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14 Page)

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 WILLIAM F. RUSSELL, on behalf of  
18 himself and all others similarly situated,

19 Plaintiff,

20 v.

21 NATIONAL COLLEGIATE ATHLETIC  
22 ASSOCIATION (a/k/a the "NCAA");  
23 COLLEGIATE LICENSING COMPANY  
24 (a/k/a "CLC"); and ELECTRONIC  
25 ARTS, INC.,

26 Defendants.

27 **C11-04938**

28 CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1. Plaintiff and putative Class Representative William F. Russell (known as "Bill Russell"), one of the very greatest NCAA, NBA and Olympic basketball players in history, brings this action both individually and on behalf of antitrust damages and injunctive relief classes (collectively, the "Antitrust Classes" or "Antitrust Class") consisting of former student-athletes who competed for NCAA member colleges or universities on those schools': (1) "Division I"

CLASS ACTION COMPLAINT

ORIGINAL  
FILED

OCT - 5 2011

RICHARD J. KING  
CLERK OF COURT  
NORTHERN DISTRICT OF CALIFORNIA

ADP

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1 men's basketball athletic teams; and (2) "Football Bowl Subdivision" (formerly known until 2006  
2 as "Division I-A") men's football athletic teams whose images have been licensed or sold by  
3 Defendants, their co-conspirators, or their licensees from July 21, 2005 and continuing until a  
4 final judgment in this matter (the "Antitrust Class Period"), or may be in the future. For purposes  
5 of the injunctive relief class only, Plaintiff also brings this action on behalf of current student-  
6 athletes competing on the teams described above, as well as former student-athletes, as both  
7 groups' future compensation rights are impacted by the anticompetitive practices described  
8 herein.  
9

10 2. Plaintiff Russell joins the pending efforts in this Court initiated by former UCLA  
11 basketball star Ed O'Bannon, in his initial antitrust complaint and former NCAA and NBA legend  
12 Oscar Robertson in his antitrust complaint, both of whom have been joined by numerous other  
13 antitrust plaintiffs including Ray Ellis, Harry Flournoy, Tate George, Alex Gilbert, Sam Jacobson,  
14 Thad Jaracz, David Lattin, Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric Riley, Bob  
15 Tallent, and Danny Wimprine in the class action pending in this court and captioned *In re NCAA*  
16 *Student-Athlete Name & Likeness Licensing Litigation*, Case No. 4:09-cv-1967 CW (NC).  
17 Included in that litigation are also the "Right of Publicity" Plaintiffs, led by initial right of  
18 publicity class action plaintiff Sam Keller, and joined by Bryan Cummings, Lamarr Watkins and  
19 Byron Bishop. Plaintiffs are aware of at least three other plaintiffs that have subsequently  
20 instituted similar putative class action litigation in various courts, as well as a similar individual  
21 case brought in California state court by collegiate and professional basketball legend Kareem  
22 Abdul-Jabbar relating to the use of his collegiate image.  
23  
24

25 3. Including Plaintiff Russell, there thus now are at least 25 plaintiffs presently involved  
26 in litigation regarding the licensing, sale, and use of their collegiate images following cessation of  
27 their intercollegiate athletics career. Anticipating this matter will be consolidated *In re NCAA*  
28

1 *Student-Athlete Name & Likeness Licensing Litigation*, Case No. 4:09-cv-1967 CW (NC), for  
2 ease of reference herein Plaintiff Russell and the other antitrust plaintiffs are referred to  
3 collectively as the “Antitrust Plaintiffs” or “Antitrust Class Representatives” to ensure  
4 consistency with the other pending complaints.  
5

6 4. Defendants NCAA, EA, the CLC (the NCAA’s licensing arm), and their co-  
7 conspirators have committed violations of the federal antitrust laws by engaging in a price-fixing  
8 conspiracy and a group boycott / refusal to deal that has unlawfully foreclosed class members  
9 from receiving compensation in connection with the commercial exploitation of their images,  
10 likenesses and/or names following their cessation of intercollegiate athletic competition. The  
11 Antitrust Plaintiffs also set forth a claim for unjust enrichment and request that the Court require  
12 Defendants to provide an accounting of ill-gotten gains and the monies unlawfully withheld from  
13 Antitrust Class members. The Antitrust Plaintiffs further request that the Court establish a  
14 constructive trust for the benefit of class members and for the purpose of holding in trust the  
15 licensing revenues that Defendants and their co-conspirators have unlawfully diverted from  
16 Antitrust Class members.  
17

18 5. Defendants NCAA, CLC, and EA have additionally conspired to deprive Antitrust  
19 Class members from receiving compensation in connection with the use of their names, images,  
20 and likenesses in EA’s various NCAA video game products.  
21

22 6. One of the NCAA’s business partners, Thought Equity Motion (“TEM”), has  
23 described the NCAA’s video content archive as “one of the most unique and valuable content  
24 collections in the world.” Collegiate Images, LLC (“CI”), a licensing entity that represents more  
25 than 200 of the NCAA’s members, repeatedly stresses that in creating a digital library that  
26 contains thousands of collegiate games, coaches shows and highlights dating back to the early  
27  
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1 1900s, it is helping its members “maximize new revenue streams” and “monetize priceless  
2 collegiate video and images.”

3 7. Plaintiff Russell and the plaintiffs in the related matters competed in several eras  
4 (some as recently as a few years ago), and are representative of the thousands of other unnamed  
5 players and teammates from those eras whose collective efforts conveyed enormous financial  
6 benefits and glory upon their schools, conferences, the NCAA, and their many for-profit business  
7 partners. While all of those entities continue to enjoy commercial benefits from the sale and use  
8 of the players’ images following the conclusion of their collegiate athletic careers and to this day,  
9 the players have been foreclosed from participating or sharing in those benefits pursuant to the  
10 anticompetitive conduct described herein. The Antitrust Class Representatives are united in their  
11 efforts to achieve fairness for both past and future generations of collegiate athletes.  
12

13 8. As utilized herein, the term “former student athletes” includes those individuals that  
14 have permanently ceased competing on teams because of, for example, graduation; exhaustion of  
15 eligibility; injury; voluntary decisions to cease competition; and involuntary separations from  
16 teams due to decisions by coaches, schools, conferences, and/or the NCAA, and also includes  
17 those individuals that subsequently became professional athletes, whether prior to or after the  
18 exhaustion of their intercollegiate eligibility, and further includes current students that have  
19 remained in school but ceased competing on a collegiate athletic team.  
20

21 9. The term “Antitrust Damages Class” refers to former student-athletes as described  
22 herein. The term “Antitrust Declaratory and Injunctive Relief Class” includes both former and  
23 current student-athletes as described herein. As noted above, the terms “Antitrust Class” or  
24 “Antitrust Classes” include both Antitrust Damages and Declaratory and Antitrust Injunctive  
25 Relief class members, unless otherwise specified.  
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1           10. Defendant NCAA describes itself as “the organization through which the colleges  
2 and universities of the nation speak and act on athletics matters at the national level” and states  
3 that it is a “voluntary association of more than 1,000 institutions, conferences and organizations.”  
4 The NCAA’s official “licensing representative” is CLC, a for-profit entity that is a defendant  
5 herein, which is a division of IMG Worldwide, Inc. (“IMG”). CLC states on its website that there  
6 is a “\$4.0 billion annual market for collegiate licensed merchandise.”  
7

8           11. As described below, the NCAA has unreasonably and illegally restrained trade in  
9 order to commercially exploit former student-athletes previously subject to its control, with such  
10 exploitation affecting those individuals well into their post-collegiate competition lives. The  
11 NCAA’s conduct is blatantly anticompetitive and exclusionary, as it wipes out in total the future  
12 ownership interests of former student-athletes in their own images -- rights that all other members  
13 of society enjoy -- even long after student-athletes have ceased attending a university.  
14

15           12. The NCAA, acting through its members, and in conjunction with its for-profit  
16 business partners, has eliminated the rights of former student-athletes to receive even a single  
17 dollar from the substantial revenue streams described herein. Former-student athletes do not  
18 share in these revenues even though they have never given informed consent to the widespread  
19 and continued commercial exploitation of their images. While the NCAA, its members, and its  
20 for-profit business partners reap millions of dollars from revenue streams including television  
21 contracts, rebroadcasts of “classic” games, DVD game and highlight film sales and rentals, on-  
22 demand streaming and sales of games and clips, “stock footage” sales to corporate advertisers and  
23 others, photograph sales, video game sales, and jersey and other apparel sales, former student-  
24 athletes whose likenesses are utilized to generate those profit-centers receive no compensation  
25 whatsoever.  
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28

1           13.     Only within recent years has the NCAA entered into some of the licensing  
2 partnerships detailed herein that unlawfully utilize the images of Antitrust Class members. The  
3 related available content featuring images, likenesses, and/or names of former student-athletes,  
4 such as DVDs, photos, and video games, continues to grow in both availability and popularity,  
5 and growth will continue to explode as merchandise continues to be made available in new  
6 delivery formats as developing technology and ingenuity permits, as exemplified by the  
7 substantial library of “on demand” internet content now available for sale for NCAA games going  
8 back several decades.

10           14.     Article 2.9 of the NCAA’s Constitution (“The Principle of Amateurism”) states in  
11 part that “[s]tudent participation in intercollegiate athletics is an avocation, and *student athletes*  
12 *should be protected from exploitation by professional and commercial enterprises.*” (emphasis  
13 added). Article 2.15 of the NCAA’s Constitution (“The Principle Governing Postseason  
14 Competition and Contests Sponsored by Noncollegiate Organizations”) states the following:

16           The conditions under which postseason competition occurs shall be  
17 controlled to assure that the benefits inherent in such competition  
18 flow fairly to all participants, to prevent unjustified intrusion on the  
19 time student-athletes devote to their academic programs, and to  
20 *protect student-athletes from exploitation by professional and*  
21 *commercial enterprises.* (emphases added).

22           Additionally, the NCAA describes its “NCAA Brand” as follows: “**Learning. Balance. Spirit.**  
23 **Community. Fair play. Character.** These are the attributes that the NCAA promotes through its  
24 branding initiative. An important part of the NCAA brand is a consistent image that supports  
25 these attributes.” (emphasis in original).

26           15.     The NCAA accomplishes its unreasonable restraint of trade in part by requiring all  
27 student-athletes to sign a form each year – such as 2008’s “Form 08-3a” – that purports to require  
28 each of them to relinquish all rights in perpetuity to the commercial use of their images, including  
after they graduate and are no longer subject to NCAA regulations. (See Exhibit A). Form 08-3a

1 is purposefully misleading, incomplete and ambiguous on its face, and student-athletes, including  
2 minors, must sign it under duress and without informed consent.

3           16.     The NCAA further requires student-athletes to sign at least one other similarly  
4 illegal consent form pursuant to Article 12.5.1.1 of its Bylaws (the “Institutional, Charitable,  
5 Educational, or Nonprofit Promotions Release Statement”), that allows commercial exploitation  
6 of former student-athletes by effecting another purported perpetual release of rights. The  
7 NCAA’s Bylaws contain further provisions allowing for-profit third parties to benefit financially  
8 from the commercial exploitation of former student-athletes. The penalty for a student-athlete  
9 who refuses to sign the forms described herein is that the student-athlete is declared permanently  
10 ineligible for participation on his or her respective team, unless he or she later signs the forms.  
11

12           17.     More specifically, Form 08-3a purports to cause student-athletes to release in  
13 perpetuity their rights to obtain compensation in connection with use by the NCAA, or the  
14 NCAA’s designated “third parties,” of a student-athlete’s “name or picture to generally promote  
15 NCAA championships or other NCAA events, activities or programs.” Similar language is  
16 contained in the “Institutional, Charitable, Educational, or Nonprofit Promotions Release  
17 Statement.” The NCAA, without advising its student-athletes, has taken that purposefully  
18 ambiguous language as a license to develop an array of multi-media revenue streams for itself  
19 without providing any compensation whatsoever to the former athletes whose images are sold  
20 over and over again via NCAA-owned, controlled, and licensed entities. Form 08-3a and the  
21 “Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement” are contracts  
22 of adhesion, imposed via anticompetitive conduct and agreement, and are plainly unenforceable.  
23

24           18.     The NCAA’s forms in fact do not in any way grant licenses in perpetuity, or even  
25 ones extending beyond the conclusion of any student-athlete’s collegiate athletics career.  
26 Student-athletes have not transferred or conveyed their rights in the licensing or use of their  
27  
28

1 image following the cessation of their participation on NCAA teams. The NCAA and its  
2 members, under its control and direction, have no right to license or use players' images,  
3 likenesses and/or names upon the conclusion of their participation in intercollegiate athletics.  
4 The NCAA and others, however, have agreed to act as if their forms do grant perpetual licenses  
5 with no limits, and further agreed to license and use the wrongfully obtained rights.  
6

7 19. In addition to agreeing to wrongfully interpret the release forms as perpetual  
8 licenses, the NCAA has operated as an illegal horizontal cartel, additionally facilitated by  
9 Defendants CLC and EA. That cartel has collectively and illegally conspired to limit and depress  
10 the compensation of former student-athletes for continued use of their images to zero.  
11 Defendants' and their co-conspirators' actions further constitute a group boycott / refusal to deal.  
12 Their concerted action requires all student-athletes to sign each year the forms described herein  
13 that purport to require each of them to relinquish all rights in perpetuity for use of their images.  
14 This concerted action is in effect a refusal to deal with Antitrust Class members on future post-  
15 competition rights issues.  
16

17 20. The NCAA's abridgement of former student-athletes' economic rights in  
18 perpetuity is unconnected to any continuing pro-educational benefits for former student-athletes,  
19 who by definition are no longer student-athletes. Defendants' patently anticompetitive and illegal  
20 scheme has unreasonably restrained trade, and is a violation of the Section 1 of the Sherman Act.  
21

22 21. In additional to violating the federal antitrust laws, Defendants have unjustly  
23 enriched the NCAA, its members, and its for-profit business partners. Defendants' actions have  
24 deprived Antitrust Class members of their ability to exploit their right of publicity, which protects  
25 the misappropriation of a person's identity for commercial use by another, and such use can  
26 consist of the person's name, visual likeness, or other "indicia of identity" such as voice,  
27 photograph, signature, or physical mannerisms.  
28

1           22.    In September of 2008, the NCAA's then-President, Myles Brand, acknowledged  
2 that student-athletes possess a right of publicity. In connection with an explanation as to why the  
3 NCAA would not sue its business partner, the CBS television network, over its use of college  
4 player information in its "fantasy sports" statistical game, President Brand wrote the following:

5  
6                   Some have urged the NCAA to seek legal remedy to this poke in  
7 the eye of intercollegiate athletics. They want us to sue the  
8 producers on the grounds that the use of names of student-athletes  
9 violates the principle of amateurism.

10                   Well, it does.

11                   But that likely isn't good enough to bring suit. The stake in the  
12 ground is the right to control publicity by athletes of their names,  
13 likenesses and identification. Indeed, courts might very well find  
14 that student-athletes should be held apart from professional athletes  
15 in this application. The benefit that naturally comes with the  
16 publicity of names and statistics for professionals is critical enough  
17 that those athletes assign their rights to organizations to manage.

18                   But in the case of intercollegiate athletics, the right of publicity is  
19 held by the student-athletes, not the NCAA. We would find it  
20 difficult to bring suit over the abuse of a right we don't own.

21           The NCAA's express acknowledgement of current student-athletes' rights of publicity is equally  
22 applicable to former student-athletes.

23           23.    In the NCAA's 2009 "State of the Association" speech, Wallace I. Renfro, the  
24 NCAA's vice president and senior advisor to President Myles Brand, stated the following:

25                   There are commercial activities in which universities should not  
26 engage even if it generates substantial revenues for athletics. A  
27 crystal clear example is that student-athletes should not be  
28 commercially exploited. They are students, not professionals.  
Exploiting student-athletes for commercial purposes is as contrary  
to the collegiate model as paying them.

                  There are several orthogonal parameters that must be understood in  
order to find the balance point for commercial activity. These  
parameters include the locus of responsibility for controlling  
commercial activity, the underlying types of activity relevant to  
college sports, and the potential for diminishing or eliminating  
cases of run-away commercialism.

1  
2 Whatever "orthogonal parameters" are being weighed by the NCAA and its business partners,  
3 they do not include any form of compensation to former student-athletes.

4         24. Reasonable and less restrictive alternatives are available than the NCAA's "zero  
5 compensation" policy for former student-athletes' licensing rights. For example, all of the major  
6 professional sports, including basketball and football, have identified and utilized group-licensing  
7 methods to share revenues among teams and players. Additionally, other reasonable and less  
8 restrictive alternatives could include the establishment of funds for health insurance, additional  
9 educational or vocational training, and/or pension plans to benefit former student athletes.

10  
11         25. On behalf of the Antitrust Damages Class described herein, the Antitrust Plaintiffs  
12 seek relief herein including monetary damages, to be automatically trebled under the federal  
13 antitrust laws; disgorgement and restitution of all monies by which the Defendants have been  
14 unjustly enriched; and declaratory relief that Form 08-3a, the "Institutional, Charitable,  
15 Educational, or Nonprofit Promotions Release Statement," and any similar forms regarding future  
16 compensation rights are void and unenforceable. The Antitrust Plaintiffs further seek an  
17 accounting of the monies received by Defendants, their co-conspirators, and their licensees in  
18 connection with the exploitation of Antitrust Damages Class members' images, likenesses, and/or  
19 names and the establishment of a constructive trust to benefit Antitrust Damages Class members.  
20

21         26. The Antitrust Plaintiffs, on behalf of both former and current student-athletes,  
22 additionally request injunctive relief permanently enjoining the NCAA and its members from  
23 utilizing the provisions Form 08-3a, the "Institutional, Charitable, Educational, or Nonprofit  
24 Promotions Release Statement," and any similar forms that purport to deprive former student-  
25 athletes of licensing and/or compensation rights, and further enjoining Defendants from selling,  
26 licensing, or using former student-athletes' rights.  
27

1                    JURISDICTION AND VENUE WITH RESPECT TO ANTITRUST CLAIMS

2            27.     The Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal  
3 question) and 28 U.S.C. § 1337 (commerce and antitrust regulation), as this action arises under  
4 Section 1 of the Sherman Act, 15 U.S.C. § 1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C.  
5 §§ 15(a) and 26. The Court has supplemental subject matter jurisdiction over the pendent state  
6 law claims under 28 U.S.C. § 1367. The Court also has jurisdiction over this matter pursuant to  
7 28 U.S.C. § 1332(d), in that this is a class action in which the matter or controversy exceeds the  
8 sum of \$5,000,000, exclusive of interest and costs, and in which some members of the proposed  
9 class are citizens of a state different from the Defendants.  
10

11            28.     Venue is proper because Defendants reside, are found, have agents, and transact  
12 business in this District as provided in 28 U.S.C. § 1391(b) and (c) and in Sections 4 and 12 of  
13 the Clayton Act, 15 U.S.C. §§ 15 and 22.  
14

15            29.     This Court has personal jurisdiction over Defendants because, *inter alia*, they:  
16 (a) transacted business throughout the United States, including in this District; (b) participated in  
17 organizing intercollegiate athletic contests, and/or licensing or selling merchandise throughout the  
18 United States, including in this District; (c) had substantial contacts with the United States,  
19 including in this District; and (d) were engaged in an illegal anticompetitive scheme that was  
20 directed at and had the intended effect of causing injury to persons residing in, located in, or  
21 doing business throughout the United States, including in this District. Additionally, Defendant  
22 EA maintains its headquarters in this District. Numerous NCAA Division I universities or  
23 colleges also are found within this District, *i.e.*, the University of California’s Berkeley campus  
24 (“Cal”), Stanford University, Santa Clara University, the University of San Francisco (“USF”),  
25 and St. Mary’s College.  
26  
27  
28

PLAINTIFF

1  
2           30.     Antitrust Plaintiff William F. ("Bill") Russell is a resident of Seattle, Washington.  
3 Mr. Russell is universally acknowledged as one of the very greatest basketball players in history.  
4 He competed on the University of San Francisco ("USF") varsity men's basketball team in this  
5 District in the 1953-54, 1954-55 and 1955-56 seasons. During his college career at USF, Mr.  
6 Russell was the centerpiece of an effort to turn an unranked team in his first year to a two-time  
7 national championship team, with a 56-game winning streak, in the following two years. In the  
8 1954-55 NCAA postseason tournament, Mr. Russell was named the Most Outstanding Player of  
9 the Final Four. Upon graduating, Mr. Russell played in the 1956 Olympics in Melbourne,  
10 Australia, leading the United States to a Gold Medal. His career had only just begun. He  
11 continued on to play for the NBA's Boston Celtics for the remainder of his career, where he won  
12 a remarkable 11 NBA championships in 13 years, a number that has never since been approached.  
13 Mr. Russell is a five-time NBA Most Valuable Player, 12-time NBA All-Star, the second all-time  
14 leading rebounder in NBA history, and was named one of the 20 greatest athletes of all time by  
15 ESPN. His number 6 jersey was retired by the Boston Celtics in 1972 and he was inducted into  
16 the Basketball Hall of Fame in 1975. Mr. Russell's accomplishments including beyond athletics  
17 were further recognized in 2011, when President Obama awarded him with the highest honor a  
18 civilian can receive in the United States, the Presidential Medal of Freedom.  
19  
20

21           31.     Mr. Russell competed pursuant to the NCAA's rules and regulations, and has been  
22 deprived of compensation by Defendants and their co-conspirators for the continued use of his  
23 image following the end of his intercollegiate athletic career. Mr. Russell signed one or more of  
24 the release forms discussed herein (or the precursors to them, including scholarship and eligibility  
25 papers that the NCAA has interpreted as a release of the student-athlete's rights with respect to  
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1 his image, likeness and/or name in connection with merchandise sold by the NCAA, its members,  
2 and/or its licensees).

3 32. Mr. Russell's image, likeness and/or name, along with those of other Antitrust  
4 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period  
5 in at least the ways described below, without informed consent from him and without  
6 compensation paid to him. For example, on the NCAA's On Demand on-line store, operated in  
7 connection with its for-profit business partner Thought Equity Motion, a 1955 NCAA national  
8 championship game featuring University of San Francisco vs. La Salle is offered for sale at \$150  
9 per DVD, or via bulk orders for 25 or more DVDs at pricing available on request. A 1955 NCAA  
10 national semi-final game featuring Colorado vs. University of San Francisco is offered for sale at  
11 \$150 per DVD, or via bulk orders for 25 or more DVDs at pricing available on request. Similar  
12 materials are available for the 1956 NCAA championship game featuring University of San  
13 Francisco vs. Iowa, the NCAA regional final game featuring University of San Francisco vs.  
14 Utah, and the national semifinal game vs. Southern Methodist.

17 33. The championship game is also offered for sale via other outlets, for example, via  
18 efootage.com, which licenses out the footage of the game for varying prices depending on the use  
19 and length of footage.

20 34. On Thought Equity Motion's footage licensing website, at least 54 video-clips  
21 featuring Mr. Russell's collegiate images are currently available for licensing with "custom  
22 pricing."

23 35. As another example of formats in which Antitrust Damages Class members'  
24 images, likenesses and/or names are being utilized subject to the anticompetitive restraints  
25 detailed herein, on one of the NCAA's on-line photo stores, at least four images of Mr. Russell  
26 are offered for sale. On NCAAPhotos.com, an image with the caption "University of San  
27  
28

1 Francisco's Bill Russell (6) gets a ride off the court by fans after defeating La Salle 77-63 to win  
2 the NCAA National Basketball title in Kansas City, MO . . ." is offered for sale at price points  
3 ranging from \$15 to \$200. A team photo featuring Mr. Russell and his teammates with the  
4 national championship trophy is available at the same price points. At least two additional  
5 images of Mr. Russell in his USF uniform are for sale via Getty Images' website, and upon  
6 information and belief, Getty Images has had a contractual relationship with the NCAA relating  
7 to photo sales.  
8

9 36. Additionally, Mr. Russell's image, likeness and/or name has been used in replays  
10 of the championship game and clips from the game including on the ESPN Classic network, as  
11 well as on broadcasts of University of San Francisco basketball games during telecasts of West  
12 Coast Conference games including within the last two years.  
13

14 37. Upon information and belief, Mr. Russell's image, likeness and/or name has been  
15 used and sold in additional ways for additional uses via the licensing entities such as Defendant  
16 CLC and TEM described herein.

17 38. Additionally, Defendant EA utilized Mr. Russell's name, image and/or likeness in  
18 connection with its NCAA licensed videogames, including in 2009. In a November 12, 2008  
19 interview, Novell Thomas, EA's Associate Producer for NCAA Basketball 09 stated the  
20 following:  
21

22 However, rather than talking about the 2008-2009 teams, I'm going  
23 to take you back to the past and talk about classic teams.

24 The Tournament of Legends is a customizable, 64 team, single  
25 elimination tournament. Top teams from the 50's, 60's, 70's, 80's,  
26 90's and 2000's are selectable. Coming up with and nailing down  
27 the legendary teams was not an easy process. A lot of time was  
28 spent researching the best teams and players from the various eras.  
Some of the factors we looked at were: championships won,  
win/loss records, team personnel and memorable team and player  
performances. To ensure that we had the correct teams selected, we  
leveraged our partners and contacts at ESPN and Blue Ribbon. We

1 also got Basketball Hall of Fame contributor, Dick Vitale's  
2 thoughts and recommendations - after all, he's been around college  
3 basketball for years and has seen all of these teams and players  
4 first hand.

5 Here's a breakdown of the various players and teams throughout  
6 the various eras. I apologize in advance for not being able to  
7 include names:

8 **50's....One of the best players of all time played during this era.  
9 The University of San Francisco's center, #6, is arguably one of  
10 the best players to play that position. He won two  
11 championships and many many more at the professional level.  
12 Any player who averages 20 points and 20 rebounds per game  
13 during his college career, is definitely worth playing with.**

14 39. As a result of the federal antitrust violations described herein, Antitrust Plaintiff  
15 Russell was injured in his business or property, and was unfairly deprived of compensation in  
16 connection with the use and sale of his image, likeness and/or name.

#### 17 ANTITRUST DEFENDANTS

18 40. Defendant NCAA is an unincorporated association with its principal place of  
19 business located in Indianapolis, Indiana.

20 41. Defendant CLC is a for-profit corporation incorporated under the laws of Georgia  
21 with its principal place of business located at 290 Interstate N Circle SE, Suite 200, Atlanta,  
22 Georgia 30339. IMG College, a division of IMG, identifies CLC as its "licensing team," and  
23 states that CLC is "the unrivaled leader in collegiate brand licensing, managing the licensing  
24 rights for nearly 200 leading institutions that represent more than \$3 billion in retail sales and  
25 more than 75% share of the college licensing market." IMG identifies itself as "a leading  
26 collegiate marketing, licensing and media company."

27 42. Defendant EA is a for-profit corporation incorporated under the laws of Delaware  
28 with its principal place of business located in this District at 209 Redwood Shores Parkway,  
Redwood City, California 94065. EA is publicly traded on the NASDAQ stock exchange (ticker  
symbol: ERTS) and identifies itself as "the world's leading interactive entertainment software

1 company” and states that it “develops, publishes, and distributes interactive software worldwide  
2 for video game systems, personal computers, cellular handsets and the Internet.” In its 2008  
3 fiscal year, EA had revenues of \$3.67 billion and 27 of its titles sold more than one million  
4 copies. As described herein, the NCAA has entered into license agreements with EA relating to  
5 the use of the likenesses of members of the Antitrust Classes in video games available via various  
6 platforms.  
7

8 43. Whenever in this Complaint reference is made to any act, deed, or transaction of  
9 the Defendants, the allegation means that the Defendants engaged in the act, deed, or transaction  
10 by or through their officers, directors, agents, employees, or representatives while they were  
11 actively engaged in the management, direction, control or transaction of Defendants’ business or  
12 affairs.  
13

#### 14 ANTITRUST CO-CONSPIRATORS

15 44. Various other persons, firms, corporations, and entities (including, but not limited  
16 to, TEM, CI, Getty Images, and Learfield Sports) have participated as unnamed co-conspirators  
17 with Defendants in the violations and conspiracy alleged herein, including the NCAA’s members.  
18 In order to engage in the offenses charged and violations alleged herein, these co-conspirators  
19 have performed acts and made statements in furtherance of the antitrust violations and other  
20 violations alleged herein.  
21

22 45. At all relevant times, each co-conspirator was an agent of Defendants and each of  
23 the remaining co-conspirators, and in doing the acts alleged herein, was acting within the course  
24 and scope of such agency. Defendants and each co-conspirator ratified and/or authorized the  
25 wrongful acts of Defendants and each of the other co-conspirators. Defendants and the co-  
26 conspirators, and each of them, are participants as aiders and abettors in the improper acts and  
27 transactions that are the subject of this action.  
28

1 INTERSTATE TRADE AND COMMERCE WITH RESPECT TO ANTITRUST CLAIMS

2 46. The business activities of Defendants that are the subject of this action were within  
3 the flow of, and substantially affected, interstate trade and commerce.

4 47. During the Antitrust Class Period, Defendants transacted business in multiple  
5 states in a continuous and uninterrupted flow of interstate commerce throughout the United  
6 States.

7  
8 ANTITRUST ALLEGATIONS

9  
10 CLASS ACTION ALLEGATIONS WITH RESPECT TO ANTITRUST CLAIMS

11 48. Plaintiff brings this action under Federal Rule of Civil Procedure 23(b)(2) and  
12 (b)(3) on their own behalf and on behalf of the following Antitrust Classes:

13 The "Antitrust Declaratory and Injunctive Relief Class":

14  
15 All current and former student-athletes residing in the United States  
16 who compete on, or competed on, an NCAA Division I college or  
17 university men's basketball team or on an NCAA Football Bowl  
18 Subdivision (formerly known as Division I-A until 2006) men's  
19 football team and whose images, likenesses and/or names may be,  
20 or have been, licensed or sold by Defendants, their co-conspirators,  
21 or their licensees after the conclusion of the athlete's participation  
22 in intercollegiate athletics.

23 The Class also excludes the officers, directors, and employees of  
24 Defendants, the officers, directors and employees of any NCAA  
25 Division I college or university, and the officers, directors, or  
26 employees of any NCAA Division I athletic conference.

27 The "Antitrust Damages Class":

28 All former student-athletes residing in the United States who  
competed on an NCAA Division I college or university men's  
basketball team or on an NCAA Football Bowl Subdivision  
(formerly known as Division I-A until 2006) men's football team  
whose images, likenesses and/or names have been licensed or sold  
by Defendants, their co-conspirators, or their licensees from July  
21, 2005 and continuing until a final judgment in this matter. The  
class does not include current student-athletes.

The Class also excludes the officers, directors, and employees of  
Defendants, the officers, directors, and employees of any NCAA

1 Division I college or university, and the officers, directors, or  
2 employees of any NCAA Division I athletic conference.

3 Members of the Antitrust Damages and Declaratory and Antitrust Injunctive Relief Classes are  
4 collectively referred to herein as the "Antitrust Class" or the "Antitrust Classes" unless otherwise  
5 individually specified.

6 49. In addition to seeking certification of nationwide classes for the antitrust claims,  
7 Plaintiff also seeks certification of a nationwide class for purposes of their unjust enrichment /  
8 constructive trust and accounting claims.

9 50. Antitrust Plaintiffs do not know the exact number of Antitrust Class members,  
10 because that information is in the exclusive control of Defendants and third parties, including the  
11 NCAA's members. However, due to the nature of the trade and commerce involved, Plaintiffs  
12 believe that the Antitrust Class members number in the thousands and are geographically diverse  
13 so that joinder of all Antitrust Class members is impracticable. Given that the NCAA is selling  
14 and licensing the images, likenesses and/or names of players from many decades, as described  
15 herein, it stands to reason that there are more former student athletes than current ones affected by  
16 the NCAA's anticompetitive practices described herein.

17 51. There are questions of law and fact common to members of both the Antitrust  
18 Damages Class and the Antitrust Declaratory and Injunctive Relief Class, including but not  
19 limited to the following:

- 20
- 21
- 22
- 23 a. whether Defendants and their co-conspirators engaged in or  
24 entered into a contract, combination, or conspiracy among  
25 themselves to fix, depress, maintain, and/or stabilize prices  
26 paid to Antitrust Class members for use of their images,  
27 likenesses and/or names after the conclusion of their  
28 participation in intercollegiate athletics;
- b. whether Defendants' unlawful conduct has enabled them to  
decrease, maintain, or stabilize below competitive levels  
the output, and compensation / royalties that Antitrust Class

1 members would receive for use, of their images, likenesses  
2 and/or names in a market free of anticompetitive  
constraints;

- 3 c. the duration of the contract, combination, or conspiracy  
4 alleged herein;
- 5 d. whether Defendants violated Section 1 of the Sherman Act;
- 6 e. whether Defendant NCAA's Form 08-03a, and any similar  
7 forms, are void and unenforceable;
- 8 f. whether Defendant NCAA's "Institutional, Charitable,  
9 Educational, or Nonprofit Promotions Release Statement,"  
and any similar forms, are void and unenforceable; and
- 10 g. whether the conduct of Defendants and their co-  
11 conspirators caused injury to the business or property of  
Plaintiffs and Antitrust Class members.

12 52. Additional common questions of law of fact specific to the Antitrust Damages

13 Class include the following:

- 14 a. the appropriate measure of damages sustained by Plaintiffs and class members;  
15 and
- 16 b. whether Defendants have been unjustly enriched.

17 53. The common questions with respect to the Antitrust Damages Class predominate  
18 over questions, if any, that affect only individual Antitrust Damages Class members.

19 54. With respect to the Antitrust Declaratory Relief and Injunctive Relief Classes,  
20 common questions of law or fact include the following:

- 21 a. whether injunctive relief is appropriate;
- 22 b. if injunctive relief is appropriate, what types of such relief are suitable in this  
23 matter;
- 24 c. whether declaratory relief is appropriate;
- 25 d. whether a constructive trust for the benefit of class members should be  
26 established; and
- 27 e. whether an accounting is appropriate.
- 28

1           55.     With respect to members of the Antitrust Declaratory and Injunctive Relief Class,  
2 Defendants have acted or refused to act on grounds generally applicable to the Antitrust Class,  
3 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect  
4 to the Antitrust Declaratory and Injunctive Relief Class as a whole.

5  
6           56.     Antitrust Plaintiffs' claims are typical of, and not antagonistic to, the claims of the  
7 other Antitrust Class members. By advancing their claims, Antitrust Plaintiffs will also advance  
8 the claims of all Antitrust Class members, because Defendants participated in activity that caused  
9 all Antitrust Class members to suffer similar injuries.

10           57.     Antitrust Plaintiffs and their counsel will fairly and adequately protect the interests  
11 of absent Antitrust Class members. There are no material conflicts between Antitrust Plaintiffs'  
12 claims and those of absent Antitrust Class members that would make class certification  
13 inappropriate. Counsel for Antitrust Plaintiffs are highly experienced in complex class action  
14 litigation, including antitrust litigation, and will vigorously assert Plaintiffs' claims and those of  
15 absent Antitrust Class members.  
16

17           58.     A class action is superior to other methods for the fair and efficient resolution of  
18 this controversy. The class action device presents fewer management difficulties, and provides  
19 the benefit of a single adjudication, economy of scale, and comprehensive supervision by a single  
20 court. The damages suffered by Antitrust Plaintiffs and each Antitrust Damages Class member  
21 are relatively small as compared to the expense and burden of individual prosecution of the  
22 claims asserted in this litigation. Thus, absent class certification, it would not be feasible for  
23 Plaintiffs and Antitrust Class members to redress the wrongs done to them. It also would be  
24 grossly inefficient for the judicial system to preside over large numbers of individual cases.  
25 Further, individual litigation presents the potential for inconsistent or contradictory judgments  
26 and would greatly magnify the delay and expense to all parties and to the judicial system.  
27  
28

1 Therefore, the class action device presents far fewer case management difficulties and will  
2 provide the benefits of unitary adjudication, economy of scale, and comprehensive supervision by  
3 a single court.

4  
5  
6 **THE NCAA AND ITS CONTROL OF THE COLLEGIATE LICENSING MARKET**

7 59. Each year, the colleges and universities who are members of the NCAA award  
8 more than 11,500 athletic scholarships to men's football and basketball players.

9 A. **The NCAA and its Structure and Governance.**

10 60. In its Consolidated Statement of Financial Position, dated August 31, 2008, the  
11 NCAA stated the following:

12  
13 The National Collegiate Athletic Association (the NCAA or the  
14 Association) is an unincorporated not-for-profit educational  
15 organization founded in 1906. The NCAA is the organization  
16 through which the colleges and universities of the nation speak and  
17 act on athletics matters at the national level. It is a voluntary  
18 association of more than 1,000 institutions, conferences and  
19 organizations devoted to the sound administration of  
20 intercollegiate athletics in all its phases. Through the NCAA, its  
21 members consider any athletics issue that has crossed regional or  
22 conference lines and is national in character. The NCAA strives  
23 for integrity in intercollegiate athletics and serves as the colleges'  
24 national athletics accrediting agency. A basic purpose of the  
25 NCAA is to maintain intercollegiate athletics as an integral part of  
26 the educational program and the athlete as an integral part of the  
27 student body.

28 The NCAA operates through a governance structure which  
empowers each division to guide and enhance their ongoing  
division-specific activities. In Division I, the legislative system is  
based on conference representation and an eighteen member Board  
of Directors that approves legislation. The Division II and III  
presidential boards are known as the Presidents Council; however,  
legislation in Division II and III is considered through a one-  
school, one-vote process at the NCAA Annual Convention. The  
governance structure also includes an Executive Committee  
composed of sixteen chief executive officer (member institution  
chief executive officers) that oversee association-wide issues

1 which is charged with ensuring that each division operates  
2 consistently with the basic purposes, fundamental policies and  
3 general principles of the NCAA. The Executive Committee has  
4 representation from all three divisions and oversees the  
5 Association's finances and legal affairs.

6 61. On its website, the NCAA further describes itself as being "comprised of  
7 institutions, conferences, organizations and individuals committed to the best interests, education  
8 and athletics participation of student-athletes." The NCAA further states that its members are the  
9 "colleges, universities and conferences that make up the NCAA," and that "[t]he members  
10 appoint volunteer representatives that serve on committees which introduce and vote on rules  
11 called bylaws. The members also establish programs to govern, promote and further the purposes  
12 and goals of intercollegiate athletics." The NCAA additionally states "[m]any believe the  
13 Association rules college athletics; however, it is actually a bottom-up organization in which the  
14 members rule the Association."

15 62. The 2008-09 NCAA "Division I Manual" is comprised of the NCAA's  
16 Constitution, its Operating Bylaws, and its Administrative Bylaws, which together span more  
17 than 400 pages. These rules regulate all aspects of collegiate athletic competition, and  
18 demonstrate the NCAA's control of the collegiate licensing market and the horizontal agreements  
19 by which the NCAA's members agree to abide by, implement, and enforce the rules.  
20

21 **B. The NCAA's Anticompetitive Form 08-3a.**

22 63. Bylaw 12.5.1.1.1 ("Promotions Involving NCAA Championships, Events,  
23 Activities or Programs") states the following:  
24

25 The NCAA [or a third party acting on behalf of the NCAA (*e.g.*,  
26 host institution, conference, local organizing committee)] may use  
27 the name or picture of an enrolled student-athlete to generally  
28 promote NCAA championships or other NCAA events, activities or  
programs.

1           64. Before a student-athlete commences athletic participation each year, the NCAA  
2 requires that he or she sign its "Form 08-3a." titled "Student-Athlete Statement." The form is of  
3 particular importance due to its provision regarding student-athletes' release of rights in  
4 connection with use of their images, likenesses and/or names. It appears that the title of this form  
5 changes each year in connection with the applicable year.  
6

7           65. The mandatory nature of the form on which student-athletes must agree to the  
8 terms of Bylaw 12.5.1.1.1 is detailed in the Constitution and Bylaws. Specifically, Article 3.2.4.6  
9 of the Constitution ("Student-Athlete Statement") states the following:

10                         An active member shall administer annually, on a form prescribed  
11                         by the Legislative Council, a signed statement for each student-  
12                         athlete that provides information prescribed in Bylaws 14.1.3 and  
13                         30.12.

14           66. Bylaw 14.1.3.1 ("Content and Purpose"), referred to in Article 3.2.4.6 of the  
15 Constitution, details the contents of the required form and states the following:

16                         Prior to participation in intercollegiate competition each academic  
17                         year, a student-athlete shall sign a statement in a form prescribed by  
18                         the Legislative Council in which the student athlete submits  
19                         information related to eligibility, recruitment, financial aid, amateur  
20                         status, previous positive drug tests administered by any other  
21                         athletics organization and involvement in organized gambling  
22                         activities related to intercollegiate or professional athletics  
23                         competition under the Association's governing legislation. Failure  
24                         to complete and sign the statement shall result in the student-  
25                         athlete's ineligibility for participation in all intercollegiate  
26                         competition. Violations of this bylaw do not affect a student-  
27                         athlete's eligibility if the violation occurred due to an institutional  
28                         administrative error or oversight, and the student-athlete  
                              subsequently signs the form; however, the violation shall be  
                              considered an institutional violation per Constitution 2.8.1.

29           67. Bylaw 14.1.3.2 ("Administration") continues that "[t]he institution shall administer  
30 this form individually to each student-athlete prior to the individual's participation in  
31 intercollegiate competition each year. Details about the content, administration, and disposition of  
32 the statement are set forth in Bylaw 30.12."

1           68.    Bylaw 30.12 (“Student-Athlete Statement”), referred to in Article 3.2.4.6 of the  
2 Constitution and in Bylaw 14.1.3.2, states the following:

3                   The following procedures shall be used in administering the  
4 student-athlete statement required in Bylaw 14.1.3:

- 5                   (a) The statement shall be administered individually to each  
6 student-athlete by the athletics director or the athletics  
7 director’s designee prior to the student’s participation in  
8 intercollegiate competition each academic year;
- 9                   (b) The statement shall be kept on file by the athletics director and  
10 shall be available for examination upon request by an  
11 authorized representative of the NCAA; and
- 12                   (c) The athletics director shall promptly notify in writing the vice  
13 president of NCAA’s education services group regarding a  
14 student-athlete’s disclosure of a previous positive drug test  
15 administered by any other athletics organization.

16           69.    Form 08-3a states that it is “required by NCAA Constitution 3.2.4.6 and NCAA  
17 Bylaws 14.1.3.1 and 30.12,” and that its purpose is “[t]o assist in certifying eligibility.” It further  
18 notes that “[t]his NCAA Division I statement/consent form shall be in effect from the date this  
19 document is signed and shall remain in effect until a subsequent Division I Student-Athlete  
20 Statement/Drug-Testing Consent form is executed.” Form 08-3a has seven parts, including the  
21 following: “[a]statement concerning eligibility;” “[a]n affirmation of status as an amateur  
22 athlete;” and “[a] statement concerning the promotion of NCAA championships and other NCAA  
23 events.”

24           70.    Under Part IV (“Promotion of NCAA Championships, Events, Activities or  
25 Programs”), student athletes must sign and agree to the following:

26                   You authorize the NCAA [or a third party acting on behalf of the  
27 NCAA (e.g., host institution, conference, local organizing  
28 committee)] to use your name or picture to generally promote  
NCAA championships or other NCAA events, activities or  
programs.

1           71.     Part IV, described in the preceding paragraph, has been utilized by the NCAA and  
2 its co-conspirators to engage in the unlawful licensing of Antitrust Class members' commercial  
3 rights. Its provision stating that it "shall remain in effect until a subsequent Division I Student-  
4 Athlete Statement/Drug-Testing Consent form is executed" has the effect of granting a purported  
5 release in perpetuity.

6  
7           72.     Notably, Form 08-3a states that it is "required by NCAA Constitution 3.2.4.6 and  
8 NCAA Bylaws 14.1.3.1 and 30.12" and that its purpose is to "assist in certifying eligibility." The  
9 referenced sections of the Constitution and Bylaws, however, do not convey, transfer, or grant  
10 any rights of the student-athlete to the NCAA, its member institutions, or its licensees. The  
11 sections referenced regarding the Constitution and Bylaws have to do with matters concerning  
12 eligibility, disclosure of educational and drug testing records, and affirmation of amateur status  
13 requirements. Relying on these provisions, the NCAA has created an anti-competitive and  
14 unconscionable perpetual release relating to image rights.

15  
16           73.     The "authorization" described above in Form 08-3a is entirely coerced and  
17 uninformed and is even signed, in some cases, by minors.

18           74.     Form 08-3a is evidence of the NCAA's repeated attempts to obfuscate issues about  
19 sales of merchandise by referring to the vague and ambiguous concept of "promot[ion] of NCAA  
20 championships or other NCAA events, activities or programs of college athletics." The  
21 ambiguous word "support" also appears in the "Institutional, Charitable, Education or Nonprofit  
22 Promotions Release" mandated by Article 12.5.1.1 of the Bylaws. No reasonable person, upon  
23 reading Form 08-3a, and the "Institutional, Charitable, Education or Nonprofit Promotions  
24 Release" described below, would interpret phrases such as "support educational activities," or  
25 "generally promote NCAA championships or other NCAA events, activities or programs" to  
26 specifically grant a license in perpetuity for former players' images to be used for profit, over  
27  
28

1 many years, in DVDs, on-demand video, video games, photographs for sale, “stock footage” sold  
2 to corporate advertisers, “classic games” for re-broadcast on television, jersey and apparel sales,  
3 and other items.

4 75. The NCAA’s releases described herein are also notable for their failure to indicate  
5 that legal rights are being relinquished, and for their failure to counsel student-athletes, who are  
6 sometimes minors, that they may wish to seek legal advice in connection with the release of  
7 future compensation rights.  
8

9 76. At a hearing in this matter on December 17, 2009, upon questioning from the  
10 Court, counsel for the NCAA confirmed the NCAA’s interpretation of its release forms as  
11 follows:  
12

13 “[THE COURT]: SO DO YOU VIEW THE THINGS THAT  
14 THEY SIGNED, OR SOME PEOPLE MAY HAVE SIGNED,  
15 AND WHEN THEY GRADUATE FROM COLLEGE, AFTER  
16 THAT, THEY ARE NOT BOUND BY IT ANYMORE?”

17 [NCAA Counsel]: IT DEPENDS ON WHICH THING WE ARE  
18 TALKING ABOUT, YOUR HONOR.

19 [THE COURT]: ANY OF THEM. DO THEY ALL END ON  
20 GRADUATION OR IS THERE SOME THAT YOU CONTEND  
21 REALLY DO CONTINUE TO APPLY?

22 [NCAA Counsel]: THE FORM 08-3A AND 09-3A, BY THEIR  
23 TERMS, GIVE THE NCAA A LIMITED RIGHT, AND IT’S  
24 LIMITED TO USE CERTAIN LIKENESSES THAT WERE  
25 CREATED DURING THE TIME PERIOD THAT THE PERSON  
26 WAS A STUDENT ATHLETE FOR THE LIMITED PURPOSE  
27 OF PROMOTING NCAA CHAMPIONSHIPS AND GENERAL  
28 NCAA EVENTS.

[THE COURT]: ONLY UP UNTIL THE TIME THEY  
GRADUATE?

[NCAA Counsel]: NO, THAT CONTINUES.

(12/17/10 Hearing Tr., at 44:19 – 45:9)

1           77. This is not the first occasion in which the NCAA has sought to prevent input from  
2 legal counsel on matters that affect student-athletes' post-collegiate endeavors. In an Opinion  
3 dated February 12, 2009, in the matter of *Oliver v. National Collegiate Athletic Association*  
4 (*"Oliver"*), Judge Tygh M. Tone of the Common Pleas Court of Erie County, Ohio, examined the  
5 NCAA's Bylaw 12.3.2.1. That Bylaw states that "A lawyer may not be present during  
6 discussions of a contract offer with a professional organization or have any direct contact (in  
7 person, by telephone or by mail) with a professional sports organization on behalf of the  
8 individual. A lawyer's presence during such discussions is considered representation by an  
9 agent." A player utilizing an "agent" in such negotiations is deemed ineligible under the NCAA's  
10 rules, whereas one who does not utilize an agent can retain his eligibility if he chooses to return to  
11 school and not become a professional. The court ruled that "Bylaw 12.3.2.1 is arbitrary and  
12 capricious and against the public policy of the State of Ohio as well as all states within this Union  
13 and further limits the player's ability to effectively negotiate a contract."

14  
15  
16           78. The court in *Oliver* further stated that the effect of the Bylaw "is akin to a patient  
17 hiring a doctor but the doctor is told by the hospital board and the insurance company that he (the  
18 doctor) cannot be present when the patient meets with a surgeon because the conference may  
19 improve his patient's decision making power." The court additionally stated that "[i]f the  
20 Defendant [NCAA] intends to deal with this athlete or any athlete in good faith, the student-  
21 athlete should have the opportunity to have the tools present (in this case an attorney) that would  
22 allow him to make a wise decision without automatically being deemed a professional, especially  
23 when such contractual negotiations can be overwhelming, even to those who are skilled in their  
24 implementation."  
25

26           79. On October 9, 2009, *The New York Times* reported that the NCAA agreed to settle  
27 the case and pay Mr. Oliver \$750,000.  
28

1           80.     The NCAA, through its total control of intercollegiate athletics, and due to a gross  
2 disparity in bargaining power, requires student-athletes to sign nonnegotiable forms, as the terms  
3 are nonnegotiable. Any Class member declining to do so is barred by the NCAA and the relevant  
4 member institution from all further intercollegiate athletic competition.

5  
6           C.     The NCAA's Anti-Competitive "Institutional, Charitable, Educational, or  
7                 Nonprofit Promotions Release Statement" Mandated by NCAA Bylaws  
8                 Section 12.5.1.1.

9           81.     Article 12.5.1.1 ("Institutional, Charitable, Education or Nonprofit Promotions")  
10 also results in the creation of an unconscionable release that benefits members. This release also  
11 is the product of the anticompetitive agreement described herein among the NCAA and its  
12 members. Article 12.5.1.1 states in pertinent part the following:

13                     A member institution or recognized entity thereof (e.g., fraternity,  
14                     sorority or student government organization), a member conference  
15                     or a non-institutional charitable, educational or nonprofit agency  
16                     may use a student-athlete's name, picture or appearance to support  
17                     its charitable or educational activities or to support activities  
18                     considered incidental to the student-athlete's participation in  
19                     intercollegiate athletics, provided the following conditions are met:

- 20                     (a) The student-athlete receives written approval to participate  
21                     from the director of athletics (or his or her designee who may  
22                     not be a coaching staff member), subject to the limitations on  
23                     participants in such activities as set forth in Bylaw 17;
- 24                     (b) The specific activity or project in which the student-athlete  
25                     participates does not involve co-sponsorship, advertisement or  
26                     promotion by a commercial agency other than through the  
27                     reproduction of the sponsoring company's officially registered  
28                     regular trademark or logo on printed materials such as pictures,  
                      posters or calendars. The company's emblem, name, address,  
                      telephone number and Web site address may be included with  
                      the trademark or logo. Personal names, messages and slogans  
                      (other than an officially registered trademark) are prohibited;
- (c) The name or picture of a student-athlete with remaining  
                      eligibility may not appear on an institution's printed  
                      promotional item (e.g., poster, calendar) that includes a  
                      reproduction of a product with which a commercial entity is  
                      associated if the commercial entity's officially registered

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regular trademark or logo also appears on the item;

- (d) The student-athlete does not miss class;
- (e) **All moneys derived from the activity or project go directly to the member institution, member conference or the charitable, educational or non-profit agency (emphases added);**
- (f) The student-athlete may accept actual and necessary expenses from the member institution, member conference or the charitable, educational or nonprofit agency related to participation in such activity;
- (g) The student-athlete's name, picture or appearance is not used to promote the commercial ventures of any nonprofit agency;
- (h) Any commercial items with names, likenesses or pictures of multiple student-athletes (other than highlight films or media guides per Bylaw 12.5.1.7) may be sold only at the member institution at which the student-athletes are enrolled, institutionally controlled (owned and operated) outlets or outlets controlled by the charitable or educational organization (e.g., location of the charitable or educational organization, site of charitable event during the event). Items that include an individual student-athlete's name, picture or likeness (e.g., name on jersey, name or likeness on a bobble-head doll), other than informational items (e.g., media guide, schedule cards, institutional publications), may not be sold; and
- (i) **The student-athlete and an authorized representative of the charitable, educational or nonprofit agency sign a release statement ensuring that the student-athlete's name, image or appearance is used in a manner consistent with the requirements of this section. (emphasis added).**

82. The preceding Bylaw, with its mandated release pursuant to subsection (i), has been utilized by the NCAA's members to engage in the unlawful licensing of Antitrust Class members' rights, as intended by the NCAA. Just as described herein with respect to the NCAA's Form 08-3a, this mandated release constitutes an unconscionable contract that is both procedurally and substantively unconscionable.

1           83.    Bylaw 12.5.1.7 (“Promotion by Third Party of Highlight Film, Videotape or Media  
2 Guide”) states the following:

3                   Any party other than the institution or a student-athlete (e.g., a  
4 distribution company) may sell and distribute an institutional  
5 highlight film or videotape or an institutional or conference media  
6 guide that contains the names and pictures of enrolled student-  
athletes only if:

- 7                   (a)    The institution specifically designates any agency that is  
8 authorized to receive orders for the film, videotape or media  
guide;
- 9                   (b)    Sales and distribution activities have the written approval of  
10 the institution’s athletics director;
- 11                   (c)    The distribution company or a retail store is precluded from  
12 using the name or picture of an enrolled student-athlete in any  
13 poster or other advertisement to promote the sale or  
distribution of the film or media guide; and
- 14                   (d)    There is no indication in the makeup or wording of the  
15 advertisement that the squad members, individually or  
16 collectively, or the institution endorses the product or services  
of the advertiser.”

17           84.    The above-provision appears to purport to give third parties (meaning for-profit  
18 “distribution companies”) the right to “sell and distribute” highlight films upon approval from the  
19 school, without even mandating a release from the student-athlete. However, the release that the  
20 NCAA mandates in its Bylaw 12.5.1.1(h), described a few paragraphs above, has been utilized by  
21 the NCAA and its members to unlawfully license and use the commercial rights of former  
22 student-athletes’ rights in the use of their images.

23           85.    The *Des Moines Register* recently confirmed that schools do in fact require  
24 student-athletes to sign the NCAA’s mandated consent forms, and reported the following in an  
25 article that also described two schools’ receipt of funds relating to the NCAA’s video game  
26 license agreement with Defendant EA (as further detailed herein):

27                   The athletic departments for Iowa and Iowa State ask for student-

1 athletes' consent before using their likeness on any promotional  
2 material for the schools.

3 "Generally, the way we approach it is we've been very conservative  
4 over the years," Iowa athletic director Gary Barta said. "When we  
5 do sell the likeness of a student-athlete, we have signed permission  
6 ... and all the proceeds from those sales go back directly to benefit  
7 student-athletes in general (through the school's athletic fund)."

8 The "consent" and "permission," described above, however, is entirely coerced and uninformed,  
9 as intended by the NCAA and its business partners - its member schools, conferences, and for-  
10 profit licensees, and as such constitutes an unconscionable contract and is the product of  
11 anticompetitive conduct and agreement.

12 D. The Collegiate Licensing Market.

13 86. The NCAA and its members control the collegiate licensing market in the United  
14 States, including licensing rights to current and former players' images and likenesses (which are  
15 utilized in, for example, items such as DVDs of game films, on-demand sales of game films,  
16 "stock footage" for corporate advertisers, "classic" games shown on the cable television network  
17 "ESPN Classic" and other networks, photographs, video games, and in other merchandise).

18 87. IMG, the owner of the NCAA's licensing arm, Defendant CLC, recognizes the  
19 college market on its website as follows: "IMG College is a leading collegiate marketing,  
20 licensing and media company that can create and build comprehensive marketing platforms that  
21 leverage the marketing potential of the college sports and on-campus market. " IMG continues  
22 that "[c]onsumer devotion to college institutions is unrivaled, but the complexity of the space  
23 makes it challenging for marketers to tap the full potential. With our expertise, broad  
24 relationships and portfolio of properties, IMG College can help brands create platforms to reach  
25 millions of passionate, loyal fans." IMG further states that "[o]ur licensing team, The Collegiate  
26 Licensing Company, is the unrivaled leader in collegiate brand licensing, managing the licensing  
27 rights for nearly 200 leading institutions that represent more than \$3 billion in retail sales and  
28

1 more than 75% share of the college licensing market.” IMG on its website further states:  
2 “[h]aving originally contracted with IMG College in 1976, the NCAA has trusted the Company  
3 for nearly 30 years to lead the industry in delivering the power of the collegiate market to  
4 consumers nationwide.”

5  
6 88. The NCAA and its members have the ability to control price and exclude  
7 competition. The NCAA and its members control the output and set the price for licensed  
8 merchandise and licensing rights and have the power to exclude from this market any member  
9 who is found to violate its rules. The NCAA can and does exclude both current and former  
10 student-athletes from this market, as evidenced by the usage of the anticompetitive forms  
11 described herein. The NCAA and its members have obtained a 100% share in the licensing  
12 market. With respect to current student-athletes, those players would collectively have a share of  
13 that market absent the vehicles described herein by which they are required to transfer those  
14 rights to the NCAA, its members, and others. Former student-athletes, including the members of  
15 the Antitrust Damages Class described herein, also would have a share of the market, absent the  
16 anticompetitive practices described herein.  
17

18 89. The NCAA (through its members) thus totally controls the licensing rights market,  
19 and is able to dictate the supply and the terms upon which licensed products and licenses are  
20 bought and sold.  
21

22 90. Another indicator of the NCAA and its members’ power include the fact that *all*  
23 student-athletes are required to sign the forms described herein and pursuant to which the NCAA  
24 has unlawfully licensed the rights of former student-athletes are forced to release all future rights  
25 to the commercial use of their images. Student-athletes must sign these forms, even if he or she  
26 does not receive a scholarship. The NCAA has the power to impose and enforce the releases, and  
27 to exclude non-signing athletes from participation in all future intercollegiate competition, as well  
28

1 as penalize schools whose athletes violate the terms of the forms and related rules, regardless of  
2 whether the athlete receives any scholarship funds.

3 91. The NCAA, through its member schools, imposes a wide variety of conditions on  
4 student-athletes. For example, they may not receive compensation beyond educational expenses  
5 approved by the NCAA; they may not retain an agent for exploitation of their future professional  
6 career; they must meet minimum requirements for educational progress; and they are strictly  
7 limited in receiving compensation for non-athletic services that might be understood to reflect on  
8 their athletic ability. If student-athletes had the opportunity to receive a college education and  
9 compete at an elite level of intercollegiate competition without these restrictions, many student-  
10 athletes would choose to do so. The fact that they agree to these conditions demonstrates the  
11 market power of the NCAA member schools, *i.e.*, the lack of any reasonable substitute for those  
12 who wish to receive a college education and compete in elite intercollegiate athletic competition.  
13  
14

15 92. The demand for student-athletes is such that, absent the unlawful Form 08-3a, the  
16 “Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement,” and any  
17 other similar device that the NCAA has utilized to attempt to eliminate compensation owed to  
18 former student-athletes, the colleges and universities participating in the relevant markets would  
19 have competed against each other by offering higher amounts of post-graduation licensing  
20 revenues to student athletes. For example, schools, in order to compete with each other, could  
21 offer players a portion of the revenue that the schools in turn receive via the NCAA and other  
22 sources for commercial exploitation of those players’ images. But under current anticompetitive  
23 conditions, compensation is “capped” at zero by artificial rules imposed by the NCAA that result  
24 in lower compensation than would otherwise prevail in a more competitive market.  
25  
26  
27  
28

1           93.     Thus, for the members of the proposed Antitrust Damages Class, increased  
2 competition on the terms of post-career revenue distribution for former athletes would result in  
3 additional revenue for all members of the proposed class.

4           94.     All NCAA members have agreed to utilize and abide by the NCAA's Bylaws,  
5 including the provisions detailed herein that mandate the use of Form 08-3a and the "Institutional,  
6 Charitable, Educational, or Nonprofit Promotions Release Statement" discussed herein, which  
7 have been used by the NCAA and its member institutions and conferences to fix the prices at  
8 which former student-athletes are paid for their commercial licensing rights or foreclosed from  
9 exercising any such rights.

10           95.    The NCAA and its members are able to engage in these anticompetitive  
11 agreements and arrangements, as there are no acceptable substitutes for major college football or  
12 major college basketball.

13           96.    The agreement among the NCAA and its members to jointly appropriate student-  
14 athletes' rights after the expiration of the students' eligibility as an amateur athlete is not  
15 necessary to achieve the NCAA's stated goal of clearly demarcating between college and  
16 professional sports, or to serve any pro-educational purpose, or any other legitimate, pro-  
17 competitive purpose in the marketing of college sports.

18           97.    Moreover, reasonable and less restrictive alternatives are available than the  
19 NCAA's "zero compensation" policy for former student-athletes' licensing rights. For example,  
20 all of the major professional sports, including basketball and football, have identified and utilized  
21 group-licensing methods to share revenues among teams and players. Additionally, other  
22 reasonable and less restrictive alternatives could include the establishment of funds for health  
23 insurance, additional educational or vocational training, and/or pension plans to benefit former  
24 student athletes.

1 FACTUAL ALLEGATIONS

2 A. The NCAA's 2009 "State of the Association" Speech Regarding Commercial  
3 Exploitation of Student-Athletes.

4 98. As noted above in the Introduction, Wallace Renfro, the NCAA's vice president  
5 and senior advisor to President Myles Brand gave its 2009 "State of the Association" speech. Mr.  
6 Renfro's remarks are notable for the contrast with the NCAA's actual conduct in exploiting  
7 former student-athletes, and his acknowledgment that "[g]eneration of much needed revenue does  
8 not justify the exploitation of student-athletes." Certainly the same holds true with respect to  
9 former student-athletes. Specifically, Mr. Renfro's remarks included the following:  
10

11 Any adequate policy of commercial activity must ensure that  
12 student-athletes are not commercially exploited.

13 Call this the condition of non-exploitation.

14 This condition is further delineated in the paper you received as  
15 you arrived today. When we say "student-athlete exploitation in  
16 commercial activity," we should have a specific definition in mind.

17 Since student-athletes are amateurs, not paid professionals, they  
18 cannot accept payment for endorsing or advertising any  
19 commercial product or service.

20 It also means they should not be put in a position in which the  
21 natural interpretation by a reasonable person is that they are  
22 endorsing or advertising a commercial product or service.

23 But most cases of exploitation are subtle and indirect.

24 Instead of obvious product endorsement, the marketing can include  
25 game pictures, films, audio or video of student-athletes that make it  
26 appear to a reasonable person that a student-athlete is endorsing a  
27 specific commercial product.

28 The student-athlete may well have no knowledge or awareness that  
his or her reputation, image or name is being used for these  
commercial purposes.

But exploitation may be the result, nonetheless.

Generation of much needed revenue does not justify the  
exploitation of student-athletes.

We can – and we should – debate the nature of proper commercial  
conduct. However, one principle is not subject to debate:

1 commercial exploitation of student-athletes is not permissible.

2 Period.

3 B. The NCAA's Web of Licensing Agreements With For-Profit Entities.

4 99. In the early 1980s, the total retail market for products identified with college  
5 athletics was estimated to be under \$100 million per year. The typical outlets for such sales were  
6 college book stores or other campus locations. In the mid-1990s, the market was estimated to  
7 have grown to \$2.5 billion per year, with the predominant sales locations being retail and chain  
8 stores. IMG now estimates that the market is a \$4.0 billion per year. The growth of the market  
9 has been explosive, and advances in technology and product delivery outlets, namely, the internet,  
10 cable television delivery systems, and video game technology advances, have accelerated the  
11 growth.  
12

13 100. A review of even the limited public information available regarding the NCAA's  
14 financial operations details the explosive growth in revenue that it has received in connection  
15 with sales of NCAA-related merchandise. In its 2002-03 Revenue Report, the NCAA listed  
16 receipt of "royalties" of \$3.8 million, and \$6.2 million in "sales and services" (along with \$370  
17 million in television revenue).  
18

19 101. In its 2007-08 report, the NCAA listed \$552 million in total revenue for "television  
20 and marketing rights fees" of which \$529 million was elsewhere attributed to revenues from its  
21 television contract with CBS, leaving an apparent \$23 million difference attributable to royalties.  
22 Additionally, the NCAA reported approximately \$14.5 million in revenue for "sales and  
23 services." Thus, in just a few years, it appears that the combination of royalties and sales and  
24 services went from \$10 million for the 2002-03 fiscal year (\$3.8 million plus \$6.2 million), to  
25 \$37.5 million (\$23 million plus \$14.5 million) in for the 2007-08 fiscal year. That number only  
26 represents the NCAA's portion obtained pursuant to currently unknown royalty rates, and does  
27  
28

1 not represent the total value of the associated sales via the NCAA's licensees, or sales made by  
2 member conferences and schools of goods.

3 102. Within recent years, the NCAA has entered into some of the licensing  
4 partnerships detailed herein that unlawfully utilize the images of Antitrust Class members. The  
5 related available content featuring likeness of former student-athletes, such as DVDs, photos, and  
6 video games, continues to grow in both availability and popularity, and growth will continue to  
7 explode as merchandise continues to be made available in new delivery formats as developing  
8 technology and ingenuity permits, as exemplified by the substantial library of "on demand"  
9 internet content now available for sale for NCAA games going back several decades.

10  
11 103. Through the NCAA's web of licensing agreements with for-profit companies, the  
12 NCAA sells its rights, its members' rights, and Damages Class members' rights that unlawfully  
13 exercises via the anticompetitive and unconscionable conduct described herein. On its website,  
14 the NCAA directs interested parties to contact Defendant CLC for licensing information.

15  
16 104. In the "Frequently Asked Questions" portion of its website, the NCAA provides  
17 various information with respect to licensing. Most notably, there is no information whatsoever  
18 regarding the rights of players – current or former – with regard to licensed merchandise. This  
19 total absence of information regarding the rights of players in the commercial licensing and usage  
20 of their images also is observed on the websites of the NCAA's licensing arm, Defendant CLC.

21  
22 The NCAA states the following regarding CLC:

23 The Collegiate Licensing Company is the licensing representative  
24 for the NCAA. CLC is responsible for administering the licensing  
25 program, including processing applications, collecting royalties,  
enforcing trademarks and pursuing new market opportunities for  
the NCAA.

26 i) CLC.

27 105. On its website, under "Terms of Use," Defendant CLC states the following:

28 The Collegiate Licensing Company ("CLC") is the trademark

1 licensing representative for nearly 200 colleges, universities, bowl  
2 games, athletic conferences, the Heisman Trophy and the NCAA  
3 (“CLC Institutions”). Based in Atlanta, CLC is a full-service  
4 licensing company, which employs a staff of more than 80  
5 licensing professionals with the capability to establish and manage  
6 every aspect of a collegiate licensing program.

7 106. CLC further states that it “is a division of global sports and entertainment company  
8 IMG,” that it was founded in 1981, and that it is “the oldest and largest collegiate licensing  
9 agency in the U.S.” On its website, CLC provides some information regarding its history and  
10 licensing operations. The content is notable for several reasons, as it details information about  
11 licensing agreements for coaches, universities, and the NCAA. There is not a single word devoted  
12 to the rights of former players. Specifically, CLC states the following:

13 Since its early days in 1981, CLC's mission has been to serve as  
14 the guiding force in collegiate trademark licensing and one of the  
15 top sports licensing firms in the country. As such, our company  
16 and staff have dedicated ourselves to being a center of excellence  
17 in providing licensing services of the highest quality to institutions,  
18 licensees, retailers, and consumers.

19 The consolidated approach to licensing offered by CLC provides  
20 every institution with a greater voice in the market, increased  
21 exposure, the broadest range of available licensing services, and  
22 reduced administration expenses, while still allowing for  
23 independent decision-making by each and every client. This  
24 approach, combined with our committed staff and industry-leading  
25 services has helped to guide and shape the \$4.0 billion annual  
26 market for collegiate licensed merchandise. CLC's long-standing  
27 relationships with retailers and licensees have also been essential  
28 to the growth of the industry and the success of each client's  
individual licensing program.

Today, the CLC Consortium represents the consolidated retail  
power of the many colleges, universities, athletic conferences,  
bowl games, and other collegiate institutions that comprise the  
CLC Consortium. The collective efforts that have contributed to  
the growth of the collegiate licensing industry will remain an  
important cornerstone of the industry in the future.

ii) IMG.

107. As noted above, Defendant CLC identifies itself as a division of IMG. One of  
IMG's divisions and/or brands appears to be known as “IMG College.” IMG has stated the  
following with respect to IMG College:

1 Named by the *Sports Business Journal* as America's Top Sports  
2 Marketing Agency, IMG College (formerly HOST) provides  
3 extensive, yet varied sports marketing services for several  
4 NCAA® Division I universities and conferences. IMG College  
5 represents Arizona, Cincinnati, Connecticut, Florida, Furman,  
6 Gonzaga, Kansas, Kentucky, Michigan, Nebraska, Ohio State,  
7 Oklahoma State, Oregon, Rice, South Alabama, Tennessee, Texas,  
8 Western Kentucky, Wofford and several conferences, including the  
9 Southeastern Conference, the Ohio Valley Conference, the  
10 Southern Conference and the West Coast Conference.

11 ...

12 The rights to these schools, conferences, and properties include  
13 some, or all, of the following: radio and television programs,  
14 publishing, printing, creative design, marketing, licensing, Internet,  
15 national advertising and signage sales, and numerous lifestyle and  
16 event marketing platforms.

17 Additionally, IMG College holds the distinct position of having the longest  
18 consecutive relationship with the National Collegiate Athletic  
19 Association® (NCAA), over and above any other contractor.  
20 Having originally contracted with IMG College in 1976, the  
21 NCAA has trusted the Company for nearly 30 years to lead the  
22 industry in delivering the power of the collegiate market to  
23 consumers nationwide.

24 Through an agreement with CBS Sports, IMG College oversees  
25 select NCAA rights including licensing, printing & publishing and  
26 special event promotions, like the NCAA Hoop City® interactive  
27 events.

28 108. IMG also has stated the following regarding IMG College:

Host Communications, Inc. (HOST) and the Collegiate Licensing  
Company (CLC) were joined to form IMG College, the premier  
college marketing, licensing and media company. IMG College  
creates opportunities for corporations to connect with specific  
audiences within the collegiate market . . .

Through its unique relationships with many of the elite universities  
and conferences, IMG College ultimately offers platforms that  
provide companies immediate access to more than 110 million  
loyal, passionate collegiate fans and alumni and more than 15  
million students enrolled in NCAA member institutions.

109. IMG also has stated that it “helps marketers leverage the passion and loyalty of  
America’s strongest collegiate brands.” It further has stated that “IMG College is a leading  
collegiate marketing, licensing and media company that can create and build comprehensive  
marketing platforms that leverage the marketing potential of the college sports and on-campus

1 market.” IMG also has stated that “[c]onsumer devotion to college institutions is unrivaled, but  
2 the complexity of the space makes it challenging for marketers to tap the full potential. With our  
3 expertise, broad relationships and portfolio of properties, IMG College can help brands create  
4 platforms to reach millions of passionate, loyal fans.”

5  
6 110. IMG has also stated that “[o]ur licensing team, The Collegiate Licensing  
7 Company, is the unrivaled leader in collegiate brand licensing, managing the licensing rights for  
8 nearly 200 leading institutions that represent more than \$3 billion in retail sales and more than  
9 75% share of the college licensing market.”

10 C. Description of Revenue Streams Relating to the Commercial Exploitation of  
11 Images of Former Student-Athletes.

12 111. There are a vast number of revenue streams generated in connection with  
13 collegiate sports. Many of those revenue streams are generated at least in part from the  
14 continuing commercial exploitation of the images, likenesses and/or names of former student-  
15 athletes. The following descriptions detail some of the current revenue streams of which  
16 Antitrust Plaintiffs are aware.

17  
18 a. Media Rights for Televising Games.

19 112. The NCAA, as well as individual conferences and schools, negotiates various  
20 deals with television networks to televise regular season and post-season games. In 1999, the  
21 NCAA and the CBS television network negotiated a deal that became effective in 2003, and that  
22 provided CBS with an 11-year right to televise the NCAA men’s postseason basketball  
23 tournament in exchange for a staggering \$6 billion.

24  
25 113. In 2008, the ESPN network and the NCAA’s Southeastern Conference negotiated  
26 a deal by which ESPN will pay the Southeastern Conference \$2.25 billion over 15 years to have  
27 the rights to televise all conference games that are not televised by the CBS network under  
28 another deal. In 2008, the Big Ten Network, operated by media giant News Corp., reached a deal

1 with the Big Ten Conference to televise conference games, and was estimated to potentially  
2 require a \$2.8 billion payment to the Big Ten Conference over the course of 25 years.

3 114. Many telecasts of games, in particular the NCAA tournament games, frequently  
4 show video clips of former student-athletes competing in prior tournament games as means of  
5 further enhancing viewers' experience of the current games.  
6

7 115. No valid and lawful releases with informed consent from Antitrust Class members  
8 have been obtained for the use of those clips, and any purported transfer of former student-  
9 athletes' rights relating to this usage is the product of the anticompetitive agreement described  
10 herein.

11 **b. DVD and On-Demand Sales and Rentals.**

12 116. The NCAA, in March of 2007, launched its "NCAA On Demand" website, which  
13 offers for sale telecasts of games from numerous decades in the DVD and "on-demand" delivery  
14 formats. This is not to be confused with a separate on-demand service by which live games are  
15 shown. In the "About Us" section of the website, the NCAA states the following:  
16

17 NCAA On Demand is a partnership between the NCAA and  
18 Thought Equity Motion, centered on providing fans of college  
19 athletics access to memorable moments and games of past  
20 collegiate events. NCAA On Demand will initially focus on NCAA  
21 championships, but will expand into the premier site for college  
22 athletics video with content from games and events from regular  
23 season and conference championships as well as unique content that  
24 has never been seen before.

25 Through a number of relationships NCAA On Demand will provide  
26 fans with video imagery in a variety of formats from DVDs to  
27 digital video. Fans will be able to relive past games through video  
28 streaming or purchase the game for their own collection.  
Additionally, NCAA On Demand will develop key elements that  
will allow fans to truly integrate with the collegiate athletics  
experience.

117. TEM identifies itself as the "world's largest supplier of online motion content,  
licensing and professional representation services to the agency, entertainment and corporate

1 production industries.” TEM has entered into a partnership with the NCAA to offer for sale  
2 DVDs and internet content utilizing images of Class Members. Additionally, TEM offers for sale  
3 more than 12,000 video clips of portions of NCAA games for uses including corporate  
4 advertisements, corporate in-house presentations, films, and television programs, as well as  
5 additional highlight films, complete games and interviews that utilize the images of Class  
6 Members. On its website, Thought EquityTEM states the following:  
7

8 We’re pleased to announce the launch of NCAA On Demand. For  
9 the first time, college sports fans and athletes can access the entire  
10 NCAA Championship Collection, which contains nearly 5,000  
11 championship games. While many fans have experienced college  
12 sports through football bowl games or March Madness, NCAA On  
13 Demand now makes championships from all 23 NCAA sports  
14 available.

15 Select content is available through free Internet streaming, so you  
16 can check out classic college highlights of Michael Jordan, Magic  
17 Johnson, Larry Bird and many others.

18 118. In an article dated March 7, 2007, the NCAA and TEM issued a press release that  
19 stated in part the following:  
20

21 “The NCAA is excited that supporters of collegiate athletics will  
22 have unprecedented access to the NCAA Championship Collection.  
23 We are pleased to open our archives to fans, former student-  
24 athletes, and member institutions that have added so much to  
25 American sports and society,” said Greg Shaheen, NCAA’s senior  
26 vice president for Basketball and Business Strategies.

27 “NCAA On Demand has always been a big part of our vision for  
28 making the NCAA video archive more accessible and valuable,”  
said Kevin Schaff, CEO of Thought Equity Motion. “Since we took  
over the management of the archive in 2005, we have had  
thousands of requests for classic games from fans and former  
student-athletes from all over the country. Through our partnership  
with the NCAA, we are proud to be able to make these moments  
accessible to the people who created them.”

119. The “accessibility” to “former student-athletes” comes at a price, and there is  
substantial irony in that such individuals must pay \$24.99 to purchase footage of a game in which

1 they played, and for which they never lawfully licensed, conveyed, or transferred their rights for  
2 compensation for use of those images, and for which are not provided any compensation in  
3 connection with any sales. Meanwhile, the NCAA and TEM receive a continuing revenue  
4 stream.

5  
6 120. At least the following numbers of games are available in various Men's sports:  
7 Basketball – 2,468; Football – 464; and Baseball – 525. Purchases of individual games typically  
8 cost \$24.99. Various box sets are also available, and the purchase price typically exceeds \$100  
9 for those sets.

10 121. Defendant CLC, the NCAA's official licensing company, states on its website, as a  
11 part of its "Terms of Use" Agreement, the following:

12  
13 The Collegiate Exchange ("TCE") - TCE is CLC's online business-  
14 to-business trading exchange. TCE is provided by CLC in  
15 conjunction with iCongo.com. Through this site, retailers can view  
16 catalogs from participating licensees and place orders for collegiate  
17 merchandise. Only collegiate retail stores and licensees can  
18 participate in this program. There are costs for licensees to  
19 participate in TCE. Please visit  
20 <http://www.thecollegiateexchange.com> to view terms and  
21 conditions specific to TCE.

18 The Collegiate Exchange's website in turn indicates that retailers can purchase hundreds of  
19 licensed products for sale, including "Highlight Tapes/DVDs."

20  
21 122. The NCAA also recently entered into yet another venture with a for-profit entity to  
22 sell DVDs. On January 20, 2009, the NCAA announced the release of its DVD titled "NCAA  
23 March Madness: The Greatest Moments of the NCAA Tournament," with a suggested retail price  
24 of \$19.95. The NCAA's business partners in this venture are a for-profit entity called Genius  
25 Products LLC, as well as Thought Equity. In a press release, the three entities described the DVD  
26 as "the first DVD officially produced and branded by the NCAA to feature the greatest moments  
27 from more than 70 years of tournament action." In the partners' press release, Thought Equity is  
28

1 described as “the world leader in providing access to high quality film, video and music content.  
2 The company’s forward-thinking approach to digital video has produced an array of products and  
3 services to meet the exploding demand of new media.”

4 123. NCAA DVDs also are available through myriad other outlets. For example,  
5 hundreds of NCAA DVDs are available from CBS Sports’ “Online DVD Store.” On  
6 Amazon.com, more than 1,600 NCAA sports DVDs are for sale. NCAA DVDs also are for sale  
7 via myriad other outlets, such as, for example, walmart.com, the NBC network’s sports website,  
8 FantasyPlayers.com’s website, Barnes & Noble’s website, and the Big Ten Network’s website.  
9

10 124. Additionally, hundreds of NCAA games and highlight films are available for rental  
11 from Blockbuster Video and Netflix, including via their websites.

12 125. No valid and lawful releases with informed consent from Antitrust Class members  
13 have been obtained for the use of their images, likenesses and/or names in DVDs and on-demand  
14 delivery formats, and any purported transfer of former student-athletes’ rights relating to this  
15 usage is the product of the anticompetitive agreement described herein.  
16

17 126. Only through the discovery process will Plaintiffs be able to ascertain the true  
18 scope of sales, in terms of outlets, license agreements, and sales volume of DVD products  
19 containing the images of class members.  
20

21 **c. The NCAA’s New “Vault” Website Operated in Connection with TEM.**

22 127. On March 3, 2010, *The New York Times* reported on the debut of a new NCAA  
23 commercial venture with Thought Equity called “The Vault” in an article titled “N.C.A.A.  
24 Tournament Goes Online, Clip by Clip” as follows:

25 With its tournament approaching, the N.C.A.A. has found a way to  
26 exploit a portion of its men’s basketball tournament archive by  
27 ceding a significant amount of clip selection to fans. Through a  
28 deal with the N.C.A.A., Thought Equity Motion has digitally diced  
every tournament game this decade from the Round of 16 forward  
into all of its notable plays, and assigned a Web address to each of

1           them. It lets fans watch any of the games, or thin slices of them, and  
2           link to social networking sites like Facebook or Twitter or to their  
3           blogs.

4           The NCAA Vault, at [NCAA.com/vault](http://NCAA.com/vault), is making its formal debut  
5           Wednesday after finishing its beta phase.

6           “Fans want basketball content, and we wanted to find a way to get  
7           people to connect to it,” said Kevin Schaff, chief executive of  
8           Thought Equity Motion, which digitizes and stores video archives.

9           ...

10          Schaff added, “People want to consume the moment and discuss it.”  
11          He said that the site’s goal was to extend  
12          the tournament’s mania beyond its natural period.

13          ...

14          The site, which is advertiser-supported, breaks games into small bits  
15          and divides them into packaged sections like dunks, great shots and  
16          great blocks. But it also lets fans choose clips from each game’s  
17          play-by-play log.

18          One Tweeter called it “the answer to all hoops junkies problems,”  
19          while another said he was “going to lose hours of time watching  
20          games.”

21          ...

22          Gregg Winik, the chief executive of CineSport, an online highlights  
23          provider for local media Web sites, and a former executive at NBA  
24          Entertainment, said that the mixture of video and social network  
25          had created a “big and bold step” in the evolution of sports video  
26          archives.

27          “The old idea in the industry was to protect the archive and drive  
28          fans to the broadcasts,” he said. “Now, people are saying, ‘Internet  
29          video is a real business.’ ”

128.    In a trade publication published by the Sports Video Group (“SVG”), an  
organization formed “to bring the entire sports industry closer together so that it can more  
effectively share information about best practices and new technologies that impact the industry,”  
SVG, in connection with an interview with Thought Equity’s Dan Weiner, Vice President of

1 Marketing and Product, explained in unvarnished terms the explicit commercial nature of the  
2 enterprise. Specifically, Sports Video Group reported the following on March 3, 2010:

3 TEM began its work with the NCAA across all of its sports, turning  
4 shelves of videotapes into a centralized, digitized historical archive.  
5 In addition to serving as a backup, the archive can be searched and  
6 accessed by schools and alumni for commercialization and revenue  
opportunities.

7 ...

8 The vault contains every full-length basketball game from the  
9 Sweet Sixteen round through the championship of every NCAA  
10 Tournament from 2000 to '09. (Additional games are already in the  
works).

11 ...

12 "Over time, it's not about this one site that we built," Weiner says.  
13 "It's about being able to go to SI, ESPN, USA Today, and anyone  
14 else who can get the specs for the API and create a licensing deal  
15 with the NCAA. The Web-development team at ESPN or SI can  
16 take their own NCAA page and build their own version of this  
Vault, hooking up our video into their player without having to deal  
with a video file or do editing."

17 Everyone from Web publishers to iPhone-app creators can work  
18 through this API to build applications, providing new opportunities  
19 for monetization and ad revenue for the NCAA. For this year,  
however, the Vault is part of the NCAA site and the existing  
advertising-support model on that site.

20 "This is something that we see as a leading-edge development in  
21 sports-rights development," Weiner says. "This unlocks the archive  
22 and brings it to life. Rather than creating a bunch of DVDs, you  
bring the content forward, bring it to life, make it very easy to  
publish and access."

23 ...

24 The next steps for this Vault will be to expand it beyond the Sweet  
25 Sixteen round, and beyond the last decade. Additional games will  
26 be added to the Vault as soon as this year's tournament is complete,  
with more on the horizon.

27 "We're talking with the NCAA about expanding this to other sports  
28 of theirs as well," Weiner says. That means that a NCAA baseball

1 or soccer vault could soon be on the way.

2 129. No valid and lawful releases with informed consent from Antitrust Class members  
3 have been obtained for the use of their images, likenesses and/or names in this new vault website,  
4 and any purported transfer of former student-athletes' rights relating to this usage is the product  
5 of the anticompetitive agreement described herein.  
6

7 d. Video-Clip Sales to Corporate Advertisers and Others.

8 130. Via another of TEM's websites, there are more than 12,000 NCAA related clips  
9 spanning several decades offered for sale as "stock footage." The overwhelming majority of  
10 them are from NCAA Division I men's basketball games. The clips run for varying time periods,  
11 generally ranging from 10 seconds to several minutes. Many of them indicate that the full game  
12 for which from which the clips were culled, as well as related highlight films, also are available  
13 for sale via TEM. For many items, prices are not shown, and prospective buyers are asked to  
14 contact the company for pricing. One interview clip appeared to cost approximately \$150.  
15

16 131. In a brochure describing its partnership with the NCAA, TEM makes clear the  
17 unmistakable pecuniary purpose of its venture with the NCAA. For example, Thought Equity  
18 touts its role in "[d]elivering value through the preservation and monetization of the NCAA's  
19 footage assets." Thought Equity further states that "[i]n 2005, the NCAA was searching for a  
20 partner to preserve and manage the vast NCAA content library with two primary directives in  
21 mind: 1. Preservation of historic footage and current content [and] 2. Accessibility to the entire  
22 NCAA footage library to drive revenue generation." TEM goes on to state that "[a]s the NCAA's  
23 exclusive licensing agent, Thought Equity drives revenue through the licensing of NCAA sports  
24 content for use in films, commercials, corporate productions, documentaries and emerging media  
25 applications." TEM further states that it has assisted the NCAA in being "among the first-to-  
26 market with innovative ways to monetize their video assets across the entire spectrum of  
27  
28

1 emerging media.” TEM claims that it “is committed to the continued growth of this amazing  
2 library, enhancing its value through the preservation and monetization of the NCAA’s valuable  
3 footage assets, [and] providing the premiere online destination” for NCAA footage.

4  
5 132. TEM further states that “[y]ear over year, Thought Equity Motion has grown  
6 licensing revenue by nearly 100%.” Kevin Schaff, TEM’s founder and CEO is quoted as stating  
7 that its NCAA collection “is one of the most unique and valuable content collections in the  
8 world.”

9 133. TEM also stresses its cost-saving function as follows: “Thought Equity also staffs  
10 the functions of receiving and fulfilling all footage requests, including research and technical  
11 support – costs that previously added to the NCAA national office overhead.” TEM further states  
12 that it provides services including restoration, digitizing content, and making content available  
13 on-line “at no charge to the NCAA.”  
14

15 134. TEM further notes that “[t]o date, Thought Equity has digitized and brought online  
16 nearly 7,000 hours of NCAA sports action and manages more than 20,000 hours of content in the  
17 NCAA library.” TEM further notes that “[n]ew NCAA content is continually added to ensure the  
18 online library is a timely resource for NCAA content.”

19 135. TEM additionally states that “NCAA footage is sought-after content for  
20 advertisers, corporations and entertainment producers as it delivers all the action, drama and  
21 emotion unique to athletic competition.” TEM further states that “[b]ringing the NCAA content  
22 online has been a key component to unlocking the value of the library.” TEM also states that its  
23 online platform has “help[ed] drive revenue growth by making purchasing content easy and fast.”  
24

25 136. TEM further states that “NCAA Corporate Champions and Partner companies as  
26 diverse as Coca-Cola, AT&T, State Farm Insurance, and Lowe’s have tapped the NCAA library  
27 to create messaging to inform and inspire their audiences.” TEM further states that it has  
28

1 “licensed NCAA content for use in hundreds of television programs, films, commercials and  
2 corporate productions.” Moreover, Thought Equity states that “[l]ooking to the future, exploding  
3 growth in emerging media such as online and mobile advertising and entertainment translates to  
4 significant new revenue streams for footage licensing and programming opportunities.”

5  
6 137. TEM further states that its library can be utilized to allow NCAA member  
7 institutions to create other revenue centers, e.g., “to create original programs and promotions such  
8 as coaches’ shows, Hall of Fame and museum exhibits, web sites and entertainment featured on  
9 in-venue video boards.”

10 138. TEM further states that it “brings value to the NCAA by continually creating  
11 innovative ways to leverage their video assets,” and touting its “ability to drive revenue  
12 employing its deep licensing expertise.”

13  
14 139. TEM further states that “[a]ny use of NCAA content featuring individuals or  
15 brands must be cleared for use,” and that it “brings deep expertise to navigating the complexities  
16 of clearing NCAA student athletes, individual’s licenses and institutional trademarks, protecting  
17 both amateur status and rights.”

18 140. No valid rights from Antitrust Damages Class members have been obtained by the  
19 NCAA, its members or its licensees for the use of those class members’ images, likenesses and/or  
20 names in video clips for sales to corporate advertisers and others, and any purported transfer of  
21 former student-athletes’ rights relating to this usage is the product of the anticompetitive  
22 agreements described herein.

23  
24 e. Premium Content on Websites.

25 141. Numerous NCAA schools and conferences make available, or plan to make  
26 available, streaming on-demand video content available to users for one-time and/or subscription  
27 fees. This video content utilizes the images of Antitrust Damages Class members.  
28

1           142. On July 27, 2009, *Sports Business Daily* reported that the Southeastern Conference  
2 and XOS Technologies were teaming to form the SEC Digital Network that will "aggregate all  
3 sports content and distribute it in a centralized model."

4           143. Similarly, CSTV's website indicates that CSTV.com "includes a network of  
5 approximately 215 official college athletic websites." CSTV further states that it "was founded in  
6 1999 by Brian Bedol and Stephen D. Greenberg, co-founders of Classic Sports Network, and  
7 Chris Bevilacqua, a former Nike executive. CSTV officially launched in April 2003 from the  
8 network's New York City based Chelsea Piers Studio, the Field House. In January 2006, CSTV  
9 was purchased by CBS Corporation and became the 24-hour college sports network from CBS  
10 Sports."

11           144. No valid rights from Antitrust Damages Class members have been obtained by the  
12 NCAA, its members or its licensees for the use of those class members' images, likenesses and/or  
13 names in premium website content, and any purported transfer of former student-athletes' rights  
14 relating to this usage is the product of the anticompetitive agreements described herein.  
15

16  
17           f. Photos.

18           145. Replay Photos, LLC ("Replay Photos") operates "The Official NCAA Photo  
19 Store" in conjunction with the NCAA through which photographs of Class members are available  
20 for purchase, as well as a separate website, through which additional photographs of Class  
21 members are available for purchase. Thousands of photographs from postseason tournaments in  
22 numerous sports are offered for sale.  
23

24           146. In February of 2009, the NCAA and The Associated Press announced a three-year  
25 partnership and in a press release stated the following:

26           The NCAA and The Associated Press this week announced a three-year  
27 content partnership making AP the worldwide distributor of NCAA  
28 Championship photography and creating the largest collection  
anywhere of collegiate sports photos. Under the agreement, AP Images

1 will serve as the NCAA's exclusive photo licensing agent, including  
2 retail sales of archival photos, for all NCAA Championships and  
3 events.

4 ...

5 "In partnership with Rich Clarkson and Associates, the NCAA has  
6 compiled an archive of photos representing the greatest moments in  
7 NCAA Championship history," said Greg Weitekamp, NCAA director  
8 of broadcasting. "Combine the history of the NCAA photo archives  
9 with the depth of photos compiled by AP Images over the last 100  
10 years, and the NCAA and the AP Images partnership will create the  
11 single greatest collection of collegiate sports photos."

12 ...

13 The new agreement between the NCAA and AP Images will allow the  
14 NCAA to include NCAA photos in the AP Images archives, where they  
15 will then be made available for editorial and commercial use. In  
16 addition, the partnership will provide the NCAA with access to AP  
17 Images' archive of NCAA photography.

18 The partnership with the NCAA, headquartered in Indianapolis, will  
19 also include a consumer outlet at NCAA.com, where consumers will be  
20 able to purchase photos. NCAA Championship photos will be available  
21 on the APImages.com site.

22 147. Replay Photo also has entered into contractual arrangements with at least 62  
23 universities by which it offers for sale thousands of photographs of current and former student-  
24 athletes. Framed versions of the photographs can cost up to several hundred dollars. The list of  
25 available sports include at least the following: men's and women's basketball; football; baseball;  
26 crew; men's and women's cross country; golf; gymnastics; men's and women's soccer; softball;  
27 men's and women's swimming and diving; men's and women's tennis; men's and women's track  
28 and field; men's and women's volleyball; water polo; and wrestling.

29 148. No valid rights from Antitrust Damages Class members have been obtained by the  
30 NCAA, its members or its licensees for the use of those class members' images, likenesses and/or  
31 names in the aforementioned photos, and any purported transfer of former student-athletes' rights  
32 relating to this usage is the product of the anticompetitive agreements described herein.

1                   g. Action Figures, Trading Cards, and Posters.

2                   149. On April 27, 2009, *Sports Business Daily* reported that certain former college  
3 football players will be paid a royalty for the sale of action figures depicting them in their college  
4 uniforms, and that their former schools also will be paid a royalty. Specifically, *Sports Business*  
5 *Daily* stated the following:  
6

7                   Phoenix-based McFarlane Toys has been producing action figures  
8 of professional athletes for more than a decade, but never before has  
9 the company tapped the college market. That will change later this  
10 year with the release of six action figures that portray NFL stars in  
11 their college gear, including Tom Brady in his Michigan uniform  
12 and Peyton Manning in his Tennessee garb.

13                   “There’s not much out there on the college market that’s player-  
14 centric,” said founder Todd McFarlane, whose businesses include  
15 everything from comics to toys and film animation. “If a guy had a  
16 decent career, let’s see if the fans are still fond of him.”  
17 Tennessee’s Peyton Manning is one of three SEC alumni in the six-  
18 figure set.

19                   ...

20                   Now he’s going to put some of those professional stars in their  
21 college football gear to tap into the passion of the college fan. In  
22 addition to Brady and Manning, the company will produce action  
23 figures representing Adrian Peterson (Oklahoma), JaMarcus Russell  
24 (LSU), Ray Lewis (Miami) and Hines Ward (Georgia).

25                   ...

26                   To obtain the license, McFarlane went through IMG’s Collegiate  
27 Licensing Co., the licensing agent for those schools. He’ll also pay  
28 the players a royalty. Current college players are not allowed to be  
featured in commercial endeavors such as this, according to NCAA  
guidelines, which is why McFarlane went with the professionals.

“There’s two pieces to the deal,” McFarlane said. “You pay for the  
uniform, which goes to the school, and you pay the player. That  
beefs up the money going out, so you have to make sure you have a  
model that works.”

1           These 6-inch-tall action figures will sell for about \$10 each and hit  
2           stores such as Wal-Mart, Target and Toys “R” Us, as well as the  
3           local specialty stores that sell collectibles, by August, just in time  
4           for the start of a new football season.

5           ...

6           Fathead also is thought to be considering a line of posters that  
7           would feature NFL stars in their college uniforms.

8           ...

9           150.   The above information is significant. The NCAA’s licensing arm, Defendant  
10          CLC, has participated in a deal which expressly recognizes that former college players should be  
11          paid a royalty when their image is utilized for profit.

12          151.   No valid rights from Antitrust Damages Class members have been obtained by the  
13          NCAA, its members or its licensees for the use of those class members’ images, likenesses and/or  
14          names in the aforementioned items, and any purported transfer of former student-athletes’ rights  
15          relating to this usage is the product of the anticompetitive agreements described herein.

16                   **h. Video Games.**

17          152.   The images and likenesses of college student-athletes and former student-athletes  
18          also appear in video games devoted to NCAA college basketball and football. The NCAA has  
19          executed a license for video games with Defendant EA, a global interactive software company.  
20          EA identifies itself as “the world’s leading interactive entertainment software company” and states  
21          that it “develops, publishes, and distributes interactive software worldwide for video game  
22          systems, personal computers, cellular handsets and the Internet.”

23          153.   EA and the NCAA enjoy a unique relationship. For example, on the NCAA’s  
24          “Official Licensee List as of April 2011,” available on the NCAA’s website, EA is nearly the only  
25          non-apparel manufacturer listed, and the others make items such as chairs and basketball hoops.  
26          EA appears to be the only listed NCAA official licensee using images of current or former players  
27          28

1 in products. EA further is unique in that it is the only NCAA licensee or business partner that is  
2 making brand-new products, not based on pre-existing actual content such as filmed images or  
3 photographs, that utilizes the images of current and former student-athletes. This explains in part,  
4 as detailed below, the yearly meetings involving the NCAA, EA and CLC regarding the product  
5 approval process. The relationship thus is exceptionally close, and different from that involving  
6 other third parties.  
7

8 154. EA markets a wide variety of sports-based video games under the label EA  
9 Sports. EA Sports describes their video games as including “simulated sports titles with realistic  
10 graphics based on real-life sports leagues, players, events and venues.” Their advertising taglines  
11 - “If it’s in the game, it’s in the game,” subsequently shortened to “It’s in the game” - expressly  
12 and openly makes a major selling point out of the fact that all aspects of the real-life games  
13 appear in their video games. EA Sports releases new iterations of most of their games annually,  
14 three of which are titled “NCAA Football,” “NCAA Basketball” and “NCAA Basketball: March  
15 Madness Edition.”  
16

17 155. EA’s NCAA football games consistently have enjoyed sales of more than one  
18 million units per year, and currently sales are estimated at more than two million units per year.  
19 On EA’s website, NCAA Football 10 for the Playstation 3 game platform is offered for sale at  
20 \$59.95 per unit. In 2008, with respect to its basketball games, EA stated that “[t]he market leader  
21 in basketball videogame sales, EA SPORTS basketball franchises (NBA LIVE, NBA STREET  
22 and NCAA March Madness) have combined generated more than \$1 billion in retail sales over  
23 the past 10 years.” On EA’s website, NCAA Basketball 09 is currently listed with a  
24 manufacturers’ suggested retail price of \$59.95 per unit.  
25  
26  
27  
28

1           156. EA has acknowledged that its NCAA games are among its major revenue drivers.  
2 For example, in an SEC Form 10-K, EA stated that “[f]or fiscal year 2008, net revenue in North  
3 America was \$1,942 million, driven by Rock Band, Madden NFL 08, and NCAA Football 08.”

4           157. Additionally, in its 2010 SEC Form 10-K, EA advised investors that “[i]f we are  
5 unable to maintain or acquire licenses to include intellectual property owned by others in our  
6 games, or to maintain or acquire the rights to publish or distribute games developed by others, we  
7 will sell fewer hit titles and our revenue, profitability and cash flows will decline. Competition  
8 for these licenses may make them more expensive and reduce our profitability. . . . Competition  
9 for these licenses may also drive up the advances, guarantees and royalties that we must pay to  
10 licensors and developers, which could significantly increase our costs and reduce our  
11 profitability.”

12           158. The photorealistic nature of EA’s NCAA College Football and NCAA College  
13 Basketball video games has been noted. *Legal Affairs* magazine reported the following in 2006  
14 regarding EA’s NCAA Football 06, which is instructive for its description of the game’s use of  
15 player images, as well as the interaction among the NCAA and Defendants CLC and EA:  
16  
17

18           THE BEST PLAYER IN COLLEGE FOOTBALL THIS SEASON  
19 is arguably the quarterback at the University of Southern California.  
20 He is a senior, listed at 6-foot-5 inches and 225 pounds. He wears  
21 number 11. His name is Matt Leinart. The best player in the wildly  
22 popular video game called "NCAA Football 06" also happens to be  
23 a quarterback at USC. He, too, is a senior, listed at 6-foot-5 inches  
24 and 225 pounds. And, not coincidentally, he wears number 11. His  
25 name, however, is QB #11.

26           You don't have to know a PlayStation from a train station to get  
27 what's going on. QB #11 is the digitized analogue of Leinart; he  
28 resembles the living version right down to the mop of dark hair on  
his head. So why doesn't the game from Electronic Arts use  
Leinart's name? National Collegiate Athletic Association  
regulations prohibit companies from profiting off a student-athlete's  
likeness, so EA does this two-step - with the NCAA's blessing. In  
exchange for a cut of revenues from the video game, the association  
has granted the software company the right to reproduce the

1 stadiums, uniforms, and mascots of schools that are members of the  
2 NCAA, and the game-makers do so with almost photographic  
3 accuracy. Under the current regulations, the only thing off-limits is  
4 the use of players' names and recognizable facial features. The  
5 NCAA doesn't want member-schools marketing their student-  
6 athletes for commercial purposes, and, in order to prohibit them  
7 from doing that, it has to restrain itself as well.

8 Even though QB #11 is not identified by name, however, EA and  
9 the NCAA might struggle to keep straight faces when they claim  
10 that he is not supposed to represent Leinart for the purpose of  
11 making a profit. EA is the North Star of a burgeoning sports video  
12 game industry, which made revenues of \$1.9 billion in 2004, and  
13 the company's hallmark is precise, nay obsessive, attention to detail.  
14 EA's slogan boasts, "If it's in the game, it's in the game." That  
15 means nailing the little stuff, capturing nuances like a player's  
16 wristband placement and facemask style. In its annual iterations of  
17 "NCAA Football," the software company makes the game as  
18 lifelike as possible, within the constraints marked by the NCAA. A  
19 quick survey of the rest of the players for USC's 2005-2006 Trojans  
20 reveals that everyone has a digitized doppelganger that's dead on.  
21 Tight end Dominique Byrd -- pardon, TE#86 -- sports braids like  
22 his real-life model's. The height and weight of backup defensive  
23 end Rashaad Goodrum, aka DE #44, are as true as Leinart's, though  
24 Goodrum played just a few downs during the 2004-2005 season.

25 "NCAA Football 06" has pinpoint-accurate rosters for all 117  
26 Division I-A football programs (which engage in the highest level  
27 of collegiate competition), not to mention graphics so advanced that  
28 you can see the stadium reflected in a quarterback's helmet, the face  
paint on a cheerleader's cheeks, the Nike swoosh on a tailback's  
cleats, and the haze around the lights during a night game at the  
University of Florida's stadium, the Swamp. For all these reasons,  
the omission of players' names seems little more than a formality,  
done with a wink and a nudge in order to keep the NCAA satisfied.

Especially since an owner of the video game can change QB #11 to  
Matt Leinart by fiddling with a few buttons. Once the owner inputs  
a player's name, it appears on the back of the player's jersey and can  
be shouted by the virtual announcers who do the play-by-play for  
the games within the game. Game owners can also adjust a virtual  
player's facial hair, adding, say, a goatee to match the real player's  
face, since players are known to change their looks from time to  
time. Although not approved by the NCAA, memory cards for  
automatically uploading each school's roster are available from  
independent manufacturers. Oddly, the main difference between  
the players and their video facsimiles are their hometowns, which in  
the game are intentionally off by a few suburbs (QB #11's

1 "hometown" of La Habra, Calif., is 15 miles from Leinart's native  
2 Santa Ana). But the point is, in EA's hyper-detailed world, video  
3 game characters now have hometowns. The NCAA's amateurism  
4 regulations, originally designed to guard against things like posters  
5 and trading cards featuring individual athletes, likely never  
6 contemplated a day when an amateur's digital likeness could fetch a  
7 profit.

8 ...

9 A key player in managing that distinction is the Collegiate  
10 Licensing Company or CLC, which handles product licensing for  
11 collegiate sports organizations like bowl games committees, athletic  
12 conferences, and the NCAA. CLC performs two tasks for the  
13 association: protecting the amateur standing of its members' athletes  
14 and obtaining for members the most lucrative licensing deals. Last  
15 summer, an NCAA subcommittee on amateurism invited Pat Battle,  
16 the president of CLC, and athletic directors and athletes from  
17 Division I-A schools to a meeting—the one at which Brand  
18 spoke—about licensing and promotion issues.

19 At that meeting, Battle suggested something Brand probably didn't  
20 want to hear: that revenues for the NCAA would increase if the  
21 association's limits on video games were eased. He indicated that  
22 game manufacturers were growing frustrated with the restrictions,  
23 and that the NCAA needed to address that frustration or risk  
24 diminishing a valuable source of revenue. "It's a concern, and I  
25 stand by that," Battle said recently. "A failure to keep up with  
26 technology and take full advantage from a consumer standpoint  
27 may make the NCAA [video game] titles less valuable."

28 ...

29 "I think EA will continue to push for more leeway," said CLC's  
30 Battle. EA seems to think it will, too. "This has been an ongoing  
31 discussion: 'O.K., how far can we go?' " EA spokeswoman Jennifer  
32 Gonzalez told *The Indianapolis Star* earlier this year.

33 Since it started making "NCAA Football," EA has gained  
34 substantial concessions from the NCAA. The early versions of the  
35 game weren't nearly as accurate as the latest ones in terms of the  
36 height, weight, or skin color of the athletes. But the NCAA may  
37 balk at going further: It's unlikely that EA will ever be allowed to  
38 include player names.

THIS IS NOT THE FIRST TIME that the NCAA's rules about  
amateurism have struggled to address new licensing opportunities.  
About 15 years ago, college-apparel sales exploded into a

1 substantial source of revenue for major athletic programs, and one  
2 of the touchiest issues involved replica jerseys. They featured a star  
3 player's number and school colors, but not his name, even though  
4 every fan knew whose jersey he was buying. Replica jerseys are  
5 still big business: Every Saturday, Matt Leinart looks up to see  
6 USC's stands swelling with a sea of maroon No. 11 jerseys, which  
7 sell for about \$50 each online and at the campus bookstore.

8 The jerseys were green-lighted under the NCAA's rules for the  
9 same reason that "NCAA Football" was approved: The association  
10 considers a jersey number a step removed from a player's identity.  
11 "I see nothing wrong with selling jerseys with just numbers on  
12 them," Brand said at last summer's meeting. "But I would draw the  
13 line at selling the names."

14 The argument can be made that the video game industry deserves  
15 more leeway than apparel makers, because games ostensibly  
16 promote entire teams—even if those teams feature a few superstars.  
17 "The jerseys are centered around one or two players, whereas the  
18 video game features every player on the team," CLC's Battle  
19 explained. "If the video games wanted to use the name and likeness  
20 of one or two players, that would be impossible. But if we're  
21 looking at a situation where the entire team is being promoted, it  
22 may change the discussion." EA would argue that the video games  
23 are similar to television broadcasts, which are obviously filled with  
24 plenty of highlights and interviews with individual players, yet are  
25 licensed by the NCAA for big bucks and regarded as innocuous  
26 staples of Americana.

27 159. EA has expressly incorporated the likenesses of Antitrust Damages Class members  
28 into its games. As one example, NCAA Basketball 09 has a "Classic Teams" feature in which  
game players can choose to play with "classic teams." These "classic teams" expressly use the  
likenesses of Class members, in a fashion identical to that described above. A post on EA's game  
forum website dated March 12, 2009 identifies the roster of each of these classic teams, and  
provides the players' name; position; uniform number; type of t-shirt worn underneath a jersey;  
sock length; and use of ankle braces, knee braces, wrist taping. The post further specifically  
identifies the following "classic teams" as being incorporated into the game: 2008 Kansas  
Jayhawks; 2007 Florida Gators; 2006 George Mason Patriots; 2005 North Carolina Tarheels;  
2005 Illinois Fighting Illini; 2004 Connecticut Huskies; 2003 Syracuse Orangemen; 2002

1 Maryland Terrapins; 2001 Duke Blue Devils; 1999 Connecticut Huskies; 1997 Arizona Wildcats;  
2 1996 University of Massachusetts Minutemen; 1996 Kentucky Wildcats; 1995 Wake Forest  
3 Demon Deacons; 1995 UCLA Bruins; 1994 Arkansas Razorbacks; 1993 North Carolina Tarheels;  
4 1993 Michigan Wolverines; 1992 Duke Blue Devils; 1991 UNLV Runnin' Rebels; 1991  
5 Georgetown Hoyas; 1991 Arkansas Razorbacks; 1990 LSU Tigers; 1990 Loyola Marymount  
6 Lions; 1990 Georgia Tech Yellow Jackets; 1989 Syracuse Orangemen; 1989 Michigan  
7 Wolverines; 1988 Kansas Jayhawks; 1987 Indiana Hoosiers; 1986 Navy Midshipmen; 1986  
8 Louisville Cardinals; 1986 Duke Blue Devils; 1985 Villanova Wildcats; 1985 St. John's Redmen;  
9 1984 Georgetown Hoyas; 1983 North Carolina State Wolfpack; 1983 Houston Cougars; 1982  
10 North Carolina Tarheels; 1981 Virginia Cavaliers; 1981 Indiana Hoosiers; 1980 Louisville  
11 Cardinals; 1979 Michigan State Spartans; and 1979 Indiana State Sycamores.

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14 160. All of EA's NCAA-related video games use photographic-like realism in the  
15 depiction of all aspects of the visual presentation, including the player uniforms, school logos,  
16 stadiums and mascots. While not identifying them by name, EA also uses likenesses of numerous  
17 specific former student-athletes in their games. The players on the virtual college teams in the  
18 games correspond exactly to their real-life counterparts in many characteristics, such as position,  
19 jersey number, race, size, height, weight and home state. Even uniquely identifiable idiosyncratic  
20 characteristics of real-life players appear in their video game virtual counterparts.

21  
22 161. Each year, the NCAA games sold by EA feature the likenesses of players,  
23 including ones that no longer are NCAA athletes. For example, NCAA Football 09 and NCAA  
24 Basketball 09 are currently for sale, and feature substantial numbers of former NCAA players.  
25 Additionally, versions based on prior years are also for sale. For example, "March Madness 06,"  
26 "March Madness 07," and "March Madness 08" are all listed for sale via Electronic Arts'  
27  
28

1 website, which also notes that the games are available via retailers. These games also feature the  
2 likenesses of substantial numbers of former players.

3 162. On April 23, 2009, EA announced that former college players Michael Crabtree,  
4 Brian Johnson, Brian Orakpo and Mark Sanchez “will be featured on platform exclusive covers of  
5 EA SPORTS NCAA<sup>®</sup> Football 10, available in stores July 14th” and that “[e]ach cover athlete led  
6 his team on a memorable run toward the BCS National Championship, helping to shape the  
7 competitive landscape of college football in 2008.” Electronic Arts further stated that  
8 “[d]eveloped in Orlando, Florida by EA Tiburon, and licensed by The Collegiate Licensing  
9 Company, NCAA Football 10 will be available on the Xbox 360<sup>®</sup> video game and entertainment  
10 system, the PlayStation<sup>®</sup>2 and PLAYSTATION<sup>®</sup>3 computer entertainment systems, and the PSP<sup>®</sup>  
11 (PlayStation<sup>®</sup>Portable).” On EA’s website, the players’ mentioned above appear in mock-ups of  
12 packaging covers for the game, as well as sample screen shots from the game, in their college  
13 team uniforms. The cover of NCAA Basketball 09 features the likeness of former UCLA  
14 basketball player Kevin Love in his collegiate uniform. It appears that licensing deals have been  
15 struck with the players depicted on the covers.  
16

17  
18 163. In an interview dated September 21, 2005, Mike Mahar, the producer of EA’s  
19 NCAA March Madness 06 game, stated the following about the 39 All-Time Teams in that year’s  
20 game:  
21

22 There are 14 new All-time teams to the game this year. Highlights  
23 include All-Georgia (Dominique Wilkins), All-Gonzaga (we have  
24 such depth now we can start compiling all time teams for the best  
25 'mid-majors'), All-NC State (David Thompson), and All-Time  
26 teams for the ACC, Big East, Big Ten, Big 12, SEC, PAC 10, and  
27 CUSA.....basically the best players ever from each of the 'major  
28 conferences.

29 We select a wide range of players from each school/conference  
30 using websites and the respective Hall of Fame. From there we  
31 send the list out to as many basketball experts as possible.....for  
32 example I asked Kenny Smith who he thought should be on the  
33 All-Time Carolina team when he was recording here last year.

1 Occasionally, player's names are passed by Dick Vitale, we use  
2 existing lists such as the ACC Top 50 players of all time...etc.  
3 After we have the short list we look at the ratings, historical stats,  
4 and achievements as well as players who will be popular with our  
5 consumers and we come up with the bench and the starting 5.

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164. In a November 12, 2008 interview, Novell Thomas, EA's Associate Producer for  
NCAA Basketball 09 stated the following:

However, rather than talking about the 2008-2009 teams, I'm going  
to take you back to the past and talk about classic teams.

...

The Tournament of Legends is a customizable, 64 team, single  
elimination tournament. Top teams from the 50's, 60's, 70's, 80's,  
90's and 2000's are selectable. Coming up with and nailing down  
the legendary teams was not an easy process. A lot of time was  
spent researching the best teams and players from the various eras.  
Some of the factors we looked at were: championships won,  
win/loss records, team personnel and memorable team and player  
performances. To ensure that we had the correct teams selected, we  
leveraged our partners and contacts at ESPN and Blue Ribbon. We  
also got Basketball Hall of Fame contributor, Dick Vitale's  
thoughts and recommendations - after all, he's been around college  
basketball for years and has seen all of these teams and players  
first hand.

Here's a breakdown of the various players and teams throughout  
the various eras. I apologize in advance for not being able to  
include names:

50's....One of the best players of all time played during this era.  
The University of San Francisco's center, #6, is arguably one of  
the best players to play that position. He won two championships  
and many many more at the professional level. Any player who  
averages 20 points and 20 rebounds per game during his college  
career, is definitely worth playing with. However, you can't forget  
about 1957 Kansas' center #13 (who averaged 30pts and 18rpg in  
college) or 1954 LaSalle's ball handling big man.

60's....The center #11, from Ohio State was one of the greats from  
this era. He was an unbelievable rebounder, scorer and passer  
(24ppg/17rpg). But we all know that this era belongs to UCLA's  
center, #33. It's tough to argue that he's not the #1 player of all  
time. He won 3 National Championships and awarded 3-  
Tournament MOP honors. The only thing that stopped him from  
getting four of each was perhaps the rule which deemed freshmen  
ineligible.

70's....there were some great players from this era but I've got to  
start off with the guy nicknamed "Pistol" who averaged 44 points  
per game. He wore #23 and played point guard for LSU and  
averaged 44 points per game. Did I say that he averaged 44 ppg.

1 That's unbelievable. The 70's started off with a bang and ended off  
2 with an even bigger bang. Two of college basketball's greatest  
3 players, in Indiana State's forward #33 and Michigan State's  
4 Magician #33. They went head to head for the national  
5 championship in 1979 and this game is said to have changed  
6 basketball forever and very few disagree.

7 80's....The talent level and number of elite players continued to  
8 pour in during this era. Indiana's point guard #11 dazzled the  
9 competition with his smooth controlling style; Houston's center  
10 #34 and small forward #22, members of Phi Slama Jama were  
11 great to watch with their up-tempo style; North Carolina's shooting  
12 guard #23 (aka. "the great one") needs no introduction and #52  
13 their power forward was also known for having a few 'Big Games'  
14 of his own; there was also the center from Navy, "the Admiral"  
15 who brought some excitement to that program; and you can't forget  
16 about the center from Georgetown #33. These were college  
17 basketballs' best during this time and now members of the NBA's  
18 greatest 50 players of all time. With all of these great players there  
19 were definitely some great games and upsets. NC State over  
20 Houston and Villanova over Georgetown were two upsets during  
21 this era which people still talk about to this day.

22 90's....The talent continued to pour into college basketball during  
23 this era. The style of play changed drastically and the up-tempo  
24 style really took over (make sure you check out the Producer  
25 Diaries for Game Tempo). You had teams pushing the ball in  
26 transition, pressing and trapping in the full court and really  
27 increasing the entertainment value in college basketball. My  
28 favorite team during the early 90's was definitely UNLV. They had  
guys who could GO and the athleticism amongst their  
forwards/centers was second to none. The ameba defense they use  
to play still gives me chills and those lob passes and screams were  
the icing on the cake. You can't forget about Duke. The Blue  
Devils had some great players who made big plays at big times.  
However, 1996 Kentucky raised the bar to an entirely new level.  
The talent level was off the charts and 4-5 players could play  
multiple positions on the court. They had big guys (6'8 and taller)  
constantly shooting threes, guards throwing down sick dunks...that  
roster had so many future NBA stars (I believe 7 of them ended up  
playing in the association), which further emphasizes how talented  
they were. But the most talented player probably came from the  
ACC's Wake Forest, "the Big Fundamental" - a true big man who  
had a great feel for the game. He knew when to kick it out and  
when to go to work in the post.

2000's....2005 Illinois and 2005 North Carolina had some future  
NBA talent as well but nothing during this era was bigger than the  
Florida Gators back to back championships. 4 out of their 5 starters  
are now in the NBA but for them to win back to back  
championships during this day and age, when parity is at an all  
time high, is really impressive. There weren't too many people who  
believed it could be done but they proved us all wrong.

There were a ton of teams and players who I did not mention but as

1 you can tell, we've now granted users the ability to determine who  
2 the best legendary teams of all time are. I encourage all of you to  
3 load up the Tournament of Legends mode and take your favorite  
4 team to the winners circle. Or better yet, try to win the  
5 championship with a team from each era and see the difference in  
6 the various teams styles of play.

7 I really enjoy these legendary teams and everything that comes  
8 along with them: the classic team logos, the classic jerseys, old  
9 school sneakers (ie. Chuck Taylors) and overall look, will  
10 definitely get you in that "old school" realm.

11 Here's a list of all the teams in the ESPN Classic Tournament of  
12 Legends:

13	Arizona	1997
14	Arkansas	1991, 1994
15	Cal	1959
16	Cincinnati	1962
17	Connecticut	2004, 1999
18	Duke	2001, 1986, 1992
19	Florida Gators	2007
20	George Mason	2006
21	Georgetown	1991, 1984
22	Georgia Tech	1990
23	Houston	1983
24	Houston	1968
25	Illinois	2005
26	Indiana	1981, 1976, 1987
27	Indiana State	1979
28	Kansas	1952, 1957, 1988, 2008
	Kentucky	1996, 1978, 1954
	LaSalle	1954
	Louisville	1980, 1986
	Loyola Maramount	1990

1	LSU	1970, 1990
2	Marquette	1977
3	Maryland	2002
4	Michigan	1993, 1989
5	Michigan State	1979
6	Navy	1986
7	North Carolina	1957, 1982, 1993, 2005
8	North Carolina State	1974, 1983
9	Ohio State	1960
10	San Francisco	1956
11	St. John's	1985
12	Syracuse	1989, 2003
13	Texas Western	1966
14	UCLA	1968, 1967, 1972, 1975, 1995
15	Umass	1996
16	UNLV	1991
17	Villanova	1985
18	Virginia	1981
19	Wake Forest	1995
20	West Virginia	1959

21  
22           165. Numerous athletes featured on the covers of EA's various games have made  
23 telling admissions about the use of their likenesses in the games. For example, in a November 21,  
24 2005 interview with Raymond Felton, former point guard for the University of North Carolina  
25 men's basketball team, Mr. Felton stated:

26                           I usually play the sports games like March Madness, NBA Live,  
27                           Madden, and MVP Baseball. We used to play in the dorms all the  
28                           time last year, but I never played as North Carolina. I'm not the  
                              type of person who really likes to play as himself. I always check

1 out what I look like, but I don't want to spend time working on my  
2 jumper in the game when I can work on it in real life.

3 166. In an interview dated June 23, 2006, Adam Morrison, former Gonzaga University  
4 men's basketball player and a player featured on the cover of EA's March Madness 07, stated:  
5 ""Everyone always thinks they should be faster. You look at what your overall rating is, and on  
6 the EA college basketball game last year, if you had that three-point icon under your feet, you  
7 were happy."''

8 167. In an interview dated June 16, 2009, former Oklahoma University men's  
9 basketball player Blake Griffin, who appears on the cover of EA's NCAA Basketball 10, stated:  
10 "It's crazy how much it looks like the guys on our team."  
11

12 168. Kevin Love, who played college basketball at UCLA, said in a 2008 ESPN  
13 interview about EA's NCAA Basketball '09 video game that "[y]ou go into the replay and zoom  
14 in and it looks exactly like me. It's incredible."  
15

16 169. EA's representative regularly attend practices for NCAA teams with the  
17 permission of NCAA member schools to study in detail the physical attributes and playing  
18 characteristics of players.

19 170. There is rampant commercialization within the context of EA's games. A  
20 multitude of non-player individuals and corporations are featured in the game, all presumably  
21 pursuant to lucrative contractual arrangements with EA. Each year, more and more third parties  
22 participate in revenue derived from and relating to EA's games, and each year, class members are  
23 entirely excluded from such participation. With respect to various items of athletic-related gear  
24 and apparel, as described below, class members are being used as walking-billboards for  
25 corporate interests without compensation.  
26

27 171. For example, in EA's NCAA Basketball 09, video game players can make various  
28 shoe selections to have players choose among at least the Nike, Adidas and Reebok brands, all of

1 which are identified by name as well as by their logos on the shoes. Those logos additionally  
2 appear on team uniforms.

3 172. The box cover for NCAA Basketball 09 prominently notes that the game is  
4 “Featuring ESPN.” Dick Vitale, a prominent announcer on the ESPN television network, serves  
5 as a game announcer in EA’s game, and his image appears on posters in crowds.  
6

7 173. Moreover, there are numerous references to arenas with corporate sponsorships.  
8 As just a few examples, Ohio State’s Value City Arena, the University of Colorado’s Coors Event  
9 Center, and DePaul University’s Allstate Arena are all featured.

10 174. In 2008, EA announced a deal with the National Association of Basketball  
11 Coaches, a group representing NCAA Division I and other basketball coaches. Pursuant to the  
12 deal, coaches’ names and likenesses began appearing in EA’s NCAA Basketball 10, released in  
13 December of 2009. In NCAA Basketball 09, Kansas Coach Bill Self is featured to provide an  
14 introduction to the game.  
15

16 175. With respect to EA’s NCAA Football 09, the commercialization is even more  
17 prevalent. There are a myriad of branding options per player, including an option to select  
18 Riddell Revolution, Adams or Schutt helmets and facemasks. For visors, there are options for  
19 video game players to select options for at least the Nike, Under Armour, and Oakley brands. For  
20 shoes, there are options to select at least the Nike and Adidas brands. Those corporate logos also  
21 appear on player jerseys. There is an additional option to select Nike gloves.  
22

23 176. During the process of loading the game, there is a prominent full-screen devoted to  
24 the Coca-Cola Company’s “Coke-Zero Season Showdown” promotion. A pre-game weather  
25 report is sponsored by The Weather Channel / Weather.com, and game players can also select a  
26 “live-feed” from the Weather Channel.  
27  
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1           177. There also is substantial ESPN branding. ESPN college football announcers Kirk  
2 Herbstreet and Lee Corso are utilized, and ESPN personality Erin Andrews provides side-line  
3 reports. There also is a Lee Corso “Ask Corso” default setting for assistance in choosing which  
4 play to run that appears along with an image of him.

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6           178. An EA press release dated September 11, 2008, in which EA announced the  
7 release of NCAA Basketball 09, also stated that “*NCAA Basketball 09* will feature Division I  
8 coaches in-game for the first time. Each coach will provide real time instruction and feedback,  
9 helping gamers control the tempo by executing their team’s offense and defense to perfection.” It  
10 appears that licensing deals have been struck with these coaches for use of their likenesses.

11           179. EA has a unique partnership with the NCAA with respect to the development of  
12 electronic video games featuring the images and likenesses of current and former student-athletes  
13 who play or have played Division I college football and basketball. EA has unrivaled access to  
14 the highest levels of the NCAA’s hierarchy that it has used to advocate and obtain agreement on  
15 making its NCAA-themed videogames as photorealistic as possible, all the while knowing and  
16 agreeing with the NCAA’s position that student-athletes would receive no remuneration for the  
17 use of their enhanced images and likenesses. Indeed, EA and the NCAA have had extensive  
18 discussions about the use of the names of student-athletes in its videogames and EA reached  
19 agreement with the NCAA to propose amendments to the NCAA’s bylaws that would accomplish  
20 just that. The timeline of EA’s recent involvement and agreements with the NCAA may be  
21 summarized as follows.

22  
23  
24           180. EA has entered into three licensing agreements with CLC, on behalf of the NCAA  
25 and NCAA member institutions, in connection with its NCAA-themed video games: (a) a 2005-  
26 11 football agreement, (b) a 2005-10 basketball agreement, and (c) a 2008-11 EA football license  
27 agreement. Each of these agreements constitutes an overt act in furtherance of the conspiracy  
28

1 alleged herein. In each of these contracts, EA expressly agreed to abide by the NCAA's rules with  
2 respect to student-athletes. As described in this Complaint, those rules prohibited EA from  
3 offering any student-athlete compensation for the use of the athlete's name, image or likeness in  
4 its NCAA-themed video games. EA further agreed to extend its agreement with the NCAA,  
5 prohibiting compensation to student-athletes, to former student-athletes.  
6

7 181. The NCAA, as well as individual schools and conferences, benefits financially  
8 from the NCAA's license agreement with EA. For example, the *Des Moines Register* recently  
9 reported that one school alone, Iowa State University, has received royalties from football and  
10 basketball video games averaging \$17,600 a year in the last two years. It was further reported  
11 that for the University of Iowa, "such [video game royalty] allocations come from the Big Ten  
12 Conference as part of a package that includes television and other licensing revenue."  
13

14 182. The NCAA also had a license with 2K Sports, a subsidiary of Take-Two  
15 Interactive Software, Inc., for video games rights for college basketball. 2K Sports has produced  
16 several iterations of their college basketball video game between 2005 and 2008 (College Hoops  
17 2K6, College Hoops 2K7, and College Hoops 2K8.) which they still market and sell. 2K Sports  
18 discontinued the series and the NCAA subsequently granted EA the exclusive license for college  
19 basketball.  
20

21 183. The *NCAA News*, on June 21, 2004, provided detail on discussions involving the  
22 NCAA, CLC, and EA, and also served as a conduit to further communicate the message to the  
23 NCAA's members the importance of video game licensing revenues. Specifically, *The NCAA*  
24 *News* reported that the NCAA's Agents and Amateurism Subcommittee of its Academics /  
25 Eligibility / Compliance Cabinet met on June 9<sup>th</sup> and 10<sup>th</sup>, 2004; Pat Battle of the Defendant CLC  
26 made a presentation to the group, which as well as the following panelists: Ohio State University  
27 Athletics Director Andy Geiger, University of Connecticut Athletics Director Jeff Hathaway,  
28

1 Miami (Ohio) University Athletics Director Brad Bates and University of Notre Dame Associate  
2 Athletics Director Bill Scholl. The *NCAA News* specifically stated the following:

3           The CLC's Battle, however, indicated interest in seeing the NCAA  
4 allow more latitude in the marketing areas, specifically in video  
5 games. His concerns centered on the risk of losing business rather  
6 than gaining it, though he did project that licensing revenues would  
7 increase dramatically under more flexible rules. Battle said video  
8 game manufacturers appear to be more and more frustrated with  
9 NCAA restrictions, especially since the technology exists to  
10 produce a much more realistic version -- and thus a much more  
11 attractive and marketable version -- of college football and  
12 basketball games.

13 CLC's and EA's message to the NCAA and its members was heeded and agreed to.

14           184.       The *Madden Nation* blog site reported on a June 2005 interview with a member  
15 of EA's Development Team for NCAA College Football 06 video game where the interviewee  
16 stated that EA wanted to put student-athlete names in future editions of the video game and was  
17 "working with the NCAA on this matter...."

18           185.       *Legal Affairs* further reported the following in its January / February 2006 issue:

19           Last summer, an NCAA subcommittee on amateurism invited Pat  
20 Battle, the president of CLC, and athletic directors and athletes  
21 from Division I-A schools to a meeting—the one at which Brand  
22 spoke—about licensing and promotion issues.

23           At that meeting, Battle suggested something Brand probably didn't  
24 want to hear: that revenues for the NCAA would increase if the  
25 association's limits on video games were eased. He indicated that  
26 game manufacturers were growing frustrated with the restrictions,  
27 and that the NCAA needed to address that frustration or risk  
28 diminishing a valuable source of revenue. "It's a concern, and I  
stand by that," Battle said recently. "A failure to keep up with  
technology and take full advantage from a consumer standpoint  
may make the NCAA [video game] titles less valuable."

...

"I think EA will continue to push for more leeway," said CLC's  
Battle. EA seems to think it will, too. "This has been an ongoing  
discussion: 'O.K., how far can we go?' " EA spokeswoman Jennifer  
Gonzalez told The Indianapolis Star earlier this year.

1                   Since it started making "NCAA Football," EA has gained  
2                   substantial concessions from the NCAA. The early versions of the  
3                   game weren't nearly as accurate as the latest ones in terms of the  
4                   height, weight, or skin color of the athletes.

5                   186. The above information regarding the ongoing discussions between Defendants  
6                   NCAA, CLC, and EA is significant. Each agreed to allow more and more realistic depictions of  
7                   player likeness including former players, to act as if they had the rights to do so, and to not tender  
8                   any compensation to former players for doing so.

9                   187. In a GameTrailers.com interview conducted in 2007, Sean O'Brien, the producer  
10                  of EA's NCAA Basketball 08 video game, when asked about real players in the game, said that  
11                  that was "[s]omething that we are constantly exploring and continuing to explore with the  
12                  NCAA. I think we have made a lot of progression so I hope to be there one day soon."

13                  188. In an interview conducted in 2008, O'Brien, who was then the producer of EA's  
14                  NCAA Basketball 09 video game, talked about how "[h]aving the partnership with the NCAA  
15                  gives us the opportunity to work directly with all of the partners that are part of the NCAA...."  
16                  With respect to the inclusion of actual student-athlete names and likenesses in EA's NCAA-  
17                  themed video games, O'Brien said that he would like to see those in the games and that the  
18                  NCAA "know[s] how we feel....The NCAA knows we want it and they're investigating it for us."  
19                  In another interview from 2008 disseminated by IGN, O'Brien defended EA's making available  
20                  college team rosters for use in NCAA Basketball 09, O'Brien stated that "[i]t's all above board to  
21                  add names to rosters and post them for other gamers to use....It's above board with the NCAA and  
22                  it's perfectly legal – 100 percent count on having rosters with names available for all schools  
23                  shortly after release."  
24                  25

26                  189. In an Operation Sports interview conducted in 2010, Ben Haumiller, designer of  
27                  EA's NCAA Football 10 said that EA has a "laundry list" of topics that are discussed with the  
28

1 NCAA every year including: (1) player names, (2) coaches, and (3) playoffs. EA would create  
2 "pitches" for the NCAA to review to incorporate certain items into the videogame.

3 190. EA and the NCAA have also colluded to allow third parties to use the names of  
4 student-athletes in connection with televised presentations of EA video games without  
5 compensation. A 2008 article reported as follows:  
6

7 The broadcasting crew represented in EA Sports annual NCAA  
8 Football 09 are ESPN's "College Game Day" broadcasters: Brad  
9 Nessler, Kirk Herbstreit, and Lee Corso ("Sportcasters"). One can  
10 assume the Sportcasters receive compensation for the use of their  
11 likenesses in NCAA Football 09. Followers of college football are  
12 well acquainted with this crew. They are seen live on Saturdays  
13 throughout college football season on ESPN's College Game Day  
14 coverage. The College Game Day set travels to the location of the  
15 biggest NCAA football games of each week.

16 During College Game Day coverage, Sportcaster commentary is  
17 regularly combined with simulated game action featuring NCAA  
18 Football 09 video game representations. The student-athlete  
19 counterparts to the video game representations play for their  
20 member institutions in NCAA football games appearing live on  
21 ESPN coverage later that day. It is a unique and innovative way to  
22 market both NCAA football games and NCAA football video  
23 games to the marketers' most desired demographic. However, while  
24 the individual student-athletes' video game representation is being  
25 displayed and broadcast on ESPN, the Sportcasters refer to the  
26 video game representation by speaking the name of the student-  
27 athlete counterpart, thereby publishing the linked identity of the two  
28 entities. This activity blatantly violates that student-athlete's  
property right, the right of publicity, as well as the NCAA – EA  
Sports Licensing Agreement.

Specific examples of concurrent video-game student-athlete  
representation and television broadcast with vocal reference  
include: Tim Tebow, a Heisman Trophy winning quarterback for  
the University of Florida, on September 6, 2008, promoting the  
game between the University of Florida and the University of  
Miami; Knowshon Moreno, the star running back for the then  
number one ranked Georgia Bulldogs, on September 17, 2008,  
promoting the game between the University of Georgia and Arizona  
State University; and Sam Bradford and Colt McCoy, the starting  
quarterbacks for Oklahoma University and the University of Texas,  
respectively, on October 9, 2008, promoting the annual Red River  
Rivalry, a game between the OU and Texas.

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191. The same article notes that EA and the NCAA have mutually condoned or collusively participated in internet marketing of EA's NCAA-themed video games that makes use of student-athletes' names without compensation:

The ESPN website provides similar examples of commercial use of the student-athletes' identity, including: replayable videos featuring vocal commentary which links the student-athlete to NCAA Football '09 counterpart by name and articles discussing and reviewing NCAA Football 09 written by ESPN contributors.

The NCAA Football 09 Top 25 Countdown is [a] replayable pre-season poll production identifying the top rated teams in NCAA Football 09. The NCAA Football 09 Top 25 Countdown features NCAA Football 09 video game representations in action accompanied by announcer commentary. The announcer commentary includes reference to prominently displayed NCAA Football 09 video game representations by the spoken name of the student-athlete counterpart. The NCAA Football 09 Top 25 Countdown utilizes this method for all twenty-five NCAA member institution football teams featured.

The ESPN website contains articles discussing and reviewing NCAA Football 09. Many such examples illustrate the instantly recognizable nature of the video game representations to their student-athlete counterparts. An interesting example explains EA Sports attribute rating system concerning the video game representations and refers to the representations by the written name of the student-athlete counterpart. This article contains a statement demonstrating bad faith on the part of both EA Sports and ESPN in their dealings with the NCAA and its student-athletes; "[w]hile the in-game players go nameless because of NCAA regulations -- well, at least until someone fills up their EA Locker with a roster -- we've got the real names here, so you don't have to think."

192. Similarly, EA and the NCAA have colluded to purposefully and knowingly allow third parties to create and market modifications to the NCAA video games which allow players to upload complete roster information for various teams, including player names. The NCAA and CLC have allowed this because it benefits them financially by increasing the popularity of EA's

1 NCAA games, thereby increasing the royalty payments to the NCAA. As explained in an article  
2 in the website [abovethelaw.com](http://abovethelaw.com):

3 So, game publishers like Electronic Arts, essentially, cheat. If you  
4 pick up the copy of a college sports game, you'll see all the  
5 players, with their accurate numbers, positions, player attributes,  
6 pretty much everything except the players' actual names. Luckily,  
7 you can change the names of players, and every year hundreds of  
8 users sit there and change all of the names of all the players to their  
9 real life counterparts. Then people like me pay for the "updated  
10 rosters" (back in the day) or simply download them for free.

11 And everybody is happy. Except, of course, the college athletes.  
12 Especially the college athletes that have only a limited chance of  
13 going pro but are very popular college athletes and want to get a  
14 little more than a diploma out of it.

15 193. In 2009, EA went even further, developing and launching on its website its  
16 "TeamBuilder" page that lets users create and upload profiles of current and former NCAA  
17 football players to be incorporated into EA's games. On the page, EA states "Create Your School  
18 On-Line" and "Play with Your School on Your Console" and "Share your teams – upload your  
19 creations to a shared library for everyone to enjoy." The page further features official logos of  
20 CLC and the NCAA and links to those entities' webpages.

21 194. The profiles expressly state the player's name, number, position, year in school,  
22 height, weight, have an avatar of a player reflecting racial characteristics, and have fully  
23 developed player profiles featuring ratings in dozens of categories. For example, on May 12,  
24 2011, a full profile was on EA's website for current Stanford quarterback Andrew Luck as a part  
25 of the 2009 Stanford Cardinal team, as well as a full profile for former player Auburn quarterback  
26 Cam Newton as a part of the Auburn Tigers 2010 team.

27 195. In its "Terms of Service" on the site, EA states that "EA respects the intellectual  
28 property rights of others. You must have the legal right to upload Content to EA Services. You  
may not upload or post any Content on EA Services that is protected by copyright, trademark or

1 other intellectual property rights unless (i) you are the owner of all of those rights; or (ii) you  
2 have the prior written consent of the owner(s) of those rights to make such use of that Content.  
3 EA may, without prior notice to you and in its sole judgment, remove Content that may infringe  
4 the intellectual property rights of a third party. If you are a repeat infringer of EA's or a third  
5 party's intellectual property rights, EA may terminate your Account without notice to you." On  
6 information and belief, EA has not invoked any of these provisions with respect to the use of  
7 current and former collegiate players on its website.  
8

9 196. EA further states that "[i]n exchange for EA enabling your contribution of  
10 Content, when you contribute Content to an EA Service, you expressly grant to EA a non-  
11 exclusive, perpetual, worldwide, complete and irrevocable right to quote, re-post, use, reproduce,  
12 modify, create derivative works from, syndicate, license, print, sublicense, distribute, transmit,  
13 broadcast, and otherwise communicate, and publicly display and perform the Content, or any  
14 portion thereof, in any manner or form and in any medium or forum, whether now known or  
15 hereafter devised, without notice, payment or attribution of any kind to you or any third party."  
16 EA thus expressly takes the rights to this content on its website.  
17

18 197. EA has continued to seek to further collude with the NCAA to deprive current and  
19 former student-athletes of rights with respect to EA's video-games. In 2010, the NCAA's  
20 Amateurism Cabinet presented Proposal 2010-26, which would have modified NCAA Bylaw  
21 12.5.1.1 to formalize the ability of commercial entities to use student-athletes' names and  
22 likenesses. EA was a big supporter of this proposal and, on information and belief, was  
23 instrumental in getting the NCAA to present it for consideration. Minutes of the NCAA Division  
24 I Student-Athlete Advisory Committee meeting held in Indianapolis, Indiana on November 19-21,  
25 2010, at which Proposal 2010-26 was discussed, indicate that "[r]epresentatives from EA Sports  
26 gave a presentation to the committee regarding the NCAA College Football video game and  
27  
28

1 answered questions regarding the use of student-athletes' likeness in the game." According to  
2 EA's interrogatory responses in this action, Joel Linzer, EA's Executive Vice-President for  
3 Business and Legal Affairs, and Todd Sitrin, EA's Group Vice-President of Marketing, attended  
4 this meeting. After Antitrust Plaintiffs indicated that they would move to enjoin the  
5 implementation of Proposal 2010-26, the NCAA shelved it, at least for the present.  
6

7 198. Other indicia of conspiratorial activity involving the NCAA, CLC and EA and  
8 marked departures from other practices include the fact that neither the NCAA nor CLC has  
9 brought any legal action, or encouraged any member school or CLC client, or current or former  
10 student-athlete, to stop EA's use of player images and likenesses in EA's NCAA-themed games.  
11 The NCAA and CLC, on behalf of CLC's school clients, aggressively enforce intellectual  
12 property and contractual rights in a myriad of other contexts.  
13

14 199. No valid rights from Antitrust Class members have been obtained by the NCAA,  
15 its members, or its licenses for the use of their images, likenesses, and/or names in video games,  
16 and any purported transfer or usage of student-athletes' rights relating to this usage is the product  
17 of the anticompetitive agreements described herein.

18 **i. Rebroadcasts of Classic Games.**

19 200. In 1997, the ESPN cable television network acquired the Classic Sports Network  
20 for an amount reported to be between \$175 and \$200 million, and renamed it "ESPN Classic."  
21 ESPN Classic replays games from a variety of sports and seasons that are considered to be  
22 "classics" in some way. ESPN describes ESPN Classic as follows:  
23

24 ESPN Classic is a 24-hour, all-sports network devoted to  
25 telecasting the greatest games, stories, heroes and memories in the  
26 history of sports. ESPN Classic presents programming from the  
27 NFL, NBA, MLB, NHL, NASCAR, boxing (including the ESPN  
28 Big Fights Library), tennis, golf, college football and basketball,  
Olympics and others. ESPN Classic is a wholly owned subsidiary  
of ESPN, The Worldwide Leader in Sports.

1           201. As indicated above ESPN Classic has acquired the rights to rebroadcast various  
2 “classic” college basketball and football games, and does so. These rebroadcasts feature and  
3 utilize the images of Damages Class Members.

4           202. Various conferences and universities also run their own networks that replay  
5 classic games. For example, the Big Ten Network states the following on its website:  
6

7                   **Big Ten's Greatest Games**

8                   They are epic sports battles that are etched in hearts and minds of  
9 Big Ten fans across the nation. They are unforgettable moments  
10 that stir passion and pride. They are echoes of both triumphant  
11 victories and devastating defeats.

12                   Throughout the winter, college football fans will have the  
13 opportunity to relive the best of those match-ups on the Big Ten  
14 Network series, "The Big Ten's Greatest Games." The Big Ten  
15 Network will also televise classic games throughout the basketball  
16 season. Use the list to the right to find full season listings.

17                   Our "Greatest Games" schedule features five Big Ten national  
18 championships, including Indiana's title games in 1981 and 1987,  
19 Michigan's championship game in 1989 and Michigan State's titles  
20 in 1979 and 2000. Additional games from the NCAA Elite Eight  
21 and Sweet 16 will air throughout the winter, as will memorable  
22 regular season classics.

23                   Northwestern's 2005 overtime victory against Iowa premiered on  
24 Dec. 1 and the Illinois' 2004 ACC-Big Ten Challenge win against  
25 Wake Forest debuted on Dec. 8. Both games will re-air several  
26 times during the course of the season.

27                   If there's a game that you want to see on "Greatest Games," use the  
28 form below to drop us a line. Our "Greatest Games" crew wants to  
hear from you!

29           203. The Big Ten Network's "Season 1" of classic men's basketball games, which was  
30 broadcast in late 2007 and early 2008, featured 36 games ranging from 1983 to 2007 featuring the  
31 following teams: Connecticut, Duke, Georgetown, Georgia Tech, Illinois, Indiana, Iowa,  
32 Kentucky, LSU, Michigan, Michigan State, Minnesota, North Carolina, Northwestern, Ohio  
33 State, Penn State, Purdue, Texas, and Wisconsin.

1           204. It appears that by the next season, The Big Ten Network had reached an agreement  
2 to show NCAA tournament games. Whereas the first season's offerings did not appear to be  
3 NCAA tournament games, nearly all games shown in the next season were from the NCAA  
4 tournament. The Big Ten Network's "Season 2" of classic men's basketball games, which was  
5 broadcast in late 2008 through March of 2009, featured 16 games ranging from 1979 to 2008  
6 featuring the following teams: Arizona, Florida, Illinois, Indiana, Indiana State, Iowa, Kansas,  
7 Kentucky, Maryland, Michigan State, Minnesota, North Carolina, Northwestern, Ohio State,  
8 Oklahoma, Purdue, Seton Hall, St. John's University, Syracuse, Wake Forest, and Wisconsin.  
9 The games included NCAA tournament championship games, and games from the NCAA  
10 tournament's "Sweet Sixteen," "Elite Eight" and "Final Four" rounds.  
11

12           205. The Big Ten Network had similar numbers of offerings for men's football games.  
13 In Season 1, it rebroadcast approximately 30 different games ranging from the 1990 to 2006  
14 seasons, and in Season 2 it rebroadcast a similar number of games ranging from the 1981 to 2006  
15 seasons.  
16

17           206. As another example, the Brigham Young University cable television network,  
18 available via cable systems around the country such as the Comcast network in the San Francisco  
19 Bay Area, runs the "BYU Television" cable television network, on which it rebroadcasts various  
20 games. For example, on May 30, 2009, the network was scheduled to run a "BYU Classic  
21 Sports" presentation of a 2002 men's basketball game between BYU and Utah, followed by a  
22 1988 game between BYU and Hawaii. Later that day, the network was scheduled to rebroadcast  
23 a 1986 football game between BYU and the University of New Mexico.  
24

25           207. No valid rights from Antitrust Damages Class members have been obtained by the  
26 NCAA, its members, or its licensees for the use of their images, likenesses and/or names in  
27  
28

1 rebroadcasts of “classic” games , and any purported transfer of former student-athletes’ rights  
2 relating to this usage is the product of the anticompetitive agreements described herein.

3 **j. Jerseys, T-Shirts and Other Apparel.**

4 208. Defendants and their co-conspirators, through the release process described herein,  
5 also have allowed former players’ indicia of identity, namely, their uniform numbers and names,  
6 to be utilized in connection with sales of replica and actual jerseys and other apparel offered for  
7 sale. In addition to featuring sometimes current players, replica jerseys also are sold featuring the  
8 numbers and names of former players.  
9

10 209. For example, the University of Connecticut, through its online athletics store, sells  
11 a replica basketball jersey bearing the number 4. This number clearly corresponds to former star  
12 player Ben Gordon, who played for three years at UConn before turning professional in 2004.  
13 Indeed, many other websites sell similar jerseys and specifically reference Mr. Gordon and his  
14 number 4.  
15

16 210. The NCAA’s President, Myles Brand, was referenced in a 2004 article in *The New*  
17 *York Times* in connection with jersey sales featuring current players as follows: “Even Myles  
18 Brand, the President of the N.C.A.A. said he had ethical concerns about the marketing of star  
19 players’ numbers, although he ruled out permitting athletes to make money from the sale of  
20 replicas of their uniforms.” The article further stated that “[p]layers’ number are a meaningful  
21 substitute for their names . . .”  
22

23 211. The NCAA, in fact, has examined, and blessed, its members’ use of players’  
24 uniform numbers for replica jersey sales. As a 2008 article on CNBC.com stated, “For years, the  
25 NCAA has turned a blind eye to the fact that its member institutions give the [apparel companies]  
26 of the world specific numbers that match up to their best players. The schools know the reality of  
27 the situation, which is that numbers that correspond to the stars will sell better than a generic No.  
28

1 1. And just because the NCAA forbids the selling of the jerseys with the names on the back  
2 doesn't mean you can cut the player out of the equation. Everyone knows what's going on.”

3 212. *The New York Times* further reported that “[j]erseys like these are also sold around  
4 the country in Wal-Mart, Sears and other stores under agreements with manufacturers and the  
5 [Defendant] Collegiate Licensing Company, which oversees licensing, marketing and distribution  
6 of royalties for the N.C.A.A. and nearly 200 universities, said Derek Eiler, the company’s chief  
7 operating officer.”

9 213. *The New York Times* further reported in 2004 that “[w]hile sales figures are hard to  
10 acquire, N.C.A.A. officials estimated that Division I universities that sell the most T-shirts and  
11 other team apparel each generate about \$6 million to \$7 million a year in sales. About 6 percent  
12 of those revenues, or perhaps \$360,000, involves the sale of replica jerseys.”

14 214. In addition to replica jersey sales, dozens of the NCAA’s members sell the actual  
15 jerseys worn by former players to the operators of websites such as [www.collegejersey.com](http://www.collegejersey.com),  
16 which then offers the jerseys for sale, typically for prices ranging from several hundred dollars up  
17 to \$1000 or more. These jerseys often bear the players’ names on the back. For example, on June  
18 16, 2009, there were more than 30 former UCLA football players’ jerseys offered for sale that  
19 bear players’ names on the back. Additional information is supplied regarding the year the jersey  
20 was worn, and often additional details on the particular player, such as the position that he played.  
21 In the UCLA example, the players played between 1995 and 2004.

23 215. Additionally, certain schools sell “game worn” uniforms directly. For example, as  
24 of June 16, 2009, Ohio State University was offering for sale via its online memorabilia store  
25 approximately 30 “game worn” jerseys from the 2005 season bearing various uniform numbers.  
26 Each one is offered at \$200. The complete player roster from that season, which lists player  
27 names and uniform numbers, is readily available on-line from websites such as [scout.com](http://scout.com).  
28

1           216. No valid rights from Antitrust Damages Class members have been obtained by the  
2 NCAA, its members, or its licensees for the use of their images, likenesses and/or names in  
3 apparel sales, and any purported transfer of former student-athletes' rights relating to this usage is  
4 the product of the anticompetitive agreements described herein.  
5

6           D.     The Reality for Players After College.

7           217. There is a vast amount of information available that documents the realities of  
8 student-athlete life in the Division I revenue producing sports, i.e., men's basketball and football.  
9 Those athletes typically do not enjoy an academic experience anything like that of "regular"  
10 students. Such athletes frequently are required by the university to devote more than 40 hours a  
11 week to their sports, can have enormous travel demands placed upon them, are often spoon-fed a  
12 curriculum of athlete-friendly classes that are nothing like those experienced by the general  
13 student population, and their graduation rates frequently are abysmal.  
14

15           218. Two Michigan State University law professors, Robert A. McCormick and Amy  
16 Christian McCormick, recently conducted a study regarding Division I athletes in the revenue  
17 generating sports, and concluded that those athletes "daily burdens and obligations not only meet  
18 the legal standard of employee, but far exceed the burdens and obligations of most university  
19 employees."  
20

21           219. After they spend their college years juggling athletic and academic requirements,  
22 many student-athletes wind up substantially in debt because their scholarships did not fully cover  
23 the basic necessities of life. A recent study illustrated that so-called "full scholarships" can leave  
24 student-athletes with as much as \$30,000 in normal student expenses uncovered over the course  
25 of their collegiate athletic careers.

26           220. Moreover, many former student-athletes have continuing medical bills and  
27 treatments resulting from their participation in intercollegiate athletics. These medical treatments  
28

1 and attendant financial responsibility can continue long after the conclusion of a student-athlete's  
2 collegiate sports career. On July 16, 2009, *The New York Times*, in an article titled "College  
3 Athletes Stuck With the Bill After Injuries," reported the following:

4  
5 After years of concerns about inadequate health coverage for  
6 college athletes, the National Collegiate Athletic Association  
7 started requiring universities to make sure their athletes had  
8 insurance before competing.

9 But the association never established clear standards for that  
10 coverage when it introduced the rule four years ago, leaving  
11 colleges to decide for themselves. While some colleges accept  
12 considerable responsibility for medical claims, many others  
13 assume almost none, according to a review of public documents  
14 from a cross section of universities and interviews with current and  
15 former athletes, trainers, administrators and N.C.A.A. officials.

16 ...

17 Other athletes discover their financial problems long after their  
18 bodies have healed. An Ohio University football player,  
19 temporarily paralyzed during a workout, learned that he still owed  
20 \$1,800 in unpaid medical bills when he went to buy a car six years  
21 after his injury.

22 Many students, whether athletes or not, have medical insurance  
23 through their parents. But these plans often exclude varsity sports  
24 injuries, limit out-of-state treatment or do not cover much of the  
25 bill. Some colleges buy secondary policies to fill the gaps,  
26 although even these plans have holes. And only players hurt badly  
27 enough to require extensive care can turn to the N.C.A.A. for  
28 coverage. Its catastrophic insurance carries a \$75,000 deductible,  
which will increase to \$90,000 next year.

...

Even scholarship athletes in major sports can end up in similar  
situations.

Jason Whitehead, a former football player at Ohio University, was  
so badly injured during a workout in 2001 that he had to be  
airlifted to a hospital. He was temporarily paralyzed.

"The next day, when I woke up, the doctor came in and informed  
me that surgery went well, but this was a career-ending injury," he  
said. "You're a 19-year-old kid. It took awhile to sink in."

1 He said he took the bills not covered by his father's insurance to  
2 the Ohio University trainers. His father's insurance and Ohio  
University refused to pay the claims.

3 Whitehead lost his scholarship one academic year after being  
4 medically disqualified by a team physician, per university policy.  
5 University officials declined to comment on his situation, citing  
6 their commitment to student privacy. They also said they would  
not pay bills for procedures that occurred more than a year earlier.

7 But Whitehead, now a 28-year-old district manager for Frito Lay  
8 in the Cleveland area, said he discovered he owed roughly \$1,800  
9 in unpaid medical bills while reviewing paperwork to buy his first  
car about six years after his injury.

10 "The coach says: 'You're on full scholarship. If you ever get hurt,  
11 we'll make sure to take care of you,' " he said. "There's a lot of us  
out there that get used."

12 221. The overwhelming majority of players do not turn professional, and those that do  
13 turn professional typically do not remain professionals for very long. Those that do become  
14 professionals often emerge from universities totally unprepared to manage their finances, and thus  
15 frequently fall prey to financial predators, as a recent expose in *Sports Illustrated* magazine  
16 documented.

17 222. The rare player who reaches the top professional ranks in basketball and is drafted  
18 at least likely will have a guaranteed contract for a few years; in the National Football League, the  
19 rare player who reaches the professional ranks does *not* have a guaranteed contract and can be cut  
20 from the team at any time due to injury or non-performance.

21 223. Whatever the realities of student-athlete life may be, the NCAA is not entitled to  
22 abridge those student-athletes' economic rights in perpetuity.

### 23 ANTITRUST ALLEGATIONS

24 224. Defendants' contract, combination, and conspiracy described herein consisted of a  
25 continuing agreement, understanding, and concert of action among the Defendants and their co-  
26 conspirators, the substantial terms of which were to artificially fix, depress, maintain, and/or  
27  
28

1 stabilize prices received by Antitrust Plaintiffs and Antitrust Class members for use and sale of  
2 their images, likenesses and/or names at zero dollars in the United States, its territories and  
3 possessions.

4 225. Defendants' and their co-conspirators' actions also can be understood as a group  
5 boycott/ refusal to deal.  
6

7 226. Defendants CLC, EA and various co-conspirators facilitated the contract,  
8 combination and conspiracy described herein, and benefited financially from its operation.

9 227. In formulating and effectuating the contract, combination, or conspiracy,  
10 Defendants and their co-conspirators did those things that they unlawfully combined and  
11 conspired to do, including, among other things:

- 12 a. agreeing to artificially fix, depress, maintain, and/or stabilize prices paid to  
13 Antitrust Plaintiffs and Antitrust Class members for use and sale of their  
14 images, likenesses and/or names;
- 15 b. agreeing to limit output of the use or sale of the images, likenesses and/or  
16 names of Antitrust Plaintiffs and Antitrust Class Members;
- 17 c. agreeing to boycott and refuse to deal with Antitrust Plaintiffs and Antitrust  
18 Class members regarding compensation for the use and sale of their images,  
19 likenesses and/or names; and
- 20 d. implementing and monitoring the conspiracy among cartel members.

21 228. The activities described above have been engaged in by Defendants and their co-  
22 conspirators for the purpose of effectuating the unlawful agreement to fix, depress, maintain  
23 and/or stabilize prices paid to Antitrust Plaintiffs and Antitrust Class members for the sale and use  
24 of their images, likenesses and/or names.

25 229. Defendants' actions constitute an unreasonable restraint of trade.  
26  
27  
28



1           233. Antitrust Plaintiffs and the members of the Antitrust Class received less than they  
2 otherwise would have received for the use of their images, likenesses and/or names in a  
3 competitive marketplace, were thus damaged, and seek to recover for those damages.

4           234. On information and belief, the NCAA always conditioned eligibility to play  
5 NCAA Division I college or university men's basketball or NCAA Football Bowl Subdivision  
6 (formerly known as Division I-A until 2006) men's football on the perpetual relinquishment to  
7 the NCAA and its members by the student-athlete of all rights to his image, likeness and/or name  
8 associated with the playing of those sports.

9           235. Defendants and their co-conspirators' total abridgment of compensation rights for  
10 former student-athletes are not connected to any legitimate non-commercial goal. Defendants'  
11 actions are solely to enhance revenue for themselves and their for-profit business partners, by  
12 cutting costs, *i.e.*, eliminating the need to pay any compensation to former student-athletes for the  
13 continuing commercial exploitation of their images, likenesses and/or names. Defendants'  
14 actions have no relationship to any alleged goal of "amateurism," or pro-educational purposes, as  
15 former student-athletes by definition are no longer members of athletic teams under the NCAA's  
16 control. Thus, the NCAA's actions directly regulate a commercial market and therefore are  
17 illegal.

18           236. Defendant CLC has facilitated this illegal scheme, and has financially benefited  
19 from it.

20           237. Defendant EA has participated in this illegal scheme, and has financially benefited  
21 from it.

22           238. As a direct and proximate result of Defendants' scheme, Antitrust Plaintiffs and  
23 the members of the Antitrust Class have been injured and financially damaged in amounts which  
24 are presently undetermined. Antitrust Plaintiffs' and Antitrust Class members' injuries consist of  
25

1 receiving lower prices for use of their images than they would have received absent Defendants'  
2 conduct. Antitrust Plaintiffs' and Antitrust Class members' injuries are of the type the antitrust  
3 laws were designed to prevent and flow from that which makes Defendants' conduct unlawful.

4 239. Defendants' and their co-conspirators' have collectively conspired to illegally limit  
5 and depress the compensation of former student-athletes for continued use of their images to zero.  
6 This anticompetitive and illegal scheme has unreasonably restrained trade.

7 240. The anticompetitive effects of Defendants' scheme substantially outweigh any  
8 alleged procompetitive effects that may be offered by Defendants, including that their collusive  
9 conduct is shielded by its concept of "amateurism." Reasonable and less restrictive alternatives  
10 are available to Defendants' current anticompetitive practices.

11 241. Antitrust Plaintiffs and Antitrust Class members are entitled to a declaratory  
12 judgment declaring as void and unenforceable all forms that purport to grant, transfer, or convey  
13 the rights of former student-athletes in the use of their images.

14 242. Antitrust Plaintiffs and the Antitrust Class are entitled to a permanent injunction  
15 that terminates the ongoing violations alleged in this Complaint.

16  
17  
18 **SECOND CLAIM FOR RELIEF**

19 **Violation of Section 1 of the Sherman Act – 15 U.S.C. § 1**

20 **Unreasonable Restraint of Trade – Group Boycott / Refusal to Deal**

21 **(Against All Defendants)**

22  
23 243. Antitrust Plaintiffs incorporate and re-allege each allegation set forth in the  
24 preceding paragraphs dealing with the claims of the Antitrust Class.

25 244. Defendants and their co-conspirators, by and through Defendants' and co-  
26 conspirators' officers, directors, employees, agents, or other representatives, entered into a  
27 continuing contract, combination, and conspiracy in restraint of trade to effectuate a horizontal  
28

1 group boycott of Antitrust Class Members. Defendants' group boycott / refusal to deal  
2 encompasses Defendants' concerted refusal to compensate Antitrust Class Members for use of  
3 their images, likenesses and/or names and to otherwise concertedly act to prevent Class Members  
4 from being compensated for use of their images, likenesses and/or names, in the United States  
5 and its territories and possessions, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

6  
7 245. Defendants' group boycott / refusal to deal includes Defendants' concerted action  
8 to require all current student-athletes to sign forms each year that purport to require each of them  
9 to relinquish all rights in perpetuity for use of their images, likenesses and/or names. This  
10 concerted action is in effect a refusal to deal with Antitrust Class members on future post-  
11 competition compensation rights issues, and forecloses them from access to the market.  
12 Defendants use the eligibility rules as a threat of a boycott to force all student-athletes to sign the  
13 forms.  
14

15 246. Defendants' group boycott / refusal to deal also includes Defendants' ongoing  
16 concerted action to deny Antitrust Class Members compensation in the form of royalties for the  
17 continued use of their images, likenesses and/or names for profit, including, but not limited to,  
18 through restrictions in the Bylaws.

19 247. Plaintiffs and the members of the Antitrust Class received less than they otherwise  
20 would have received for the use of their images in a competitive marketplace, were thus damaged,  
21 and seek to recover for those damages.  
22

23 248. On information and belief, the NCAA always conditioned eligibility to play  
24 NCAA Division I college or university men's basketball or NCAA Football Bowl Subdivision  
25 (formerly known as Division I-A until 2006) men's football on the perpetual relinquishment to  
26 the NCAA and its members by the student-athlete of all rights to his image, likeness and/or name  
27 associated with the playing of those sports.  
28

1           249. Defendants and their co-conspirators' total abridgment of compensation rights for  
2 former student-athletes are not connected to any legitimate non-commercial goal. Defendants'  
3 actions are solely to enhance revenue for themselves and their for-profit business partners, by  
4 cutting costs, *i.e.*, eliminating the need to pay any compensation to former student-athletes for the  
5 continuing commercial exploitation of their images, likenesses and/or names. Defendants'  
6 actions have no relationship to any alleged goal of "amateurism," or pro-educational purposes, as  
7 former student-athletes by definition are no longer members of athletic teams under the NCAA's  
8 control. Thus, the NCAA's actions directly regulate a commercial market and therefore are  
9 illegal.  
10

11           250. CLC has facilitated this illegal group boycott/refusal to deal, and has financially  
12 benefited from it.  
13

14           251. Defendant EA has participated in this illegal scheme, and has financially benefited  
15 from it.

16           252. As a direct and proximate result of Defendants' group boycott, Antitrust Plaintiffs  
17 and the members of the Antitrust Class have been injured and financially damaged in amounts  
18 which are presently undetermined. Antitrust Plaintiffs' and Antitrust Class members' injuries  
19 consist of denial of compensation for use of their images, likenesses and/or names. Antitrust  
20 Plaintiffs' and Antitrust Class members' injuries are of the type the antitrust laws were designed  
21 to prevent and flow from that which makes Defendants' conduct unlawful.  
22

23           253. Defendants' and their co-conspirators' have collectively conspired to illegally  
24 deny compensation to former student-athletes for continued use of their images, likenesses and/or  
25 names in unreasonable restraint of trade.

26           254. The anticompetitive effects of Defendants' group boycott substantially outweigh  
27 any alleged pro-competitive effects that may be offered by Defendants, including that their  
28

1 collusive conduct is shielded by its concept of “amateurism” or pro-educational purpose.  
2 Reasonable and less restrictive alternatives are available to Defendants’ current anticompetitive  
3 practices.

4 255. Antitrust Plaintiffs and the Antitrust Class are entitled to a permanent injunction  
5 that terminates the ongoing violations alleged in this Complaint.  
6

7 **THIRD CLAIM FOR RELIEF**

8 **Unjust Enrichment**

9 **(Against All Defendants)**

10 256. Antitrust Plaintiffs incorporate and re-allege each allegation set forth in the  
11 preceding paragraphs dealing with the claims of the Antitrust Class.

12 257. Defendants have been unjustly enriched as a result of the unlawful conduct  
13 detailed herein at the expense of Antitrust Plaintiffs and Antitrust Class members. Under  
14 common law principles of unjust enrichment, Defendants should not be permitted to retain the  
15 benefits conferred upon them via their wrongful conduct, and it would be unjust for them to be  
16 allowed to do so.  
17

18 258. Antitrust Plaintiffs seek disgorgement of all Defendants’ profits resulting from the  
19 wrongful conduct described herein and establishment of a constructive trust from which Antitrust  
20 Plaintiffs and the Class members may seek restitution.

21 **FOURTH CLAIM FOR RELIEF**

22 **Accounting**

23 **(Against All Defendants)**

24 259. Antitrust Plaintiffs incorporate and re-allege each allegation set forth in the  
25 preceding paragraphs dealing with the claims of the Antitrust Class.  
26  
27  
28

1           260. As a result of the illegal conduct alleged herein, Defendants have received  
2 licensing revenues in various forms and amounts, including both licensing fees and royalty  
3 payments. As an alternative to their damage claims, Antitrust Plaintiffs and the members of the  
4 Antitrust Class seek to recover a share of these revenues generated from the exploitation of their  
5 likenesses and images, likenesses and/or names.

6           261. Upon a determination of liability, an accounting of the licensing revenues that  
7 Defendants have wrongfully diverted to themselves and other entities will be required in order to  
8 determine damages in the form of each Antitrust Plaintiff's and Antitrust Class members' share  
9 of these licensing revenues.  
10

11           262. These licensing revenues are collected by Defendants as a result of numerous  
12 licensing agreements among many different entities, including the Defendants and their co-  
13 conspirators, and likely thousands of companies that license, manufacture, market and sell various  
14 products and services bearing the likenesses and images of Antitrust Plaintiffs and the members  
15 of the Antitrust Class. The structure of the many relationships between these entities and terms of  
16 the various agreements governing the licensing transactions are not known to Antitrust Plaintiffs  
17 and the members of the Antitrust Class.  
18

19           263. Antitrust Plaintiffs and the members of the Antitrust Class cannot identify at this  
20 time, among other things; (a) all of the entities that have entered into licensing and/or royalty  
21 agreements with the Defendants and their co-conspirators, (b) how the licensing revenue due to  
22 the Defendants and their co-conspirators from each of those agreements is calculated, (c) the  
23 amount of that revenue, and (d) which members of the Antitrust Class' images, likenesses and/or  
24 names are associated with which agreements. Antitrust Plaintiffs seek to recover for themselves  
25 and the members of the Antitrust Class a percentage of the revenue from Defendants and their co-  
26 conspirators for every unlawful licensing and/or royalty agreement involving their image,  
27  
28

1 likenesses, and/or names; this percentage and amount is ascertainable and will be decided by this  
2 Court upon a determination of liability.

3 264. The amount of licensing revenue generated from the exploitation of these images,  
4 likenesses and/or names, including the tracing the revenue resulting from each transaction,  
5 requires a full and complete accounting. This is so because determining the amounts due will  
6 involve a fuller understanding and accounting of the various transactions, agreements, parties and  
7 revenues involved.  
8

9 265. Calculation of the amounts due to Antitrust Plaintiffs and Antitrust Class members  
10 may well be complex. Industry accounting standards may need to be determined, understood and  
11 applied, revenues may need to be traced through the various Defendants and their co-conspirators  
12 and parties involved in the transactions, and tax consequences may also be considered.  
13

#### 14 ANTITRUST PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff prays as follows:

16 A. That the Court determine that this action may be maintained as a class action under  
17 Rule 23 of the Federal Rules of Civil Procedure;

18 B. That the contract, combination, or conspiracy, and the acts done in furtherance  
19 thereof by Defendants and their co-conspirators, be adjudged to have been in violation of  
20 Section 1 of the Sherman Act (15 U.S.C. § 1);

21 C. That judgment be entered for Antitrust Plaintiffs and members of the Antitrust  
22 Class against Defendants for three times the amount of damages sustained by Plaintiffs and the  
23 Class as allowed by law, together with the costs and expenses of this action, including reasonable  
24 attorneys' fees;  
25

26 D. That Defendants be ordered to disgorge all profits earned via the wrongful use and  
27 sale of Antitrust Class members' images, likenesses and/or names as described herein;  
28

1 E. That Antitrust Plaintiffs and Antitrust Class members be awarded any available  
2 prejudgment and post-judgment interest;

3 F. That Antitrust Plaintiffs and Antitrust Class members are entitled to Declaratory  
4 relief declaring as void and unenforceable any releases that purport to have caused Antitrust  
5 Plaintiffs and Class member to relinquish rights to compensation for use of their images after they  
6 no longer are student-athletes, and further declaring as void and unenforceable all NCAA and  
7 member license agreements that purport to represent that Antitrust Class members have released  
8 future compensation rights for the use of their images after they no longer are student-athletes;

9 G. That Defendants, their affiliates, successors, transferees, assignees, and the  
10 officers, directors, partners, agents, and employees thereof, and all other persons acting or  
11 claiming to act on their behalf, be permanently enjoined and restrained from, in any manner,  
12 continuing, maintaining, or renewing the contract, combination, or conspiracy alleged herein, or  
13 from engaging in any other contract, combination, or conspiracy having a similar purpose or  
14 effect, and from adopting or following any practice, plan, program, or device having a similar  
15 purpose or effect;

16 H. That Antitrust Plaintiffs and Antitrust Class members are further entitled to  
17 equitable relief permanently enjoining the future use of the release forms described herein, and  
18 enjoining Defendants and their co-conspirators from selling, licensing or using former student-  
19 athletes' rights that Defendants do not own; and

20 I. That Antitrust Plaintiffs and Antitrust Class members have such other, further, and  
21 different relief as the case may require and the Court may deem just and proper under the  
22 circumstances.


23  
24  
25  
26 **ANTITRUST JURY DEMAND**

27 Antitrust Plaintiffs demand a jury trial, pursuant to Federal Rule of Civil Procedure 38(b),  
28

1 of all triable issues.

2  
3 Dated: October 5, 2011

HAUSFELD LLP

By: 

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# Exhibit A



**Student-Athlete Statement – Division I**

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**For:** Student-athletes.  
**Action:** Sign and return to your director of athletics.  
**Due date:** Before you first compete each year.  
**Required by:** NCAA Constitution 3.2.4.6 and NCAA Bylaws 14.1.3.1 and 30.12.  
**Purpose:** To assist in certifying eligibility.  
**Effective Date:** This NCAA Division I statement/consent form shall be in effect from the date this document is signed and shall remain in effect until a subsequent Division I Student-Athlete Statement/Drug-Testing Consent form is executed.

---

Student-Athlete: \_\_\_\_\_  
(Please Print Name)

Name of your institution: \_\_\_\_\_

This form has seven parts:

- A statement concerning eligibility;
- A Buckley Amendment consent;
- An affirmation of status as an amateur athlete;
- A statement concerning the promotion of NCAA championships and other NCAA events;
- Results of drug tests;
- Previous involvement in NCAA rules violation(s); and
- An affirmation of valid and accurate information provided to the NCAA Eligibility Center and admissions office, including ACT or SAT scores, high school attendance, completion of coursework and high school grades.

If you are an incoming freshman, you must complete and sign Parts I, II, III, IV, V and VII to participate in intercollegiate competition. If you are an incoming transfer student or a continuing student, you must complete and sign Parts I, II, III, IV, V and VI to participate in intercollegiate competition.

Before you sign this form, you should read the Summary of NCAA Regulations provided by your director of athletics or his or her designee or read the bylaws of the NCAA Division I Manual that deal with your eligibility. If you have any questions, you should discuss them with your director of athletics or your institution's compliance officer, or you may contact the NCAA at 317/917-6222.

The conditions that you must meet to be eligible and the requirement that you sign this form are indicated in the following bylaws of the Division I Manual:

- Bylaws 10, 12, 13, 14, 15 and 16
  - Bylaws 14.1.3.1, 18.4 and 31.2.3
- 

**Part I: Statement Concerning Eligibility.**

By signing this part of the form, you affirm that, to the best of your knowledge, you are eligible to compete in intercollegiate competition.

You affirm that your institution has provided you a copy of the Summary of NCAA Regulations or the relevant sections of the Division I Manual and that your director of athletics (or his or her designee) gave you the opportunity to ask questions about them.

You affirm that you meet the NCAA regulations for student-athletes regarding eligibility, recruitment, financial aid, amateur status and involvement in gambling activities.

You affirm that all information provided to the NCAA, the Eligibility Center and the institution's admissions office is accurate and valid, including ACT or SAT scores, high school attendance, completion of coursework and high school grades, as well as the student-athlete's amateur status.

You affirm that you have reported to the director of athletics or his or her designee of your institution any violations of NCAA regulations involving you and your institution.

You affirm that you understand that if you sign this statement falsely or erroneously, you violate NCAA legislation on ethical conduct and you will further jeopardize your eligibility.

---

Name (Please Print)

---

Date of Birth

---

Age

---

Signature of Student-Athlete

---

Home Address (Street or P.O. Box)

---

Date

---

Home City, State, and Zip Code

---

Sport(s)

## Part II: Buckley Amendment Consent.

By signing this part of the form, you certify that you agree to disclose your educational records.

You understand that this entire form and the results of any NCAA drug test you may take are part of your educational records. These records are protected by the Family Educational Rights and Privacy Act of 1974 and they may not be disclosed without your consent.

You give your consent to disclose only to authorized representatives of this institution, its athletics conference (if any) and the NCAA, except as permitted in the Drug-Testing Consent form, the following documents:

- This form;
- Results of NCAA drug tests and related information and correspondence;
- Results of positive drug tests done by non-NCAA national or international athletics organizations;
- Any transcript from your high school, this institution, or any junior college or any other four-year institutions you have attended;
- Precollege test scores, appropriately related information and correspondence (e.g., testing sites, dates and letters of test-score certification or appeal), and where applicable, information relating to eligibility for or conduct of nonstandard testing;
- Graduation status;
- Your social security number and/or student identification number;
- Race and gender identification;
- Diagnosis of any education-impact disabilities;
- Accommodations provided or approved and other information related to any education-impact disabilities in all secondary and postsecondary schools;
- Records concerning your financial aid; and
- Any other papers or information pertaining to your NCAA eligibility.

You agree to disclose these records only to determine your eligibility for intercollegiate athletics, your eligibility for athletically related financial aid, for evaluation of school and team academic success, for awards and recognition programs highlighting student-athlete academic success, for purposes of inclusion in summary institutional information reported to the NCAA (and which may be publicly released by it), for NCAA longitudinal research studies and for activities related to NCAA compliance reviews and athletics certification. You will not be identified by name by the NCAA in any such published or distributed information. This consent shall remain in effect as long as any issues regarding the purposes listed above exist.

You also agree that information regarding any infractions matter in which you may be involved may be published or distributed to third parties as required by NCAA policies, bylaws or procedures.

---

Date

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Signature of Student-Athlete

---

**Part III: Affirmation of Status as an Amateur Athlete.**

You affirm that you have read and understand the NCAA amateurism rules.

By signing this part of the form, you affirm that, to the best of your knowledge, you have not violated any amateurism rules since you requested a final certification from the NCAA Eligibility Center or since the last time you signed a Division I student-athlete statement, whichever occurred later.

You affirm that since requesting a final certification from the Eligibility Center, you have not provided false or misleading information concerning your amateur status to the NCAA, the NCAA clearinghouse and the institution's athletics department, including administrative personnel and the coaching staff.

---

Name (Please Print)

---

Date

---

Signature of Student-Athlete

---

**Part IV: Promotion of NCAA Championships, Events, Activities or Programs.**

You authorize the NCAA [or a third party acting on behalf of the NCAA (e.g., host institution, conference; local organizing committee)] to use your name or picture to generally promote NCAA championships or other NCAA events, activities or programs.

---

Name (Please Print)

---

Signature of Student-Athlete

---

Date

---

**Part V: Results of Drug Tests.**

If you have not tested positive for a banned substance by the NCAA and/or by a non-NCAA national or international athletics organization, sign A and C. If you have tested positive, complete B and C.

**A. No positive drug test.**

You affirm that you have never tested positive by the NCAA and/or by a non-NCAA national or international athletics organization for a banned substance; violated drug-testing protocol; or failed to show for a drug test.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Signature of Student-Athlete

\_\_\_\_\_  
Date

**B. Positive drug test.**

If you have ever tested positive for a substance banned by the NCAA and/or by a non-NCAA national or international athletics organization; violated drug-testing protocol; or failed to show for a drug test, the results must be declared here. The results of a non-NCAA national or international athletics organization positive drug test must be reported by your director of athletics to NCAA Education Services. Should you consequently transfer, you are obligated to report NCAA positive drug-test results to the respective institution.

\_\_\_\_\_  
Date of test

\_\_\_\_\_  
Organization conducting test

\_\_\_\_\_  
Substance

Are you currently under such a drug-testing suspension?

Yes \_\_\_\_\_ No \_\_\_\_\_

**C. Future positive test.**

Should you test positive for a substance banned by the NCAA and/or by a non-NCAA national or international athletics organization; violate drug-testing protocol; or fail to show for a drug test, at any time after you sign this statement, as described in the above paragraph, you must report the results to your director of athletics, who must then report the results to the NCAA.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Student-Athlete

**Part VI: Incoming Transfers – Previous Involvement in NCAA Rules Violation(s).**

Have you previously attended a four-year NCAA Division I, II or III institution?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what is the name(s) of the institution(s)?

Are you aware of any NCAA violations you were involved in while previously attending an NCAA institution?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, did this violation result in your being withheld from competition while attending your previous institution?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered yes to either of the above questions, please provide an explanation.

---

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**Part VII: Incoming Freshmen – Affirmation of Valid ACT or SAT Score.**

You affirm that, to the best of your knowledge, you have received a validated ACT and/or SAT score. You agree that, in the event you are or have been notified by ACT or SAT of the possibility of an invalidated test score, you will immediately notify the director of athletics of your institution. You affirm that all information provided to the NCAA, the Eligibility Center and institution's admissions office is valid and accurate, including high school attendance, completion of coursework and high school grades. You affirm that you did not fraudulently earn your qualifying ACT or SAT score by having someone else take the test for you, copying answers from another person taking the test, etc.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Student-Athlete

**What to do with this form:** Sign and return it to your director of athletics or his or her designee before you first compete. This form is to be kept in the director of athletics' office for six years.

**Any questions regarding this form should be referred to your director of athletics or your institution's NCAA compliance staff, or you may contact the NCAA at 317/917-6222.**