

IN THE CHANCERY COURT OF RHEA COUNTY, TENNESSEE

NATIONAL ASSOCIATION OF
CHRISTIAN ATHLETES,

Plaintiffs,

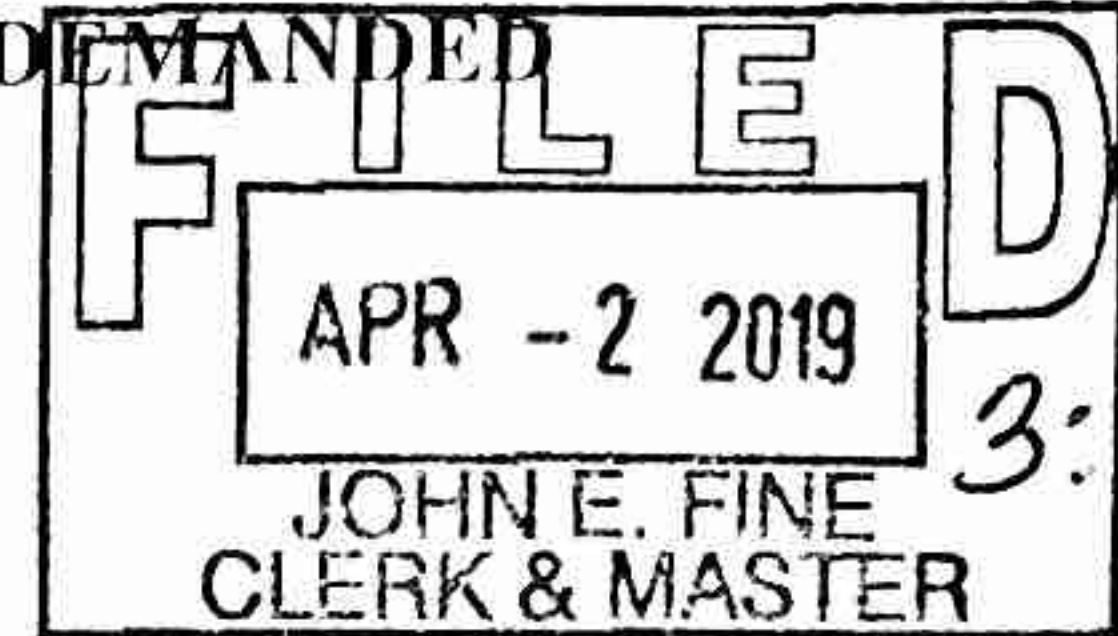
v.

BRYAN COLLEGE,

Defendant.

No. 19-CV-11195

JURY DEMANDED



COMPLAINT

Plaintiff, National Association of Christian Athletes ("NACA"), by and through counsel,
and for its complaint against Defendant, Bryan College, alleges as follows:

INTRODUCTION

NACA is a non-profit corporation that, since its formation in 1969, has conducted, hosted and facilitated events and activities for the purposes of promoting Christianity and fostering relationships with Jesus Christ. In the early 1980's, NACA acquired a large tract of property in Dayton, Tennessee (the "Fort Bluff Camp"), on which it erected extensive facilities (including a gymnasium, athletic fields, cabins and other structures) that have been utilized consistently for athletic events and tournaments as well as for the intellectual and spiritual development of the camp's attendees.

In late 2009/early 2010, NACA experienced a crisis involving members of its leadership. Specifically, one of NACA's founders, Trustees and President, Michael L. Crain, stood accused of multiple counts of sexually assaulting individuals (including a minor) at the Fort Bluff Camp. It was necessary for NACA to separate itself from Michael Crain, as well as his wife and fellow NACA founding member, Naomi Crain. Bryan College's President, Stephen D. Livesay ("Livesay"), along with certain third parties, including Glenn Stophel (an attorney and member of

Bryan College's Board of Trustees) ("G. Stophel"), inserted themselves into NACA's affairs, including the separation of the Crains from NACA. On December 18, 2009, in part based upon the meddling and influence of Livesay and G. Stophel, NACA's existing Board of Trustees voted to alter the makeup of NACA's governing body and to allow Livesay to hand-pick a new board consisting of a majority of individuals affiliated with Bryan College (including both Livesay and G. Stophel).

As of December 18, 2009, individuals who were members of Bryan College's Board of Trustees or who otherwise affiliated with Bryan College controlled the majority of the seats on NACA's Board of Trustees and, therefore, controlled the operations and affairs of NACA. To the extent that any decision affecting the operations of NACA resulted in a potential benefit for Bryan College, these individuals (who owed fiduciary duties to *both* Bryan College and to NACA) had a clear and inherent conflict of interest.

In early 2016, Livesay engaged in negotiations with a third party, pursuant to which Livesay offered to have *Bryan College* sell the Fort Bluff Camp (NACA's primary asset) to the third party for \$8.9 million. Thereafter, in April 2016, Bryan College's Board of Trustees voted to take the Fort Bluff Camp from NACA. Livesay, whose compensation at Bryan College was based, in part, on the fiscal performance of the college, stood to earn substantial sums if Bryan College received the Fort Bluff Camp and recorded the value of the property as an asset on its books. In June 2016, the Fort Bluff Camp and a small adjacent parcel of property with a home located on it (the "Bluff House Property") appraised for \$7,485,000. The value assigned to the Bluff House Property was only \$430,000. In June 2016, the NACA Board of Trustees (*which was still controlled by individuals affiliated with Bryan College*) voted to transfer the Fort Bluff Camp to Bryan College.

Livesay sought to have a Lease for the Fort Bluff Camp approved by NACA and Bryan College. A proposed lease ("Lease 1") was furnished to NACA's Board of Trustees in June 2016. Lease 1 contained various terms that were favorable to NACA, such as a provision that NACA would only have to pay rent in a year when Bryan College operated at a deficit and that NACA would receive a credit for any improvements it constructed. Subsequently, at a specially called meeting, NACA's Board of Trustees approved Lease 1.

After NACA's Board of Trustees voted to approve Lease 1, a different lease ("Lease 2") was provided to Bryan College's board for approval. Multiple terms in Lease 1 favorable to NACA, including the provision that NACA would not be required to pay rent during any year that Bryan College finished in the black, were not included in Lease 2. Lease 2 was approved by Bryan College's board.

At the end of June, a Quitclaim Deed was signed by Vance Berger ("Berger"), NACA's sitting president, *who was also an officer of Bryan College at the time*, which purported to transfer the Fort Bluff Camp from NACA to Bryan College for \$1. Bryan College recorded the value of the Fort Bluff Camp on its books at \$6,045,580. Despite the fact that NACA's Board of Trustees had approved Lease 1 and not Lease 2, Berger nevertheless executed Lease 2 on behalf of NACA.

Bryan College did not report on its federal tax returns that it had received the Camp from NACA (in that Bryan College did not disclose that it had received any non-cash contributions in excess of \$25,000) or that it was "related" to any tax-exempt organizations. Despite the fact that Tennessee law requires non-profit corporations to seek the approval of such transfers from the Attorney General of the State of Tennessee, neither NACA nor Bryan College informed the Attorney General of the transfer of NACA's primary asset to Bryan College. After Bryan College

received the Fort Bluff Camp, Livesay received a sizeable bonus and increase in base salary from Bryan College.

Once Bryan College had taken NACA's primary asset (the Fort Bluff Camp) and Bryan College's officer had executed a harsh and inequitable lease on behalf of NACA, the individuals associated with Bryan College resigned from NACA's Board of Trustees and left their positions of power at NACA. Now that NACA finally had independence from Bryan College, NACA sought to unwind the damage that had been done. Such efforts, which included requesting the return of the Fort Bluff Camp from Bryan College, were promptly refused. NACA also stopped paying rent, in part, due to the fact that the Fort Bluff Camp was wrongfully transferred and the fact that Lease 2 was never approved by NACA's Board of Trustees. Bryan College responded by filing a lawsuit seeking to remove NACA from the Fort Bluff Camp despite NACA operating the camp since the early 1980's. Bryan College has left NACA with no choice but to institute this proceeding in an attempt to preserve its existence, to invalidate the unlawful transactions involving the Camp and to regain the assets that were wrongfully taken from NACA by Bryan College.

PARTIES AND JURISDICTION

1. NACA is a non-profit corporation organized under the laws of the State of Delaware. NACA's principal place of business is located at 370 Fort Bluff Camp Road, Dayton, Tennessee 37321.

2. Upon information and belief, Bryan College is a non-profit corporation organized under the laws of the State of Tennessee. Bryan College may be served with process through its registered agent for service of process in the State of Tennessee, Stephen D. Livesay, at Bryan College's principal office located at 721 Bryan Drive, Dayton, Tennessee 37321.

3. The subject matter of this litigation involves wrongful and unlawful conduct by Bryan College, which occurred in Rhea County, Tennessee, and which has caused NACA to sustain significant damages in Rhea County, Tennessee.

4. Venue and jurisdiction are proper before this Court.

FACTS

5. On April 10, 1969, Judo and Karate for Christ, Inc. ("JKC") was incorporated in the State of Delaware as a non-profit corporation.

6. JKC applied for and received 501(c)(3) status.

7. JKC's Charter, a copy of which is attached hereto as Exhibit A, defines the purposes of the corporation:

The exclusive objects or purposes to be promoted or carried on by this corporation are to produce speeches, conduct conferences, produce television appearances and any other religious activity having an influence for Christ; to write books or tracts, make records and erect camps whose ultimate end is the social, physical, intellectual and spiritual improvement of the people to whom ministered, and such other religious, charitable, scientific and/or education activities as will promote the advancement or well-being of mankind, either directly or indirectly through its cooperation with public or private agencies having like purposes or objects.

8. JKC's Charter imposes an obligation on NACA's trustees that they must act in good faith and with reasonable care in the management of JKC's operations.

9. JKC's Charter provides that, "[t]his corporation shall operate as an organization exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code, as amended, and shall apply for exemption as such."

10. The Crains were two of the four original incorporators of JKC.

11. JKC's Charter directs that, "[n]o trustee, member, officer or employee of the corporation shall receive or be lawfully entitled to receive any pecuniary profit from the operation

thereof, except reasonable compensation for services actually rendered to or on behalf of said corporation.”

12. On August 18, 1984, a Certificate of Amendment was filed with the Delaware Secretary of State’s office, pursuant to which the name of JKC was changed to the National Association of Christian Athletes.

13. On September 11, 1990, NACA received a Certificate of Authorization to do business in the State of Tennessee.

14. At the time that it received its Certificate of Authorization, NACA was operating the Camp in Dayton, Tennessee.

15. In June 2008, Michael Crain was serving as a member of NACA’s Board of Trustees and as the President of NACA.

16. In June 2008, Naomi Crain was serving as a member of NACA’s Board of Trustees.

17. In early June 2008, allegations were asserted against Michael Crain that he had sexually assaulted an eight-year-old girl at the Fort Bluff Camp.

18. After NACA received allegations of Michael Crain’s misconduct, a meeting of NACA’s Board of Trustees occurred on June 7, 2008. During that meeting, Naomi Crain was elected to serve as NACA’s President.

19. The parents of the young girl who allegedly had been assaulted by Michael Crain, who were board members of NACA at the time, resigned from their position as Trustees.

20. A meeting of the NACA Board of Trustees occurred on November 15, 2008. During the meeting, the board recognized Michael Crain’s resignation as a member of NACA’s Board of Trustees and as the President of NACA.

21. In and prior to November 2008, the Crains owned the Bluff House Property and leased the same to NACA.

22. The Crains subsequently conveyed the Bluff House Property to NACA but reserved a life estate in the property.

23. On or about April 23, 2009, an appraisal of the Bluff House Property was provided to Michael Crain, which assigned a total market value to the Bluff House Property of \$540,000.00.

24. Bryan College is a Christian liberal arts college in Dayton, Tennessee.

25. In June 2009, attorney G. Stophel was a member of Bryan College's Board of Trustees.

26. Bryan College ended its 2009 fiscal year in June 2009 with an operating loss of \$909,257.

27. In June of 2009, Livesay was the President of Bryan College, whose responsibility was, in part, to operate the college with a balanced budget, as well as a member of Bryan College's Board of Trustees.

28. In or around July 2009, new allegations were asserted against Michael Crain that he had sexually assaulted several additional individuals, including a minor, at the Fort Bluff Camp.

29. In light of the sexual assault accusations that had been made against Michael Crain, members of NACA's Board of Trustees determined that NACA needed to sever ties with the Crains.

30. In September 2009, upon information and belief, members of NACA's Board of Trustees were seeking to put together, agree upon, and implement a plan to extricate the Crains from NACA.

31. Certain members of NACA's Board of Trustees desired to have NACA pay the Crains a guaranteed lifetime income. However, other members of NACA's Board of Trustees were concerned with the legality of such an arrangement in light of NACA's 501(c)(3) status.

32. Certain members of NACA's Board of Trustees loyal to the Crains sought advice from G. Stophel as to how to pay a predetermined amount of income to the Crains after they departed from NACA.

33. The payment of private inurement by a non-profit corporation to persons such as the Crains is prohibited by Section 501(c)(3) of the Internal Revenue Code.

34. On October 5, 2009, Michael Crain was indicted on two counts of felony sexual assault.

35. With extensive assistance from G. Stophel, certain members of NACA's Board of Trustees formulated a plan (the "Golden Parachute Plan"), pursuant to which the Crains would receive a golden parachute package under which NACA would be obligated to pay over a million dollars to the Crains after they cut ties with NACA.

36. The Golden Parachute Plan created significant legal issues for NACA and was created at a time when NACA was struggling financially and was experiencing difficulty paying its monthly debt obligations.

37. Numerous members of NACA's Board of Trustees resigned in late 2009 due, in part, to disagreements concerning the Golden Parachute Plan, including its legality and appropriateness relative to NACA's financial condition.

38. On or about December 4, 2009, another individual provided correspondence to a member of NACA's Board of Trustees in which she alleged that she had also been sexually harassed at the Fort Bluff Camp by Michael Crain.

39. On December 12, 2009, NACA's Executive Committee conducted a meeting at G. Stophel's home in Franklin Tennessee. Livesay attended the meeting. Upon information and belief, during that meeting, Livesay and G. Stophel formed another plan with members of NACA's Executive Committee (including Naomi Crain) to allow control of NACA to be transferred to Bryan College.

40. Shortly after the meeting that occurred at G. Stophel's home on December 12, 2009, NACA's Executive Committee took certain actions, which included:

- a. Passing a resolution that provided for a specially called meeting of NACA's Board of Directors on December 18, 2009;
- b. Passing a resolution that provided for an alternative specially called meeting of NACA's Board of Directors on December 29, 2009;
- c. Passing a resolution that the Executive Committee request the resignations of all directors of NACA, and that the committee recommend to the Board of Directors nine (9) new directors to be selected by Livesay who were associated with Bryan College (on Bryan College's Board of Trustees and/or otherwise employed by or affiliated with Bryan College); and
- d. Passing a resolution that six (6) of NACA's current board members be offered positions on the new Board of Directors to serve with the nine (9) directors nominated by Livesay.

41. In a correspondence dated December 14, 2009, to members of Bryan College's Executive Committee, Livesay explained that he had been approached by Naomi Crain "to see whether Bryan College (through the election of Board members to NACA) would be interested in assuming control of NACA and Ft. Bluff Camp."

42. On December 15, 2009, the Executive Committee of Bryan College voted to authorize Livesay to serve on NACA's Board of Trustees and to nominate eight (8) additional members to NACA's board. Prior to this vote, G. Stophel recused himself "due to his relationship with both NACA and Bryan College."

43. A special meeting of NACA's Board of Trustees was held at Bryan College on December 18, 2009. Livesay and G. Stophel participated in the meeting. During the meeting,

certain members of NACA's Board of Trustees voted to take certain actions, including the following actions:

- a. Approving the actions taken by NACA's Executive Committee on December 12, 2009, at G. Stophel's home;
- b. Passing a resolution that the Trustees of NACA shall elect nine (9) new Trustees nominated by Livesay from the board and administration of Bryan College;
- c. Passing a resolution that the present Trustees of NACA would resign, and that the new NACA board will select six (6) of the former trustees to join the nine (9) trustees from Bryan College to make up a 15-member Board of Trustees.

44. During the December 18, 2009 NACA board meeting, no action was taken to approve or authorize the transfer of the Fort Bluff Camp to Bryan College.

45. During the December 18, 2009 NACA board meeting, the purpose of allowing Bryan College to essentially take over NACA's Board of Trustees was characterized as enabling Bryan College to assist in operating the Fort Bluff Camp.

46. A multi-million dollar offer from a third party to purchase the Fort Bluff Camp and lease the same to NACA was considered and rejected by NACA's Board of Trustees during the December 18, 2009 meeting.

47. Prior to the conclusion of the December 18, 2009 meeting of NACA's Board of Trustees, nine (9) new Trustees from Bryan College (including Livesay and G. Stophel) were elected to NACA's board, the existing NACA board members resigned or evidenced their intent to resign, Livesay was elected the Chairman of the Board, and a new Executive Committee (consisting of Livesay, G. Stophel and three other individuals affiliated with Bryan College) was formed.

48. As of December 18, 2009, NACA became controlled by Bryan College, as the majority of NACA's Board of Trustees was comprised of individuals with fiduciary duties to

Bryan College resulting from their positions as members of Bryan College's Board of Trustees and/or as officers, employees or agents of Bryan College.

49. On December 20, 2009, Livesay emailed several individuals associated with NACA an official statement, which was to be provided if they received inquiries about NACA. Livesay's statement included the following assertions: "Bryan College (www.bryan.edu) and Fort Bluff/NACA (www.fbc-naca.org) will continue as separate tax exempt 501(c)(3) organizations," and "Bryan College will offer support and supervision through the Board of Directors."

50. On December 21, 2009, Margie Legg (Livesay's assistant at Bryan College) sent an email from Livesay to the Bryan College Board of Trustees concerning Bryan's takeover of NACA's Board of Trustees. In the email, Livesay advised that NACA and Bryan College will "remain distinct and separate—each with its own function," and that, "We do not assume any assets or liabilities with this arrangement."

51. In January 2010, Bryan College released a public statement about NACA and Bryan College joining together. Rhea Herald News reporter (and Bryan College alumnus) Michael Reneau's article cited interviews with Livesay, who emphasized that, "...Bryan has not acquired Fort Bluff or NACA and has expended no funds in the deal," and that Bryan's role is "to provide oversight just basically to help them during this during very difficult time."

52. In 2010, individuals with fiduciary duties to Bryan College (through their positions as officers of Bryan College and/or members of Bryan College's Board of Trustees) took action to adopt the Golden Parachute Plan for the Crains, which purportedly obligated NACA to pay substantial sums to the Crains and created a financial hardship for NACA.

53. In 2010, during its first year under Bryan College's control, NACA's income dropped \$193,317 and its expenses rose \$165,798. During this same period of time, NACA's

long-term liabilities increased approximately \$1.2 million, from \$368,044 in 2009 to \$1,488,482 in 2010.

54. In December 2012, a meeting of Bryan College's Executive Committee was conducted. During that meeting, it was acknowledged that budget cuts were needed at Bryan College and that certain assets should be sold. During the meeting several motions were made concerning moving the Fort Bluff Camp to Bryan College's balance sheet as an asset. However, no such action was taken at that time.

55. Insistent on taking the Fort Bluff Camp from NACA, on January 11, 2013, Livesay sent an email to Bryan College's Executive Committee. In his email, Livesay advised that he and Vance Berger ("Berger"), an officer of Bryan College, "met with the auditors, and they have told us that we have options with the camp. [. . .] We can bring the camp in at Fair Market Value (with appraisal) or at book value. In either case we can indemnify Bryan for any possible liabilities in the text of the agreement itself. Of course, the FMV would bring in a greater net (probably \$3M), but the downside would be could we sell the camp for that appraised amount should we need to? That would affect our financial statement in the year in which we sold the camp. We can discuss during the meeting." Livesay's comments demonstrate that Bryan College viewed itself as totally in control of NACA and approached decisions concerning NACA from the standpoint of how such decisions could best benefit Bryan College.

56. On January 17, 2013, the Bryan College Executive Committee conducted a meeting. The minutes contain the acknowledgement by Bryan College's Executive Committee that, "[t]he legal entity is NACA which owns the camp." The minutes further state:

The College was originally given ownership of NACA and we chose to keep it separate from the College due to potential undisclosed liabilities which included:

1. Land encroachment issue based on where the lodge was built. This is now orally settled for \$25K.

2. Alleged child abuse by a NACA officer. The party was found guilty and is no longer associated in any way with the camp or NACA. The child is now 16, was 13 at the time of the crime. TN law states that the child has until their 19th birthday to file suit. Glenn stated that given the period of time that has passed and the criminal action resolution, our risk for future action is minimized.

The question has been how to include the assets of the camp in a way that will most greatly benefit the College while minimizing any risk. The auditors and accountants have stated that NACA board can take action to donate ALL of the organization's assets to the College while maintaining their function. The College can receive a benefit on the balance sheet by accepting the donations.

The process would require that the NACA board donate the camp assets to the college while maintaining its legal existence for the next four years. That can be accomplished by holding a required meeting once per year and annually filing the appropriate documents.

57. During the January 17, 2013 meeting, the Bryan College Executive Committee voted to keep the existence of the NACA Board of Trustees in place but donate NACA's assets to Bryan College.

58. Contrary to what was represented to NACA's independent board in 2009 and to various third parties shortly after Bryan College seized control of NACA's governing body, individuals at Bryan College – including Livesay and Berger – were not truly interested in managing NACA but, instead, desired to leave NACA with various liabilities while at the same time facilitating the transfer of NACA's assets, including the Fort Bluff Camp, to Bryan College.

59. On April 19, 2013, Bryan College's Board of Trustees held a meeting. Minutes relating to that meeting reflect that "[t]he Fort Bluff vision was discussed by the committee, and it does not have a compelling purpose within the academic structure of the College." Certain board members at Bryan College apparently understood, at least at that time, that it would be inappropriate for Bryan College to simply take NACA's assets.

60. On or about February 25, 2014, the faculty of Bryan College submitted to the Bryan College Board of Trustees a 30-2 vote, with six abstentions, of "no confidence" in the leadership of Livesay.

61. On May 20, 2014, the Bryan College Executive Committee voted to approve the issuance of the following statement concerning Bryan College's relationship with NACA:

A recent lawsuit included some misstatements as to the relationship between Bryan College and NACA/Fort Bluff Camp in Dayton, TN. The Bryan College has approved and issued the following statement concerning the NACA/Fort Bluff Camp in Dayton, TN.

While Bryan College enjoys a good relationship with its neighbor, the NACA/Fort Bluff Camp, the Bryan College Board of Trustees hereby formally affirms that neither Bryan College nor the Bryan College Board of Trustees exercises any governance or control over the NACA/Ft. Bluff Camp on any matters relating to NACA/Ft. Bluff Camp, including without limitation the day to day activities and decisions in connection with its programs or facilities. There are no shared resources, personnel or expenses between Bryan College and the NACA/Ft. Bluff Camp, which is a separate business entity, distinct and independent of the College. The Bryan College Board is aware that some employees or board members of Bryan College serve on the NACA/Ft. Bluff board or in other capacities. Such service is in no way contingent on or subject to their involvement or employment by Bryan College. This statement of clarification, dated May 20, 2014 clarifies and governs over all documents and information relating in any way to Bryan College or NACA/Ft. Bluff Camp.

62. On July 11, 2014, Bryan College Board of Trustees held an emergency meeting. Four trustees (and one in abstentia) asked Livesay to resign during the meeting. Livesay refused, and in response, five members of Bryan College's Board of Trustees resigned.

63. A meeting of NACA's Board of Trustees occurred on October 25, 2014. During that meeting, it was confirmed that Naomi Crain and Michael Crain – in connection with the exodus from NACA – had brokered a deal with representatives of Bryan College (presumably Livesay and G. Stophel) to ensure that Bryan College would maintain continuous control over NACA. Upon information and belief, the consideration for this deal was that the new NACA board

controlled by Bryan College would approve and adopt the Golden Parachute Plan (which purportedly obligated NACA to pay hundreds of thousands of dollars to the Crains after their departure from NACA).

64. Minutes from the October 25, 2014 meeting of NACA's Board of Trustees reflect that Livesay discussed two proposals concerning expanding NACA's governing structure:

The first proposal discussed was for an executive committee that met regularly with a larger board. The difficulty with this proposal is that it provides for the possibility of the college related persons being removed from the majority in violation of the initial agreement with the Crains.

The second proposal is to have the NACA Board and a second Advisory Board. The proposals of the Advisory Board would have to be reviewed and approved by the NACA Board. NACA Board members would be permitted to sit in on Advisory Board even though they are not members.

65. Minutes from the October 24, 2014 meeting of Bryan College's Board of Trustees further contain the statement that, "[w]hichever option is pursued, policy will need to put into place to ensure compliance with the initial agreement with the Crains."

66. On May 13, 2015, a member of NACA's Board of Trustees emailed Berger (NACA's sitting President and an officer at Bryan College who reported to Livesay) and inquired whether an aspect of the Golden Parachute Plan could somehow be refinanced to reduce the exorbitant rate of interest being paid by NACA. Berger responded by email stating, "[t]he situation was set up by Glenn Stophel and Stephen Livesay. We are not able to pay off early."

67. While under Bryan College's "management," NACA's debt ballooned and its financial condition deteriorated. In 2016, an individual associated with NACA contacted a third party, SCORE International ("SCORE"), to discuss potential options to improve NACA's situation.

68. Quickly, Livesay and individuals associated with Bryan College became involved in the dealings with SCORE concerning NACA. Livesay attempted to assure that any transaction involving SCORE with NACA would benefit Bryan College significantly. Livesay involved himself in meetings of Bryan College's Board of Trustees and NACA's Board of Trustees and stated during those meetings reasons why the Fort Bluff Camp should be transferred to Bryan College in connection with any transaction involving SCORE.

69. On February 3, 2016, Charlie Fife ("Fife"), a member of NACA's Board of Trustees, met with representatives of SCORE in West Palm Beach, Florida. During that meeting, Fife and the representatives from SCORE discussed a potential transaction involving Bryan College, NACA and SCORE regarding the Fort Bluff Camp.

70. Fife prepared a memorandum summarizing dealings that had occurred between and among representatives of NACA, Bryan College and SCORE leading up to the February 3, 2016 meeting (the "SCORE Memo"). The SCORE Memo, in relevant part, as follows:

On Wednesday, December 16, John Zeller and David Gaither met with Dr. Stephen Livesay and the NACA Board of Directors at Bryan College to discuss Score's desire to "own" NACA. After much discussion on the matter, Dr. Livesay suggested a sub-committee of the NACA Board meet separately with Zeller and Gaither for further discussion. In a move of "good faith", Dr. Livesay invited Zeller and Gaither onto the NACA Board. The meeting ended with Score representatives leaving very positive regarding the meeting and how the development of a Board combination might look in the future.

On Tuesday, January 19, Ken Lassiter and David Gaither met with Dr. Livesay, Vance Burger, Dave Sekura, and Rick Taphorn (VP Finance and Enrollment) at Bryan College. John Zeller joined the meeting via conference call from Tampa, FL. After much discussion, Livesay introduced the idea that Bryan College would be interested in selling NACA to Score. Prior to this time, Score representatives were under the impression that Score would step in through some sort of Board combination and oversee and manage Fort Bluff because of the synergy that existed between SCORE and NACA, and because of the perception that the camp had become somewhat of an albatross for Bryan College. The notion of Bryan College selling Fort Bluff to Score was a complete surprise. Gaither and Lassiter asked

what price Bryan had in mind so that Score could take the matter under advisement. Livesay said that he would get back to Score in a few days.

On Friday, January 22, Dr. Livesay contacted Ken Lassiter and told him that the price for Fort Bluff was \$8.9 million. Lassiter communicated to Zeller and Gaither. As far as Score was concerned, there was a sense that the Lord had closed the door to Fort Bluff.

71. The SCORE Memo contains notes concerning the events that transpired during the February 3, 2016 meeting. The SCORE Memo provides that a handshake agreement was reached among Livesay and representatives of SCORE, pursuant to which, in exchange for NACA's assets, SCORE would assume existing NACA debt and Bryan College (not NACA) would be paid \$1.5 million in cash. Specifically, the SCORE Memo states, "Livesay would agree to take \$3 million (\$1.48 million debt + \$1.5 million cash) for NACA," and that, "there was verbal agreement and handshake that Score's purchase of NACA would be assumption of debt plus payment of \$1.5 million to Bryan College over 5 years in payments of \$300,000 per year."

72. The Meeting Notes demonstrate that it was Livesay's desire to cause a significant financial benefit for Bryan College by the sale of NACA's assets.

73. Upon information and belief, Livesay anticipated a personal monetary benefit by improving Bryan College's financial condition.

74. At a meeting on February 5, 2016, NACA's (Bryan College controlled) Board of Trustees rejected the multi-million dollar offer from SCORE.

75. On February 9, 2016, Fife sent an email to Livesay, in which he stated concerns regarding the manner in which NACA was being governed. Excerpts from Fife's email to Livesay are as follows:

However, let's move onto something more troubling. The current board of NACA consist of folks picked by you and in most cases serve on the board of BRYAN COLLEGE as well. When Naomi and the then NACA board decided to entrust the affairs of this ministry to the new group money played a minor role in our decision.

We were transferring the responsibility of overseeing and managing this magnificent soul winning ministry to a new group utilizing all of the property and assets in place.... Carey Brown made a last-minute offer of several million dollars which we did not accept because we had a verbal understanding with you.

I responded to a call from Score and they requested a meeting in WPB. Every step and nuance in that meeting was discussed with you in advance. I excused myself, talk with you, and resumed my conversation. At no time did I get ahead of your expressed wishes. You picked the amount and the terms. I was shocked when the Board did not go forward with the Score proposal. The proposal would provide BRYAN COLLEGE with a gain of approximately \$1,200,000.00.

I would like to remind all that we are NACA Board members and I believe our fiduciary responsibility is to the ministry that NACA has so successfully pursued over the last 40 years. I especially wanted, under your leadership, to have as little debt as possible. The success potential of the ministry is greatly enhanced by lower debt. It now appears that any new ministry manager/operator would be facing even greater debt as you are seeking a significant sum for BRYAN COLLEGE in exchange for transferring control of the ministry.

The prospect of excessively enriching BRYAN COLLEGE at the expense of the new NACA ministry is troubling. Potentially, the more money allocated to BRYAN results in lowering the success potential of the future of NACA ministry.

76. On April 15, 2016, a meeting of Bryan College's Board of Trustees occurred. During the meeting a motion was passed for Bryan College to "accept contribution of [the] NACA camp to Bryan College." Such action constituted one more step taken by Bryan College to obtain NACA's assets.

77. On May 27, 2016, a member of NACA's Board of Trustees asked Livesay in an email whether Livesay had "a conflict of interest that would prevent you from participating in discussions and decisions regarding the disposition of NACA assets to Bryan College?" Despite his clear conflict of interest, Livesay responded to this inquiry by stating, "No; since I was asked by the previous owners (Mike and Naomi Crain) to facilitate the change."

78. Upon information and belief, the Crains did not agree or instruct Livesay to transfer the assets of NACA to Bryan College. Further, even if such an understanding was reached among the Crains and Livesay, the Crains were not authorized to bind NACA to such a proposition.

79. On May 27, 2016, a member of NACA's Board of Trustees asked Livesay in an email whether there was a transition plan for the potential transfer of the NACA assets to Bryan College. Livesay responded that, "Our attorney, Jim Catanzaro has arranged for the deed transfer."

80. James L. "Jim" Catanzaro, Jr. is a shareholder at the law firm of Chambliss, Bahner & Stophel, P.C. ("CBS"). G. Stophel was a long-time shareholder of CBS and a named partner.

81. In an email dated June 2, 2016, to a member of Bryan College's Compensation Committee, Livesay acknowledged that Bryan College was slated to finish its fiscal year (ending June 30, 2016) at a significant deficit. However, Livesay further stated that, "The gift from NACA will be in the \$2-3M net range and will more than offset the current deficit so that we will end the year in the black."

82. Livesay's June 2, 2016 email demonstrates that Livesay continued to focus on utilizing NACA's assets as a means of improving Bryan College's financial condition, without regard to the best interests of NACA.

83. On June 17, 2016, an appraisal was issued for the Fort Bluff Camp and the Bluff House Property. The appraisal determined that the value of both properties was \$7,485,000 and that the value of the Bluff House Property alone was only \$430,000. Accordingly, the value attributed to the Fort Bluff Camp exceeded seven million dollars.

84. On June 21, 2016, a meeting of Bryan College's Compensation Committee was held. During that meeting, one member of the committee praised Livesay's performance as "exceptional." Another committee member noted that, "the plan to bring the assets and liabilities

of the National Association of Christian Athletes/Fort Bluff Camp into Bryan College [was] a positive factor in Dr. Livesay's favor." The Compensation Committee then approved a motion to increase Livesay's base salary from \$225,000 to \$250,000, to provide Livesay with substantial additional fringe benefits of not less than \$25,000 and to evaluate an additional bonus for Livesay after a projected budget for fiscal year 2017 was determined.

85. On June 24, 2016, SCORE sent correspondence to Livesay, in which SCORE advanced a new multi-million dollar offer for the Fort Bluff Camp.

86. On June 24, 2016, Livesay sent an email to NACA's Board of Trustees, which contained an agenda for an upcoming board meeting scheduled for June 27, 2016, as well as a lease agreement between NACA and Bryan College for the Fort Bluff Camp. In his email, Livesay confirmed that the Lease was prepared by G. Stophel's former firm, CBS.

87. In a separate email sent by Livesay to members of NACA's Board of Trustees on June 24, 2016, Livesay made the following representations concerning the lease he had provided to the board:

- "As you look at the considerations for the lease, they are the same as I have sent to you previously. The difference is we will be using an accounts receivable billing of \$120K for the NACA rent each year. In doing so, we can wait until we have the previous year's audit before determining the exact contribution NACA will make. NACA will make its rent to the College at the end of October of each year."
- "There will be no rent if Bryan College ends the year in the black (by any amount), and should there be a year when that does not happen, NACA's rent is only the amount of the deficit (because of the depreciation) up to a maximum of \$120K. Any approved capital improvement at NACA will be an offset for that depreciation rent. Also, NACA no longer will have the depreciation expense (Vance estimates at \$160K) on its financial statement."

88. On June 25, 2016, Livesay sent an email to NACA's Board of Trustees, in which he advised that, "I failed to mention in my last email that SCORE did also put out a proposal today

to purchase the camp for 2.5M (that includes paying off the SE Note of \$920,000). That amount is approximately one-third of the fair value (appraisal).”

89. Livesay convened a specially called NACA Board of Trustees meeting on June 27, 2016. During the meeting, the Board of Trustees adopted a resolution (the “6/27/16 Resolution”), pursuant to which NACA would convey “all of the land and permanent fixtures owned by NACA located at Ft. Bluff Camp in Dayton, Tennessee to Bryan College.” (A copy of the 6/27/16 Resolution is attached as Exhibit B).

90. The 6/27/16 Resolution included a “Whereas” clause, which states that Bryan College is assuming “certain debts” of NACA.

91. The 6/27/16 Resolution passed by majority vote. Minutes from the June 27, 2016 NACA board meeting reflect that the following members of NACA’s Board of Trustees voted in favor of the 6/27/16 Resolution: Livesay, Berger, Robert Coddington (“Coddington”), Ralph Green (“Green”) and Mrs. Bobby McKenzie (“McKenzie”). Fife was not present at the meeting.

92. Minutes from the June 27, 2016 NACA board meeting reflect that J. Wayne Cropp, a NACA board member, voted against the 6/27/16 Resolution.

93. As of June 17, 2016, NACA’s Board of Trustees was comprised of only seven (7) board members: Livesay, Berger, Coddington, Green, Fife, McKenzie and Cropp.

94. At the time that they voted as members of NACA’s Board of Trustees to approve the 6/27/2016 Resolution, Livesay, Coddington and Green were members of Bryan College’s Board of Trustees.

95. At the time that he voted as a member of NACA’s Board of Trustees to approve the 6/27/2016 Resolution, Livesay was an officer (the President) and employee of Bryan College.

96. At the time that he voted as a member of NACA's Board of Trustees to approve the 6/27/2016 Resolution, Berger was an officer (Controller) and employee of Bryan College.

97. Due to their positions with Bryan College and fiduciary duties owed to Bryan College, Livesay, Coddington, Green and Berger each had clear and direct conflicts of interest relative to voting on the 6/27/2016 Resolution. In an affidavit executed by Livesay on October 23, 2017, Livesay himself acknowledged in a sworn affidavit that he did have a conflict of interest, self-interest, financial interest or other self-dealing relative to the transfer of the Fort Bluff Camp from NACA to Bryan College due to the nature of his role at Bryan College.

98. Despite their conflicts of interest, Livesay, Coddington, Green and Berger failed to recuse themselves from voting on the 6/27/2016 Resolution.

99. Livesay, Coddington, Green and Berger failed to recuse themselves from voting on the 6/27/2016 Resolution and from taking other appropriate action because these individuals were motivated by self-interest and the desire to benefit Bryan College to the detriment of NACA.

100. NACA's Bylaws, a copy of which is attached as Exhibit C provides that "A majority of the members of said Board of Trustees shall constitute a quorum for a meeting of the Board...."

101. Significantly, had Livesay, Coddington, Green and Berger recused themselves, NACA would have lacked the quorum required under NACA's Bylaws; therefore, Resolution 6/27/2016 could not have been voted upon by the remaining minority members of NACA's Board of Trustees who were not affiliated with Bryan College.

102. Prior to and during 2016, NACA had adopted and maintained a Conflict of Interest Policy. The actions of Livesay, Coddington, Green and Berger, in failing to timely disclose their conflicts of interest relative to the subject matter of the 6/27/2016 Resolution, participating in

discussions and meetings concerning the 6/27/2016 Resolution and voting on the 6/27/2016 Resolution violated NACA's Conflict of Interest Policy.

103. During the June 27, 2016 meeting of NACA's Board of Trustees, the NACA board members affiliated with Bryan College acted to benefit the interests of Bryan College to NACA's detriment. When the NACA board considered the lease that Livesay had previously circulated, Coddington moved to approve the lease (referred previously herein as Lease 1), but only for a one (1) year term – instead of a twenty-five (25) year term. The reduction of the term of Lease 1 substantially impaired the limited rights that Lease 1 would have otherwise afforded NACA in the Fort Bluff Camp under the agreement.

104. Members of NACA's Board of Trustees (despite the majority having clear and direct conflicts of interest) nevertheless voted to approve Lease 1 with the term being reduced from twenty-five (25) years to only one (1) year.

105. Each of the members of NACA's Board of Trustees who were affiliated with Bryan College should have recused themselves from voting on whether to approve Lease 1 due to their conflicts of interest. Had these individuals recused themselves, NACA's remaining board members would have lacked the quorum required under NACA's Bylaws; therefore, Lease 1 could not have been voted upon by the remaining minority members of NACA's Board of Trustees who were not affiliated with Bryan College.

106. Prior to and during 2016, NACA had adopted and maintained a Conflict of Interest Policy. The board members who were affiliated with Bryan College violated NACA's Conflict of Interest Policy, in failing to timely disclose their conflicts of interest relative to the subject matter of Lease 1, participating in discussions and meetings concerning Lease 1 and voting to approve Lease 1.

107. *After* voting in favor of having NACA transfer the Fort Bluff Camp to Bryan and *after* voting to approve a modified version of Lease 1, Livesay announced during the June 27, 2016 NACA board meeting that, “he could not be on the board of NACA and Bryan College due to a conflict of interest,” and that, “we need 4 members on [t]he board who are non-Bryan College board members.”

108. On June 27, 2016, after the NACA board meeting, Margie Legg (Livesay’s assistant) sent an email from Livesay to the Bryan College Board of Trustees. Attached to Ms. Legg’s email was a copy of a proposed lease agreement with NACA. The email provides, “[t]his lease replaces the one that was sent to you on Friday.”

109. The lease that was attached to Ms. Legg’s email (previously referred to herein as “Lease 2”) differs from the version of Lease 1 that had been approved by NACA, in part, because Lease 2 did not contemplate the non-payment of rent by NACA in the event that Bryan College finished a fiscal year in the black. In other words, Lease 2 required NACA to pay rent regardless of whether Bryan College needed such a financial contribution to operate on a balanced budget. (A copy of Lease 2 is attached hereto as Exhibit D).

110. On June 28, 2016, the Bryan College Board of Trustees conducted a telephonic meeting. The meeting was attended by various trustees, including Green, Coddington and Livesay. A motion was made and approved during the meeting for Bryan College to execute Lease 2. Again, Lease 2 was not approved by NACA’s Board of Trustees.

111. On June 30, 2016, a Quitclaim Deed (“the “Quitclaim Deed”) was signed by Berger (on behalf of NACA), pursuant to which the Fort Bluff Camp was purportedly conveyed to Bryan College “IN CONSIDERATION of the sum of One Dollar (\$1.00). . . .” (A copy of the Quitclaim Deed is attached hereto as Exhibit E).

112. The Quitclaim Deed that Berger signed was prepared for Berger to sign on behalf of NACA.

113. Berger executed the Quitclaim Deed despite the existence of a clear conflict of interest arising out of Berger being an employee and officer of Bryan College.

114. Despite the fact that NACA's Board of Trustees did not approve Lease 2, and, in fact, had approved a substantially different lease agreement, and despite Berger's clear conflict of interest relative to transactions between and among NACA and Bryan College, Berger executed Lease 2 on behalf of NACA.

115. On July 6, 2016, an Assignment and Assumption Agreement for Promissory Note and Deed of Trust (the "Assignment and Assumption") was executed between Bryan College, NACA and Southeast Bank. The Assignment and Assumption provides that NACA "shall not be released or discharged in any manner whatsoever from any of its liabilities, indebtedness, or obligations" to Southeast Bank. In other words, although Bryan may have obligated itself to repay certain indebtedness to Southeast Bank, NACA remained responsible for the repayment of such indebtedness even though it purportedly no longer owned the Fort Bluff Camp.

116. The terms of the transaction involving the Fort Bluff Camp among NACA and Bryan College (the "Transaction"), including the conveyance of the Fort Bluff Camp from NACA to Bryan College and the lease of the Fort Bluff Camp from Bryan College to NACA, were unfair, inadequate, oppressive and improper.

117. According to Bryan College's 2015 Form 990 (for the period of July 1, 2015-June 30, 2016), the college ended its June 30, 2016 fiscal year in the black at \$4,961,619. Upon information and belief, without receiving the "gift" of NACA's Fort Bluff Camp, Bryan College would have ended their 2016 fiscal year in the red, with a loss of approximately one million dollars.

118. In October 2016, Bryan College's Compensation Committee conducted a meeting. During the meeting, the committee confirmed a prior recommendation to increase Livesay's annual salary from \$225,000 to \$250,000 and to pay Livesay an additional bonus of \$15,000. Livesay's compensation was substantially increased despite objections from one committee member (Cropp), who questioned why Livesay should receive a salary increase instead of Bryan College considering an across-the-board salary increase for faculty and staff.

119. Upon information and belief, Livesay's significant compensation increase resulted from his efforts and the efforts of those loyal to him and Bryan College to consummate the Transaction and facilitate the transfer of the Fort Bluff Camp (worth in excess of \$6 million) to Bryan College. Hence, by facilitating the transfer of the Fort Bluff Camp from NACA to Bryan College, Livesay did personally receive significant additional compensation from Bryan College.

120. Upon information and belief, officials and board members of Bryan College recognized that the Transaction was improper, and as a result actions were taken to conceal the Transaction from certain governmental bodies. For example, in February 2017, Bryan College submitted its 2015 IRS Form 990 (for the period July 1, 2015 - June 30, 2016) to the Internal Revenue Service. Therein, it was represented that Bryan College was not "related" to any tax-exempt organization, that Bryan College did not receive any non-cash contributions in excess of \$25,000, and that Bryan College was not a party to a business transaction with an entity of which a current officer, director, trustee, or key employee was an officer, director, trustee, or direct or indirect owner.

121. On August 15, 2017, Berger executed a Form 990 on behalf of NACA for fiscal year 2016. Therein, Berger correctly acknowledged that NACA maintained a conflict of interest

policy, but erroneously represented that NACA regularly and consistently monitored and enforced the policy.

122. Additionally, as noted previously, neither NACA (while under the control of Bryan College's representatives) nor Bryan College sought approval from the Tennessee Attorney General of the Transaction, as required under Tennessee law.

123. Upon information and belief, in or around July 2017, speaking on behalf of Bryan College, G. Stophel represented to Marvin Olasky (Editor and Chief of World Magazine) that the payments NACA was making to Bryan College under Lease 2 were "for the principal and interest on NACA debt that has now been taken on by the College." In other words, G. Stophel acknowledged that, while Bryan College claimed that it had taken on NACA's debt from Southeast Bank as part of its acquisition of the Fort Bluff Camp, no consideration was actually afforded to NACA because NACA was still being made to pay this debt.

124. The purported transfer of the Fort Bluff Camp from NACA to Bryan College was not supported by consideration. Instead, the transfer was considered and has been characterized by individuals, including Berger (as recently as December 13, 2017) as a "contribution" from one charitable organization to another.

125. On or about July 23, 2017, an online petition was launched by Bryan College Alumni asking that Livesay and others step down from their positions at Bryan College. The petition included reference to "ethically and even legally questionable means used to transfer the assets of Fort Bluff Camp to Bryan College...."

126. Upon information and belief, officials and board members of Bryan College recognized that the Transaction was improper, and as a result actions were taken to conceal the Transaction from certain governmental bodies. On or about August 15, 2017, Berger (an officer

of Bryan College simultaneously serving as NACA's President) filed NACA's 2016 IRS Form 990 (for the period January 1, 2016 - December 31, 2016) with the Internal Revenue Service. At that time, Berger was both employed by Bryan College and acting as an officer of Bryan College as well as serving as NACA's President and as a member of NACA's Board of Trustees. In NACA's 2016 IRS Form 990, Berger did not disclose that NACA and Bryan College were related entities, that NACA had been a party to a business transaction with an entity of which a current officer, director trustee, or key employee of NACA was an officer, director, trustee, or director or indirect owner of Bryan College, or that NACA had transferred more than 25% of its net assets to Bryan College.

127. In or around April 2018, the majority of NACA's Board of Trustees was no longer controlled by individuals affiliated with Bryan College.

128. On April 9, 2018, representatives of NACA sent correspondence to Livesay and other officials at Bryan College requesting that Bryan College return the Fort Bluff Camp to NACA.

129. On April 23, 2018, Chris Cashion, the chair of Bryan College's Finance and Operations Committee responded to NACA on behalf of Bryan College. In his response, Mr. Cashion explained that, "[w]hile we understand NACA's desire, the Bryan College Board of Trustees has a legal and fiduciary duty to act in the best interest of Bryan College," and that Bryan College was "not interested" in returning the Fort Bluff Camp.

130. Mr. Cashion's April 23, 2018 correspondence acknowledges precisely why the actions that were taken by Livesay, Berger, Coddington, Green and others in connection with the Transaction were legally and ethically improper, due to the inherent and inescapable conflicts of

interest that existed, and also constituted breaches of these individuals' respective fiduciary duties to NACA.

131. Through April 2018, NACA made payments of \$10,000 per month to Bryan College in rent under Lease 2 (which was never approved by NACA's Board of Trustees). The total rent paid to Bryan College by NACA is not less than \$220,000.

132. In May 2018, Berger resigned as NACA's President and from NACA's Board of Trustees.

133. Beginning in May, once NACA was free of Bryan College's controlling influence, NACA stopped making payments to Bryan College under Lease 2 – which Berger had improperly and without authorization executed on behalf of NACA.

134. On January 7, 2019, Bryan College filed a detainer action against NACA in the General Sessions Court of Rhea County, Tennessee, Case No. 2019-CV-25 (the "Detainer Action") in which Bryan College is seeking to have NACA removed from the Fort Bluff Camp that it has operated continuously for well over thirty (30) years.

135. Bryan College is seeking to destroy NACA's ministry and to prevent NACA from continuing to utilize the Fort Bluff Camp as a means of promoting its stated purposes, including promoting Christianity and relationships with Jesus Christ.

136. As a result of the unlawful and improper Transaction, which was orchestrated by Livesay, Berger and others who placed Bryan College's interests above NACA's interests, and as a result of additional wrongful, unlawful and improper actions of individuals affiliated with and acting on behalf of Bryan College, NACA has sustained and continues to sustain substantial financial damage.

137. In this action, NACA is seeking to undo the damages that were inflicted upon NACA by Bryan College and those affiliated therewith, including returning NACA to its rightful position as the owner of the Fort Bluff Camp.

CAUSES OF ACTION

I. Declaratory Judgment.

138. NACA incorporates the foregoing allegations of this Complaint as if restated herein in their entirety.

139. A justiciable controversy exists between NACA and Bryan College, as these parties have real, present and adverse interests concerning the enforceability of the Transaction, including the Quitclaim Deed and Lease 2.

140. NACA has a real and protectable and legally cognizable interest in the issue of whether the Quitclaim Deed and Lease 2 should be deemed void, unenforceable and set aside.

141. NACA has standing to request declaratory relief in this matter relative to the Transaction, including the validity and enforceability of Quitclaim Deed and Lease 2, pursuant to Tenn. Code Ann. §§ 29-14-102, 103 and 110.

142. Livesay, Coddington, Green and Berger each had a direct or indirect interest in the Transaction, including the 6/27/2016 Resolution, the Quitclaim Deed and Lease 2.

143. Due to his position as President of Bryan College, as well as a member of Bryan College's Board of Trustees and Chairman of NACA's Board of Trustees, Livesay dominated and controlled other members of NACA's Board of Trustees and officers, including Coddington, Green and Berger.

144. Members of NACA's Board of Trustees who had conflicts of interest concerning the Transaction, including the 6/27/2016 Resolution, Quitclaim Deed and Lease 2, nevertheless

participated in the Transaction. The Transaction, including the 6/27/2016 Resolution, the Quitclaim Deed and Lease 2, should be invalidated, set aside and declared void and of no legal consequence because the Transaction was not fair to NACA.

145. The Transaction, including the 6/27/2016 Resolution, Quitclaim Deed and Lease 2, should be set aside and deemed invalid and unenforceable, in part, due to the fact that individuals affiliated with Bryan College took actions to consummate, enforce, approve and/or conduct the Transaction despite the existence of clean and unavoidable conflicts of interest in violation of Tenn. Code Ann. §§ 47-58-701 through 704.

146. The Transaction, including the 6/27/2016 Resolution, the Quitclaim Deed and Lease 2, should be set aside and deemed invalid and unenforceable, in part, due to the failure of members of NACA's Board of Trustees and/or officers of NACA (including Livesay, Coddington, Green and Berger to act in good faith.

147. By consummating, enforcing, approving and/or executing the 6/27/2016 Resolution, the Quitclaim Deed and Lease 2, NACA's Board of Trustees and/or officers of NACA (including Livesay, Coddington, Green and Berger) violated NACA's Charter, Bylaws and resolutions. Accordingly, The Transaction, including the 6/27/2016 Resolution, the Quitclaim Deed and Lease 2, should be set aside and deemed invalid and unenforceable, in part, due to ultra vires actions of NACA's Board of Trustees and/or officers of NACA (including Livesay, Coddington, Green and Berger).

148. The Transaction, including the 6/27/2016 Resolution, the Quitclaim Deed and Lease 2, should be set aside and deemed invalid and unenforceable, in part, due to the failure of NACA and Bryan College to comply with the requirements of Tenn. Code Ann. § 48-62-102(g).

149. The Transaction, including the 6/27/2016 Resolution, Quitclaim Deed and Lease 2, should be set aside and deemed invalid and unenforceable. in part, due to the various breaches of the fiduciary duties (including the duty of loyalty) and breaches of NACA's Bylaws and Charter that were committed by members of NACA's Board of Trustees and officers (including Livesay, Coddington, Green and Berger) in connection with the Transaction, including actions taken to approve and/or execute the 6/27/2016 Resolution, the Quitclaim Deed and Lease 2.

150. Due to the unlawful, inequitable and improper conduct of Bryan College and those individuals affiliated with Bryan College identified herein, the Transaction, including the 6/27/16 Resolution, the Quitclaim Deed and Lease 2, should be invalidated, set aside and declared void and of no legal consequence. Further, NACA should be declared to be the lawful and rightful owner of the Fort Bluff Camp.

II. Unjust Enrichment

151. NACA incorporates the foregoing allegations of this Complaint as if restated herein in their entirety.

152. Through the receipt of the Fort Bluff Camp and not less than \$220,000 in rent that has been paid to Bryan College by NACA, Bryan College has been unjustly enriched.

153. As a matter of equity, Bryan College should be required to disgorge and return to NACA the Fort Bluff Camp, as well as the rent that NACA has paid to Bryan College pursuant to Lease 2, which was never authorized nor approved by NACA's Board of Trustees, and which was executed by Berger despite his clear and inescapable conflict of interest and the fact that the terms of Lease 2 were patently unfair and inequitable as they relate to NACA's interests.

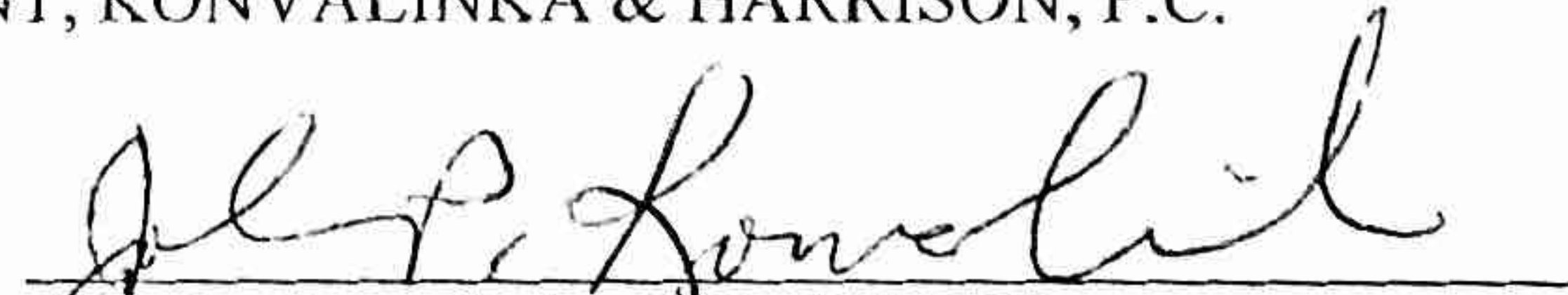
WHEREFORE, NACA respectfully requests:

- a. that Bryan College be served with process and required to answer or otherwise defend within the time required by law;
- b. that the Court enter a declaratory judgment setting aside and rendering void and enforceable the Quitclaim Deed and Lease 2, and declaring that NACA is the rightful and lawful owner of the Fort Bluff Camp;
- c. that the Court enter a judgment awarding NACA damages against Bryan College in an amount to be determined at trial but not less than \$220,000;
- d. that NACA be awarded prejudgment and post-judgment interest;
- e. that all costs, including without limitation court costs and discretionary costs, be taxed against Bryan College;
- f. that the Detainer Action be stayed pending a determination by this Court as to whether the Detainer Action should be consolidated with this lawsuit; and
- g. that NACA be awarded such other, further and general relief to which it may be entitled.

Respectfully submitted,

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