IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

The Spirit Lake Sioux Tribe of Indians, by and through its Committee of Understanding and Respect, and Archie Fool Bear, individually, and as Representative of the more than 1004 Petitioners of the Standing Rock Sioux Tribe,	)	CASE NO.
Plaintiffs,	)	
vs.	)	
The National Collegiate Athletic Association,	)	
Defendants.	)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs allege the following for their Complaint against Defendant National Collegiate Athletic Association (NCAA) by showing this honorable court as follows:

1. This Court has jurisdiction over this matter under 28 U.S.C. Sec. 1332, as the matter in controversy exceeds the sum of seventy-five thousand dollars, exclusive of interest and costs, and is between citizens or entities of different states. This court also has jurisdiction under 42 U.S.C. Sec. 1981, 1983,1988, 1996 and the 14th Amendment to the U.S. Constitution, the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. § 1331, 1337.

2. Venue is proper in this district under to 28 U.S.C. Sec. 1391(a) and 28 U.S.C. Sec. 1391.

JURISDICTION

3. Plaintiff Spirit Lake Tribe is a federally recognized American Indian tribe governed by a revised Constitution dated May 5, 1960, approved by Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and subsequently amended July 17, 1969; May 3,

1974; April 16, 1976; May 4, 1981; and August 19, 1996; and approved by the Commissioner, Bureau of Indian Affairs; and by Resolution No. A05-11-174.

4. The Committee of Understanding and Respect is authorized by the Spirit Lake Tribe to act on its behalf and proceed in any legal manner it deems appropriate to assure that the University of North Dakota (UND) shall remain known as the "Fighting Sioux". Said individuals specifically appointed to act on behalf of the Tribe include Eunice Davidson, Renita DeLorme, LaVonne Alberts, Alex Yankton, Joseph Lawrence, Sr., John D. Chaske, Sr., and Frank Black Cloud (hereinafter, "Committee").

5. Archie Fool Bear is an enrolled member of the Standing Rock Sioux Tribe (hereinafter, "SRST"), former member of the Tribal Council and former Chairman of the Judicial Board, who led a petition drive, with the help of many others, and peacefully assembled and gathered more than twice the required signatures from enrolled members needed to hold a democratic election on the Standing Rock Sioux Indian Reservation for a people's vote on UND's use of the "Fighting Sioux" name.

6. The NCAA is an unincorporated and semi-voluntary association of more than 1281 members, including UND, being virtually all public and private universities and four-year colleges conducting major athletic programs in the United States, headquartered at 700 W. Washington St., Indianapolis, Indiana.

HISTORY

A. UND and the NCAA.

7. The NCAA has no tribal colleges as members, nor has it invited an Indian Nations University to join its membership, nor has it promoted by financial means

or otherwise, Native American athletics or academic programs. Nevertheless the NCAA on August 5, 2005, announced a policy that it considered UND's use of the "Fighting Sioux" name "hostile and abusive". The NCAA mandated that Native American references could not be worn or displayed at NCAA championship competitions and if UND continued to display or promote Native American references, UND could not host championship events.

8. On August 12, 2005, Former UND President Kupchella, in an open letter to the NCAA stated:

> *"the quiet serenity of our beautiful campus was disturbed early August 5 by news reports that the NCAA had decided to address the Indian nickname issue....hostile and abusive were invoked without definition...do you really expect us to host a tournament in which these names and images are covered in some way that would imply that we are ashamed of them.....if the NCAA has all this power, why not use it to restore intercollegiate athletics to the ideal of sportsmanship by decoupling intercollegiate athletics from its corruption by big budgets? Why not use the power to put a halt to the out-of-control financial arms race that threatens to corrupt even higher education itself....in considering how to appeal, we find it exasperating that we can't tell what the basis for your initial decision was and how you singled us out in the first place....by the way, the last time this issue was stirred up on our campus, a formal charge was made to the Office for Civil Rights that the use of our logo or nickname created a hostile environment here at the University. The office for Civil Rights sent a half-dozen people to our campus. They fanned out across campus and after more than a week here, found no such thing..." (Ex. 1).*

9. After administrative appeals were exhausted, the State of North Dakota by and through the North Dakota State Board of Higher Education, and UND, brought suit against the NCAA in October, 2006, in the Northeast Central Judicial District, Civ. No. 06-C-01333, alleging among other things, that the NCAA had no bylaws concerning or relating to Native American Imagery.

10. The lawsuit further alleged that the NCAA Executive Committee had no

power to legislate or to enforce such bylaws yet chose to adopt a new policy ("policy") to prohibit UND and other colleges and universities from displaying so-called "hostile and abusive" racial/ethnic/national origin mascots, nicknames or imagery.

11. The new policy adopted by the NCAA threatened sanctions against UND if UND chose not to comply by not jettisoning the name "Fighting Sioux".

12. In an 80 page response to the lawsuit, the NCAA defended its policy and actions citing resolutions from Tribes and entities that were either completely outside or partially outside the boundaries of the State of North Dakota.

13. The NCAA policy and the reliance by the NCAA on such resolutions was never based upon any democratic vote of Indian people, and the policy was never researched, analyzed or investigated as it related to tribal traditions, sacred and religious ceremonies, or distinct cultures of various Indian tribes.

14. On October 5, 2007, the State of North Dakota and the NCAA entered into a settlement agreement to resolve "their" issues. Both parties executed the settlement agreement in October, 2007 which states in part:

> *... North Dakota Sioux Tribes, ..., have important contributions in determining whether, to what extent and in what manner the "Sioux" name and the "Fighting Sioux" nickname or logo should continue to be used in conjunction with the athletic tradition at UND..."* (Ex. 2).

15. Prior to signing the above agreement, the NCAA made no attempt to consult with, or obtain any consent from the Spirit Lake Sioux, or the Standing Rock Sioux, for the settlement agreement. Instead, the NCAA inexplicably had the Grand Forks District Court record sealed from public view. (Ex. 3). Such actions by the NCAA constitute fraud

and a material misrepresentation to carry out the intent of any settlement agreement.

16. Despite giving final authority to the two North Dakota tribes to forever decide the issue of UND's use of the name "Fighting Sioux", the NCAA never considered whether the tribal administrations even wanted to be part of the process.

17. The Standing Rock Tribal Chairman, in a October 30, 2009, letter to ND Chancellor William Goetz, said, *"to be quite honest, this issue is not at the top of the new administration's list of priority matters."* (Ex. 4). As the facts will show, SRST never acknowledged the settlement agreement and the member's of SRST were never given a voice on this important issue.

B. Standing Rock Sioux

18. On April 16, 2009, a Motion was made at the Standing Rock Sioux Regular Tribal Council Meeting to approve putting the issue of "The Fighting Sioux" logo on the ballot for the next election. The measure was defeated 5 in favor, 6 against, 2 not voting and 4 excused. (Ex. 5).

19. On December 7, 2009, the SRST Tribal Attorney drafted an opinion stating:

> *"The passage of a motion/resolution by the Tribal Council placing a moratorium on a referendum/initiative vote regarding any issue "negates the peoples' right to redress their grievances regarding that issue. This is a direct violation of Article XI Sec. 1 of the Constitution of the Standing Rock Sioux Tribe as well as Sec. 1302 of the Indian Civil Rights Act of 1968 (25 U.S.C. Sec. 1301-03). Additionally it denies the peoples' right to liberty without the due process of law violating Article XI Sec. 8 of the Constitution of the Standing Rock Sioux Tribe".* (Ex. 6).

20. Thereafter, a petition and referral drive began, collecting over 1004

signatures from enrolled members of the Standing Rock Sioux Tribe, more than 50% of the people who had voted in the previous election. The petition was secured and ultimately submitted by Plaintiff Fool Bear to secure a reservation wide vote on the "Fighting Sioux" issue. In April, 2010, Fool Bear submitted the signed petitions to the SRST Tribal Council.

21. On April 6, 2010, the Standing Rock Sioux Tribe informed Plaintiff Fool Bear that it would discuss the "Fighting Sioux" name once the North Dakota Board of Higher Education made a decision to retire the name, "Fighting Sioux". (Ex. 7).

22. Following that decision by SRST, the North Dakota Board of Higher Education on April 9, 2010, made a decision to retire the name "Fighting Sioux". (Ex. 8).

23. In May, 2010, rather than discussing UND's use of the "Fighting Sioux" name, the SRST Tribal Council attempted to place a moratorium on any vote on this issue by its citizens. (Ex. 9).

24. On April 12, 2010, the Standing Rock Tribal Chairman was stonewalled in granting the 1004 + enrolled members the right to vote on the "Fighting Sioux" issue as noted in his memo to the Tribal Secretary, saying there was "no formalized procedure in place for such a vote..." (Ex. 10).

25. Thereafter, the SRST Tribal Council on June 17, 2010, voted to deny the people a right to vote on the issue. (Ex. 11). The NCAA, being duly informed, if not involved in the denial of due process, chose to look the other way and stand by its policy of what it defined as "hostile and abusive".

26. By its actions and omissions, the NCAA has conspired with certain members of the SRST Tribal Council to deprive Tribal members of traditions and promises made by SRST elders when UND was formally given the right to use the honorable name

"Fighting Sioux". It is believed that the records sealed from public view at the Grand Forks District Court will establish this factual allegation. (See Ex. 3).

27. Six of eight SRST Districts, expressed their support for the "Fighting Sioux" name. In an April 26, 2006, letter to NCAA VP Bernard W. Franklin, Plaintiff Fool Bear, then Chairman of the SRST Judicial Committee, informed the NCAA that six of the eight districts within Standing Rock's jurisdiction voted overwhelmingly to support UND's use of the name. (Ex. 12).

28. Further confirmation came later from the Cannon Ball Local District within the Standing Rock Indian Reservation when it passed a resolution in 2008 (reaffirmed in March, 2011) to hold a referendum vote on whether UND would continue to use the name "Fighting Sioux" for their athletic teams. This resolution noted that its own tribe failed to honor the resolution. (See Ex. 13).

29. The Doctrine of Sovereign Immunity of the SRST Tribe has prevented any suit against the Tribe to force a vote of the people. The only remedy available to the people of Standing Rock must come from this federal court. The SRST Constitutional Bill of Rights states in four relevant sections the rights of the 1004+ petitioners that, thus far, have been denied:

a. Section 1. "The Tribe shall not make or enforce any law prohibiting...the right of the people peaceably to assemble and to petition for a redress of grievances."

b. Section 8. "The Tribe shall not deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."

c. Section 12. The Tribe shall recognize and support the enforcement of rights, privileges and guarantees vested and derived from the Treaties made, negotiated, and applicable, wherein the people of Standing Rock have a vested interest as an affected party with enforceable rights, privileges, guarantees and claims."

d. Section 13. "The Tribe shall as a matter of right recognize the traditional laws and customs of the Standing Rock Sioux."

30. The Standing Rock Sioux Tribal Code of Justice, by and through its rules of procedure, recognize the Federal Rules of Civil Procedure and recognize and give binding effect to any applicable custom and ceremony or usage.

31. The State of North Dakota also recognizes and gives binding effect to Tribal customs, ceremonies and usage of tribal traditions. (See N.D.C.C. Sec. 27-19-09).

C. The 1969 Ceremony - A Sacred Gift.

32. In 1969, SRST Tribal leaders carried out sovereign duties of the Tribe by traveling to UND to formally give the name "Fighting Sioux" to UND. These tribal leaders formally consented that UND use the name "Fighting Sioux", not just for athletic teams, but for all departments at UND including music, band, symphony, drama, debate, etc.. (See Ex. 14, Grand Forks Herald, July 21, 1969; See Ex. 15, Bismarck Tribune, July 22, 1969). These SRST Tribal leaders included Tribal Chairman Aljoe Agard, Traditional and Spiritual Leader Edward Loon, Tribal Judge Bernard Standing Crow, and Traditional Leader Frank White Buffalo Man (grandson of Sitting Bull). (See Ex. 16, and 17, July 25, 1969, UND Newspaper).

33. In July, 1969, with much fanfare and celebration, then UND President Dr.

George W. Starcher was presented an Indian Headdress. A powwow, ceremonial rites, and dances were held. (See Ex. 18, 19, 20, 21, 22). Over 300 people filled the Prairie State Ballroom to observe President Starcher be adopted into the Sioux tribe and given the name "The Yankton Chief". The leaders from Standing Rock Sioux also expressed their appreciation to UND for its efforts on behalf of the Tribe in the educational field (See Ex. 23).

34. The 1969 ceremony is considered sacred by Tribal elders. It is part of Sioux history. A religious pipe ceremony was conducted in conjunction with the sacred giving of the "Fighting Sioux" name. Throughout history treaties were rarely signed by the Sioux. Instead the sacred Pipe was lit to seal a bond of the Sioux Word forever. Sioux elders were bound by their Word given by the Sacred Pipe, smoked and honored in Word and deed as was done with UND. It cannot be taken away. To dismiss the sacred ceremony of 1969 is to dismiss the Sioux people, and to dismiss the tradition and ceremonies of the Sioux people.

35. Because of the sacredness of the 1969 ceremony conducted by Standing Rock's Tribal Elders, approval of UND's use of the "Fighting Sioux" name was long ago given, thereby meeting the terms of approval for the settlement agreement.

D. Spirit Lake Sioux

36. When UND was forced by the NCAA to again seek permission from the Sioux Tribes to keep the name "Fighting Sioux", controversy developed in the news media, and the un-wanted attention by non-Indians was upon the two North Dakota Sioux tribes.

37. Originally, the Tribal Chairperson for Spirit Lake was not going to allow the people to vote, but she was challenged at the general assembly and the people voted on

the issue.

38. The Committee of Understanding and Respect was formed and discussed the issue with the people of Spirit Lake. They took to the air waves and asked all who were interested to come and discuss the matter. The Committee met at "elderly timeout meetings" to thoroughly discuss the issue.

39. A survey was taken that reported there was overwhelming support of the name in the communities on the Spirit Lake reservation. The Spirit Lake Sioux Tribe understands racism. The people of the Spirit Lake Sioux Tribe have experienced racism, discrimination, and difficulty. The people of Spirit Lake as a whole have been taught respect and have chosen not to overreact and to move on and not re-live what has happened in the past. The people of Spirit Lake, like the majority of Standing Rock, stand by the 1969 ceremony.

40. The Tribal Council was approached and the Council honored the Tribal Constitution and allowed the people to vote after approximately 20% of the tribal voters signed a petition.

41. The action by Plaintiff Committee obtained the vote of approximately 70% of the tribal members that led to the Tribal Resolution of September 18, 2009, giving perpetual use by UND of the "Fighting Sioux" name and logo. (See Ex. 24).

42. Largely because of the 1969 ceremony, the people of Spirit Lake believe the usage of "Fighting Sioux" by UND brings pride, honor and respect. The people of Spirit Lake are a fighting people today, fighting to maintain dignity, the native language, and the culture, and heritage of the Sioux.

43. Largely due to the sacredness of the 1969 ceremony the people of

Spirit Lake believe that by UND retaining the name "Fighting Sioux", the mending of racial differences will continue, especially for the young, and racial harmony will eventually be achieved. The opportunities to educate crowds of tens of thousands of people about the Sioux traditions and ways take place at each and every game at hockey arenas spanning the country. (Ex. 25). As a federally recognized tribe, the Spirit Lake Sioux Tribe gains recognition and benefits nationally by UND's sacredly given right to use the name "Fighting Sioux".

44. The Spirit Lake Sioux Tribe is the only Sioux reservation located entirely within the state of North Dakota. The people of Spirit Lake strongly support UND's use of the name and logo of the "Fighting Sioux". The alternative is to lose identification, public interest, knowledge, and respect for Sioux history and culture. This would be detrimental as a whole to the Sioux people. The Sioux once dominated the northern Plains and the heritage of the Sioux is desired to be used by UND, adopting the courage and bravery of the Sioux warrior, conveying the pride of the people of Spirit Lake. (Ex. 26).

45. The people of Spirit Lake want to move forward, working with the NCAA bridging racial gaps between Indians and non-Indians in the surrounding communities and the state of North Dakota. However, at every turn, with every correspondence sent to the NCAA, the reply is either non-existent or a sharp rebuke through the media. (Ex. 27).

46. The Spirit Lake Sioux Tribe understands that "hostile and abusive" is not the correct depiction by the NCAA when it refers to UND's use of the name "Fighting Sioux". UND has 25 separate programs in support of American Indian students including: Indians into Medicine, similar programs in nursing and clinical psychology, engineering, media and aviation.

THE SETTLEMENT AGREEMENT IS VOID AB INITIO

While re-alleging the above paragraphs, Plaintiffs also assert the following counts:

COUNT ONE - INDISPENSABLE PARTIES

47. The settlement agreement that gave ultimate authority to Spirit Lake and SRST makes the two tribes indispensable parties. The NCAA has created an anomaly, forcing the two North Dakota Sioux tribes into a contract when those tribes had no opportunity to negotiate any terms.

48. Public records reveal SRST had no intent to make the settlement agreement a priority nor did it desire to be involved in the process of allowing enrolled SRST members to vote on the issue. (See Exhibits 4, 5,6, 7, 9,10,11,). The NCAA's failure to recognize, consult, and obtain consent from SRST makes the settlement agreement void.

49. The NCAA did not consult, negotiate or discuss the terms of any settlement agreement with the Spirit Lake Sioux Tribe. The NCAA gave the Spirit Lake Sioux one part of the ultimate decision to determine the fate of UND's usage of the "Fighting Sioux" name, thereby making Spirit Lake an indispensable party to the litigation and the settlement agreement.

50. Had Spirit Lake been at the table with the NCAA as part of the negotiations, the sacredness of the 1969 ceremony would have been honored, recognizing that Standing Rock had already given its consent to UND's use of the name "Fighting Sioux". Although Spirit Lake was forced into the agreement without its consent, it operated

in good faith. However, Spirit Lake never would have agreed to the terms of the settlement agreement as written.

51. The failure to obtain written consent from the Spirit Lake Sioux Tribe, to the settlement agreement with the NCAA, renders the settlement agreement void.

52. The participation and joinder of the two tribes was necessary to make any settlement agreement valid.

53. Because the two Sioux tribes were never brought into discussions, never brought into negotiations, and neither acquiesced to the NCAA's intentions, the settlement agreement is void on its face and a violation of 42 U.S.C. 1981 et. seq.

COUNT TWO - BREACH OF CONTRACT

54. Plaintiffs have standing in regard to the contract, aka settlement agreement, because their participation is required to make the ultimate decision regarding UND's usage of the "Fighting Sioux" name.

55. One term of the settlement agreement stated in part that the:

> *... North Dakota Sioux Tribes, ..., have important contributions in determining whether, to what extent and in what manner the "Sioux" name and the "Fighting Sioux" nickname or logo should continue to be used in conjunction with the athletic tradition at UND..."* (Ex. 2).

56. The two Sioux Tribes were not consulted or contacted by the NCAA about making any contribution regarding the "Sioux" and "Fighting Sioux" names used by UND. Further, the settlement agreement allowed the two tribes to change their minds as to use of the name anytime they wanted making the terms of the contract/settlement agreement open ended without closure to any perceived issue in violation of N.D.C.C. 47-02-27.1.

57. The failure of the NCAA to abide by the settlement term requiring Tribal contribution in determining the use of the "Fighting Sioux" name is a material breach, and fraudulent, rendering the Settlement Agreement void.

COUNT THREE - COPYRIGHT INFRINGEMENT

58. While re-alleging the above paragraphs, Plaintiffs assert the NCAA has attempted to exercise powers well beyond any jurisdiction it may otherwise have.

59. UND holds the federal copyright on the "Fighting Sioux" logo. Before the copyright was granted and certified there was a determination that the copyright was not disparaging to Plaintiffs.

60. This copyright is protected by federal law that preempts and supercedes the settlement agreement..

61. Because the domain of copyright and its intended usage is a matter of federal jurisdiction, the settlement agreement as to the NCAA's policy mandate is void ab initio.

62. Further, the name "Sioux" is not copyrighted or trademarked by anyone. It is in common use and thus in the public domain, readily and freely available to everyone. The NCAA knew or should have known that UND had a recorded and recognized copyright and logo. The NCAA knew or should have known that the Sioux name is in the public domain with common usage to be legally used by anyone, including UND.

63. The name "Sioux" can legally be used by anyone, including UND. "Sioux" is used extensively by commercial and public entities throughout the U.S.A. for other purposes. Therefore namesake approval by the NCAA is not and never was, necessary, rendering the settlement agreement as to the NCAA void as a matter of law.

COUNT FOUR - LACK OF JURISDICTION

64. The U.S. Dept of Education and the Office of Civil Rights have jurisdiction of all U.S. colleges, universities and other schools as to discrimination, not the NCAA. The U.S. Dept of Education and the Office of Civil Rights participated in the lawsuits in Illinois, Wisconsin, and Massachusetts concerning use of Native American names, but after investigating UND, imposed no sanctions against UND.

65. The NCAA has attempted to supercede and intrude into a social arena setting its own standards as universal and public law, well outside it's authority, rendering the settlement agreement void. The NCAA policy against the Plaintiffs and UND was ultra vires and beyond its powers.

66. The purpose of the NCAA administration according to its Constitution is:

> "1.2(b) to uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this association....(h) to legislate through bylaws or by resolutions of a convention upon any subject of general concern to the members related to the administration of intercollegiate athletics...."

In this instance, as applied to UND, NCAA convention members never saw, nor did they have an opportunity to vote on, any policy about allegations of "hostile and abusive" name and logo of "Fighting Sioux".

67. The NCAA Constitution is its base of authority and purpose. It contains no reference to American Indian names or imagery. Any amendments at any future time must be within the purpose and authority of the NCAA Constitution. The actions taken by the NCAA as against UND, therefore, are done without authority and exceed the jurisdiction of the NCAA, making its policies and threatened sanctions against UND void.

COUNT FIVE - VIOLATION OF THE INDIAN RELIGIOUS FREEDOM ACT

68. While re-alleging the above facts, the NCAA has arbitrarily and capriciously implemented a policy that, by its own standards, is supposed to protect Native Americans. The policy has had the opposite effect on the only Sioux tribe entirely within the North Dakota borders as well as all Plaintiffs.

69. The NCAA has failed to take into account traditions, ceremonies and religious acts that are sacred to the Sioux Nations, including Plaintiffs.

70. The NCAA has dismissed and disregarded the ceremony in 1969 that is considered sacred by the Sioux nations. The NCAA has failed to recognize that, as a matter of Sioux religion, the name cannot be taken from UND.

71. The NCAA, by its actions and attempt at misguided policy, has dismissed the tradition and ceremonies of the Sioux people, dismissing the Sioux people as a distinct and sovereign race in violation of the American Indian Religious Freedom Act, 42 U.S.C. 1996.

COUNT SIX - THE INDIAN CIVIL RIGHTS ACT

72. While re-alleging the above facts, the NCAA created, then mandated, a policy that, with the weapon of sanctions, unilaterally determined the "Fighting Sioux" name "hostile and abusive". As set forth above, this policy was litigated in a North Dakota State District Court and subsequently settled without any discussion with, negotiated with, or consent by, the Sioux Tribes and their people.

73. The effect of the NCAA's actions is to abridge Plaintiffs' religion and rights.

74. The effect of the NCAA's actions abridge Plaintiffs' freedom of speech to use and honor the name of their people.

75. As set forth above the actions of the NCAA has created an environment wherein the Indian Civil Rights as codified in 25 U.S.C. 1301 et. seq. has been violated.

COUNT SEVEN - 42 U.S.C. SEC. 1983 & 42 U.S.C. 2000d

76 Plaintiffs re-allege the above paragraphs and assert that the NCAA has violated 42 U.S.C. Sec. 1983 which provides in part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

Pursuant to the Civil Rights Attorney Fees Awards Act of 1976 Plaintiffs seek and demand full recovery of all attorneys fees and costs.

77. 42 U.S.C. Sec. 2000d provides:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

78. Because the public institutions which make up the NCAA receive Federal funds, the NCAA is bound by 42 U.S.C. Sec. 2000d. In this action, the NCAA has deliberately singled out an entire race, the Sioux people. The NCAA's action through its policy against the Sioux people, was intentional and race was the single motivating factor for the NCAA's policy. The NCAA had actual knowledge of the effect it would have on Plaintiffs but were deliberately indifferent to the effects its policy would have on

opportunities and benefits to Plaintiffs.

79. Plaintiffs have been deprived of their constitutional rights under color of law by the NCAA.

COUNT EIGHT - DEFAMATION

80. Plaintiffs re-allege the above paragraphs and re-assert that the policies of the NCAA have soiled the name and reputation of the Sioux nation. The NCAA's policy of labeling the name "Fighting Sioux" as "hostile and abusive" is defamatory per se.

81. The failure of the NCAA to include Plaintiffs in any settlement discussions reflects an attitude that the two tribes are lesser persons whose relation and interest to the lawsuit should not be brought to the attention of any Court. The NCAA's actions and omissions are arrogant, condescending, and insult Plaintiffs, constituting defamation.

82. The NCAA allegations that the "Sioux" name and logo of an Indian head profile and "Fighting Sioux" nickname being "hostile and abusive" are per se defamatory, done with malice, without reference to extrinsic proof, defamatory against Plaintiffs, causing damages, real and punitive.

83. The defamation has been largely publicized nationwide and the NCAA has encouraged other institutions not to compete with UND because of its name "Sioux". The hostility by the NCAA to the "Fighting Sioux" name is so pervasive that the NCAA has mandated Native American imagery at UND to be taken down, and eradicated in a deliberate attempt to wipe out the memory of the Plains Indians. The NCAA's policy has mandated that, because of the name "Fighting Sioux", UND cannot host a championship event. UND cannot, because of the NCAA's defamatory policy, use any facility whether or not owned by UND that contains images associated with the Native American culture.

Further, The policies of the NCAA against Native Americans, including Plaintiffs, impugns the reputation of the Sioux nation, making the name a slur, or worse, erasing the name from American culture and memory and violating the freedom of expression to use the "Fighting Sioux" name with dignity and honor. The NCAA's actions are malicious and intentional as against the Plaintiffs.

COUNT NINE - PUNITIVE DAMAGES

84. Plaintiffs re-allege the above paragraphs and assert the actions and omissions by the NCAA are reckless and performed without any forethought or understanding of Native American ways, resulting in harm and damages to the Plaintiffs. Due to the malicious nature of the NCAA policy against the Plaintiffs, said actions warrant the recovery of punitive damages on behalf of Plaintiffs.

COUNT TEN - VIOLATION OF EQUAL PROTECTION OF LAWS

85. Plaintiffs re-allege the above paragraphs and assert that the policy of the NCAA to prohibit UND from using the "Fighting Sioux" name is patronizing and paternalistic.

86. The NCAA allows other universities and tribes the right to use Native American names, logos imagery and even mascots, e.g. Florida State and the University of Illinois. Yet the NCAA denies the same right for smaller universities and tribes in violation of the equal protection of the laws.

87. On August 23, 2005, the NCAA applied a newly-created exception to exempt Florida State University (FSU), a large and influential school from the Policy. In support of this action, the NCAA issued a press release stating that "the decision of a

namesake sovereign tribe, regarding when and how its name and imagery can be used must be respected even when others may not agree". The NCAA has applied a different standard to Plaintiffs in this matter in violation of its constitutional rights and equal protection of the laws.

88. The NCAA subsequently removed Central Michigan University (CMU) Catawba College, Mississippi College, and the University of Utah from the list of schools prohibited from using Native American names and imagery based upon the namesake tribe exception.

89. The NCAA did not investigate the actual use and depiction of Native American imagery by exempted institutions, nor did the NCAA Executive Committee make any findings that the exempted institutions' use of Native American imagery would not give rise to a "hostile or abusive" environment at NCAA championship events, the only events where the policy purports to apply.

90. CMU was removed from the list of schools prohibited from using Native American mascots, names, imagery based upon namesake tribe approval from the Saginaw Chippewa Indian Tribe of Michigan. Numerous other federally recognized tribes utilize the "Chippewa" name or refer to themselves as "Chippewa", including others within the State of Michigan, of which a large number oppose the use of the name by CMU. The NCAA did not consider opposition to CMU's use of the name "Chippewa" by other Chippewa tribal authorities. The NCAA didn't inquire about the views of other federally recognized Chippewa tribes other than the Saginaw Chippewa Tribe of Michigan. The NCAA has applied a different standard to UND and to the Plaintiffs in this action.

91. FSU and other schools removed from the list on the basis of namesake tribe approval are free to participate in any NCAA championship event in any venue while continuing to display their schools' Native American names, mascots, and imagery.

92. The proportionate number of Native American students, and the number of substantive programs in support of Native American students, at UND exceed that of all of the exempted schools combined.

93. Neither Plaintiffs nor UND sanction the use of stereotypical behavior historically associated with Native American imagery, including, but not limited to drum beats, tomahawk chops, and the like. Instead, before home games, a short presentation on the history of the "Fighting Sioux" name is shown. All incoming students to UND additionally receive information on cultural diversity generally.

COUNT ELEVEN - UNLAWFUL RESTRAINT ON TRADE

94. Plaintiffs re-allege the above and assert they have standing to attack the validity of the settlement agreement and the authority of the NCAA's constitution to declare, through policy, the name "Fighting Sioux" as being "hostile and abusive".

95. The NCAA Constitution sets forth basic purposes of the NCAA. The legislation passed by the NCAA membership to promote these purposes and principles are found in the Operating Bylaws. The policies and procedures to implement and enforce the rules and regulations found in the Operating Bylaws are contained in the Administrative Bylaws. There are no bylaws concerning or relating to Native American imagery.

96. The NCAA Constitution and Bylaws provide for an Executive Committee responsible for administering the general affairs of the NCAA as a whole. They also provide for an independent "President's Council" within each division (or in Division I, the

Board of Directors) to set forth the policies, rules, and regulations for operating each division.

97. Complementing these administrative bodies are association-wide and division-specific committees and subcommittees.

98. The NCAA Executive Committee is an administrative body comprised of 19 institutional CEO's appointed by the Division I Board of Directors and the Divisions II and III Presidents Councils.

99. The NCAA Executive Committee has no power to legislate or to enforce bylaws.

100. The Constitution provides that bylaws can be adopted only by the NCAA membership, or in specified limited circumstances, the divisional presidential bodies such as the Division II Presidents Council or Division II Management Council.

101. The NCAA Constitution empowers the membership to adopt new constitutional provisions and to adopt operating bylaws and administrative bylaws.

102. The NCAA Executive Committee is empowered only to forward proposed amendments to the NCAA Constitution, and other dominant legislation, to the entire membership for a vote or call for a vote of the entire membership on the action of any division that it determines to be contrary to the basic purposes, fundamental policies, and general principles set forth in the NCAA constitution.

103. The constitution guarantees members access to national championship tournaments..

104. Only the divisional bodies and the divisional Championships Committee are vested with the power to administer NCAA championships, including all policies and

procedures incident thereto.

105. Governing sports committees and the Championships Committee are responsible for selecting championship sites.

106. The criteria to be considered by the Championships Committee does not include any reference to the use of Native American imagery by NCAA members, like UND.

107. On August 5, 2005, the NCAA Executive Committee announced that it had "adopted a new policy to prohibit NCAA colleges and universities from displaying "hostile and abusive" racial/ethnic/national origin mascots, nicknames or imagery at any of the 88 NCAA championships".

108. The NCAA policy, as stated by the NCAA Executive Committee, prohibits colleges or universities with "mascots, nicknames or images deemed "hostile or abusive" in terms of race, ethnicity or national origin" from:

a. displaying Native American imagery at NCAA championship competitions;

b. hosting any NCAA championship competitions;

c. displaying or promoting Native American references on mascots, cheerleaders, dance teams and band uniforms or paraphernalia, or wearing any uniforms or paraphernalia depicting such references at NCAA championships; and

d. selling Native American mascot, nickname, and imagery "related merchandise" at championship venues.

In addition, the Policy urges NCAA member institutions to refrain from scheduling regular season games with schools identified on the list.

109. Any member institution subject to the policy will be sanctioned by not

being allowed to host any post-season championship event - meaning 1) a member institution would not be able to bid for the contracts to host future events at predetermined sites; and 2) a member institution would not be able to host a home play-off game, even though it had earned post-season home field advantage through superior performance during the regular season and qualified by criteria contained in the Contract governing site selection.

110. Members of the NCAA are obligated to enforce legislation by convention. Members of the NCAA are obligated to provide full faith and recognition of State laws as well. Members of the NCAA are not obligated to enforce policies of the NCAA Executive Committee.

111. The membership has adopted Article 19 which sets forth penalties for violation of the Bylaws and enforcement procedures. It includes provision for a Committee on Infractions, which is responsible for enforcing NCAA rules.

112. UND has not been referred to the Committee on Infractions for its use of Native American Imagery, nor should it.

113. The NCAA, and others who have collaborated with them, have formed a conspiracy, or contract, or combination of the two, against Plaintiffs as those terms are utilized in N.D.C.C. Sec. 51-08.1-02. The purpose and effect of the conspiracy, or contract, or combination is to restrain trade of the "Fighting Sioux" name and restrain competition of the UND "Fighting Sioux" athletics in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

114. The NCAA policy violates N.D.C.C. Sec. 51-08.1-02 as an unreasonable and unlawful restraint of trade or commerce in the relevant market. The NCAA's policy is

an unlawful restraint on trade, exercising a monopolistic control over the Plaintiffs in violation of the Sherman Act as set forth in 15 U.S.C. §1 and 2.

COUNT TWELVE - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

115. Plaintiffs re-allege the above allegations and assert that the actions and omissions taken by the NCAA are an intentional act constituting extreme and outrageous conduct, intending to inflict severe emotional distress and, in fact, causing severe emotional distress upon the people of the Spirit Lake Sioux tribe and upon Plaintiffs.

116. The NCAA considers an honorable name Sioux as "hostile and abusive". UND carries the Sioux name around the country and the world creating good will for Sioux people everywhere. The NCAA purportedly agrees to listen to the Sioux people in determining how UND may continue to use the name but then refuses to invite the Sioux people to negotiate and come to reasonable terms. The NCAA unilaterally labels UND's use of the Sioux name "hostile and abusive" and with conspiracy applies sanctions to UND. The NCAA also ignores the wishes of more than 1000 Sioux people who were denied the right to vote on an issue that was forced upon them without their consent. The NCAA tramples the religious sacred ceremony of 1969 without apology. The actions by the NCAA constitute conduct that is so outrageous in character, and so extreme in degree as to go beyond the bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

117. The NCAA knew that its conduct would result in the infliction of severe emotional distress.

WHEREFORE, PLAINTIFFS PRAY FOR THE FOLLOWING RELIEF:

1. For the NCAA Policy against Native American Imagery be stricken as unconstitutional and "hostile and abusive" against Plaintiffs.

2. For the NCAA Policy be stricken for being outside and ultra vires the jurisdiction of the Defendant.

3. For the NCAA Policy to be stricken as a violation of copyright and trademark laws.

4. For the NCAA Policy to be stricken as against UND and Plaintiffs as a violation of the Native American Religious Freedom Act.

5. For the NCAA Policy to be stricken due to the actions and omissions of the NCAA that in turn violated the Indian Civil Rights Act.

6. For the NCAA Policy to be stricken due to its improper and unequal application against other tribes and universities, in violation of the U.S. and state equal protection laws and constitutional provisions.

7. For the NCAA Policy to be stricken due to it's violation of U.S. and state Anti-trust provisions.

8. For the NCAA to be required to adopt a policy that will actually promote Native American athletes and coaches into NCAA Division I athletics.

9. For the NCAA to be required to adopt a policy that will involve Native Nations colleges to participate in NCAA sponsored events.

10. For the NCAA to be required to adopt a policy that will actually encourage, promote and support Native American womens' athletics.

11. For an immediate injunction prohibiting the NCAA from taking any actions or implementing any policies against UND or its use of the "Sioux" or "Fighting Sioux" names.

12. For an immediate injunction enjoining the NCAA to take such actions as the court deems appropriate to honor and implement the resolutions and requests of the Plaintiffs.

13. For the files of the State District Court action filed by the State of North Dakota against the NCAA, entitled State of North Dakota, et. al. vs. NCAA, Civ. No. 06-C-01333, be opened to Plaintiffs for purposes of discovery in this suit and transparency to the public in general.

14. That this Court uphold and recognize the religious significance of the 1969 ceremony and the sacred pipe as binding until revoked by authorized constitutional referendum pursuant to both North Dakota tribes that honor and use the Sioux name.

15. For economic damages in an amount to be proven at trial.

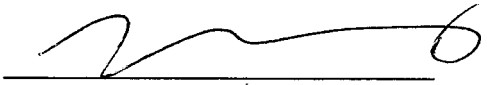
16. For non-economic damages in a reasonable amount but not less than $10,000,000.00 U.S.

17. For all attorneys fees and costs to be paid by the NCAA.

18. For other relief as this Court deems just and necessary.

Dated this 31st day of October, 2011.

PRINGLE & HERIGSTAD, P.C.

By: 

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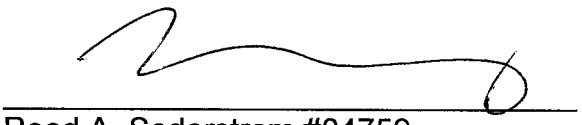
DEMAND FOR JURY TRIAL

Plaintiffs hereby makes a demand for trial by jury upon all issues.

Dated this 31st day of October, 2011.



Reed A. Soderstrom #04759