

INDIANA COMMERCIAL COURT

STATE OF INDIANA

MARION SUPERIOR COURT

COUNTY OF MARION

SS:

CAUSE NO. 49D01-2308-CT-_____

REGINALD A. BUSH, II,

Plaintiff,

v.

THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION,

Defendant.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff, Reginald A. Bush, II ("Mr. Bush"), by counsel, respectfully submits this Complaint against Defendant, The National Collegiate Athletic Association ("Defendant" or "NCAA"), and states the following in support.

I. THE NCAA'S DEFAMATION OF REGGIE BUSH

1. This action seeks to hold the NCAA accountable for maliciously attacking the character of Mr. Bush.
2. Mr. Bush is a sports analyst, philanthropist and one of the most electrifying and celebrated football players of all time.
3. On July 28, 2021, the NCAA, by and through its authorized spokesperson, falsely told reporters that because of Mr. Bush's prior involvement in a "pay-for-play

arrangement,” the NCAA would not consider restoring his collegiate records that it vacated in 2010.

4. The NCAA’s claim that Mr. Bush engaged in “pay-for-play” (the “Statement”) is reasonably and widely understood to mean that Mr. Bush received payment in return for playing football at the University of Southern California (“USC”).

5. Within less than a day, the Statement was republished by no less than 20 different media organizations and circulated to readers around the world.

6. The Statement is completely false and highly offensive. Mr. Bush was never paid to play for USC and was never involved in a “pay-for-play arrangement.”

7. The NCAA made the Statement knowing it was false or with reckless disregard of its veracity. The Statement was made with willful and wanton intent. Although the NCAA was previously involved in a (now-discredited) investigation (the “Investigation”) that purportedly determined that Mr. Bush accepted tangential benefits from an nascent sports marketing agency during his time playing for USC, the NCAA and its spokesperson were aware at the time of the Statement that (i) the Investigation did not conclude that Mr. Bush engaged in “pay-for-play” while at USC, and (ii) there were serious flaws with the Investigation that undermine its reliability to such an extent that to rely on the Investigation’s findings as factual is reckless.

8. More importantly, even if the Investigation’s findings are taken as true (which they are not), they *do not* support NCAA’s false Statement that Mr. Bush accepted

payment in return for agreeing to play football at USC. Mr. Bush was never even accused of, much less sanctioned for, such conduct, which never occurred.

9. As a result of NCAA's conduct, Mr. Bush's reputation in his field has been substantially and irreparably damaged.

10. This action seeks to hold the NCAA accountable for its unlawful conduct and for the damages, mental anguish, humiliation, and embarrassment it has caused Mr. Bush by the NCAA's false and defamatory Statement.

II. PARTIES

A. Plaintiff

11. Plaintiff Reginald A. Bush, II is an individual that resides in Los Angeles, California.

12. Mr. Bush had one of the most successful individual careers in college football history, entertaining millions as he led the USC Trojans to consecutive National Championship games in 2004 and 2005.

13. In 2006, Mr. Bush declared for the NFL draft and was selected second overall by the New Orleans Saints. In a storied professional career that lasted from 2006 until 2016, Mr. Bush scored over fifty-five touchdowns, was recognized as a First-Team All-Pro, and won a Super Bowl with the Saints in 2010.

14. Mr. Bush retired from football in 2017. Mr. Bush currently serves as a college football studio analyst with FOX Sports and cohosts the BIG NOON KICKOFF college football pregame show every Saturday.

15. Mr. Bush is also a well-regarded philanthropist and community activist. Mr. Bush uses his earnings, success, and reputation to advance his mission of enriching and bettering the world, including through his non-profit organization, 619 Charitable Foundation, and other charitable organizations.

B. Defendant

16. Defendant NCAA is an unincorporated association with its principal office located in Indianapolis, Indiana.

17. Established in 1906, the NCAA describes itself as “a member-led organization dedicated to the well-being and lifelong success of college athletes.”¹ The NCAA is comprised of 1,098 colleges and universities.²

18. As the governing body for college athletics, the NCAA regulates, promulgates, and enforces rules for athletic competitions, including eligibility requirements for student-athletes.

19. Meghan Durham (“Durham”) is an employee of the NCAA and holds the title of Associate Director of Communications. Durham has been employed with the NCAA since 2013.

¹ NCAA, *What is the NCAA?*, <https://www.ncaa.org/sports/2021/2/10/about-resources-media-center-ncaa-101-what-ncaa.aspx> (last accessed Aug. 22, 2023).

² NCAA, *Members*, <https://www.ncaa.org/sports/2021/2/10/about-resources-media-center-ncaa-101-what-ncaa.aspx> (last accessed Aug. 22, 2023).

20. In her capacity as Associate Director of Communications, Durham is an agent authorized by the NCAA to speak for and on behalf of the NCAA. Durham's Statement is attributable to the NCAA, and the NCAA is liable for the false Statement made within the course and scope of Durham's employment.

III. JURISDICTION AND VENUE

21. Defendant NCAA is an unincorporated association that transacts business in the State of Indiana.

22. Venue is proper in this Court under Ind. Trial Rule 75(A)(4) because the NCAA's principal office is located in Marion County, Indiana

IV. FACTUAL BACKGROUND

A. Mr. Bush's Early Football Career

23. Bush was born in 1985 in San Diego. His mother, Denise Griffin, served the community as a sheriff's deputy and a corrections officer. His biological father left the family when Mr. Bush was just an infant, and Mr. Bush was raised by his mother and stepfather, LaMar Griffin, a school security guard, who came into Mr. Bush's life when he was two years old.

24. Mr. Bush grew up poor. His family lived in an impoverished part of San Diego where children were targets for drug traffickers and gangs. Although his parents worked hard, they could not earn enough money to move to a different neighborhood.

25. Mr. Bush's financial circumstances forced him to develop his talent largely on his own. Unlike children from more affluent families, he did not attend elite football

camps or participate in other programs that cost money that his parents didn't have. But he took the opportunities where he could find them, for example, attending a free local football camp in the summers.

26. From 1999 to 2003, Bush attended Helix High School in La Mesa, California. By his sophomore year, Bush was the starting running back on the varsity team. That year the team won the state championship. The team won the state championship again his junior year. In fact, Bush's team lost only one game his entire high school career: the state championship his senior year.

27. As a result of his talent, Mr. Bush was considered one of the top potential college recruits in 2003. Although he had many options, Mr. Bush just "felt right" at USC and decided to attend in part due to its proximity to family.

28. Mr. Bush attended USC from 2003 to 2005. As a running back on the football team, Bush enjoyed one of the most successful individual careers in the history of college football.

29. During his freshman year, Mr. Bush was the football team's backup running back. Mr. Bush was a consensus first-team Freshman All-American, and ESPN recognized him as the Pac-10 Newcomer of the Year.

30. The following season, in 2004, Mr. Bush rushed for 908 yards and tallied an additional 509 receiving yards. He was named the team's MVP, earned consensus All-American Honors, and was a finalist for the Heisman Trophy—college football's greatest

individual honor, reserved for the most “outstanding college football player.”³ Mr. Bush ended the 2004 season by leading his team to the BCS Championship Game, where USC prevailed over the University of Oklahoma.

31. Mr. Bush’s junior season (2005) was one of the greatest single seasons in NCAA history. He was a unanimous All-American and Pac-10 Player of the Year, and led the USC Trojans to a second consecutive national championship game. For his performance, Mr. Bush was also awarded the Heisman Trophy.

B. The NCAA

32. The NCAA earns more than a billion dollars per year, the majority of which is derived from television and marketing rights associated with college sports.

33. Since its inception, the NCAA has strived to strictly control and regulate the compensation that student-athletes may receive, ostensibly in order to maintain the integrity of amateur athletic competitions.

34. NCAA promulgates rules governing student compensation for athletics. Such rules (the “NCAA Rules”) were in effect during Mr. Bush’s tenure at USC.⁴

35. The operative NCAA Rules provided that an individual “loses amateur status” and becomes ineligible to compete in NCAA competitions by, among other things,

³ Heisman Trust, *Our Mission*, <https://www.heisman.com/heisman-trust/> (last accessed Aug. 22, 2023).

⁴ E.g., NCAA, *2009–10 NCAA Division I Manual* (“D1 2010 Bylaws”), at Rule 12.1.2.(a), (b) and (d), <http://www.ncaapublications.com/productdownloads/D110.pdf> (eff. Aug. 1, 2009) (last accessed Aug. 22, 2023).

(i) “[us]ing his or her athletics skill (directly or indirectly) for pay in any form in that sport;” (ii) “accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics;” or (iii) “receiv[ing], directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based upon athletics skill or participation ...”⁵ These rules were intended to combat the practice of “pay to play”, by barring universities from using payments to induce student athletes to attend and play sports for the school.⁶

36. The NCAA Rules also prohibit student athletes from engaging in a litany of other activities unrelated to “pay-for-play”, including associating with sports marketing agents prior to graduation and receiving benefits from third parties unassociated with any educational institution.

37. While the practice of “pay-for-play”—*i.e.*, colleges paying student prospects to choose a specific school and play sports—was widely condemned by the public, the NCAA has faced enormous criticism for preventing the student athletes who generate billions in revenue for NCAA and its member institutions from generating revenue from their “name, image, and likeness” (“NIL”).

38. These NIL rules have long-impacted students like Mr. Bush, who come from impoverished backgrounds and have little to no financial resources to support

⁵ *Id.*, DI 2010 Bylaws.

⁶ *Id.*, DI 2010 Bylaws at Rule 13.2.1

themselves in school. Despite his incredible success on the field and his national profile, which generated millions in revenue for USC and NCAA, Mr. Bush struggled financially and received no financial support from his parents. He initially lived in a dormitory on campus, but after the roof caved in, USC relocated him to off-campus housing. He was provided a stipend of \$1000 a month to cover all living expenses, including rent of \$740, leaving only \$260 for food, utilities, gas, car maintenance, and other monthly expenses.

39. The NCAA's draconian approach to enforcement has resulted in student-athletes losing eligibility to play because they accepted a ride from a third-party,⁷ they went to summer school classes before transferring,⁸ or simple administrative delays completely out of the athlete's control,⁹ to punishing the student-athlete for actions of others that have no direct benefit to the student-athlete.¹⁰

40. As described further below, years after his tenure at USC the NCAA sanctioned Mr. Bush in 2010 and stripped him of his college record for allegedly accepting "benefits" *from a family friend*, including the use of a San Diego hotel room to change clothes and a

⁷ https://www.theadvocate.com/baton_rouge/sports/lsu/lsu-secondary-ncaa-violations-player-hitches-ride-with-agent-tigers-change-sideline-policy/article_4bf9f2d2-d370-11e6-8b49-1ff96e46b9e7.html (last accessed Aug. 22, 2023)

⁸ <https://www.wyvt.com/content/sports/Braxton-Beverly-ruled-ineligible-school-to-appeal-450810153.html> (last accessed Aug. 22, 2023)

⁹ <https://atozsports.com/nashville/tennessee-vols-ss-maui-ahuna-baseball-first-series/> (last accessed Aug. 22, 2023)

¹⁰ <https://www.cbssports.com/college-basketball/news/ncaas-unfair-2-year-suspension-for-silvio-de-sousa-shows-that-players-not-coaches-or-schools-are-treated-harsh/> (last accessed Aug. 22, 2023)

subsequent ride to a birthday party, and minor assistance with fixing Mr. Bush's used car.

41. Unsurprisingly, since 2010, NCAA has faced both public outrage and serial litigation in response to its poor treatment of the student athletes like Mr. Bush that generate enormous revenue for the association.

42. In 2021 alone the NCAA made over \$1.15 billion, with the vast majority of its profits coming from TV deals associated with broadcasting college sports.¹¹ But while NCAA rakes in billions in cash generated from the public's interest in watching talented student athletes compete, the NCAA has consistently blocked any efforts to permit students to pursue marketing and agency relationships to support themselves while still in school.

43. As a result of NCAA's refusal to treat student athletes fairly, state governments have stepped in with legislation aimed at addressing these issues. For example, in 2019, California passed legislation permitting athletes to earn compensation for their NIL starting in 2023. Florida passed a similar bill that went into effect July 1, 2021.

44. The NCAA's ability to prevent students from receiving benefits in college was ultimately challenged and overturned by a unanimous opinion issued by the United States Supreme Court in June 2021. Specifically, in *NCAA v. Alston*, the United States Supreme Court held that NCAA cannot enforce limits on education-related benefits that

¹¹ See https://www.espn.com/college-sports/story/_/id/33201991/ncaa-earns-115-billion-2021-revenue-returns-normal (last accessed Aug. 22, 2023).

colleges and universities offer to students who play Division I sports, siding with a group of former college athletes who brought a lawsuit accusing NCAA of anti-competitive behavior.¹²

45. In response to the Supreme Court's decision in *NCAA v. Alston*, as well as increasing public and governmental pressure, NCAA issued an "Interim NIL Policy" in July 2021 that suspended prior rules and drastically increased student athletes' rights to receive compensation for NIL rights and other pre-professional marketing activities. The new rules also now permit use of agents and other professional service providers to assist in marketing activities.

46. The Interim NIL Policy, however, contained two major stipulations: athletes still cannot be paid for on-field performance and schools cannot offer impermissible incentives to attend. The NCAA guidance provided to student athletes in July 2021¹³ prominently highlighted NCAA's continued restrictions against Pay-For-Play and impermissible inducements:

¹² See *Nat'l Collegiate Athletic Ass'n v. Alston*, 210 L. Ed. 2d 314, 141 S. Ct. 2141 (2021).

¹³ See https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_QuickGuideToNewPolicy.pdf (last accessed Aug. 22, 2023).

Everyone
NCAA rules prohibiting pay-for-play and impermissible inducements remain in effect.

PAY-FOR-PLAY **IMPERMISSIBLE INDUCEMENTS**

Individuals and schools in states with NIL laws or executive actions with the force of law in effect:
NCAA rules, including prohibitions on pay-for-play and improper recruiting inducements, remain in effect, but NIL activities protected by state law will not impact eligibility.

Individuals where there is no state law or executive actions:
If an individual chooses to engage in an NIL activity, eligibility will not be impacted by NCAA amateurism and athletics eligibility bylaws, but other NCAA rules, including prohibitions on pay-for-play and improper recruiting inducements remain in effect.

47. In light of this major policy shift, news media organizations and dedicated fans began calling for NCAA to reverse its previous sanctions against students for conduct now expressly permitted by the new rules.¹⁴ This specifically included Mr. Bush, who, as detailed below, was unjustly sanctioned for allegedly accepting minor NIL benefits during his time at USC and for allegedly working with a marketing agent prior to graduation. As a result of these (later determined to be unsubstantiated) allegations, Mr. Bush was stripped of his USC record, declared ineligible and subsequently had to forfeit his Heisman Trophy.

¹⁴ See <https://www.theatlantic.com/ideas/archive/2021/07/ncaa-owes-athletes-reggie-bush-heisman/619361/> (last accessed Aug. 22, 2023).

48. However, as described below, instead of revisiting its now likely illegal conduct towards Mr. Bush, NCAA doubled-down and issued the defamatory Statement to the media, falsely claiming that Mr. Bush had run afoul of its “pay-for-play” prohibition.

C. NCAA “Investigates” And Sanctions USC And Mr. Bush

49. From 2006 until 2010, NCAA Division I enforcement staff conducted the wide-sweeping Investigation into USC’s athletics program.

50. Among other matters, the Investigation addressed allegations that students received impermissible benefits while attending USC. This included allegations that Mr. Bush had improperly received benefits from a potential sports marketing agent in violation of NCAA rules while he was a student at USC and that USC had violated rules related to student internships when facilitating an internship opportunity for Mr. Bush.

51. The Investigation culminated in a three-day hearing on February 18-20, 2010, where USC officials, including the former head football coach, Todd McNair, an assistant football coach and the former head men's basketball coach appeared before the NCAA Division I Committee on Infractions (the “Committee”).

52. On June 10, 2010, the Committee issued a report (the “Report”) concluding, among other things, that USC had failed to maintain adequate institutional control.

53. The Report also concluded that, among other student athletes at USC, Mr. Bush had violated NCAA amateurism rules.¹⁵

54. Specifically, the Report attested that Mr. Bush and his parents engaged in early discussions with Mr. Bush's stepfather's long-time friend (and convicted felon) Lloyd Lake aimed at forming a sports marketing agency intended to support *post-graduation* marketing efforts related to Mr. Bush's future professional career. The Report also determined that Mr. Bush and his parents received tangential benefits from this individual, that were impermissible under NCAA's (now-inapplicable) guidelines for student athlete compensation.

55. USC vigorously disputed these allegations. Specifically, USC denied Mr. Bush was ever "in partnership" with or agreed to be represented by the supposed "agent" highlighting the fact Mr. Lake was not credible because of his criminal record.¹⁶ Further, USC contended that Mr. Lake's extensive criminal background and history of gang-related and violent activity make it highly unlikely that Mr. Bush would have chosen him as an agent.¹⁷

¹⁵ NCAA, *University of Southern California Public Infractions Reports June 10, 2010*, the "Report"), at 4–27, <https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102369> (June 10, 2010) (last accessed Aug. 22, 2023).

¹⁶ *Id.*, Report at p. 6.

¹⁷ *Id.*, Report at p. 11.

56. The NCAA disregarded USC's arguments, however, and determined that Mr. Bush had improperly agreed to sign up with Lloyd Lake's fledgling marketing agency and that Mr. Lake provided impermissible benefits to Bush and his family.

57. Based on this finding, the NCAA determined that Mr. Bush violated NCAA Bylaws 12.3 Use of Agents and 12.3.1.2 Benefits From Prospective Agents.¹⁸

58. The NCAA further claimed that Mr. Bush had violated NCAA Bylaw 16.11.2.1 General Rule [regarding Nonpermissible Benefits], again, because a sports marketing agent allegedly provided Mr. Bush and some of his friends and family members with "impermissible benefits."¹⁹

59. The Report, however, *did not* determine that Mr. Bush "received funds, award or benefits ... for participation in athletics."²⁰

60. As a result of the Investigation and Report, which also implicated allegations of misconduct by USC and other student-athletes unrelated to Mr. Bush, the Committee imposed a number of penalties on USC, and encouraged and/or required USC to self-impose various penalties. These included vacating USC's wins, including those in games in which Mr. Bush played and was purportedly ineligible, and vacating Bush's individual records in those games.

¹⁸ See *supra*, note 15, Report at 10–11.

¹⁹ See *supra*, note 15, Report at 27–36.

²⁰ See *supra*, note 4, D1 2010 Bylaws, at Rule 12.02.2. **Pay.**

61. As a result of these sanctions, Mr. Bush was compelled to relinquish the 2005 Heisman Trophy.

62. Mr. Bush has consistently disputed the NCAA's findings and continues to do so.

63. Regardless of the veracity of the Investigation and Report, it is undisputed that NCAA *did not allege or find that Mr. Bush engaged in pay-to-play or received impermissible inducement benefits to attend USC.*²¹ Indeed, Mr. Bush's alleged conduct is permissible under NCAA's current NIL rules.

D. NCAA's Investigation Was Fatally Flawed And Violated Due Process

64. In 2011, Todd McNair, Mr. Bush's assistant coach at USC, sued the NCAA for slander and defamation based on the Report's allegation that McNair knew that Mr. Bush was violating NCAA rules. The resulting litigation revealed critical deficiencies regarding the NCAA's Investigation into USC and Mr. Bush.

65. The district court found that the Report "was false in several material ways."²² For example, the court found that the Report falsely misrepresented the testimony Lloyd

²¹ Moreover, as detailed below, the Investigation and Report's findings were ultimately discredited, and as a result, NCAA was compelled to settle a defamation suit brought by an USC official implicated in the Investigation.

²² *McNair v. NCAA, et al.*, BC462891, *Minute Order Granting Pl.'s Mot. for New Trial* (Sup. Ct. CA, Jan. 16, 2019).

Lake gave to the interview staff, which the NCAA heavily relied upon, and that the interview itself was conducted inappropriately.²³

66. Specifically, Lake's answers to interview questions," the court explained, "were unclear and unresponsive to the point of being unreliable and lacking in any value," and "non-responsive and speculative responses by Lake were recorded as being true." Ultimately, the court held, the Report produced a "fictional account" that "gave evidentiary weight to statements that were not made," and the NCAA's attempts to justify "the variance between the actual content of the Lake interview and the [Report] as 'paraphrase'" were "ludicrous."

67. The district court was also deeply critical of NCAA's "unprofessional" conduct.²⁴ The interviews were not transcribed or recorded, the witnesses were not under oath, and "NCAA investigative personnel ... were clearly not prepared, as they were mistaken as to basic facts ... and were making jokes and interruptions during the interview that obscured the actual answers."

68. The California appellate court agreed with this characterization. Chastising the NCAA for relying on a record that was so "recklessly constructed," the appellate court held that the "trial court reasonably founded there was no credible basis for the jury" to

²³ See *supra*, note 22, at 4 (The falsity of the summary of the phone call as quoted above is material, because the content of this phone call has been cited by the NCAA as the "linchpin" upon which McNair was sanctioned by the NCAA.)

²⁴ See *supra*, note 22, at 4.

have found that the statements in the Report were anything “other than false” because, *inter alia*, “Lake was unsworn, was not subject to the cooperative principle, gave hearsay responses (Bush ‘told me he knew’), and was frequently interrupted by the interviewers so that it is difficult to ascertain what question he was responding to.” “For from being inconsequential,” Lake’s testimony was the only support for “core elements” of the NCAA’s findings and the trial court properly found that Lake’s testimony was “unclear, unreliable, speculative, vague, and so unresponsive that they would have been stricken had they been made in court.”²⁵

69. In response to the appellate court’s order, NCAA and McNair entered into a confidential settlement agreement in July 2021.

70. After these procedural infirmities came to light, and NCAA changed its NIL rules, Mr. Bush petitioned the NCAA to revisit its sanction determination.

71. Mr. Bush’s request was also influenced by a July 2, 2021 statement²⁶ from the Heisman Trophy Trust.

72. In its statement, the Heisman Trophy Trust recognized that “the recent decision by the NCAA to allow student athletes the ability to control their name, image and likeness is a positive step in the right direction.” The Trust went on to laud Mr. Bush’s

²⁵ *McNair v. NCAA*, No. B295359, 2021 Cal. App. Unpub. LEXIS 759, 2021 WL 405876 at *8–9 (Feb. 5, 2021).

²⁶ <https://www.heisman.com/articles/statement-from-the-heisman-trophy-trust-july-2-2021/> (last accessed Aug. 22, 2023)

“remarkable” on-field accomplishments as a student athlete, recognizing that the Trust was only forced to vacate his award due to NCAA’s “investigation that he and his family had received impermissible benefits while a student athlete at the University of Southern California and vacated his playing records as well as those of the entire USC football team.” The statement concluded by committing that, “[s]hould the NCAA reinstate Bush’s 2005 status, the Heisman Trust looks forward to welcoming him back to the Heisman family.”

73. In his petition to NCAA for reconsideration, Mr. Bush provided a comprehensive overview of the procedural infirmities with the Investigation and counterfactual findings.

74. While NCAA disputed certain allegations in the letter, tellingly, NCAA *did not* dispute Mr. Bush’s contentions regarding the flaws in the Investigation. Instead, NCAA refused to reopen the case for technical reasons. Incredibly, NCAA argued that Mr. Bush “lacked standing” to challenge the Report at all because “[he] was not an involved individual” and was “never officially charged by the NCAA enforcement staff”.

E. The NCAA Defames Mr. Bush

75. In June 2021, the United States Supreme Court released its decision in *National Collegiate Athletic Association v. Alston*, 141 S.Ct. 2141 (2021), holding that the NCAA violated the Sherman Act by arbitrarily restricting the amount non-cash compensation that student-athletes to fund their education. *Alston* fundamentally changed the level of control the NCAA could exercise over its student-athletes.

76. In response to *Alston*, the NCAA issued the Interim NIL Policy, permitting student athletes to receive compensation for the use of their name, image, and likeness for the first time in the history of college sports.²⁷

77. As noted above, in response to this monumental change in intercollegiate athletics, the Heisman Trust stated that “[s]hould the NCAA reinstate Bush’s 2005 status, the Heisman Trust looks forward to welcoming him back to the Heisman family.”²⁸

78. Naturally, the NCAA received media inquiries as to whether Mr. Bush’s records would be restored, given that, under the NIL Policy, Mr. Bush’s alleged acceptance of benefits would not have impacted his eligibility. It would be eminently unfair to deny Mr. Bush’s achievements because he allegedly received tangential benefits from a marketing agent, while student-athletes of Mr. Bush’s caliber now regularly command multi-million dollar contracts.

79. Specifically, on or about July 1, 2021 ESPN reporter Kyle Bonagura asked NCAA spokesperson Megan Durham whether NCAA would reconsider the sanctions imposed on Mr. Bush.

²⁷ NCAA, *NCAA Adopts Interim Name, Image And Likeness Policy*, <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> (June 30, 2021) (last accessed Aug. 22, 2023).

²⁸ ESPN, *For Reggie Bush To Get Heisman Trophy Back, NCAA Must Reinstate First, Trust Says*, https://www.espn.com/college-football/story/_/id/31751898/for-reggie-bush-get-heisman-trophy-back-ncaa-reinstate-first-trust-says (last accessed Aug. 22, 2023).

80. On July 28, 2021 ESPN reported that, Durham, speaking in her capacity as an authorized NCAA spokesperson, responded (the "Statement"):²⁹

"Although college athletes can now receive benefits from their names, images and likenesses through activities like endorsements and appearances, NCAA rules still do not permit pay-for-play type arrangements," the NCAA spokesperson said. "The NCAA infractions process exists to promote fairness in college sports. The rules that govern fair play are voted on, agreed to and expected to be upheld by all NCAA member schools."

81. The Statement was then republished by ESPN. Additionally, Durham again speaking in her capacity as an authorized NCAA spokesman made the exact same Statement to other media, including Forbes and the Los Angeles Times, that was republished respectively.³⁰

SURPRISING FACT

While it was believed the benefits Bush received at USC would have been allowed under new name, image and likeness rules, Durham said in a statement Bush had actually engaged in a "pay-for-play type arrangement," which is not allowed under NCAA rules. Additional details were not provided.

²⁹ ESPN, *Reggie Bush Won't Get 2005 Heisman Trophy Returned TO Him After Decision By NCAA*, July 28, 2021, https://www.espn.com/college-football/story/_/id/31905468/ncaa-consider-returning-2005-heisman-trophy-ex-usc-trojans-star-reggie-bush

³⁰ <https://www.forbes.com/sites/nicholasreimann/2021/07/28/reggie-bush-wont-get-heisman-back-after-ncaa-ruling/?sh=171d02b5cbb5> (last accessed Aug. 22, 2023); <https://www.latimes.com/sports/usc/story/2021-07-28/ncaa-says-reggie-bush-wont-get-his-heisman-trophy-back-despite-new-nil-rules> (last accessed Aug. 22, 2023).

82. Within twenty-four hours, dozens of media outlets—including ABC, CBS, CNN, and Sports Illustrated—republished and circulated the Statement to audiences throughout the United States and across the World.³¹

³¹ See ABC News, *Reggie Bush Won't Get 2005 Heisman Trophy Returned To Him After Decision By NCAA*, <https://abcnews.go.com/Sports/reggie-bush-2005-heisman-trophy-returned-decision-ncaa/story?id=79120666> (July 28, 2021) (last accessed Aug. 22, 2023); ABC KMIZ 17, *NCAA Stance Means Reggie Bush Won't Get Heisman Trophy Back*, <https://abc17news.com/news/national-world/cnn-national/2021/07/28/ncaa-stance-means-reggie-bush-wont-get-heisman-trophy-back/> (July 28, 2021) (last accessed Aug. 22, 2023); ABC KVIA 7, *NCAA Stance Means Reggie Bush Won't Get Heisman Trophy Back*, <https://kvia.com/news/us-world/cnn-national/2021/07/28/ncaa-stance-means-reggie-bush-wont-get-heisman-trophy-back/> (July 28, 2021) (last accessed Aug. 22, 2023); Advance Local, *NCAA Statement Reveals Reggie Bush Won't Get 2005 Heisman Trophy Returned*, <https://www.al.com/sec/2021/07/ncaa-reggie-bush-wont-get-2005-heisman-trophy-returned.html> (July 28, 2021) (last accessed Aug. 22, 2023); Bleacher Report, *Reggie Bush Won't Get 2005 Heisman Trophy Back Despite NCAA's NIL Rule Change*, <https://bleacherreport.com/articles/10008941-reggie-bush-wont-get-2005-heisman-trophy-back-despite-ncaas-nil-rule-change> (July 28, 2021) (last accessed Aug. 22, 2023); CBS Sports, *Reggie Bush Unlikely To Have Heisman Trophy Returned After NCAA Says Past Penalties Won't Be Re-Evaluated*, <https://www.cbssports.com/college-football/news/reggie-bush-unlikely-to-have-heisman-trophy-returned-after-ncaa-says-past-penalties-wont-be-re-evaluated/> (July 28, 2021) (last accessed Aug. 22, 2023); CBS WDJT 58, *NCAA Stance Means Reggie Bush Won't Get Heisman Trophy Back*, <https://www.cbs58.com/news/ncaa-stance-means-reggie-bush-wont-get-heisman-trophy-back> (July 28, 2021) (last accessed Aug. 22, 2023); CNN, *NCAA Stance Means Reggie Bush Won't Get Heisman Trophy Back*, <https://www.cnn.com/2021/07/28/us/reggie-bush-heisman-trophy-spt/index.html> (July 28, 2021) (last accessed Aug. 22, 2023); Complex, *Reggie Bush Won't Get 2005 Heisman Trophy Back Despite New Rules For NCAA Athletes*, <https://www.complex.com/sports/reggie-bush-wont-get-heisman-back> (July 28, 2021) (last accessed Aug. 22, 2023); Daily Caller, *The NCAA Announces Reggie Bush Won't Get His Heisman Back*, <https://dailycaller.com/2021/07/29/ncaa-reggie-bush-not-getting-heisman-back/> (July 28, 2021) (last accessed Aug. 22, 2023); ESPN Africa, *Reggie Bush Won't Get 2005 Heisman Trophy Returned To Him After Decision By NCAA*, https://africa.espn.com/college-football/story/_/id/31905468/ncaa-consider-returning-2005-heisman-trophy-ex-usc-trojans-star-reggie-bush (July 28, 2021) (last accessed Aug. 22, 2023); Forbes, *Reggie Bush Won't Get Heisman Back After NCAA Ruling*,

83. The Statement can only be interpreted to concern Mr. Bush. The Statement was made in response to an inquiry from ESPN (and other reporters) specifically regarding whether the NCAA would revisit the sanctions it imposed on Mr. Bush in 2010. In this context, a reasonable reader would understand the Statement to apply to Mr. Bush and no one else. Indeed, the media outlets that published the Statement expressly understood the Statement to refer to Mr. Bush. So too did millions of readers across the world.

<https://www.forbes.com/sites/nicholasreimann/2021/07/28/reggie-bush-wont-get-heisman-back-after-ncaa-ruling/?sh=10e93855cbb5> (July 28, 2021) (last accessed Aug. 22, 2023); NBC KOMU 8, *NCAA Stance Means Reggie Bush Won't Get Heisman Trophy Back*, https://www.komu.com/sports/ncaa-stance-means-reggie-bush-wont-get-heisman-trophy-back/article_93d31c96-586c-528f-a1df-f9aad9f2068.html (July 28, 2021) (last accessed Aug. 22, 2023); LA Times, *NCAA Says Reggie Bush Won't Get His Heisman Trophy Back Despite New NIL Rules*, <https://www.latimes.com/sports/usc/story/2021-07-28/ncaa-says-reggie-bush-wont-get-his-heisman-trophy-back-despite-new-nil-rules> (July 28, 2021) (last accessed Aug. 22, 2023); Law360, *Reggie Bush Won't Get Heisman Back Despite NCAA Reforms*, <https://www.law360.com/employment/articles/1407668/reggie-bush-won-t-get-heisman-back-despite-ncaa-reforms> (July 28, 2021) (last accessed Aug. 22, 2023); FanNation (Sports Illustrated Media Group), *Reggie Bush Fires Back at NCAA: 'Sham Investigation That's About To Get Exposed*, <https://www.si.com/college/usc/football/reggie-bush-fires-back-at-ncaas-heisman-reinstatement-decision> (July 28, 2021) (last accessed Aug. 22, 2023); The Athletic, *Reggie Bush Won't Have Heisman Trophy Returned After NCAA Decision*, <https://theathletic.com/news/reggie-bush-wont-have-heisman-trophy-returned-after-ncaa-decision/Ah8sEhiAfEXr/> (July 28, 2021) (last accessed Aug. 22, 2023); Times of San Diego, *Reggie Bush, Following Plea for Record Reinstatement, Won't Get Heisman Trophy Back*, <https://timesofsandiego.com/sports/2021/07/30/reggie-bush-following-plea-for-record-reinstatement-wont-get-heisman-trophy-back/> (July 28, 2021) (last accessed Aug. 22, 2023); TMZ, *NCAA Won't Give Back Heisman ... Despite New NIL Rules*, <https://www.tMZ.com/2021/07/28/ncaa-reggie-bush-heisman-trophy-2005-usc-trojans/> (July 28, 2021) (last accessed Aug. 22, 2023); Yahoo! Sports, *Sorry, Reggie Bush: NCAA Won't Reinstate Vacated Stats And Records After NIL Rules Changes*, <https://sports.yahoo.com/sorry-reggie-bush-ncaa-wont-reinstate-stats-and-records-after-nil-rules-changes-171545865.html> (July 28, 2021) (last accessed Aug. 22, 2023).

F. The NCAA Statement Was False, Defamatory, And Made With Malice

84. When it made the Statement, the NCAA and Durham knew that there was no basis to claim that Mr. Bush was involved in a “pay-for-play” scheme. The Statement was made with the NCAA’s and Durham’s knowledge of its falsity or reckless disregard of its veracity.

85. In light of the context in which it was given, a reasonable person would understand the Statement as one of fact and not opinion.

86. The NCAA’s claim that Mr. Bush was involved in a “pay-for-play arrangement” can only be understood to mean that NCAA is claiming that Mr. Bush accepted payments in exchange for playing football at USC. Given the context and NCAA’s prior statements regarding “pay-for-play”, a reasonable person of ordinary intelligence would interpret NCAA’s Statement in this manner.

87. Further, a reader would reasonably understand the Statement to mean that Mr. Bush accepted payments in exchange for playing football at USC because NCAA bylaws define “Pay” to mean “the receipt of funds, awards or benefits not permitted by the governing legislation of the Association *for* participation in athletics.”³²

³² See *supra*, note 4, D1 2010 Bylaws, at Rule 12.02.2. (emphasis added).

88. Indeed, in announcing the NIL policy, the NCAA described “pay-for-play” arrangements as “improper recruiting inducements” and “improper inducements tied to choosing to attend a particular school.”³³

89. This understanding accords with how the NCAA uses the phrase “pay-for-play” in other contexts. Earlier this year, in describing “a burgeoning scandal of disguised ‘play for play’ in college athletics, NCAA Council chairman Shane Lyons stated that the problem relates to the involvement of boosters in the recruiting process.³⁴ “Play-for-play,” as the NCAA uses the phrase, refers to “inducements for initial enrollment and transfers.”³⁵

90. As such, the Statement is false. Mr. Bush was never offered money to compete for USC. Mr. Bush never considered accepting such a proposal. Mr. Bush did not accept any money or benefits in return for enrolling at and/or competing for USC.

91. The NCAA has not attempted to retract or modify its Statement and has thus ratified both the Statement and the context in which it has been reported.

92. The Investigation and Report provide no support for the Statement. The Investigation and Report did not suggest that Mr. Bush was ever involved in a “pay-for-

³³ See *supra*, note 13.

³⁴ CBS Sports, *NCAA Aims To Crack Down On Boosters Disguising ‘Pay For Play’ As Name, Image And Likeness Payments*, <https://www.cbssports.com/college-football/news/ncaa-aims-to-crack-down-on-boosters-disguising-pay-for-play-as-name-image-and-likeness-payments/> (May 3, 2022) (last accessed Aug. 22, 2023).

³⁵ *Id.*

play arrangement.” On the NCAA’s account, Mr. Bush purportedly received benefits from a potential sports marketing agent *after* enrolling in USC and once he was already a highly successful athlete. Indeed, the NCAA found that Mr. Bush’s image and success was the reason why he was offered these tangential benefits. And although Mr. Bush disputes NCAA’s allegations, even if they were true, they would be permissible under NCAA’s current guidelines. Nothing in the Report even hints at the possibility that Mr. Bush’s decision to compete for USC was influenced by monetary considerations or part of a quid–pro–quo with the school, its recruitment boosters, or anyone else.

93. Even if NCAA attempts to claim now that the Statement was based on the Investigation findings reflected in the Report, NCAA cannot rely on these to support the Statement because, in addition to the fact that the Report does not make any such findings, any claim of reasonable reliance on the Report to support NCAA’s Statement is foreclosed based on the well–recognized infirmities with the Investigation.

94. Moreover, NCAA has admitted that Mr. Bush was “never officially charged by the NCAA enforcement staff.” So even if the Report provided factual support for NCAA’s Statement, which it does not, NCAA cannot purport now to have reasonably relied on unofficial “findings” against Mr. Bush made by NCAA enforcement staff that did not lead to any charge of misconduct.

95. The Statement is defamatory *per se* because it states that Mr. Bush was involved in severe misconduct that relates directly to his occupation as a football player and

analyst, and Mr. Bush has suffered both financial damage and damage to his reputation as a result of NCAA's misconduct.

V. CAUSES OF ACTION
FIRST CAUSE OF ACTION
(Defamation)

96. Mr. Bush restates the above allegations as though fully set forth herein.

97. The NCAA Statement, by and through its spokesperson, Durham, about Mr. Bush, published on July 28, 2021, constitutes defamation *per se* and is actionable under Indiana law.

98. A reasonable individual would understand the Statement to mean that the NCAA and Durham had knowledge of facts indicating that Mr. Bush agreed to accept or actually accepted payments in return for playing football as a student-athlete for USC.

99. The Statement is patently false. Mr. Bush did not accept any payments in return for playing football for USC as a student-athlete; there is no basis for anyone to suggest that Mr. Bush ever considered, let alone entered into, such an arrangement.

100. The Statement was made with knowledge it was false or with reckless disregard for its falsity.

101. The Statement is not privileged, and the NCAA knew and understood that its Statement to an ESPN reporter regarding an internationally known celebrity would be published across the world.

102. As a result of the Statement, Mr. Bush has been damaged and is entitled to presumed, compensatory and punitive damages.

SECOND CAUSE OF ACTION
(False Light)

103. Mr. Bush restates the above allegations as though fully set forth herein.

104. The NCAA Statement, by and through its spokesman, communicates that Mr. Bush acted improperly and immorally by agreeing to accept payments or accepting payments in return for playing football as a student-athlete for USC.

105. The Statement is patently false and placed Mr. Bush in a false light. Mr. Bush did not accept any payments in return for playing football for USC as a student-athlete. There is no basis for the NCAA spokesman to suggest that Mr. Bush ever considered, let alone entered into, such an arrangement.

106. The Statement is highly offensive to a reasonable person and unreasonably intrudes on Mr. Bush's privacy.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Reginald A. Bush, Jr. respectfully prays for judgment in his favor and against the NCAA, including the following relief:

- a) Presumed and compensatory damages to be established at trial;
- b) Punitive damages;
- c) Prejudgment and post-judgment interest as the maximum rate allowed by law; and
- d) All other relief as appropriate in law or equity.

JURY DEMAND

Plaintiff, Reginald A. Bush, II, demands trial by jury.

Dated: August 23, 2023

Respectfully submitted,

s/ Andrew W. Hull

Andrew W. Hull (11218-49)

awhull@hooverhullturner.com

Finis Tatum IV (29092-49)

ftatum@hooverhullturner.com

Amanda L.B. Mulroony (30051-49)

amulroony@hooverhullturner.com

HOOVER HULL TURNER LLP

111 Monument Circle, Suite 4400

P.O. Box 44989

Indianapolis, IN 46244-0989

Tel: (317) 822-4400 | Fax: (317) 822-0234

Levi G. McCathern, II (pro hac vice forthcoming)

TX State Bar No. 00787990

lmccathern@mccathernlaw.com

Paul A. Grinke (pro hac vice forthcoming)

TX State Bar No. 24032255

pgrinke@mccathernlaw.com

Ty M. Sheaks (pro hac vice forthcoming)

TX State Bar No. 24042416

tsheaks@mccathernlaw.com

MCCATHERN, PLLC

3710 Rawlins Street, Suite 1600

Dallas, TX 75219

(214) 741-2662 Telephone

(214) 741-4717 Facsimile

Benjamin L. Crump (pro hac vice forthcoming)
Florida Bar No. 0072583

Ben@BenCrump.com

Chris O'Neal (pro hac vice forthcoming)

Florida Bar No. 910201

Chris@BenCrump.com

Precious Chavez (pro hac vice forthcoming)

Florida Bar No. 1040700

Precious@BenCrump.com

Brooke Cluse (pro hac vice forthcoming)

Texas Bar No. 24123034

Brooke@BenCrump.com

BEN CRUMP LAW, PLLC

122 South Calhoun Street

Tallahassee, Florida 32301

Phone: 1-888-320-8444

Attorneys for Plaintiff

Reginald A. Bush, II