

## UNITED STATES DISTRICT COURT

for the  
Northern District of California

Server

Date 9-22-21 Time 2:45 PM

F/S

ANDERSON INVESTIGATIONS, INC #P101391  
P.O. BOX 535, SLC, UT 84110 877-619-1110

Civil Action No. 4:20-cv-03919 CW

IN RE COLLEGE ATHLETE NIL LITIGATION

Plaintiff

v.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: UNIVERSITY OF UTAH, c/o Phyllis J. Vetter, General Counsel and Vice President  
Office of General Counsel, 201 Presidents Circle, Room 309, Salt Lake City, UT 84112

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attachments A-C

Place: Veritext Court Reporting Service Center  
236 South 300 East, Salt Lake City, UT 84111  
(Or as otherwise agreed to by the parties)

Date and Time:

10/05/2021 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/20/2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Benjamin J. Siegel

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs  
, who issues or requests this subpoena, are:

Benjamin J. Siegel, Hagens Berman Sobol Shapiro LLP, 715 Hearst Ave., Ste. 202, Berkeley, CA 94710; 510-725-3000

bens@hbsslaw.com

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:20-cv-03919 CW

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:



## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

### (2) Claiming Privilege or Protection.

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

### (g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**ATTACHMENT A**  
**SCHEDULE OF DOCUMENTS TO BE PRODUCED**

**DEFINITIONS**

1. The following rules of construction shall apply to all document requests: (a) the terms “All” and “Each” shall be construed as any, each or all; (b) “And” and “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside its scope; (c) “Including” shall be construed to mean “without limitation”; and (d) the use of the singular form of any word includes the plural and vice versa.

2. “Agreement” means any contract, arrangement or understanding, formal or informal, oral or written, between two or more persons, together with all modifications or amendments thereto.

3. “Communication” is used in its broadest sense to encompass any disclosure, transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether orally, in writing, face-to-face or by telephone, facsimile, videoconference, e-mail, text message or emoji, iMessage, WhatsApp, instant message application, Slack correspondence, and/or Microsoft Teams or Zoom comment.

4. “Data” means raw, produced, or computed numbers, facts, statistics, calculations, information, output, quantities, and/or figures that could be used as a basis for calculations, analysis, planning, reasoning, or discussion.

5. “Document” shall mean and refer to any and all documents, electronically stored information (“ESI”), memos, PowerPoints, Excel spreadsheets, databases, notes, emails, writings, drawings, graphs, charts, photographs, videos, sound recordings, images, and other data



or data compilations stored in any medium, including handwritten, typed, printed, pictorial, or graphic matter, however produced or reproduced, of every kind and description, and any other tangible thing, including without limitation any “writings,” “originals,” and “duplicates,” as defined in Fed. R. Civ. P. 34 and Fed. R. Evid. 1001. “Document” shall also include both final and draft versions of the same item.

6. “NCAA” means the National Collegiate Athletic Association, its subsidiaries, departments, divisions, and joint ventures/affiliates, including, without limitation, any organization or entity which it manages or controls, together with all present and former directors, officers, employees, agents, representatives or any persons acting or purporting to act on behalf of the National Collegiate Athletic Association.

7. The term “NIL” means the names, images, pictures, appearances, likenesses, or athletic reputations of all Student-Athletes participating in any of the Sports at Issue.

8. The term “NIL Activity” means any undertaking whereby a Student-Athlete receives compensation of any form, including both monetary and in-kind, for the licensing, sale, use, display or monetization of his or her NIL, including, but not limited to, signing autographs, selling apparel, endorsing or appearing on or in any product, or appearing (including via his or her likeness or voice) in any form of commercial or advertisement, whether on television, radio, print media, the internet, Social Media, or the like.

9. “Relating To” means, without limitation, analyzing, commenting on, comprising, concerning, constituting, dealing with, describing, discussing, evaluating, evidencing, exhibiting, exploring, identifying, mentioning, naming, negating, pertaining to, prepared for, regarding, relating or referring to, reflecting, showing, supporting, or otherwise involving, in whole or in part.

10. “Social Media” means any account creation or activity on any social media account or platform, including but not limited to, Facebook, Instagram, Twitter, YouTube, Snapchat, TikTok, Reddit, Pinterest, Twitch, Tumblr, and LinkedIn.

11. The “Sports at Issue” means all NCAA Division I men’s and women’s athletic programs administered by You.

12. “Student-Athlete” means the definition identified in the 2020-2021 NCAA Division I Manual, Bylaw 12.02.14 “Student-Athlete” for the Sports at Issue.

13. The terms “You” and “Your” mean the responding party, its predecessors, successors, subsidiaries, departments, divisions, joint ventures and/or affiliates, including, without limitation, any organization or entity which the responding party manages or controls, together with all present and former directors, officers, employees, agents, representatives, consultants or any persons acting or purporting to act on behalf of the responding party.

14. Unless otherwise noted, the “Relevant Time Period” means the period from June 1, 2016 through the present.

### **INSTRUCTIONS**

1. This subpoena and any and all Documents and Communications produced in response thereto are governed by a court-approved “Stipulation and Protective Order,” dated December 22, 2020. A copy of the Stipulation and Protective Order, along with relevant exhibits, are attached herein (the “Protective Order”). The Protective Order ensures that information meeting the standards of confidential or personally private information shall be maintained as confidential by the requesting parties and all receiving parties, and shall not be disclosed to anyone outside of the litigation absent court order. Documents responsive to this subpoena that contain such confidential or personally private information may be marked



“Confidential” or “Highly Confidential / Attorney Only Information,” as appropriate, but shall otherwise be produced in complete, unredacted form.

2. These requests call for the production of all responsive Documents and Communications that are within the possession, custody, or control of You or in the possession, custody, or control of Your present or former employees, representatives, agents, and persons consulted or otherwise available to You, Including without limitation Documents and Communications in the possession, custody, or control (Including in their work emails, computers, or mobile devices) of relevant employees such as coaches, the athletic department and its employees, the financial aid office and its employees, the office of the president and its employees, and other locations likely to contain responsive Documents and Communications.

3. If any responsive Document or Communication was but no longer is in Your possession, custody, or control, state the reason it is no longer in Your possession, custody, or control (*i.e.*, lost, missing, destroyed, transferred, disposed of) and explain the circumstances surrounding the disposition of the Document or Communication and the date it occurred.

4. If any Document or Communication covered by these requests is withheld by reason of a claim of attorney-client privilege, attorney work product protection, or any other privilege or protection, please furnish a log providing the following information with respect to each such withheld Document or Communication: date, author, recipients, general subject matter sufficient to make a prima facie determination whether the asserted privilege has been properly invoked, and the legal basis upon which it has been withheld.

5. If any Document or Communication is redacted on the basis of privacy, please identify such in the redaction or by furnishing a log providing the following information with

respect to each redaction: date, author, recipients, and type of information withheld on the basis of privacy.

6. With respect to any Document or Communication maintained or stored electronically, please harvest it in a manner that maintains the integrity and readability of all data.

7. Please produce All Documents and Communications maintained or stored electronically in native, electronic format with All relevant metadata intact. Encrypted or password-protected Documents and Communications should be produced in a form permitting them to be reviewed.

8. To the extent responsive Documents or Communications reside on databases and such other systems and files, You are requested to produce the relevant database in useable form and/or permit access for inspection, review and extraction of responsive information.

9. To the extent You use or compile responsive Data in a specific computer program, Including but not limited to Compliance Assistant, You are requested to produce the Data in a machine readable format.

10. You are requested to immediately meet and confer with plaintiffs' counsel regarding the manner in which You shall produce Documents stored electronically in order for the parties to try and reach agreement in this regard and avoid any unnecessary expense. The court has approved a "Stipulated Order Regarding Discovery of Electronically Stored Information," dated December 14, 2020 ("ESI Order"). A copy of the ESI Order is attached herein and should be reviewed prior to meeting and conferring.

11. These requests shall be deemed continuing so as to require further and supplemental production in accordance with Federal Rule of Civil Procedure 26(e).



12. These requests seek all responsive Documents created or generated during the Relevant Time Period, as well as responsive Documents created or generated outside the Relevant Time Period but which contain information concerning the Relevant Time Period.

## **DOCUMENT REQUESTS**

### **Request No. 1:**

All “squad list forms” and “supplementary forms” as defined in the 2020-2021 NCAA Division I Manual, Bylaw 15.5.11.2, prepared by You for the Sports at Issue, Including information identifying the sport and year denoted by the “squad list,” and each Student-Athlete in the Sports at Issue at Your institution’s name, sport, and year in school (e.g., Sophomore).

For avoidance of doubt, this Request does not include any player rosters or squad list forms for any club or intramural sport teams, or for any varsity sports not regulated by the NCAA.

### **Request No. 2:**

Documents and Data sufficient to show: every Student-Athlete in the Sports at Issue at Your institution who received any financial aid at any point during their time as a Student-Athlete at Your institution; any previous redshirt year by each such Student-Athlete; the years covered by such financial aid; the precise dollar amount of the financial aid, by source(s) (*i.e.*, athletic, institutional (*e.g.*, academic), third-party (*e.g.*, National Merit Scholarship), or a combination thereof), received by each such Student-Athlete for each year financial aid was received; each Student-Athlete’s maximum allowable financial aid for each year financial aid was received; what percentage of each such Student-Athlete’s maximum allowable financial aid was disbursed to the Student-Athlete each year in athletic financial aid; what percentage of each such Student-Athlete’s maximum allowable financial aid was disbursed to the Student-Athlete each year in total financial aid (both athletic and non-athletic); and, to the extent You maintain such distinctions, whether, for each year of the financial aid, the Student Athlete was/is classified by You as in-state, in-region, or out-of-state for tuition purposes. If data comes from a database where specific disbursements are assigned a code related to the type of funding (*e.g.*, athletic aid, Pell Grant, etc.), please provide a legend identifying the codes by type of aid.

To the extent Your institution uses Compliance Assistant, You may be able to satisfy this Request by providing authorization for the NCAA to release all relevant Compliance Assistant Data to Plaintiffs.

### **Request No. 3:**

All Documents, Communications and Data Relating To the Social Media activity of Student-Athletes at Your institution, Including Documents sufficient to show Student-Athletes’

name, social media handles and accounts, number of followers, activity/posts, paid activity/posts, impressions, engagement, demographics, platform, date or time, and payments received for Social Media activity. The Relevant Time Period for this Request is July 1, 2021 to the present.

**Request No. 4:**

All Documents, Communications and Data Relating To any Agreements that would, will or do provide compensation to any Student-Athlete at Your institution for NIL Activity, Including the identities of the contracting parties, the length of the Agreement, the amount of money or other compensation received or receivable by the Student-Athlete, and the type of NIL Activity done in exchange for the compensation (e.g., television commercial, autograph signing, Social Media endorsement). The Relevant Time Period for this Request is July 1, 2021 to the present.

**Request No. 5:**

All Documents, Communications and Data Relating To any compensation, either monetary or in-kind, provided by You to any Student-Athlete for NIL Activity, Including through any individual or group NIL licensing Agreements. The Relevant Time Period for this Request is July 1, 2021 to the present.

**Request No. 6:**

All Documents and Communications Relating To any rules, bylaws, requirements, regulations, or policies You maintain, or to which You or any Student-Athlete participating in any of the Sports at Issue at Your institution are subject to, Relating To Student-Athletes' NIL Activity or non-Student-Athletes' NIL Activity.

**Request No. 7:**

Documents sufficient to show any assignment, exchange, release or Agreement entered into by any Student-Athlete in any Sports at Issue at Your institution with You, the NCAA, or any athletics conference that authorizes the licensing, sale, use, display or monetization of the Student-Athlete's NIL by You, the NCAA, or any athletics conference.

**Request No. 8:**

All Documents, Communications and Data Relating To any media, sponsorship, licensing, or other commercial agreement entered into by You Relating to the Sports at Issue, Including all apparel and equipment contracts, sponsorship contracts, multimedia rights contracts, and contracts licensing the broadcast, rebroadcast, transmission, or retransmission of any athletic contest across any medium (Including television, radio, internet broadcasts, or any other form of electronic dissemination).

**Request No. 9:**

Documents sufficient to show the ratio of financial assistance between male and female Student-Athletes at Your institution.



**Request No. 10:**

All Documents and Communications Relating To feedback, opinions, responses, reactions, or commentary You have received from Your sponsors, broadcast partners, donors, boosters, fans or other third parties Relating To the impact of allowing Student-Athletes to earn compensation for their NILs or participate in NIL Activity on viewership and attendance of, monetary donations to and/or sponsorships for the Sports at Issue at Your institution.

**Request No. 11:**

All Documents and Communications Relating To any educational initiatives or other support, Including branding, marketing and financial literacy programs, that You offer to Student-Athletes at Your institution to help them maximize, secure, negotiate or otherwise manage their opportunities to engage in NIL Activity.

**Request No. 12:**

Any study, survey, report, analysis, examination, estimation, assessment, evaluation, forecast and/or projection Relating To compensation that Student-Athletes at Your institution have received since July 1, 2021, or may receive in the future, from NIL Activity.

**Request No. 13:**

All Documents and Communications sent or received by Mark Harlan Relating To his work on the LEAD1 Association Relating To Student-Athletes' ability to earn compensation for their NILs or participate in NIL Activity.

**Stipulated Order Regarding Discovery  
of Electronically Stored Information**



[All counsel listed on sig. page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

GRANT HOUSE, *et al.*,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, *et al.*,

Defendants.

No. 4:20-cv-03919 CW

**STIPULATED ~~PROPOSED~~ ORDER  
REGARDING DISCOVERY OF  
ELECTRONICALLY STORED  
INFORMATION**

TYMIR OLIVER, *et al.*,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, *et al.*,

Defendants.

No. 4:20-cv-04527 CW

1           **1.     PURPOSE**

2           Unless otherwise agreed to by the parties, this Order will govern discovery of  
3 electronically stored information (“ESI”) in these cases, as well as any subsequent consolidated as  
4 a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of  
5 Electronically Stored Information, and any other applicable orders and rules. Capitalized terms in  
6 this Order are defined in the attached Exhibit A.

7           **2.     COOPERATION**

8           The parties are aware of the importance the Court places on cooperation and commit to  
9 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the  
10 Discovery of ESI.

11          **3.     LIAISON**

12          The parties will identify liaisons to each other who are and will be knowledgeable about  
13 and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have  
14 access to those who are, knowledgeable about the technical aspects of e-discovery, including the  
15 location, nature, accessibility, format, collection, search methodologies, and production of ESI in  
16 this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve  
17 disputes without court intervention.

18          **4.     PRESERVATION**

19          The parties have discussed their preservation obligations and needs and agree that  
20 preservation of potentially relevant ESI will be reasonable and proportionate. Given the nature and  
21 complexity of these actions, the parties agree to address methods to reduce the costs and burdens  
22 of preservation and to ensure proper ESI is preserved in response to particular discovery requests.

23          The following categories of ESI are not discoverable—and, to the extent that they exist,  
24 need not be retained, processed, reviewed, or produced—except upon a showing of good cause:  
25 (a) recorded voice messages, including voicemail in the Avaya Voice Player (.lvp) or WAVE  
26 (.wav) file formats; (b) instant messaging communications, including Skype communications,  
27 Zoom chats, and similar videoconferencing functions; (c) temporary data stored in a computer’s



1 random access memory (RAM), or other ephemeral data that are difficult to preserve without  
 2 disabling the operating system; (d) common system and program files; (e) slack, fragmented,  
 3 unallocated data, or data that no longer has a file marker on hard drives; (f) electronic mail sent to  
 4 or from mobile devices (e.g., iPhone and Blackberry devices), provided that a copy of such mail is  
 5 routinely saved elsewhere; (g) other electronic data stored on a mobile device, such as calendar or  
 6 contact data or notes, provided that a copy of such information is routinely saved elsewhere; (h)  
 7 logs of calls made from mobile devices; (i) Network Access Server Activity Logs; (j) data  
 8 remaining from systems that are no longer in use, and that is unintelligible on systems in use; (k)  
 9 Online Access Data such as temporary internet files, history, cache, cookies, etc.; and (l) data in  
 10 metadata fields that are frequently updated automatically, such as last opened dates, (m) text,  
 11 iMessage, or pin-to-pin messages sent to or from mobile devices (e.g., iPhone and Blackberry  
 12 devices) and (n) back-ups or other long-term storage media (Backup and Archival Files) that were  
 13 created strictly for use as data back-up or disaster recovery medium.

#### 14 **5. GIA DOCUMENTS**

15 The Court has deemed produced in this litigation documents previously produced in *In re*  
 16 *NCAA GIA Cap Antitrust Litigation*, Case Nos. 4:14-md-02541-CW and 4:14-cv-02758-CW,  
 17 which include certain documents also produced in *O'Bannon* (the "GIA documents"). There is no  
 18 requirement that any party reproduce the GIA documents in this case or provide additional or  
 19 different information or metadata for those documents. The parties further agree that the privilege  
 20 and/or redaction logs produced in connection with GIA suffice for purposes of the GIA documents.

#### 21 **6. SEARCH**

22 The parties will cooperate in good faith regarding the disclosure and formulation of  
 23 appropriate search terms and protocols used to search for ESI responsive to document requests  
 24 served pursuant to Fed. R. Civ. P. 34. The parties shall meet and confer as early as possible to  
 25 discuss, *inter alia*:

- 26 • Disclosure of search terms used to search for documents responsive to document
- 27 requests, including semantic synonyms. Semantic synonyms shall mean without

1 limitation code words, terms, phrases or illustrations, acronyms, abbreviations, or non-  
 2 language alphanumeric associational references to relevant ESI, or information that  
 3 may lead to the discovery of relevant ESI.

- 4 • Post-search error sampling and sampling/testing reports, if any.
- 5 • Potential use of computer-assisted review of predictive coding techniques.

6 The parties will meet and confer, prior to the application of search terms to find  
 7 documents responsive to party document requests, and will review any search terms proposed  
 8 and/or requested by the parties. The parties will continue to meet and confer regarding any search  
 9 process issues as necessary and appropriate, including any supplemental requests to add additional  
 10 search terms based on supplemental document productions by either party. This ESI protocol does  
 11 not impose upon any party an obligation to run supplemental searches, nor does it address or  
 12 resolve any objection to the scope of the parties' respective discovery requests.

#### 13 7. PRODUCTION FORMATS

14 The parties agree that documents produced in these proceedings, whether originally stored  
 15 in paper or electronic form, shall be produced in electronic form in the manner as described below.  
 16 Notwithstanding the foregoing provisions of this paragraph, the Parties reserve the right to request  
 17 that an alternative format or method of production be used for certain Documents. In that event,  
 18 the Receiving Party and the Producing Party will meet and confer to discuss alternative production  
 19 requirements, concerns, formats, or methods.

20 **a) Document Format.** Documents shall be produced according to the following  
 21 formats:

- 22 i) Electronic Production of Paper Documents. Documents that are maintained  
 23 in paper format shall be scanned per document and converted to a Static Image,  
 24 and, except as otherwise provided below, shall be produced as black and white 1-  
 25 bit TIFF images at 300 x 300 d.p.i. or greater resolution, in Group 4 compression  
 26 single-page TIFFs and reflect the full and complete information contained in the  
 27 original Document. Paper Documents shall be produced in black and white, except



1 where color is necessary to decipher the meaning, context, or content of the  
 2 document. The Producing Party shall honor reasonable requests for either the  
 3 production of the original Document for inspection and copying or production of a  
 4 color image of the Document. Documents shall also be produced with the  
 5 associated OCR, and with a load file, in accordance with paragraph 6(a)(iii), below.  
 6 No Producing Party shall be required to ensure that the OCR is an exact duplicate  
 7 of the contents of the TIFF image; and the Receiving Party shall accept the OCR in  
 8 its "as is" condition. In the event a Document is redacted, the Producing Party shall  
 9 withhold the redacted text for that Document.

10 ii) Electronically Stored Information. Except as provided in paragraph 6(a)(iv)  
 11 below, Document images shall be generated from electronic Documents in a Group  
 12 4 compression single-page TIFF image that reflects the full and complete  
 13 information contained on the original Document. All black and white images must  
 14 be in TIFF image format and color documents, if applicable, must be in JPG image  
 15 format, together with a Load File or functional equivalent specified in Paragraph  
 16 6(a)(iii) that contains the metadata as set forth in Paragraph 6(h), below, and  
 17 Extracted Text or associated OCR or a link thereto. Files shall be imaged to show  
 18 track changes, speaker notes, and user comments. In the event a Document is  
 19 redacted, the Producing Party shall withhold the redacted text for that Document.

20 iii) File Structure. Each production shall include the following unless  
 21 otherwise agreed between the parties:

22 **a. Index File:**

- 23 • Each production has one index file, in .DAT file format
- 24 • The format of the DAT file shall use Western European (Windows)  
 25 encoding.
- 26 • Standard Concordance delimiters shall be used
- 27 ○ Comma — ASCII character 20 (¶)

- Quote — ASCII character 254 (p)
- Newline — ASCII character 174 (®)
- First line must contain the column/field names (set forth in paragraph 6(h) herein)
- The fields BEGINBATES, ENDBATES, TEXTPATH and NATIVELINK (where applicable) must be present
- Each subsequent row must contain the Metadata for one Document
- Every row must have the same number of columns/fields (empty values are acceptable)
- File shall be placed in the *DATA* subdirectory

**b. OCR and Extracted Text Files (.TXT Files):**

- A single text file for each Document containing all the Document's pages, in text.
- Filenames shall be of the form: <Bates num>.txt, where <Bates num> is the Bates number of the first page of the Document, filenames shall not contain spaces
- Text must be encoded in Western European (Windows) format
- The TEXTPATH of the OCR or Extracted Text files shall be included as a field in the DAT file listed above
- Files shall be placed in the *TEXT* subdirectory

**c. Image Files:<sup>1</sup>**

- A single image for each page in each Document
- A single image per file (no multi-page image files)
- The default format shall be black and white single-page TIFF images and color JPG images, if applicable.

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<sup>1</sup> Not required for documents produced in Native Format.



- Filenames shall be of the form: <Bates num>.<ext>, where <Bates num> is the BATES number of the page, and <ext> is the appropriate extension for the image format (.jpg, .tif, .png, etc.), filenames shall not contain spaces
- Files shall be placed in the *IMAGES* subdirectory

**d. Native Files:**

- Native files need only be produced for (a) Microsoft Excel files, (b) Microsoft PowerPoint files, (c) audio files, (d) video files, and (e) other files that the parties may agree shall be produced natively pursuant to paragraph 6(a)(iv), below.
- Where Documents are produced in Native Format (pursuant to paragraph 6(a)(iv) below) filenames must be unique in the production, unless the content is identical; preferably by naming files by the starting Bates number of the associated document
- The filename of a native file must retain the file extension corresponding to the original Native Format; for example, an Excel 2003 spreadsheet's extension must be .xls
- Each native file filename must correspond to the NATIVELINK metadata field in its corresponding document's row in the DAT file
- Where native files are produced pursuant to this subsection, it is unnecessary to produce Image Files, such as TIFF images, other than the bates stamped native placeholder with confidentiality designation (when applicable) discussed below.
- Any native file text must be encoded in Western European (Windows) format
- Native files shall be placed in the *NATIVES* subdirectory

iv) Native Format Documents. The parties recognize that it may be

1 appropriate for certain Documents to be produced in Native Format. Therefore, the  
2 Producing Party shall produce all .XLS spreadsheets, .PPT presentations, audio  
3 files, and video files, and any files that cannot be imaged properly, in Native  
4 Format unless there is an agreement to the contrary, with bates stamped native  
5 placeholder documents representing native documents for purposes of document  
6 identification and confidentiality designations. The Receiving Party may also  
7 request that the Producing Party produce additional file types of electronic  
8 Documents in Native Format where the converted image format distorts or causes  
9 the information to be improperly displayed, or for which there is no visual  
10 representation, such as database files. The parties will meet and confer regarding  
11 such requests.

12 If a Document to be produced as a Native Format contains privileged  
13 information as well as non-privileged information, it shall be produced in TIFF  
14 format with redactions rather than Native Format, except that Excel spreadsheets  
15 may be produced in Native Format with redactions. If redacting information causes  
16 formatting issues in any Document, the Producing Party and Requesting Party will  
17 meet and confer in good faith in an effort to resolve the issues.

18 To the extent the Producing Party wishes to establish additional procedures for  
19 the protection of confidential information as defined in any applicable Protective  
20 Order entered herein produced in Native Format, the Producing Party and the  
21 Receiving Party shall meet and confer to establish additional procedures, to the  
22 extent necessary, for the protection of the information in Native Format.

23 v) Resolution of Production Issues. If Documents cannot be read because of  
24 imaging, software compatibility, or formatting problems, the Producing Party and  
25 the Receiving Party shall meet and confer to attempt to resolve problem(s), to the  
26 extent the problem(s) are within the Parties' control.

27 vi) Support for Experts' Opinions. Unless a Document shall be produced in



1 Native Format, Documents supporting the Producing Party's experts' opinions  
2 shall be produced as color PDF files or color JPG files where the original  
3 Document contains color and color is necessary to decipher the meaning, context or  
4 content of the document.

5 **b) Production Media.** A Producing Party shall produce Documents electronically,  
6 i.e. FTP or Share File, or on such readily accessible computer or electronic media as the  
7 Producing Party and the Receiving Party may hereafter agree upon (the "Production  
8 Media"). Information that shall be identified on the face of the Production Media shall  
9 include: (1) the production date, and (2) the confidentiality notation required by the  
10 Protective Order entered in this case, if the media contains Confidential Information, as  
11 defined in the Protective Order. The face of the Production Media shall also contain the  
12 Bates Number range(s) of the Documents on the Production Media. When produced  
13 electronically the same information may be provided in an accompanying email or letter. If  
14 the Producing Party encrypts or "locks" the production, the Producing Party shall include  
15 with the production or in a separate letter or email an explanation of how to decrypt the  
16 files. The parties agree to the following production formats: Electronically (i.e. SFTP or  
17 Share File site), CD, DVD or external USB hard drive, whichever results in the least  
18 number of items.

19 **c) Production of Structured Data.** To the extent a response to discovery requires  
20 production of discoverable electronic information contained in a Database which may  
21 contain potentially responsive information, in lieu of producing the Database, the parties  
22 shall meet and confer to agree upon a set of queries to be made for discoverable  
23 information and generate a report in a reasonably usable and exportable electronic file  
24 (e.g., Excel or CSV format) for review by the Requesting Party or counsel. As part of the  
25 meet and confer process, the Producing Party will, at a minimum, identify for the  
26 Requesting Party all data fields containing potentially responsive information in the  
27

1 Database and provide any data dictionary necessary to understand those fields.<sup>2</sup> Upon  
 2 review of the report(s), the Requesting Party may make reasonable requests for additional  
 3 information to explain the Database scheme, codes, abbreviations, and different report  
 4 formats or to request specific data from identified fields.

5 If a Producing Party asserts that certain Database ESI is inaccessible or  
 6 otherwise unnecessary or inadvisable under the circumstances, or if the Requesting Party  
 7 asserts that, following production, certain Database ESI is not reasonably usable, the  
 8 parties shall meet and confer with their respective technology experts to discuss resolving  
 9 such assertions. If the parties cannot resolve any such disputes after such a meet and confer  
 10 has taken place, the issue shall be presented to the Court for resolution.

11 **d) Document Unitization.** Paper documents scanned into Document Images shall  
 12 be logically unitized in a manner so as to maintain the document(s) and any attachments,  
 13 as they existed in their original state, if possible. For electronic documents, the relationship  
 14 of Documents in a Document collection (e.g., cover letter and enclosures, e-mail and  
 15 attachments, binder containing multiple documents, or other documents where a parent-  
 16 child relationship exists between the documents) shall be maintained through the scanning  
 17 or conversion process from Native Format to TIFF, provided however that the Parties shall  
 18 only be required to present one level of parent-child relationship. Document Images  
 19 generated from attachments to e-mails stored in Native Format shall be produced  
 20 contemporaneously and sequentially immediately after the parent e-mail. All hard copy  
 21 Documents imaged and produced electronically shall include a unitization file ("load file")  
 22 in accordance with paragraph 6(a)(iii)(a).

23 **e) Duplicates.** The Producing Party may remove duplicate Documents pursuant to  
 24

25 <sup>2</sup> The parties are meeting and conferring about whether, if discovery requires production of  
 26 discoverable electronic information contained in a Database, the Producing Party will identify for  
 27 the Requesting Party *all* data fields in a Database which contains potential responsive information  
 28 and provide any data dictionary necessary to understand those fields. If the parties cannot reach  
 agreement on this issue, each reserves the right to ask the Court to resolve it.



the following limitations: removal of duplicates shall only be done on exact duplicate Documents (based on MD5 or SHA-1 hash values at the Document level). As a general rule, a Producing Party may de-duplicate its production within a source (custodian), or across the entire production (cross-custodian/globally). With respect to hard copy documents for which metadata does not exist, however, a Producing Party may only de-duplicate within a source (e.g., custodian), provided however that if the Producing Party provides the custodian field for metadata as requested in Exhibit B it may de-duplicate across the entire production. If a Producing Party de-duplicates across the entire production (globally), the Producing Party shall provide both of the following: (1) name of each custodian possessing the de-duplicated copy (the All Custodians metadata fields); and (2) the original file path of each de-duplicated copy (the All Paths metadata field). Where any such Documents have attachments, hash values must be identical for both the document-plus-attachment (including associated metadata) as well as for any attachment (including associated metadata) standing alone. Nothing in this paragraph is intended to resolve a Producing Party's objections in written discovery requests on the ground that the request is duplicative because the requested Documents were produced or are being produced by other parties.

**f) Paper Documents Containing Fixed Notes.** Paper Documents that contain fixed notes shall be scanned with the notes affixed, if it can be done so in a manner so as not to obstruct other content on the Document. If the content of the Document is obscured by the affixed notes, the Document and note shall be scanned separately.

**g) Bates Numbering and Other Unique Identifiers.** Each Producing Party shall Bates number its production(s) as follows:

i) Document Images. Each page of a produced Document—except Native Files—shall have a legible, unique page identifier (“Bates Number”) electronically “burned” onto the image at a location that does not unreasonably obliterate, conceal, or interfere with any information from the source document. The Bates



1 Numbers shall be enumerated as defined in Exhibit A. The Producing Party will  
2 use a consistent prefix throughout the matter unless good reason exists for using a  
3 different prefix. No other legend or stamp will be placed on the Document Image  
4 other than a confidentiality legend (where applicable), redactions, the Bates  
5 Number identified above, and any other internal tracking number that the  
6 Producing Party may choose to use. The confidentiality legend shall be “burned”  
7 onto a Document’s image at a location that does not unreasonably obliterate or  
8 obscure any information from the source document.

9 ii) Native Format Documents. In the event Native Format Documents are  
10 produced, in order to preserve the integrity of those Native Format Documents, no  
11 Bates Number, confidentiality legend or internal tracking number shall be added to  
12 the content of the Native Document unless otherwise agreed between the Producing  
13 Party and the Receiving Party during any meet and confer related to confidentiality  
14 protections for Native Format Documents; however, the Producing Party will  
15 provide a MD5 Hash Value for each Native Format Document.

16 **h) Metadata.** The Producing Party shall produce the metadata information  
17 described in Exhibit B, if available, with each production and in the format described in  
18 Paragraph 6(a)(iii)(a) above. The Producing Party has no obligation or duty to fill in any  
19 metadata fields or create any metadata that is not present with the original file. The  
20 Producing Party also has no obligation or duty to recollect documents already collected in  
21 in response to discovery requests during the *GIA* litigation to fill in any metadata fields as  
22 long as the original collection was consistent with the ESI Protocol entered in the *GIA*  
23 litigation. For each Document, the Producing Party shall produce a line in the index file  
24 with the fields identified in Exhibit B, where available. The field naming conventions shall  
25 be as described in Exhibit B unless otherwise agreed and consistently applied across all  
26 productions.

27 **i) Compressed Files.** Compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP)

1 shall be decompressed in a reiterative manner to ensure that a zip within a zip is  
2 decompressed into the lowest possible compression resulting in individual folders and/or  
3 files.

4 **j) Email Threading.** Email thread suppression techniques may be applied to  
5 eliminate or withhold documents from production provided the use of such techniques are  
6 disclosed at the time of production and provided that the All Custodians and All Paths  
7 metadata for lesser inclusive emails that are within the Producing Party's agreed-to review  
8 population and suppressed from production are included in the metadata for the most  
9 inclusive emails that are produced. Additionally, all non-duplicate email attachments  
10 included in the lesser inclusive emails that are suppressed shall be produced.

#### 11 **8. PHASING**

12 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties  
13 agree to meet and confer regarding the phasing of the production of ESI, should such phasing be  
14 appropriate.

#### 15 **9. OBJECTIONS TO ESI PRODUCTION**

16 If either party objects to producing requested information in the formats described herein  
17 on the grounds that such information is not reasonably accessible because of undue burden or cost,  
18 before asserting such an objection, the Responding Party will inform the Requesting Party of any  
19 format in which it is willing to produce the requested data, the nature and location of the  
20 information claimed to not be reasonably accessible, the reason(s) why the requested form of  
21 production would impose an undue burden or is unreasonably costly, and afford the requesting  
22 party 10 business days from receipt of such notice to propose an alternative means of compliance  
23 with the request. Such proposal may include alternative cost estimates for ESI discovery  
24 production, may offer a proposal for ESI discovery cost allocation, or both.

25 The parties shall meet and confer in good faith to resolve any dispute regarding a proposed  
26 deviation from the provisions of this stipulation. To the extent the parties are unable to resolve any  
27 such dispute, each party reserves the right to seek judicial intervention in compliance with the



1 relevant court rules and orders. Nothing in this Order negates the parties' ongoing obligations to  
2 report spoliation of evidence.

3 **10. DOCUMENTS PROTECTED FROM DISCOVERY**

4 a) For any document withheld in its entirety or produced but redacted on the  
5 basis of privilege or work product protections, the party withholding the document(s) (the  
6 "Withholding Party") will produce privilege/redaction logs consistent with the  
7 requirements of the Federal Rules of Civil Procedure.

8 b) The logs shall be in Excel format or any other format that permits electronic  
9 sorting and searching, except that the parties shall have no obligation to log information  
10 either (i) generated on or after June 15, 2020 or (ii) involving privileged communications  
11 with outside counsel. When there is a chain of privileged e-mails, the Withholding Party  
12 need only include one entry for the top/most recent email on the privilege/redaction log for  
13 the entire e-mail chain and need not log each e-mail contained in the chain separately. For  
14 each document withheld or redacted, the Producing Party's privilege/redaction logs shall  
15 include the following information, where available: (a) custodian or source; (b) date; (c)  
16 author(s); (d) for documents produced but redacted on the ground of privilege, the starting  
17 and ending Bates number; (e) recipient(s), CC(s) and BCC(s) (for e-mail and hard-copy  
18 communication such as letters and internal memoranda); (f) specification of the privilege  
19 claimed; and (g) a description of the document and the basis for the privilege or redaction  
20 claim. Privilege/redaction logs shall be produced within 45 days of the substantial  
21 completion of a party's production, or another time period mutually agreed to by the  
22 parties.

23 c) Pursuant to Fed. R. Evid. 502(b), the disclosure of a communication or  
24 information covered by the attorney-client privilege or work-product doctrine does not  
25 operate as a waiver if (1) the disclosure is inadvertent; (2) the holder of the privilege or  
26 protection takes reasonable steps to prevent disclosure; and (3) the holder promptly took  
27 reasonable steps to rectify the error, including (if applicable) following Federal Rule of

Civil Procedure 26(b)(5)(b).

d) All other issues of privilege, including the production of privileged or protected documents or information, shall be governed by the Protective Order entered by the Court in this litigation.

#### 11. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

#### 12. MISCELLANEOUS

This Stipulated Order is not intended to govern any protections or restrictions related to the production of privileged litigation material. Any documents recalled due to a mutually-agreed upon clawback provision shall have a specific protocol followed to ensure all copies of each such document are appropriately removed from the review system of the opposite party.

**IT IS SO STIPULATED**, through Counsel of Record.

Dated: December 11, 2020

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**E-FILING ATTESTATION**

I, Steve W. Berman, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Steve W. Berman  
STEVE W. BERMAN

\* \* \*

**~~PROPOSED~~ ORDER**

**PURSUANT TO STIPULATION,  
IT IS SO ORDERED.**

DATED: December 14, 2020



THE HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE



**EXHIBIT A**  
**DEFINITIONS**

A. **“Electronically stored information” or “ESI,”** as used herein, means and refers to computer generated information or data of any kind, stored in or on any storage media located on computers, file servers, disks, tape or other real or virtualized devices or media. Non-limiting examples of ESI include:

- Digital communications (e.g., e-mail, voice mail, instant messaging);
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB);
- Word processed documents (e.g., Word or WordPerfect files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., individual entries stored in an Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations);
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files;
- Backup and Archival Files (e.g., Veritas, Zip, .GHO); and
- Cloud based or other virtualized ESI, including application, infrastructure and data.

B. **“Native File(s)” or “Native Format”** means and refers to ESI that has an associated file structure defined by the creating or viewing application in the file type for (or of)

1 the application in which such ESI is normally created, viewed, modified and/or as used by the  
2 producing party in the normal course of its business.

3           **C.           “Metadata”** means and refers to information embedded in or associated  
4 with a Native File (i) that does not constitute the primary content region of the file; (ii) that is not  
5 ordinarily viewable or printable from the application that generated, edited, or modified such  
6 Native File that describes the characteristics, origins, usage and/or validity of the electronic file;  
7 and/or (iii) that is generated automatically by the operation of a computer or other information  
8 technology system when a Native File is created, modified, transmitted, deleted or otherwise  
9 manipulated by a user of such system.

10           **D.           “Database”** means or refers to a set of related files that is created and  
11 managed by a Database Management System or DBMS.

12           **E.           “Database Management System” or “DBMS”** means and refers to  
13 software that controls the organization, storage, retrieval, security and integrity of data in a  
14 database.

15           **F.           “Static Image”** means or refers to a representation of ESI produced by  
16 scanning paper documents or converting a Native File to create a standard image format capable  
17 of being viewed and printed on standard computer systems. A Tagged Image File Format (TIFF)  
18 image is an example of a Static Image.

19           **G.           “Documents”** means or refers to any electronic or tangible medium from  
20 which information can be obtained and /or translated into reasonably usable form, and shall have  
21 the same meaning as used in the Federal Rules of Civil Procedure, including without limitation  
22 writings, computer file, drawings, graphs, charts, photographs, sound recordings, images, video  
23 and other data, data records or data.

24           **H.           “Load/Unitization File”** means or refers to an electronic file containing  
25 information identifying a set of paper-scanned images or processed ESI and containing (i) an  
26 indication of which individual pages or files constitute each Document, including attachments, and  
27 links to the Static Images associated with each Document; (ii) links to any Native Files, including



1 attachments, associated with each Document; and (iii) data relevant to each individual Document,  
2 including extracted and user-created Metadata and coded data.

3 **I. “OCR”** means or refers to the optical character recognition file that is  
4 created by software used in conjunction with a scanner that is capable of reading text-based  
5 documents and making such documents searchable using appropriate software.

6 **J. “Extracted Text”** means or refers to the user-created text that can be  
7 electronically extracted from a native file without the use of OCR. Extracted text is favored over  
8 OCR.

9 **K. “Receiving Party”** means or refers to the party receiving production of  
10 Documents in response to any request for production of document(s) pursuant to Fed. R. Civ. P.  
11 34(a) or pursuant to any initial production of documents identified in the party’s Rule 26(a)  
12 disclosures.

13 **L. “Producing Party”** means or refers to the party producing Documents in  
14 response to any request for production of documents pursuant to Fed. R. Civ. P. 34(a) or pursuant  
15 to any initial production of documents identified in the party’s Rule 26(a) disclosures.

16 **M. “Bates Number”** means or refers to an identifier consisting of a two to  
17 seven letter prefix, associated with the Producing Party’s name, followed by numbers (e.g.,  
18 ABCD000000001). Each page in the production is assigned a unique, incremental Bates number.  
19 The prefix must be the same for all pages from the same Producing Party unless good reason  
20 exists for the Producing Party to use a different prefix.

21 **N. “Media”** means an object or device, real or virtualized, including but not  
22 limited to a disc, tape, computer or other device, on which data is or was stored.

**EXHIBIT B****METADATA FIELDS**

Field Name	Field Description	Field Type	Hard Copy	Email	Other ESI	Calendar Items
Begin Bates	Begin Bates (including prefix) – No spaces or special characters	Text	X	X	X	X
End Bates	End Bates (including prefix) – No spaces or special characters	Text	X	X	X	X
All Custodians	Identification of all custodians/sources who the producing party agreed to produce and where a duplicate of the Document was de-duplicated when processing the documents.	Text	X	X	X	X
Custodian	Custodian(s) / source(s) John Doe or ABC Department	Text	X	X	X	X
Time Zone	The TimeZone from which the native file was processed	Text		X	X	X
MD5 Hash	Document MDS hash value (used for deduplication or other processing)	Text		X	X	X
Begin Family	Start Bates of family range	Text	X	X	X	X
End Family	End Bates of family range	Text	X	X	X	X
Pages	Page count	Integer	X	X	X	X
Confidentiality	Confidentiality designation for document	Text	X	X	X	X
Hidden Content	Indicates a document has hidden data (Y/N)	Text			X	
Track Changes	Indicates a document contains track changes (Y/N)	Text			X	
Comments	Indicates a document contains comments (Y/N)	Text			X	
Speaker Notes	Indicates a document contains speaker notes (Y/N)	Text			X	
All Paths	Identification of all file paths for duplicate copies.	Text		X	X	X



Field Name	Field Description	Field Type	Hard Copy	Email	Other ESI	Calendar Items
File Path/Directory Path	Email folder path (sample:Inbox/Active); The name of the folder from which the ESI document was obtained, including any parent folders	Text		X	X	X
From	Author of the Email or Calendar Item	Text		X		X
To	Recipients of the Email	Multi-Entry		X		X
Cc	Names of individuals who were copied on the Email	Multi-Entry		X		X
Bcc	Names of individuals who were blind-copied on the Email	Multi-Entry		X		X
Subject	Email or calendar subject	Text		X		X
Date Created	Datetime electronic file was created internally. Format: MM/DD/YYYY 00:00 pm UTC	Datetime			X	
Date Modified	Datetime electronic file was last modified internally. Format: MM/DD/YYYY 00:00 pm UTC	Datetime			X	
Date Sent	Date the email was sent. Format: MM/DD/YYYY 00:00 pm UTC	Datetime		X		X
Date Received	Datetime Email was received. Format: MM/DD/YYYY 00:00 pm UTC	Datetime		X		X
Message Id	Proprietary email database/mailstore/post office file associated with centrally managed enterprise mail servers. Microsoft Outlook PST EntryID, the UniqueID (UNID) for Lotus Notes, equivalent value for other proprietary mailstore formats.	Text		X		X
Email Conversation Index	Email thread identification	Text		X		X
Date Saved	Date native file was last	Date			X	

Field Name	Field Description	Field Type	Hard Copy	Email	Other ESI	Calendar Items
	modified internally. Format: MM/DD/YYYY					
Date Printed	Date native file was printed (metadata derived from Word documents, etc.)	Date			X	
Author	Author field value extracted from the metadata of a native file	Text			X	
Last Modified By	Identity of last person who modified the document internally from the metadata of a native file	Text			X	
Text Path	File path to the text file location on the delivery medium	Text	X	X	X	X
File Size	File size in KB	Integer		X	X	X
Filename	File name of native file (E-Docs or attachments to Email)	Text		X	X	X
Application	Application used to create native file (e.g., Excel, Outlook, Word)	Text		X	X	X
File Extension	File extension of native file	Text		X	X	X
NativePath	File path location to the current native file location on the delivery medium	Text			X	
Redacted	Indicates a document contains redactions (Y/N)	Text	X	X	X	X
Producing Party	Agency (US) or Entity (Defendants) from whom documents were collected	Text	X	X	X	X



# **ATTACHMENT B**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

GRANT HOUSE, et al.,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, et al.,

Defendants.

Case No. 4:20-cv-03919 CW

**STIPULATION AND ~~PROPOSED~~  
PROTECTIVE ORDER**

TYMIR OLIVER, on behalf of himself and  
all others similarly situated,

Plaintiffs,

v.

NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION, et al.,

Defendants.

Case No. 4:20-cv-04527 CW



1 At the case management conference in the above-captioned actions held on November 18,  
2 2020, the Court directed that all documents produced in the actions captioned *In re NCAA Athletic*  
3 *Grant-in-Aid Cap Antitrust Litigation* (Case Nos. 4:14-md-2541-CW and 4:14-cv-2758-CW)  
4 (herein "*Alston*") would be deemed to have been produced in discovery in these actions. The *Alston*  
5 documents deemed to have been produced in discovery in these actions include documents  
6 produced in *In re Student-Athlete Name and Likeness Licensing Litigation* (Case Nos. C 09-1967-  
7 CW and C 09-3329-CW) (herein "*O'Bannon*").

8 Certain of the *Alston* documents produced in discovery were subject to multiple protective  
9 orders entered in the *Alston* action, as follows:

10 1. Protective Order entered on January 1, 2015 [14-md-2541; Dkt. 189] (including  
11 provisions concerning designation of documents as Confidential or as Highly  
12 Confidential/Attorney Only Information), attached herewith as Exhibit A;

13 2. Addendum to Protective Order entered on July 9, 2015 [14-md-2541; Dkt. 234]  
14 (including provisions concerning designation of documents as Highly Confidential NCAA  
15 Member Financial Data), attached herewith as Exhibit B;

16 3. Second Addendum to Protective Order entered on October 12, 2016 [14-md-2541;  
17 Dkt. 512] (including provisions concerning designation of documents as Conference Strictly  
18 Confidential and Network Strictly Confidential Information – Outside Counsel Only), attached  
19 herewith as Exhibit C;

20 4. Third Addendum to Protective Order entered on November 11, 2016 [14-md-2541;  
21 Dkt. 539 & 540] (including additional provisions concerning designation of documents as  
22 Network Strictly Confidential Information – Outside Counsel Only), attached herewith as  
23 Exhibit D;

24 5. Stipulation Regarding Second Addendum to Protective Order entered on  
25 September 4, 2018 [14-md-2541; Dkt. 1027] (concerning disclosures at trial of certain  
26 confidential information), attached herewith as Exhibit E; and

27 6. Fourth Addendum to Protective Order entered on September 15, 2019 [14-md-  
28 2541; Dkt. 1237 & 1238] (concerning certain billing records), attached herewith as Exhibit F.

1 These protective orders (collectively the “*Alston* Protective Orders”), with the modifications  
2 reflected below, remain in effect with respect to the *Alston* documents deemed to have been  
3 produced in these actions. Additional documents not produced in *Alston* may also be produced in  
4 these actions pursuant to the provisions of the applicable *Alston* Protective Orders with the  
5 exception of documents that may be eligible for the designations Conference Strictly Confidential  
6 – Outside Litigation Counsel Only or Network Strictly Confidential – Outside Litigation Counsel  
7 Only. In the event that documents or information that could be designated Conference Strictly  
8 Confidential – Outside Litigation Counsel Only and/or Network Strictly Confidential – Outside  
9 Litigation Counsel Only under the *Alston* Protective Orders is to be produced in this litigation in  
10 the future, the parties will negotiate appropriate protections for those documents in a separate  
11 stipulation or submit any disagreements to the Court for resolution. The parties will negotiate in  
12 good faith to reach agreement on appropriate protections for any Conference Strictly Confidential  
13 – Outside Litigation Counsel Only and/or Network Strictly Confidential – Outside Litigation  
14 Counsel Only documents to be produced in this litigation and by February 1, 2021 either submit a  
15 separate stipulation to the Court, or, if agreement cannot be reached, submit any disagreements for  
16 resolution by the Court.

17 NOW, THEREFORE, through counsel, the parties to this action stipulate and move the  
18 Court to order that:

19 1. Each of the *Alston* Protective Orders is deemed to have been and is hereby entered  
20 in these actions with the following modifications and exceptions.

21 2. To the extent the *Alston* Protective Orders reference or name specific counsel of  
22 record in that case, they are hereby amended to reference and apply to counsel in parallel positions  
23 in these actions.

24 3. Paragraph 11 of Exhibit C is hereby deleted in its entirety and replaced with the  
25 following: No disclosure of Conference Strictly Confidential – Outside Litigation Counsel Only  
26 Information or Network Strictly Confidential – Outside Litigation Counsel Only Information to a  
27 consultant or expert witness or their necessary support personnel shall occur until that person has  
28 accurately completed and signed the certification annexed to this Second Addendum as Exhibit A,



1 and, in the case of Network Strictly Confidential – Outside Litigation Counsel Only Information,  
2 a signed copy has been provided to the applicable Network(s) referenced in the document; and to  
3 the extent there has been an objection under Paragraph 13 with respect to Network Strictly  
4 Confidential – Outside Litigation Counsel Only Information, that objection is resolved as  
5 discussed below. A separate certification annexed to this Second Addendum as Exhibit A shall not  
6 be required for staff members working under the supervision of an individual signing the  
7 certification annexed hereto as Exhibit A. An individual signing the certification annexed to this  
8 Second Addendum as Exhibit A, however, shall accept full responsibility for taking measures to  
9 ensure that staff members working under his or her supervision comply with the terms of this  
10 Second Addendum. Neither the parties in this action nor their counsel shall seek information  
11 regarding the identity of any consultant or expert witness or their necessary support personnel that  
12 is provided to any Network(s) pursuant to this stipulation. If a party or its counsel learns the identity  
13 of any consultant or expert witness or their necessary support personnel from any Network(s), that  
14 party's counsel shall inform the party who retained the consultant or expert witness of the  
15 disclosure.

16 4. Paragraphs 12-15 of Exhibit C are amended as follows: any reference to  
17 "Disclosing Party" is replaced with "applicable Network(s) referenced in the document" and any  
18 reference to "parties" or "the party" includes, where applicable, the Network(s) referenced in the  
19 document(s) at issue.

20 5. The modifications to Exhibit C reflected in paragraphs 3 and 4 above shall be  
21 incorporated into Exhibit D only to the extent Exhibit D sets forth the rights and obligations with  
22 respect to the NCAA, including documents for which the NCAA was the "Disclosing Party," and  
23 their media networks. These modifications reflected in paragraphs 3 and 4 above shall not be  
24 incorporated into Exhibit D to the extent Exhibit D sets forth the rights and obligations with respect  
25 to the Six Conferences, as defined in Exhibit D and who are not defendants in these actions,  
26 including documents for which any of the Six Conferences were the "Disclosing Party," and their  
27 media networks.

28

1           6.       Neither the parties in this action nor their counsel shall seek information regarding  
2 the identity of any consultant or expert witness or their necessary support personnel that is provided  
3 to any of the “Six Conferences” or “media networks” pursuant to Exhibit D. If a party or its counsel  
4 learns the identity of any consultant or expert witness or their necessary support personnel from  
5 any of the Six Conferences or media networks, that party’s counsel shall notify the party who  
6 retained the consultant or expert witness of the disclosure.

7           7.       Exhibits C, D and E will not apply to documents produced in these cases that were  
8 not previously produced in *Alston*. To the extent documents and information that were not  
9 produced in *Alston* will be produced in these cases and would be eligible for the designations  
10 Conference Strictly Confidential – Outside Litigation Counsel Only or Network Strictly  
11 Confidential – Outside Litigation Counsel Only under the *Alston* Protective Orders, the parties will  
12 negotiate appropriate protections for those documents and by February 1, 2021 either submit a  
13 separate stipulation to the Court, or, if agreement cannot be reached, submit any disagreements for  
14 resolution by the Court.

15           8.       If and to the extent any of the certifications annexed to the *Alston* Protective Orders  
16 are provided in accordance with this Order, the party(ies) obtaining the certification will first  
17 update the certification to reflect the case name(s) and docket number(s) of these cases. Any failure  
18 to do so, however, shall not result in the document(s) and/or information losing their protection in  
19 these cases pursuant to this Stipulation.

20           9.       If and to the extent that documents were publicly filed as trial exhibits without being  
21 placed under seal in *Alston* and have thus become publicly available, such documents shall not be  
22 governed by the *Alston* Protective Orders.

23           10.      By entering into this Stipulation, no party concedes or agrees, or otherwise  
24 compromises its position, concerning whether any documents are (a) discoverable or admissible  
25 in evidence, (b) properly deemed to be confidential and/or subject to enhanced confidentiality  
26 treatment pursuant to the provisions of any of the *Alston* Protective Orders, or (c) properly  
27 redacted, in light of the issues in this action.

28



1 Dated: December 21, 2020

Respectfully submitted,

2 **WILKINSON STEKLOFF LLP**

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**PURSANT TO STIPULATION, IT IS SO ORDERED,**

DATED: December 22, 2020



The Hon. Claudia Wilken  
UNITED STATES DISTRICT JUDGE



# **EXHIBIT A**

1  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION  
11

12 IN RE: NATIONAL COLLEGIATE  
13 ATHLETIC ASSOCIATION ATHLETIC  
14 GRANT-IN-AID CAP ANTITRUST  
15 LITIGATION

CASE NO. 14-md-2541-CW  
CASE NO. 14-cv-2758-CW

16 STIPULATED ~~PROPOSED~~  
17 PROTECTIVE ORDER REGARDING  
18 CONFIDENTIALITY OF DOCUMENTS  
19 AND MATERIALS

20 This Document Relates to:  
21 ALL ACTIONS  
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14-md-2541-CW  
14-cv-2758-CW

STIPULATED ~~PROPOSED~~ PROTECTIVE ORDER REGARDING CONFIDENTIALITY

1 In order to protect confidential information obtained from or disclosed by the respective  
2 parties or nonparties in connection with this litigation and pursuant to the Court's authority under  
3 Federal Rule of Civil Procedure 26(c) and Federal Rule of Evidence 502, the parties submit as  
4 follows:

5 **PURPOSES AND LIMITATIONS**

6 1. Disclosure and discovery activity in these actions are likely to involve production  
7 of trade secrets, confidential, proprietary, or private information for which special protection from  
8 public disclosure and from use for any purpose other than prosecuting this litigation would be  
9 warranted. The unrestricted disclosure of such information would cause undue damage to the  
10 parties and their businesses or to third parties. The disclosure of trade secrets, proprietary  
11 information, and confidential business and financial information would harm the disclosing party  
12 if it was made known to the disclosing party's competitors, and in some cases, could violate the  
13 confidentiality agreements between the disclosing party and third parties or parties to those  
14 agreements. Disclosure of private information and educational information is also governed by  
15 statute and other laws such that disclosure of that information may be inconsistent with those  
16 statutes and other laws. Accordingly, the parties in these actions hereby stipulate to and petition  
17 the Court to enter the following Protective Order. The parties acknowledge that this Order does  
18 not confer blanket protections on all disclosures or responses to discovery, and that the protections  
19 outlined herein extend only to the limited information or items that are entitled to treatment as  
20 confidential under applicable legal principles. This Protective Order is, therefore, entered into  
21 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to protect information entitled to be  
22 kept confidential.

23 2. The parties further acknowledge, as set forth in Paragraph 17, below, that this  
24 Protective Order creates no entitlement to file confidential information under seal; the relevant  
25 court rules (e.g., Civil Local Rule 79-5) set forth the procedures that must be followed, and reflect  
26 the standards that will be applied, when a party seeks permission from the Court to file material  
27 under seal.

28 3. Documents and other information produced by the parties or nonparties in



1 connection with these actions shall be used solely for purposes of prosecuting, defending or  
2 attempting to settle these actions, whether such information is designated “Confidential” or  
3 “Highly Confidential – Counsel Only” or not.

4 4. The protections outlined in this Order apply only to information appropriately  
5 designated as “Confidential” or “Highly Confidential – Counsel Only” pursuant to the terms of  
6 this Order (collectively, the “Protected Information”).

7 5. The parties have reviewed the Case Management Order (Dkt. 132), which includes  
8 Judge Wilken’s Civil Pretrial Order, and Magistrate Judge Nathanael M. Cousins’ Civil Standing  
9 Order. The parties represent that nothing contained in this Protective Order conflicts with any of  
10 the provisions in those orders.

#### 11 **NONDISCLOSURE OF PROTECTED INFORMATION**

12 6. Except with the prior written consent of the party or non-party originally  
13 designating a document, discovery response, or deposition transcript (the “Disclosing Party”),  
14 Protected Information may not be disclosed to any person except as specifically authorized herein.

15 7. Any Disclosing Party may designate as Confidential (by stamping the relevant page  
16 or portion “Confidential”) any document, response to discovery, or deposition transcript which  
17 that Disclosing Party considers in good faith to contain information involving trade secrets,  
18 proprietary information, confidential business, educational or financial information, private  
19 information or other information subject to protection under California or federal law, or another  
20 applicable legal standard (“Confidential Information”). Where a document or response consists of  
21 more than one page, the first page and each page on which Confidential Information appears shall  
22 be so designated. Confidential Information may only be disclosed to those persons set forth in  
23 Paragraph 12 below.

24 8. Any Disclosing Party may designate as Highly Confidential (by stamping the  
25 relevant page or portion “Highly Confidential – Counsel Only”) any document, response to  
26 discovery, or deposition transcript which that Disclosing Party considers in good faith to contain  
27 Confidential Information, the disclosure of which to another party or non-party would create a  
28 substantial risk of serious harm that could not be avoided by less restrictive means (“Highly

Confidential – Counsel Only Information”). Where a document or response consists of more than one page, the first page and each page on which Highly Confidential Information appears shall be so designated. Highly Confidential – Counsel Only Information may only be disclosed to those persons set forth in Paragraph 13 below.

9. A Disclosing Party may designate information disclosed by it during a deposition or in response to written discovery as “Confidential” or “Highly Confidential – Counsel Only” by so indicating in said responses or on the record at the deposition. Additionally a party may designate in writing, within 21 days after receipt of said responses or of the deposition transcript for which the designation is proposed, the specific pages of the transcript and/or specific responses that are “Confidential” or “Highly Confidential – Counsel Only.” Any party may object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures described in Paragraph 14 below. Unless otherwise designated during the deposition, deposition transcripts shall be treated in their entirety as “Highly Confidential – Counsel Only” Information for 21 days after receipt. All parties shall affix the relevant legend required by paragraphs 7 and/or 8 of this Order on each page of the deposition transcript designated “Confidential” or “Highly Confidential – Counsel Only” at the deposition or by subsequent written notice.

10. The inadvertent failure to designate Protected Information that has been disclosed as Confidential or Highly Confidential – Counsel Only shall be without prejudice to any claim by the Disclosing Party that it is Confidential or Highly Confidential – Counsel Only and shall not waive the Disclosing Party’s right to secure protection under this Order for such material. In the event a Disclosing Party designates material as Confidential or Highly Confidential – Counsel Only after it has been inadvertently disclosed, the receiving party will treat such material pursuant to the relevant designation pursuant to this Order and shall make arrangements with the Disclosing Party to have the Protected Information, including copies, marked “Confidential” or “Highly Confidential – Counsel Only.”

11. If it comes to a Disclosing Party’s attention that information or items that it designated for protection do not qualify for protection, the Disclosing Party must promptly notify all other parties that it is withdrawing the designation.



**PERMISSIBLE DISCLOSURES**

12. Confidential Information that is designated as such in accordance with the terms of this Protective Order shall not be disclosed to any person other than the following, and only to the extent necessary to litigate these actions:

a. counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for these actions;

b. employees of such counsel, including a party's in-house legal staff;

c. plaintiffs, or any officer or employee of a party, to the extent deemed necessary by counsel for the prosecution or defense of these actions;

d. consultants or expert witnesses retained for the prosecution or defense of these actions, provided that each such person shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information;

e. the original author, addressees, or recipients of the Confidential Information;

f. the Court, court personnel and court reporters; and

g. witnesses (other than persons described in Paragraph 12(d)) who testify at deposition or at trial, provided that such witnesses shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information; and

h. persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that such persons or entities shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information.

13. Highly Confidential – Counsel Only Information that is designated as such in accordance with the terms of this Protective Order shall not be disclosed to any person other than the following, and only to the extent necessary to litigate these actions:

a. counsel for the respective parties to this litigation, including in-house

1 counsel and co-counsel retained for these actions;

2 b. employees of such counsel, including a party's in-house legal staff;

3 c. consultants or expert witnesses retained for the prosecution or defense of  
4 these actions, provided that each such person shall execute a copy of the certification annexed to  
5 this Protective Order as Exhibit A before being shown or given any Highly Confidential – Counsel  
6 Only Information;

7 d. the original author, addressees, or recipients of the Highly Confidential –  
8 Counsel Only Information;

9 e. the Court, court personnel and court reporters;

10 f. persons or entities that provide litigation support services (e.g.,  
11 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,  
12 retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that  
13 such persons or entities shall execute a copy of the certification annexed to this Protective Order as  
14 Exhibit A before being shown or given any Confidential Information; and

15 g. witnesses (other than persons described in Paragraph 13(c)) who testify at  
16 deposition or at trial, provided that (1) the Receiving Party has a good faith belief that such  
17 witness previously had access to or otherwise had obtained knowledge of the Highly Confidential  
18 – Counsel Only Information; and (2) such witnesses shall execute a copy of the certification  
19 annexed to this Protective Order as Exhibit A before being shown or given any Highly  
20 Confidential – Counsel Only Information.

## 21 **RESOLVING DISPUTED CLASSIFICATIONS**

22 14. Should a party wish to object to a Confidential or Highly Confidential – Counsel  
23 Only designation of any material, that party shall make a written Designation Objection to the  
24 Disclosing Party, as set forth below:

25 a. Designation Objection: The objecting party shall identify with specificity  
26 (i.e., by document control numbers, deposition transcript page and line reference, or other means  
27 sufficient to locate such materials) each document bearing a disputed Confidential or Highly  
28 Confidential – Counsel Only designation. A Designation Objection will trigger an obligation on



1 the part of the Disclosing Party to make a good faith determination of whether the disputed  
2 designation(s) is entitled to be treated as Confidential Information or Highly Confidential –  
3 Counsel Only Information pursuant to the terms of this Protective Order. Within ten (10) court  
4 days the Disclosing Party shall respond in writing to the Designation Objection either agreeing to  
5 remove the disputed designation(s) or stating the Disclosing Party’s refusal to do so. During that  
6 period, the parties will meet and confer in good faith.

7           b. Court Determination: If the Disclosing Party refuses to agree to remove the  
8 Confidential or Highly Confidential – Counsel Only designation pursuant to subsection (a) above,  
9 the Objecting Party may make a written application to the Court to remove the protective  
10 treatment in compliance with applicable court rules and orders. The application will be made  
11 within ten (10) court days of receiving the Disclosing Party’s refusal to remove the disputed  
12 designation(s). In any judicial proceeding challenging a Confidential or Highly Confidential –  
13 Counsel Only designation, the burden of persuasion with respect to the propriety of the  
14 designation shall remain upon the Disclosing Party. If the Objecting Party fails to make such  
15 timely application, the Disclosing Party’s designation will remain in effect.

16           c. Pending a ruling, all parties shall continue to treat the information subject to  
17 the Designation Objection pursuant to the disputed designation under the terms of this Protective  
18 Order.

#### 19                                   **PROTECTED INFORMATION AT TRIAL**

20           15. The terms of this Protective Order do not preclude, limit, restrict or otherwise apply  
21 to the use of documents at trial. Subject to the Federal Rules of Evidence, Protected Information  
22 may be offered at any court hearing (including trial) provided that the offering party confers in  
23 good faith with the Disclosing Party (and, if the Disclosing Party is not a party to these actions, a  
24 representative of the offering party’s opposing parties (hereinafter together the “Affected  
25 Parties”)) over the proposed use of that information five days prior to the anticipated use. If it is  
26 not practicable for the offering party to provide the Affected Parties with five days’ notice, the  
27 offering party must provide the Affected Parties with as much notice as practicable. Regardless of  
28 the notice provided, the offering party must take all reasonable steps to ensure that the Affected

1 Parties are provided a meaningful opportunity to be heard by the Court regarding the proposed use  
2 of Protected Information at any court hearing or trial, and may not offer such information until the  
3 Affected Parties have been given an opportunity to provide an objection on the record.

4 16. Any party or interested non-party may move the Court for an order that the  
5 evidence be received in camera or under other conditions to prevent unnecessary disclosure. That  
6 court will then determine whether the proffered evidence should continue to be treated as either  
7 Confidential Information or Highly Confidential – Counsel Only Information and, if so, what  
8 protection, if any, may be afforded to such information at the trial.

9 **PROTECTED INFORMATION SUBPOENAED OR**  
10 **ORDERED PRODUCED IN OTHER LITIGATION**

11 17. If at any time any Protected Information is subpoenaed by a court, administrative or  
12 legislative body, or by any other person or entity purporting to have authority to require the  
13 production of such information, the person to whom the subpoena is directed shall give written  
14 notice thereof to the Disclosing Party as soon as reasonably practicable but in no event more than  
15 five (5) days after receipt of the subpoena. After receipt of the notice specified under this  
16 paragraph, the Disclosing Party shall have the sole responsibility for obtaining any order it  
17 believes necessary to prevent disclosure of the Protected Information that has been subpoenaed. If  
18 the Disclosing Party does not move for or obtain a court order prohibiting such production or  
19 disclosure within the time allowed for production by the subpoena (or within such time as a court  
20 may direct or as may be agreed upon between the Disclosing Party and the subpoenaing party) and  
21 give written notice of such motion to the subpoenaing party and the person to whom the subpoena  
22 is directed, the person to whom the subpoena is directed may commence production in response  
23 thereto. The person to whom the subpoena is directed shall not produce any Protected Information  
24 while a motion for a protective order brought pursuant to this paragraph is pending or while any  
25 appeal from or request for appellate review of such motion is pending, unless ordered by a court to  
26 do so.

27 **FILING DOCUMENTS UNDER SEAL**

28 18. No Protected Information shall be filed in the public record without the written



1 permission of the Disclosing Party, or a court order. The parties shall comply with the relevant  
2 court rules (e.g., N.D. Cal. Civil L.R. 79-5) regarding filing of documents under seal. Copies of  
3 any pleading, brief, or other document containing Protected Information which is served on  
4 opposing counsel shall be stamped **“CONFIDENTIAL PURSUANT TO PROTECTIVE**  
5 **ORDER”** or **“HIGHLY CONFIDENTIAL – COUNSEL ONLY PURSUANT TO**  
6 **PROTECTIVE ORDER”**, shall be transmitted via email or cover letter and envelope bearing  
7 similar designation, and shall be treated in accordance with the provisions of this Protective Order.

#### 8 **NON-TERMINATION**

9 19. All provisions of this Protective Order restricting the communication or use of  
10 Protected Information shall continue to be binding after the conclusion of this action unless  
11 otherwise agreed or ordered. In addition, the court retains jurisdiction to resolve any dispute  
12 concerning the disclosure of Protected Information in violation of the terms of this Order, unless  
13 otherwise agreed or ordered.

14 20. Unless otherwise ordered or agreed to in writing by the Disclosing Party, within  
15 sixty (60) days after the final termination of this litigation by settlement or exhaustion of all  
16 appeals all parties in receipt of Protected Information shall use reasonable efforts to either return  
17 such materials and copies thereof to the Disclosing Party or destroy such Protected Information  
18 and certify that fact. The Receiving Party’s reasonable efforts shall not require the return or  
19 destruction of Protected Information that (i) is stored on backup storage media made in accordance  
20 with regular data backup procedures for disaster recovery purposes, (ii) is located in the email  
21 archive system or archived electronic files of departed employees, or (iii) is subject to legal hold  
22 obligations. Backup storage media will not be restored for purposes of returning or certifying  
23 destruction of Protected Information, but such retained information shall continue to be treated in  
24 accordance with the Order. Counsel for the parties shall be entitled to retain copies of court papers  
25 (and exhibits thereto), correspondence, pleadings, deposition and trial transcripts (and exhibits  
26 thereto), expert reports and attorney work product that contain or refer to Protected Information,  
27 provided that such counsel and employees of such counsel shall not disclose such Protected  
28 Information to any person, except pursuant to court order.

21. Nothing in this Order shall be interpreted in a manner that would violate any applicable canons of ethics or codes of professional responsibility.

### **MODIFICATION PERMITTED**

22. Nothing in this Protective Order shall prevent any party or other person from seeking modification of this Protective Order or from objecting to discovery that it believes to be otherwise improper.

### **RESPONSIBILITY OF ATTORNEYS**

23. The counsel for the parties are responsible for employing reasonable measures, consistent with this Protective Order, to control duplication of, access to, and distribution of copies of Protected Information.

24. The counsel for the parties are responsible for administering and keeping the executed original copy of Exhibit A pursuant to ¶¶ 12(d), 12(g), 12(h), 13(c), 13(f) and 13(g) above.

### **NO WAIVER**

25. Nothing herein shall be deemed to waive any applicable privilege or work product protection or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection. Pursuant to the Court's authority under Federal Rule of Evidence 502 and any other applicable law, rule, or legal principal, the inadvertent production of documents or information subject to the attorney-client privilege or work-product immunity shall not waive the privilege or immunity if a request for the return of such documents or information is made promptly after the Disclosing Party learns of its inadvertent production.

26. Nothing contained in this Protective Order and no action taken pursuant to it shall prejudice the right of any party to contest the alleged relevancy, admissibility or discoverability of the confidential documents and information sought.

IT IS SO STIPULATED.



1 DATED: January 9, 2015

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15 DATED: January 9, 2015

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28 DATED: January 9, 2015

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21 DATED: January 9, 2015

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**FILER'S ATTESTATION**

I, KAREN HOFFMAN LENT, am the ECF user whose identification and password are being used to file this **STIPULATED [PROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS AND MATERIALS**. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

/s/ Karen Hoffman Lent

1  
2 **PURSUANT TO STIPULATION,**  
3 **IT IS SO ORDERED.**

4 DATED: January 15, 2015

5  
6   
7 THE HON. CLAUDIA WILKEN  
8 UNITED STATES DISTRICT JUDGE  
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EXHIBIT A

I, \_\_\_\_\_, state:

1. My address and telephone number are: \_\_\_\_\_

2. My present employer and my employer's address are: \_\_\_\_\_

3. I have received a copy of the Stipulated Protective Order Regarding Confidentiality of Documents and Materials (the "Protective Order") entered in the case of *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, in the United States District Court for the Northern District of California, No. 4:14-MD-2541-CW.

4. I have carefully read the Protective Order and understand its provisions.

5. I will comply with all the provisions of the Protective Order.

6. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order any documents designated Confidential or Highly Confidential – Counsel Only, and I will use such Confidential Information and/or Highly Confidential – Counsel Only Information only for the allowed purposes stated in the Order.

7. I will return all documents that are designated Confidential or Highly Confidential – Counsel Only to counsel for the party from whom I obtained such documents.

8. I will submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of the enforcement of the Protective Order, and understand that violation of the Protective Order can constitute contempt of Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

SIGNED: \_\_\_\_\_, 201\_\_.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

# **EXHIBIT B**

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION  
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12 IN RE: NATIONAL COLLEGIATE  
13 ATHLETIC ASSOCIATION ATHLETIC  
14 GRANT-IN-AID CAP ANTITRUST  
15 LITIGATION

CASE NO. 14-md-2541-CW  
CASE NO. 14-cv-2758-CW

16 STIPULATION AND ~~PROPOSED~~  
17 ORDER REGARDING ADDENDUM TO  
18 STIPULATED PROTECTIVE ORDER

19 This Document Relates to:

20 ALL ACTIONS  
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1 All parties, by their respective counsel, hereby agree and stipulate to this proposed  
2 Addendum to the “Stipulated Protective Order Regarding Confidentiality of Documents and  
3 Materials” (the “Protective Order”) (Dkt. 189) entered by the Court on January 15, 2015:

4 1. Unless otherwise defined herein, all capitalized terms shall have the meanings  
5 ascribed to such terms in the Protective Order.

6 2. The Protective Order will recognize a new category of discovery called “Highly  
7 Confidential NCAA Member Financial Data.” Any party may designate as “Highly Confidential  
8 NCAA Member Financial Data” (by stamping the relevant page or portion “Highly Confidential  
9 NCAA Member Financial Data – Lead Counsel Only”) any document, response to discovery, or  
10 deposition transcript which includes NCAA member institution financial data (including  
11 summaries or analyses of such data and all identification keys that match member institution  
12 financial data to member institution names) that the Disclosing Party considers in good faith to  
13 contain Highly Confidential Information, the disclosure of which to another party or non-party  
14 would create a substantial risk of serious harm that could not be avoided by less restrictive means.  
15 Where a document, response to discovery, or deposition transcript consists of more than one page,  
16 the first page and each page on which Highly Confidential NCAA Member Financial Data appears  
17 shall be so designated. Highly Confidential NCAA Member Financial Data may only be disclosed  
18 to those persons set forth in Paragraph 3 below.

19 3. Highly Confidential NCAA Member Financial Data that is designated as such in  
20 accordance with the terms of the Protective Order and this Addendum shall not be disclosed to any  
21 person other than the following, and only to the extent necessary to litigate these actions:

22 a. Plaintiffs’ Interim Co-Lead Class Counsel as appointed by the court  
23 (namely, Winston & Strawn LLP, Hagens Berman Sobol Shapiro LLP and Pearson, Simon &  
24 Warshaw LLP) (Dkt. 82) and employees of such counsel;

25 b. counsel for Defendants in this litigation, including in-house counsel and co-  
26 counsel retained for these actions and employees of such counsel, including a Defendant’s in-  
27 house legal staff;

28 c. consultants or expert witnesses retained for the prosecution or defense of

1 these actions, and anyone assisting said consultants or expert witnesses in connection with these  
2 actions, provided that each such person shall execute a copy of the certification annexed to this  
3 Addendum as Exhibit A before being shown or given any Highly Confidential NCAA Member  
4 Financial Data;

5 d. the original author, addressees, or recipients of the Highly Confidential  
6 NCAA Member Financial Data;

7 e. the Court, court personnel and court reporters;

8 f. persons or entities that provide litigation support services (e.g.,  
9 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,  
10 retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that  
11 such persons or entities shall execute a copy of the certification annexed to this Addendum as  
12 Exhibit A before being shown or given any Highly Confidential NCAA Member Financial Data;  
13 and

14 g. witnesses (other than persons described in Paragraph 3(c) above) who  
15 testify at deposition or at trial, provided that (1) the Receiving Party has a good faith belief that  
16 such witness previously had access to or otherwise had obtained knowledge of the Highly  
17 Confidential NCAA Member Financial Data; and (2) such witnesses shall execute a copy of the  
18 certification annexed to this Addendum as Exhibit A before being shown or given any Highly  
19 Confidential NCAA Member Financial Data.

20 4. Except as set forth herein, for purposes of all paragraphs of the Protective Order  
21 except Paragraph 13, Highly Confidential NCAA Member Financial Data will receive the same  
22 treatment under each such paragraph as Highly Confidential – Counsel Only Information.  
23 Without limitation, any challenges or objections concerning the designation of information as  
24 Highly Confidential NCAA Member Financial Data shall be made pursuant to Paragraph 14 of the  
25 Protective Order.

26 5. The parties agree that they will file documents that use Highly Confidential NCAA  
27 Member Financial Data regarding any NCAA institution identified by name (as opposed to an  
28 institution identified by unique identifier) if and only if they have a good faith need to identify the

1 institution by name. The parties further agree that any such filing shall be filed under seal.

2 IT IS SO STIPULATED.

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1 DATED: July 8, 2015

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23 DATED: July 8, 2015

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*Plaintiffs' Interim Co-Lead Class Counsel*

1  
2 DATED: July 8, 2015

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19 *Counsel for Jenkins Plaintiffs*  
*Interim Class Counsel*

20 DATED: July 8, 2015

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DATED: July 8, 2015

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DATED: July 8, 2015

**ROBINSON BRADSHAW & HINSON**

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DATED: July 8, 2015

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DATED: July 8, 2015

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and Conference USA*

1 DATED: July 8, 2015

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15 *Attorneys for Defendants National Collegiate Athletic*  
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25 *Attorneys for Defendant National Collegiate Athletic*  
26 *Association*



1 DATED: July 8, 2015

**COVINGTON & BURLING LLP**

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17 *Attorneys for American Athletic Conference*

18 DATED: July 8, 2015

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27 *Attorneys for Defendant Sun Belt Conference*

28 DATED: July 8, 2015

**WALTER | HAVERFIELD LLP**

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*Attorneys for Defendant Mid-American Conference*

DATED: July 8, 2015

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*Attorneys for Defendant Mountain West Conference*

**ECF ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from each of the other signatories above.

/s/ Karen Hoffman Lent  
Karen Hoffman Lent

1 PURSUANT TO STIPULATION,  
2 IT IS SO ORDERED.

3 DATED: July 9, 2015

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5 THE HON. CLAUDIA WILKEN  
6 UNITED STATES DISTRICT JUDGE  
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EXHIBIT A

I, \_\_\_\_\_, state:

1. My address and telephone number are:

2. My present employer and my employer's address are:

3. I have received a copy of the Stipulated Protective Order Regarding Confidentiality of Documents and Materials (the "Protective Order") entered in the case of *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, in the United States District Court for the Northern District of California, No. 4:14-MD-2541-CW, entered by the Court on January 15, 2015, and the Stipulation and Order Regarding Addendum to Stipulated Protective Order ("Addendum") entered by the Court on \_\_\_\_\_.

4. I have carefully read the Protective Order and Addendum and understand their provisions.

5. I will comply with all the provisions of the Protective Order and Addendum.

6. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order and Addendum any documents designated Confidential, Highly Confidential – Counsel Only or Highly Confidential NCAA Member Financial Data – Lead Counsel Only, and I will use such Confidential Information and/or Highly Confidential – Counsel Only Information and/or Highly Confidential NCAA Member Financial Data only for the allowed purposes stated in the Protective Order and Addendum.

7. I will return all documents that are designated Confidential, Highly Confidential – Counsel Only or Highly Confidential NCAA Member Financial Data – Lead Counsel Only to counsel for the party from whom I obtained such documents.

8. I will submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of the enforcement of the Protective Order and Addendum, and understand that violation of the Protective Order and Addendum can constitute contempt of Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

SIGNED \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

# **EXHIBIT C**

1 Scott P. Cooper (SBN 096905)  
2 Kyle A. Casazza (SBN 254061)  
3 Shawn S. Ledingham, Jr. (SBN 275268)  
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14 *Counsel for Pac-12 Conference*

15 [Additional counsel listed on signature page]

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

Case No. 4:14-md-02541-CW (NC)  
Case No. 4:14-cv-02758-CW (NC)

STIPULATION AND [PROPOSED] ORDER  
REGARDING SECOND ADDENDUM TO  
STIPULATED PROTECTIVE ORDER

THIS DOCUMENT RELATES TO:

ALL ACTIONS



1 All parties, by their respective counsel, hereby agree and stipulate to this proposed Second  
2 Addendum to the “Stipulated Protective Order Regarding Confidentiality of Documents and  
3 Materials” (the “Protective Order”) (Dkt. 189) entered by the Court on January 15, 2015:

4 1. Unless otherwise defined herein, all capitalized terms shall have the meanings  
5 ascribed to such terms in the Protective Order.

6 **ADDITIONAL CATEGORIES OF PROTECTED INFORMATION**

7 2. The Protective Order will recognize a new category of discovery called Conference  
8 Strictly Confidential – Outside Litigation Counsel Only. The Protective Order will also recognize a  
9 new category of discovery called Network Strictly Confidential – Outside Litigation Counsel Only.

10 3. Any party or non-party may designate as Conference Strictly Confidential – Outside  
11 Litigation Counsel Only (by stamping the relevant page or portion “Conference Strictly Confidential  
12 – Outside Litigation Counsel Only”) any document, response to discovery, deposition transcript, or  
13 anything else furnished during the course of these actions that includes or concerns financial  
14 information, contractual terms, or other sensitive business information of a Conference Defendant  
15 (including summaries or analyses of such information that may identify the nature of such terms),  
16 that the Disclosing Party or their contractual counterparty considers in good faith to contain  
17 information, the disclosure of which to in-house counsel or specific individual outside counsel of  
18 another party or non-party would create a substantial risk of serious competitive, business, or  
19 financial harm (“Conference Strictly Confidential – Outside Litigation Counsel Only Information”).  
20 Where a document, response to discovery, deposition transcript, or anything else furnished during  
21 the course of these actions consists of more than one page, each page on which Conference Strictly  
22 Confidential – Outside Litigation Counsel Only Information appears shall be so designated.  
23 Conference Strictly Confidential – Outside Litigation Counsel Only Information may be disclosed  
24 only to those persons set forth in Paragraph 6 below.

25 4. Any party or non-party may designate as Network Strictly Confidential – Outside  
26 Litigation Counsel Only (by stamping the relevant page or portion “Network Strictly Confidential –  
27 Outside Litigation Counsel Only”) any document, response to discovery, deposition transcript, or  
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anything else furnished during the course of these actions that includes or concerns a term of any current, expired, or future media, network, or broadcasting contract, agreement, arrangement, or understanding (including summaries or analyses of such information that may identify the nature of such terms), that the Disclosing Party or their contractual counterparty considers in good faith to contain information, the disclosure of which to in-house counsel or specific individual outside counsel of another party or non-party would create a substantial risk of serious competitive, business, or financial harm ("Network Strictly Confidential – Outside Litigation Counsel Only Information"). Where a document, response to discovery, deposition transcript, or anything else furnished during the course of these actions consists of more than one page, each page on which Network Strictly Confidential – Outside Litigation Counsel Only Information appears shall be so designated. Network Strictly Confidential – Outside Litigation Counsel Only Information may be disclosed only to those persons set forth in Paragraph 7 below.

5. If any document, response to discovery, deposition transcript, or anything else furnished during the course of these actions is designated as Conference Strictly Confidential – Outside Litigation Counsel Only Information and then later designated (or is discovered to have been previously designated) as Network Strictly Confidential – Outside Litigation Counsel Only, it shall be treated and regarded as Network Strictly Confidential – Outside Litigation Counsel Only for all purposes.

**PERMISSIBLE DISCLOSURES OF INFORMATION  
CONFERENCE STRICTLY CONFIDENTIAL – OUTSIDE  
LITIGATION COUNSEL ONLY**

6. Conference Strictly Confidential – Outside Litigation Counsel Only Information (that is designated as such in accordance with the terms of the Protective Order and this Second Addendum) shall not be disclosed, except to the following persons, and then only to the extent necessary to litigate these actions:

a. Plaintiffs' Interim Co-Lead Class Counsel as appointed by the court (namely, Winston & Strawn LLP, Hagens Berman Sobol Shapiro LLP and Pearson, Simon & Warshaw LLP) (Dkt. 82);



b. Outside litigation counsel of record for Defendants in this litigation, including those law firms' paralegals, assistants, and other employed staff;

c. Consultants or expert witnesses retained for the prosecution or defense of these actions, as well as members of said consultants' or expert witnesses' staffs assisting them in connection with these actions, provided that each such person shall execute a copy of the certification annexed to this Addendum as Exhibit A before being shown or given any Conference Strictly Confidential – Outside Litigation Counsel Only Information;

d. The original author, addressees, or recipients of the Conference Strictly Confidential – Outside Litigation Counsel Only Information;

e. The Court, court personnel and court reporters;

f. Persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that such persons or entities shall execute a copy of the certification annexed to this Addendum as Exhibit A before being shown or given any Conference Strictly Confidential – Outside Litigation Counsel Only Information; and

g. Witnesses (other than persons described in Paragraph 6(c) above) who testify at deposition or at trial, provided that (1) the Receiving Party has a good faith belief that such witness previously had access to or otherwise had obtained knowledge of the Conference Strictly Confidential – Outside Litigation Counsel Only Information; and (2) such witnesses shall execute a copy of the certification annexed to this Addendum as Exhibit A before being shown or given any Conference Strictly Confidential – Outside Litigation Counsel Only Information.

**PERMISSIBLE DISCLOSURES OF INFORMATION  
NETWORK STRICTLY CONFIDENTIAL – OUTSIDE  
LITIGATION COUNSEL ONLY**

7. ESPN, Inc., ESPN Enterprises, Inc., American Broadcast Companies, Inc. (“ESPN/ABC”), Fox Broadcasting Company, Fox Cable Networks, Inc., Fox International Channels, Fox Sports Net, Inc., Big Ten Network, LLC (“Fox Networks”), CBS Broadcasting Inc., CSTV



1 Networks, Inc. d/b/a CBS Sports Network (“CBS”), or any future affiliates that move to intervene  
 2 are hereby referred to as the “Network Intervenors”. Network Strictly Confidential – Outside  
 3 Litigation Counsel Only Information (that is designated as such in accordance with the terms of the  
 4 Protective Order and this Second Addendum) shall not be disclosed, except to the following persons,  
 5 and then only to the extent necessary to litigate these actions:

6 a. Defendants’ outside litigation counsel of record, including lawyers and other  
 7 members and employees of those law firms assisting with litigation-related tasks in this case  
 8 (“Authorized Outside Litigation Counsel”), provided that (1) absent written permission from each  
 9 Network Intervenor, no individual attorney who has in the past been involved directly or indirectly  
 10 in negotiating any media, network, or broadcasting contract, agreement, arrangement or  
 11 understanding with any Network Intervenor may review Network Strictly Confidential – Outside  
 12 Litigation Counsel Only Information to which such attorney did not have access prior to production  
 13 of such Information in this action; and (2) any individual attorney who reviews Network Strictly  
 14 Confidential – Outside Litigation Counsel Only Information of a Network Intervenor to which such  
 15 attorney did not have access prior to production of such Information in this action may not, absent  
 16 written permission from such Network Intervenor, participate directly or indirectly on or before  
 17 March 31, 2021 in negotiating any media, network, or broadcasting contract, agreement,  
 18 arrangement, or understanding with such Network Intervenor, except that nothing in this Addendum  
 19 shall be construed to require a Network Intervenor’s permission for any individual attorney’s  
 20 participation in negotiating any agreements, arrangements, or understandings pertaining to  
 21 discovery, motion practice, or other litigation-related matters in this lawsuit pertaining to Network  
 22 Strictly Confidential – Outside Litigation Counsel Only Information of a Network Intervenor.

23 i. Defendants’ law firms acting as outside litigation counsel of record in  
 24 these actions shall erect and maintain ethical walls limiting access to Network Strictly Confidential –  
 25 Outside Litigation Counsel Only Information to Authorized Outside Litigation Counsel.

26 ii. Absent a good faith basis for belief that any attorney other than  
 27 Authorized Outside Litigation Counsel has reviewed Network Strictly Confidential – Outside  
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Litigation Counsel Only Information, no Network Intervenor will assert the provisions of this Addendum as a basis to bar such attorney from engaging in future negotiations of any media, network, or broadcasting contract, agreement, arrangement, or understanding with such Network Intervenor. In the event a Network Intervenor asserts the provisions of this sub-paragraph as a basis to bar an attorney from engaging in negotiations of any media, network, or broadcasting contract, agreement, arrangement, or understanding with such Network Intervenor, that Network Intervenor will withdraw its invocation of this sub-paragraph upon the subject attorney proffering an affidavit or declaration, subject to penalty of perjury, that he/she has not reviewed Network Strictly Confidential – Outside Litigation Counsel Only Information.

iii. No Network Intervenor shall assert that the provisions of this Addendum are a basis to bar an entire law firm from engaging in future negotiations of any media, network, or broadcasting contract, agreement, arrangement, or understanding with such Network Intervenor on the basis that the firm acted as outside litigation counsel of record in these actions;

b. Plaintiffs' Interim Co-Lead Class Counsel as appointed by the court (namely, Winston & Strawn LLP, Hagens Berman Sobol Shapiro LLP and Pearson, Simon & Warshaw LLP) (Dkt. 82) and employees of such counsel;

c. Consultants or expert witnesses retained for the prosecution or defense of these actions, as well as members of said consultants' or expert witnesses' staffs assisting them in connection with these actions, subject to the provisions of Paragraphs 10-15 herein, and who have executed a copy of the certification annexed to this Second Addendum as Exhibit A before being shown or given any Network Strictly Confidential – Outside Litigation Counsel Only Information, provided that such individuals will not be involved directly or indirectly in negotiating any media, network, or broadcasting contract, agreement, arrangement, or understanding with any Network Intervenor, on or before January 1, 2021 (for the sake of clarity, subject to his/her compliance with this Protective Order, this Protective Order shall not preclude any such individuals from negotiating and/or entering into any contract or other arrangement or understanding with a Network Intervenor



solely on his or her own behalf, including but not limited to any agreement to appear on any programming of a Network Intervenor);

d. The original authors or recipients of the Network Strictly Confidential – Outside Litigation Counsel Only Information and in circumstances where the Network Strictly Confidential – Outside Counsel Only Information is an executed agreement, the parties to the agreement and their respective employees with access to such agreement in the ordinary course of business;

e. The Court, court personnel and court reporters; and

f. Persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that such persons or entities shall execute a copy of the certification annexed to this Second Addendum as Exhibit A before being shown or given any Network Strictly Confidential – Outside Litigation Counsel Only Information.

#### **FILING DOCUMENTS UNDER SEAL**

8. No Network Strictly Confidential – Outside Litigation Counsel Only Information shall be filed in the public record without either the written permission of each Network Intervenor discussed or referenced therein, or a court order denying an Administrative Motion to File Under Seal such Network Strictly Confidential – Outside Litigation Counsel Only Information, provided that in the event any Administrative Motion to File Under Seal such Network Strictly Confidential – Outside Litigation Counsel Only Information is denied, the Network and the filing party agree to meet and confer within three (3) calendar days to discuss in good faith alternatives to filing the Network Strictly Confidential – Outside Litigation Counsel Only Information on the public record. The Network Intervenors preserve their rights to seek a writ of mandamus from the Ninth Circuit and/or a stay of any order denying an Administrative Motion to File Under Seal. No party may file such Network Strictly Confidential – Outside Litigation Counsel Only Information until seven (7) calendar days after the denial of any Administrative Motion to File Under Seal. At least five (5)



business days in advance of the date or deadline on which any party or non-party seeks to file an Administrative Motion to File Under Seal regarding any Network Strictly Confidential – Outside Litigation Counsel Only Information, the filing entity shall provide written notice to each Network Intervenor discussed or referenced therein, as well as one (1) redacted copy and one (1) unredacted copy of the Information so designated. However, if multiple Network Intervenors are discussed or referenced in the same document, no unredacted copies shall be provided to the Network Intervenors unless each of the applicable Network Intervenors discussed or referenced individually consent. The parties shall otherwise comply with the applicable court rules (*e.g.*, N.D. Cal. Civil L.R. 79-5) regarding filing of documents under seal. Copies of any pleading, brief, or other document containing Network Strictly Confidential – Outside Litigation Counsel Only Information which is served on opposing counsel shall be stamped “**NETWORK STRICTLY CONFIDENTIAL – OUTSIDE LITIGATION COUNSEL ONLY INFORMATION PURSUANT TO PROTECTIVE ORDER**”, shall be transmitted via email or cover letter and envelope bearing similar designation, and shall be treated in accordance with the provisions of the Protective Order, as amended.

#### INCORPORATION OF PROTECTIVE ORDER

9. Except as set forth herein, for purposes of all Paragraphs of the Protective Order except Paragraph 13, both Conference Strictly Confidential – Outside Litigation Counsel Only Information and Network Strictly Confidential – Outside Litigation Counsel Only Information will receive the same treatment under each such Paragraph as Highly Confidential – Counsel Only Information. Except as set forth herein, any challenges or objections concerning the designation of information as Conference Strictly Confidential – Outside Litigation Counsel Only Information or Network Strictly Confidential – Outside Litigation Counsel Only Information shall be made pursuant to Paragraph 14 of the Protective Order.

**DISCLOSURE TO CONSULTANTS AND EXPERT WITNESSES**

10. Information designated Conference Strictly Confidential – Outside Litigation Counsel Only Information or Network Strictly Confidential – Outside Litigation Counsel Only may be furnished and disclosed to the receiving party’s consultants and expert witnesses and their necessary support personnel as is reasonably necessary for maintaining, defending or evaluating these actions. The terms “consultants” and “expert witnesses” shall mean an independent, outside expert witness or consultant with whom counsel may deem it appropriate to consult and whom (with respect to information designated Network Strictly Confidential – Outside Litigation Counsel Only) complies with Paragraph 11.

11. No disclosure of Conference Strictly Confidential – Outside Litigation Counsel Only Information or Network Strictly Confidential – Outside Litigation Counsel Only Information to a consultant or expert witness or their necessary support personnel shall occur until that person has accurately completed and signed the certification annexed to this Second Addendum as Exhibit A, and a signed copy has been provided to the Disclosing Party; and to the extent there has been an objection under Paragraph 13 with respect to Network Strictly Confidential – Outside Litigation Counsel Only Information, that objection is resolved as discussed below. A separate certification annexed to this Second Addendum as Exhibit A shall not be required for staff members working under the supervision of an individual signing the certification annexed hereto as Exhibit A. An individual signing the certification annexed to this Second Addendum as Exhibit A, however, shall accept full responsibility for taking measures to ensure that staff members working under his or her supervision comply with the terms of this Second Addendum.

12. A party desiring to disclose Network Strictly Confidential – Outside Litigation Counsel Only Information to a consultant or expert witness shall give prior written notice to the Disclosing Party as applicable, who shall have ten (10) business days after such notice is given to object in writing. The party desiring to disclose Network Strictly Confidential – Outside Litigation Counsel Only Information to a consultant or expert witness must provide the following information for each consultant or expert witness: the name, title, business address, residence state and country,



1 present occupation (or job description), past and present business relationships with the party  
2 retaining them or other party to the litigation, curriculum vitae, a list of all instances in which, during  
3 the last four (4) years, the consultant or expert witness testified by trial or deposition, and a  
4 certification annexed to this Second Addendum as Exhibit A signed by such consultant or expert  
5 witness. No Network Strictly Confidential – Outside Litigation Counsel Only Information shall be  
6 disclosed to such consultant or expert witness until after the expiration of the foregoing ten (10)  
7 days' notice period.

8 13. A party objecting to disclosure of Network Strictly Confidential – Outside Litigation  
9 Counsel Only Information to a consultant or expert witness shall state with particularity the  
10 ground(s) of the objection. The objecting party's consent to the disclosure of Network Strictly  
11 Confidential – Outside Litigation Counsel Only Information to a consultant or expert witness shall  
12 not be unreasonably withheld.

13 14. The applicable parties shall meet and confer to attempt to resolve the  
14 dispute/objection within seven (7) days from the date of electronic delivery of the objection. If the  
15 parties cannot resolve the dispute, the party seeking disclosure may move the Court for an order that  
16 access to Network Strictly Confidential – Outside Litigation Counsel Only Information be provided  
17 to the designated consultant or expert witness. If the parties cannot resolve the dispute and the party  
18 seeking disclosure does not make such a motion within ten (10) business days of the electronic  
19 delivery of the objection, disclosure of Network Strictly Confidential – Outside Litigation Counsel  
20 Only Information shall not be made to the designated consultant or expert witness. The parties agree  
21 to cooperate in good faith to shorten the time frames set forth in this Paragraph if necessary to abide  
22 by any discovery or briefing schedules. If a motion is made by the party seeking disclosure, it shall  
23 be the burden of the party seeking disclosure to demonstrate by a preponderance of the evidence that  
24 Network Strictly Confidential – Outside Litigation Counsel Only Information should be allowed to  
25 be disclosed to the consultant or expert witness.

26 15. Failure to object to a consultant or expert witness shall not preclude the non-objecting  
27 party from later objecting to continued access by that consultant or expert witness where facts  
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1 suggesting a basis for objection could not have been discovered by the objecting party or its counsel,  
2 exercising due diligence, within the period for making a timely objection. A later objection to a  
3 consultant or expert witness cannot be made on the basis of information disclosed pursuant to  
4 Paragraph 12, except to the extent that said disclosure contained a material omission or  
5 misrepresentation.

6 IT IS SO STIPULATED.  
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1 Dated: October 6, 2016

Respectfully submitted,

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*Attorneys for intervenor CBS Broadcasting  
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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

/s/ Scott P. Cooper  
SCOTT P. COOPER

SO ORDERED.

Dated: October 12, 2016





EXHIBIT A

I, \_\_\_\_\_, state:

1. My business address is:

2. My present employer is:

3. My present occupation or job description (including my title) is:

4. My past and present business relationships with the parties to this litigation are:

5. For experts or consultants only, a copy of my curriculum vitae is attached hereto.

6. For experts or consultants only, in accordance with the Protective Order, First Addendum, and Second Addendum, I have provided a list of all instances in which, during the last four (4) years, I testified at trial or deposition.

7. I have received a copy of the Stipulated Protective Order Regarding Confidentiality of Documents and Materials (the "Protective Order") entered in the case of *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, in the United States District Court for the Northern District of California, No. 4:14-MD-2541-CW, entered by the Court on January 15, 2015, the Stipulation and Order Regarding Addendum to Stipulated Protective Order ("First Addendum") entered by the Court on July 9, 2015, and the Stipulation and Order Regarding Second Addendum to Stipulated Protective Order ("Second Addendum") entered by the Court on [\_\_\_\_\_].

8. I have carefully read the Protective Order, First Addendum, and Second Addendum and understand their provisions.

9. I will comply with all the provisions of the Protective Order, First Addendum, and Second Addendum.

10. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order, First Addendum, or Second Addendum any documents designated Confidential, Highly Confidential – Counsel Only, Highly Confidential NCAA Member Financial Data – Lead Counsel Only, Conference Strictly Confidential – Outside Litigation Counsel Only Information, or Network Strictly Confidential – Outside Litigation Counsel Only, and I will use such Confidential Information and/or Highly Confidential – Counsel Only Information and/or Highly Confidential NCAA Member Financial Data and/or Network Strictly Confidential – Outside Litigation Counsel Only Information only for the allowed purposes stated in the Protective Order, First Addendum, and Second Addendum.



11. I will return all documents that are designated Confidential, Highly Confidential – Counsel Only, Highly Confidential NCAA Member Financial Data – Lead Counsel Only, Conference Strictly Confidential – Outside Litigation Counsel Only Information, or Network Strictly Confidential – Outside Litigation Counsel Only, to counsel for the party from whom I obtained such documents.

12. I will submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of the enforcement of the Protective Order, First Addendum, or Second Addendum and understand that violation of the Protective Order, First Addendum, or Second Addendum can constitute contempt of Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

SIGNED \_\_\_\_\_, 201\_\_.

Signature

Printed Name

# **EXHIBIT D**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Case No. 4:14-md-02541-CW  
Case No. 4:14-cv-02758-CW

**STIPULATION AND [PROPOSED] ORDER  
REGARDING THIRD ADDENDUM TO  
STIPULATED PROTECTIVE ORDER**



1 All parties, by their respective counsel, hereby agree and stipulate to this proposed Third  
 2 Addendum to the “Stipulated Protective Order Regarding Confidentiality of Documents and  
 3 Materials” (the “Protective Order”) (Dkt. 189) entered by the Court on January 15, 2015:

4 1. The Second Addendum to Stipulated Protective Order (Dkt. 508) was negotiated and  
 5 signed between Plaintiffs and only five of the Conference Defendants in the Consolidated Action:  
 6 (1) Atlantic Coast Conference; (2) The Big Ten Conference, Inc.; (3) The Big 12 Conference, Inc.;  
 7 (4) Pac-12 Conference; and (5) Southeastern Conference. The parties now wish for the Court to  
 8 order this stipulated addendum such that the Second Addendum to Stipulated Protective Order  
 9 applies to the six other Conference Defendants in the Consolidated Action and the National  
 10 Collegiate Athletic Association (“NCAA”). The six other Conference Defendants in the  
 11 Consolidated Action are: (1) the American Athletic Conference; (2) Conference USA; (3) the Mid-  
 12 American Conference; (4) the Mountain West Conference; (5) the Sun Belt Conference; and (6) the  
 13 Western Athletic Conference (collectively, the “Six Conferences”).

14 2. By way of this stipulation, the Six Conferences in the Consolidated Actions and the  
 15 NCAA shall have the same rights and obligations under the Second Addendum to Stipulated  
 16 Protective Order as the Conference Defendants who negotiated and signed the Second Addendum to  
 17 Stipulated Protective Order, and Plaintiffs will have the same rights and obligations with regard to  
 18 the Six Conferences and the NCAA as they do with regard to the Conference Defendants who  
 19 negotiated and signed the Second Addendum to the Stipulated Protective Order.

20 3. The Second Addendum to Stipulated Protective Order was signed by certain media  
 21 networks that formally intervened into this litigation: (1) ESPN entities (ESPN, Inc., ESPN  
 22 Enterprises, Inc., and American Broadcasting Companies, Inc.); (2) Fox entities (Fox Broadcasting  
 23 Company, Fox Cable Networks, Inc., and Fox International Channels (US), Inc.); and (3) CBS  
 24 Broadcasting Inc. (collectively, the “Network Intervenors”). By way of this stipulation, the rights  
 25 and obligations of the Network Intervenors under the Second Addendum to Stipulated Protective  
 26 Order will apply not just to the Network Intervenors but to all media networks (including their  
 27 various entities, affiliates and assigns) that are partners of any of the eleven Conference Defendants  
 28 in this litigation or the NCAA, and which have an interest in the litigation, regardless of whether

each has formally intervened in this litigation. Each such media network will be considered by the parties to be—and will receive the same treatment as—a Network Intervenor solely for purposes of the Second Addendum to Stipulated Protective Order and shall not otherwise be treated as having intervened in this litigation absent a formal motion to intervene by such network. However, nothing in this stipulation shall prevent any media network or any other party from intervening in this litigation.

IT IS SO STIPULATED.

Dated: November 11, 2016

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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatory above.

/s/ Jeffrey L. Kessler  
Jeffrey L. Kessler

1 IT IS SO ORDERED.

2  
3 Dated:

4 THE HON. NATHANAEL COUSINS  
5 UNITED STATES DISTRICT COURT FOR THE  
6 NORTHERN DISTRICT OF CALIFORNIA  
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11/11/2016	540	<b>Order granting <u>539</u> Stipulation entered by Magistrate Judge Nathanael M. Cousins. (This is a text-only entry generated by the court. There is no document associated with this entry.) (Entered: 11/11/2016)</b>
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# **EXHIBIT E**

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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

Case No. 4:14-md-02541-CW  
~~Case No. 14-ev-02758-CW~~

STIPULATION AND ~~PROPOSED~~ ORDER  
REGARDING SECOND ADDENDUM TO  
STIPULATED PROTECTIVE ORDER

THIS DOCUMENT RELATES TO:  
ALL ACTIONS.

Judge: Hon. Claudia Wilken



1 All parties and Network Intervenors, by and through their respective counsel, hereby agree and  
2 stipulate to the below as it relates to the Second Addendum to the “Stipulated Protective Order  
3 Regarding Confidentiality of Documents and Materials” (the “Second Addendum”) (Dkt. 512) entered  
4 by the Court on October 12, 2016:

5 1. The Second Addendum was negotiated and signed between Plaintiffs and only five of  
6 the Conference Defendants in the Consolidated Action: (1) Atlantic Coast Conference; (2) The Big  
7 Ten Conference, Inc.; (3) The Big 12 Conference, Inc.; (4) Pac-12 Conference; and (5) Southeastern  
8 Conference. (Dkt. 508.)

9 2. On November 11, 2016, Magistrate Judge Nathaniel M. Cousins entered via minute  
10 entry (Dkt. 540) the Third Addendum to the Stipulated Protective Order (Dkt. 539) (the “Third  
11 Addendum”). The Third Addendum was signed and entered for the purpose of applying the terms of  
12 the Second Addendum to the six other Conference Defendants in the Consolidated Action and the  
13 National Collegiate Athletic Association (“NCAA”). The six other Conference Defendants in the  
14 Consolidated Action are: (1) the American Athletic Conference; (2) Conference USA; (3) the Mid-  
15 American Conference; (4) the Mountain West Conference; (5) the Sun Belt Conference; and (6) the  
16 Western Athletic Conference (collectively, the “Six Conferences”).

17 3. The Second Addendum was also signed by certain media networks that formally  
18 intervened in this litigation: (1) ESPN entities (ESPN, Inc., ESPN Enterprises, Inc., and American  
19 Broadcasting Companies, Inc.); (2) Fox entities (Fox Broadcasting Company, Fox Cable Networks,  
20 Inc., and Fox International Channels (US), Inc.); and (3) CBS Broadcasting Inc. (collectively, the  
21 “Network Intervenors”). By way of the Third Addendum, the rights and obligations of the Network  
22 Intervenors under the Second Addendum were extended to apply not just to the Network Intervenors,  
23 but to all media networks (including their various entities, affiliates and assigns) that are partners of  
24 any of the eleven Conference Defendants in this litigation or the NCAA, and which have an interest  
25 in the litigation, regardless of whether each has formally intervened in this litigation.

26 4. Absent Network Intervenor permission, the Second Addendum and Third Addendum  
27 limit the involvement of defense counsel who receive information that is designated “Network Strictly  
28 Confidential – Outside Litigation Counsel Only” (“NSC”), which is defined in Paragraph 4 of the

1 Second Addendum. Specifically, Paragraph 7(a)(2) of the Second Addendum provides:

2 [A]ny individual attorney who reviews Network Strictly Confidential –  
3 Outside Litigation Counsel Only Information of a Network Intervenor to  
4 which such attorney did not have access prior to production of such  
5 Information in this action may not, absent written permission from such  
6 Network Intervenor, participate directly or indirectly on or before March  
7 31, 2021 in negotiating any media, network, or broadcasting contract,  
8 agreement, arrangement, or understanding with such Network Intervenor,  
9 except that nothing in this Addendum shall be construed to require a  
Network Intervenor’s permission for any individual attorney’s participation  
in negotiating any agreements, arrangements, or understandings pertaining  
to discovery, motion practice, or other litigation-related matters in this  
lawsuit pertaining to Network Strictly Confidential – Outside Litigation  
Counsel Only Information of a Network Intervenor.

10 5. Trial of this matter is scheduled to begin on September 4, 2018. The parties’ pretrial  
11 filings identify as proposed exhibits and testimony for trial certain information that is designated NSC  
12 pursuant to the Second Addendum. A number of defense counsel implicated by the terms of Paragraph  
13 7(a)(2) of the Second Addendum intend to attend the trial, in whole or in part. Counsel for the Network  
14 Intervenor may also attend the trial, in whole or in part.

15 6. The parties and Network Intervenor therefore stipulate and agree that the restriction  
16 imposed by Paragraph 7(a)(2) of the Second Addendum be modified as follows for purposes of the  
17 forthcoming trial only: to the extent NSC information is inadvertently revealed at trial by any exhibit,  
18 witness, the Court, or oral presentation by counsel, defense counsel and counsel for the Network  
19 Intervenor shall not, solely as a result of such disclosure, be barred from future negotiations under  
20 Paragraph 7(a)(2) of the Second Addendum. To the extent NSC Information is permissibly used at  
21 trial, including over the objection of a Network Intervenor, and regardless of whether the information  
22 is later sealed, then defense counsel and counsel for the Network Intervenor shall not, solely as a  
23 result of such disclosure, be barred from future negotiations under Paragraph 7(a)(2) of the Second  
24 Addendum.

25 IT IS SO STIPULATED.



1 Dated: September 4, 2018

Respectfully submitted,

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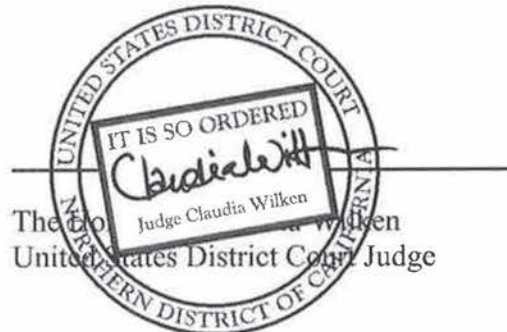
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**SO ORDERED**

Dated: September 4, 2018



**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

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# **EXHIBIT F**



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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

This Document Relates to:  
  
ALL ACTIONS

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**Case Nos. 4:14-md-2541-CW (NC)  
4:14-cv-02758-CW (NC)**

**STIPULATION AND [PROPOSED] ORDER  
REGARDING FOURTH ADDENDUM TO  
STIPULATED PROTECTIVE ORDER**

1 All parties, by their respective counsel, hereby agree and stipulate to this proposed Fourth  
2 Addendum to the “Stipulated Protective Order Regarding Confidentiality of Documents and  
3 Materials” (the “Protective Order”) (Dkt. 189) entered by the Court on January 15, 2015:

4 1. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed  
5 to such terms in the Protective Order.

6 **ORDER REGARDING PRODUCTION OF BILLING RECORDS**

7 2. On August 21, 2019, the Court held a hearing on the following motions: Plaintiffs’  
8 Motion for Attorney Fees, Expenses and Service Awards (Dkt. 1169) (“Plaintiffs’ Motion for Fees and  
9 Costs”); Joint Statement of Discovery Dispute Regarding Plaintiffs’ Motion for Attorney Fees (Dkt.  
10 1184) (the “Discovery Dispute”); Motion for Review of Clerk’s Taxation of Costs (Dkt. 1193); and  
11 Administrative Motion to Vacate Taxed Costs Order (Dkt. 1194).

12 3. As to the Discovery Dispute (Dkt. 1184), the Court ordered Plaintiffs to produce the  
13 billing records underlying Plaintiffs’ Motion for Fees and Costs to enable Defendants to review time  
14 entries for tasks, if any, that Defendants contend are non-compensable, and not for any other purpose.<sup>1</sup>

15 4. The Court did not compel waiver of privilege and ordered the parties to meet and confer  
16 regarding a protective order.

17 **ADDITIONAL CATEGORY OF PROTECTED INFORMATION**

18 5. The Protective Order will recognize a new category of discovery called “Highly  
19 Confidential Billing Records – Outside Counsel Only.” Any party or non-party may designate as  
20 “Highly Confidential Billing Records – Outside Counsel Only” any document, production, filing, or  
21 anything else furnished during the course of these actions that includes or concerns information in any  
22 party or non-party’s billing records (by stating on the first page or in an accompanying letter that it is  
23 “Highly Confidential Billing Records – Outside Counsel Only”). Highly Confidential Billing Records  
24 – Outside Counsel Only Information may be disclosed only to those persons set forth in Paragraph 6  
25 below.

26  
27 <sup>1</sup> The parties reserve all rights with respect to potential disputes related to (1) the scope of challenges  
28 Defendants are permitted to make; and (2) the production of expense reports.



**PERMISSIBLE DISCLOSURES AND USES OF INFORMATION**

6. Highly Confidential Billing Records – Outside Counsel Only Information (that is designated as such in accordance with the terms of the Protective Order and this Fourth Addendum) shall not be disclosed or used, except to the following persons, and then only to the extent necessary to litigate Plaintiffs' Motion for Fees and Costs:

a. Defendants' outside litigation counsel of record, including lawyers and other members and employees of those law firms assisting with litigation-related tasks in this case;

b. The Court, court personnel and court reporters; and

c. Persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that such persons or entities shall execute a copy of the certification annexed to this Addendum as Exhibit A before being shown or given any Highly Confidential Billing Records – Outside Counsel Only Information.

**FILING DOCUMENTS UNDER SEAL**

7. No Highly Confidential Billing Records – Outside Counsel Only Information shall be filed in the public record without either the written permission of Plaintiffs' counsel or a court order denying an Administrative Motion to File Under Seal such Highly Confidential Billing Records – Outside Counsel Only Information, provided that in the event any Administrative Motion to file Under Seal such Highly Confidential Billing Records – Outside Counsel Only Information is denied, the Plaintiffs and the filing party agree to meet and confer within three (3) calendar days to discuss in good faith alternatives to filing the Highly Confidential Billing Records – Outside Counsel Only Information on the public record. Plaintiffs preserve their rights to seek a writ of mandamus from the Ninth Circuit and/or a stay of any order denying an Administrative Motion to File Under Seal. The parties shall otherwise comply with the applicable court rules (e.g., N.D. Cal. Civil L.R. 79-5) regarding filing of documents under seal. Copies of any pleading, brief, or other document containing Highly Confidential Billing Records – Outside Counsel Only Information which is served on opposing counsel shall be stamped "HIGHLY CONFIDENTIAL BILLING RECORDS – OUTSIDE COUNSEL ONLY"



1 INFORMATION PURSUANT TO PROTECTIVE ORDER”, shall be transmitted via email or cover  
2 letter and envelope bearing similar designation, and shall be treated in accordance with the provisions  
3 of the Protective Order, as amended. Defendants agree not to oppose a motion to seal Highly  
4 Confidential Billing Records – Outside Counsel Only Information.

5 **NO WAIVER**

6 8. While Plaintiffs reserve the right to redact billing records and Defendants reserve the  
7 right to challenge Plaintiffs’ redaction of such records, the production of billing records, regardless of  
8 content, shall not be deemed to waive any applicable privilege or work product protection or to affect  
9 the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or  
10 work product protection. Pursuant to the Court’s authority under Federal Rule of Evidence 502 and  
11 any other applicable law, rule, or legal principal, the inadvertent production of documents or  
12 information subject to the attorney-client privilege or work-product immunity shall not waive the  
13 privilege or immunity if a request for the return of such documents or information is made promptly  
14 after the Disclosing Party learns of its inadvertent production.

15 **INCORPORATION OF PROTECTIVE ORDER**

16 9. Except as set forth herein, for purposes of all Paragraphs of the Protective Order except  
17 Paragraph 13, Highly Confidential Billing Records – Outside Counsel Only Information will receive  
18 the same treatment under each such Paragraph as Highly Confidential – Counsel Only Information.

19 10. Except as set forth herein, any challenges or objections concerning the designation of  
20 information as Highly Confidential Billing Records – Outside Counsel Only Information shall be made  
21 pursuant to the procedures set forth in Paragraph 14 of the Protective Order.

22 11. Except as set forth herein, the Protective Order, including but not limited to all  
23 provisions related to the nondisclosure of protected information, and the return or destruction of  
24 protected information after the final termination of the litigation, are expressly incorporated into this  
25 Fourth Addendum and remain in full force and effect.

26 IT IS SO STIPULATED.  
27  
28

1 Dated: September 13, 2019

Respectfully submitted,

2 HAGENS BERMAN SOBOL SHAPIRO LLP

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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

/s/ Jeffrey L. Kessler  
Jeffrey L. Kessler

**[PROPOSED] ORDER**

**PURSUANT TO THE FOREGOING STIPULATION OF THE PARTIES,**

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Claudia Wilken  
United States District Judge

1  
2  
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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 In re:

12 NATIONAL COLLEGIATE ATHLETIC  
13 ASSOCIATION ATHLETIC GRANT-IN-  
14 AID CAP ANTITRUST LITIGATION  
15  
16  
17

Case No. 14-md-02541 CW (NC)  
Case No. 14-cv-02758 CW (NC)

**ORDER GRANTING STIPULATION  
ON FOURTH ADDENDUM TO  
PROTECTIVE ORDER**

Dkt. No. 1237

18  
19 For good cause shown, the Court GRANTS ECF 1237, the stipulation regarding the  
20 fourth addendum to the protective order. For purposes of clarity, this order does not modify  
21 the standards or procedural requirements for filing materials under seal under N.D. Cal.  
22 Civil Local Rule 79-5. The parties must comply with Local Rule 79-5 if they seek to file  
23 materials under seal.

24 IT IS SO ORDERED.

25 Date: September 13, 2019

26   
27 Nathanael M. Cousins  
28 United States Magistrate Judge