

EXHIBIT 5

1 Michael P. Lehmann (Cal. Bar No. 77152)
2 Arthur N. Bailey, Jr. (Cal. Bar No. 248460)
3 HAUSFELD LLP
4 44 Montgomery St., 34th Floor
5 San Francisco, CA 94104
6 Telephone: (415) 633-1908
7 Facsimile: (415) 358-4980
8 Email: mlehmann@hausfeldllp.com
9 abailey@hausfeldllp.com

6 Michael D. Hausfeld (*pro hac vice*)
7 Hilary K. Scherrer (Cal. Bar No. 209451)
8 Sathya S. Gosselin (Cal. Bar No. 269171)
9 HAUSFELD LLP
10 1700 K Street, NW, Suite 650
11 Washington, DC 20006
12 Telephone: (202) 540-7200
13 Facsimile: (202) 540-7201
14 Email: mhausfeld@hausfeldllp.com
15 hscherrer@hausfeldllp.com
16 sgosselin@hausfeldllp.com

12 *Plaintiffs' Class Counsel with Principal
13 Responsibility for the Antitrust Claims*

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

18 IN RE NCAA STUDENT-ATHLETE
19 NAME & LIKENESS LICENSING
20 LITIGATION

Case No. 4:09-cv-1967 CW

20 This document relates to:
21 ANTITRUST PLAINTIFFS' ACTIONS
22
23
24
25
26

**DECLARATION OF MARY C.
WILLINGHAM IN SUPPORT OF
ANTITRUST PLAINTIFFS' COMBINED
OPPOSITION TO NCAA'S MOTION FOR
SUMMARY JUDGMENT AND REPLY IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

Judge: Honorable Claudia Wilken
Date: February 20, 2014
Time: 2:00 p.m.
Courtroom: 2, 4th Floor

28

DECLARATION OF MARY C. WILLINGHAM

I, Mary C. Willingham, declare that the following is true:

1. I have been employed by the University of North Carolina, Chapel Hill (“Carolina” or “UNC”), for the past 10 years. Currently, I work in the Center for Student Success and Academic Counseling (CSSAC). I also serve as a Clinical Instructor in the Department of Education, and as a Senior Academic Advisor in the Graduation Division (College of Arts and Sciences). I was originally hired by the University in 2003 as a Learning Specialist in the Academic Support Program for Student-Athletes, where I worked until 2010.

2. My previous positions include High School Teacher and Corporate Human Resources Manager for two Fortune 500 companies. I have a B.S. in Psychology from Loyola University and an M.A. in Liberal Studies from the University of North Carolina, Greensboro. I earned a lateral entry North Carolina Teaching License, K-12 Learning Disabled, and am a trained Reading Specialist. My research includes studies on the National Collegiate Athletic Association (NCAA), university admission procedures for revenue-sport athletes (hereafter I will refer to these as ‘profit sports’ – Division I men’s football and basketball), and those athletes’ basic skills deficits, as well as the incidence of Learning Disabilities and Attention Deficit Disorder in that community.

3. I applied for jobs outside of athletics at UNC beginning in 2009 because the pressure to keep students eligible had eclipsed learning and academic integrity. The cheating in ‘no show’ paper classes and in our mentor program (e.g., writing papers for players) had become overwhelming. In addition, I was tired of seeing the disparity between privileged students and underprivileged football players in particular. I remember so vividly the day at the end of one semester around lunch time when 3 or 4 football players were in my office talking about the lack of food available to them (training table was closed and they were out of food money) and I

1 looked out the window to see another student pull into the staff parking lot in a brand new BMW
2 convertible that his father had bought him.

3 4. In April, 2013, I won the prestigious Robert Maynard Hutchins award from the
4 Drake Group, a national faculty reform group that holds its annual meeting during the yearly
5 conference of the College Sport Research Institute (CSRI). The Hutchins award honors a
6 university employee who has stood up for integrity in the face of college sport corruption.
7

8 5. During my seven-year tenure as a Learning Specialist in the Academic Support
9 Program for Student-Athletes, I worked with hundreds of athletes, a great majority of them
10 football and basketball players. These individuals impacted my life in a way that I never
11 expected. Our athletes wear Carolina blue so proudly and represent this university well. Their
12 families are very proud of them, and rightly so. Many academically prepared athletes receive
13 distinguished awards for excelling in the classroom every year, which is something to celebrate.
14 At Carolina we have approximately 800 varsity athletes. About 400 are on the ACC honor roll or
15 dean's list in any semester; 200 achieve satisfactory academic results and can follow a major of
16 their choice; but 150-200—predominately basketball and football players—are academically
17 underprepared, many of them seriously underprepared. As a Learning Specialist, I worked one-
18 on-one with 36 students during any given week of the semester; they were my 'contact' students.
19

20 6. The gap in academic readiness between my group of 36 and their peers in the
21 general student body was large. Roughly 40-50 athletes enroll in our lowest level composition
22 class each year, while 98% of our freshman class tests out of it. The athletes that I worked with
23 struggled mightily. I attempted to tutor underprepared learners with 4th grade literacy skills who
24 were already enrolled in 12 hours of college classes (4 classes). They had to write papers and
25 take tests, all while trying to learn basic skills typically obtained between the 5th and 12th grades.
26 And literacy deficits affect learning. Imagine showing up in a university classroom with reading,
27
28

1 writing and vocabulary skills so far below your classmates that nothing makes much sense.

2 During my seven years working with athletes from 8 am-3 pm and again from 7-9 pm every day,
3 including evenings on Sunday (for which I earned an annual starting salary of \$35,000), I began
4 to realize that the help I was offering as a Learning and Reading Specialist was not enough to
5 address the gap in college readiness. Teaching letters, short vowel sounds and sentence structure
6 to struggling college learners became the most important and time-consuming part of my job.
7 Between these persistent obstacles to learning and the athletes' physically demanding, full time
8 "jobs" with travel and frequent injury (especially in football), I do not believe, as an educator, that
9 this is a manageable state of affairs.
10

11 7. I have also reviewed data that is consistent with my experience. During the last
12 decade at UNC, where I have obtained permission from the institutional review board to collect
13 data for research purposes, the majority of our football and basketball players have entered the
14 institution woefully underprepared for the classroom. At UNC, we routinely tested for learning
15 disabilities any athlete who attended a 2nd summer school session before the first year. Of the 182
16 athletes screened between 2005 and 2012, a great majority (85%) come from the profit sports,
17 although several teams are represented in the group. About 60% (110) of these athletes had
18 reading scores below the 50% range—constituting 4th-8th grade reading levels. More than a
19 dozen, 8-10%, were functionally illiterate, and 39% were found to be learning disabled and/or
20 have attention deficit hyperactivity disorder.
21

22 8. The college football and basketball players that I worked with sometimes earned a
23 degree, but they did not get an education. They simply did not have equal access to a real
24 education because the academic experience for athletes is separate and unequal. They arrived
25 unprepared and remained unprepared because of institutional priorities. They did not have access
26 to all courses and degree programs. They did not participate in study abroad, internships or
27
28

1 research opportunities. They were prohibited from enjoying any of these opportunities because
2 they conflicted with practice, tournaments, summer school, or spring football. They were not
3 given the freedom to explore courses and fields of study they found intriguing. At UNC, there are
4 roughly eighty majors in the college of arts and sciences. But athletes in the profit sports
5 predominantly pursue three majors – Communication Studies, Exercise and Sports Science, and
6 African American and Diaspora studies. Nor are the athletes trusted to forge relationships with
7 faculty on their own. Part of this is a result of institutional denial: I was often told at UNC that
8 “we don’t do remedial instruction here.” But another cause of the separate and unequal treatment
9 to which profit-sport athletes at UNC are subjected is the NCAA imperative to stay ‘eligible,’
10 educational consequences aside. In my experience, football and basketball players are ushered
11 through a special curriculum constructed just for them. The courses in that curriculum, though
12 they usually make no sense as a coherent course of study, have one thing in common: they are
13 known to be easy, manageable, or friendly, and they therefore “help” athletes, and the compliance
14 office, with eligibility.
15

16
17 9. One illustration of this is the 2013 Belk Bowl UNC football team. A cohort of
18 seventeen starters and other regular players on that team had a combined GPA of 2.3 (the UNC
19 average GPA is 3.2), and together they had 29 F’s, 53 D’s and 10 semesters of academic
20 probation. They had also taken an inordinate number of Drama classes, though none had a major
21 or minor in Drama. They took those classes only because they are historically passable. One
22 academically prepared player in this cohort originally intended to study sciences for a potential
23 career in the health field. The time required for football practice, conditioning, lifting weights,
24 and watching film did not afford him the time (12-15 hours per science class per week on the
25 average) needed to pass even the entry level science classes.
26
27
28

1 10. I personally saw UNC athletes deprived of the opportunities that their non-athlete
2 classmates take for granted. One football player was artistically gifted and wanted to teach art
3 while another wanted to coach middle school football back in his hometown. Their athletic
4 schedules, their need for intensive academic support, and costs not covered by their scholarships
5 did not allow for either of these pursuits. Art, for example, is a very expensive major, and the
6 scholarship does not cover all of the supplies. Teaching requires a strong GPA and a semester-
7 long student teaching assignment was impossible in light of athletic expectations. Another athlete
8 hoped to someday build a YMCA in one of North Carolina poorest counties – but the Kenan-
9 Flagler Business School and the School of Education were both untenable for the same reasons.
10 Yet another aspired to be a school counselor so that he could intervene when, as had been his
11 experience, a 5th grade teacher tells a young child that he will never learn to read or write. This,
12 too, was impossible for the reasons stated above.
13
14

15 11. At UNC, we have also sadly admitted to tolerating a system of no-show classes
16 (which preserved eligibility) that existed in our African and Afro-American Studies Department
17 for more than two decades, a system that athletes, advisors, coaches and administrators all knew
18 about, but for which only two people have been blamed. Athletes were not the only students in
19 these fake classes, although they were the overwhelming majority in most of them. This scandal
20 was investigated eight times and is the subject of the recent Martin Report (The University of
21 North Carolina at Chapel Hill, Academic Anomalies Review, Report of Findings).¹ Each
22 investigation concluded, to my disappointment, that the institution had done nothing wrong; it
23 was the fault of just two people. I remained silent and ashamed from 2010 to 2012 while I waited
24 for my institution to do the right thing – to admit the cheating was system wide, and not just the
25 fault of two people. Finally, I spoke out.
26
27

28 ¹ <http://www.unc.edu/news/12/UNC-Governor-Martin-Final-Report-and-Addendum.pdf>.

1 12. Many basketball players and football players told me what they would like to
2 apply themselves academically if given the time to do so. Instead, UNC directed them to an array
3 of mismatched classes that have a very long history of probable eligibility. In my experience, as a
4 result of their treatment by the schools and the NCAA, Division I basketball and football players
5 are first and foremost *athletes*—not students.

6 13. I understand that the NCAA has suggested that its blanket prohibition on
7 compensation, from any source and for any purpose, is essential to improving the educational
8 experience for athletes and advancing the educational mission of colleges and universities. Based
9 on my experience, I disagree. The NCAA's prohibition on compensation does nothing to
10 safeguard the educational experience of athletes, whom I have seen exploited for their physical
11 talents rather than being encouraged to cultivate their minds. And athletes' ability to obtain
12 compensation—whether now or after the end of their eligibility—poses no threat to the
13 educational mission of the schools.

14 14. As a college instructor and academic advisor, it is my privilege to write countless
15 numbers of recommendation letters for students (many of whom are also on scholarship at the
16 time) when they apply for part-time jobs and paid internships. Students' work experiences—and
17 the accompanying compensation—enhance the learning experience in the classroom and permit
18 students to begin working towards financial independence from their parents (for those
19 individuals who are lucky enough to receive any means of support from their families). I have
20 taught and advised students who were earning compensation in a range of areas of talent and
21 expertise, including music, art, journalism, and academic tutoring, among others. These students
22 derive personal satisfaction, motivation and a sense of self-worth from such compensation,
23 however small or large. In my experience, this sort of work and compensation does not detract
24 from students' educational pursuits or alienate those students from their peers.

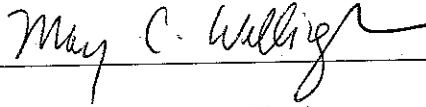
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. While UNC's non-athlete student body can seek employment and pay during their free time, our basketball and football players enjoy no such luxury because of their considerable time commitments, putting them at a disadvantage as soon as they arrive on our college campus. Often players would arrive without some of the basic necessities for college life, and, as noted above, their scholarships often do not cover the real cost of attendance.

16. In my opinion, truth and integrity will only be restored to college athletics when our talented athletes are afforded a real education and the ability to earn compensation for the use of their names, images, and likenesses—rights and privileges that all of our other students already enjoy.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 10, 2014 in Chapel Hill, North Carolina.



Mary C. Willingham