and disbursements.

h. Preparation and Filing of Documents

Prepare, execute, and file a record, report, or other document my Agent considers desirable to safeguard or promote my interest under a statute or governmental regulation.

i. Reimbursements

Reimburse my Agent for expenditures properly made by my Agent in exercising the powers granted under this Power.

j. Disclaimers

To release or disclaim on my behalf any interest acquired by intestate, testate or inter vivos transfer.

k. Other Lawful Acts

In general, do any other lawful acts with respect to the power being exercised, it being my intention that, in connection with the exercise of that power, my Agent shall have full authority, to the extent that a principal can act through an agent, to take all actions that he believes necessary, proper, or convenient, to the extent that I could take such actions myself.

Section 16. Power to Make Gifts

a. Estate and Gift Tax Planning

I authorize my Agent to make gifts of any of my assets (whether or not such assets are held in a revocable trust created by me or by my Agent pursuant to this Power) to any trust or individuals (including any individuals holding this power or trusts benefiting them), other than any individual I have disinherited in my then current testamentary plan, especially to take advantage of the federal estate and gift tax annual exclusion, (and/or to any charities), provided that I have previously made gifts to such donee, or such donee is a beneficiary under my most recently executed Will or Living Trust (as determined by my Agent), or such donee is otherwise a natural object of my bounty.

b. Government Benefits Planning

In addition to (and not in limitation of) the powers granted above in the Section 16, I authorize my Agent to appoint a Special Agent who, relative to my Agent, is not a related or subordinate party as described in Section 672 of the Internal Revenue Code of 1986, as amended, to make gifts of my assets to the parties previously described in this Section 16 (whether or not such assets are held in a revocable trust created by me or my Agent pursuant to this Power) if, in my Agent's judgment, the gift of such assets will qualify me for government benefits and increase the amount of my estate which will be received by my heirs.

Section 17. Restrictions on Property Management Powers

a. Notwithstanding any other provision in this Power, my Agent shall not have any of the following powers related to property management:

i. Obligations of Agent

To use my property to discharge the legal obligations of my Agent, including but not limited to the support of the dependents of my Agent, except for those dependents to whom I also, along with my Agent, owe a duty of support.

ii. Insurance on Life of Agent

To exercise any incident of ownership over any insurance policy that I own and that insures the life of my Agent.

iii. General Power of Appointment

To hold any power that would constitute a general power of appointment under Section 2041 of the Internal Revenue Code of 1986, as amended.

b. Fiduciary Obligation

The provisions contained in this paragraph 17(b) in no way limit the powers of my Agent in dealing with third parties who may rely on the powers as set out in all other sections of this Power of attorney without limitation by the provisions of this paragraph. Nonetheless, my Agent's authority under this Power of Attorney is subject to a fiduciary duty to me and to the beneficiaries of my estate and my other estate planning. My Agent's authority to benefit my Agent or the members of my Agent's family shall be consistent with my previous estate planning, including my wills, trusts and beneficiary designations. My Agent's ability to gift and to exercise any beneficiary designations shall be limited by this fiduciary obligation to act consistently with such fiduciary duty. Gifts or exercises of powers to make or adjust beneficiary designations for the benefit of my Agent shall be limited to amounts deemed necessary or desirable to my Agent, in its fiduciary capacity, to provide for the Agent's maintenance in health and reasonable comfort (without the need to take into consideration any other means of support) as determined in the discretion of my Agent. In addition, gifts or beneficiary designations to my Agent or his family may only be made if gifts or designations are simultaneously made to others similarly situated, in proportions among them consistent with my prior planning, (exclusive of any donee whose receipt of a gift would supplant or replace any government benefits that are being or would be provided absent a gift). My agent shall make no gifts that would have the effect of discharging said Agent's legal obligation of support.

Section 18. Reimbursement for Costs and Expenses

My Agent shall be entitled to reimbursement from my property for expenditures properly made in the execution of any of the powers conferred by me in this Power. My Agent shall keep records of any such expenditures and reimbursement.

Section 19. Life Insurance Products

My Agent shall have the power respecting life insurance policies, annuities or any other insurance product to change the ownership, make or change the beneficiaries (including the ability of my Agent to name my Agent as beneficiary), purchase, invest in, surrender, exchange, pledge,

liquidate, borrow against or make any and all available elections thereunder or perform any other acts authorized under the provisions of such products or by law.

Section 20. Additional Powers

In addition to the above enumerated powers, I give my Agent all powers that I could exercise over any property of mine which I own. It is my intent that this Section 20 be read to provide to my Agent any specific power which my Agent needs to manage my affairs which is not either generally authorized by law or included above. Any person acting in reliance on this Section 20 shall be held harmless from any act by such person.

ARTICLE TWO

General Provisions

Section 1. Reliance by Third Parties

To induce third parties to act in accordance with the powers granted to my Agent in this document I represent and warrant that:

a. If this document is revoked or amended for any reason, I, my estate, my heirs, successors and assigns will hold any third party harmless from any loss suffered or liability incurred by the third party in acting in accordance with this document before the third party's receipt of written notice of termination or amendment.

b. The powers conferred on my Agent may be exercised alone and my Agent's signature or act under the authority granted in this document may be accepted by third parties as fully authorized by me and with the same force and effect as if I were personally present, competent and acting on my own behalf.

c. No person who acts in reliance upon any representation of my Agent as to the scope of my Agent's authority granted under this document shall incur any liability to me, my estate, my heirs, successors or assigns for permitting my Agent to exercise any such power nor shall any person who deals with my Agent be responsible to determine or ensure the proper application of funds or property.

d. All third parties from whom my Agent may request information regarding my personal affairs or my physical or mental health including medical, dental and hospital records are hereby authorized to provide such information to my Agent without limitation and are released from any legal liability whatsoever to me, my estate, my heirs, successors or assigns for complying with those requests. I authorize in advance all physicians, dentists, psychiatrists and psychologists who have treated me and all other providers of health care including hospitals to release to my Agent all information or photocopies of any records that my Agent may request. If I am able to confirm this authorization at the time of the request third parties may seek such confirmation from me, but this authorization shall not be conditional on that confirmation. Physicians, hospitals and other providers of health care shall treat the request of my Agent as that of a legal representative of an incompetent patient and shall honor that request on that basis. I waive any privilege

applicable to such information and records and to any communication pertaining to me and made in the course of a physician-patient or psychiatrist-patient relationship.

Section 2. Ratification

I ratify and confirm all that my Agent does or causes to be done under the authority granted in this Power. All contracts, promissory notes, checks or other bills of exchange, drafts, other obligations, stock powers, instruments and other documents signed, endorsed, drawn, accepted, made, executed or delivered by my Agent shall bind me, my estate, my heirs, successors and assigns.

Section 3. Exculpation of My Agent

My Agent shall not be liable to me or any of my successors in interest for any action taken or not taken in good faith, but shall be liable for any willful misconduct or gross negligence.

Section 4. Revocation and Amendment

Except as to any power of attorney for health care and any state statutory form power of attorney which specifically indicates that it is intended to be supplemental to this power, I revoke all prior General Powers of Attorney that I may have executed and I retain the right to revoke or amend this document and to substitute other Attorneys-in-Fact in place of my Agent. Amendments to this document shall be made in writing by me personally (not by my Agent) and they shall be attached to the original of this document and recorded in the same county or counties as the original if the original is recorded.

Section 5. Photostatic Copies

Persons dealing with my Attorney-in-Fact may rely fully on a photostatic copy of this Power.

Section 6. Severability

If any of the provisions of this Power are found to be invalid for any reason, such invalidity shall not affect any of the other provisions of this Power and all invalid provisions shall be wholly disregarded.

Section 7. Governing Law

All questions pertaining to validity, interpretation and administration of this Power shall be determined in accordance with the laws of the State of Georgia.

Section 8. Explanation of Durable Power for Property Management

I understand that this Power is an important legal document. Before executing this document, my lawyer explained to me the following:

a. This document provides my Attorney-in-Fact with broad powers to dispose of, sell, convey and encumber my real and personal property.

b. The powers granted in this Power will exist for an indefinite period of time unless I limit their duration by the terms of this Power or revoke this Power. These powers will continue to exist notwithstanding my subsequent disability or incapacity.

c. I have the right to revoke or terminate this Power at any time.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 1st day of June, 2018.

SIGNED, SEALED, AND DELIVERED)
this 1st day of June, 2018)
in Columbia County, Georgia)
in the presence of)

Colby Borchellen)
Witness 1)

J. A. [Signature])
Witness 2)

Earl Michael Lett)
(L.S.))

) EARL MICHAEL LETT

The foregoing instrument was signed by EARL MICHAEL LETT, as his Power of Attorney in our presence, and we, in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

Colby Borchellen
Witness 1

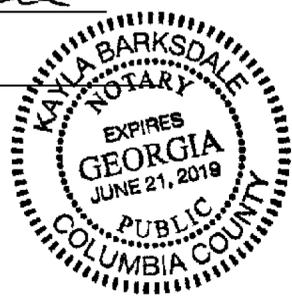
J. A. [Signature]
Witness 2

ACKNOWLEDGEMENT

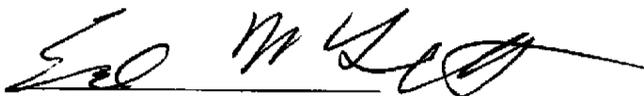
On this 1st day of June, 2018, before me, a Notary Public in and for the state and county indicated by my signature below, duly commissioned and qualified, personally appeared, EARL MICHAEL LETT, and Colby Borchellen (Witness 1) and J.D. Rhodes (Witness 2), to me known to be the persons described in and who executed the foregoing instrument, and acknowledge that said persons executed the same as such persons own free act and deed.

Witness my hand and seal in Columbia County, Georgia on this 1st day of June, 2018.

Kayla Barksdale
Notary Public
My Commission Expires: _____



This Power of attorney is an immediate Power of attorney. It can be used immediately. It does not require you to be incompetent for it to be used. Your signature evidences that you are aware of this.

A handwritten signature in black ink, appearing to read "Earl Michael Lett", written in a cursive style.

EARL MICHAEL LETT

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ELAINE LETT, as attorney-in-fact of Earl Lett, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Columbia County, GA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Raizner Slania LLP, 2402 Dunlavy St, Houston, TX 77006, (713) 554-9099

DEFENDANTS

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

County of Residence of First Listed Defendant Marion County, IN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332

Brief description of cause: Negligence, Fraudulent Concealment, Breach of Contract, Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/25/2019 SIGNATURE OF ATTORNEY OF RECORD s/ Jeff Raizner

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

ELAINE LETT, as attorney-in-fact of Earl Lett, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Defendant(s)

Civil Action No. 1:19-cv-815

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
700 WEST WASHINGTON STREET
INDIANAPOLIS, INDIANA 46206

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

JEFF RAIZNER
RAIZNER SLANIA LLP
2402 DUNLAVY ST.
HOUSTON, TX 77006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:19-cv-815

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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