

**BOARD OF SUPERVISORS
FOR THE UNIVERSITY OF
LOUISIANA SYSTEM**

VERSUS

ACT, INC.

15TH JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

DOCKET NO.: _____

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes the BOARD OF SUPERVISORS FOR THE UNIVERSITY OF LOUISIANA SYSTEM (the “Board of Supervisors”), a body corporate of the State of Louisiana, domiciled in East Baton Rouge Parish, which respectfully represents that:

1.

The University of Louisiana at Lafayette (“UL”) is a member institution of the University of Louisiana System, under the supervision and management of the Board of Supervisors. UL is in Lafayette Parish, Louisiana, where the damages complained of were sustained.

2.

One of the Defendants is ACT, Inc. (“ACT”), an Iowa not-for-profit corporation authorized to do and doing business in the State of Louisiana.

3.

ACT administers the ACT exam to assess students’ academic readiness for college and reports exam results to universities, colleges, and others.

4.

To be admitted to UL, prospective students must provide college readiness exam results meeting certain threshold scores. The ACT exam score is one of two permissible college readiness exam scores to satisfy this requirement.

5.

UL is a member of the National Collegiate Athletic Association (“NCAA”), and is classified by the NCAA as Division I for athletic competition.

6.

In order for a freshman student-athlete to be eligible to compete in NCAA sports at a Division I school, including football, and to be a member of the football team, the student-athlete must provide college readiness exam results meeting certain threshold scores. The ACT exam is one of two permissible college entrance exams to satisfy this requirement.

7.

On information and belief, for several years, since at least 2010, the answer sheets for some prospective student-athletes taking the ACT exam at the ACT testing site at Wayne County High School in Waynesboro, Mississippi were altered to falsely increase the prospective student-athletes' exam scores.

8.

On information and belief, for several years, since at least 2010, ACT's test administrator at the Waynesboro testing site, Ginny Crager, completed and/or altered, or directed the completing and or altering of, some prospective student-athletes' answer sheets so those prospective student-athletes received these false test scores.

9.

On information and belief, for several years, since at least 2010, ACT knew or should have known in the reasonable implementation of its duties to ensure valid testing conditions and exam scores, information indicating or suggesting that ACT personnel at the Waynesboro testing site were completing or altering some prospective student-athletes' answer sheets and that some prospective students-athletes were obtaining false ACT exam scores.

10.

ACT failed to detect improper test administration or exam results at its Waynesboro testing site, to timely investigate the possibility or actuality of such improprieties in relation thereto, and to correct the situations. Further, ACT failed to notify UL of the existence or potential existence of such improprieties, of which it knew or should have known in the reasonable implementation of its duties to ensure valid testing conditions and exam scores.

11.

Six particular prospective student-athletes, Student-Athlete A, Student-Athlete B, Student-Athlete C, Student-Athlete D, Student-Athlete E, and Student-Athlete F (collectively, the “Prospective Student-Athletes”), took the ACT exam at the Waynesboro testing site.

12.

On information and belief, Ms. Crager falsified the Prospective Student-Athletes’ answer sheets so they obtained false ACT exam scores. On information and belief, Ms. Crager erased and filled in different responses to some questions on the Prospective Student-Athletes’ answer sheets, and filled in some blanks left by the Prospective Student-Athletes on their answer sheets.

13.

The Prospective Student-Athletes applied for admission to UL and to participate on UL’s football team. ACT reported the Prospective Student-Athletes’ ACT exam scores to UL, to supply that portion of the documentation required for their admission; and to the NCAA to supply that portion of the documentation required for certification of eligibility for their participation on the UL football team.

14.

ACT misrepresented the scores it reported to UL and the NCAA for the Prospective Student-Athletes as being their own scores, achieved by their own efforts and reflective of their actual academic work and abilities, when ACT reported false scores for the Prospective Student-Athletes, obtained through the improper actions of Ms. Crager, ACT’s own test administrator.

15.

The Prospective Student-Athletes’ ACT scores as reported by ACT satisfied UL’s requirements for admission and the requirements for NCAA certification of eligibility to participate on the UL football team. UL admitted the Prospective Student-Athletes as students at UL and they were deemed eligible to participate, and participated, on the UL football team on the basis of the scores as reported by ACT.

16.

On May 22, 2015, the NCAA issued a Notice of Allegations to UL, alleging that the Prospective Student-Athletes' scores were false and improperly obtained through the actions of ACT's own test administrator, Ms. Crager. On information and belief, these allegations are true. Under UL's obligations as an NCAA member institution, the NCAA may assess onerous penalties against UL if the NCAA finds these allegations to be true.

17.

The penalties that the NCAA may assess against UL include public reprimand and censure, financial penalties, probation, vacation of football contests in which any Student-Athletes played on the team (including bowl victories), limitation of grants-in-aid, limitation of recruiting opportunities and communications, ineligibility for televised or postseason games, and complete ineligibility to compete against other schools.

18.

UL has expended significant financial resources to investigate and respond to the NCAA Notice of Allegations, and continues to expend additional resources as the matter is ongoing.

19.

The allegations against UL by the NCAA were widely reported by the news media, casting UL and its football program in a negative light. This adverse publicity is damaging to UL's reputation for integrity and impairs its ability to attract qualified students and faculty.

20.

The damages and harm suffered by UL because of ACT's misrepresentation of the Prospective Student-Athletes' exam scores to UL and the NCAA were the direct and foreseeable results of ACT's actions and failures to act detailed herein.

**FIRST CAUSE OF ACTION
Negligent Misrepresentation**

21.

ACT undertook to administer the ACT college entrance exam and to report the results to schools such as UL and to the NCAA. Reporting these scores to schools and entities such as the NCAA is ACT's primary purpose and its business. ACT purported to be reporting valid scores.

ACT intended schools such as UL to rely upon the scores it reported as being valid, and UL relied on ACT and its reputation for this purpose. ACT therefore had a duty to report valid ACT scores and to take reasonable precautions to ensure the validity of the ACT exam scores it reported.

22.

ACT failed to take reasonable precautions to ensure the validity of the ACT exam scores it reported, including by failing: to adequately supervise and manage its test administration personnel; to take reasonable precautions to prevent its own personnel from enabling or creating false scores; to make a reasonable and timely investigation when it knew or should have known facts indicating there was an actual or potential problem with the validity of the scores it reported; and to warn or notify UL of the actual or potential invalidity of the results reported by ACT. ACT therefore violated its duty to report valid ACT scores.

23.

ACT misrepresented the Prospective Student-Athletes' ACT exam scores and UL reasonably relied upon ACT's representations, causing the damages and harm to UL as set forth herein.

SECOND CAUSE OF ACTION
Contract – *Stipulation Pour Autrui*

24.

On information and belief, the Prospective Student-Athletes had a contract with ACT, whereby for compensation, ACT administered the ACT exam to them and reported their scores to UL and the NCAA.

25.

UL was a third-party beneficiary of this contract. This *stipulation pour autrui* is manifestly clear, as the purpose of the contract was to provide UL with exam scores required for the Prospective Student-Athletes to obtain admission to UL, and to provide exam scores required for the NCAA to determine their respective eligibility to participate on the UL football team. The benefit to UL was certain, namely, valid exam scores. This benefit was not incidental to the contract between the Prospective Student-Athletes and ACT, but was its primary purpose.

26.

ACT's provision of false exam scores for the Prospective Student-Athletes, upon which UL reasonably relied, caused the damages and harm to UL as set forth herein.

**THIRD CAUSE OF ACTION
Detrimental Reliance**

27.

ACT represented that the Prospective Student-Athletes' college entrance exam scores reported to UL by ACT were valid. ACT has reported college entrance exam scores for decades, and is one of only two entities whose score reporting enjoys nationwide acceptance by universities, colleges, and others. Further, ACT holds itself out as providing valid test results, and intends these schools, including UL, to rely on the exam scores ACT reports as being valid. ACT's business depends on these schools relying on the exam scores ACT reports.

28.

UL admitted the Prospective Student-Athletes to UL and to its football team in reliance upon their ACT scores as reported by ACT. The invalidity and falsification of the scores reported by ACT, upon which UL reasonably relied, caused the damages and harm to UL as set forth herein.

29.

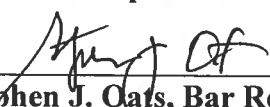
Plaintiff demands trial by jury as to all issues so triable herein.

WHEREFORE, Plaintiff prays:

1. That Defendant be duly served with the foregoing petition and citation;
2. That Defendant be duly cited to appear and answer same;
3. That, after all legal proceedings and due delays are had, judgment be rendered for Plaintiff, the BOARD OF SUPERVISORS FOR THE UNIVERSITY OF LOUISIANA SYSTEM, in an amount reasonable in the premises, with legal interest thereon from judicial demand until paid and all costs of these proceedings; and
4. For all general and equitable relief to which Plaintiff may be entitled.

Respectfully submitted,

OATS & MARINO
A Partnership of Professional Corporations



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**Counsel for Plaintiff, the Board of Supervisors
for the University of Louisiana System**

Please Serve

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Through its Registered Agent for Service of Process in Louisiana
Corporation Service Company
320 Somerulos St.
Baton Rouge, La 70802-6129

ACT, Inc.

Through Long Arm Service
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Des Moines, IA 50309