

120. As a result of this meeting, Florida State’s Athletic Director began to advocate for more money for the university through unequal sharing of revenue. “We have to do something,” he said, after previously claiming that Florida State’s “brand” entitled it to more revenue.¹⁴

121. At the same time, Florida State advocated for unequal payments for it as a consequence of its “brand.”

122. In response, on May 17, 2023, the Conference endorsed the concept of distributing a larger share of post-season revenues to the Members that generated those revenues, rather than equally among all Members. This was the first time in the Conference’s 70-year history that it had agreed to any form of unequal revenue distribution among Members.

123. Following this change, Florida State’s Athletic Director stated: “I’m thrilled with the work and the direction that it’s going. . . . Step in the right direction. We’re not going to ever cover the entire gap, but it will allow you to be competitive.”¹⁵ He then claimed: “We’re thrilled about being in this league, and we want to stay in it.”¹⁶

124. However, shortly after its Athletic Director’s public remarks, Florida State began to demand more, advocating for an unequal share of *all Conference revenue*, not just revenue generated by athletic success: “If you have success, you are rewarded for it. At the same time, I

¹⁴ *FSU, Clemson, Pushing for New ACC Revenue Model*, THE STUART NEWS (May 16, 2023).

¹⁵ *ACC leadership touts progress in trying to address financial gap with the Big Ten and the SEC*, AP NEWS (May 17, 2023), available at <https://apnews.com/article/acc-revenue-sec-big-ten-0801204ef4a928cc89348af081b2d1d7>.

¹⁶ After exploring situation, UM, FSU, others expected to stay in ACC, with new revenue deal, MIAMI HERALD (May 17, 2023), available at <https://www.aol.com/exploring-situation-um-fsu-others-210328299.html>.

believe the media value should also be changed and divided differently, and right now, that's not being looked at.”¹⁷

125. Despite the Conference's willingness to explore new revenue distribution models to reward success, Florida State sought to claim the largest share of revenue, asserting that “We're one of the best media value teams in the United States. We in many ways . . . help to carry the value of the media rights in the ACC.”

I. Florida State Creates a Plan to Breach its Agreements and Disclose Confidential Information

126. Upon information and belief, and before the filing of a Complaint in Florida, Board of Trustees had decided on a course of action in which Florida State would leave the Conference.

127. Florida State has a right to withdraw from the Conference under the ACC Constitution provided that it meets certain obligations. The ACC Constitution requires that a withdrawing Member notify the Conference on or before August 15 to make a withdrawal effective as of June 30 the following year.

128. One of the purposes of this notice period is to permit scheduling changes among the remaining Members and address other logistical issues.

129. The Board of Trustees held a regularly scheduled meeting on August 2, 2023.

130. The last hour of this meeting was dominated by a discussion on Florida State's membership in the Conference.

¹⁷ *AD Alford Cautiously Optimistic on ACC Plan for Revenue*, ORLANDO SENTINEL (May 27, 2023).

131. At this meeting, the President of Florida State informed the Board of Trustees that the university would “consider very seriously leaving the ACC unless there is a radical change to the revenue distribution.”¹⁸

132. During this same meeting, another trustee claimed that “[u]nless something drastic changes on the revenue side at the ACC, it’s not a matter of if we leave. In my opinion, it’s a matter of how and when we leave.” For Florida State, “[s]ports is no longer an extracurricular activity at the university level. It’s big business. So if you want to participate in big business, you need to invest accordingly. *So we need to do whatever is necessary.*” (emphasis supplied).

133. A copy of a transcript of this Board of Trustees Meeting is attached as **Exhibit 10** to the Amended Complaint.

134. By this time, Florida State had either already created or was in the process of creating a plan to challenge the Grant of Rights agreements.

135. The day before the Board of Trustees meeting on August 2, the Chair of the Board stated in an interview that with regard to the Grant of Rights, “[W]e have a very good handle on what our risks are under that document, what our opportunities are under that document. And that’s the least of my worries. . . . We have gotten a lot of counsel on that document and that will not be the document that keeps us from taking action.” A copy of a transcript of this interview is attached as **Exhibit 11** to the Amended Complaint.

136. In short, before filing its Complaint in Florida, Florida State had determined that it would not be bound by its promises and obligations in the Grant of Rights or Amended Grant of Rights, or the promises and obligations in any agreement based on the Grant of Rights or Amended Grant of Rights, including the ESPN Agreements.

¹⁸ Remarks of President McCullough to Board of Trustees, August 2, 2023.

137. Upon information and belief, as part of this plan, Florida State further determined that it would not be bound by the withdrawal provisions of the ACC Constitution, and in particular, the alternative performance specified by the withdrawal payment.

138. In preparation for the actions set forth in this Complaint, Florida State, through counsel, reviewed the Multi-Media Agreement and the ACC Network Agreement at the ACC's headquarters in North Carolina on October 7, 2022, January 4, 2023, and August 1 and 2, 2023.

139. On each of these occasions, Florida State was provided access to the ESPN agreements. But before being provided access, and as a condition for such access, Florida State was advised that the information in the ESPN Agreements was confidential.

140. For example, on August 2, 2023, the General Counsel for the ACC informed a member of Florida State's legal team, that the documents provided for review "must be kept confidential according to the terms of those agreements, particularly the ESPN agreements." A copy of this email is attached as **Exhibit 12** to the Amended Complaint.

141. Florida State did not provide any notice of withdrawal from the Conference for the academic year 2023-2024 by August 15, 2023.

142. Notwithstanding its plan to breach its agreements, during this time Florida State certified through a vote of its Board of Trustees that it had the mandate and support of the Board of Trustees "to operate a program of integrity in full compliance with NCAA, Conference and all other relevant rules and regulations." A copy of this is attached as **Exhibit 13** to this Amended Complaint.

J. Florida State Carries Out Its Plan to Breach Its Agreements, Interfere with the Conference's ESPN Agreements, and Reveal Confidential Information that is a Trade Secret.

143. On December 21, 2023, the Board of Trustees notified the public of a Board meeting that would occur the next day.

144. Under Florida State University Policy 1-1 "BOT Operating Procedures," the Board is required to provide the public with one week notice of Board meetings. Policy 1-1, § 202 (b).

145. However, the Policy also provides that a notice of an "emergency meeting" need only be posted "as early as practicable prior to the meeting." Policy 1-1, § 202(b).

146. Policy 1-1 further provides that "[m]eetings of the Board may be held for the purpose of acting on emergency matters affecting the university." Policy 1-1, § 201(e).

147. In violation of its legal obligations, the Board of Trustees did not specify the "emergency matter[] affecting the university" that necessitated a meeting on the last business day before the Christmas Holiday on one-day's notice.

148. In fact, there was no "emergency," but only Florida State's desire to file a preemptive lawsuit against the ACC in Leon County, Florida, Florida State's home county.

149. With the knowledge of Florida State's clear intention to breach the Grant of Rights and Amended Grant of Rights, and being under an obligation to take all commercially reasonable measures to protect those rights, the Conference filed its Complaint on December 21, 2023, after notice of the alleged "emergency" meeting.

150. The "emergency" Board meeting took place at 10:00 am on December 22, 2023.

151. During the course of the "emergency" Board meeting, neither the Board of Trustees, the officers of Florida State, nor its counsel informed the public of the nature of the "emergency" that had necessitated giving less than the statutorily required notice.

152. Remarks made at the meeting by Members revealed that Florida State had already decided it would breach its agreements and reveal confidential information from the ESPN Agreements.

153. For example, the Board Chairman revealed that a Complaint to be filed by Florida State had been transmitted to all Members several days before.

154. The Board Chairman further revealed that each of the Board Members had been privy to “individual briefings” over the course of several months.

155. The Board Chairman also revealed that he had spoken individually with all Board Members for the purpose of securing the necessary votes to proceed to litigation.

156. Upon information and belief, these actions were intended for the purpose of avoiding the applicability of Florida’s Public Meetings Act.

157. A private attorney representing Florida State also revealed that a member of his firm was prepared to electronically file the Complaint once the Board formally voted to execute its scheme.

158. In furtherance of its litigation, Florida State misrepresented basic facts during the course of the Board meeting.

159. For example, multiple members of the Board claimed that the Conference treated the Grant of Rights and Amended Grant of Rights as a confidential document and would not allow Florida State to have a copy of the agreements.

160. Florida State retained an executed copy of the Grant of Rights after its execution and, in fact, provided it to the public. In 2016, the Associate Director of Athletics for Florida State, informed the Conference that the General Counsel for Florida State had provided a fully executed

copy of the Grant of Rights to a blogger named “AllNoles” who had posted it on the website “Warchant.” A copy of this email is attached as **Exhibit 14** to the Amended Complaint.

161. Throughout 2022 and 2023, Florida State was repeatedly informed that the ESPN Agreements were confidential, that the ESPN Agreements required the Conference to maintain their confidentiality, and that a condition for disclosure of the ESPN Agreements to Florida State was that Florida State was required to “maintain the confidentiality.”

162. Each time Florida State reviewed the ESPN Agreements, it had access to the portions of those Agreements requiring confidentiality.

163. Notwithstanding these repeated warnings, and the language of the ESPN Agreements, Florida State chose to deliberately and publicly disclose or authorize the disclosure of confidential information from the ESPN Agreements.

164. For example, during the December 22, 2023, meeting, counsel for Florida State discussed at length the future media rights to be paid under the ESPN Agreements.

165. While counsel “cherry picked” the numbers to make it appear that Florida State would receive less than was actually projected, counsel did disclose various confidential terms and provisions of the ESPN Agreements.

166. These terms included:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. Other provisions of the Multimedia Agreement and ACC Network Agreement.

167. The Board of Trustees authorized the disclosure of this confidential information.

168. At the conclusion of the “emergency” Meeting, the Board of Trustees authorized the filing of a Complaint containing confidential information without any protections.

169. Before a Complaint was filed, however, Florida State disclosed or authorized others to disclose the allegations of the Complaint, including the allegations disclosing confidential information in the ESPN Agreements. An unfiled copy of the cover-page of Complaint that circulated on the internet is attached to this Amended Complaint as **Exhibit 15**.

170. Counsel for Florida State, and at the direction of the Board, filed a Complaint in the Circuit Court of Leon County at approximately 11:26 AM (“the Florida Action”).

171. The Complaint filed by Florida State in the Florida Action did not seek to protect this confidential information in the ESPN Agreements. Instead, the Complaint disclosed this confidential information. A copy of those portions of the Complaint referring to confidential information is attached as **Exhibit 16** to the Amended Complaint.

172. Shortly after the release of the unfiled copy of the Complaint in the Florida Action, on December 22, 2023, ESPN notified Florida State that it had disclosed confidential information. Subsequently, on January 9, 2024, the Conference notified Florida State that it had disclosed confidential information.

III. Claims for Relief

First Claim for Relief: Request for Declaratory Judgment that the Grant of Rights and Amended Grant of Rights are Valid and Enforceable Contracts

173. The ACC adopts by reference and incorporates the allegations of paragraphs 1 through 172 of the Amended Complaint.

174. In the Grant of Rights and the Amended Grant of Rights, Florida State agreed to grant its athletic Media Rights “irrevocably” and “exclusively” to the Conference for the term.

175. In the Grant of Rights and Amended Grant of Rights, Florida State transferred its Media Rights to the Conference “regardless” of whether it remained a Member Institution during the term of the Grant of Rights and Amended Grant of Rights.

176. In the Grant of Rights and Amended Grant of Rights, Florida State transferred its Media Rights to the Conference through 2036 and specifically acknowledged that the transfer was valid even if it withdrew from the Conference as a Member Institution.

177. In exchange for the Grant of Rights and Amended Grant of Rights, the ACC entered into contracts and agreements with ESPN which significantly increased the revenues paid to the Conference and distributed to its Member Institutions, including Florida State. The increase in revenues included [REDACTED] held by the ACC.

178. Florida State’s Media Rights, a form of intellectual property, are worth in excess of \$5 Million. Florida State has received more than [REDACTED] under the Grant of Rights since 2013.

179. The Grant of Rights and amended Grant of Rights between Florida State on the one hand, and the ACC on the other, was and is supported by good and valuable consideration.

180. The ACC has not breached the Grant of Rights or Amended Grant of Rights. To the contrary, at all times relevant to the Complaint, the ACC has abided by the terms of the Grant of Rights and Amended Grant of Rights.

181. Florida State has breached, ignored, or otherwise violated terms of the Grant of Rights and Amended Grant of Rights, and further indicated an intent to violate these agreements in their entirety notwithstanding the ACC’s ownership of the rights through June 30, 2036.

182. Florida State's challenge to the Grant of Rights and Amended Grant of Rights further constituted a breach of its warranties to ESPN arising out of the ESPN Agreements. The ACC was an intended beneficiary of those warranties and has been damaged by these breaches.

183. Under the ESPN Agreements, the Conference is obligated to take all commercially reasonable actions to defend the Grant of Rights and Amended Grant of Rights and the rights granted to ESPN under those contracts.

184. The Conference is entitled to a declaration by this Court that the Grant of Rights and Amended Grant of Rights are valid and binding contracts, supported by good and adequate consideration, and that the Conference is and will remain the owner of the rights transferred by Florida State under the Grants of Rights through June 30, 2036.

Second Claim for Relief: Florida State is Estopped by Its Acceptance of Benefits (Quasi-Estoppel) or Has Waived by Its Conduct Any Challenge to the Grant of Rights and Amended Grant of Rights

185. The ACC adopts by reference and incorporates the allegations set forth in paragraphs 1 through 184 of the Amended Complaint.

186. The purpose of the Grant of Rights and Amended Grant of Rights was to permit the ACC to negotiate various agreements with ESPN and provide ESPN the Media Rights for its Member Institutions, including Florida State, in exchange for Rights Fees and other good and valuable consideration.

187. Since 2013, Florida State has received more than [REDACTED] in distributions from revenue generated by the Grant of Rights and Amended Grant of Rights, [REDACTED] [REDACTED], as a result of entering into the Grant of Rights and Amended Grant of Rights and transferring its Media Rights exclusively and irrevocably to the ACC for the term of these agreements.

188. Florida State had the option of accepting or rejecting the benefits resulting from the Grant of Rights and Amended Grant of Rights.

189. Florida State had the right not to enter into and execute the Grant of Rights or Amended Grant of Rights.

190. By accepting and retaining the benefits of the Grant of Rights and Amended Grant of Rights, Florida State ratified the validity and enforceability of the Grant of Rights and Amended Grant of Rights.

191. Florida State substantially and materially benefitted from the Grant of Rights and Amended Grant of Rights.

192. Florida State never objected to its share of the distributions generated by the Grant of Rights and Amended Grant of Rights, including payments specifically for the Grant of Rights and Amended Grant of Rights. It accepted all benefits derived from and made possible by the ACC Constitution and the Grant of Rights and Amended Grant of Rights.

193. By accepting the substantial benefits made possible by the Grants of Right and Amended Grant of Rights over a ten-year period, Florida State is equitably estopped from challenging the validity or enforceability of the Grants of Right and Amended Grant of Rights.

194. Having entered into the Grant of Rights and Amended Grant of Rights, accepted the benefits generated by the Grant of Rights and Amended Grant of Rights, and retained the benefits generated by the Grant of Rights and Amended Grant of Rights, Florida State is now estopped from contesting the validity or enforceability of the Grant of Rights and Amended Grant of Rights.

195. Florida State made a deliberate choice to transfer its Media Rights to the ACC for a specific term in order to negotiate different and increasingly lucrative multi-media agreements

with ESPN, knowing that the transfer of these rights for a specific term would continue even if it ceased to be a Member Institution or chose to withdraw from the Conference.

196. In the Grant of Rights and Amended Grant of Rights, Florida State expressly and voluntarily relinquished its Media Rights to the ACC, with the understanding that the transfer of rights to the ACC would continue through June 30, 2036, regardless of whether it remained a Member Institution.

197. Florida State knowingly and voluntarily agreed in the Grant of Rights and Amended Grant of Rights to transfer ownership of its Media Rights to the ACC through June 30, 2036, knowing that the transfer and ownership would continue regardless of whether it remained a Member Institution of the Conference.

198. Florida State had full knowledge, actual or constructive, of the rights it transferred to the Conference in the Grant of Rights and Amended Grant of Rights, as well as the benefits that it would receive as a result.

199. Florida State intended to transfer the rights covered by these agreements to the Conference when it executed the Grant of Rights and Amended Grant of Rights, with the expectation of receiving the benefits of different and enhanced agreements between the Conference and ESPN.

200. Florida State intended for the Grant of Rights and Amended Grant of Rights to be enforceable and valid for the purpose of receiving the benefits generated by these contracts.

201. Florida State, through its conduct in accepting the benefits under the Grant of Rights and Amended Grant of Rights for more than a decade, led the ACC to reasonably understand that Florida State did not contest the validity or enforceability of the Grant of Rights or Amended Grant of Rights.

202. By accepting the substantial benefits made possible by the Grant of Rights and Amended Grant of Rights over a ten-year period, Florida State has waived its right to contest the validity or enforceability of these contracts.

203. The ACC is entitled to a declaration that Florida State is estopped from challenging the validity or enforceability of the Grant of Rights or Amended Grant of Rights, or has waived its right to contest the validity or enforceability of the terms and conditions of these contracts as a result of its conduct, including its acceptance of benefits under these agreements, over nearly a decade.

Third Claim for Relief: Florida State Has Breached Its Promises in the Grant of Rights and Amended Grant of Rights Agreements

204. The ACC adopts by reference and incorporates the allegations of paragraphs 1 through 203 of the Complaint.

205. The Grant of Rights and the Amended Grant of Rights are a valid, enforceable contract between the ACC and Florida State.

206. In the Grant of Rights and Amended Grant of Rights, Florida State “covenants and agrees that . . . it will not take any action, or permit any action to be taken by others subject to its control, . . . or fail to take any action, that would affect the validity and enforcement of the Rights granted to the Conference under this Agreement.”

207. In the Grant of Rights and Amended Grant of Rights, Florida State also “irrevocably and exclusively grant[ed] [its Media Rights] to the Conference during the Term” of the ESPN Agreements.

208. Under North Carolina law, each contract has an implied duty of good faith and fair dealing. Thus, the Grant of Rights and Amended Grant of Rights require Florida State to act in good faith and on principles of fair dealing to accomplish the purpose of the contracts.

209. By instituting the Florida Action, Florida State took direct action that affects the validity and enforcement of the Grant of Rights and Amended Grant of Rights, and breached its contract with the Conference.

210. By instituting the Florida Action, Florida State has taken direct action that affects the irrevocability and exclusivity of the Grant of Rights and Amended Grant of Rights, and has breached its contract with the Conference.

211. By filing the Florida Action, and taking the other actions set forth in this Amended Complaint, Florida State breached its obligation of good faith and fair dealing under the Grant of Rights and Amended Grant of Rights. In particular, rather than act in good faith and deal fairly with the Conference to accomplish the ends of the Grant of Rights and Amended Grant of Rights, Florida State has actively breached and sought to prevent the goals of those contracts.

212. The Conference has been damaged by these breaches in an amount yet to be determined but which the Conference reasonably believes will be substantial.

Fourth Claim for Relief: Florida State Has Breached Its Obligation to Protect Confidential Information

213. The ACC adopts by reference and incorporates the allegations set forth in paragraphs 1 through 212 of the Amended Complaint.

214. In the 2016 Multi-Media Agreement, ESPN and the ACC agreed that “[e]ach party shall maintain the confidentiality of this Agreement and its terms, and any other Confidential Information.” 2016 Multi-Media Agreement § 25.11; **Exhibit 8**.

215. Disclosure of the confidentiality of the 2016 Multi-Media Agreement and all Confidential Information under the 2016 Multi-Media Agreement was permitted “to each Conference Institution, provided that each Conference Institution shall agree to maintain the

confidentiality of this Agreement, subject to the law applicable to each such Conference Institution.” 2016 Multi-Media Agreement § 25.11(c); **Exhibit 8**.

216. As of December 22, 2023, Florida State was aware and had been aware of the confidentiality provisions of the 2016 Multi-Media Agreement.

217. In the ACC Network Agreement, ESPN and the ACC agreed that “[e]ach party shall maintain the confidentiality of this Agreement and its terms, and any other Confidential Information.” ACC Network Agreement § 18.11; **Exhibit 9**.

218. Disclosure of the confidentiality of the ACC Network Agreement and all Confidential Information under the ACC Network Agreement was permitted “to each Conference Institution, provided that each Conference Institution shall agree to maintain the confidentiality of this Agreement, subject to the law applicable to each such Conference Institution.” ACC Network Agreement § 18.11(c); **Exhibit 9**.

219. As of December 22, 2023, Florida State was aware and had been aware of the confidentiality provisions of the ACC Network Agreement.

220. In an effort to preserve the confidentiality of the ESPN Agreements, the Conference limits access to the Agreements. They are maintained at its Headquarters in North Carolina. Access is limited amongst Conference staff. Prior to voting to approve the Agreements in 2016, and at other meetings where the Agreements are discussed, the Members are verbally briefed on the provisions of the ESPN Agreements, each time reminded of the confidential nature of the Agreements. The ESPN Agreements are not shared electronically with Members.

221. In an effort to preserve the confidentiality of the ESPN Agreements, the Conference permits its Members to inspect and review the ESPN Agreements on request at its Headquarters

but only on agreement that the Member would not copy or reproduce the provisions of the ESPN Agreements and would treat the information as confidential.

222. In preparation for the actions set forth in this Amended Complaint, Florida State, through counsel, reviewed the 2016 Multi-Media Agreement and the ACC Network Agreement at the ACC's Headquarters in North Carolina on October 7, 2022, January 4, 2023, and August 1 and 2, 2023.

223. Before each inspection of the ESPN Agreements, the ACC informed Florida State of the confidentiality requirements and that its review was conditioned upon protecting the confidential information contained in the ESPN Agreements and not disclosing that information to the public.

224. As a result of these reviews, Florida State was provided with and learned the confidential information in the ESPN Agreements.

225. Florida State violated these conditions of confidentiality when it authorized and permitted disclosure of confidential information from the ESPN Agreements during the course of the Board of Trustees Meeting on December 22, 2023.

226. Florida State violated these conditions of confidentiality when it authorized and permitted disclosure of confidential information from the ESPN Agreements in the release of an unfiled version of the Complaint in the Florida Action.

227. Florida State violated these conditions of confidentiality when it authorized and permitted the disclosure of confidential information from the ESPN Agreements in the Complaint that it filed on December 22, 2023.

228. The material outlined in the Complaint constitutes confidential information under the terms of the 2016 Multi-Media Agreement and ACC Network Agreement.

229. Florida State has breached its obligation to treat the information in the 2016 Multi-Media Agreement and the ACC Network Agreement as confidential and, instead, has disclosed this information to the public.

230. The Conference has been damaged by Florida State's breach of its obligation in an amount to be determined but which the Conference reasonably believes will be substantial.

231. The Conference is further entitled to permanent injunctive relief barring Florida State from disclosing the confidential information in the ESPN Agreements that was disclosed to it by the Conference.

Fifth Claim for Relief: Florida State Has Breached and Continues to Breach Its Fiduciary Obligations to the Conference Under the ACC Constitution and Bylaws and North Carolina Law

232. The ACC adopts by reference and incorporates the allegations set forth in paragraphs 1 through 231 of the Amended Complaint.

233. The ACC is an unincorporated nonprofit association under North Carolina law and is governed by its Constitution and Bylaws. The Constitution and Bylaws are a contract by and between the ACC and a Member, including Florida State.

234. In 1991, Florida State requested to be permitted to join the Conference as a Member Institution. Each year, Florida State certifies that it has the mandate and support of the Board of Trustees "to operate a program of integrity in full compliance with NCAA, Conference and all other relevant rules and regulations."

235. The ACC Constitution and Bylaws give Florida State the right to participate in the management of the affairs of the Conference and, since joining the Conference in 1991, Florida

State, its employees, and its Presidents have actively participated in the management of the affairs of the Conference.

236. As a Member of an unincorporated nonprofit association under North Carolina law, Florida State had the right to participate in the management of the affairs of the Conference. N.C. Gen. Stat. § 59B-2(1).

237. As a Member Institution, Florida State has the right to participate in and select individuals authorized to manage the Conference's affairs and develop policies. N.C. Gen. Stat. § 59B-2(1).

238. As a Member Institution, Florida State has the authority to assert claims on behalf of the Conference. N.C. Gen. Stat. § 59B-7(e).

239. The rights and obligations of Members of an unincorporated nonprofit association under North Carolina law are further supplemented by principles of law and equity. N.C. Gen. Stat. § 59B-3.

240. Upon joining the ACC as a Member Institution, Florida State entered into a common and joint venture with the other Member Institutions, as expressed in the ACC's Constitution. As a member of a common and joint venture, Florida State has a fiduciary obligation to the other members of the common and joint venture, as well as to the Conference, to act in ways that advance the common and joint venture's goals and not act in ways that undermine or frustrate those goals.

241. The ACC Constitution and Bylaws, as well as the statutory and common law of North Carolina, impose a duty on Florida State to act in good faith, with due care, and in a manner that is in the best interests of the Conference while it is a Member of the Conference and charged with managing the Conference's affairs.

242. Under North Carolina law, when a member of a common and joint venture can no longer support the goals of the joint venture, it has an obligation to withdraw from the joint venture and not act in ways that frustrate the goals of the joint venture.

243. The Conference has adopted the method and form of governance of an incorporated body.

244. As a Member Institution, Florida State designated its President as a Member of the Board of Directors.

245. At all times relevant to this Amended Complaint, the President of Florida State was acting under the direction and pursuant to the authority of Florida State. His actions are the actions of Florida State.

246. Members of the Board of Directors of the Conference owe a fiduciary duty under the ACC Constitution and Bylaws, as well as principles of statutory and common law in North Carolina, to the Conference and its Member Institutions to act for the benefit of the Conference in matters involving the Conference.

247. Members of the Board of Directors of the Conference owe a fiduciary duty to the Conference and its Member Institutions under the ACC Constitution and Bylaws, as well as principles of statutory and common law in North Carolina, not to undermine or frustrate the goals and viability of the Conference.

248. Under the ACC Constitution and Bylaws, as well as principles of statutory and common law in North Carolina, when a Member of the Board of Directors of a joint venture contemplates and then authorizes actions that undermine or are designed to frustrate the stability of the joint venture or its goals, he has an obligation to resign from the Board of Directors.

249. One of the Conference's common goals, and part of the joint and common venture into which Florida State has entered as a Member Institution, is to create a viable collegiate athletic conference that, through its activities, enhances and funds college athletics for its Members.

250. By challenging the validity of the Grant of Rights and Amended Grant of Rights through the Florida Action, Florida State seeks to undermine or destroy the contracts and agreements that enable the Conference to create a viable collegiate athletic conference that, through its activities, enhances and funds college athletics for its Members.

251. By challenging the validity of the Grant of Rights and Amended Grant of Rights through the Florida Action, Florida State has further challenged the right of the Conference established under the Bylaws to market the Media Rights of the Member Institutions collectively, undermining the organization and management of the Conference.

252. Florida State's actions as set forth in this Amended Complaint and in filing the Florida Action have been for its own benefit, with no regard for the best interests of the Conference.

253. Florida State's actions as set forth in this Amended Complaint and in filing the Florida Action were taken without due care and in breach of its obligation of good faith.

254. None of the actions taken by Florida State as set forth in this Amended Complaint and in filing the Florida Action were for the benefit of or in the best interest of the Conference.

255. Florida State actions set forth in this Amended Complaint and in filing the Florida Action breached its fiduciary obligations to the Conference.

256. The actions of Florida State have caused actual damage to the Conference and will continue to cause damage in the future to the Conference.

257. Among the requests for relief sought by Florida State in the Florida Action is a request by Florida State that it be deemed to have retroactively withdrawn from the Conference as of August 15, 2023.

258. To be clear, a decision by Florida State to withdraw from the Conference does not constitute a breach of its President's fiduciary obligations as a member of the Board of Directors if appropriate notice is given under the ACC Constitution and Bylaws so that the Conference can address the resulting conflict of interest.

259. Under the ACC Constitution and Bylaws, in order to withdraw, a Member is required to provide notice of withdrawal by August 15 for a withdrawal to be effective on the following June 30.

260. Once a Member has indicated an intention to withdraw, the ACC Constitution and Bylaws further provide that as a consequence of a conflict of interest, the Conference may withhold proprietary or confidential information or bar attendance, voting, or attendance at Conference meetings for the Member and its Chief Executive or other representative(s):

During the period between delivery of a notice of . . . withdrawal and the effective date . . . the Board, the Executive Committee and any other Committee may withhold any information from, and exclude from any meeting (or portion thereof) any/or any vote, the Director . . . of the . . . withdrawing member, if the Board determines that (i) the relevant matter relates primarily to any period after the effective date . . . (ii) such information is proprietary or confidential or (iii) such attendance, access to information or voting could present a conflict of interest

Exhibit 1 at 13, ¶ 1.5.1.3.

261. As of the date of this Amended Complaint, Florida State claims that it has not withdrawn from the Conference.

262. By this claim, Florida State seeks to avoid exclusion from meetings or a bar on access to information or voting as a consequence of its conflict of interest.

263. By seeking retroactive withdrawal in the Florida Action, Florida State has a clear, direct, and material conflict of interest with the management of the Conference.

264. By continuing to act in disregard of this clear, direct, and material conflict of interest, Florida State breaches their obligations under the ACC Constitution and Bylaws, and the statutory and common law of North Carolina.

265. The ACC requests that this Court grant permanent injunctive relief barring Florida State from acting in breach of its fiduciary obligations under the ACC Constitution and Bylaws, as well as principles of statutory and common law in North Carolina, by barring it and its President and other representatives from participating in the management of the affairs of the Conference while it has a direct and material conflict with the purposes and objectives of the Conference.

Sixth Claim for Relief: Florida State Has Breached Its Obligation of Good Faith and Fair Dealing Under the ACC Constitution and Bylaws

266. The ACC adopts by reference and incorporates the allegations set forth in paragraphs 1 through 265 of the Amended Complaint.

267. The ACC Constitution and Bylaws is a valid and enforceable contract between the Conference and its Members.

268. Under North Carolina law, it is a basic principle of contract law that a party to a contract must act in good faith and on principles of fair dealing to accomplish the purpose of the contract.

269. Thus, in North Carolina, each contract has an implied duty of good faith and fair dealing.

270. Under the ACC Constitution and Bylaws, the Commissioner is charged with the duty to negotiate Media Rights agreements on behalf of the Conference. **Exhibit 1** at p. 13 §2.3.1.q and p. 39 §2.10.3. Florida State further agreed under the Bylaws that it had “granted to the

Conference the right to exploit certain media and related rights” under the Grant of Rights. *Id.* §2.10.1. Florida State further agreed under the Bylaws that it had “granted to the Conference the right to exploit certain media and related rights” under the Grant of Rights. *Id.* §2.10.1.

271. Florida State’s actions as detailed in this Amended Complaint violate its duty to act in good faith and fairly deal with the Conference.

272. To the contrary, and in violation of its obligations of good faith and fair dealing, Florida State has not acted in good faith and has not dealt fairly with the Conference.

273. The Conference has been damaged by Florida State’s violation of its contractual obligations of good faith and fair dealing in an amount to be determined, but which the Conference reasonably believes will be substantial.

IV. Prayer for Relief

WHEREFORE, the Plaintiff prays that::

1. The Court issue a Declaration that the Grant of Rights and amended Grant of Rights is a valid and enforceable contract between Florida State and the ACC and issue all necessary injunctive decrees or relief to enforce this Declaration;

2. The Court issue a Declaration that Florida State is estopped from challenging the validity of the Grant of Rights and amended Grant of Rights under the doctrine of equitable estoppel or estoppel by acceptance of benefits;

3. The Court issue a Declaration that Florida State is barred from challenging the validity of the Grant of Rights and amended Grant of Rights and has waived its right to do so.

4. The Conference have and recover of Florida State damages for its breaches of the Grant of Rights and Amended Grant of Rights in an amount to be proven at trial but which the Conference reasonably believes will be substantial;

5. The Conference have and recover of Florida State damages for the breach of its obligation to maintain the confidentiality of the ESPN Agreements in an amount to be determined but which the Conference reasonably believes will be substantial;

6. This Court issue a permanent injunction barring Florida State from disclosing confidential information from the ESPN Agreements;

7. This Court issue a permanent injunction barring Florida State from participating in the management of the affairs of the Conference while it has a direct and material conflict of interest with the purposes and objectives of the Conference;

8. The Conference have and recover of Florida State damages for its breach of the ACC Constitution and Bylaws in an amount to be proven at trial but which the Conference believes will be substantial;

9. This Court order such further relief as it deems just and appropriate.

This 17th day of January 2024.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed using the N.C. Business Court's electronic filing system, which will automatically and electronically notify all counsel of record as follows:

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