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| IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA                    |           |
|------------------------------------------------------------------------|-----------|
| STATE OF NEBRASKA, ex rel.<br>MICHAEL T. HILGERS,<br>ATTORNEY GENERAL, | CI23      |
| Plaintiff,<br>v.                                                       | COMPLAINT |
| NFLUENCE, an unincorporated association,                               |           |
| KENNETH JASON MCCANTS,<br>individually.                                |           |
| Defendants.                                                            |           |

COMES NOW the State of Nebraska, by and through its Attorney General, Michael T. Hilgers and Assistant Attorney General Justin C. McCully and brings this action against Nfluence and Kenneth Jason McCants to obtain injunctive relief, the refund of monies paid, civil penalties, and other equitable relief for Defendants' violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. ("CPA") and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq (UDTPA), in connection with advertisement, marketing, distribution, and sale of the Nebraska Game Day Experience.

### INTRODUCTION

- Each Nebraska football season is a memorable time for Nebraskans and their families. Every year, Nebraskans of all ages come together to cheer on the Cornhuskers at Memorial Stadium.
- 2. Nebraskans also care about their communities, time and again opening their hearts for worthy charities and causes, supporting them with their time and hard-earned money.
- 3. Every fall, Nebraskans are presented with opportunities to support good causes while also supporting Nebraska or cheering on the Cornhuskers—a virtuous connection between support of the home football team and worthy causes.
- 4. Defendants took advantage of Nebraskans' charitable nature and desire to support the Nebraska Cornhusker football team. Cornhusker fans were led to believe they could donate to charitable causes by purchasing suite tickets to a Nebraska home football game.
- 5. Instead of helping these charitable causes and giving the donors suite tickets to the home game, Defendants took their money, used it for personal purchases, and failed to provide tickets. In doing so, Defendants abused the public's trust and engaged in unfair and deceptive trade practices.
- 6. The Nebraska Attorney General is responsible for enforcement of the CPA, UDTPA, and other state and federal laws that affect Nebraska consumers. Under Neb. Rev. Stat. § 59-1608 the Attorney General may bring an action in the name of the State of Nebraska against any person to restrain and prevent the doing of any act prohibited by the CPA.

- 7. Under Neb. Rev. Stat. § 87-303.05, the Attorney General may apply for and obtain, in an action in any district court of Nebraska, a temporary restraining order, or injunction, or both, prohibiting such person from engaging in any deceptive trade practices or engaging therein, or doing any act in furtherance thereof.
- 8. The Attorney General has cause to believe that Defendants have violated the CPA and UDTPA and brings this action in the public interest because Defendants have deceived, misled, and caused financial harm to consumers from Nebraska and other states.

### PARTIES

- 9. Plaintiff is the State of Nebraska, ex rel. Michael T. Hilgers. Under the CPA and UDTPA, the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the CPA and UDTPA and secure such equitable and other relief as may be appropriate in each case.
- 10. Defendant, Nfluence, is an unincorporated association of Nebraska creatives. At all times material to this Complaint, Nfluence, its officers, members, and agents advertised, marketed, or sold the Nebraska Game Day Experience to consumers throughout Nebraska and other states.
- 11. Defendant, Kenneth Jason McCants, a resident of the State of Nebraska, at all times relevant to the complaint, served as a member and Pro Bono Creative Director for Nfluence. Defendant Kenneth Jason McCants, or agents under his direction and control, created and placed advertisements that made

representations marketing the sale of the Nebraska Game Day Experience to consumers throughout Nebraska and other states.

### JURISDICTION AND VENUE

- 12. The District Court of Lancaster County has jurisdiction over Defendants and the subject matter of this action pursuant to Neb. Rev. Stat. §§ 59-1608 and 87.303.05(1) because Defendants have transacted business within the State of Nebraska at all times relevant to this complaint.
- Venue for this action properly lies in the District Court of Lancaster County under Neb. Rev. Stat. §§ 59-1608.01 and 87-303.05(1).

## FACTUAL ALLEGATIONS

- 14. Beginning in June of 2022, Defendants advertised, offered for sale, and sold a product called "The Nebraska Game Day Experience."
- 15. The Nebraska Game Day Experience offered consumers the opportunity to watch a University of Nebraska-Lincoln collegiate football game at Memorial Stadium in Lincoln, Nebraska, in person, with former University of Nebraska-Lincoln collegiate football players.
- 16. Consumers were promised that their purchase of the Nebraska Game Day Experience included two suite tickets to watch a collegiate football game at Memorial Stadium.
- 17. Suite tickets differ from general admission tickets because they offer the purchaser the opportunity to watch the game from luxury accommodations. Suites also offer additional amenities

compared to general admission tickets such as personalized catering, lounge seating, high-definition TVs, and an in-suite kitchenette.

- 18. In contrast, general admission tickets guarantee access to a particular game and a specific seat within the stadium. General Admission tickets do not include additional amenities.
- 19. Consumers that purchased the Nebraska Game Day Experience were promised various additional perks.
- 20. These perks included but were not limited to: a commemorative check presentation, a personal thank you message from a former University of Nebraska collegiate football player on the player's social media accounts, a commemorative football autographed by former Husker players and the entire University of Nebraska-Lincoln football coaching staff, and a gift bag curated by a wellknown former Husker football player from BleedHuskerRed by JOLT Design.
- 21. Defendants advertised that the proceeds of the Nebraska Game Day Experience would benefit various charitable organizations.
- 22. Defendant, Kenneth Jason McCants recruited a former player under the pretext that the Nebraska Game Day Experience was a fundraiser to benefit various charitable organizations.
- 23. Defendant, Kenneth Jason McCants, or agents at his direction and control, created promotional materials, including a promotional video, for purposes of advertising the Nebraska Game Day Experience.

- 24. Defendants, or agents at their direction and control, then advertised the Nebraska Game Day Experience by placing the promotional video online and promoting it on social media.
- 25. Defendants' promotional video contained slides, depicted in Figure A, Figure B, and Figure C, and attached hereto as Exhibit 1, Exhibit 2, Exhibit 3, promoting potential players a consumer could meet with the purchase of the Nebraska Game Day Experience.
- 26. The edited promotional video contains an infographic depicted in Figure D, attached hereto as Exhibit 4.
- 27. Defendants sold the Nebraska Game Day Experience to the public. Examples of the representations made to the public are depicted in Figure E, Figure F, Figure G, and Figure H; attached hereto as Exhibit 5, Exhibit 6, Exhibit 7, and Exhibit 8.
- 28. Consumers paid at least one thousand dollars (\$1,000) to purchase the Defendants' Nebraska Game Day Experience.
- 29. Defendants sold the Nebraska Game Day Experience for the Nebraska vs. Minnesota Game on November 5<sup>th</sup>, 2022 and the Nebraska vs. Wisconsin game on November 19<sup>th</sup>, 2022.
- 30. Defendants presented the Nebraska Game Day Experience as an opportunity to watch the game with a former Nebraska football player and a donation to the player's charity of choice. Examples of the Defendants' representations are referenced below at Figure I and Figure J, attached hereto as Exhibit 9 and Exhibit 10.

- 31. Consumers who purchased the Nebraska Game Day Experience for the Nebraska vs. Minnesota Game did not receive suite tickets.
- 32. Defendants instead provided consumers who purchased the Nebraska Game Day Experience general admission tickets to the Nebraska vs. Minnesota game.
- 33. Consumers who purchased the Nebraska Game Day Experience for the Nebraska vs. Minnesota game did not meet with former University of Nebraska collegiate football players.
- 34. Consumers who purchased the Nebraska Game Day Experience for the Nebraska vs. Minnesota game did not receive any of the promised perks associated with the Nebraska Game Day Experience.
- 35. Consumers who purchased the Nebraska Game Day Experience for the Nebraska vs. Wisconsin game did not receive suite tickets, meet with former University of Nebraska collegiate football players, or receive the promised perks associated with their purchases.
- 36. From June 2022 through July 2022, Defendants generated at least eighty-seven thousand dollars (\$87,000) in proceeds from the sale of the Nebraska Game Day Experience to Nebraska consumers and out-of-state consumers.
- 37. The proceeds from the sale of the Nebraska Game Day Experience did not go directly to any charity identified by the Defendants.

- 38. The proceeds from the sale of the Nebraska Game Day Experience were deposited into the personal bank account of Defendant, Kenneth Jason McCants.
- 39. Defendant, Kenneth Jason McCants, was the only person on the bank account and the only authorized user on the bank account.
- 40. The proceeds from the sale of the Nebraska Game Day Experience were expended on items unrelated to the representations made in the advertisements for the Nebraska Game Day experience. Rather, these proceeds were spent on items such as online streaming subscriptions, Disneyland Tickets, various purchases in Hawaii, and what appears to be other personal expenses.

# COUNTS I THROUGH IV: VIOLATIONS OF THE CONSUMER PROTECTION ACT DECEPTIVENESS (Neb. Rev. Stat. § 59-1602 et seq.)

- 41. The State of Nebraska re-alleges the facts above and incorporates them herein by reference.
- 42. Defendants are "persons" within the meaning of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(1).
- 43. Defendants conduct "trade and commerce" within the meaning of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(2).
- 44. The Consumer Protection Act, Neb. Rev. Stat. § 59-1602, prohibits "...deceptive acts or practices in the conduct of any trade or commerce."

- 45. An act or practice is deceptive if it possesses the tendency or capacity to mislead or creates the likelihood of deception.
- 46. Defendants engaged in deceptive acts or practices in violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1602, by, without limitation:
  - a. Misrepresenting, either expressly or by implication, that the purchase of the Nebraska Game Day Experience included suite tickets to a University of Nebraska-Lincoln collegiate football game where instead consumers received general admission tickets.
  - b. Advertising the Nebraska Game Day Experience without the intent to sell it as advertised, by Defendants failing to provide consumers with suite tickets to a University of Nebraska-Lincoln collegiate football game.
  - c. Misrepresenting to consumers, expressly or by implication, that the purchase of the Nebraska Game Day Experience involved watching a University of Nebraska-Lincoln collegiate football game with a former football player, including but not limited to, Brandon Reilly, Jared Crick, Johnny Rodgers, Jay Foreman, Zach Potter, Brent Qvale, Alex Henery, and Jerry Murtagh. The Nebraska Game Day Experience, as sold and experienced, did not provide the opportunity to watch the game with any of the aforementioned football players.
  - d. Misrepresenting to consumers, expressly or by implication, that the purchase of the Nebraska Game Day Experience came with perks including but not limited; a commemorative check presentation, a personal thank you message from a former University of Nebraska collegiate

football player on the player's social media, a commemorative football autographed by former Husker players and the entire Nebraska football coaching staff, and a gift bag curated by a well-known former Husker player from BleedHuskerRed by JOLT Design when the Nebraska Game Day Experience, as sold and experienced, did not come with any of these perks.

47. Defendants' actions constitute deceptive acts or practices in the conduct of any trade or commerce in violation of Neb. Rev. Stat.
§ 59-1602. Each and every advertisement, failure to disclose information, misrepresentation, deceptive representation, and fraudulent representation constitutes a separate and independent violation of the Consumer Protection Act. Neb. Rev. Stat. § 59-1602.

# COUNTS V THROUGH VI: VIOLATIONS OF THE CONSUMER PROTECTION ACT, UNFAIRNESS (Neb. Rev. Stat. § 59-1602 et seq.)

- 48. The State of Nebraska re-alleges the facts above and incorporates them herein by reference.
- 49. The Consumer Protection Act, Neb. Rev. Stat. § 59-1602, prohibits "unfair...acts or practices in the conduct of any trade or commerce."
- 50. An act or practice is unfair if it is offensive to public policy, immoral, unethical, oppressive, unscrupulous, or falls within some common law, statutory, or other established concept of unfairness, or causes substantial injury to consumers.

- 51. Defendants engaged in unfair acts or practices in violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1602 by, without limitation:
  - a. Systematically failing to provide consumers the benefit of the Nebraska Game Day Experience as bargained for by the consumers at the time of purchase.
  - b. Taking advantage of consumers' lack of knowledge regarding the sponsorship, endorsement, and features of the Nebraska Game Day Experience to induce consumers to purchase the Nebraska Game Day Experience without adequate substantiation for the claimed sponsorship, endorsement, and features.
- 52. Defendants' actions constitute unfair acts or practices in the conduct of any trade or commerce in violation of Neb. Rev. Stat. § 59-1602. Each and every act constitutes a separate and independent violation of the Consumer Protection Act. Neb. Rev. Stat. § 59-1602.

# COUNTS VII THROUGH IX: VIOLATIONS OF THE UNIFORM DECEPTIVE TRADE PRACTICES ACT (Neb. Rev. Stat. § 87-301 et seq.)

- 53. The State of Nebraska re-alleges the facts above and incorporates them herein by reference.
- 54. Section 87-302(a) of the Uniform Deceptive Trade Practice Act specifies multiple practices, which when conducted in the course of business, constitute a deceptive trade practice.

- 55. Defendants are "persons" within the meaning of the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301(19).
- 56. Defendants engaged in deceptive trade practices in violation of the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-302 by, without limitation:
  - a. Using or employing deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or concealment, suppression, or omission of any material fact in connection with the Nebraska Game Day Experience by representing that the proceeds of the Nebraska Game Day Experience would be donated to various charities. None of the proceeds of the sale of the Nebraska Game Day Experience went to any of these charities. Neb. Rev. Stat. §87-302(a)(21).
  - b. Representing expressly or by implication, that the Nebraska Game Day Experience includes watching a University of Nebraska-Lincoln football game with a former collegiate football player at the University of Nebraska-Lincoln, including but not limited to, Brandon Reilly, Jared Crick, Johnny Rodgers, Jay Foreman, Zach Potter, Brent Qvale, Alex Henery, and Jerry Murtagh when the Nebraska Game Day Experience did not have this sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities. Neb. Rev. Stat. §87-302(a)(5).
  - c. Representing expressly or by implication, that the Nebraska Game Day Experience comes with perks including but not limited to; a commemorative check presentation, a personal thank you message from a former University of Nebraska collegiate football player

on the player's social media, a commemorative football autographed by former Husker players and the entire Nebraska football coaching staff, and a gift bag curated by a well-known former Husker player from BleedHuskerRed by JOLT Design when the Nebraska Game Day Experience when the Nebraska Game Day Experience did not have this sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities. Neb. Rev. Stat. § 87-302(a)(5).

57. Defendants' actions constitute deceptive trade practices in violation Neb. Rev. Stat. § 87-302. Each and every advertisement, failure to disclose information, misrepresentation, deceptive representation, and fraudulent representation constitutes a separate and independent violation of the Uniform Deceptive Trade Practices Act. Neb. Rev. Stat. § 87-302

## PRAYER FOR RELIEF

**WHEREFORE,** the State of Nebraska, respectfully requests that this Court:

A. Permanently enjoin and restrain Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from using or employing deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or concealment, suppression, or omission of any material fact in connection with the solicitation of funds or assets for any charitable purpose or which represents that the funds or assets will be used for any charitable purpose as alleged in the Complaint and in violation of the Uniform Deceptive Trade Practices Act under Neb. Rev. Stat. § 87-303.05

- B. Permanently enjoin and restrain Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them from engaging in unfair or deceptive acts or practices, in violation of the Consumer Protection Act and Uniform Deceptive Trade Practices Act, in connection with the advertising, marketing, and sale of the Nebraska Game Day Experience and any other similar product and service under Neb. Rev. Stat. §§ 59-1608(1) and 87-303.05.
- C. Permanently enjoin and restrain Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair or deceptive acts or practices, in violation of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act under Neb. Rev. Stat. §§ 59-1608(1) and 87-303.05.
- D. Order Defendants to pay civil penalties for each violation of the Uniform Deceptive Trade Practices Act and the Consumer Protection Act pursuant to Neb. Rev. Stat. §§ 87-303.11 and 59-1614.
- E. Order Defendants to restore to every person any money acquired by Defendant as a result of their violation of the Uniform Deceptive Trade Practices Act and the Consumer Protection Act pursuant to Neb. Rev. Stat. §§ 87-303.05(1) and 59-1608(2).
- F. Order Defendants to pay the State's costs and attorney's fees in this matter, pursuant to Neb. Rev. Stat. §§ 87-303(b) and 59-1608(1).
- G. Order any other relief that the Court deems just and equitable.

DATED this 14<sup>th</sup> day of September 2023.

## STATE OF NEBRASKA, Plaintiff.

BY: MICHAEL T. HILGERS, #24483 Nebraska Attorney General BY: <u>/s/Justin C. McCully</u> Justin C. McCully, #27067 2115 State Capitol Lincoln, NE 68509-8920 Telephone: (402) 471-2682 Fax: (402) 471-4725 Justin.mccully@nebraska.gov

Attorneys for *Plaintiff* 

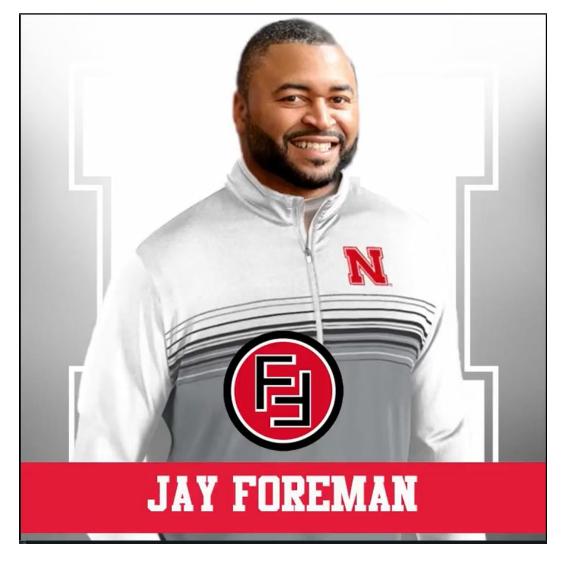
### FIGURE A



[Remainder Left Intentionally Blank]



# FIGURE B



[Remainder Left Intentionally Blank]



# FIGURE C



[Remainder Left Intentionally Blank]

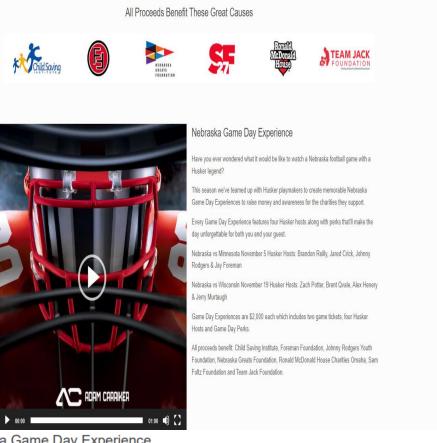


# FIGURE D





### FIGURE E



Nebraska Game Day Experience

Have you ever wondered what it would be like to watch a Nebraska football game with a Husker legend?

This season we've teamed up with Husker playmakers to create memorable Nebraska Game Day Experiences to raise money and awareness for the charities they support.

Every Game Day Experience features four Husker hosts along with perks that'll make the day unforgettable for both you and your guest.

Nebraska vs Minnesota November 5 Husker Hosts: Brandon Reilly, Jared Crick, Johnny Rodgers & Jay Foreman

Nebraska vs Wisconsin November 19 Husker Hosts: Zach Potter, Brent Qvale, Alex Henery & Jerry Murtaugh

Game Day Experiences are \$2,000 each which includes two game tickets, four Husker Hosts and Game Day Perks.

All proceeds benefit: Child Saving Institute, Foreman Foundation, Johnny Rodgers Youth Foundation, Nebraska Greats Foundation, Ronald McDonald House Charities Omaha, Sam Foltz Foundation and Team Jack Foundation.



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### FIGURE F

Upon purchase of a Nebraska Game Day Experience you will receive an email confirmation from: gameday@adamcarriker.com.

Two weeks prior to your Game Day Experience you will be contacted via email with additional Game Day details and will receive applicable passes via USPS registered mail. Once you receive your passes you will be required to send an email confirming receipt.

This Game Day Experience is non-transferable and cannot be resold. Should you be unavailable to attend we will work with you to name a replacement friend(s) or family member(s.)

In the event that your celebrity is unable to attend the Game Day Experience you purchased you will be contacted immediately. Should you decide to cancel; your purchase will be fully refunded and the Game Day Experience will be relisted with an alternate celebrity.

Game Day Experiences will fully comply with applicable University of Nebraska policies.

All proceeds: \$2500.00 per experience benefit the following charities:

Child Saving Institute Foreman Foundation Johnny Rodgers Youth Foundation Nebraska Greats Foundation Sam Foltz Foundation Ronald McDonald House Charities Omaha

The purchaser will receive an acknowledgement receipt after their Nebraska Game Day Experience is completed.

Celebrities have graciously donated their time for this campaign and are not paid to participate.

### NFLUENCE

Nebraska Game Day Experience is administered by NFLUENCE, a collective of Nebraska creatives that work probono for Nebraska charities and the philanthropic messaging of Nebraska Influencers.



### FIGURE G



All proceeds benefit: Child Saving Institute, Foreman Foundation, Johnny Rodgers Youth Foundation, Nebraska Greats Foundation, Ronald McDonald House Charities Omaha, Sam Foltz Foundation and Team Jack Foundation.

#### EACH GAME DAY EXPERIENCE INCLUDES



You'll watch the game from the comfort of a suite which includes private restrooms, high-definition televisions and catered food and beverages.



Autographed Commemorative Football You'll receive a commemorative football autographed by all our Husker celebrity hosts and the entire Nebraska Football Coaching staff.



Four Husker Celebrity Hosts





BleedHuskerRed Gift Bag

You'll receive a gift bag curated by Adam Carriker from BleedHuskerRed by JOLT Design.



Check Presentation

Your photo will be taken with a commemorative check and your Husker host will post a thank you message on their social media.



**Two Suite Tickets** 

You'll watch the game from the comfort of a suite which includes private restrooms, high-definition televisions and catered food and beverages.



### Autographed Commemorative Football

You'll receive a commemorative football autographed by all our Husker celebrity hosts and the entire Nebraska Football Coaching staff.



### FIGURE H



#### Four Husker Celebrity Hosts

You'll watch the game with Husker legends and get their X's & O's insight.



#### BleedHuskerRed Gift Bag

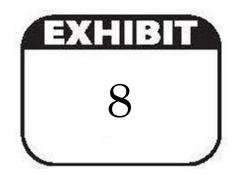
You'll receive a gift bag curated by Adam Carriker from BleedHuskerRed by JOLT Design.



#### **Check Presentation**

Your photo will be taken with a commemorative check and your Husker host will post a thank you message on their social media.

[Remainder Left Intentionally Blank]



### FIGURE I

You'll receive a commemorative football autographed by all our Husker celebrity hosts and the entire Nebraska Football Coaching staff. BleedHuskerRed by JOLT Design.

### Nebraska vs Minnesota November 5, 2022 With Brandon Reilly, Jared Crick, Johnny Rodgers and Jay Foreman.





Watch Nebraska vs Minnesota with Brandon Reilly

Brandon's charity of choice is the Sam Foltz Foundation

The Sam Foltz Foundation provides scholarships and supports other civic functions that were important to Sam such as veteran's and children's causes.

#### Purchase Brandon Reilly Experience

Opens in new window to a secure Stripe checkout page.

Watch Nebraska vs Minnesota with Jared Crick

#### Jared's charity of choice is Team Jack Foundation

The Team Jack Foundation's mission is to raise money to fund impactful pediatric brain cancer research and work to create national awareness for the disease.

#### Purchase Jared Crick Experience

Opens in new window to a secure Stripe checkout page.

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### FIGURE J

Nebraska vs Wisconsin November 19, 2022 With Zach Potter, Brent Qvale, Alex Henery and Jerry Murtaugh.



Watch Nebraska vs Wisconsin with Zach Potter

#### Zach's charity of choice is the Ronald McDonald House Charities Omaha

The specific purpose of the Ronald McDonald House Charities is to support access to care, reduce financial burden, provide psychosocial support keeping families together, enhance clinical experiences and outcomes and help families resume normalcy.

### Purchase Zach Potter Experience

Opens in new window to a secure Stripe checkout page.

#### Watch Nebraska vs Wisconsin with Brent Qvale

Brent's charity of choice is Team Jack Foundation

The Team Jack Foundation's mission is to raise money to fund impactful pediatric brain cancer research and work to create national awareness for the disease.

### Purchase Brent Qvale Experience

Opens in new window to a secure Stripe checkout page.

