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COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ____

Civil Action No. _____

JOHN D. MEYERS

PLAINTIFF

V.

UNIVERSITY OF KENTUCKY
ATHLETICS DEPARTMENT,
UNIVERSITY OF KENTUCKY, a political
subdivision of the Commonwealth of
Kentucky, d/b/a K FUND

DEFENDANT

MOTION FOR TEMPORARY INJUNCTION PURSUANT TO CR 65.04

Comes now the Plaintiff, John D. Meyers (hereinafter “John” or “Plaintiff”), by and through counsel, and respectfully submits his Motion For Temporary Injunction Pursuant to CR 65.04, to enjoin Defendant University of Kentucky Athletics Department (hereinafter “UK”) from taking any action that would deny Plaintiff two floor seat season tickets nearest mid-court, during the 2024-2025 UK Men’s Basketball games, and to affirmatively enjoin UK to permit John to purchase such floor level season tickets during John’s lifetime and his wife’s lifetime, or at least so long as Defendants maintain floor seating in Rupp Arena for men’s home basketball games. In support of said Motion, Plaintiff states as follows:

RELEVANT UNDERLYING FACTS

The University of Kentucky’s Athletics Department operates K Fund as the fundraising arm of UK Athletics. The K Fund regularly solicits capital contributions over and above the price

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of the tickets from its season ticketholders to benefit its varsity athletes as a condition of obtaining premium season tickets for a variety of varsity sports, including men’s basketball.

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As detailed in Plaintiff’s Complaint, in 2013 John approached former UK tennis coach, Dennis Emery, who referred him to K Fund representatives Katie Eiserman and Candice Chaffin. John offered to exchange his ten (10) season tickets to UK men’s basketball games for two “very good” lower arena season tickets.¹ John was told that K Fund had no interest in his six (6) upper arena seats but would agree to an exchange of the four lower arena seats for two “very good” seats plus an increased K Fund contribution.² John was shown options for several “very good” seats including lower priced seats in the upper portions of the lower arena and a much more expensive option for brand new seating on the floor behind the visiting team’s bench.³ John accepted the more expensive option and chose the two seats on the floor behind the visiting team’s bench closest to mid-court.⁴ To obtain these floor seats, John agreed to pay the annual price of season tickets plus an additional total capital contribution of \$400,000.00.⁵ John was given a credit of \$180,000.00 for his four lower arena tickets which were returned to the K Fund for reallocation, and agreed to pay the remaining \$220,000.00 over a ten (10) year period.⁶ To memorialize this agreement John was directed to execute a document styled “Statement of Intent” on a form provided to him by UK. This 2013 agreement explicitly provides that John would make contribution to UK as noted above, and:

Contribution to benefit UK Tennis Program in memory of Professors H.H. Downing and E.N. Fergus, includes right to buy 2 floor level basketball tickets – transferrable to spouse, Janie Fergus, parking pass, and hospitality.

¹ Complaint, at Paragraph 8.
² Complaint, at Paragraph 9-11.
³ Complaint, at Paragraph 12.
⁴ Complaint, at Paragraph 13.
⁵ Complaint, at Paragraph 14.
⁶ Id.

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Your annual K Fund per seat donation will be waived while paying your capital gift (your annual payment must be the same or exceed the amount of the current annual K fund seat donation.) **Once your capital gift has been paid in full you will then begin to pay the per seat annual K Fund donation.**⁷ (emphasis added)

From 2013 to present John has faithfully made payments consistent with his pledge and to UK’s satisfaction, and John has held the two floor seats behind the visitor’s bench consistently since that time.

In January 2024 John received a letter from UK’s K Fund Staff, advising him of “changes coming to the seating arrangement of your seats at Rupp Arena for the upcoming 2024 – 2025 season.”⁸ This letter goes on to advise that “Rupp Arena and the Lexington Center Corporation have decided to replace seating in the first five (5) rows of both lower-level sidelines due to the aging infrastructure of the risers. The new seating structure will have a different configuration than the current.”⁹ The letter states that, “the order of the seat selection process will be determined by the K Fund Priority Point Rank system,” and states that 342 seats will be selected ahead of John.¹⁰ A map was enclosed with this letter, which appears to show that there will be fifty-six (56) floor seats after the new seating structure is implemented.¹¹ In response to inquiries about changes to the seating structure, the K Fund has notified ticket holders that they can make additional contribution to the K Fund to improve K Fund Priority Point Ranking. Any additional contributions must be made on or before March 29, 2024, at 5:00 p.m., at which time priority rankings will be frozen and the seating selection process shall commence.

⁷ See Agreement attached as **EXHIBIT A** to Plaintiff’s Complaint.

⁸ See Happy New Year Letter, attached as **EXHIBIT C** to Plaintiff’s Complaint.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See new seating map attached hereto as **EXHIBIT C**.

STANDARD OF REVIEW

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A temporary injunction is an "extraordinary remedy" to be issued "where absolutely necessary to preserve a party's rights pending a trial on the merits." *Commonwealth ex rel. Cowen v. Wilkinson*, 828 S.W.2d 610, 612 (Ky. 1992). *overruled on other grounds by Commonwealth ex rel. Conway v. Thompson*, 300 S.W.3d 152 (Ky. 2009). "[A] temporary injunction is designed merely to hold the status quo until the merits can be decided." *Curry v. Farmers Livestock Mkt.*, 343 S.W.2d 134, 135 (Ky. 1961).

Injunctive relief is governed by Ky. R. Civ. P. 65.04, which states that a temporary injunction may be granted if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

This rule effectively requires that a trial court only grant injunctive relief if each of the following is met: first, that the movant presents a "substantial question" in the case ("*i.e.* that there is a substantial possibility that the movant will ultimately prevail"); second, that the injury resulting absent injunctive relief would be immediate and irreparable; and third, that the temporary injunction "will not unduly harm other parties or disserve the public." *Price v. Paintsville Tourism Com'n*, 261 S.W.3d 482, 484 (Ky. 2008) (citing *Cyprus Mountain Coal Corp. v. Brewer*, 828 S.W.2d 642 (Ky. 1992)). "Realizing that the elements of CR 65.04 must often be tempered by the equities of any situation, injunctive relief is basically addressed to the sound discretion of the trial court." *Maupin v. Stansbury*, 575 S.W.2d 695, 697-98 (Ky. App. 1978) (citations omitted).

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ARGUMENT

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1. PLAINTIFF HAS A LAWFULLY AUTHORIZED WRITTEN CONTRACT WHICH UK HAS BREACHED IN VIOLATION OF KRS 45A.245, AND IS THEREFORE LIKELY TO PREVAIL ON THE MERITS.

UK is a state agency, and as such enjoys “the benefits and protections of governmental immunity except where it has been explicitly waived by the legislature.” *Furtula v. University of Kentucky*, 438 S.W.3d 303, 305 (Ky. 2014). KRS 45A.245 expressly waives sovereign immunity. “Any person, firm or corporation, having a lawfully authorized written contract with the Commonwealth at the time of or after June 21, 1974, may bring an action against the Commonwealth on the contract, including but not limited to actions either for breach of contracts or for enforcement of contracts or for both.” KRS 45A.245(1). Plaintiff seeks injunctive relief to ensure that this Court can enforce the contract between Plaintiff and UK going forward.

The Kentucky Supreme Court in a number of recent decisions has made clear that this statute is meant to be interpreted broadly, such that it would clearly encompass the agreement at issue in the case *sub judice*. In *University of Louisville v. Rothstein*, 532 S.W.3d 644, 647 (Ky. 2017), the high court made clear that “KRS 45A.245 is an unqualified waiver of immunity in *all* cases based on a written contract with the Commonwealth,” clarifying that it applies not only to contracts made pursuant to the model procurement code. (emphasis added). “The essential elements of a valid contact are an offer and unequivocal acceptance, a certain and complete recitation of the material terms, and consideration. Under Kentucky law, the terms of the contract must be sufficiently definite to enable the court to determine the measure of damages in the event of breach.” *Britt v. Univ. of Louisville*, 628 S.W.3d 1, 5 (Ky. 2021) (internal citations omitted) (holding that breach of an employment contract actionable under KRS 45A.245).

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It is black letter law that multiple documents, each individually incomplete, may form a contract, when combined and read as one to provide the necessary elements of contract formation. *Sackett v. Maggard*, 142 Ky. 500, 134 S.W. 888, 890 (Ky. 1911) (“It is well settled that, where a contract is contained in two separate and distinct papers, they will be read together for the purpose of ascertaining the true contract.”). At common law, one writing can refer to another writing and incorporate the latter's contents into the contractual bargain; this is known as incorporation by reference. *Dixon v. Daymar Colleges Group, LLC*, 483 S.W.3d 332, 344 (Ky. 2015). “For a contract validly to incorporate other terms, ‘it must be clear that the parties to the agreement had knowledge of and assented to the incorporated terms.’ In addition, there must be ‘clear language expressing the incorporation of other terms and conditions.’” *Id.* (internal footnotes and citations omitted); *Britt*, 628 S.W.3d at 8. “Terms and conditions incorporated by reference are enforceable.” *Home Lumber Co. v. Appalachian Reg'l Hosps., Inc.*, 722 S.W.2d 912,914(Ky.App.1987).

Univ. of Kentucky v. Regard, 670 S.W.3d 903, 912 (Ky. 2023) (holding that KRS 45A.245 applied to agreement between UK and students regarding tuition and fees). The Kentucky Supreme Court has made clear that KRS 45A.245 applies broadly and consistent with common law contract principles. *Id.*; see also *Armory Com'n v. Palmer*, 253 Ky. 425, 69 S.W.2d 681, 682 (1934) (“All contracts made with the state are subject to the provisions of the existing law”).

The 2013 agreement between John and UK is clearly a lawfully authorized written contract within the auspices of KRS 45A.245. Simply put, in exchange for a substantial contribution to the UK Athletic Department which John has faithfully paid to date, UK promised John that he would receive 2 floor tickets, along with parking and hospitality, for as long as John and/or his spouse are alive and desire to purchase such tickets. Later, John was offered the opportunity to choose his floor seats and he did so by choosing two seats behind the visiting team’s bench closest to mid-court, where he has since sat for over ten years. By its January 2024 “Happy New Year” letter, UK has reneged on this agreement and does not intend to honor the agreement going forward, instead forcing John into a “seat selection process” controlled by the K

Fund Priority Point Rank system. The K Fund Priority Point Rank system will allow John to select, at best, the 343rd and 344th seats chosen based on current K Fund capital contributions.

Plaintiff asks this Court to preserve the status quo to allow him to keep his two floor seats behind the visitor’s bench, closest to mid-court, for the 2024-2025 basketball season, consistent with the 2013 agreement.

2. ABSENT INJUNCTIVE RELIEF PLAINTIFF WILL SUFFER IMMEDIATE AND IRREPARABLE HARM.

“An injunction will not be granted on the ground merely of an anticipated danger or an apprehension of it, but there must be a reasonable probability that injury will be done if no injunction is granted.’ *Hamlin v. Durham*, 235 Ky. 842, 32 S.W.2d 413, 414 (1930).”
Norsworthy v. Kentucky Bd. of Med. Licensure, 330 S.W.3d 58, 63 (Ky. 2009). Here, the danger is not anticipated, UK has announced that effective March 29, 2024, John will no longer have his two floor seats closest to mid-court. KRS 45A.245 contemplates an action for *enforcement* of a contract with the state in addition to an action for damages for breach of contract. Here, Plaintiff is seeking enforcement rather than damages. Plaintiff enjoys a unique experience as a result of his 2013 contract with UK Athletics. His seats are situated so that he is able to be in the thick of the action during exciting UK men’s basketball games. He is very near the benches and the coaches and can hear the dialogue and rapid-fire banter being exchanged. He can literally feel the pounding on the court from the action.

An “irreparable injury” is one which cannot be fully compensated in damages or cannot be measured by any certain pecuniary standard. *Devou v. Pence*, 106 S.W. 874 (Ky. 1908). What Plaintiff bargained for is priceless. If he is deprived of the experience for which he had paid handsomely pursuant to his contract, there simply is no replacement. If Plaintiff is ultimately successful, the 2024-2025 season will likely be underway before this case is finally

decided. Prying these tickets from another UK men’s basketball fan’s hands will be difficult, if not impossible. However, if UK ultimately wins the day in this litigation it will easily be able to find another bidder for Plaintiff’s seats. Plaintiff has suffered immediate and irreparable harm, sufficient to justify injunctive relief.

3. GRANTING INJUNCTIVE RELIEF TO PRESERVE THE STATUS QUO AND WILL NOT HARM OTHER PARTIES OR DISSERVE THE PUBLIC.

UK will no doubt couch their “reseating” policy in public safety terms. The Court should not be fooled. This is all about money – who will pay the highest price for choice seats to UK men’s home basketball games. UK even phrases their plan as “rebidding” for choice seats. They were happy to accept John’s capital contribution of \$400,000 in 2013 when they were unsure if anyone would “bid” on the new floor seats. However, now that those have proven to be among the most sought-after seats in Rupp Arena, UK is happy to renege on its contract in an effort to extort even higher sums from John and others similarly situated to him. John is one among hundreds of season ticket holders affected by UK’s “reseating” policy. Apparently, UK intends to do away with seats FL 11-12 of Section 30, John’s seats. Perhaps they intend to add more floor seating next to Coach Cal’s chair to see how many millions of dollars can be obtained from those seats.

Public interest favors the enforcement of valid contracts. *Zeitz v. Foley*, 264 S.W.2d 267, 268 (Ky. 1954) (“[C]ontracts voluntarily made between competent persons are not to be set aside lightly ... [and] the usual and most important function of courts is to enforce and maintain contracts....”). The public will not be harmed by maintaining the status quo. UK has not even tried to argue that John’s two seats are a safety hazard. Ten years have proven they are not a safety hazard. It is simply a matter of taking two folding chairs and placing them behind the visitor’s bench closest to mid-court, as UK has done for more than ten years.

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CONCLUSION

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Plaintiff respectfully requests that this Court grant Plaintiff’s motion for a temporary injunction and enjoin the Defendant from taking actions to deprive Plaintiff of his two floor seat season tickets closest to mid-court for UK men’s basketball for the 2024-2025 season.

Respectfully Submitted,

/s/ Joe F. Childers
JOE F. CHILDERS
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NOTICE OF HEARING

This matter will come before the Franklin Circuit Court, Franklin County Courthouse, 222 St. Clair Street, Frankfort, Kentucky, for a hearing on Wednesday, March 20, 2024, at 9:00 a.m., or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served on the Defendants by delivery with the summons and the Complaint.

/s/ Joe F. Childers
JOE F. CHILDERS

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