NO. 22-1793 and 22-1946

United States Court of Appeals

for the

Fourth Circuit

ZION WILLIAMSON,

Plaintiff-Appellee,

– v. –

PRIME SPORTS MARKETING, LLC; GINA FORD,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIEF FOR PLAINTIFF-APPELLEE ZION WILLIAMSON

JEFFREY S. KLEIN
CLARICK GUERON REISBAUM LLP
220 Fifth Avenue, 14th Floor
New York, NY 10001
(212) 633-4310
jklein@cgr-law.com

LAUREN E. RICHARDS
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154
(212) 407-4000
lrichards@loeb.com

JOHN R. WESTER
FITZ E. BARRINGER
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
jwester@robinsonbradshaw.com
fbarringer@robinsonbradshaw.com

ZACHARY D. TRIPP
WEIL, GOTSHAL & MANGES, LLP
2001 M Street, NW, Suite 600
Washington, DC 20036
(202) 682-7000
zack.tripp@weil.com

ROBERT B. NILES-WEED
ZACHARY A. SCHREIBER
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000
robert.niles-weed@weil.com
zachary.schreiber@weil.com

Attorneys for Plaintiff-Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes and Rules

Other Authorities

JURISDICTIONAL STATEMENT

The District Court entered final judgment on August 16, 2022. On September 7, 2022, Prime Sports timely filed a notice of appeal. This Court has jurisdiction pursuant to 28 U.S.C. 1291.[1]

[1] Prime Sports filed a premature notice of appeal on July 22, 2022, but cured that defect by subsequently filing a second notice of appeal after entry of final judgment. The two appeals were consolidated.

STATEMENT OF ISSUES

1. Whether the District Court correctly declared the Agreement void on the ground that Williamson was a student-athlete at the time Prime Sports recruited him in violation of the Agents Act, when it is undisputed he was a student engaged in playing college basketball for Duke.

2. Whether the District Court correctly granted summary judgment to Williamson on Prime Sports' misappropriation claim when the uncontroverted evidence established that the purported trade secrets were commonly known and Prime Sports did not treat them as secret.

3. Whether the District Court correctly granted summary judgment to Williamson on Prime Sports' fraud claim when Ford admitted that Williamson never made the misrepresentation alleged in the complaint, and Prime Sports' effort to raise a new "pure omissions" theory was untimely and failed as a matter of law.

INTRODUCTION

When Appellee Zion Williamson was studying at Duke University and playing on Duke's basketball team, he was a student-athlete. That slam-dunk conclusion is enough to affirm.

Appellants Prime Sports Marketing, LLC, and Gina Ford (collectively "Prime Sports"), flagrantly violated the North Carolina Uniform Athlete Agents Act, N.C. Gen. Stat. § 78C-85 et seq. The Agents Act requires athlete agents to register with the State before recruiting any student-athlete, and to include prominent warnings in any contract with a student-athlete. Yet Prime Sports, an agent and her agency, admit they did neither. They never registered in North Carolina—yet recruited Williamson while he was playing basketball for Duke. After illegally recruiting him, they signed Williamson to an illegal contract that lacks the required warnings. This case is therefore simple: Prime Sports' undisputed conduct rendered the contract void. The District Court thus correctly granted judgment on the pleadings to Williamson.

Prime Sports contends that, even though Williamson was in fact a student-athlete playing basketball for Duke, he was not a "student-athlete" protected by the Act. They assert that Williamson *should not* have been playing basketball because they allege he had previously engaged in conduct that "*would have* rendered him ineligible under NCAA rules."

Prime Br. 3 (emphasis added). Prime Sports thus seeks to escape the consequences of their own admitted wrongdoing by shifting the blame to Williamson.

The District Court correctly rejected that effort, which makes nonsense of the statutory text, would improperly make courts the arbiters of student-athlete eligibility determinations, and would flout the Act's purpose of protecting student-athletes from unscrupulous agents. The statutory definition of "student-athlete" does not ask whether a student "should have" been playing college sports. It speaks in plain (not hypothetical) terms to protect anybody who is a "student-athlete" in ordinary English. The statute protects anybody who "engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport." N.C. Gen. Stat. § 78C-86(11). Accordingly, if a student is playing (or eligible or potentially eligible to play) any college sport, they are protected as a "student-athlete."

Prime Sports argues that the second sentence of the definition creates an exception to the first and excludes from protection any individual who was or should have been considered "permanently ineligible." But the Act's text makes clear that the second sentence does no such thing. Instead, it broadens protection to cover a two-sport athlete who is a student-athlete for purposes of one sport but not another: "If an individual is permanently

ineligible to participate in *a particular intercollegiate sport*"—that is, if the student is not "engage[d] in, eligible to engage in, or [potentially] eligible in the future to engage in" a particular sport—"the individual is not a student-athlete for purposes of *that sport*." *Id.* (emphasis added). So if a student ceases to be a student-athlete for one sport ("a particular sport"), the loss of eligibility is only "for purposes of that sport."

Here, Williamson was obviously a student-athlete when Prime Sports illegally recruited him: He was actually playing college basketball. Ford even came to a Duke game to watch Williamson play. Moreover, it is undisputed that the National Collegiate Athletic Association ("NCAA") never found him ineligible, much less permanently so. Again, he was playing. And it is up to the NCAA—not a court—to determine whether a player is eligible under the NCAA's own rules. "In North Carolina, it is well established that courts will not interfere with the internal affairs of voluntary associations." *McAdoo v. Univ. of N.C. at Chapel Hill*, 736 S.E.2d 811, 825 (N.C. Ct. App. 2013) (cleaned up).

Prime Sports' position would also upend the statutory purpose. The Act is designed to protect student-athletes (and their schools) from unscrupulous agents who are motivated by the prospect of reaping enormous rewards from signing a young student to a lucrative contract. Prime Sports flagrantly disregarded the Act's commands when recruiting Williamson

during his freshman year in college. Yet under Prime Sports' interpretation, they could still enjoy the fruits of their illicit conduct so long as they point a finger at Williamson, attack his reputation, and prove that he violated NCAA rules before Prime Sports illegally recruited him. That would transform the Act from a shield for student-athletes into a sword that unscrupulous agents could wield against the very students the Act is designed to protect. That is nonsense.

Quite simply, Williamson was a "student-athlete" when he was a student-athlete playing basketball for Duke. The District Court thus correctly held that the undisputed facts were sufficient to render Prime Sports' contract void.

The District Court also correctly granted summary judgment to Williamson on Prime Sports' counterclaims. Prime Sports only makes a half-hearted effort to argue otherwise, and those arguments fail. In particular, the District Court correctly held that Prime Sports' marketing materials were not trade secrets because the uncontroverted evidence showed that they were generic (not proprietary) and Prime Sports did not even keep them secret. And the District Court correctly held that Prime Sports' fraud claim failed because Ford herself disclaimed the only fraud claim that Prime Sports timely raised below. The District Court's judgment is accordingly correct and this Court should affirm.

STATEMENT OF THE CASE

A. The Uniform Athlete Agents Act

The North Carolina Uniform Athlete Agents Act, N.C. Gen. Stat. § 78C-85 et seq. (2003), adopts a model statute drafted by the National Conference of Commissioners on Uniform State Laws. *See* Unif. Athlete Agents Act (Unif. L. Comm'n 2000).[2] Today, more than 40 states have enacted some form of the model statute. Unif. L. Comm'n, *Athlete Agents Act* (last visited Mar. 23, 2023).[3] The purpose of the statute is to protect students and the educational institutions they attend from the "serious problems" that "would-be agents" cause. Unif. Athlete Agents Act, Prefatory Note. Congress has encouraged all States to enact the model statute "to protect student-athletes and the integrity of amateur sports from unscrupulous sports agents." 15 U.S.C. 7807.

The Agents Act mandates that "an individual may not act as an athlete agent in [North Carolina] without holding a certificate of registration" from the State. N.C. Gen. Stat. § 78C-88(a). The Act defines "athlete agent"

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[2] https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/e73a8419-f1f2-3d78-b887-5dfde1abcb53_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1679455702&Signature=33W02KfJpJ6vdrB7sD7RcQbncw8%3D.

[3] https://www.uniformlaws.org/committees/community-home?CommunityKey=cef8ae71-2f7b-4404-9af5-309bb70e861e.

to include any person who "directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract" or "represents to the public that" he or she is an athlete agent. N.C. Gen. Stat. § 78C-86(2). Thus, the Act requires a person to register before recruiting a student-athlete. The registration process requires agents to provide detailed information, both professional and criminal in nature, so that the State can assess the agent's character and fitness. *See* N.C. Gen. Stat. § 78C-89(a).

The Act provides that "[a]n agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract." N.C. Gen. Stat. § 78C-88(d).

The Act requires agents to include certain terms and clear disclosures in any contract with a student-athlete. Among others, a contract must contain "a conspicuous notice in boldface type in capital letters" stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU SHALL LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR;

> **(3) YOU WAIVE YOUR ATTORNEY-CLIENT PRIVILEGE WITH RESPECT TO THIS CONTRACT AND CERTAIN INFORMATION RELATED TO IT; AND**
>
> **(4) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT SHALL NOT REINSTATE YOUR ELIGIBILITY.**

N.C. Gen. Stat. § 78C-94(c).

An agency contract that lacks this warning "is voidable by the student-athlete." N.C. Gen. Stat. § 78C-94(d). "If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract." *Id.*

The Act defines a "student-athlete" as:

> An individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

N.C. Gen. Stat. § 78C-86(11). The model statute commentary explains that the second sentence addresses "a two-sport athlete who has eligibility remaining in one sport. For example, an individual who has signed a contract to play professional basketball is not a student-athlete in basketball, but is a student-athlete in baseball." Unif. Athlete Agents Act § 2 & cmt.

B. Factual background

1. Williamson was a star basketball player at Duke University, where he was a student and played college basketball throughout the 2018-2019 season. JA24; JA71-72.

Prime Sports never registered as an athlete agent in North Carolina. JA66-67. Nonetheless, while Williamson was playing basketball at Duke, Ford traveled to North Carolina to recruit him. Ford began texting Williamson's family during the season in early 2019; communicated with Williamson, through his family, during the remainder of the season; attended at least one Duke basketball game to watch him play; and met with Williamson or his family on multiple occasions. JA72; JA326-344.[4]

On April 20, 2019, Williamson signed a contract with Prime Sports (the "Agreement") to make Prime Sports his marketing agent. JA27; JA50-56. The Agreement lacks the warning the Act requires. JA50-56. It also includes draconian terms. It promised Prime Sports 15% of Williamson's income from any endorsement deals, in perpetuity, whether introduced by Prime Sports or by anybody else. JA51-52. And Prime Sports has asserted

[4] The parties dispute who initiated contact, but that it irrelevant. An "athlete agent" is any person who recruits or solicits a student-athlete or holds herself out as an athlete agent. If the student-athlete initiates contact, the Act allows the athlete agent "seven days after an initial act as an athlete agent" to apply for registration with the State. N.C. Gen. Stat. § 78C-88(b). It is undisputed that Prime Sports never registered.

that the Agreement is not terminable at all for five years, and thereafter terminable only for cause. JA52.

2. The relationship went downhill fast. Prime Sports failed to timely develop a marketing plan. On the day Williamson signed the Agreement, Williamson's family asked Ford for a written plan outlining her strategy for marketing him. JA1942-1943; JA1154-1156. More than a month passed. On May 23, 2019, Ford provided a hard copy "Brand Management Strategy." JA1938; JA1159-1160; JA1821-1831. It showed no originality; it instead contained generic concepts such as "1+1=3" and "Be Yourself," and listed dozens of brands in various categories such as "Auto" or "Shoes." JA1821-1831. It was not marked confidential. JA1821-1831.

Williamson, through his parents, instructed Ford to cease all work on his behalf and reiterated this instruction in writing. JA58. Nonetheless, Ford thereafter sent Williamson two sets of "Partnership Summaries." JA1849-1897; JA1965. Those documents were similarly unhelpful. They consisted of one-page spreadsheets that either documented purported initial offers made to Williamson by various brands, or that served as placeholders with potential terms as "TBD." *See, e.g.*, JA1872.

On May 31, 2019, Williamson terminated and voided the Agreement. JA60. Later that day, Williamson signed a representation agreement with

Creative Artists Agency ("CAA"). JA2327-2332. CAA never saw the Marketing Plan. JA1177; JA1180-1181. The uncontroverted summary judgment evidence showed that each of the brands Williamson ultimately partnered with is a common brand partner for basketball players like Williamson, JA1952, had been independently identified by CAA before CAA even met Williamson, JA2336-2347, and CAA solicited and negotiated each deal independently of Prime Sports. *See* JA2373-2377.

C. Procedural history

1. Williamson sues to have the contract declared void and Prime Sports counterclaims.

On June 13, 2019, Williamson filed suit in the United States District Court for the Middle District of North Carolina seeking a declaration that the Agreement was void because of Prime Sports' violations of the Agents Act. DE 1. On May 8, 2020, Prime Sports filed an Answer and Counterclaims. JA64-257. Prime Sports admitted that Ford had never registered as an athlete agent in North Carolina, JA66-67, and that Williamson was playing basketball at Duke when they recruited him in early 2019, JA71-72. Prime Sports also does not dispute that the Agreement lacks the required warnings. JA50-56; *see also* Prime Br. 7.

Prime Sports asserted eleven causes of action in their Counterclaims, seeking more than $100 million in damages. Three claims sought to recover under the contract: Prime Sports alleged that Williamson (1)

breached the contract and (2) breached the implied covenant of good faith and fair dealing, and (3) sought a declaration that the contract was valid and enforceable. Four claims sought to recover in tort for work performed under the contract: Prime Sports alleged that Williamson had (4) been unjustly enriched by work that Prime Sports performed, (5) misappropriated Prime Sports' trade secret marketing materials, (6) engaged in conversion of those marketing materials, and (7) acquired the marketing materials by making fraudulent representations to Ford. Prime Sports' remaining claims were derivative: Prime Sports (8) sought to recover under the North Carolina Unfair and Deceptive Trade Practices Act based on their misappropriation and fraud claims, (9) alleged that Williamson had conspired with others to commit the foregoing claims, and sought (10) injunctive relief and (11) punitive damages.

On May 20, 2020, Williamson answered and moved for partial judgment on the pleadings. JA258-344; JA412. Williamson contended that the undisputed facts were sufficient to render the contract void: (1) Prime Sports was not a registered athlete agent; (2) Prime Sports nonetheless began recruiting Williamson while he was playing college basketball at Duke; (3) the Agreement lacks the statutorily-required warnings; and (4) Williamson had voided the contract. DE 35.

After that motion was briefed, Prime Sports moved to supplement their opposition with "newly discovered evidence" that they alleged showed that Williamson had violated NCAA rules before Prime Sports began recruiting him, and which they asserted the court could adjudicate to strip Williamson of protection as a student-athlete. *See* DE 43.

2. The District Court grants Williamson's motion for partial judgment on the pleadings and declares the contract void.

On January 20, 2021, the District Court granted Williamson's motion for partial judgment on the pleadings and declared the Agreement void. JA345-364. First, the Court determined that the undisputed facts established that Williamson was a student-athlete protected by the Agents Act. The Court explained that the Act "merely requires that an individual 'engages in' an intercollegiate sport in order to be considered a student-athlete," and Prime Sports had "acknowledge[d] that Plaintiff did 'engage in' intercollegiate sports at Duke during the relevant period." JA358.

The District Court further determined that a "listing of purported offenses [of potential NCAA rules violations is] insufficient to raise a genuine issue of material fact as to whether Plaintiff had been deemed permanently ineligible during the time period in question … by the governing body authorized to do so" and Prime Sports "ha[d] not alleged that this has occurred." JA361. Accordingly, Prime Sports' "newly discovered evidence"

was "immaterial." JA352. The Agreement thus was void as a matter of law because there was no dispute that:

> (1) Plaintiff was a student at Duke University and playing on Duke University's men's basketball team at the time that the parties engaged one another; (2) he had not been determined to be permanently ineligible by any governing body at the time of the agreement; (3) Defendant Ford did not hold the requisite athlete agent certification as required by North Carolina's UAAA; (4) the parties entered into the Agreement; (5) the Agreement permits Defendants to negotiate or solicit professional-sports-services or endorsement contracts on Plaintiff's behalf; (6) the Agreement at issue did not have the statutorily required warning; and (7) Plaintiff's family communicated to Defendants that they were terminating and voiding the agreement.

JA363-64.

3. The District Court denies Prime Sports' motions for reconsideration and motions to amend the pleadings.

Prime Sports filed a series of motions asking the Court to reconsider and seeking leave to amend to raise more allegations regarding Williamson's purported NCAA rules violations before Prime Sports began recruiting him. *See, e.g.*, JA414; JA420; JA430; JA435. Prime Sports asserted that their allegations, if proven, "would have cost Williamson his eligibility." *See, e.g.*, JA421.

On September 15, 2021, the District Court denied each of Prime Sports' motions, describing them as "a fishing expedition into the backgrounds of Plaintiff, his parents, and his associates" and an attempt to

"relitigate matters which have been addressed by the Court." JA382. The Court explained that the Agents Act did not ask "whether [Williamson] *could have conceivably* been found permanently ineligible by the overseeing collegiate association or *should have* been found permanently ineligible, but rather whether [Prime Sports] had sufficiently alleged that he *was* permanently ineligible." JA376. The Court concluded that Prime Sports failed to do so. JA380. The Court accordingly denied leave to amend as futile.

4. The District Court grants Williamson's motion for summary judgment on the counterclaims.

Following discovery on Prime Sports' counterclaims, the parties cross-moved for summary judgment. On July 18, 2022, the District Court granted Williamson's motion for summary judgment and denied Prime Sports' cross-motion, finding against Prime Sports as to all of their counterclaims. JA384-408.

First, the District Court rejected Prime Sports' contract-based claims and unjust enrichment claim. "Since the Agreement is void," the Court explained, Prime Sports could not recover for breach of contract or for lack of good faith and fair dealing or obtain a declaration that the Agreement was valid. JA388. Similarly, because the contract was "void as against public policy," Prime Sports could not "recoup benefits they provided to

[Williamson] pursuant to the Agreement under a theory of unjust enrichment." JA389.

Second, the District Court held that Williamson was entitled to summary judgment on Prime Sports' fraud claim. The misrepresentation Prime Sports alleged was "not borne out by Defendant Ford's own testimony." JA391. And the Court rejected as untimely Prime Sports' belated effort to shift to a "pure omissions" theory. In the alternative, the Court found that such a claim would fail on the merits, because an ordinary agency contract would not create a duty to disclose and the Agreement "certainly did not" because it was void for violating public policy. JA391-392. "Allowing such a claim would create a backdoor for athletics agents to avoid the requirements of the [Agents Act] and effectively enforce unenforceable contracts through tort law." JA392.

Third, the District Court granted Williamson summary judgment on Prime Sports' misappropriation claim because the evidence established that the marketing materials were not trade secrets. The "idea" that Williamson should market himself as "the First Zion Williamson" rather than "the next LeBron James" had been employed by Williamson himself in "publicly available materials" long before he met Ford and was "both generally known and readily ascertainable." JA395-396. The idea "1+1=3" was not a trade secret because "[n]umerous sources, from U.S. Supreme Court

opinions and legal dictionaries to business magazines and online publications, openly discuss the very concept." JA396-397. The Brand Management Strategy did not "contain any information that could not be readily ascertained by watching the commercials during any televised NBA game." JA398. The Partnership Summaries contained only "initial offers" that "are not trade secrets" under North Carolina law. JA398. And "each company independently brought their offers to [Williamson's new marketing agency], demonstrating that each was readily ascertained through independent development." JA398-399. Prime Sports had also failed to set forth any evidence "that they took measures to guard the secrecy of the information," thus precluding protection as trade secrets. JA399.

Finally, the District Court rejected the conversion claim because "[i]ntangible property … cannot be the subject of a conversion claim." JA399. And the court rejected the remaining claims as derivative. JA400-401. The Court entered final judgment in Williamson's favor.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's ruling on a motion for judgment on the pleadings. *Butler v. United States*, 702 F.3d 749, 751 (4th Cir. 2012). "Judgment on the pleadings is appropriate where the case turns on a legal question and the pleadings demonstrate that the moving

party is entitled to judgment as a matter of law." *Fed. Ins. Co. v. S. Litho-plate, Inc.*, 7 F. Supp. 3d 579, 583 (E.D.N.C. 2014).

This court reviews the denial of a motion for leave to amend under Fed. R. Civ. P. 15(a)(2) for abuse of discretion. *Ganey v. PEC Sols., Inc. (In re PEC Sols., Inc. Sec. Litig.)*, 418 F.3d 379, 387-88 (4th Cir. 2005).

This court reviews a district court's grant of summary judgment *de novo* and applies the same standard as the district court. *Butler*, 702 F.3d at 751-52. Summary judgment is appropriate where there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

SUMMARY OF THE ARGUMENT

I. The District Court correctly held that Williamson was a student-athlete protected by the Agents Act at the time Prime Sports illegally recruited him and that the Agreement was therefore void. Prime Sports does not dispute that they failed to register as an athlete agent in North Carolina before recruiting Williamson and that the Agreement lacked the requisite warnings. Prime Sports does not dispute that Williamson was playing basketball for Duke at the time. And they do not dispute that such violations render a resulting contract illegal and void.

Prime Sports nonetheless asserts that their own misconduct should be disregarded. They contend that Williamson was not a student-athlete

protected by the Agents Act, even though he was playing basketball at Duke, because they allege he engaged in conduct before Prime Sports' illegal recruiting began that "would have rendered him ineligible under NCAA rules." Prime Br. 3. The District Court correctly rejected that gambit, holding that those allegations of NCAA rule violations, even if true (which they are not), were irrelevant as a matter of law.

The Act's definition of "student-athlete" comports with ordinary English to cover "[a]n individual who engages in, is eligible to engage in, or may be eligible in the future" to play any college sport. N.C. Gen. Stat. § 78C-86(11). It asks whether the student is playing ("engages in") or could have been playing ("is eligible to engage in") at the relevant time or in the future ("may be eligible in the future"). It does not ask whether the student "should have been" playing college sports or "would have been" ineligible if the school or the NCAA had learned of Prime Sports' allegations. It asks about reality, not hypotheticals. It asks what the NCAA and its member institutions—which are charged with making eligibility determinations—actually did, not what a court or agent thinks they should have done. Here, it is undisputed that Williamson was "engage[d] in" playing basketball when Prime Sports recruited him to enter into a contract. Williamson therefore was a student-athlete, in ordinary speech and under the statute.

Prime Sports misreads the second sentence of the definition, which states: "If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport." N.C. Gen. Stat. § 78C-86(11). According to Prime Sports, the sentence means, "notwithstanding the first sentence, individuals that are permanently ineligible to compete in a sport do not meet the definition of student-athlete," and Prime Sports asserts that it is up to a federal court (or jury) to decide whether the student should be found "permanently ineligible" under the court's interpretation of the NCAA's own discretionary rules. Prime Br. 23-24.

That is not what the statute says. There is no indication that the second sentence is an exception to the first, and it does not refer generically to competing in "a sport." Rather, it provides: "If an individual is permanently ineligible to participate *in a particular* intercollegiate sport, the individual is not a student-athlete for purposes of *that sport*." N.C. Gen. Stat. § 78C-86(11) (emphases added). The provision thus makes clear that a two-sport athlete who is permanently ineligible in one sport ("a particular" sport) is ineligible only "for purposes of that sport," but may remain a student-athlete for purposes of a second sport (provided that they meet one of the three prongs of the student-athlete definition with respect to that other

sport). Prime Sports offers no explanation for the references to "a particular sport" or "that sport," which make clear that the second sentence expands the protection to reach multi-sport athletes.

Moreover, even if an individual could somehow be "permanently ineligible" to play a college sport while they are playing that sport, the undisputed facts would be sufficient to establish that such an exception would not apply here. The Act expressly relies on the NCAA's assessment of eligibility through the definition of an "intercollegiate sport," which means a sport for which "eligibility requirements for participation by a student-athlete *are established by a national association for the promotion or regulation of collegiate athletics*." N.C. Gen. Stat. § 78C-86(6) (emphasis added). The NCAA thus decides who is eligible to play NCAA sports. And it is undisputed that the NCAA did not view Williamson as permanently ineligible at the time Prime Sports recruited him. To the contrary, by allowing him to play at Duke, the NCAA necessarily viewed him as eligible to play.

Prime Sports' approach would also flout the statutory purpose of protecting student-athletes against overreaching or unscrupulous agents. Prime Sports *admits* that it violated the Act's requirements. Yet Prime Sports nonetheless seeks to evade the consequences of their own wrongdoing by shifting the blame to Williamson, attacking Williamson's reputa-

tion and asserting that he broke different rules first. That is totally backwards. The Agents Act protects student-athletes from unscrupulous agents. It is not a weapon for unscrupulous agents to use to attack the reputation of the very students the law is designed to protect.

The District Court therefore correctly granted judgment on the pleadings to Williamson, declared the contract void, and denied as futile Prime Sports' request to add yet more irrelevant allegations to their complaint.

II. The District Court correctly granted summary judgment to Williamson on Prime Sports' counterclaims. Most of those claims are derivative of Prime Sports' void contract and fail accordingly. Prime Sports' trade secret and fraud claims fail on their own terms. The District Court correctly determined that Prime Sports cannot claim trade secret protection over documents which—the undisputed factual record showed—were generally known and which Prime Sports did not keep secret. The District Court also correctly rejected the fraud claim for multiple reasons. Ford admitted during discovery that Williamson never made the misrepresentation alleged in the pleadings. And the District Court correctly rejected Prime Sports' belated effort to plead a new "pure omissions" theory of fraud as both forfeited and meritless. This Court should affirm.

ARGUMENT

I. Williamson was a student-athlete when he was a student playing basketball at Duke.

The central issue in this appeal is a straightforward question of statutory interpretation: When Zion Williamson was enrolled and playing basketball at Duke, was he a student-athlete within the meaning of the Agents Act? The answer is yes.

To interpret a North Carolina statute, this Court must "use the interpretive methodology of the Supreme Court of North Carolina." *Whitmire v. S. Farm Bureau Life Ins. Co.*, 52 F.4th 153, 157 (4th Cir. 2022). "[W]hen a statute's language is 'clear and without ambiguity, it is the duty of [an interpreting court] to give effect to the plain meaning of the statute.'" *Id.* at 158 (alteration in original) (quoting *Winkler v. N.C. State Bd. of Plumbing*, 843 S.E.2d 207, 210 (N.C. 2020)); *In re G.T.*, 791 S.E.2d 274, 278-79 (N.C. Ct. App. 2016) ("If the language of the statute is clear and is not ambiguous, we must conclude that the legislature intended the statute to be implemented according to the plain meaning of its terms."), *aff'd*, 808 S.E.2d 142 (N.C. 2017) (citations omitted). When a statute is ambiguous, "judicial construction must be used to ascertain the legislative will," which "must be found from the language of the act, its legislative history, and the circumstances surrounding its adoption which throw light upon the evil

sought to be remedied." *Burgess v. Your House of Raleigh, Inc.*, 388 S.E.2d 134, 136-37 (N.C. 1990) (citation omitted).

Here, the unambiguous text confirms that Williamson is a student-athlete. And even if the text were ambiguous, the statutory history and purpose would confirm that same result.

A. Williamson was a student-athlete under the Agents Act because he was "engage[d] in" an "intercollegiate sport."

Williamson was plainly a student-athlete within the first sentence of the statutory definition when Prime Sports recruited him. The statute protects any "individual who engages in, is eligible to engage in, *or* may be eligible in the future to engage in any intercollegiate sport." N.C. Gen. Stat. § 78C-86(11) (emphasis added). The definition thus offers three independent bases for making a student a "student-athlete." A student who is currently taking part in (*i.e.* "engages in") an intercollegiate sport is a "student-athlete." *See Engage*, *Black's Law Dictionary* (11th ed. 2019) ("To employ or involve oneself; to take part in; to embark on"). So, too, are students who are not currently playing but could be ("is eligible to engage in"). *See Eligible*, *Black's Law Dictionary* (11th ed. 2019) ("Fit and proper to be selected[;] legally qualified"). And so, too, is a student who is currently not eligible, but may someday in the future be ("may be eligible in the future").

The definition is written in descriptive terms—it does not speak in hypotheticals. It does not ask whether the student "should have been" engaged in that sport or might have engaged in conduct that "would have rendered him ineligible under NCAA rules." Prime Br. 3. Instead, it protects any student who "engages in" an intercollegiate sport, or even is "eligible" or potentially "may be eligible in the future."

That choice stands in contrast to other provisions of the Agents Act. For example, the Act provides that the Secretary of State may suspend, revoke, or refuse to renew an agent's registration if the agent engaged in "conduct that *would have justified* denial of registration." N.C. Gen. Stat. § 78C-91(a) (emphasis added). The North Carolina legislature could have drafted the student-athlete definition similarly to exclude any student who engaged in "conduct that would have justified denial of eligibility," as Prime Sports interprets the law. But the legislature did not.

The undisputed facts thus confirm that Williamson was a student-athlete when Prime Sports began recruiting him in early 2019. As the District Court explained, "[t]hough [Prime Sports] deny [Williamson's] eligibility to be a student-athlete, they nevertheless acknowledge that [he] did 'engage in' intercollegiate sports at Duke during the relevant period," and even "attached exhibits to their pleadings that refer to [his] engagement in collegiate athletics." JA358. Ford even attended one of Williamson's

games. JA72. "Given that the [Agents Act] merely requires that an individual 'engages in' an intercollegiate sport in order to be considered a student-athlete," Williamson "meets this bar." JA358. Prime Sports' recruiting was therefore illegal and the resulting contract is void.

B. The second sentence is inapplicable and does not empower Prime Sports to retroactively undo the fact that Williamson was engaged in intercollegiate sports.

Prime Sports' counterintuitive position that Williamson was playing basketball at Duke but nonetheless was not a "student-athlete" rests on a fundamental misreading of the second sentence of the statutory definition. That sentence provides:

> If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

N.C. Gen. Stat. § 78C-86(11). Prime Sports reads the sentence to mean that, "notwithstanding the first sentence, individuals that are permanently ineligible to compete in a sport do not meet the definition of student-athlete," even if they are currently playing that sport. Prime Br. 23-24. Still more, Prime Sports reads that sentence to vest courts—not the NCAA—with authority to decide which students should or should not be eligible to play in NCAA games, and to retroactively strip Williamson of protection because of alleged rules violations. Each of those contentions lacks merit.

1. The second sentence is not an exception and instead broadens the Act's protection with respect to two-sport athletes.

At the outset, the second sentence is not an exception at all. It does not include the words "notwithstanding the first sentence" or any other language suggesting that it is an exception to the three categories set forth in the first sentence. Rather, it clarifies and broadens the statutory protection for two-sport athletes: It confirms that if a student does not fit within any of the first sentence's three categories with respect to a "*particular* intercollegiate sport" (*i.e.* they are not engaged in, eligible to engage in, or potentially eligible in the future to engage in, the particular sport) then they are not a student-athlete only "for purposes of *that sport*." But they may still be a student-athlete for purposes of another sport, provided that they are engaged in, eligible, or potentially eligible in the future to play that sport (and therefore are not "permanently ineligible" for purposes of that second sport). Prime Sports offers this Court no explanation for the reference to a "particular sport" and "for purposes of that sport," which are surplus under their interpretation.

The commentary to the model statute confirms that ordinary reading of the text: It explains that "[t]he definition of 'student-athlete' applies to a two-sport athlete who has eligibility remaining in one sport. For example, an individual who has signed a contract to play professional basketball

is not a student-athlete in basketball, but is a student-athlete in baseball." Unif. Athlete Agents Act, § 2 & cmt. It thus clarifies that the student-athlete assessment is made sport-by-sport, not student-by-student.[5]

College sports history is rich with examples of multi-sport athletes. For example, long before he sat on the U.S. Supreme Court, Justice Byron White was a three-sport student-athlete, playing basketball, baseball, and—most notably—football for the University of Colorado. Alfred Wright, *A Modest All-America Who Sits on the Highest Bench*, Sports Illustrated (Dec. 10, 1962).[6] And two-sport student-athletes have been ineligible in one sport, yet continued to play another. For example, NFL player Russell Wilson played college baseball at North Carolina State, was drafted by the Colorado Rockies to play professional baseball, and later returned to the University of Wisconsin to play football. Patrick Clarke, *Seahawks QB Russell Wilson Selected in MLB Rule 5 Draft by Texas Rangers*, Bleacher Report (Dec. 12, 2013).[7] The second sentence of the student-athlete definition exists to protect multi-sport athletes like those.

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[5] The NCAA Bylaws similarly state that "[a] professional athlete in one sport may represent a member institution in a different sport and may receive institutional financial assistance in the second sport." NCAA Bylaw 12.1.3, 2019-2020 Division I Manual (2019).

[6] https://vault.si.com/vault/1962/12/10/a-modest-allamerica-who-sits-on-the-highest-bench.

[7] https://bleacherreport.com/articles/1886287-seahawks-qb-russell-wilson-selected-in-mlb-rule-5-draft-by-texas-rangers.

Prime Sports also misreads the reference to an athlete who is "permanently ineligible." "Permanently ineligible" to play an intercollegiate sport is not a new and unique category of ineligibility; it is the negative of the definition in the first sentence. If an individual is *not* engaging in, eligible to engage in, or potentially eligible in the future to engage in a particular intercollegiate sport, the individual is permanently ineligible (and therefore *not* a student-athlete) for purposes of that sport. *See Permanent*, *Webster's Third New International Dictionary* (1993) ("not subject to fluctuation or alteration"). Conversely, if a student is engaged in, eligible to engage in, or potentially eligible in the future to engage in a sport, then by definition they are not "permanently ineligible" to play that sport.

The second sentence thus does not create a carve-out for a special category of eligibility violations that could result in retroactive permanent ineligibility at a time when a student athlete was actively playing. The second sentence merely clarifies that a two-sport athlete can retain protection as a "student-athlete" in one sport even if they have lost protection in another. The sentence is therefore inapplicable to Williamson, a one-sport college athlete who was playing basketball at the time Prime Sports recruited him. He was a "student-athlete" for purposes of basketball under the first sentence and therefore qualifies as a student-athlete, full stop.

2. Even if the second sentence were an exception, it would be up to the NCAA—not the court—to determine whether the exception would apply here.

a. Even if the second sentence were an exception, it still would not apply. It is undisputed that the NCAA did not view Williamson as permanently ineligible at the time Prime Sports recruited him. Instead, he was actually playing basketball under the NCAA's auspices, reflecting the NCAA's determination that he was eligible to do so. And under the Act, it does not matter whether the NCAA could have or should have done something differently. The Act's text makes clear that the NCAA decides eligibility to play NCAA sports, not a court.

The statutory definition of "student-athlete" covers any person who "engages in, is eligible to engage in, or may be eligible in the future to engage in any *intercollegiate sport*." N.C. Gen. Stat. § 78C-86(11) (emphasis added). The definition of an "intercollegiate sport," in turn, is a "sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics." N.C. Gen. Stat. § 78C-86(6). The NCAA is the "national association" that has established "eligibility requirements for participation by a student-athlete," which are set forth in the NCAA Division 1 Manual.

The Act thus incorporates into the definition of "student-athlete" the notion that "a national association for the promotion or regulation of collegiate athletics" (the NCAA) determines eligibility requirements pursuant to its own established rules. It is up to the NCAA to set and apply the substantive criteria for evaluating eligibility; and it is up to the NCAA to set the processes and standards for challenging eligibility.

The Act's deference to NCAA eligibility determinations comports with North Carolina's approach to membership determinations by a voluntary association. "In North Carolina, '[i]t is well established that courts will not interfere with the internal affairs of voluntary associations.'" *McAdoo v. Univ. of N.C. at Chapel Hill*, 736 S.E.2d 811, 825 (N.C. Ct. App. 2013) (quoting *Wilson Realty & Constr., Inc. v. Asheboro-Randolph Bd. of Realtors, Inc.*, 518 S.E.2d 28, 30 (N.C. Ct. App. 1999)). A North Carolina court "will not 'determine, as a matter of its own judgment, whether [a] member should have been suspended or expelled.'" *Wilson Realty*, 518 S.E.2d. at 30 (citation omitted); *see also, e.g.*, *Manuel v. Okla. City Univ.*, 833 P.2d 288, 292 (Okla. Ct. App. 1992) ("The general rule is that the courts will not interfere with the activities of a voluntary association.").

The only exceptions are if the association failed to "follow [its] own internal rules and procedures," failed to provide "notice and an opportunity to be heard," or "engaged in 'arbitrariness, fraud, or collusion.'" *McAdoo*, 736 S.E.2d at 825-826 (citations omitted).

That standard is demanding, and Prime Sports does not even attempt to argue it is satisfied. In any event, the proper way to raise such a challenge to the NCAA's decision-making would be in an action against the NCAA itself, not a misguided effort to ask a court to completely ignore the NCAA's undisputed determination that Williamson was eligible. *See id.*

Nothing in the Act breaks from that well-established rule of deference to allow a court to ignore the NCAA's own procedures for determining who is eligible to play NCAA sports, and instead to make a *de novo* retroactive assessment whether a player should have been playing or would have been permanently ineligible. The Act nowhere authorizes a court to determine eligibility for itself or establishes criteria for a court to apply. The Act does not set forth options for potential penalties a court may impose. The Act does not state which violations of which rules render a student ineligible. The Act does not state which violations could or must trigger a permanent loss of eligibility, or when temporary ineligibility or a suspension is sufficient. And the Act does not indicate whether any such determinations by a court may have corresponding implications for the educational

institution the student-athlete attended, such as whether a court could order a school to forfeit wins or titles earned while an allegedly ineligible student was playing. And all with good reason: these issues are the NCAA's to resolve.

That silence in the Act speaks volumes. This is not merely one proverbial "dog that did not bark." *Chisom v. Romer*, 501 U.S. 380, 396 n.23 (1991) (citing Arthur Doyle, Silver Blaze, in The Complete Sherlock Holmes 335 (1927)); *cf. Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 602 (1980) (Rehnquist, J., dissenting). It is an entire pack of dogs that did not bark. The much more sensible interpretation—and the only one consistent with the Act's text—is that the NCAA's assessment of eligibility (not a court's) is controlling.

b. The NCAA has established robust rules and procedures for ensuring that any player who is playing is eligible to do so, as well as for deciding whether a player has violated NCAA rules, what the sanctions should be, and in particular whether there should be any loss of eligibility and whether it should be permanent.

First, the NCAA's Bylaws set forth a clear process by which it makes eligibility determinations. "It is the responsibility of each member institution [such as Duke] to control its intercollegiate athletics program in compliance with the rules and regulations of the [NCAA]." NCAA Bylaw 2.1.1,

2019-2020 Division I Manual (2019).[8] Specifically, "[a]n active member [*i.e.* an educational institution] is responsible for certifying the eligibility of student-athletes" under the NCAA's rules "before permitting a student-athlete to represent the institution in intercollegiate competition." NCAA Bylaw 3.2.4.4. A student-athlete is required to sign a statement and provide information certifying their eligibility. NCAA Bylaw 12.7.2. A member institution, such as Duke, is required to certify the eligibility of the student-athlete by "determin[ing] the validity of the information on which the amateur status of a prospective student athlete … is based." NCAA Bylaw 12.1.1. Thus, a student cannot play basketball for an NCAA member institution unless that institution has determined, on the NCAA's behalf, that the athlete is eligible.

An institution has an ongoing responsibility to ensure that a student-athlete is eligible before allowing him to play in any game. "If a student-athlete is ineligible … the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition." NCAA Bylaw 12.11.1; *see O'Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1377 (9th Cir. 1988) (explaining that, "if a student athlete is ineligible under the NCAA requirements, the member school must withhold that athlete from all intercollegiate competition," lest the

[8] https://www.ncaapublications.com/productdownloads/D120.pdf.

school face "NCAA enforcement proceedings"). Accordingly, under the NCAA's rules, the fact that Williamson was playing basketball for Duke reflects determinations by Duke, on behalf of the NCAA, that Williamson was eligible to do so.

Second, the NCAA has established a defined process for the NCAA to determine whether alleged rule violations in particular cases in fact occurred and, if so, whether they render a student permanently ineligible. A student-athlete must be "determined to be ineligible" by the institution or the NCAA and withheld from competition; once that happens, the institution may request the student-athlete's reinstatement through a "Committee on Student-Athlete Reinstatement." NCAA Bylaw 12.12; 21.7.6.5.3 (defining membership, powers, and duties of the Committee). The Committee has "authority to determine all matters pertaining to" eligibility and restoration. NCAA Bylaw 18.4.1.2; 21.7.6.5.3.3. And the Committee's determination "shall be final, binding and conclusive and shall not be subject to further review by any other authority." NCAA Bylaw 21.7.6.5.3.3.1.

Accordingly, an allegation of conduct in violation of NCAA rules, even if proven, would not be enough. As the commentary to the model statute explains, "violation of eligibility rules … *is not automatic* and does not occur until a determination has been made by the educational institution or the national association." Unif. Athlete Agents Act § 10 & cmt. (emphasis

added); *see also McRae v. Sweet*, 1991 WL 274261, at *1 (N.D.N.Y. Dec. 13, 1991) (describing a player who was repeatedly reinstated by the NCAA after eligibility violations). What is needed is for the NCAA to come to the view that the player is permanently ineligible, under its own processes, and it is undisputed that no such thing occurred here.

Prime Sports' allegations of eligibility violations thus fail on multiple levels. They are entirely irrelevant because Williamson was playing, which is enough to make him a "student-athlete" without further inquiry into eligibility. Even if eligibility were necessary, the NCAA's assessment of eligibility would control, and the fact that Williamson was playing reflects an affirmative determination that he was eligible to do so. And third, even if a court could determine whether the alleged rule violation occurred, that still would not automatically and irrevocably make Williamson permanently ineligible. It would still be up to the NCAA to decide the consequences through its existing processes. And again, it is undisputed that the NCAA did not view Williamson as permanently ineligible to play. Instead, the NCAA allowed him to *actually* play in NCAA games.

3. The statutory context further supports the District Court's conclusion.

As set forth above, the District Court's ruling is dictated by the plain meaning of the statutory text and well-settled principles of deference to membership determinations made by private institutions. The statutory

context further confirms that the District Court's interpretation is correct. "When construing a statute, the Supreme Court of North Carolina reads text 'within the context of the statute' rather than in isolation." *Farm Labor Org. Comm. v. Stein*, 56 F.4th 339, 346 (4th Cir. 2022) (quoting *Stahle v. CTS Corp.*, 817 F.3d 96, 105 (4th Cir. 2016)).

Start with the title. This is the Uniform Athlete Agents Act, not the Uniform Code of Student Conduct. Its focus is regulating agents, not policing student conduct. It imposes a raft of duties on agents to regulate their conduct to protect pre-professional student-athletes and the schools at which they are enrolled. For example, agents must register with the state and undergo an examination of their character and fitness. *See* N.C. Gen. Stat. §§ 78C-88, 78C-89(a). The Act also sets forth detailed rules of primary conduct for agents, requiring them to provide prominent warnings in their contracts; to refrain from making false promises or representations; and to refrain from furnishing anything of value to a student-athlete before they enter into an agency contract. *See, e.g.*, N.C. Gen. Stat. §§ 78C-94, 78C-98(a). An agent who violates the Act faces possible criminal prosecution. *See* N.C. Gen. Stat. §§ 78C-94, 78C-99.

The Act also sets up a bright-line rule that any agent can immediately ascertain to ensure compliance: If a student is playing college sports, he is fully protected. Athlete-agents who seek to recruit those students first

must register with the state, pass the character-and-fitness review, and provide robust warnings to student-athletes, among other measures.

By contrast, the Act imposes just one duty on a student-athlete—and that duty confirms that Prime Sports is wrong to treat alleged eligibility violations as immediate, automatic, and permanent. Section 78C-95, titled "Notice to educational institution," provides:

> Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

This requirement's unambiguous text puts to bed any argument that a student-athlete automatically loses protection under the Act the moment he signs an agency contract, as Prime Sports contends. Prime Br. 28. The Act calls a person who has already entered into an agency contract a "student-athlete" (not a "former student-athlete"), confirming that student-athlete status is not immediately, automatically, and irrevocably lost upon the signing of an agency contract. *Compare* N.C. Gen. Stat. § 78C-100 (referring to a "former student-athlete").

The notice requirement is also part and parcel of the Act's deference to the NCAA's assessment of student-athlete eligibility. The requirement puts the "athletic director of the educational institution" on notice that a

student-athlete has entered an agency contract, so that the athletic director can work with the institution and the NCAA to make the requisite determination about the student-athlete's eligibility in a timely manner, and in particular before any upcoming game. This provision underscores that any player who is actually playing is protected. And it suggests that, if an agent suspects that a student currently playing an intercollegiate sport engaged in conduct that might lead the NCAA to find the student ineligible, the agent should inform the school and NCAA of her concerns to allow them to make the appropriate determination. Prime Sports never did so.

4. Prime Sports' position would flout the purpose of the Agents Act.

The unambiguous statutory text is sufficient to resolve this case, but the statutory purpose powerfully supports the District Court's decision. The Agents Act was drafted to protect student-athletes and educational institutions from the "serious problems" that "would-be agents" cause. Unif. Athlete Agents Act, Prefatory Note; *see also* 15 U.S.C. 7807 (encouraging States to enact the model act "to protect student-athletes and the integrity of amateur sports from unscrupulous sports agents"). Among other potential harms caused by unscrupulous agents, the model act cites loss of athlete eligibility, sanctions for universities, loss of revenues, non-

monetary sanctions and tarnished reputations, as well as "severe disruption in the activities of those responsible for administration of the institutions." Unif. Athlete Agents Act, Prefatory Note.

Prime Sports contends that "[t]here is no public policy reason to treat athletes who engaged in the same improper conduct differently based solely on whether or not they got caught." Prime Br. 37. But a student who has been certified by an institution as eligible and indeed is *actively playing for the team,* and thus was found to be eligible to do so, is very differently situated from a student who has been found to have violated NCAA rules, excluded from playing, and found permanently ineligible by the NCAA. Prime Sports ignores the ample reason to treat those two students differently. One is still a student-athlete. The other is not.

Prime Sports' reading would turn the Act's protective purpose on its head, transforming it from a shield for student-athletes into a sword that unscrupulous agents can use to attack the reputation of unknowing students and their families. In particular, Prime Sports' interpretation would create a powerful incentive for unscrupulous agents to turn vigilante as soon as their own wrongdoing is uncovered, and dig through the student-athlete's life history to find any nugget of evidence to contend that the student violated eligibility rules before the agent's illegal recruitment began.

Prime Sports' conduct vividly illustrates the dangers of that rule. They have raised irrelevant and salacious allegations that the District Court described as "a fishing expedition into the backgrounds of Plaintiff, his parents, and his associates," even though Prime Sports admits that they recruited Williamson without registering or provide the requisite warning. JA382. Prime Sports is thus plainly seeking to attack Williamson in an effort to escape responsibility for their own misdeeds.

The real policy question is therefore whether to empower unscrupulous agents to evade the Act's requirements by attacking the student-athlete and stripping that athlete of the statute's protection so long as the agent can prove that the athlete had previously violated NCAA rules. Accepting Prime Sports' argument would create an incentive for agents to disregard the Act in the hopes of landing a lucrative deal with an unsuspecting student—and then later escape liability by following Prime Sports' extortionate strategy. It would also discourage student-athletes from coming forward to vindicate their rights—even if they did nothing wrong—because of the risk of harassment and reputational damage that Prime Sports' interpretation would invite.

C. Prime Sports' counterarguments lack merit.

The statutory text, context, history, and purpose thus all confirm that the District Court correctly held that Williamson was a student-athlete,

without regard to Prime Sports' allegations of supposed eligibility violations. Prime Sports looks far and wide in search of support for their strained interpretation. But none of it helps. If anything, the differences between the examples Prime Sports cites and the text of the Act confirm the District Court's interpretation.

1. Prime Sports cites irrelevant and unhelpful context.

As set forth above, Prime Sports' allegations about determinations the NCAA could or should have made, were it informed of Prime Sports' allegations of misconduct, are irrelevant. It is undisputed that the NCAA and its member institutions did not view Williamson as permanently ineligible to play. Instead, the NCAA allowed him to play.

Nevertheless, Prime Sports argues that the District Court "added a requirement" to the Act by holding that "permanent ineligibility" requires a formal "declaration" by the NCAA or a member institution. Prime Br. 27. But the District Court itself explained that it had done no such thing: "[T]he Court's ruling did not stand for a proposition that [Prime Sports] must establish that there had been a declaration by the NCAA that [Williamson] was permanently ineligible." JA073. Rather, it is undisputed that the NCAA did not consider Williamson to be permanently ineligible at the relevant time under its own standards and processes for making that assessment (with or without issuing a declaration). It is likewise undisputed

that Prime Sports did not ask the NCAA to make such an assessment—much less challenge any such determination by the NCAA. Instead, Williamson was engaged in playing basketball at the time Prime Sports recruited him. He was thus a student-athlete.

Prime Sports also invokes three provisions of the Act. None support their interpretation. *First,* Prime Sports cites Section 78C-100(e), which provides that the Act "does not restrict rights, remedies, or defenses of any person under law or equity." Prime Br. 24 (quoting § 78C-100(e)). But that is irrelevant. Whether the Act reserves rights under *other* laws does not change the meaning of *this* law. Prime Sports argues that they were deprived of "[t]he right to raise an affirmative defense challenging whether a prerequisite statutory definition has been met." *Id.* Not so. Prime Sports raised that affirmative defense—it just failed on the merits.

Second, Prime Sports cites the disclosure the Act requires in agency contracts—a disclosure that *Prime Sports admits they failed to include in the Agreement*. Prime Sports notes that agents must disclose that "if you sign this contract … you shall lose your eligibility to compete as a student-athlete in your sport." § 78C-94(c) (emphasis removed). Prime Sports asserts that this means that a permanent loss of eligibility is immediate and automatic upon signing an agency contact. Prime Br. 28.

But the warning is just that—a warning. It informs student-athletes that signing an agency contract may cause the NCAA to find them ineligible to compete. As discussed above, the Act requires a student-athlete signing such a contract to notify their school's athletic director so that the school can make such an eligibility determination on the NCAA's behalf. And the Act expressly refers to the person as a "student-athlete" even after signing the agreement. The legislature thus did not abrogate the NCAA's process for determining eligibility merely by requiring this warning.

Third, Prime Sports invokes a provision that gives institutions a right of action against "an athlete agent or a former student-athlete for damages caused by a violation of [the Act]," including because "the conduct of … [a] former student-athlete" caused the institution to be "penalized, disqualified, or suspended from participation in athletics" by the NCAA or by "reasonable self-imposed disciplinary action." § 78C-100(a), (b).

Contrary to Prime Sports' contentions, that provision does not mean that a court gets to decide *de novo* whether "the alleged violations *could have resulted* in a finding of ineligibility." Prime Br. 30 (emphasis added). It provides a cause of action for the school when the violations *did* result in a finding of ineligibility (either made by the school or the NCAA) and the school suffered harm as a result.

For example, if the student-athlete fails to notify a school's athletic director that he has entered into an agency contract, as the Act requires, continues to compete on behalf of the school, and the NCAA later determines that he had violated NCAA eligibility rules and nevertheless competed, the NCAA could impose sanctions on the school. *See, e.g.*, NCAA Bylaw 19.9.8. The Act thus provides a cause of action when an institution incurs such damage. But a court would not second-guess the NCAA's eligibility determinations in such a suit. Rather, such a suit would piggyback on the eligibility determinations the NCAA already made (or the sanction the school reasonably self-imposed) and award damages in connection with any such actions that were actually taken. That provision thus fully supports the District Court's position.

2. Prime Sports cites other deference regimes that support Williamson's interpretation of the Act.

Prime Sports invokes a hodge-podge of legal schemes, asserting that federal courts should not be "bound" by the NCAA's eligibility determinations when federal courts are not bound by "decisions of the International Court of Justice," findings of "the Patent and Trial Appeal Board," "the Register of Copyrights," "the Coast Guard Examiner," "the Social Security Administrator," or "the findings of state courts." Prime Br. 30-35. But if anything, those unrelated regimes support Williamson because they show that it is the terms and context of the specific statutory scheme at issue

that control the scope and substance of judicial review. Where legislatures intend for judicial review of determinations made afresh by other entities, they provide for it. Here, the Act does not.

Start where Prime Sports ends, with the Social Security Administrator—this example illustrates the flaws with Prime Sports' far-flung analogies. Prime Br. 34. Prime Sports argues that "[c]ourts have consistently held that the Administrator's findings of disability" are not binding, and instead subject to judicial review. Prime Br. 34. But unlike the NCAA, the Social Security Administration is a government agency. And the Social Security Act provides that "[a]ny individual, after any final decision of the Commissioner of Social Security … may obtain a review of such decision" in federal district court. 42 U.S.C. 405(g). So the statute expressly provides for judicial review—but only after a party has sought and received a final decision from the agency. And it sets a standard of review: "factual findings … 'shall be conclusive' if supported by 'substantial evidence.'" *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019) (quoting 42 U.S.C. 405(g)).[9]

[9] Prime Sports' other examples are similar. For example, the Patent Act expressly provides for review of determinations by the Patent Trial and Appeal Board, *see* 28 U.S.C. 1295(a)(4)(A), and the Federal Circuit "review[s] the PTAB's factual findings for substantial evidence," *In re Rudy*, 956 F.3d 1379, 1383 (Fed. Cir. 2020). *See also, e.g.*, 42 U.S.C. 2000e-16(c) (granting a right of appeal to an employee or applicant aggrieved by the final disposition of the EEOC).

Parallel language is completely absent from the Agents Act. There is no provision for judicial review or any standard of review by which a court would reassess whether a student should have been playing NCAA basketball. Instead, the Act provides that the institution and the NCAA make eligibility decisions based on their own criteria and processes. That is consistent with the general rule that North Carolina courts "will not interfere with the internal affairs of voluntary associations.'" *McAdoo*, 736 S.E.2d at 825 (citation omitted).

3. Prime Sports' cases that reference the NCAA rules are irrelevant or support Williamson.

Prime Sports cites many cases, but identifies no court that has ever reached the bizarre conclusion that a student who is currently playing NCAA sports is not a student-athlete.

To the contrary, several of Prime Sports' cases confirm that the NCAA and member institutions—not courts—make and enforce eligibility determinations. As *United States v. Walters*, 711 F. Supp. 1435 (N.D. Ill. 1989), explains, "every student [must] sign and submit each year statements containing information relating to eligibility" based on which "*the schools determine* a student-athlete's eligibility to compete." *Id.* at 1437-38 (emphasis added). So the NCAA and its members are responsible for determining who may play NCAA sports. They are also responsible for determining who may not play: *O'Halloran v. Univ. of Wash.*, 856 F.2d 1375 (9th Cir.

1988), explains that "if a student athlete is ineligible under the NCAA requirements," the responsibility belongs to "*the member school* [to] withhold that athlete from all intercollegiate competition," lest the school face "NCAA enforcement proceedings." *Id.* at 1377 (emphasis added).

Prime Sports relies on *United States v. Gatto*, 986 F.3d 104 (2d Cir. 2021), but that case did not address the Agents Act. It is a criminal case that upheld the wire fraud convictions for individuals who defrauded three universities into extending scholarships to students. Specifically, the individuals covered up payments they made to the students that could have been grounds for the NCAA to find the students ineligible. 986 F.3d at 130. The Second Circuit did not adjudicate the students' eligibility, as Prime Sports suggests. *See* Prime Br. 44. Rather, the court held that the evidence was sufficient to support the jury's verdict that the defendants' scheme had harmed the schools because, if the schools had known of the payments, they would not have provided the scholarships. 986 F.3d at 111-12. The wire fraud statute thus required proof of a hypothetical (that the schools had suffered harm because they otherwise would not have granted scholarships), whereas the Agents Act does not.

Prime Sports takes out of context statements from the district court opinion that the students "in fact were ineligible to compete." *United States v. Gatto*, 295 F. Supp. 3d 336, 339-340 (S.D.N.Y. 2018). But those

statements were made in the context of proving up the harm the schools suffered because of the defendants' cover-up; they do not establish that a court in a case under the Agents Act should decide in the first instance whether a player should have lost his eligibility because of purported rules violations. Furthermore, the Second Circuit in *Gatto* recognized that certain NCAA rules violations may result only in athletes being "temporarily deemed ineligible and then readmitted to play under the NCAA reinstatement guidelines." 986 F.3d at 120. *Gatto* thus does nothing to disturb the District Court's holding that it is the NCAA that makes eligibility determinations, not a court.

Two of Prime Sports' cases stand for the uncontroversial proposition that agents may argue that a person does not meet the "student-athlete" definition. *See* Prime Br. 38-41 (citing *Sloane v. Tenn. Dep't of State, Bus. Servs. Div.*, 2019 WL 4891262 (Tenn. Ct. App. Oct. 3, 2019), and *Howard v. Miss. Sec'y of State*, 184 So. 3d 295 (Miss. Ct. App. 2015)).[10] Prime Sports raised that defense—it just failed on the merits because the undisputed facts establish that Williamson *was* a student-athlete.

[10] Defendants also assert that the Agents Act "allows a court to 'reverse or modify a decision if the substantial rights of the petitioner may have been prejudiced." Prime Br. 41 n.6. But they are citing N.C. Gen. Stat. § 150B-51, which is part of the North Carolina Administrative Procedure Act. That provision applies to government agency decisions, and not to determinations by Duke or the NCAA, which are private organizations.

Finally, Prime Sports cites cases where individuals who the NCAA declared ineligible *sued the NCAA* to challenge that determination. Prime Br. 41-42. But those cases confirm that "courts will not interfere with the internal affairs of voluntary associations," like the NCAA, except in very narrow circumstances, such as when the determinations are arbitrary, fraudulent, or collusive. *E.g.*, *McAdoo*, 736 S.E.2d at 825-826. Those cases confirm that the appropriate way to challenge the NCAA's eligibility determinations is to do so directly, giving the NCAA the opportunity to defend its own internal decision-making processes under the appropriately deferential standard.

Thus, Prime Sports' cases strongly support the District Court's ruling—and undercut Prime Sports' radical position that courts should adjudicate student-athlete eligibility in the first instance. Prime Sports is effectively asking courts to step into the NCAA's shoes, displace its processes for determining whether a student should be playing, whether a violation has occurred, assess mitigating and aggravating factors, consider a range of penalties (such as fines, suspensions, or permanent ineligibility), and displace the NCAA's role in determining whether a permanent loss of eligibility is indeed warranted. For the reasons set forth above, there is no sound basis for the Court to interpret the Act to launch courts on that groundbreaking journey.

At best, Prime Sports has "recit[ed] [a list] of purported offenses"—none of which Williamson admits—that, had the NCAA been asked to consider the issue "could have led to [Williamson's] ineligibility, permanent or otherwise." JA359. But all of that is beside the point. "The question the Court had to determine in interpreting the applicability of the [Agents Act] was not whether Plaintiff *could have conceivably* been found permanently ineligible by the overseeing collegiate association or *should have* been found permanently ineligible, but rather whether Defendants had sufficiently alleged that he *was* permanently ineligible." JA376. They did not. The District Court therefore correctly granted Williamson judgment on the pleadings and declared the Agreement void. For the same reasons, the District Court correctly denied as futile Prime Sports' request for leave to amend to add yet more irrelevant allegations.

II. The District Court correctly granted summary judgment on Prime Sports' counterclaims.

Prime Sports' remaining arguments are half-hearted and fail on the merits. Prime Sports admits that if the contract is void (as it is, for the reasons set forth above), then their claims for breach of contract, good faith and fair dealing, unjust enrichment, and demand for a declaratory judgment fail as well. *See* Prime Br. 51. Prime Sports' cursory challenges to the District Court's resolution of its trade secret and fraud claims also fail. And, without a trade secret or fraud claim, Prime Sports admits that their

claims for conspiracy, unfair and deceptive trade practices, injunctive relief, and punitive damages must fail as well. *See id.* at 58.

A. The District Court correctly held that Prime Sports' marketing materials were not trade secrets.

The District Court correctly granted summary judgment to Williamson on Prime Sports' trade secret claims. Under North Carolina law, a trade secret must "deriv[e] independent actual or potential commercial value from not being generally known or readily ascertainable" and must be subject to "efforts that are reasonable under the circumstances to maintain its secrecy." N.C. Gen. Stat. § 66-152(3); *see, e.g.*, *Area Landscaping, LLC v. Glaxo-Welcome, Inc.*, 586 S.E.2d 507, 525 (N.C. Ct. App. 2003) ("In order to survive a motion for summary judgment, [the party] must allege facts that would allow a reasonable finder of fact to conclude that the [alleged trade secret] was not 'generally known or readily ascertainable' and that [the party] has made reasonable efforts to maintain the information's secrecy."). As the District Court correctly concluded, the uncontroverted record evidence established that Prime Sports' purported trade secrets failed both prongs of this test: the materials were generally known and Prime Sports did not make reasonable efforts to keep them secret.

Prime Sports' purported trade secrets consist of two sets of documents—a hard copy "Brand Management Strategy" deck, and a compilation of "Partnership Summaries" that documented initial offers made to Williamson by various brands.

The uncontroverted evidence established that the Brand Management Strategy is nothing more than a 10-page deck that sets forth generic marketing concepts and lists dozens of brands in various categories, such as "Footwear" or "Automotive." *See* JA1821-1831. Ford admitted that the listed brands "are known. They do deals with athletes." JA1953. And as the District Court correctly concluded, "[t]he Brand Management Strategy does not appear to contain any information that could not be readily ascertained by watching the commercials during any televised NBA game." JA398. Under North Carolina law, "information that is compiled in the course of doing business" and that "can be learned directly from [third parties]" is not a trade secret. *Edgewater Servs., Inc. v. Epic Logistics, Inc.*, No. 05-CVS-1971, 2009 WL 2456868, at *5 (N.C. Super. Ct. Aug. 11, 2009) (granting summary judgment as to the trade secrets claim), *aff'd*, 2011 WL 6035918 (N.C. Ct. App. Dec. 6, 2011).

Prime Sports also asserted that two "ideas" set forth in the Brand Management Strategy, "Just Be Yourself" and "1+1=3," constituted trade

secrets. Prime Sports argued that "Just Be Yourself" was intended to capture the idea that Williamson market himself as "The First Zion Williamson" rather than "the Next LeBron James." But the uncontroverted record evidence showed that Williamson himself had long before used the concept of "the First Zion Williamson" in "publicly available materials" and the idea was thus "both generally known and readily ascertainable." JA395-396. And the formula "1+1=3" was not a trade secret because "[n]umerous sources, from U.S. Supreme Court opinions and legal dictionaries to business magazines and online publications, openly discuss the very concept." JA395-397. Widely publicized, and therefore generally known, ideas are not trade secrets.

Prime Sports' Partnership Summaries consist of one-page spreadsheets, some of which documented "initial offers" made to Williamson by brands widely known for athlete endorsements. *See* JA1849-1897. Some of the Partnership Summaries are blank, containing only "TBD" as potential terms. *See, e.g.*, JA1872. But even for those brands that listed an initial offer, "a nebulous, potential, business opportunity, not yet realized, that is being offered by a third-party" does not qualify as a trade secret under North Carolina law. *RLM Commc'ns, Inc. v. Tuschen*, 66 F. Supp. 3d 681, 700 (E.D.N.C. 2014) *aff'd*, 831 F.3d 190 (4th Cir. 2016). And the District Court correctly found that the evidence set forth at summary judgment

further demonstrated that Williamson's new marketing agency, CAA, had independently generated each offer by reaching out to their contacts at the brand. JA398-399.

The District Court also correctly concluded that Prime Sports did not make a reasonable effort to keep their marketing materials secret. JA399. This independently defeats Prime Sports' claim. The record evidence established that both the Brand Management Strategy and the Partnership Summaries were largely developed by a third party, Brian Levine, who was unaffiliated with Prime Sports and subject to no confidentiality obligations. *See* JA2370-2372. The documents were not marked confidential. *See* JA1821-1831; JA1849-1897. The Brand Management Strategy was shared with a focus group not subject to confidentiality obligations, as well as various "other people." JA1945; JA1786-1795. And Prime Sports publicly filed several of the Partnership Summaries on the docket in a related action in Florida. JA1092-1104. For these reasons, the District Court correctly granted summary judgment to Williamson and Prime Sports offers no sound basis to disrupt that conclusion on appeal.

B. The District Court correctly held that the alleged fraud did not occur, as Ford herself admitted.

Finally, the District Court correctly granted summary judgment to Williamson on Prime Sports' fraud claim. First, the District Court correctly determined that the undisputed facts foreclosed the only fraud claim

Prime Sports preserved: Prime Sports alleged in their counterclaims that Williamson fraudulently told Prime Sports that he wanted a marketing plan so that he could share it with a potential basketball agent (not a marketing agent like Prime Sports). *See, e.g.*, JA150-151. But Ford openly admitted in her deposition that Williamson told her no such thing. JA1942-1943. That claim accordingly failed.

Prime Sports then attempted in their summary judgment brief to newly raise a "pure omissions" theory that Williamson had a duty to disclose that he was considering terminating Prime Sports and signing with a different agent. Indeed, Prime Sports recognizes that they changed their theory. Prime Sports says merely that their new argument at summary judgment "was [] *consistent with* [their] allegations." Prime Br. 52 (emphasis added). But the District Court was correct in determining that this belated argument was forfeited. "This alone is sufficient reason" to defeat Prime Sports' claim. JA391.

The District Court also correctly held that Prime Sports' new fraud theory would fails on the merits for two additional, independent reasons. First, as the District Court explained, "[a] typical enforceable contract would not create a duty to disclose these facts." JA392; *see also Rahamankhan Tobacco Enters. Pvt. Ltd. v. Evans MacTavish Agricraft, Inc.*, 989 F. Supp. 2d 471, 477 (E.D.N.C. 2013) (citing *Comput. Decisions, Inc.*

v. Rouse Off. Mgmt. of N.C. Inc., 477 S.E.2d 262, 265) (N.C. Ct. App. 1996)) ("a party to a commercial transaction has no duty to tell the other party that it is negotiating with a third party"). Thus, even under ordinary circumstances, the Agreement would not have created the duty to disclose that Prime Sports asserted.

Second, the void Agreement "certainly did not create such a duty." JA392. As the District Court explained, "[i]t would be contradictory to hold that the Agreement is void as against North Carolina public policy but nevertheless creates a duty to disclose. Allowing such a claim would create a backdoor for athletics agents to avoid the requirements of the [Agents Act] and effectively enforce unenforceable contracts through tort law." *Id.* Prime Sports has no response.

Therefore, the District Court correctly entered summary judgment against Prime Sports' fraud claim for multiple independent reasons.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the District Court.

STATEMENT REGARDING ORAL ARGUMENT

Appellee respectfully requests oral argument. This case involves a question of statutory interpretation, and Appellee believes oral argument could significantly aid in the Court's decisional process.

Respectfully submitted,

/s/ Zachary D. Tripp

Zachary D. Tripp
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
(202) 682-7000
zack.tripp@weil.com

Robert B. Niles-Weed
Zachary Schreiber
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Jeffrey S. Klein
CLARICK GUERON REISBAUM LLC
220 Fifth Avenue, 14th Floor
New York, NY 10001
(212) 633-4310

Lauren E. Richards
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154
(212) 407-4990

John R. Wester
Fitz E. Barringer
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Effective 12/01/2016

No. 22-1793 **Caption:** Williamson v. Prime Sports Marketing, LLC, Gina Ford

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I certify that on March 24, 2023 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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