IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES C. SPIELMAN AKA CHRIS SPIELMAN, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED	
PLAINTIFFS,	
VS.	**CASE NO. 2:17-CV-612**
IMG COLLEGE, LLC, [IMG WORLDWIDE, INC., WME ENTERTAINMENT ("WME"), DBA IMG, DBA INTERNATIONAL MANAGEMENT GROUP, DBA ENDEAVOR LLC] (COLLECTIVELY REFERRED TO AS "IMG")	**JUDGE MICHAEL H. WATSON** **MAGISTRATE JUDGE KIMBERLY A. JOLSON** **JURY DEMAND ENDORSED HEREON**
AND	
NIKE, INC.	
AND	
NIKE USA, INC.,	
AND	
ENDEAVOR LLC,	
AND	
JOHN DOES 1-10,	
DEFENDANTS.	

SECOND AMENDED CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiff and putative Class Representative Charles C. Spielman aka Chris Spielman ("Chris Spielman") brings this action both individually and on behalf of

damages and injunctive relief classes (collectively, the "Classes") consisting of all current and former student-athletes residing in the United States who compete on, or competed on, any football program within the NCAA Division I Football Bowl Subdivision (FBS), formerly known as Division I-A of the NCAA, for any school, college, or university which has or had a licensing or marketing contract with IMG College, LLC or its affiliates. And where those current and former student-athletes' images, likenesses and/or names may be, or have been, included or could have been included (by virtue of their appearance in a team roster) in marketing campaigns licensed or sold by Defendants, their co-conspirators, or their licensees within the past ten (10) years immediately preceding this Complaint. The people who comprise the Classes have had their names, images, and/or likenesses licensed and/or sold, distributed, or utilized by Defendants or their licensees and/or affiliates preceding the filing of this Complaint (the "Class Period"), and will continue to do so in the future. '

2. Defendants IMG Communications, Inc. d/b/a IMG College ("IMG"), Nike USA Inc. and Nike, Inc. ("NIKE"), (IMG and NIKE are collectively referred to as "Defendants") have committed *per se* violations of the federal antitrust laws by engaging in a price-fixing conspiracy and a group boycott / refusal to deal that has unlawfully foreclosed class members from receiving compensation in connection with the commercial exploitation of their names, images, and/or likenesses following their cessation of intercollegiate athletic competition. Plaintiff also sets forth claims for (1) Unreasonable Restraint of Trade in Violation of Section 1 of the Sherman Act 15 U.S.C. §1, (2) Unreasonable Restraint of Trade – Group Boycott / Refusal to Deal in Violation

of Section 1 of the Sherman Act 15 U.S.C. §1, (3) Violations of 15 U.S.C. §1125, *et seq.*, (4) Violations of R.C. 4165, et seq., (5) Violations of R.C. 2741, *et seq.*, (6) Accounting, (7) Unjust Enrichment, and (8) Declaratory Relief. Plaintiff further requests that the Court establish a constructive trust for the benefit of the Class Members and for the purpose of holding in trust the licensing revenues that Defendants have unlawfully diverted from Class Members.

3. As utilized herein, the term "former student-athletes" or "Former Players" includes only those individuals that have permanently ceased competing in intercollegiate athletics at the NCAA Division I Football Bowl Subdivision (FBS), formerly known as Division I-A of the NCAA, for any school, college, or university which has or had a licensing or marketing contract with IMG College, LLC or its affiliates, because of, for example, graduation; exhaustion of eligibility; injury; voluntary decisions to cease competition; and involuntary separations from teams due to decisions by coaches, schools, conferences, and/or the NCAA, and also includes those individuals that subsequently became professional athletes, whether prior to or after the exhaustion of their intercollegiate eligibility, and further includes current students that have remained in school but ceased competing in those applicable intercollegiate athletic programs. The term "Damages Class" refers to Former Players. The term "Declaratory and Injunctive Relief Class" includes both Former Players and current student-athletes as described herein. The terms "Class," "Classes" and "Class Members" include both Damages and Declaratory and Injunctive Relief class members, unless otherwise specified.

4. As described below Defendants have unreasonably and illegally restrained trade in order to commercially exploit Former Players previously subject to their control, with such exploitation affecting those individuals well into their post-collegiate lives. The conduct of Defendants, and any and all co-conspirators, is blatantly anticompetitive and exclusionary, as it diminishes, negates, or wholly wipes out in total the future ownership interests of Former Players in their own images - rights that all other members of society enjoy - even long after student-athletes have ceased attending and/or participating in applicable intercollegiate events and/or programs.

5. Defendants, by and through their business partners and co-conspirators, including, but not limited to these and/or similar colleges and/or universities who appear to be the FBS schools with licensing or marketing contracts with IMG or its affiliates: Air Force, Alabama, University of Alabama at Birmingham, Akron, Arizona, Arizona State, Arkansas, Arkansas State, Auburn, Baylor, Boise State, Boston College, BYU, University of Central Florida, Central Michigan, Cincinnati, Clemson, Colorado, Connecticut, Duke, East Carolina, Eastern Michigan, Florida International University, Florida, Florida State, Fresno State, Georgia, Georgia State, Georgia Tech, Houston, Illinois, Kansas, Kent State, LSU, Louisiana-Lafayette, Louisville, Marshall, Maryland, Michigan, Michigan State, Middle Tennessee, Miami (OH), Miami (FL), Minnesota, Ole Miss, Missouri, Nebraska, New Mexico State, North Carolina, North Texas, Northwestern, Notre Dame, Ohio State, Ohio University, Oklahoma, Oklahoma State, Old Dominion, Oregon, Oregon State, Penn State, Pittsburgh, Rice, Rutgers, San Diego State, South Carolina, South Florida, Southern Mississippi, Stanford, Syracuse, TCU,

Tennessee, Texas, Texas A&M, Texas Tech, Tulane, Tulsa, UCLA, Utah, Utah State, University of Texas El Paso, Vanderbilt, Virginia Tech, Wake Forest, Washington, Washington State, West Virginia, Western Kentucky, Wyoming (collectively "the Co-conspirator Universities")[1], have attempted to eliminate the rights of Former Players to receive even a single dollar from the substantial revenue streams described herein (See Agreements between Defendant IMG and Co-conspirator Ohio State, attached as Exhibit A for an example of said behaviors; see also Exhibit B, Agreements between Defendant NIKE and Co-conspirator Ohio State). Former Players do not share in these revenues even though they have never given informed consent to the widespread and continued commercial exploitation of their names, images, and/or likenesses. While Defendants and their for-profit business partners reap millions of dollars from revenue streams including television contracts, rebroadcasts of "classic" games, DVD game and highlight film sales and rentals, "stock footage" sales to corporate advertisers and others, photograph sales, and jersey and other apparel sales, Former Players in the Class whose names, images and/or likenesses are utilized to generate those profit-centers receive no compensation whatsoever. (See Exhs. A and B). Despite the holdings in the *O'Bannon v. NCAA*, 802 F.3d 1049 (N.D. Cal. 2015), and without the consent of the Class Members and/or Mr. Spielman / Former Players, Defendants have entered into various licensing partnerships and/or agreements that unlawfully utilize the images of Plaintiff and Class Members, by and through Defendant IMG, and as further detailed herein.

[1] http://www.imgcollege.com/our-properties/colleges-universities; see also http://www.imgcollegeaffiliates.com/ and http://www.clc.com/Clients.aspx

The related available content featuring likeness of Former Players in the Class, such as DVDs, photos, banners, and merchandise, continues to grow in both availability and popularity, and the growth will continue to explode as merchandise continues to be made available in new delivery formats as developing technology and ingenuity permits, as exemplified by the substantial library of "on demand" internet content now available for sale for events / games as well as jerseys on various websites, including but not limited to, the Co-conspiracy Universities.

6. Mr. Spielman and Class Members have not transferred or conveyed their rights in the licensing or use of their image or likeness following the cessation of their participation in the applicable intercollegiate athletic programs. Thus, and upon information and belief, Defendants have no right to unilaterally license or use Former Players' images, names, and likeness upon the conclusion of their participation in intercollegiate athletics, nor do they have the ability to restrict Mr. Spielman or Class Members usage and/or utilization of the same. Defendants, however, have agreed to act as if they were granted perpetual licenses with no limits, and further agreed to license and use the wrongfully obtained rights. (See Ex. A).

7. In addition to agreeing to wrongfully interpret the use of Mr. Spielman and Class Members images while they were attending the Co-conspirator Universities as perpetual licenses, Defendants, in conjunction with the Co-conspirator Universities and/or similarly situated colleges and/or universities, have organized, maintained, and operated an unjust, perpetual system consisting of its dealings with the Defendants and others, which perpetual system of unjust usage and restriction has been further

facilitated by Defendants. Defendants, among potential others, in the aforementioned perpetual system of unjust and monopolistic behaviors have collectively and illegally conspired to limit and depress the compensation of Mr. Spielman and Class Members for continued use of their names, images, and likenesses to zero, and have restricted their ability to capitalize on the proverbial blood, sweat, and tears that Mr. Spielman and the Former Players shed throughout their respective tenure at the Co-conspirator Universities. Defendants' actions further constitute a group boycott/ refusal to deal, because their concerted actions have effectively caused Mr. Spielman and Class Members to relinquish all rights in perpetuity for use of their names, images, and/or likenesses. This concerted action is in effect a refusal to deal with Mr. Spielman and Former Players on future post-competition rights issues.

8. Defendants' abridgement of Mr. Spielman's and Former Players' economic rights in perpetuity is unconnected to any continuing pro-educational benefits for Mr. Spielman and/or Class Members, including those individuals currently participating in intercollegiate athletics who will inevitably become Former Players. Defendants' patently anti-competitive and illegal scheme has unreasonably restrained trade and is a *per se* violation of Section 1 of the Sherman Act. (See Ex. A).

9. In addition to violating the federal antitrust laws, Defendants, and/or their co-conspirators, have been unjustly enriched. Defendants' actions have deprived Mr. Spielman and Class Members of their ability to exploit their right of publicity which protects the misappropriation of a person's identity for commercial use by another, and

such use can consist of the person's name, visual likeness, or "other indicia of identity" such as voice, photograph, signature, or physical mannerisms. (See Ex. A).

10. Reasonable and less restrictive alternatives are available other than Defendants' apparent "zero compensation" policy for Mr. Spielman and Former Players licensing rights. For example, all of the major professional sports, including basketball and football, have identified and utilized group-licensing methods to share revenues among teams and players. Additionally, other reasonable and less restrictive alternatives could include the establishment of funds for health insurance, additional educational or vocational training, and/or pension plans to benefit Former Players.

11. On behalf of the Damages Class, Mr. Spielman seeks the relief asserted herein including monetary damages, to be automatically trebled under the federal antitrust laws; disgorgement and restitution of all monies by which the Defendants, and/or any related parties, have been unjustly enriched; and declaratory relief thereby establishing that that the language set forth in those Defendants' agreements with those certain entities, including, but not limited to, those certain NIKE agreements with Ohio State referring to the "Legends of the Scarlet and Gray" vintage jersey licensing program and any similar contracts and/or agreements with the Co-conspirator Universities regarding future compensation rights and/or which any agreements which seek to impose unjust restrictions on Mr. Spielman and the Former Players be declared as void and unenforceable. (See Ex. A). Mr. Spielman and the Class Members further seek an account of the monies received by Defendants, their affiliates, and/or their licensees in connection with the exploitation of Damages Class Members' names,

images, and/or likenesses and the establishment of a constructive trust to benefit Damages Class Members, namely Mr. Spielman and Former Players.

12. On behalf of both Former Players and current competitors in applicable intercollegiate football programs at the Co-conspirator Universities, Mr. Spielman additionally requests injunctive relief permanently enjoining Defendants and any related parties from further engaging in the behaviors set forth in this Complaint entering into and/or facilitating any other, licenses, contracts and/or agreements regarding future compensation rights and/or restrictions with respect to Mr. Spielman, Former Players, and the Class Members.

STATEMENT OF JURISDICTION

13. This Court has jurisdiction over the claims under 28 U.S.C. § 1331 because the action arises under the laws of the Unites States and involves federal questions, including but not limited to, 15 U.S.C. § 1125, *et seq*. The Court also has pendent jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

14. Jurisdiction is proper as the Causes of Actions are brought pursuant to the laws of the United States and/or utilize the same core of operative facts and is, therefore, subject to supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

15. Venue lies in the Southern District of Ohio because the facts leading to the dispute between the parties occurred in Franklin County, Ohio, within this District, and the Defendants and are doing business in this District. (See Exhs. A – D).

INTRADISTRICT ASSIGNMENT

16. This action arises in Franklin County because that is where a substantial part of the events that give rise to Mr. Spielman's claims occurred. (See Exhs. A – D). The Ohio State University main campus is located within this County. The Ohio State University is in direct privity of contract with Defendants IMG and NIKE. (See Ex. A and B). Ohio State's football program trains and competes in Franklin County. Ohio Stadium, where some of the infringing conduct occurred is located in Franklin County. Mr. Spielman and Former Players have been and will be, subject to the continuing violations described herein, as are current putative Class Members on that team for purposes of the Declaratory and Injunctive Relief Class. For the foregoing reasons, this action should be assigned to the Southern District of Ohio.

PLAINTIFF CHRIS SPIELMAN

17. Plaintiff Charles "Chris" Spielman is an individual who resides in Franklin County, Ohio. Mr. Spielman competed at Ohio State on its football team from 1984 through 1987. Mr. Spielman led the Buckeyes in total tackles in 1986 and 1987 and he is Ohio State's all-time leader in solo tackles.[2] He also holds Ohio State's record for most total tackles in a game.[3] Mr. Spielman is a three-time All-Big Ten choice and a two-time All-American and concluded his career at the Ohio State University by winning the Lombardi Award.[4] Mr. Spielman is third on the all-time Ohio State list in

[2] http://www.ohiostatebuckeyes.com/sports/m-footbl/spec-rel/062707aaa.html
[3] *Id.*
[4] *Id.*

total tackles behind Marcus Marek and Tom Cousineau.[5] After leaving Ohio State, Mr. Spielman became recognized as one of the National Football League's top players after finishing his 12-year career in 1999 with the Cleveland Browns.[6] In this case, Mr. Spielman has been deprived of compensation by Defendants for the continued use of his name, image, and likeness following the end of his playing career at Ohio State. Mr. Spielman has also been subjected to unnecessary, unjust, and unconstitutional restrictions with respect to the usage of his own name, image and/or likeness. Upon information and belief, Defendants by and through their efforts with Ohio State, organized and participated in a for-profit scheme whereby at least sixty-four (64) Former Players and/or coaches were depicted upon banners that were hung in the Ohio State University football stadium "The Horseshoe" (the "Honda Banner Program"). (See depictions of those Honda Banners attached as Ex. C). Mr. Spielman was one of the at least sixty-four (64) Former Players depicted on said banners, even though Mr. Spielman did not provide consent, and Mr. Spielman was not compensated for said Honda Banner Program. Upon information and belief, Mr. Spielman and Former Players have been and will continue to be subjected to damages for the unauthorized use of their names, images and likeness, as Defendants by and through their contracts and/or agreements among one another and/or with the Co-conspirator Universities, have continued to engage in for-profit business ventures while utilizing the name, images and/or likeness of Mr. Spielman and the Former Players without providing just

[5] *Id.*
[6] *Id.*

compensation, without obtaining their consent, and while engaging in commerce and for-profit business dealings in an attempt to impose restrictions upon Mr. Spielman and Former Players. (See Exhs. A and B; see also depictions of banners and marketing materials related to Mr. Spielman, Former Players and the Class attached collectively hereto as Exhibit C).

DEFENDANTS

18. Defendant IMG College, LLC [dba and/or otherwise known as and/or affiliated with WME Entertainment, also known as IMG Worldwide, Inc., dba IMG dba International Management Group dba Ohio State IMG Sports Marketing (collectively, "IMG" or "IMG/WME")] is a for-profit entity and is registered as a Foreign limited liability company in the State of Ohio.

19. NIKE USA, Inc. and NIKE, Inc. ("NIKE") are for-profit entities incorporated under the laws of the State of Oregon. NIKE has participated in and derived a benefit from the above-referenced business relationships and/or contractual agreements and is engaged in business in this Jurisdiction by its dealings with co-Defendants. (See Exhs. A and C).

20. Endeavor LLC is believed to be the parent company/affiliate of IMG with, upon information and belief, a principal place of business at 1075 Peachtree St NW 3300 & 3200, Atlanta, GA 30309.

21. John Does 1-10 and various other persons, firms, and corporations, and/or entities have participated as unnamed co-conspirators with Defendants in the violations and conspiracy alleged herein, including those certain dealings

whereby the Co-conspirator Universities have "assigned their rights" with respect to licensing of jerseys and additional apparel as set forth in the License Agreement with NIKE and as referenced and or reaffirmed by those certain amendments/addenda thereto. (See Exhs. A – C). In order to engage in the offenses, charges, restrictions, and violations alleged herein, these non-party and/or unnamed co-conspirators acted in concert with Defendants have performed acts and made statements in furtherance of the antitrust violations and other violations alleged herein. The names and contact information of John Does 1-10 could not be identified at the time of the filing of this action; however, certain non-party co-conspirators are identified herein.

22. At all relevant times, and upon information and belief, each Defendant was an agent, affiliate, and/or contractual party with respect to the non-party Co-conspirator Universities, and in doing the acts alleged herein, was/were acting within the course and scope of such agency/business relationship by and through the various programs and contractual dealings, including those set forth herein. Defendants ratified and/or authorized the wrongful acts of Defendants and each of the other co-Defendants, non-parties, or co-conspirators. (See Exhs. A – C). Defendants are participants as aiders and abettors in the improper acts and transactions that are the subject of this action. (See Exhs. A – C).

23. Whenever a reference is made in this Complaint to any act, deed, or transaction of the Defendants and/or presently unidentifiable defendant, the allegation

means that the Defendants engaged in the act, deed, or transaction by or through their officers, directors, agents, employees, licensees, or representatives while they were actively engaged in the management, direction, control or transaction of Defendants' for-profit business affairs, whether directly or indirectly.

CO-CONSPIRATORS

24. These colleges and/or universities appear to be the FBS schools with licensing or marketing contracts with IMG or its affiliates: Air Force, Alabama, University of Alabama at Birmingham, Akron, Arizona, Arizona State, Arkansas, Arkansas State, Auburn, Baylor, Boise State, Boston College, BYU, University of Central Florida, Central Michigan, Cincinnati, Clemson, Colorado, Connecticut, Duke, East Carolina, Eastern Michigan, Florida International University, Florida, Florida State, Fresno State, Georgia, Georgia State, Georgia Tech, Houston, Illinois, Kansas, Kent State, LSU, Louisiana-Lafayette, Louisville, Marshall, Maryland, Michigan, Michigan State, Middle Tennessee, Miami (OH), Miami (FL), Minnesota, Ole Miss, Missouri, Nebraska, New Mexico State, North Carolina, North Texas, Northwestern, Notre Dame, Ohio State, Ohio University, Oklahoma, Oklahoma State, Old Dominion, Oregon, Oregon State, Penn State, Pittsburgh, Rice, Rutgers, San Diego State, South Carolina, South Florida, Southern Mississippi, Stanford, Syracuse, TCU, Tennessee, Texas, Texas A&M, Texas Tech, Tulane, Tulsa, UCLA, Utah, Utah State, University of Texas El Paso, Vanderbilt, Virginia Tech, Wake Forest, Washington, Washington State, West Virginia, Western Kentucky, Wyoming and are the Co-conspirator Universities.

25. The Co-conspirator Universities are private and publicly funded major universities across the United States who appear to be the FBS schools with licensing or marketing contracts with IMG or its affiliates.

26. Upon information and belief, the Co-conspirator Universities have conspired, in ways not yet fully understood, with IMG and NIKE to allow IMG and NIKE to violate the claims complained of in this case.

27. American Honda Motor Co. Inc. ("HONDA") is a for-profit entity incorporated under the laws of the State of California with its principal place of business located at 700 Van Ness Ave, Torrance, California 90501. As a co-conspirator, HONDA participated in and/or derived a benefit from the above-referenced Honda Banner Program and is engaged in business in this Jurisdiction by its dealings with co-Defendants and/or the Ohio State University. (See Ex. B).

GENERAL ALLEGATIONS

28. Ohio State is one of the largest universities in the nation, with a student population over 60,000 students at its Columbus campus.[7]

29. Additionally, Ohio State has an estimated alumni base comprised of nearly half a million-people living around the world.[8]

30. Like the other Co-conspirator Universities, Ohio State offers various athletic programs, including an FBS football team.

31. Ohio State's football team is widely recognized and followed.

[7] https://www.osu.edu/osutoday/stuinfo.php
[8] https://www.osu.edu/alumni/about-us/

32. Each year the football program hosts home games (as often as seven times a year) at Ohio Stadium, which is also known by its nicknames the "Horseshoe" or the "Shoe."

33. Hundreds of thousands of people (fans) attend these home games.

34. Ohio Stadium boasts a seating capacity of 104,944 people and is the fourth largest on-campus facility in the nation.[9]

35. "From 1951 to 1973, the Buckeyes led the nation in attendance 21 times, including the 14 consecutive years from 1958 to 1971. Since 1949, Ohio State has never been lower than fourth nationally in average home attendance."[10]

36. Ohio Stadium had an average attendance in 2014 of 106,296 fans per game.[11]

37. Ohio State also regularly hosts other events at Ohio Stadium including, tours, events, and recruiting.

38. At each of these home games and various events, the fans are accosted by various advertisements.

39. These advertisements included banners that hung around Ohio Stadium and/or additional Ohio State University facilities as fans attempted to locate their seats or obtain refreshments, including but not limited to, the Honda Banner Program. (See Exhs. A and C.)

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[9] http://www.ohiostatebuckeyes.com/facilities/ohio-stadium.html

[10] *Id.*

[11] http://www.azcentral.com/story/sports/ncaaf/2015/05/14/ohio-state-had-highest-2014-average-football-attendance/27336369/

40. The depictions throughout Ohio State University's athletic facilities include Mr. Spielman as well as other Former Players. (See Exhs. A and C).

41. The Honda Banner contained depictions of notable Ohio State University football players with their last names placed vertically next to a photograph of the player and a black bar at the bottom of the banner with the word HONDA in white text as well as the image and likeness of the Former Player. (See Ex. C).

42. Like Ohio State, the other Co-conspirator Universities have football stadiums that seat tens of thousands, if not more than 100,000, fans.

43. In fact, all seven (7) of college football program whose stadiums seat over 100,000 fans (*i.e.*, in order of largest stadium capacity: Michigan, Penn State, Ohio State, Texas A&M, Tennessee, LSU, and Alabama) are Co-conspirator Universities with licensing or marketing contracts with IMG or its affiliates.

44. The Co-conspirator Universities have tens of thousands, if not hundreds of thousands, of living alumni, each.

45. The Co-conspirator Universities host up to eight football games per year at their massive stadiums.

46. The Co-conspirator Universities host other events at their football stadiums.

47. At each of the Co-conspirator Universities' home games and various events, the fans are accosted by various advertisements.

48. These advertisements included banners that hung around the Co-conspirator Universities' football stadiums and/or additional football facilities as fans

attempt to locate their seats or obtain refreshments, including but not limited to, programs identical or similar to the Honda Banner Program.

49. The Co-conspirator Universities also use the Former Players likeness in various advertisements, marketing materials, donation requests, and other for-profit uses.

50. The depictions throughout Co-conspirator Universities' football stadiums and athletic facilities include the Former Players.

51. The Banners Programs contain depictions of notable Former Players at the Co-conspirator Universities.

52. Upon information and belief, Mr. Spielman and other Putative Class Members/Former Players did not provide Defendants with, among other things, their permission to engage in for-profit licensing/marketing/advertising programs with Defendants and/or other unnamed parties, nor did they consent, to the use of their personas, names, images and/or likenesses by any of the Defendants. (See e.g., Exhs. A – C; see also, Ex. D, which is an agreement between non-party and Co-conspirator University, Ohio State University and Putative Class Member/Former Player James Stillwagon for the use of his name, image, and/or likeness in connection with a "Coke Machine" that was to be placed in Ohio Stadium in 2000).

COUNT ONE – VIOLATION OF SECTION 1 OF THE SHERMAN ACT -15 U.S.C. § 1 UNREASONABLE RESTRAINT OF TRADE

53. Mr. Spielman incorporates all the preceding and following paragraphs by reference as if fully rewritten herein.

54. Defendants, by and through Defendants' officers, directors, employees, agents, or other representatives, by and through the Co-conspirator Universities, have entered into continuing contracts/business dealings, combination, and conspiracy in restraint of trade to artificially depress, fix, maintain, and/or stabilize the prices paid (specifically, depressing, fixing, maintaining and stabilizing them at zero dollars) to Mr. Spielman, Class Members, and Former Players for the use of, and to limit supply for, licensing, restrictions, and sale of their names, images, and/or likeness in the United States and its territories and possessions, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). (See Exhs. A – D).

55. If Mr. Spielman, Former Players and Class Members were free to license and sell the rights to their names, images, and likeness, and/or, at a minimum, participate in said for-profit dealings, many more licenses/products would be sold. This output restriction also has the effect of raising the prices charged by the Defendants and third parties, including but not limited to the Co-conspirator Universities. (See e.g., Exhs. A – C).

56. Defendants and co-conspirators unlawful conduct resulted in Mr. Spielman and Former Players losing their freedom to compete in the open market. This unreasonable restraint on competition has artificially limited supply and depressed prices paid by Defendants and/or co-conspirators to Mr. Spielman, Former Players and the Class Members for use of their names, images, and/or likenesses after cessation of participation in the aforementioned athletic programs. (See Exhs. A – D).

57. Mr. Spielman, Former Players and the Class Members received less than they otherwise would have received for the use of their names, images and/or likenesses in a competitive marketplace, and were thus damaged, and seek to recover for those damages. (See Exhs. A – D).

58. Defendants' and/or co-conspirators' total abridgment of compensation rights to Mr. Spielman, Former Players and the Class Members comprised of former athletes as depicted in Exhibits C and D are *per se* restraints of trade and are not connected to any legitimate non-commercial goal. The purpose of the actions undertaken by Defendants are solely to enhance revenue for themselves and their for-profit business partners, by cutting costs, *i.e.,* eliminating the need to pay any compensation to Mr. Spielman, Former Players, and Class Members for the continuing commercial exploitation of their names, images, and likenesses. (See Ehxs. A – D).

59. Defendants, jointly and severally, and/or by and through their dealings with co-conspirators, have facilitated this illegal scheme and has financially benefited from the same.

60. As a direct and proximate result of Defendants' and/or their affiliates', utter disregard for the Mr. Spielman, Former Players, and the Class Members, Mr. Spielman, Former Players, and the Class Members have been injured and financially damaged in amounts which are presently undetermined. Mr. Spielman's, Former Players', and Class Members' injuries consist of receiving lower prices for use of their names, images, and likenesses than they would have received absent Defendants' conduct, and Mr. Spielman, Former Players and Class Members have been unjustly and

unlawfully restrained from participating in the open market. Mr. Spielman's, Former Players', and Class Members' injuries are of the type the antitrust laws were designed to prevent and flow from that which makes Defendants' conduct unlawful. (See Exhs. A – D).

61. Mr. Spielman alternatively pleads that Defendants and their co-conspirators, including but not limited to the Ohio State University, have violated Section 1 of the Sherman Act and that Defendants' actions violate the "rule of reason" antitrust analysis.

62. Defendants' and/or their co-conspirators and/or affiliates have collectively conspired to illegally limit and depress the compensation of Mr. Spielman, Former Players and the Class Members for continued use of their names, images, and likenesses to zero. This patently anticompetitive and illegal scheme has unreasonably restrained trade. (See Exhs. A – D).

63. Defendants' and their co-conspirators' and/or affiliates' scheme fails the "rule of reason" antitrust analysis, as its anticompetitive effects substantially outweigh any alleged procompetitive effects that may be offered by Defendants and/or the Ohio State University, including that their collusive conduct is shielded by its concept of "amateurism." Reasonable and less restrictive alternatives are available to Defendants' current anticompetitive practices, including but not limited to, requesting permission, providing adequate compensation, and permitting free trade. (See Exhs. A – D).

64. As a direct and proximate result of the wrongful conduct of the Defendants, Mr. Spielman, Former Players and Class Members have been damaged and

are entitled to a declaratory judgment declaring as void and unenforceable all business relationships and/or contractual agreements and/or relevant sections thereof that purport to grant, transfer, restrict or convey the rights of Mr. Spielman, Former Players, and the Class Members in the use of their names, images, and/or likenesses by and among Defendants and/or their co-conspirators, including but not limited to the Ohio State University. Mr. Spielman, Former Players and Class Members are entitled to a permanent injunction that terminates the ongoing violations alleged in this Complaint.

65. Mr. Spielman, Former Players, and Class Members are entitled to a judgment against the Defendants, jointly and severally, in an amount exceeding $75,000.00.

66. Mr. Spielman, Former Players and Class Members are entitled to an Order whereby Defendants and their respective officers, directors, agents, employees, affiliates, and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the alleged combination and conspiracy, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect with respect to the use and/or restraint of Mr. Spielman's, Former Players' and Class Members' names, images, and likenesses.

COUNT TWO - VIOLATION OF SECTION 1 OF THE SHERMAN ACT- 15 U.S.C. § 1
UNREASONABLE RESTRAINT OF TRADE - GROUP BOYCOTT/ REFUSAL TO DEAL

67. Mr. Spielman incorporates and re-alleges each allegation set forth in the preceding and following paragraphs of this Complaint.

68. Defendants, by and through Defendants' officers, directors, employees, agents, affiliates, or other representatives, entered into various contractual agreements and/or conspiracies with co-conspirators in restraint of trade to effectuate a group boycott of Mr. Spielman, Former Players, and the Class Members. (See Exhs. A – D).

69. Defendants NIKE and IMG have indemnified the Ohio State University through their agreements with the Ohio State University and likely the other Co-conspirator Universities.

70. Defendants' and the Co-conspirator Universities' group boycott / refusal to deal encompasses Defendants' concerted refusal to compensate Mr. Spielman, Former Players, and Class Members for use of their names, images, and likenesses, and to otherwise concertedly act to prevent Class Members from being compensated for use of their images, in the United States and its territories and possessions, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). (See Exhs. A – D).

71. Defendants' group boycott/refusal to deal includes concerted actions whereby Defendants and the Co-conspirator Universities have impeded Mr. Spielman's, Former Players', and Class Members' ability to maximize on future post-competition compensation rights, and attempts to restrict them from access to the

market via dealings such as those set forth in the NIKE/OSU License Agreement (See Ex. A).

72. Defendants' group boycott/refusal to deal also includes Defendants' ongoing concerted actions with the Co-conspirator Universities and similarly situated individuals and/or entities to deny Class Members compensation in the form of royalties for the continued use of their names, images, and likeness for profit, including, but not limited to, those certain dealings of and concerning the respective Honda Banner Program, as well as other licensing programs. (See Exhs. A – D).

73. Mr. Spielman, Former Players, and the Class Members received less than they otherwise would have received for the use of their names, images, and likeness in a competitive marketplace and were thereby damaged, and seek to recover for those damages.

74. Defendants' total abridgment of compensation rights for Mr. Spielman, Former Players, and the Class Members are a blanket, *per se* restraint of trade, and are not connected to any legitimate non-commercial goal. (See Exhs. A – D). Defendants' actions are solely to enhance revenue for themselves and their for-profit business partners and/or co-defendants/co-conspirators, by cutting costs, *i.e.*, eliminating the need to pay any compensation to Mr. Spielman, Former Players, and the Class Members for the continuing commercial exploitation of their images and likenesses. Thus, the actions of Defendants seek to directly regulate a commercial market and therefore are illegal.

75. Defendants, by and through their dealings with the Co-conspirator Universities and other similar entities, have facilitated this illegal group boycott/refusal to deal and have financially benefited from it. (See Exhs. A – D).

76. As a direct and proximate result of Defendants' group boycott, Mr. Spielman, Former Players, and the Class Members have been injured and financially damaged in amounts which are presently undetermined. Mr. Spielman's, Former Players', and Class Members' injuries consist of denial of compensation for use of their names, images, and likeness and attempts to restrict their usage of the same. Mr. Spielman's, Former Players' and Class Members' injuries are of the type the antitrust laws were designed to prevent and flow from that which makes Defendants' and the Co-conspirator Universities' conduct unlawful. (See e.g., Exhs. A – D).

77. Mr. Spielman on behalf of himself and all other similarly situated, alternatively pleads that the Defendants' and the co-conspirators' group boycott/ refusal to deal violates Section 1 of the Sherman Act and their concerted actions violate the "rule of reason" antitrust analysis. (See Exhs. A – D).

78. Defendants and co-conspirators have collectively conspired to restrict Mr. Spielman and the Class Members from utilizing their own names, images, and likeness illegally denying compensation to Mr. Spielman and the Class Members for continued use of their images in unreasonable restraint of trade.

79. Defendants' and their co-conspirators' group boycott fails the "rule of reason" antitrust analysis, as its anticompetitive effects substantially outweigh any alleged pro-competitive effects that may be offered by Defendants and their co-

conspirators, namely, the Co-conspirator Universities, including that their collusive conduct is shielded by its concept of "amateurism" or pro-educational purpose. Reasonable and less restrictive alternatives are available to Defendants' current anticompetitive practices, including but not limited to, requesting permission and/or providing adequate compensation to Mr. Spielman, Former Players, and Class Members. (See Exhs. A – D).

80. Mr. Spielman, Former Players and the Class Members are entitled to a permanent injunction that removes/terminates/restrains the ongoing violations alleged in this Complaint.

81. Mr. Spielman and Class Members are entitled to a judgment against the Defendants and unnamed Defendants in an amount no less than $75,000.00.

82. Mr. Spielman, Former Players and Class Members are entitled to an Order whereby Defendants and their respective officers, directors, agents, affiliates, employees, assigns, and successors and all other persons acting or claiming to act on its/their behalf are enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the alleged combination and conspiracy, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect with respect to the allegations set forth throughout the Complaint on behalf of Mr. Spielman, Former Players and Class Members.

COUNT THREE – VIOLATIONS OF 15 U.S.C. § 1125, *ET SEQ*.
(ALSO KNOWN AS THE LANHAM ACT)

83. Mr. Spielman incorporates all the preceding and following paragraphs by reference as if fully rewritten herein.

84. Defendants by and through their actions described throughout this Complaint have violated 15 U.S.C. § 1125, *et seq*.

85. Mr. Spielman, Former Players, and Class Members have been and/or are likely to be damaged by Defendants' actions, including those actions complained of herein.

86. Pursuant to 15 U.S.C. § 1125(a), *et seq*., civil liability is created for "[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol, or device or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsor-ship, or approval of his or her goods, services, or commercial activities by another person . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." 15 U.S.C. § 1125(a).

87. Mr. Spielman, Former Players, and Class Members are highly recognized figures in or around the United States.

88. Mr. Spielman, Former Players, and Class Members are highly recognized due to, among other things, their accomplishments while attending college and participating in athletic programs, including those depicted in the Exhibits attached hereto. (See Exhs. C – D).

89. Mr. Spielman's, Former Players', and Class Members' successes on and off the field have made them highly recognizable to many people, including, current and former college students, the general public, Co-Conspirator Universities' sports fans, FBS collegiate football fans, and professional sports fans. (See Exhs. A – D).

90. Mr. Spielman, Former Players, and Class Members, as a result of their personal, amateur, and professional accomplishments, have obtained a certain amount of goodwill among many people, including, but not limited to, current and former students at the Co-conspirator Universities, the general public, FBS collegiate football fans, and professional football fans.

91. Defendants are capitalizing on Mr. Spielman's, Former Players', and Class Members' personal, amateur, professional accomplishments and goodwill by, among other things, entering into for-profit licensing/marketing agreements, posting banners, or images depicting Mr. Spielman, Former Players, and certain Class Members while they were competing in athletic events, specifically while attending the Co-conspirator Universities. (See Exhs. A – D).

92. By way of limited example relevant to Mr. Spielman, Defendants are attempting to persuade visitors to the Ohio State's sports facilities, including Ohio Stadium, to purchase certain products and/or supplies because said products and/or

supplies perform at a high level, just like Mr. Spielman, Former Players, and Class Members did while they were participating in sporting events while attending Ohio State. (See Exhs. A – D).

93. Defendants have caused, facilitated and benefitted from those various images that were/are displayed prominently around Ohio State's campus including, Ohio Stadium and the Woody Hayes Facility, which contain or contained Mr. Spielman's, Former Players', and Class Members' names, likenesses and/or photographs/images, which are actual depictions of Mr. Spielman and Class Members while they were participating in athletic programs, including those undertaken while attending school at Ohio State. (See Exh's. A – D).

94. Visitors to Ohio Stadium and the Woody Hayes Facility, and/or any other athletic venues on or about the Co-conspirator Universities' campuses are likely confused, mistaken or deceived as to the affiliation, connection, or association of Mr. Spielman, Former Players, and Class Members with Defendants, or the origin, sponsorship, or approval of Defendants' commercial activities, including, but not limited to, HONDA's and NIKE's services and/or products. (See Exhs. A – D).

95. As a direct and proximate result of the wrongful conduct of Defendants and/or other presently unidentifiable defendants, Mr. Spielman, Former Players, and Class Members have been damaged and are entitled to the following remedies: a permanent injunction against commercial marketing, sale, and use of the Mr. Spielman's, Former Players', and Class Members' names, images, and likeness with corporate sponsors in for-profit ventures, confiscation and destruction of offending

products (including banners, jerseys, pictures, and all other marketing material), damages and attorney's fees.

96. Upon information and belief Defendants' and unidentified defendants' actions as alleged herein was/were committed with knowledge that such conduct was intended to be used to cause confusion, or cause mistake, or to deceive.

97. Mr. Spielman, Former Players, and the Class Members are entitled to a judgment against Defendants in an amount no less than $75,000.

98. Defendants' violation of § 43(a) of the Lanham Act has caused and, unless restrained, will continue to cause great and irreparable injury to Mr. Spielman's, Former Players', and the Class Members' goodwill and business in an amount that cannot be presently ascertained, leaving Mr. Spielman, Former Players, and the Class Members with no adequate remedy at law. Mr. Spielman, Former Players, and the Class Members are therefore entitled to injunctive relief under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

99. Mr. Spielman, Former Players, and Class Members alternatively plead that as a direct and/or proximate result of Defendants' actions, Mr. Spielman, Former Players, and Class Members have been and/or are likely to be damaged in an amount no less than $75,000.00.

COUNT FOUR – VIOLATIONS OF R.C. 4165, ET SEQ.

100. Mr. Spielman, Former Players, and Class Members incorporate all the preceding paragraphs by reference as if fully rewritten herein.

101. Pursuant to R.C. 4165, *et seq*., "[a] person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

> a. [c]auses [a] likelihood of confusion or misunderstanding as to the . . . sponsorship [or] approval of goods or services;
>
> b. [c]auses [a] likelihood of confusion or misunderstanding as to the affiliation, connection, or association with . . . another; or
>
> c. [r]epresents that goods or services have sponsorship [or] approval . . . that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

See R.C. 4165.02(A)(2, 3, and 7).

102. Defendants, jointly and severally, have violated R.C. 4165, *et seq*.

103. Defendant IMG/WME routinely advertises and/or promotes the sale of the Co-conspirator Universities' and/or other third-party products, services, and/or goods. (See e.g., Exhs. A – D).

104. Defendant IMG/WME routinely advertises and/or promotes the sale of the Co-conspirator Universities' and/or other third-party products, services, and/or goods, including HONDA and NIKE's products, services, and/or goods.

105. Defendant IMG/WME, by and through its agents, predecessors, successors, employees, contractors, assignees, and licensors/licensees (as appropriate), in the course of its business, vocation, and/or occupation, routinely advertise and/or promote the sale of the Co-conspirator Universities' and/or third-party products, services, and/or goods, including but not limited to, co-Defendants' products, services,

and/or goods, including but not limited to those related to Mr. Spielman, Former Players, and Class Members.

106. Defendant NIKE, by and through its agents, predecessors, successors, employees, contractors, assignees, and licensors/licensees (as appropriate), in the course of its business, vocation, and/or occupation, routinely advertise and/or promote the sale of its products at the Co-conspirator Universities and/or in commerce, including but not limited to those related to Mr. Spielman, Former Players, and Class Members.

107. Co-conspirator HONDA, by and through its agents, predecessors, successors, employees, contractors, assignees, and licensors/licensees (as appropriate), in the course of its business, vocation, and/or occupation, routinely advertise and/or promote the sale of its products at some of the Co-Conspirator Universities and/or in commerce, including but not limited to those related to Mr. Spielman, Former Players, and Class Members.

108. Defendant IMG/WME, by and through its agents, predecessors, successors, employees, contractors, licensors/licensees, assignees, and assignors (as appropriate), in the course of their business, vocation, and/or occupation, routinely advertise and/or promote the sale of products, services, and/or goods, including HONDA and NIKE's products, services, and/or goods and/or in commerce, including but not limited to those related to Mr. Spielman, Former Players, and Class Members.

109. Defendant NIKE, by and through its agents, predecessors, successors, employees, contractors, assignees, and assignors (as appropriate), in the course of their

business, vocation, and/or occupation, routinely advertise and/or promote the sale of its products, services, and/or goods with the Co-Conspirator Universities and/or in commerce, including but not limited to those related to Mr. Spielman, Former Players, and Class Members.

110. Defendant NIKE, by and through its agents, predecessors, successors, employees, contractors, assignees, and assignors (as appropriate), in the course of their business, vocation, and/or occupation, routinely advertise and/or promote the sale of its products, services, and/or goods with the Co-conspirator Universities and/or in commerce, including but not limited to those related to Mr. Spielman, Former Players, and Class Members.

111. Defendants have caused a likelihood of confusion and/or misunderstanding as to Mr. Spielman's, Former Players', and Class Members' **sponsorship** of goods or services related to Defendants. *See* R.C. 4165.02(A)(2).

112. Defendants have posted various banners and additional marketing/advertising materials around the Co-conspirator Universities' football facilities and stadiums depicting various student-athletes, including Mr. Spielman, Former Players, and certain Class Members, with Defendants' logos/names. (See Exhs. C and D).

113. Upon information and/or belief, the banners, and additional marketing/advertising materials posted or caused to be posted by Defendants around the Co-conspirator Universities would likely cause confusion or misunderstanding to

consumers and/or the general public as to Mr. Spielman's, Former Players', and the Class Members' sponsorship of Defendants' goods or services.

114. Defendants have caused a likelihood of confusion and/or misunderstanding as to Mr. Spielman's, Former Players', and Class Members' **approval** of goods or services of Defendants. *See* R.C. 4165.02(A)(2).

115. Upon information and/or belief, the banners and/or other advertising materials posted or caused to be posted by Defendants, including but not limited to those posted around the Co-conspirator Universities, would likely cause confusion or misunderstanding to consumers and/or the general public as to Mr. Spielman's, Former Players', and the Class Members' approval of Defendants' goods or services. (See Exhs. C – D).

116. Defendants have caused a likelihood of confusion and/or misunderstanding as to Mr. Spielman's, Former Players', and Class Members' **affiliation with** Defendants. *See* R.C. 4165.02(A)(3).

117. Upon information and/or belief, the banners and/or other advertisements posted or caused to be posted by Defendants around the Co-conspirator Universities would likely cause confusion or misunderstanding to consumers and/or the general public as to Mr. Spielman's, Former Players', and the Class Members' **affiliation with** Defendants. (See Exhs. C – D).

118. Defendants have caused a likelihood of confusion and/or misunderstanding as to Mr. Spielman's, Former Players', and Class Members' **connection with** Defendants. *See* R.C. 4165.02(A)(3).

119. Upon information and/or belief, the banners and/or other advertising materials posted or caused to be posted by Defendants around the Co-conspirator Universities would likely cause confusion or misunderstanding to consumers and/or the general public as to Mr. Spielman's, Former Players', and the Class Members' connection with Defendants.

120. Defendants have caused a likelihood of confusion and/or misunderstanding as to Mr. Spielman's, Former Players', and Class Members' **association with** Defendants. *See* R.C. 4165.02(A)(3).

121. Upon information and/or belief, the banners and/or other advertisements posted or caused to be posted by Defendants around the Co-conspirator Universities would likely cause confusion or misunderstanding to consumers and/or the general public as to Mr. Spielman's, Former Players', and the Class Members' association with Defendants.

122. Upon information and/or belief, Defendants, through their actions and/or inactions set forth throughout this Complaint, have represented that their goods and/or services have the sponsorship of Mr. Spielman, Former Players, and Class Members when Defendants did not have said sponsorship of Mr. Spielman, Former Players, and Class Members.

123. Defendants have represented that Defendants' goods or services have the **sponsorship** of Mr. Spielman, Former Players, and Class Members when Defendants do not have the **sponsorship** of Mr. Spielman, Former Players, and Class Members. *See* R.C. 4165.02(A)(7).

124. Upon information and/or belief, Defendants, through their actions and/or inactions set forth throughout this Complaint, have represented that their goods and/or services have the approval of Mr. Spielman and Class Members when Defendants did not have said approval of Mr. Spielman and Class Members.

125. Defendants have represented that Defendants' goods or services have the **approval** of Mr. Spielman, Former Players, and Class Members when Defendants do not have the **approval** of Mr. Spielman, Former Players, and Class Members. *See* R.C. 4165.02(A)(7).

126. Upon information and/or belief, Defendants, through their actions and/or inactions set forth throughout this Complaint, have represented that they have the sponsorship of Mr. Spielman, Former Players, and Class Members when Defendants did not have said sponsorship of Mr. Spielman, Former Players, and Class Members.

127. Defendants have represented that Defendants have the **sponsorship** of Mr. Spielman, Former Players, and Class Members when they do not have the **sponsorship** of Mr. Spielman, Former Players, and Class Members. *See* R.C. 4165.02(A)(7).

128. Upon information and/or belief, Defendants, through their actions and/or inactions set forth throughout this Complaint, have represented that they have the approval of Mr. Spielman, Former Players, and Class Members when Defendants did not have said approval of Mr. Spielman, Former Players, and Class Members.

129. Defendants have represented that Defendants have the **approval** of Mr. Spielman, Former Players, and Class Members when they do not have the **approval** of Mr. Spielman, Former Players, and Class Members. *See* R.C. 4165.02(A)(7).

130. Upon information and/or belief, Defendants through their actions and/or inactions set forth throughout this Complaint have represented that they are affiliated with Mr. Spielman and Class Members when Defendants did not have said affiliation with Mr. Spielman and Class Members.

131. Defendants have represented that Defendants have an **affiliation with** Mr. Spielman, Former Players, and Class Members when they do not have the **affiliation with** Mr. Spielman, Former Players, and Class Members. *See* R.C. 4165.02(A)(7).

132. Upon information and/or belief, Defendants through their actions and/or inactions set forth throughout this Complaint have represented that they have a connection with Mr. Spielman, Former Players, and Class Members when Defendants did not have said connection with Mr. Spielman, Former Players, and Class Members.

133. Defendants have represented that Defendants have a **connection with** Mr. Spielman, Former Players, and Class Members when they do not have a **connection with** Mr. Spielman, Former Players, and Class Members. *See* R.C. 4165.02(A)(7).

134. Mr. Spielman, Former Players, and the Class Members are entitled to a judgment against Defendants, jointly and severally, in an amount no less than $75,000.

135. Defendants' and unnamed defendants' acts or failures to act demonstrated malice, aggravated or egregious fraud, and oppression.

136. Mr. Spielman, Former Players, and the Class Members suffered actual damages that resulted from those acts or failures to act of Defendants.

137. Mr. Spielman, Former Players, and the Class Members are entitled to an award of punitive damages in an amount to be determined at trial against Defendants, jointly and severally, and any and all presently unidentifiable parties, if any, together with costs of this action and reasonable attorney's fees.

138. Pursuant to R.C. 4165, *et seq*., a person who commits a deceptive trade practice, as listed in section 4165.02 of the Revised Code is entitled to commence a civil action for injunctive relief against the other person for injunctive relief and to recover actual damages from the person who commits the deceptive trade practice. (See Exhs. A – D).

COUNT FIVE – VIOLATIONS OF R.C. 2741, *ET SEQ*.

139. Mr. Spielman, Former Players, and Class Members incorporate all the preceding and following paragraphs by reference as if fully rewritten herein.

140. Defendants have used aspects of Mr. Spielman's, Former Players', and Class Members' personas for commercial purposes, including but not limited to the sale and/or promotion, whether directly or indirectly, of Defendants' brands, products, services and/or goods.

141. Pursuant to R.C. 2741, *et seq*., a person shall not use any aspect of an individual's persona for commercial purpose.

142. Mr. Spielman's, Former Players', and Class Members' names, photographs, images, likenesses, and/or distinctive appearances have commercial value.

143. Defendants have used Mr. Spielman's, Former Players', and Class Members' names, photographs, images, likenesses, and/or distinctive appearances, including those depicted in Exhibits C and D.

144. Defendants have used Mr. Spielman's, Former Players', and Class Members' names, photographs, images, likenesses, and/or distinctive appearances for advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities

145. Pursuant to R.C. 2741.01(A), an individual's "**persona**" includes, an individual's name, photograph, image, likeness, or distinctive appearance, if any of these aspects have commercial value.

146. Defendants have hung banners and/or engaged in additional for-profit licensing and/or marketing/advertising ventures by depicting banners and/or marketing/advertising material containing the last name, photographs, images and/or the likenesses of Mr. Spielman, Former Players, and additional Class Members around the Co-conspirator Universities' football stadiums and facilities and other locations on or about the Co-conspirator Universities. (See Exhs. A – D).

147. Pursuant to R.C. 2741.01(B), a "**commercial purpose**" is the use of or reference to an aspect of an individual's persona, including, but is not limited to, for the

advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities.

148. Defendants use of or reference to Mr. Spielman's, Former Players', and Class Members' personas is for the advertisement or solicitation of the purchase of products, merchandise, goods, services, or other commercial activities by and among Defendants. (See Exhs. A – D).

149. Pursuant to R.C. 2741.01(C), "**name**" means the actual, assumed, or clearly identifiable name of or reference to a living or deceased individual that identifies the individual.

150. Defendants have used the last names of Mr. Spielman, Former Players, and certain Class Members on the advertisements, banners, and other media at the Co-conspirator Universities' football stadiums and facilities. (See Exhs. C – D).

151. Pursuant to R.C. 2741.02, a person shall not use any aspect of an individual's persona for a commercial purpose during the individual's lifetime or for a period of sixty years after the date of the individual's death, unless that person obtains the written consent to use the individual's persona, as further set forth in R.C. 2741, *et seq*.

152. Defendants have used aspects of Mr. Spielman's, Former Players', and Class Members' persona for a commercial purpose. (See Exhs. A – D).

153. Defendants have used aspects of Mr. Spielman, Former Players, and Class Members persona during their lifetimes and/or during the period of sixty years after the date of some of the Former Players' and Class Members' deaths.

154. Pursuant to R.C. 2741.01(F), "**written consent**" includes written, electronic, digital, or any other verifiable means of authorization.

155. Mr. Spielman, Former Players, and Class Members have not provided written consent (as defined under R.C. 2741.01(F)), to Defendants for the use of their personas, specifically, with respect to the for-profit ventures identified throughout this Complaint. (See Exhs. C and D).

156. Defendants have used aspects of Mr. Spielman's, Former Players', and Class Members' persona without Mr. Spielman's, Former Players', and Class Members' written consent.

157. The use of Mr. Spielman's, Former Players', and Class Members' personas without Mr. Spielman's, Former Players', and Class Members' written consent is a violation of R.C. 2741, *et seq*.

158. Pursuant to R.C. 2741.01(D), "**right of publicity**" means the property right in an individual's persona to use the individual's persona for a commercial purpose.

159. Defendants have violated Mr. Spielman's, Former Players', and Class Members' right of publicity.

160. Defendants have violated Mr. Spielman's, Former Players', and Class Members' right of publicity by, including but not limited to, displaying banners and advertising material depicting Mr. Spielman, Former Players, and Class Members throughout the Co-conspirator Universities' football stadiums and facilities, and elsewhere. (See Exhs. A – D).

161. Defendants' use of Mr. Spielman's, Former Players', and Class Members' personas is not subject to the exception contained in R.C. 2741.09(A)(5).

162. Pursuant to R.C. 2741.09(A)(5), an individual's persona can be used by an institution of higher education if:

a. The individual is or was a student at, or a member of the faculty or staff of, the institution of higher education; and

b. The use of the individual's persona is for educational purposes or for the promotion of the institution of higher education and its educational or institutional objectives.

163. Defendants' use of Mr. Spielman's, Former Players', and Class Members' personas is not used for the promotion of the institution of higher education and its educational or institutional objectives. (See Exhs. A – D).

164. Defendants' use of Mr. Spielman's, Former Players', and Class Members' personas are used for the promotion of an ancillary objective (*i.e.*, Defendants' for-profit ventures and the sale and/or promotion of other Defendants' commercial activities, services, and/or products).

165. Defendants have violated Mr. Spielman's, Former Players', and Class Members' rights of publicity in their respective individual personas, as set forth in R.C. 2741, *et seq*.

166. Mr. Spielman, Former Players, and the Class Members are entitled to a judgment against Defendants and unnamed defendants and/or co-conspirators in an amount no less than $75,000.

167. Defendants' and/or co-conspirators' acts or failures to act demonstrated malice, aggravated or egregious fraud, and oppression. Mr. Spielman, Former Players, and the Class Members suffered actual damages that resulted from those acts or failures to act of Defendants.

168. Mr. Spielman, Former Players, and the Class Members are entitled to an award of punitive damages in an amount to be determined at trial against Defendants, jointly and severally, together with costs of this action and reasonable attorney's fees.

COUNT SIX – ACCOUNTING

169. Mr. Spielman, Former Players, and Class Members incorporate all the preceding and following paragraphs by reference as if fully rewritten herein.

170. As a result of Defendants' aforementioned action, conduct and/or inaction, Defendants have tendered and/or received compensation or money, a portion of which is due to Mr. Spielman, Former Players, and the Class Members from Defendants and/or their co-conspirators. (See Exhs. A – D).

171. The amount of money due from Defendants to Mr. Spielman, Former Players, and the Class Members is unknown to Mr. Spielman, Former Players, and Class Members and cannot be ascertained without an accounting of the transactions by and among Defendants and/or any receipts and/or disbursements derived from the aforementioned transactions. Mr. Spielman, Former Players, and Class Members allege that the amount due to Mr. Spielman, Former Players, and Class Members is in excess of $75,000.00. (See Exhs. A – E).

172. Mr. Spielman, Former Players, and the Class Members hereby demand an accounting of the aforementioned transactions from Defendants and payment of the amounts found due as Defendants have failed and/or refused, and continue to fail and/or refuse, to render such an accounting and/or pay such sum to Mr. Spielman, Former Players, and the Class Members, including but not limited to those of and concerning Defendants and the Co-conspirator Universities.

COUNT SEVEN- UNJUST ENRICHMENT

173. Mr. Spielman, Former Players, and Class Members incorporate and re-allege each allegation set forth in the preceding and following paragraphs of this Complaint.

174. Defendants have been unjustly enriched as a result of the unjust/unlawful conduct detailed herein at the expense of Mr. Spielman, Former Players, and Class Members. Under common law principles of unjust enrichment, Defendants should not be permitted to retain the benefits conferred upon them via their wrongful/improper conduct, and it would be unjust for them to be allowed to do so. (See Exhs. A – D).

175. Mr. Spielman, Former Players, and Class Members seek disgorgement of all of the Defendants' profits resulting from the wrongful conduct described herein and the establishment of a constructive trust from which Mr. Spielman, Former Players, and the Class Members may seek restitution. (See Exhs. A – D).

COUNT EIGHT – ACTION FOR DECLARATORY RELIEF

176. Mr. Spielman, Former Players, and Class Members incorporate and re-allege each allegation set forth in the preceding paragraphs of this Complaint.

177. Defendants have combined to injure Mr. Spielman, Former Players, and Class Members by and through the allegations and causes of action set forth in this Complaint. (See Exhs. A – C).

178. Defendants through their actions, conduct, and/or inaction, whether direct or indirect, have injured Mr. Spielman, Former Players, and Class Members in such a way that it is not competent for one person alone to accomplish. (See Exhs. A – D).

179. For the reasons set forth throughout this Complaint, Mr. Spielman, Former Players, and Class Members hereby seek declaratory relief thereby establishing that the language set forth in those agreements with those certain entities, including, but not limited to, those certain license Agreement with Nike, which refers to the "Legends of the Scarlet and Gray" vintage jersey licensing program, and any similar contracts and/or agreements regarding future compensation rights and/or the rights of Mr. Spielman, Former Players, and the Class Members with respect to their rights in and to their names, images, and/or likenesses and/or ability to sell jerseys and/or other merchandise be declared as void and unenforceable. (See Exhs. A – D).

WHEREFORE, Mr. Spielman, Former Players, and Class Members pray for judgment against Defendants, jointly and severally, as follows:

1. That the Court assume jurisdiction of this case;
2. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;
3. That the contract, combination, or conspiracy, and the acts done in furtherance thereof by Defendants and/or the Co-conspirator Universities, be

adjudged to have been in violation of Section 1 of the Sherman Act (15 U.S.C. §1);

4. That judgment be entered for Mr. Spielman, Former Players, and Class Members against Defendants, jointly and severally, for three times the amount of damages sustained by Mr. Spielman, Former Players, and Class Members as allowed by law, together with the costs and expenses of this action, including reasonable attorneys' fees, including, but not limited to, those permitted under Section 1 of the Sherman Act (15 U.S.C. §1 and/or R.C. 2741.07(D);

5. Award Mr. Spielman, Former Players, and Class Members actual damages, including any profits derived from and attributable to the unauthorized use of an individual's persona for a commercial purpose as determined under division (A)(2) of R.C. 2741.07;

6. Award Mr. Spielman, Former Players, and Class Members actual damages in an amount to be determined at trial, not less than $75,000.00;

7. Award Mr. Spielman, Former Players, and Class Members the maximum economic, non-economic, actual, general, other, and statutory damages sought under each Count of this Complaint;

8. Award Mr. Spielman and Class Members costs and reasonable attorneys' fees, including those permitted pursuant to R.C. 4165.03 and/or 15 U.S.C. §15 and/or Count 3 of the Complaint;

9. Enter a permanent injunction against commercial marketing, sale, and use of the Mr. Spielman's, Former Players', and Class Members' names, images, and likenesses with corporate sponsors and/or in for-profit dealings, confiscation and destruction of offending products (including banners, jerseys, pictures, and all other marketing material), damages and attorneys' fees.

10. Issue a declaratory judgment that Mr. Spielman, Former Players, and Class Members are entitled to Declaratory Relief declaring as void and unenforceable any contracts, licenses, and/or agreements that purport to have caused Mr. Spielman, Former Players, and Class Members to relinquish rights to compensation for use of their names, images, and/or likenesses after they are no longer student-athletes;

11. Issue a declaratory judgment declaring as void and unenforceable any and all provisions of the licensing agreements by and between Defendant NIKE and the Ohio State University of and concerning the "Legends of the Scarlet and Gray, Vintage Jersey Program;"

12. Issue a declaratory judgment declaring as void and unenforceable any and all provisions of the contracts and/or agreements by and between Defendants and the Co-conspirator Universities that purport to have caused Mr. Spielman, Former Players, and Class Members to relinquish rights to compensation for use of their names, images, and/or likenesses after they are no longer student-athletes, including but not limited to those set forth in Exhibits A and B;

13. That Defendants, their affiliates, successors, transferees, assignees, licensees, and the officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from infringing upon and/or restraining Mr. Spielman's, Former Players', and Class Members' names, images, and/or likenesses, in any manner, continuing, maintain, or renewing the contract, combination, or conspiracy alleged herein, or from engaging in any other contract, combination, or conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

14. Grant Mr. Spielman, Former Players, and Class Members prejudgment and post-judgment interest; and

15. Grant such other and further relief as this Court deems proper.

Respectfully submitted,

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JURY TRIAL DEMANDED

Plaintiff and Class Members respectfully request a jury trial on all triable issues.

/s/ Brian K. Duncan
Brian K. Duncan (0080751)

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2017, the undersigned shall cause the foregoing to be served upon those parties listed below via electronic means, pursuant to Fed. R. Civ. P. 5(b). Further, the undersigned will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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