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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO BOX 11629
Columbia, SC 29211

RE: **James Earl Lovorn, III v. NCAA**
Appellate Case No.: 2026-000337

Dear Ms. Kitchings,

Enclosed for filing in the above captioned matter:

- (1). Initial Reply Brief of the Appellant;
- (2). Designation of Matter to be Included in the Record on Appeal; and
- (3). Proof of service of the Initial Reply Brief of the Appellant and the Designation of Matter to be Included in the Record on Appeal on the attorneys for the Respondents.

Sincerely,

ALLEN & ALLEN LAW FIRM, LLC


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DCA/rs

Attachments

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2026-000337

James Earl Lovorn, III Appellant

v.

National Collegiate Athletic Association Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
ARGUMENT	1
I. THE APPELLEE’S ARGUMENT THAT “DISMISSAL IS INEVITABLE” IS IRRELEVANT TO THE QUESTION OF WEATHER PROPER PROCEDURE WAS FOLLOWED AND WEATHER THE APPELLANT WAS PROPERLY NOTICED OF THE NCAA’S AFFIRMATIVE DEFENSE OF LACHES.	
CONCLUSION	2

TABLE OF AUTHORITIES

CASES

<i>Southern Railway Co. v. Coltex, Inc.</i> , 285 S.C. 213 (1985).....	1
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RULES

Rule 12, SCRCF	1
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ARGUMENT

I. THE APPELLEE’S ARGUMENT THAT “DISMISSAL IS INEVITABLE” IS IRRELEVANT TO THE QUESTION OF WHETHER PROPER PROCEDURE WAS FOLLOWED AND WHETHER THE APPELLANT WAS PROPERLY NOTICED OF THE NCAA’S AFFIRMATIVE DEFENSE OF LACHES.

The NCAA argues that even if this action was allowed to proceed in the absence of a temporary injunction, dismissal would be inevitable and therefore the Trial Court’s dismissal of the case on its merits was proper in the present case. This argument is irrelevant to the question of whether proper notice procedure was followed allowing Appellant’s an opportunity to be heard on that issue.

While it is true that the NCAA could file a motion to dismiss based on Rule 12 of the South Carolina Rules of Civil Procedure (specifically – the NCAA notes it would file under Rule 12(b)(6) and Rule 12(b)(1)) along with a Motion to dismiss based on the equitable defense of laches – the simple fact is that the NCAA *did not* file any motions under Rule 12 or any motions asserting the defense of laches. Again – the only filings made by the Defendant were a notice of appearance (filed on December 22, 2025) and a “Memorandum in Opposition to Plaintiff’s Motion for Temporary Injunction” (filed on December 22, 2025). (R. at ____)

Had the NCAA properly filed a motion to dismiss under Rule 12 the Appellant’s would have been properly noticed and the Trial Court could properly hear the motion to dismiss the case in its entirety. That did not happen in the present case and instead the Trial Court granted

dispositive relief, *sua sponte* on an unpled ground, which is improper pursuant to *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214 (1985).

CONCLUSION

The NCAA never filed a motion to dismiss under Rule 12 SCRPC or upon the affirmative defense of laches and the defense of laches was never properly asserted. Therefore, the trial court, *sua sponte*, improperly dismissed the Plaintiff's claims on the merits at the initial Temporary Injunction Hearing this court should reverse and remand the case for further proceedings on the merits.

Respectfully submitted,

s/Donald L. Chuck Allen

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s/Joshua C. B. Allen

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s/Austin G. McLain

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National Collegiate Athletic Association . . . Respondent.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Amended Summons and Complaint;
2. Motion for Temporary Injunction;
3. Defendant's Memorandum in Opposition to Plaintiff's Motion for Temporary Injunction;
4. Court's Form 4 Order of December 30, 2025;
5. Transcript of Hearing - December 30, 2025.

I certify that this designation contains no matter which is irrelevant to this appeal.

s/Donald L. Chuck Allen
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s/Joshua C. B. Allen

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Anderson, South Carolina

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v.

National Collegiate Athletic AssociationRespondent.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal on National Collegiate Athletic Association by delivering a copy of it by electronic mail to their attorneys of record, John E. Cuttino, jcuttino@gwblawfirm.com and Gray Culbreath, gculbreath@gwblawfirm.com.

September 8, 2026

s/Donald L. Chuck Allen
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s/Joshua C. B. Allen
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