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25 UNITED STATES DISTRICT COURT
26
27 NORTHERN DISTRICT OF CALIFORNIA

28 OSCAR P. ROBERTSON, TATE)
29 GEORGE, and RAY ELLIS, on behalf of)
30 themselves and all others similarly)
31 situated,)
32)
33 Plaintiffs,)
34)
35 v.)
36)
37 NATIONAL COLLEGIATE ATHLETIC)
38 ASSOCIATION (a/k/a the "NCAA");)
39 COLLEGIATE LICENSING COMPANY)
40 (a/k/a "CLC"); and ELECTRONIC)
41 ARTS, INC.,)
42)
43 Defendants.)
44)

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

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3 1. Plaintiffs and putative Class Representatives Oscar Robertson, Tate George, and Ray
4 Ellis (the “Antitrust Plaintiffs” or “Antitrust Class Representatives”), bring this action both
5 individually and on behalf of antitrust damages and injunctive relief classes (collectively, the
6 “Antitrust Classes” or “Antitrust Class”) consisting of former student-athletes who competed for
7 NCAA member colleges or universities on those schools’: (1) “Division I” men’s basketball
8 athletic teams; and (2) “Football Bowl Subdivision” (formerly known until 2006 as “Division I-
9 A”) men’s football athletic teams whose images have been licensed or sold by Defendants, their
10 co-conspirators, or their licensees from July 21, 2005 and continuing until a final judgment in this
11 matter (the “Antitrust Class Period”), or may be in the future. For purposes of the injunctive
12 relief class only, the Antitrust Plaintiffs also bring this action on behalf of current student-athletes
13 competing on the teams described above, as well as former student-athletes, as both groups’
14 future compensation rights are impacted by the anticompetitive practices described herein.
15

16 2. These three Plaintiffs join the effort initiated by former UCLA basketball star Ed
17 O’Bannon, in his initial antitrust complaint, who has been joined by numerous other antitrust
18 plaintiffs including Harry Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David Lattin,
19 Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric Riley, Bob Tallent, and Danny Wimprine
20 in the class action pending in this court and captioned *In re NCAA Student-Athlete Name &*
21 *Likeness Licensing Litigation*, Case No. 4:09-cv-1967 CW. Included in that litigation are also the
22 “Right of Publicity” Plaintiffs, led by initial right of publicity class action plaintiff Sam Keller,
23 and joined by Bryan Cummings, Lamarr Watkins and Byron Bishop. Plaintiffs are aware of at
24 least three other plaintiffs that have subsequently instituted similar putative class action litigation
25 in various courts, as well as a recently-filed individual case brought in California state court by
26 collegiate and professional basketball legend Kareem Abdul-Jabbar relating to the use of his
27 CLASS ACTION COMPLAINT
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1 collegiate image the same trading card set described herein in the section pertaining to plaintiff
2 Robertson.

3 3. Including the present plaintiffs, there thus now are at least 25 plaintiffs presently
4 involved in litigation regarding the licensing, sale, and use of their collegiate images following
5 cessation of their intercollegiate athletics career.

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

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

22
23 6. One of the NCAA's business partners, Thought Equity Motion ("TEM"), has
24 described the NCAA's video content archive as "one of the most unique and valuable content
25 collections in the world." Collegiate Images, LLC ("CI"), a licensing entity that represents more
26 than 200 of the NCAA's members, repeatedly stresses that in creating a digital library that
27 contains thousands of collegiate games, coaches shows and highlights dating back to the early
28

1 1900s, it is helping its members “maximize new revenue streams” and “monetize priceless
2 collegiate video and images.”

3 7. The Antitrust Class Representatives’ collective collegiate experiences include the
4 following. In the case of Mr. Robertson, as detailed further herein, he achieved a remarkable
5 basketball career including at the University of Cincinnati, that in conjunction with his
6 professional and Olympic career resulted in him being widely-acknowledged as perhaps the
7 greatest all-around player to ever play the game. Unfortunately, as also detailed herein, Mr.
8 Robertson’s collegiate image continues to be licensed without his consent to this day in new
9 licensing deals, such as one facilitated by defendant CLC for a new 2010 trading card set, that has
10 even resulted in pieces of Mr. Robertson’s uniforms being cut up into pieces, attached to pictures
11 of him, and sold for profit without approval by Mr. Robertson, and without any opportunity for
12 him to participate in the licensing opportunity generated by the use and sale of his own collegiate
13 image.
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16 8. Plaintiff Tate George made one of the most iconic shots in the history of the NCAA
17 men’s college basketball tournament, a “buzzer-beater” for the University of Connecticut
18 (“UCONN”) in the Sweet Sixteen round against Clemson in 1990. Mr. George caught a 90 foot
19 pass from teammate Scott Burrell with one second left, and then spun around and in one motion
20 converted a 15 foot jump shot as time expired. ESPN’s SportsCenter ranks it as one of the top 5
21 NCAA shots of all-time. The clip of Mr. George’s shot continues to be one of the most licensed
22 clips by the NCAA and its for-profit business partner Thought Equity Motion, including in a new
23 advertisement this year for McDonalds’ Egg McMuffin breakfast sandwiches. Mr. George has
24 not given his consent for the NCAA to earn licensing revenues by using Mr. George’s image and
25 name to promote McDonalds Corporation’s breakfast foods or anything else, and it is a
26 representative example of how Defendants have excluded and foreclosed class members from
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1 participation in licensing arrangements. Additional details on Mr. George and the licensing and
2 use of his image are supplied herein.

3 9. Plaintiff Ray Ellis was a starting defensive back on several of The Ohio State
4 University's Buckeyes football teams, including one that competed in the 1980 Rose Bowl, and
5 Mr. Ellis went on to play in the National Football League ("NFL") for seven years. The 1980
6 Rose Bowl is ranked by ESPN.com as one of the top 10 college bowl games of all time. As
7 further described herein, images of Mr. Ellis' interception of the first pass by USC in that game,
8 as well as a key interception in a win against Michigan to secure the Big 10 Conference
9 championship earlier in that season, continue to be licensed and sold, including, for example, in
10 new DVD created by USC in 2008, as well as in DVDs that Defendant NCAA currently offers for
11 sale on its website.
12

13 10. These players competed in several eras, and are representative of the thousands of
14 other unnamed players and teammates from those eras whose collective efforts conveyed
15 enormous financial benefits and glory upon their schools, conferences, the NCAA, and their
16 many for-profit business partners. While all of those entities continue to enjoy commercial
17 benefits from the sale and use of the players' images following the conclusion of their collegiate
18 athletic careers and to this day, the players have been foreclosed from participating or sharing in
19 those benefits pursuant to the anticompetitive conduct described herein. The Antitrust Class
20 Representatives are united in their efforts to achieve fairness for both past and future generations
21 of collegiate athletes.
22

23 11. As utilized herein, the term "former student athletes" includes those individuals that
24 have permanently ceased competing on teams because of, for example, graduation; exhaustion of
25 eligibility; injury; voluntary decisions to cease competition; and involuntary separations from
26 teams due to decisions by coaches, schools, conferences, and/or the NCAA, and also includes
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1 those individuals that subsequently became professional athletes, whether prior to or after the
2 exhaustion of their intercollegiate eligibility, and further includes current students that have
3 remained in school but ceased competing on a collegiate athletic team.

4 12. The term “Antitrust Damages Class” refers to former student-athletes as described
5 herein. The term “Antitrust Declaratory and Injunctive Relief Class” includes both former and
6 current student-athletes as described herein. As noted above, the terms “Antitrust Class” or
7 “Antitrust Classes” include both Antitrust Damages and Declaratory and Antitrust Injunctive
8 Relief class members, unless otherwise specified.

9 13. Defendant NCAA describes itself as “the organization through which the colleges
10 and universities of the nation speak and act on athletics matters at the national level” and states
11 that it is a “voluntary association of more than 1,000 institutions, conferences and organizations.”
12 The NCAA’s official “licensing representative” is CLC, a for-profit entity that is a defendant
13 herein, which is a division of IMG Worldwide, Inc. (“IMG”). CLC states on its website that there
14 is a “\$4.0 billion annual market for collegiate licensed merchandise.”

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

21 15. The NCAA, acting through its members, and in conjunction with its for-profit
22 business partners, has eliminated the rights of former student-athletes to receive even a single
23 dollar from the substantial revenue streams described herein. Former-student athletes do not
24 share in these revenues even though they have never given informed consent to the widespread

1 and continued commercial exploitation of their images. While the NCAA, its members, and its
2 for-profit business partners reap millions of dollars from revenue streams including television
3 contracts, rebroadcasts of “classic” games, DVD game and highlight film sales and rentals, on-
4 demand streaming and sales of games and clips, “stock footage” sales to corporate advertisers and
5 others, photograph sales, video game sales, trading card sales, and jersey and other apparel sales,
6 former student-athletes whose likenesses are utilized to generate those profit-centers receive no
7 compensation whatsoever.

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

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

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

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

5
6 18. The NCAA accomplishes its unreasonable restraint of trade in part by requiring all
7 student-athletes to sign a form each year – such as 2008’s “Form 08-3a” – that purports to require
8 each of them to relinquish all rights in perpetuity to the commercial use of their images, including
9 after they graduate and are no longer subject to NCAA regulations. (*See* Exhibit A). Form 08-3a
10 is purposefully misleading, incomplete and ambiguous on its face, and student-athletes, including
11 minors, must sign it under duress and without informed consent.

12
13 19. The NCAA further requires student-athletes to sign at least one other similarly illegal
14 consent form pursuant to Article 12.5.1.1 of its Bylaws (the “Institutional, Charitable,
15 Educational, or Nonprofit Promotions Release Statement”), that allows commercial exploitation
16 of former student-athletes by effecting another purported perpetual release of rights. The
17 NCAA’s Bylaws contain further provisions allowing for-profit third parties to benefit financially
18 from the commercial exploitation of former student-athletes. The penalty for a student-athlete
19 who refuses to sign the forms described herein is that the student-athlete is declared permanently
20 ineligible for participation on his or her respective team, unless he or she later signs the forms.

21
22 20. More specifically, Form 08-3a purports to cause student-athletes to release in
23 perpetuity their rights to obtain compensation in connection with use by the NCAA, or the
24 NCAA’s designated “third parties,” of a student-athlete’s “name or picture to generally promote
25 NCAA championships or other NCAA events, activities or programs.” Similar language is
26 contained in the “Institutional, Charitable, Educational, or Nonprofit Promotions Release
27 Statement.” The NCAA, without advising its student-athletes, has taken that purposefully
28

1 ambiguous language as a license to develop an array of multi-media revenue streams for itself
2 without providing any compensation whatsoever to the former athletes whose images are sold
3 over and over again via NCAA-owned, controlled, and licensed entities. Form 08-3a and the
4 “Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement” are contracts
5 of adherence, imposed via anticompetitive conduct and agreement, and are plainly unenforceable.
6

7 21. The NCAA’s forms in fact do not in any way grant licenses in perpetuity, or even
8 ones extending beyond the conclusion of any student-athlete’s collegiate athletics career.
9 Student-athletes have not transferred or conveyed their rights in the licensing or use of their
10 image following the cessation of their participation on NCAA teams. The NCAA and its
11 members, under its control and direction, have no right to license or use players’ images,
12 likenesses and/or names upon the conclusion of their participation in intercollegiate athletics.
13 The NCAA and others, however, have agreed to act as if their forms do grant perpetual licenses
14 with no limits, and further agreed to license and use the wrongfully obtained rights.
15

16 22. In addition to agreeing to wrongfully interpret the release forms as perpetual licenses,
17 the NCAA has operated as an illegal horizontal cartel, additionally facilitated by Defendants CLC
18 and EA. That cartel has collectively and illegally conspired to limit and depress the
19 compensation of former student-athletes for continued use of their images to zero. Defendants’
20 and their co-conspirators’ actions further constitute a group boycott / refusal to deal. Their
21 concerted action requires all student-athletes to sign each year the forms described herein that
22 purport to require each of them to relinquish all rights in perpetuity for use of their images. This
23 concerted action is in effect a refusal to deal with Antitrust Class members on future post-
24 competition rights issues.
25

26 23. The NCAA’s abridgement of former student-athletes’ economic rights in perpetuity
27 is unconnected to any continuing pro-educational benefits for former student-athletes, who by
28

1 definition are no longer student-athletes. Defendants' patently anticompetitive and illegal scheme
2 has unreasonably restrained trade, and is a violation of the Section 1 of the Sherman Act.

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

9
10 25. In September of 2008, the NCAA's then-President, Myles Brand, acknowledged
11 that student-athletes possess a right of publicity. In connection with an explanation as to why the
12 NCAA would not sue its business partner, the CBS television network, over its use of college
13 player information in its "fantasy sports" statistical game, President Brand wrote the following:
14

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

18 Well, it does.

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

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

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

1 26. In the NCAA’s 2009 “State of the Association” speech, Wallace I. Renfro, the
2 NCAA’s vice president and senior advisor to President Myles Brand, stated the following:

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

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

15 Whatever “orthogonal parameters” are being weighed by the NCAA and its business partners,
16 they do not include any form of compensation to former student-athletes.

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

23 28. On behalf of the Antitrust Damages Class described herein, the Antitrust Plaintiffs
24 seek relief herein including monetary damages, to be automatically trebled under the federal
25 antitrust laws; disgorgement and restitution of all monies by which the Defendants have been
26 unjustly enriched; and declaratory relief that Form 08-3a, the “Institutional, Charitable,
27 Educational, or Nonprofit Promotions Release Statement,” and any similar forms regarding future
28 compensation rights are void and unenforceable. The Antitrust Plaintiffs further seek an
accounting of the monies received by Defendants, their co-conspirators, and their licensees in

1 connection with the exploitation of Antitrust Damages Class members' images, likenesses, and/or
2 names and the establishment of a constructive trust to benefit Antitrust Damages Class members.

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

10 **JURISDICTION AND VENUE**

11 30. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question)
12 and 28 U.S.C. § 1337 (commerce and antitrust regulation), as this action arises under Section 1 of
13 the Sherman Act, 15 U.S.C. § 1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a)
14 and 26. The Court has supplemental subject matter jurisdiction over the pendent state law claims
15 under 28 U.S.C. § 1367. The Court also has jurisdiction over this matter pursuant to 28 U.S.C.
16 § 1332(d), in that this is a class action in which the matter or controversy exceeds the sum of
17 \$5,000,000, exclusive of interest and costs, and in which some members of the proposed class are
18 citizens of a state different from the Defendants.

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

22 32. This Court has personal jurisdiction over Defendants because, *inter alia*, they:
23 (a) transacted business throughout the United States, including in this District; (b) participated in
24 organizing intercollegiate athletic contests, and/or licensing or selling merchandise throughout the
25 United States, including in this District; (c) had substantial contacts with the United States,

1 including in this District; and (d) were engaged in an illegal anticompetitive scheme that was
2 directed at and had the intended effect of causing injury to persons residing in, located in, or
3 doing business throughout the United States, including in this District. Additionally, Defendant
4 EA maintains its headquarters in this District. Numerous NCAA Division I universities or
5 colleges also are found within this District, *i.e.*, the University of California's Berkeley campus
6 ("Cal"), Stanford University, Santa Clara University, the University of San Francisco ("USF"),
7 and St. Mary's College.
8

9 **PLAINTIFFS**

10 **Oscar Robertson**

11 33. Plaintiff Oscar P. Robertson is a resident of Cincinnati, Ohio. It is impossible to
12 overstate Mr. Robertson's continuing stature in the game of basketball. He is generally
13 considered the greatest all-around player in the history of the sport. In 2000, he was named
14 "Player of the Century" by the National Association of Basketball Coaches in recognition of his
15 spectacular and unmatched body of work at the collegiate, professional, and Olympic levels.
16 Additionally, as described below, he was at the forefront of players' rights issues and forever
17 transformed the business of professional basketball via antitrust litigation that resulted in the
18 establishment of today's free-agent system.
19

20 34. In his remarkable collegiate career, Mr. Robertson competed on the University of
21 Cincinnati's men's basketball team in the 1957-58, 1958-59, and 1959-60 seasons. He was the
22 first player in history to lead the NCAA in scoring for three straight years, and he finished with a
23 career average of 33.8 points per game. Mr. Robertson also was the first player in NCAA history
24 to win National College Player of the Year honors three times. He was a three-time first team
25 All-American, and led the University of Cincinnati to two "Final Four" appearances and a
26 stunning 79-9 record over his three years of collegiate competition.
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1 35. At the professional level, Mr. Robertson was an NBA star from 1960-61 to 1973-74,
2 playing 10 years with the Cincinnati Royals (now the Sacramento Kings), and four with the
3 Milwaukee Bucks. He is the only player in NBA history ever to average a "triple double" (double
4 figures in scoring, 30.8 points per game; assists, 11.4 per game; and rebounding, 12.5 per game)
5 for an entire season, 1961-62. Mr. Robertson is by a wide margin the all-time NBA leader in
6 career triple-double games with 181 and single-season triple-double games with 41 (1961-62).
7 He also was the first player to lead the NBA in scoring average (29.2) and assists average (9.7) in
8 the same season, 1967-68. Mr. Robertson led the Bucks to the 1971 NBA championship and
9 three additional playoff appearances including the NBA finals in 1974, and led the Royals to six
10 consecutive playoff appearances, 1962-1967. He was named the NBA's Most Valuable Player in
11 1964, NBA Rookie of the Year, 1961, selected to 12 consecutive NBA All-Star Teams from
12 1961-1972, and named All-Star Game MVP 1961, 1964, 1969. He set a career record with 9887
13 assists / 9.5 average per game which stood for 17 years, and ranks among all-time NBA scoring
14 leaders with 26,710 points / 25.7 average.

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17 36. Mr. Robertson was the co-captain of undefeated, gold-medal winning 1960 U.S.
18 Olympic Team, acknowledged as one of the greatest basketball teams ever, and was the team's
19 co-leading scorer.

20
21 37. Some of Mr. Robertson's numerous honors and awards include the following:

- 22 • Selected Player of the Century by National Association of Basketball Coaches
- 23 • Inducted in Naismith Memorial Basketball Hall of Fame, 1979
- 24 • Inducted in International Basketball (FIBA) Hall of Fame, 2009
- 25 • Inducted in National Collegiate Basketball Hall of Fame, 2006
- 26 • Inducted in Olympic Games Hall of Fame
- 27 • Named one of NBA's 50 Greatest Players of All Time, 1997

- 1 • Named one of 20th Century's greatest athletes by *Sports Illustrated*
- 2 • Named one of the top ten basketball players of the 20th Century by the Associated
- 3 Press, 1999
- 4 • Named one of five top college basketball players of the 20th Century by *Sports*
- 5 *Illustrated*, 1999
- 6 • Selected by ESPN as one of Fifty Greatest Athletes of the 20th Century, 1999
- 7 • Honored by the NCAA as one of the premier student-athletes of all time
- 8 • US Basketball Writers Association renamed its Player of the Year award the Oscar
- 9 Robertson Trophy in 1998

10 38. Mr. Robertson was the President of the NBA Players Association from 1965-1974.

11 "The Oscar Robertson Rule" was instituted as a result of antitrust litigation that he initiated

12 through the NBAPA. The litigation, among other things, sought to end the option clause that

13 bound a player to a single NBA team in perpetuity, and its settlement set the stage for free agency

14 in the NBA.

15 39. Mr. Robertson competed pursuant to the NCAA's rules and regulations, and has

16 been deprived of compensation by Defendants and their co-conspirators for the continued use of

17 his image following the end of his intercollegiate athletic career. Mr. Robertson signed one or

18 more of the release forms discussed herein (or the precursors to them, including scholarship and

19 eligibility papers that the NCAA has interpreted as a release of the student-athlete's rights with

20 respect to his image, likeness and/or name in connection with merchandise sold by the NCAA, its

21 members, and/or its licensees).

22 40. Mr. Robertson's image, likeness and/or name along with those of other Antitrust

23 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period

24 in at least the ways described below, without informed consent from him and without

25 compensation paid to him.

26

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1 41. For example, his collegiate image is being licensed and sold to this day in various
2 trading card sets. In a 2009 set issued by the Upper Deck Company, known as the “Greats of the
3 Game” set, Mr. Robertson’s image was used and licensed in conjunction with at least four cards,
4 identified by Upper Deck as the “Greats of the Game,” “Great of the Game Auto,” “Greats of the
5 Game var 1,” and “Greats of the Game var 2” Oscar Robertson cards, all bearing card number 35.
6 The front of the cards feature an action shot of Mr. Robertson, and the back provides various
7 information including stating “‘Big O’ was the type of player who justified restless nights for
8 opponents prior to game and nightmares afterward. He ignited the Bearcats to two Final Fours
9 and locked down 14 NCAA records while Cincinnati rolled to a 79-9 mark.”

11 42. The “Greats of the Game” cards described above featuring Mr. Robertson’s image
12 bear the logo of defendant CLC. In a press release dated April 8, 2010, Upper Deck and
13 Defendant CLC stated the following: “[T]he Upper Deck Company is proud to announce the
14 release of its first collegiate-focused sports trading card set: 2010 Great of the Game Basketball.
15 With its recently inked exclusive contract with The Collegiate Licensing Company (CLC), Upper
16 Deck pulled out all the stops with its slam-dunk launch featuring some of the greatest collegiate
17 roundball stars in history.” The press release continues that “[t]he 200-card base set is chock full
18 of the biggest names who have ever played collegiate basketball . . . Beyond the aforementioned
19 base-level cards, Upper Deck’s Greats of the Game Basketball brings collectors some of the most
20 sought-after insert cards ever assembled. The memorabilia insert card lineup is entitled ‘Old
21 School Swatches’ . . . “ The press release further quotes David Kilpatrick, Vice President of Non-
22 Apparel Marketing for defendant CLC as stating: “The collegiate institutions and CLC are
23 looking forward to working closely with Upper Deck to maximize the tremendous opportunities
24 that exist for licensed collegiate trading cards.”
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1 43. In another 2009 set issued by the Upper Deck Company in conjunction with
2 defendant CLC, known as the “Old School” set and as identified in the press release detailed
3 above, Mr. Robertson’s image was used on at least three cards, identified as the “Old School”
4 card (bearing card number 159), the “Old School Auto” card (bearing card number 159), and the
5 “Old School Swatches” card (bearing card number OS-33). These cards bear actions photos of
6 Mr. Robertson on the front and back, and include portions of his cut-up uniforms in various
7 colors. The back of the cards state: “You have received a trading card with Oscar Robertson
8 Game-Used basketball memorabilia. The memorabilia has been certified as having been used in
9 an official basketball game. We hope you enjoy this piece of basketball history, as we continue to
10 keep you as close as you can get.” The card bears the signature of Richard P. McWilliam of The
11 Upper Deck Company, Inc., and bears the logo of defendant CLC.
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14 44. As another example, defendant CLC participated in another trade card licensing deal,
15 this time with the trading card company Donruss, and again using Mr. Robertson’s collegiate
16 image as well as cut-up pieces of his uniform. In the 2008 Sports Legends set, Mr. Robertson’s
17 image was used on the front and back of a card, and the card states on the back that “[t]he
18 enclosed piece of material was personally worn by Oscar Robertson. The material was obtained
19 and is guaranteed by Donruss Playoff L.P.” The card is identified as card 7. The card bears the
20 logo of defendant CLC.
21

22 45. Another Donruss-issued card featuring Mr. Robertson’s image is identified as a 2008
23 Sports Legends / College Heroes set again using Mr. Robertson’s collegiate image as well as cut-
24 up pieces of his uniform. Mr. Robertson’s image was used on the front and back of a card, and
25 the card states on the back that “[t]he enclosed piece of material was personally worn by Oscar
26 Robertson. The material was obtained and is guaranteed by Donruss Playoff L.P.” The card is
27 identified as card “CH-6” and 109 / 250. The card bears the logo of defendant CLC.
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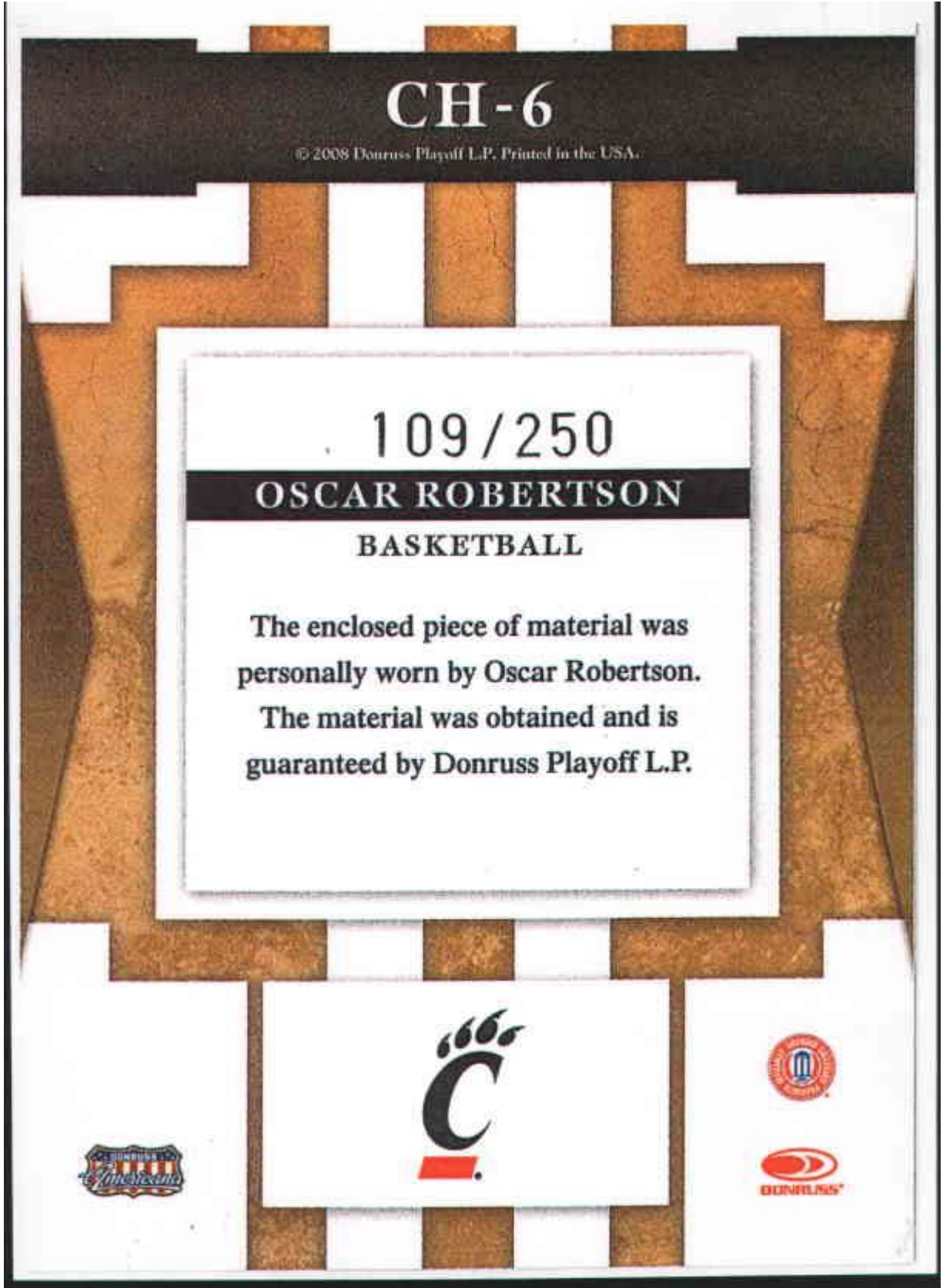
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46. Copies of the front and back of the trading cards discussed above, including those containing cut-up pieces of Mr. Robertson's uniforms, are set forth as follows:

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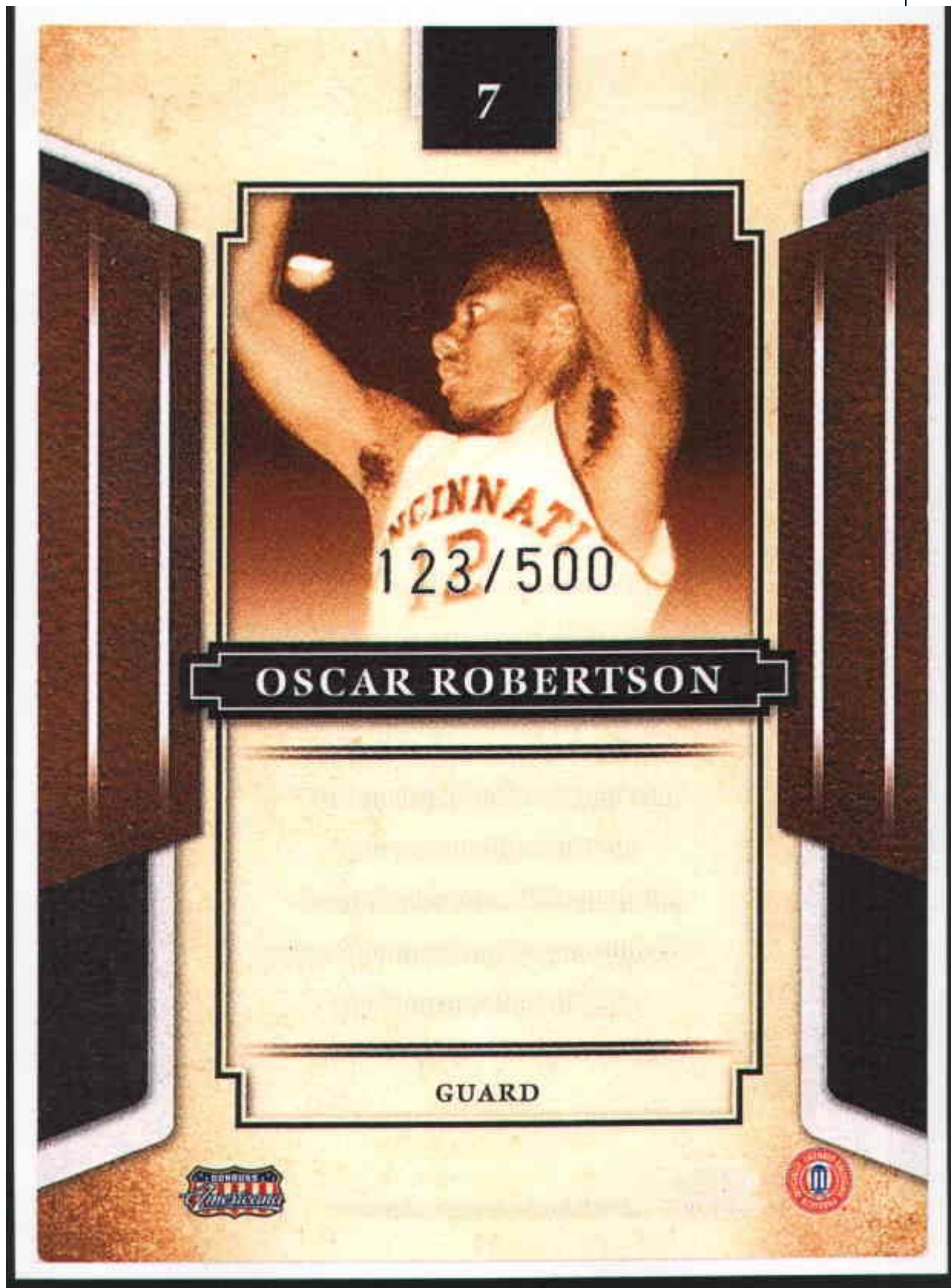
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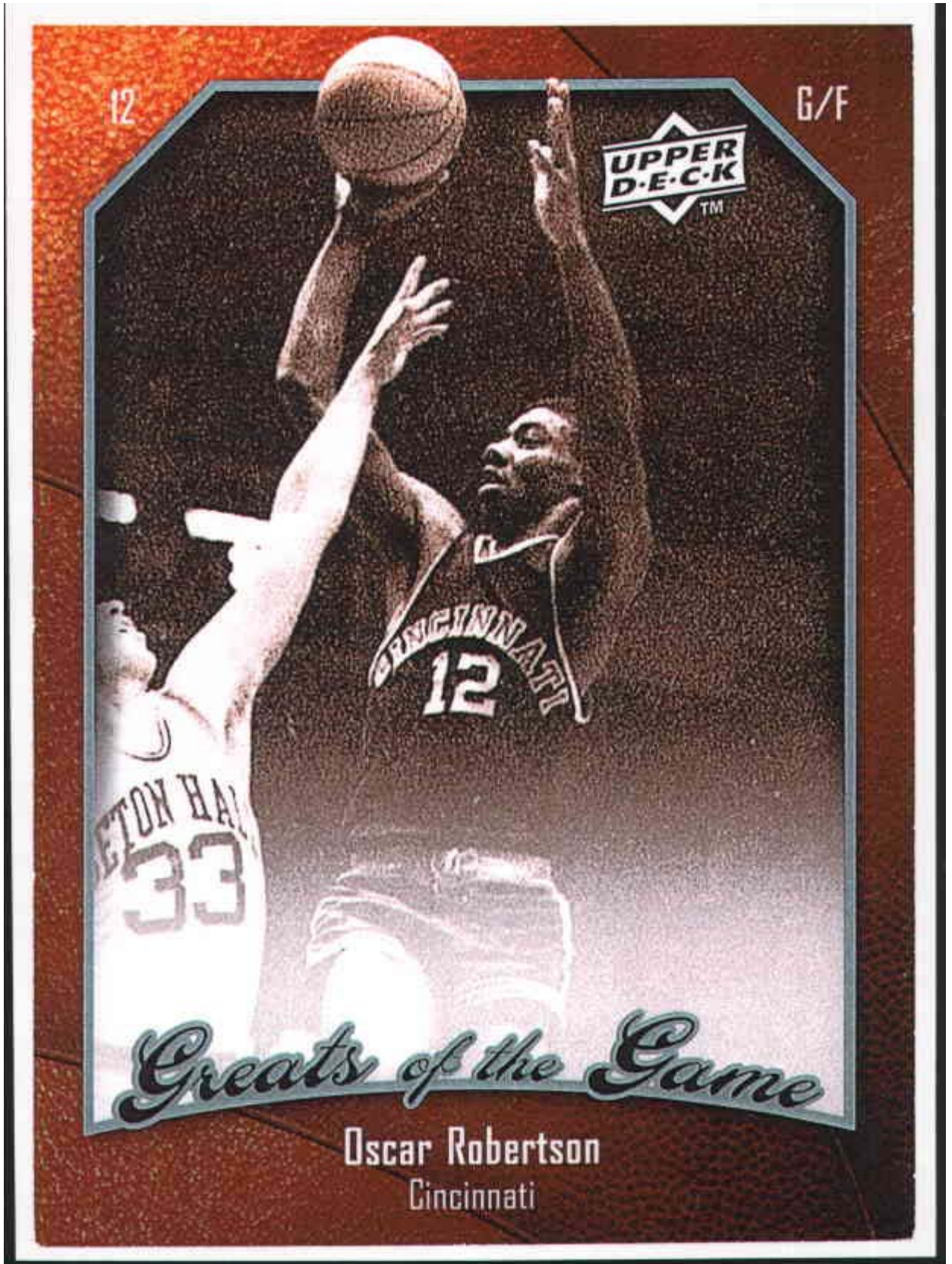
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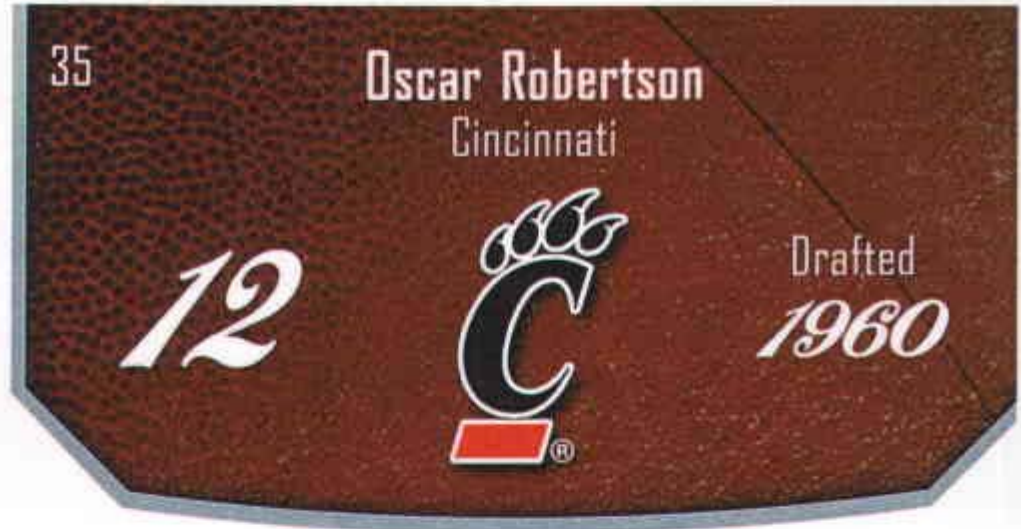
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(Material in center of card states: “The enclosed piece of material was personally worn by Oscar Robertson. The material was obtained and is guaranteed by Donruss Playoff L.P.”)

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"The '12' was the type of player who looked around before he was even drafted by Cincinnati and Cincinnati selected him. He looked like a superstar and he was drafted before most of the other guys who were drafted in 1960."

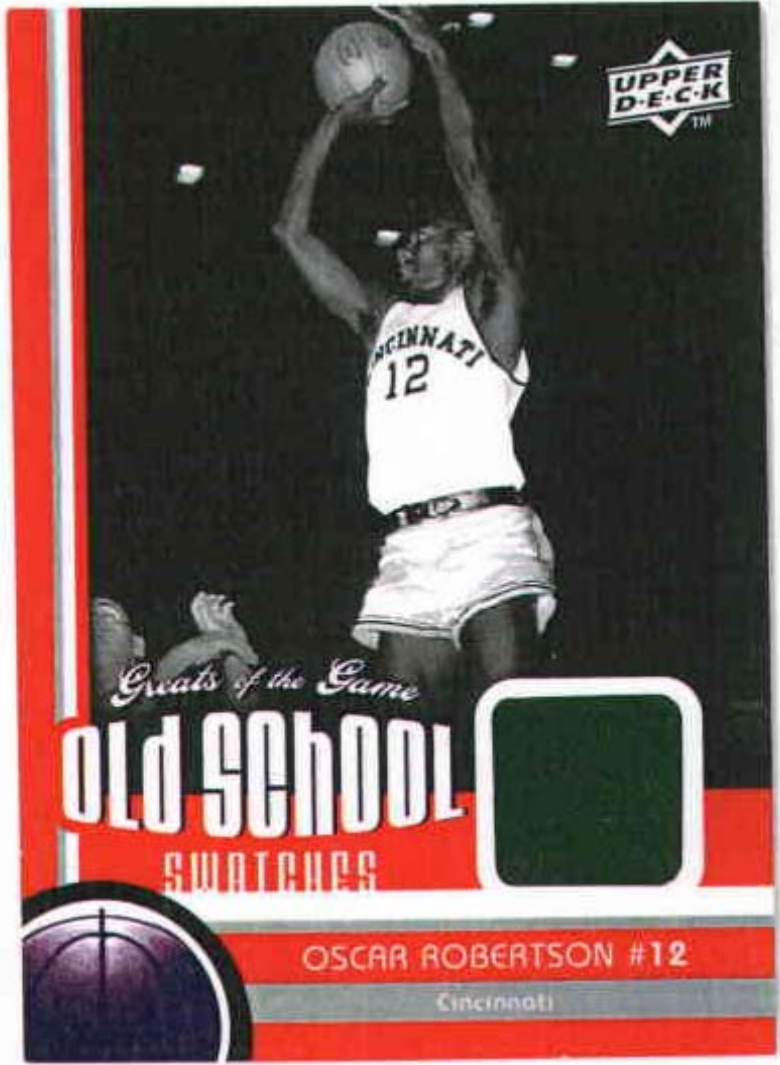
YR	TEAM	GP	PTS	AST	AVG	PTS	AST	AVG
1960-61	CINCINNATI	82	27.5	11.4	33.8	33.8	11.4	33.8
1961-62	CINCINNATI	82	27.5	11.4	33.8	33.8	11.4	33.8
1962-63	CINCINNATI	82	27.5	11.4	33.8	33.8	11.4	33.8
CAREER TOTALS		246	27.5	11.4	33.8	33.8	11.4	33.8

Greats of the Game

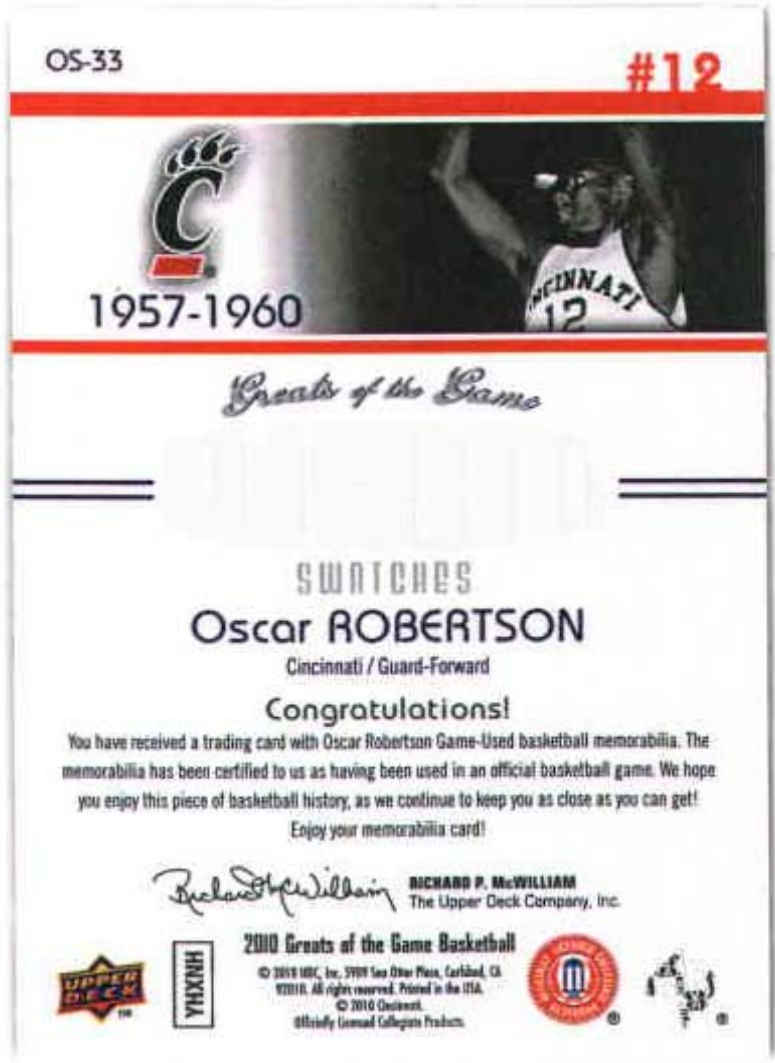
2010 Greats of the Game Basketball

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47. Another example of a format in which Antitrust Damages Class members' images, likenesses and/or names are being utilized subject to the anticompetitive restraints detailed herein is the NCAA's On Demand on-line store, operated in connection with its for-profit business partner Thought Equity Motion ("TEM"). The NCAA 1959 Division I semi-final game between the University of Cincinnati and the University of California featuring Mr. Robertson is offered for sale in this format for \$150. The 1959 NCAA regional final game between Cincinnati and Kansas State featuring Mr. Robertson is offered for sale for \$150. The 1960 NCAA regional final game between Cincinnati and California featuring Mr. Robertson is offered for sale for \$150.

1 The 1960 NCAA regional game between Cincinnati and Kansas featuring Mr. Robertson is
2 offered for \$150.

3 48. Another example of a format in which Antitrust Damages Class members' images,
4 likenesses and/or names are being utilized subject to the anticompetitive restraints detailed herein
5 is the NCAA's on-line photo store. At least one image of Mr. Robertson is offered for sale in this
6 format at prices ranging from \$15 to \$200. On another photo site run by Replay Photos, one of
7 the NCAA's and the University of Cincinnati's business partners, another photograph of Mr.
8 Robertson is available for sale at prices ranging from \$15.95 to \$179.95. Another image of Mr.
9 Robertson is offered for sale on that site, identified as of the site's "top 10 photos," with pricing
10 again beginning at \$15.95.
11

12 49. Another example of a format in which Antitrust Damages Class members' images,
13 likenesses and/or names are being utilized subject to the anticompetitive restraints detailed herein
14 is "stock footage" offered by the NCAA and its partner TEM. They offer for sale to corporate
15 advertisers and others a "stock footage" film clip that features Mr. Robertson's performance in
16 the NCAA tournament and captioned "[m]ontage featuring Oscar Robertson of Cincinnati making
17 lay-ups and a basket off a rebound." Interested parties must contact TEM for pricing, which
18 appears to vary depending on intended usage. The NCAA and TEM offer another film clip for
19 sale captioned "Bird's-eye view of Oscar Robertson of Cincinnati getting a pass and making a
20 basket." The NCAA and TEM offer another film clip for sale captioned "[m]ontage featuring
21 NCAA highlights of Oscar Robertson of Cincinnati." The NCAA and TEM offer another film
22 clip for sale captioned "[m]ontage featuring Oscar Robertson of Cincinnati taking it all the way
23 despite defense."
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1 50. On information and belief, Mr. Robertson's image, likeness and/or name has been
2 used and sold in additional ways for additional uses via the licensing entities such as Defendant
3 CLC and TEM described herein.

4 51. As a result of the federal antitrust violations described herein, Plaintiff Robertson was
5 injured in his business or property, and was unfairly deprived of compensation in connection with
6 the use and sale of his image, likeness and/or name.

7
8 **Tate George**

9 52. Plaintiff Tate George is a resident of Boca Raton, Florida. Mr. George competed
10 for the University of Connecticut's ("UCONN") men's basketball team as a starting guard in the
11 1986-87 through 1989-90 seasons. UCONN named Mr. George to its All-Century men's
12 basketball team, and he is the school's all-time career assist leader, as well as number two in
13 career steals, and finished with more than 1,000 career points. He was named to the 1986-87 Big
14 East Conference All-Rookie Team, and as a senior in 1990, he was named to the Big East All-
15 Tournament team as the Huskies won their first-ever Big East Conference tournament title. Mr.
16 George was named to the NCAA East Regional All-Tournament Team.

17
18 53. Mr. George was selected by the New Jersey Nets in the first round of the 1990 NBA
19 draft, and played for five seasons in the NBA with the Nets and Milwaukee Bucks, and
20 additionally played professional basketball in Europe for three years.

21
22 54. In the 1990 NCAA tournament in the Sweet Sixteen round, Mr. George hit an iconic,
23 game-winning, buzzer-beating shot to defeat Clemson, known to this day simply as "The Shot."
24 With one second remaining in the game, and UCONN down by one point, UCONN's Scott
25 Burrell inbounded the ball by throwing it nearly 90 feet to Mr. George, who caught the ball with
26 his back to the basket and in one motion turned around and launched a successful 15 foot shot as
27 time expired. Ever since, the play has been considered one of the greatest in NCAA tournament
28

1 history. For example, in 2006, ESPN's SportsCenter ranked it as number five on its list of "Top
2 NCAA Buzzer Beaters" of all time.

3 55. Strong interest in Mr. George continues to this day. For example, in an article in the
4 commercial real estate section of the July 20, 2010 edition of *The New York Times* titled "After
5 Sports Careers, Vying in the Real Estate Arena," Mr. George was pictured, discussed, and quoted
6 regarding his affordable housing development projects. The article stated in part that "[w]hatever
7 their projects' details, some of these former athletes seem content to leave the bright lights of
8 their playing days behind. 'What I'm doing is not self-serving, but other-serving,' Mr. George
9 said. 'When you don't work for fanfare, you can get a lot more done.'"

10
11 56. This year, Mr. George also was profiled in the August 2-9, 2010 edition of *Sports*
12 *Illustrated* magazine in an article titled "**Tate George** Twenty years after his heroics, the Newark
13 native is back home working wonders again." The article recounted his famous shot in the 1990
14 NCAA tournament, stating that he had "just nailed one of the most electrifying buzzer beaters in
15 NCAA tournament history" and that "[h]is turnaround jumper with one second left on March 22,
16 1990, sent top-seeded Connecticut past No. 5 seed Clemson and into the Elite Eight." The article
17 continued that "[a]fter finishing his NBA career (three years with the Nets and one with the
18 Bucks), George successfully moved into the world of real estate. As the CEO and chairman of
19 the board of The George Group LLC, which he started back in 2000, George is doing his part to
20 help urban communities – most notably in Newark – redevelop retail, residential and commercial
21 properties." With respect to his efforts regarding the redevelopment of Newark and supporting
22 the temporary relocation this year of the NBA's New Jersey Nets to Newark, the article quoted
23 Mr. George as follows: "It's galvanizing to a community that has nothing to look forward to,'
24 says George. 'There's not much hope. And sport is a universal time for people to come
25 together.'"

1 57. In a 2008 profile of Mr. George titled “Success, by George!” in Conde Nast’s
2 Portfolio, the publication noted, with respect to Mr. George’s shot, that the “moment may have
3 immortalized George forever, thanks to YouTube and ESPN Classic . . .”

4 58. Mr. George serves as a member of the Board of Directors of the National Basketball
5 Retired Players Association (“NBRPA”) as well as its Vice-President. The NBRPA was founded
6 in 1992 by NBA Legends Dave DeBusschere, Dave Bing, Archie Clark, Dave Cowens and Oscar
7 Robertson, and is a non-profit Association comprised of former professional basketball players of
8 the NBA, ABA and Harlem Globetrotters. It works in direct partnership with the NBA, and its
9 mission is to promote basketball and enhance the sport’s image by assisting members, including
10 in building community relationships and fostering support for charitable activities and offering
11 the Dave DeBusschere NBRPA Scholarship Fund for members and their children in need.
12

13 59. In a 2009 article profiling Mr. George in *Slam* magazine, Mr. George stated that
14 “[s]omething I really wanted to be a part of was the Retired Players’ Association, because we
15 need to have a bridge for guys [after they finish their career] . . . What we as athletes need to do is
16 take a real inventory on what we’re good at and what we’re not good at and team up.” In another
17 2009 profile on the Sport Network.com, Mr. George noted with respect to his work with retired
18 NBA players that “We have guys living in their families’ basements that have very little life skills
19 and no one is stepping up to assist in the transition of the men they promote to build the NBA
20 brand.”
21

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

3 61. Mr. George’s image, likeness and/or name along with those of other Antitrust
4 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
5 in at least the ways described below, without informed consent from him and without
6 compensation paid to him. For example, on the NCAA’s On Demand on-line store, operated in
7 connection with its for-profit business partner Thought Equity Motion (“TEM”), the 1990
8 UCONN game vs. Clemson is offered for sale for \$24.99, and the NCAA captions the game
9 solely as follows: “Tate George hit a heart-stopping 17 footer to lead UCONN past Clemson 71-
10 70,” and includes a video-clip of Mr. George’s shot as a part of the advertisement for the game on
11 the site. The NCAA further offers at least three other 1990 tournament games featuring Mr.
12 George and his teammates and opponents for a custom-order price of \$150 – first and second
13 round regional games versus the University of California, Berkeley and Boston University, and a
14 regional final game versus Duke University.

15 62. The game is also currently offered for sale through myriad other distribution outlets,
16 such as Amazon.com for \$24.99 (also described only as “Tate George hit a heart-stopping 17
17 footer to lead UCONN past Clemson 71-70.”).

18 63. As another example of formats in which Antitrust Damages Class members’ images,
19 likenesses and/or names are being utilized subject to the anticompetitive restraints detailed herein,
20 the NCAA and its partner TEM also offer for sale to corporate advertisers and others a “stock
21 footage” clip running four minutes and 14 seconds captioned “Tate George hits a buzzer beater in
22 the 1990 NCAA Men’s Basketball tournament.” Thought Equity includes the following notation
23 under the clip: “Thought Equity Motion, Inc. reserves the right to pursue any unauthorized
24 persons that use this clip. Any violation of the Intellectual Property rights related to this clip may
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1 result in liability for injunctive relief as well as damages in the form of actual damages for loss of
2 income, profits derived from the unauthorized use of this image or clip, and, where appropriate,
3 attorney fees, other costs of collection and/or statutory damages.”

4 64. A separate version of the clip running 3 minutes 30 seconds is also offered by TEM
5 and captioned: “Connecticut's Tate George misses a game-winning jumper with 4 seconds left in
6 the game; the Huskies get a reprieve when Sean Tyson couldn't convert a free throw; with one
7 second on the clock, Scott Burrell throws the ball to George, who lets the ball fly toward the
8 basket from 15 feet out.” TEM includes the same warning regarding intellectual property rights
9 as detailed above.

10 65. On information and belief, the stock footage licensing described above is the way that
11 the NCAA has licensed the famous clip of Mr. George in numerous ways, and will continue to do
12 so.
13

14 66. Clips of Mr. George’s shot continue to this day to be the subject of new licensing
15 deals executed by the NCAA and TEM. The clip has been licensed for use and has appeared in
16 numerous commercials, for example, in car commercials. The clip was recently licensed and
17 used as a part of a commercial promotion for Vitamin Water used during CBS’ broadcast of the
18 2009 NCAA men’s basketball tournament. Previously uses of the clip include commercials and
19 promotions for McDonald’s, Burger King, Buick, Chrysler, and Cadillac.
20

21 67. As another example, this year, in its March 25, 2010 newsletter, the NCAA’s
22 business partner TEM stated: “Thought Equity Motion worked with AdoTube—a video
23 advertising network and platform—to license NCAA content for a recent McDonald’s digital ad
24 campaign. McDonald’s wanted to run relevant in-stream ads over premium video content. So, in
25 a matter of days, Thought Equity Motion licensed AdoTube three fully produced, popular March
26 Madness® videos, which the company exclusively ran the McDonald’s overlay in on targeted
27

1 video-enabled ad networks. To watch the March Madness videos and see McDonald's in-stream
2 ads, click here . . .”

3 68. The first image in the McDonald's commercial advertisement is a clip of Mr.
4 George's shot, with the play-by-play announcer intoning: “Here goes the long pass with one
5 second to go, the shot's going to count, the shot by Tate George wins it!” The bottom-half of the
6 screen is filled by a streaming McDonald's ad stating: “Fact or Fiction . . . The McDonald's Egg
7 McMuffin is pre-assembled (fiction) . . . made to order (fact) . . . the Egg McMuffin, always made
8 to order . . . I'm lovin' it, © 2009 McDonalds . . .” Both computerized graphics of the assembly
9 of an Egg McMuffin, as well as a picture of an actual Egg McMuffin, are included in the ad along
10 with Mr. George's shot.
11

12 69. Mr. George has not given his consent for his image to be licensed for commercial
13 purposes to promote the interests of McDonald's Corporation and its Egg McMuffin breakfast
14 sandwiches.
15

16 70. On information and belief, Mr. George's image, likeness and/or name has been used
17 and sold in additional ways for additional uses via the licensing entities such as Defendant CLC
18 and TEM described herein.
19

20 71. Given the continuing tremendous interest in Mr. George's shot versus Clemson, and
21 the insatiable demand for college basketball, there remains a very substantial likelihood that new
22 licensing agreements will be made in the future regarding footage of Mr. George and his
23 teammates and opponents
24

25 72. As a result of the federal antitrust violations described herein, Plaintiff George was
26 injured in his business or property, and was unfairly deprived of compensation in connection with
27 the use and sale of his image, likeness and/or name.
28

1 **Ray Ellis**

2 73. Plaintiff Ray Ellis is a resident of Gilbert, Arizona. Mr. Ellis competed for The Ohio
3 State University's men's football team as a defensive back from the 1976 through 1979 seasons,
4 including in the 1980 Rose Bowl game. A four-year letterman and three-year starter, Mr. Ellis
5 won All-Big 10 Conference first team honors with five interceptions as a senior co-captain. In
6 the 1979 season, the Ohio State team compiled an 11 and 0 record and possessed a number one
7 national ranking before falling 17-16 to the University of Southern California ("USC") in the
8 Rose Bowl on January 1, 1980. That game is ranked by ESPN.com as the eighth greatest college
9 football bowl game of all time, and featured USC star running back and Heisman Trophy winner
10 Charles White running for a stunning Rose Bowl record 247 yards including the winning
11 touchdown, as well as USC running back Marcus Allen, a future NFL Hall of Fame player,
12 USC's defensive standout Ronnie Lott, another future NFL Hall of Fame player, and numerous
13 other future NFL players. Mr. Ellis intercepted the first pass of the game by USC, and that image
14 continues to be licensed to this day as described herein.

17 74. Mr. Ellis was drafted in the 1981 NFL draft by the Philadelphia Eagles, and played
18 for them from 1981 through 1985 before joining the Cleveland Browns in 1986 and competing
19 for them in the 1986 and 1987 seasons. Mr. Ellis' statistics as a strong safety in the NFL include
20 427 tackles and 14 interceptions, including 7 alone in 1984. Mr. Ellis has been active in both
21 business and community, including serving as Chief Operating Officer for People for People, a
22 non-profit corporation in Philadelphia whose mission is to educate underprivileged youth and
23 young adults. Ellis has also been active with the Big Brothers/Big Sisters, Special Olympics,
24 United Way, United Negro Fund and the National Center for Missing Children. Mr. Ellis
25 currently works as Sports Channel Director for World Talk Radio d/b/a VoiceAmerica, the largest
26 producer of original Internet talk radio programming in the world and producer of internet
27

1 television programming. He is actively involved in career transition efforts for former NFL and
2 college players, assisting them with building careers in new media, and is a member of the NFL
3 Retired Players Association and the NFL Alumni Association.

4 75. Mr. Ellis competed pursuant to the NCAA's rules and regulations, and has been
5 deprived of compensation by Defendants and their co-conspirators for the continued use of his
6 image following the end of his intercollegiate athletic career. Mr. Ellis signed one or more of the
7 release forms discussed herein (or the precursors to them, including scholarship and eligibility
8 papers that the NCAA has interpreted as a release of the student-athlete's rights with respect to
9 his image, likeness and/or name in connection with merchandise sold by the NCAA, its members,
10 and/or its licensees).

11 76. Mr. Ellis' image, likeness and/or name along with those of other Antitrust Damages
12 Class members, is being offered for sale and/or used during the Antitrust Class Period in at least
13 the ways described below, without informed consent from him and without compensation paid to
14 him.

15 77. Mr. Ellis' image appears in the "Buckeye Classics" DVD, Volume 2, which includes
16 an extensive section on Ohio State's 1979 season, described on packaging material as a season in
17 which the "Buckeyes shocked the nation and rose from relative obscurity to come within seconds
18 of the national title." The packaging material bears a logo stating it is a "Collegiate Licensed
19 Product" right next to the logo for The Ohio State University. Several video clips of Mr. Ellis
20 appear on the DVD, including an interception to clinch the Big 10 Conference title in a game
21 against Michigan, and Mr. Ellis additionally appears in footage from the Rose Bowl game.
22 Additional, a still photo of Mr. Ellis appears in the section regarding the 1979 season.
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1 78. The DVD is currently available through numerous outlets, including the Rose Bowl's
2 website, where it is identified as an "Officially Licensed NCAA Product" and sold for \$19.95.

3 The DVD also is currently sold by the NCAA itself through its on-line DVD store for \$19.99.

4 79. The NCAA currently sells another DVD via its on-line DVD store titled "NCAA
5 Rivalry Series: Ohio State Beats Michigan" for \$29.95. The NCAA describes the disc 1 of the 3
6 DVD set as containing the entire November 17, 1979 game between Ohio State and Michigan,
7 which Ohio State won 18-15, and which featured Mr. Ellis' interception clinching the Big 10
8 Conference championship. New licensing deals for this game continue to be struck. For
9 example, it is now available as a part of the "Big Ten's Greatest Games" series shown at
10 hulu.com. Hulu.com is a website offering ad-supported streaming video of TV shows and movies
11 from NBC, Fox, ABC, and many other networks and studios, and is a joint venture of NBC
12 Universal, Fox Entertainment Group, and ABC Inc. launched in 2007. Of note, a Fox entity, Fox
13 Cable Networks, is also a joint venture partner in the Big Ten Network with the Big Ten
14 Conference.

15 80. As another example of formats in which Antitrust Damages Class members' images,
16 likenesses and/or names are being utilized subject to the anticompetitive restraints detailed herein,
17 Ohio State games featuring Mr. Ellis and other Antitrust Damages Class members also are
18 periodically rebroadcast on ESPN Classic and other network pursuant to new licensing
19 agreements. For example, on September 11, 2009, ESPN Classic aired the 1980 Rose Bowl game
20 between Ohio State and USC. On December 29, 2008, the game also aired on ESPN Classic, as
21 well as in September of 2008. In November 2006, the ESPNU network aired the 1979 Ohio State
22 vs. Michigan game.

23 81. In 2008, USC created the "USC Football Classics Volume I" DVD, which contains
24 an extensive section on the 1980 Rose Bowl game as well as other games. Mr. Ellis' image is
25

1 used in the footage, and at one point the narrator notes “[the game] finally got going under perfect
2 weather conditions, not so perfect as [USC Quarterback] McDonald gets picked [intercepted] by
3 Ray Ellis” as Mr. Ellis’ interception is shown. The DVD is currently sold through USC’s
4 website, operated by CBS’ CSTV entity, for \$19.95. Additionally, the DVD is advertised on one
5 of defendant NCAA’s websites, NCAA.com, which identifies itself as “The Official Website of
6 NCAA Championships.”
7

8 82. Given the continuing tremendous interest in college football powerhouses Ohio State,
9 as well as USC, there remains a very substantial likelihood that new licensing agreements will be
10 made in the future regarding footage of Mr. Ellis and his teammates and opponents, including
11 from the 1980 Rose Bowl, as exemplified by the new DVD product created by USC in 2008, as
12 well as the new agreement to license the 1979 Michigan game for use on Hulu.com. As an
13 additional example, in 2007, the HBO television channel created a new television special entitled
14 “Michigan vs. Ohio State,” chronicling the rivalry between the two schools. The program airs to
15 this day, including as recently as November 14, 2010, and also is available on DVD for sale.
16 New licensing deals were struck for use of footage, including from games from Mr. Ellis’ era, and
17 the credits indicate that footage was licensed from, among other entities, “Thought Equity Motion
18 & the NCAA,” Ohio State University, and the University of Michigan. This exemplifies the
19 continuing licensing deals being made to this day for footage pertaining to Mr. Ellis’ teams, and
20 the likelihood of continuing licensing deals being made in the future by Defendants and their co-
21 conspirators for footage including the images of Mr. Ellis and his teammates.
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24 83. As a result of the federal antitrust violations described herein, Plaintiff Ellis was
25 injured in his business or property, and was unfairly deprived of compensation in connection with
26 the use and sale of his image, likeness and/or name.
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DEFENDANTS

1
2 84. Defendant NCAA is an unincorporated association with its principal place of
3 business located in Indianapolis, Indiana.

4 85. Defendant CLC is a for-profit corporation incorporated under the laws of Georgia
5 with its principal place of business located at 290 Interstate N Circle SE, Suite 200, Atlanta,
6 Georgia 30339. IMG College, a division of IMG, identifies CLC as its “licensing team,” and
7 states that CLC is “the unrivaled leader in collegiate brand licensing, managing the licensing
8 rights for nearly 200 leading institutions that represent more than \$3 billion in retail sales and
9 more than 75% share of the college licensing market.” IMG identifies itself as “a leading
10 collegiate marketing, licensing and media company.”
11

12 86. Defendant EA is a for-profit corporation incorporated under the laws of Delaware
13 with its principal place of business located in this District at 209 Redwood Shores Parkway,
14 Redwood City, California 94065. EA is publicly traded on the NASDAQ stock exchange (ticker
15 symbol: ERTS) and identifies itself as “the world's leading interactive entertainment software
16 company” and states that it “develops, publishes, and distributes interactive software worldwide
17 for video game systems, personal computers, cellular handsets and the Internet.” In its 2008
18 fiscal year, EA had revenues of \$3.67 billion and 27 of its titles sold more than one million
19 copies. As described herein, the NCAA has entered into license agreements with EA relating to
20 the use of the likenesses of members of the Antitrust Classes in video games available via various
21 platforms.
22

23
24 87. Whenever in this Complaint reference is made to any act, deed, or transaction of the
25 Defendants, the allegation means that the Defendants engaged in the act, deed, or transaction by
26 or through their officers, directors, agents, employees, or representatives while they were actively
27 engaged in the management, direction, control or transaction of Defendants’ business or affairs.
28

1 **CO-CONSPIRATORS**

2 88. Various other persons, firms, corporations, and entities (including, but not limited to,
3 TEM, CI, Getty Images, and Learfield Sports) have participated as unnamed co-conspirators with
4 Defendants in the violations and conspiracy alleged herein, including the NCAA's members. In
5 order to engage in the offenses charged and violations alleged herein, these co-conspirators have
6 performed acts and made statements in furtherance of the antitrust violations and other violations
7 alleged herein.
8

9 89. At all relevant times, each co-conspirator was an agent of Defendants and each of the
10 remaining co-conspirators, and in doing the acts alleged herein, was acting within the course and
11 scope of such agency. Defendants and each co-conspirator ratified and/or authorized the
12 wrongful acts of Defendants and each of the other co-conspirators. Defendants and the co-
13 conspirators, and each of them, are participants as aiders and abettors in the improper acts and
14 transactions that are the subject of this action.
15

16 **INTERSTATE TRADE AND COMMERCE**

17 90. The business activities of Defendants that are the subject of this action were within
18 the flow of, and substantially affected, interstate trade and commerce.

19 91. During the Antitrust Class Period, Defendants transacted business in multiple states
20 in a continuous and uninterrupted flow of interstate commerce throughout the United States.
21

22 **ANTITRUST ALLEGATIONS**

23 **CLASS ACTION ALLEGATIONS**

24
25 92. Antitrust Plaintiffs bring this action under Federal Rule of Civil Procedure 23(b)(2)
26 and (b)(3) on their own behalf and on behalf of the following Antitrust Classes:
27 The "Antitrust Declaratory and Injunctive Relief Class":
28

1 All current and former student-athletes residing in the United States
2 who compete on, or competed on, an NCAA Division I college or
3 university men's basketball team or on an NCAA Football Bowl
4 Subdivision (formerly known as Division I-A until 2006) men's
5 football team and whose images, likenesses and/or names may be,
6 or have been, licensed or sold by Defendants, their co-conspirators,
7 or their licensees after the conclusion of the athlete's participation
8 in intercollegiate athletics.

9 The Class also excludes the officers, directors, and employees of
10 Defendants, the officers, directors and employees of any NCAA
11 Division I college or university, and the officers, directors, or
12 employees of any NCAA Division I athletic conference.

13 The "Antitrust Damages Class":

14 All former student-athletes residing in the United States who
15 competed on an NCAA Division I college or university men's
16 basketball team or on an NCAA Football Bowl Subdivision
17 (formerly known as Division I-A until 2006) men's football team
18 whose images, likenesses and/or names have been licensed or sold
19 by Defendants, their co-conspirators, or their licensees from July
20 21, 2005 and continuing until a final judgment in this matter. The
21 class does not include current student-athletes.

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

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

93. In addition to seeking certification of nationwide classes for the antitrust claims,
Plaintiffs also seek certification of a nationwide class for purposes of their unjust enrichment /
constructive trust and accounting claims.

94. Antitrust Plaintiffs do not know the exact number of Antitrust Class members,
because that information is in the exclusive control of Defendants and third parties, including the
NCAA's members. However, due to the nature of the trade and commerce involved, Plaintiffs
believe that the Antitrust Class members number in the thousands and are geographically diverse
so that joinder of all Antitrust Class members is impracticable. Given that the NCAA is selling
CLASS ACTION COMPLAINT

1 and licensing the images, likenesses and/or names of players from many decades, as described
2 herein, it stands to reason that there are more former student athletes than current ones affected by
3 the NCAA's anticompetitive practices described herein.

4 95. There are questions of law and fact common to members of both the Antitrust
5 Damages Class and the Antitrust Declaratory and Injunctive Relief Class, including but not
6 limited to the following:
7

- 8 a. whether Defendants and their co-conspirators engaged in or
9 entered into a contract, combination, or conspiracy among
10 themselves to fix, depress, maintain, and/or stabilize prices
11 paid to Antitrust Class members for use of their images,
12 likenesses and/or names after the conclusion of their
13 participation in intercollegiate athletics;
- 14 b. whether Defendants' unlawful conduct has enabled them to
15 decrease, maintain, or stabilize below competitive levels
16 the output, and compensation / royalties that Antitrust Class
17 members would receive for use, of their images, likenesses
18 and/or names in a market free of anticompetitive
19 constraints;
- 20 c. the duration of the contract, combination, or conspiracy
21 alleged herein;
- 22 d. whether Defendants violated Section 1 of the Sherman Act;
- 23 e. whether Defendant NCAA's Form 08-03a, and any similar
24 forms, are void and unenforceable;
- 25 f. whether Defendant NCAA's "Institutional, Charitable,
26 Educational, or Nonprofit Promotions Release Statement,"
27 and any similar forms, are void and unenforceable; and
- 28 g. whether the conduct of Defendants and their co-
conspirators caused injury to the business or property of
Plaintiffs and Antitrust Class members.

96. Additional common questions of law or fact specific to the Antitrust Damages Class
include the following:

- a. the appropriate measure of damages sustained by Plaintiffs and class members;
and

1 b. whether Defendants have been unjustly enriched.

2 97. The common questions with respect to the Antitrust Damages Class predominate over
3 questions, if any, that affect only individual Antitrust Damages Class members.

4 98. With respect to the Antitrust Declaratory Relief and Injunctive Relief Classes,
5 common questions of law or fact include the following:

- 6 a. whether injunctive relief is appropriate;
- 7 b. if injunctive relief is appropriate, what types of such relief are suitable in this
8 matter;
- 9 c. whether declaratory relief is appropriate;
- 10 d. whether a constructive trust for the benefit of class members should be
11 established; and
- 12 e. whether an accounting is appropriate.

13 99. With respect to members of the Antitrust Declaratory and Injunctive Relief Class,
14 Defendants have acted or refused to act on grounds generally applicable to the Antitrust Class,
15 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect
16 to the Antitrust Declaratory and Injunctive Relief Class as a whole.

17 100. Antitrust Plaintiffs' claims are typical of, and not antagonistic to, the claims of the
18 other Antitrust Class members. By advancing their claims, Antitrust Plaintiffs will also advance
19 the claims of all Antitrust Class members, because Defendants participated in activity that caused
20 all Antitrust Class members to suffer similar injuries.

21 101. Antitrust Plaintiffs and their counsel will fairly and adequately protect the interests of
22 absent Antitrust Class members. There are no material conflicts between Antitrust Plaintiffs'
23 claims and those of absent Antitrust Class members that would make class certification
24 inappropriate. Counsel for Antitrust Plaintiffs are highly experienced in complex class action
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1 litigation, including antitrust litigation, and will vigorously assert Plaintiffs' claims and those of
2 absent Antitrust Class members.

3 102. A class action is superior to other methods for the fair and efficient resolution of this
4 controversy. The class action device presents fewer management difficulties, and provides the
5 benefit of a single adjudication, economy of scale, and comprehensive supervision by a single
6 court. The damages suffered by Antitrust Plaintiffs and each Antitrust Damages Class member
7 are relatively small as compared to the expense and burden of individual prosecution of the
8 claims asserted in this litigation. Thus, absent class certification, it would not be feasible for
9 Plaintiffs and Antitrust Class members to redress the wrongs done to them. It also would be
10 grossly inefficient for the judicial system to preside over large numbers of individual cases.
11 Further, individual litigation presents the potential for inconsistent or contradictory judgments
12 and would greatly magnify the delay and expense to all parties and to the judicial system.

13 **THE NCAA AND ITS CONTROL OF THE COLLEGIATE LICENSING MARKET**

14
15
16 103. Each year, the colleges and universities who are members of the NCAA award more
17 than 11,500 athletic scholarships to men's football and basketball players.

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

19
20 104. In its Consolidated Statement of Financial Position, dated August 31, 2008, the
21 NCAA stated the following:

22 The National Collegiate Athletic Association (the NCAA or the
23 Association) is an unincorporated not-for-profit educational
24 organization founded in 1906. The NCAA is the organization
25 through which the colleges and universities of the nation speak and
26 act on athletics matters at the national level. It is a voluntary
27 association of more than 1,000 institutions, conferences and
28 organizations devoted to the sound administration of
intercollegiate athletics in all its phases. Through the NCAA, its
members consider any athletics issue that has crossed regional or
conference lines and is national in character. The NCAA strives
for integrity in intercollegiate athletics and serves as the colleges'

1 national athletics accrediting agency. A basic purpose of the
2 NCAA is to maintain intercollegiate athletics as an integral part of
3 the educational program and the athlete as an integral part of the
4 student body.

5 The NCAA operates through a governance structure which
6 empowers each division to guide and enhance their ongoing
7 division-specific activities. In Division I, the legislative system is
8 based on conference representation and an eighteen member Board
9 of Directors that approves legislation. The Division II and III
10 presidential boards are known as the Presidents Council; however,
11 legislation in Division II and III is considered through a one-
12 school, one-vote process at the NCAA Annual Convention. The
13 governance structure also includes an Executive Committee
14 composed of sixteen chief executive officer (member institution
15 chief executive officers) that oversee association-wide issues
16 which is charged with ensuring that each division operates
17 consistently with the basic purposes, fundamental policies and
18 general principles of the NCAA. The Executive Committee has
19 representation from all three divisions and oversees the
20 Association's finances and legal affairs.

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

106. The 2008-09 NCAA "Division I Manual" is comprised of the NCAA's Constitution,
its Operating Bylaws, and its Administrative Bylaws, which together span more than 400 pages.
These rules regulate all aspects of collegiate athletic competition, and demonstrate the NCAA's

1 control of the collegiate licensing market and the horizontal agreements by which the NCAA's
2 members agree to abide by, implement, and enforce the rules.

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

5 107. Bylaw 12.5.1.1.1 ("Promotions Involving NCAA Championships, Events, Activities
6 or Programs") states the following:

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

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

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

20 An active member shall administer annually, on a form prescribed
21 by the Legislative Council, a signed statement for each student-
22 athlete that provides information prescribed in Bylaws 14.1.3 and
23 30.12.

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

26 Prior to participation in intercollegiate competition each academic
27 year, a student-athlete shall sign a statement in a form prescribed by
28 the Legislative Council in which the student athlete submits
information related to eligibility, recruitment, financial aid, amateur
status, previous positive drug tests administered by any other
athletics organization and involvement in organized gambling
activities related to intercollegiate or professional athletics

1 competition under the Association’s governing legislation. Failure
2 to complete and sign the statement shall result in the student-
3 athlete’s ineligibility for participation in all intercollegiate
4 competition. Violations of this bylaw do not affect a student-
5 athlete’s eligibility if the violation occurred due to an institutional
6 administrative error or oversight, and the student-athlete
7 subsequently signs the form; however, the violation shall be
8 considered an institutional violation per Constitution 2.8.1.

9
10 111. Bylaw 14.1.3.2 (“Administration”) continues that “[t]he institution shall administer
11 this form individually to each student-athlete prior to the individual’s participation in
12 intercollegiate competition each year. Details about the content, administration, and disposition of
13 the statement are set forth in Bylaw 30.12.”

14
15 112. Bylaw 30.12 (“Student-Athlete Statement”), referred to in Article 3.2.4.6 of the
16 Constitution and in Bylaw 14.1.3.2, states the following:

17
18 The following procedures shall be used in administering the
19 student-athlete statement required in Bylaw 14.1.3:

- 20 (a) The statement shall be administered individually to each
21 student-athlete by the athletics director or the athletics
22 director’s designee prior to the student’s participation in
23 intercollegiate competition each academic year;
- 24 (b) The statement shall be kept on file by the athletics director and
25 shall be available for examination upon request by an
26 authorized representative of the NCAA; and
- 27 (c) The athletics director shall promptly notify in writing the vice
28 president of NCAA’s education services group regarding a
student-athlete’s disclosure of a previous positive drug test
administered by any other athletics organization.

113. Form 08-3a states that it is “required by NCAA Constitution 3.2.4.6 and NCAA
Bylaws 14.1.3.1 and 30.12,” and that its purpose is “[t]o assist in certifying eligibility.” It further
notes that “[t]his NCAA Division I statement/consent form shall be in effect from the date this
document is signed and shall remain in effect until a subsequent Division I Student-Athlete
Statement/Drug-Testing Consent form is executed.” Form 08-3a has seven parts, including the

1 following: “[a]statement concerning eligibility;” “[a]n affirmation of status as an amateur
2 athlete;” and “[a] statement concerning the promotion of NCAA championships and other NCAA
3 events.”

4 114. Under Part IV (“Promotion of NCAA Championships, Events, Activities or
5 Programs”), student athletes must sign and agree to the following:
6

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

12 115. Part IV, described in the preceding paragraph, has been utilized by the NCAA and its
13 co-conspirators to engage in the unlawful licensing of Antitrust Class members’ commercial
14 rights. Its provision stating that it “shall remain in effect until a subsequent Division I Student-
15 Athlete Statement/Drug-Testing Consent form is executed” has the effect of granting a purported
16 release in perpetuity.

17 116. Notably, Form 08-3a states that it is “required by NCAA Constitution 3.2.4.6 and
18 NCAA Bylaws 14.1.3.1 and 30.12” and that its purpose is to “assist in certifying eligibility.” The
19 referenced sections of the Constitution and Bylaws, however, do not convey, transfer, or grant
20 any rights of the student-athlete to the NCAA, its member institutions, or its licensees. The
21 sections referenced regarding the Constitution and Bylaws have to do with matters concerning
22 eligibility, disclosure of educational and drug testing records, and affirmation of amateur status
23 requirements. Relying on these provisions, the NCAA has created an anti-competitive and
24 unconscionable perpetual release relating to image rights.

25 117. The “authorization” described above in Form 08-3a is entirely coerced and
26 uninformed and is even signed, in some cases, by minors.
27

1 118. Form 08-3a is evidence of the NCAA's repeated attempts to obfuscate issues about
2 sales of merchandise by referring to the vague and ambiguous concept of "promot[ion] of NCAA
3 championships or other NCAA events, activities or programs of college athletics." The
4 ambiguous word "support" also appears in the "Institutional, Charitable, Education or Nonprofit
5 Promotions Release" mandated by Article 12.5.1.1 of the Bylaws. No reasonable person, upon
6 reading Form 08-3a, and the "Institutional, Charitable, Education or Nonprofit Promotions
7 Release" described below, would interpret phrases such as "support educational activities," or
8 "generally promote NCAA championships or other NCAA events, activities or programs" to
9 specifically grant a license in perpetuity for former players' images to be used for profit, over
10 many years, in DVDs, on-demand video, video games, photographs for sale, "stock footage" sold
11 to corporate advertisers, "classic games" for re-broadcast on television, jersey and apparel sales,
12 and other items.

13
14
15 119. The NCAA's releases described herein are also notable for their failure to indicate
16 that legal rights are being relinquished, and for their failure to counsel student-athletes, who are
17 sometimes minors, that they may wish to seek legal advice in connection with the release of
18 future compensation rights.

19
20 120. On December 17, 2009, at a hearing in a related case pending in this District, upon
21 questioning from the Court, counsel for the NCAA confirmed the NCAA's interpretation of its
22 release forms as follows:

23 **“[THE COURT]:** SO DO YOU VIEW THE THINGS THAT
24 THEY SIGNED, OR SOME PEOPLE MAY HAVE SIGNED,
25 AND WHEN THEY GRADUATE FROM COLLEGE, AFTER
26 THAT, THEY ARE NOT BOUND BY IT ANYMORE?

27 **[NCAA Counsel]:** IT DEPENDS ON WHICH THING WE ARE
28 TALKING ABOUT, YOUR HONOR.

[THE COURT]: ANY OF THEM. DO THEY ALL END ON
GRADUATION OR IS THERE SOME THAT YOU CONTEND

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REALLY DO CONTINUE TO APPLY?

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

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

[NCAA Counsel]: NO, THAT CONTINUES.

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

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

122. The court in *Oliver* further stated that the effect of the Bylaw “is akin to a patient hiring a doctor but the doctor is told by the hospital board and the insurance company that he (the doctor) cannot be present when the patient meets with a surgeon because the conference may

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1 improve his patient’s decision making power.” The court additionally stated that “[i]f the
2 Defendant [NCAA] intends to deal with this athlete or any athlete in good faith, the student-
3 athlete should have the opportunity to have the tools present (in this case an attorney) that would
4 allow him to make a wise decision without automatically being deemed a professional, especially
5 when such contractual negotiations can be overwhelming, even to those who are skilled in their
6 implementation.”
7

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

10 124. The NCAA, through its total control of intercollegiate athletics, and due to a gross
11 disparity in bargaining power, requires student-athletes to sign nonnegotiable forms, as the terms
12 are nonnegotiable. Any Class member declining to do so is barred by the NCAA and the relevant
13 member institution from all further intercollegiate athletic competition.
14

15 C. **The NCAA’s Anti-Competitive “Institutional, Charitable, Educational, or**
16 **Nonprofit Promotions Release Statement” Mandated by NCAA Bylaws**
17 **Section 12.5.1.1.**

18 125. Article 12.5.1.1 (“Institutional, Charitable, Education or Nonprofit Promotions”) also
19 results in the creation of an unconscionable release that benefits members. This release also is the
20 product of the anticompetitive agreement described herein among the NCAA and its members.

21 Article 12.5.1.1 states in pertinent part the following:

22 A member institution or recognized entity thereof (e.g., fraternity,
23 sorority or student government organization), a member conference
24 or a non-institutional charitable, educational or nonprofit agency
25 may use a student-athlete’s name, picture or appearance to support
26 its charitable or educational activities or to support activities
27 considered incidental to the student-athlete’s participation in
28 intercollegiate athletics, provided the following conditions are met:

- (a) The student-athlete receives written approval to participate from the director of athletics (or his or her designee who may not be a coaching staff member), subject to the limitations on participants in such activities as set forth in Bylaw 17;

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- (b) The specific activity or project in which the student-athlete participates does not involve co-sponsorship, advertisement or promotion by a commercial agency other than through the reproduction of the sponsoring company’s officially registered regular trademark or logo on printed materials such as pictures, posters or calendars. The company’s emblem, name, address, telephone number and Web site address may be included with the trademark or logo. Personal names, messages and slogans (other than an officially registered trademark) are prohibited;
- (c) The name or picture of a student-athlete with remaining eligibility may not appear on an institution’s printed promotional item (e.g., poster, calendar) that includes a reproduction of a product with which a commercial entity is associated if the commercial entity’s officially registered regular trademark or logo also appears on the item;
- (d) The student-athlete does not miss class;
- (e) **All moneys derived from the activity or project go directly to the member institution, member conference or the charitable, educational or non-profit agency** (emphases added);
- (f) The student-athlete may accept actual and necessary expenses from the member institution, member conference or the charitable, educational or nonprofit agency related to participation in such activity;
- (g) The student-athlete’s name, picture or appearance is not used to promote the commercial ventures of any nonprofit agency;
- (h) Any commercial items with names, likenesses or pictures of multiple student-athletes (other than highlight films or media guides per Bylaw 12.5.1.7) may be sold only at the member institution at which the student-athletes are enrolled, institutionally controlled (owned and operated) outlets or outlets controlled by the charitable or educational organization (e.g., location of the charitable or educational organization, site of charitable event during the event). Items that include an individual student-athlete’s name, picture or likeness (e.g., name on jersey, name or likeness on a bobble-head doll), other than informational items (e.g., media guide, schedule cards, institutional publications), may not be sold; and
- (i) **The student-athlete and an authorized representative of the charitable, educational or nonprofit agency sign a release**

1 **statement ensuring that the student-athlete’s name, image**
2 **or appearance is used in a manner consistent with the**
3 **requirements of this section.** (emphasis added).

4 126. The preceding Bylaw, with its mandated release pursuant to subsection (i), has been
5 utilized by the NCAA’s members to engage in the unlawful licensing of Antitrust Class members’
6 rights, as intended by the NCAA. Just as described herein with respect to the NCAA’s Form 08-
7 3a, this mandated release constitutes an unconscionable contract that is both procedurally and
8 substantively unconscionable.

9 127. Bylaw 12.5.1.7 (“Promotion by Third Party of Highlight Film, Videotape or Media
10 Guide”) states the following:

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

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

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

3 129. The *Des Moines Register* recently confirmed that schools do in fact require student-
4 athletes to sign the NCAA's mandated consent forms, and reported the following in an article that
5 also described two schools' receipt of funds relating to the NCAA's video game license
6 agreement with Defendant EA (as further detailed herein):
7

8 The athletic departments for Iowa and Iowa State ask for student-
9 athletes' consent before using their likeness on any promotional
10 material for the schools.

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

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

20 **D. The Collegiate Licensing Market.**

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

26 131. IMG, the owner of the NCAA's licensing arm, Defendant CLC, recognizes the
27 college market on its website as follows: "IMG College is a leading collegiate marketing,
28 licensing and media company that can create and build comprehensive marketing platforms that

1 leverage the marketing potential of the college sports and on-campus market. “ IMG continues
2 that “[c]onsumer devotion to college institutions is unrivaled, but the complexity of the space
3 makes it challenging for marketers to tap the full potential. With our expertise, broad
4 relationships and portfolio of properties, IMG College can help brands create platforms to reach
5 millions of passionate, loyal fans.” IMG further states that “[o]ur licensing team, The Collegiate
6 Licensing Company, is the unrivaled leader in collegiate brand licensing, managing the licensing
7 rights for nearly 200 leading institutions that represent more than \$3 billion in retail sales and
8 more than 75% share of the college licensing market.” IMG on its website further states:
9 “[h]aving originally contracted with IMG College in 1976, the NCAA has trusted the Company
10 for nearly 30 years to lead the industry in delivering the power of the collegiate market to
11 consumers nationwide.”
12

13
14 132. The NCAA and its members have the ability to control price and exclude
15 competition. The NCAA and its members control the output and set the price for licensed
16 merchandise and licensing rights and have the power to exclude from this market any member
17 who is found to violate its rules. The NCAA can and does exclude both current and former
18 student-athletes from this market, as evidenced by the usage of the anticompetitive forms
19 described herein. The NCAA and its members have obtained a 100% share in the licensing
20 market. With respect to current student-athletes, those players would collectively have a share of
21 that market absent the vehicles described herein by which they are required to transfer those
22 rights to the NCAA, its members, and others. Former student-athletes, including the members of
23 the Antitrust Damages Class described herein, also would have a share of the market, absent the
24 anticompetitive practices described herein.
25
26
27
28

1 133. The NCAA (through its members) thus totally controls the licensing rights market,
2 and is able to dictate the supply and the terms upon which licensed products and licenses are
3 bought and sold.

4 134. Another indicator of the NCAA and its members' power include the fact that *all*
5 student-athletes are required to sign the forms described herein and pursuant to which the NCAA
6 has unlawfully licensed the rights of former student-athletes are forced to release all future rights
7 to the commercial use of their images. Student-athletes must sign these forms, even if he or she
8 does not receive a scholarship. The NCAA has the power to impose and enforce the releases, and
9 to exclude non-signing athletes from participation in all future intercollegiate competition, as well
10 as penalize schools whose athletes violate the terms of the forms and related rules, regardless of
11 whether the athlete receives any scholarship funds.

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

22 136. The demand for student-athletes is such that, absent the unlawful Form 08-3a, the
23 "Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement," and any
24 other similar device that the NCAA has utilized to attempt to eliminate compensation owed to

1 former student-athletes, the colleges and universities participating in the relevant markets would
2 have competed against each other by offering higher amounts of post-graduation licensing
3 revenues to student athletes. For example, schools, in order to compete with each other, could
4 offer players a portion of the revenue that the schools in turn receive via the NCAA and other
5 sources for commercial exploitation of those players' images. But under current anticompetitive
6 conditions, compensation is "capped" at zero by artificial rules imposed by the NCAA that result
7 in lower compensation than would otherwise prevail in a more competitive market.
8

9 137. Thus, for the members of the proposed Antitrust Damages Class, increased
10 competition on the terms of post-career revenue distribution for former athletes would result in
11 additional revenue for all members of the proposed class.
12

13 138. All NCAA members have agreed to utilize and abide by the NCAA's Bylaws,
14 including the provisions detailed herein that mandate the use of Form 08-3a and the "Institutional,
15 Charitable, Educational, or Nonprofit Promotions Release Statement" discussed herein, which
16 have been used by the NCAA and its member institutions and conferences to fix the prices at
17 which former student-athletes are paid for their commercial licensing rights or foreclosed from
18 exercising any such rights.
19

20 139. The NCAA and its members are able to engage in these anticompetitive agreements
21 and arrangements, as there are no acceptable substitutes for major college football or major
22 college basketball.
23

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

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

9 **FACTUAL ALLEGATIONS**

10 A. **The NCAA's 2009 "State of the Association" Speech Regarding Commercial** 11 **Exploitation of Student-Athletes.**

12 142. As noted above in the Introduction, Wallace Renfro, the NCAA's vice president and
13 senior advisor to President Myles Brand gave its 2009 "State of the Association" speech. Mr.
14 Renfro's remarks are notable for the contrast with the NCAA's actual conduct in exploiting
15 former student-athletes, and his acknowledgment that "[g]eneration of much needed revenue does
16 not justify the exploitation of student-athletes." Certainly the same holds true with respect to
17 former student-athletes. Specifically, Mr. Renfro's remarks included the following:
18

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

21 Call this the condition of non-exploitation.

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

25 Since student-athletes are amateurs, not paid professionals, they
26 cannot accept payment for endorsing or advertising any
27 commercial product or service.

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

But most cases of exploitation are subtle and indirect.

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

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

8 But exploitation may be the result, nonetheless.

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

11 We can – and we should – debate the nature of proper commercial
12 conduct. However, one principle is not subject to debate:
13 commercial exploitation of student-athletes is not permissible.

14 Period.

15 **B. The NCAA’s Web of Licensing Agreements With For-Profit Entities.**

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

23 144. A review of even the limited public information available regarding the NCAA’s
24 financial operations details the explosive growth in revenue that it has received in connection
25 with sales of NCAA-related merchandise. In its 2002-03 Revenue Report, the NCAA listed
26 receipt of “royalties” of \$3.8 million, and \$6.2 million in “sales and services” (along with \$370
27 million in television revenue).

28 145. In its 2007-08 report, the NCAA listed \$552 million in total revenue for “television
and marketing rights fees” of which \$529 million was elsewhere attributed to revenues from its

1 television contract with CBS, leaving an apparent \$23 million difference attributable to royalties.
2 Additionally, the NCAA reported approximately \$14.5 million in revenue for “sales and
3 services.” Thus, in just a few years, it appears that the combination of royalties and sales and
4 services went from \$10 million for the 2002-03 fiscal year (\$3.8 million plus \$6.2 million), to
5 \$37.5 million (\$23 million plus \$14.5 million) in for the 2007-08 fiscal year. That number only
6 represents the NCAA’s portion obtained pursuant to currently unknown royalty rates, and does
7 not represent the total value of the associated sales via the NCAA’s licensees, or sales made by
8 member conferences and schools of goods.
9

10 146. Within recent years, the NCAA has entered into some of the licensing partnerships
11 detailed herein that unlawfully utilize the images of Antitrust Class members. The related
12 available content featuring likeness of former student-athletes, such as DVDs, photos, trading
13 cards, and video games, continues to grow in both availability and popularity, and growth will
14 continue to explode as merchandise continues to be made available in new delivery formats as
15 developing technology and ingenuity permits, as exemplified by the substantial library of “on
16 demand” internet content now available for sale for NCAA games going back several decades.
17

18 147. Through the NCAA’s web of licensing agreements with for-profit companies, the
19 NCAA sells its rights, its members’ rights, and Damages Class members’ rights that unlawfully
20 exercises via the anticompetitive and unconscionable conduct described herein. On its website,
21 the NCAA directs interested parties to contact Defendant CLC for licensing information.
22

23 148. In the “Frequently Asked Questions” portion of its website, the NCAA provides
24 various information with respect to licensing. Most notably, there is no information whatsoever
25 regarding the rights of players – current or former – with regard to licensed merchandise. This
26 total absence of information regarding the rights of players in the commercial licensing and usage
27
28

1 of their images also is observed on the websites of the NCAA’s licensing arm, Defendant CLC.

2 The NCAA states the following regarding CLC:

3 The Collegiate Licensing Company is the licensing representative
4 for the NCAA. CLC is responsible for administering the licensing
5 program, including processing applications, collecting royalties,
6 enforcing trademarks and pursuing new market opportunities for
7 the NCAA.

8 i) CLC.

9 149. On its website, under “Terms of Use,” Defendant CLC states the following:

10 The Collegiate Licensing Company (“CLC”) is the trademark
11 licensing representative for nearly 200 colleges, universities, bowl
12 games, athletic conferences, the Heisman Trophy and the NCAA
13 (“CLC Institutions”). Based in Atlanta, CLC is a full-service
14 licensing company, which employs a staff of more than 80
15 licensing professionals with the capability to establish and manage
16 every aspect of a collegiate licensing program.

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

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

29 The consolidated approach to licensing offered by CLC provides
30 every institution with a greater voice in the market, increased
31 exposure, the broadest range of available licensing services, and
32 reduced administration expenses, while still allowing for
33 independent decision-making by each and every client. This
34 approach, combined with our committed staff and industry-leading
35 services has helped to guide and shape the \$4.0 billion annual
36 market for collegiate licensed merchandise. CLC’s long-standing
37 relationships with retailers and licensees have also been essential
38 to the growth of the industry and the success of each client’s
39 individual licensing program.

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

5 **ii) IMG.**

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

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

15 . . .

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

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

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

26 152. IMG also has stated the following regarding IMG College:

27 Host Communications, Inc. (HOST) and the Collegiate Licensing
28 Company (CLC) were joined to form IMG College, the premier
college marketing, licensing and media company. IMG College

1 creates opportunities for corporations to connect with specific
2 audiences within the collegiate market . . .

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

8 153. IMG also has stated that it “helps marketers leverage the passion and loyalty of
9 America’s strongest collegiate brands.” It further has stated that “IMG College is a leading
10 collegiate marketing, licensing and media company that can create and build comprehensive
11 marketing platforms that leverage the marketing potential of the college sports and on-campus
12 market.” IMG also has stated that “[c]onsumer devotion to college institutions is unrivaled, but
13 the complexity of the space makes it challenging for marketers to tap the full potential. With our
14 expertise, broad relationships and portfolio of properties, IMG College can help brands create
15 platforms to reach millions of passionate, loyal fans.”

16 154. IMG has also stated that “[o]ur licensing team, The Collegiate Licensing
17 Company, is the unrivaled leader in collegiate brand licensing, managing the licensing rights for
18 nearly 200 leading institutions that represent more than \$3 billion in retail sales and more than
19 75% share of the college licensing market.”

20 C. **Description of Revenue Streams Relating to the Commercial Exploitation of
21 Images of Former Student-Athletes.**

22 155. There are a vast number of revenue streams generated in connection with
23 collegiate sports. Many of those revenue streams are generated at least in part from the
24 continuing commercial exploitation of the images, likenesses and/or names of former student-
25 athletes. The following descriptions detail some of the current revenue streams of which
26 Antitrust Plaintiffs are aware.

27 a. **Media Rights for Televising Games.**

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

7 157. In 2008, the ESPN network and the NCAA’s Southeastern Conference negotiated
8 a deal by which ESPN will pay the Southeastern Conference \$2.25 billion over 15 years to have
9 the rights to televise all conference games that are not televised by the CBS network under
10 another deal. In 2008, the Big Ten Network, operated by media giant News Corp., reached a deal
11 with the Big Ten Conference to televise conference games, and was estimated to potentially
12 require a \$2.8 billion payment to the Big Ten Conference over the course of 25 years.
13

14 158. Many telecasts of games, in particular the NCAA tournament games, frequently
15 show video clips of former student-athletes competing in prior tournament games as means of
16 further enhancing viewers’ experience of the current games.

17 159. No valid and lawful releases with informed consent from Antitrust Class members
18 have been obtained for the use of those clips, and any purported transfer of former student-
19 athletes’ rights relating to this usage is the product of the anticompetitive agreement described
20 herein.
21

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

23 160. The NCAA, in March of 2007, launched its “NCAA On Demand” website, which
24 offers for sale telecasts of games from numerous decades in the DVD and “on-demand” delivery
25 formats. This is not to be confused with a separate on-demand service by which live games are
26 shown. In the “About Us” section of the website, the NCAA states the following:
27

28 NCAA On Demand is a partnership between the NCAA and
 Thought Equity Motion, centered on providing fans of college
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1 athletics access to memorable moments and games of past
2 collegiate events. NCAA On Demand will initially focus on NCAA
3 championships, but will expand into the premier site for college
4 athletics video with content from games and events from regular
5 season and conference championships as well as unique content that
6 has never been seen before.

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

14 161. TEM identifies itself as the “world’s largest supplier of online motion content,
15 licensing and professional representation services to the agency, entertainment and corporate
16 production industries.” TEM has entered into a partnership with the NCAA to offer for sale
17 DVDs and internet content utilizing images of Class Members. Additionally, TEM offers for sale
18 more than 12,000 video clips of portions of NCAA games for uses including corporate
19 advertisements, corporate in-house presentations, films, and television programs, as well as
20 additional highlight films, complete games and interviews that utilize the images of Class
21 Members. On its website, Thought Equity TEM states the following:

22 We’re pleased to announce the launch of NCAA On Demand. For
23 the first time, college sports fans and athletes can access the entire
24 NCAA Championship Collection, which contains nearly 5,000
25 championship games. While many fans have experienced college
26 sports through football bowl games or March Madness, NCAA On
27 Demand now makes championships from all 23 NCAA sports
28 available.

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

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

“The NCAA is excited that supporters of collegiate athletics will
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1 have unprecedented access to the NCAA Championship Collection.
2 We are pleased to open our archives to fans, former student-
3 athletes, and member institutions that have added so much to
4 American sports and society," said Greg Shaheen, NCAA's senior
5 vice president for Basketball and Business Strategies.

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

14 163. The "accessibility" to "former student-athletes" comes at a price, and there is
15 substantial irony in that such individuals must pay \$24.99 to purchase footage of a game in which
16 they played, and for which they never lawfully licensed, conveyed, or transferred their rights for
17 compensation for use of those images, and for which are not provided any compensation in
18 connection with any sales. Meanwhile, the NCAA and TEM receive a continuing revenue
19 stream.

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

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

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

1 The Collegiate Exchange’s website in turn indicates that retailers can purchase hundreds of
2 licensed products for sale, including “Highlight Tapes/DVDs.”
3

4 166. The NCAA also recently entered into yet another venture with a for-profit entity to
5 sell DVDs. On January 20, 2009, the NCAA announced the release of its DVD titled “NCAA
6 March Madness: The Greatest Moments of the NCAA Tournament,” with a suggested retail price
7 of \$19.95. The NCAA’s business partners in this venture are a for-profit entity called Genius
8 Products LLC, as well as Thought Equity. In a press release, the three entities described the DVD
9 as “the first DVD officially produced and branded by the NCAA to feature the greatest moments
10 from more than 70 years of tournament action.” In the partners’ press release, Thought Equity is
11 described as “the world leader in providing access to high quality film, video and music content.
12 The company’s forward-thinking approach to digital video has produced an array of products and
13 services to meet the exploding demand of new media.”
14

15 167. NCAA DVDs also are available through myriad other outlets. For example,
16 hundreds of NCAA DVDs are available from CBS Sports’ “Online DVD Store.” On
17 Amazon.com, more than 1,600 NCAA sports DVDs are for sale. NCAA DVDs also are for sale
18 via myriad other outlets, such as, for example, walmart.com, the NBC network’s sports website,
19 FantasyPlayers.com’s website, Barnes & Noble’s website, and the Big Ten Network’s website.
20

21 168. Additionally, hundreds of NCAA games and highlight films are available for rental
22 from Blockbuster Video and Netflix, including via their websites.

23 169. No valid and lawful releases with informed consent from Antitrust Class members
24 have been obtained for the use of their images, likenesses and/or names in DVDs and on-demand
25 delivery formats, and any purported transfer of former student-athletes’ rights relating to this
26 usage is the product of the anticompetitive agreement described herein.
27

1 170. Only through the discovery process will Plaintiffs be able to ascertain the true
2 scope of sales, in terms of outlets, license agreements, and sales volume of DVD products
3 containing the images of class members.

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

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

8 With its tournament approaching, the N.C.A.A. has found a way to
9 exploit a portion of its men’s basketball tournament archive by
10 ceding a significant amount of clip selection to fans. Through a
11 deal with the N.C.A.A., Thought Equity Motion has digitally diced
12 every tournament game this decade from the Round of 16 forward
13 into all of its notable plays, and assigned a Web address to each of
14 them. It lets fans watch any of the games, or thin slices of them, and
link to social networking sites like Facebook or Twitter or to their
blogs.

15 The NCAA Vault, at NCAA.com/vault, is making its formal debut
16 Wednesday after finishing its beta phase.

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

19 . . .

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

22 . . .

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

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

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

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

172. In a trade publication published by the Sports Video Group (“SVG”), an organization formed “to bring the entire sports industry closer together so that it can more effectively share information about best practices and new technologies that impact the industry,” SVG, in connection with an interview with Thought Equity’s Dan Weiner, Vice President of Marketing and Product, explained in unvarnished terms the explicit commercial nature of the enterprise. Specifically, Sports Video Group reported the following on March 3, 2010:

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

...

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

...

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

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

4 “This is something that we see as a leading-edge development in
5 sports-rights development,” Weiner says. “This unlocks the archive
6 and brings it to life. Rather than creating a bunch of DVDs, you
7 bring the content forward, bring it to life, make it very easy to
8 publish and access.”

9 . . .

10 The next steps for this Vault will be to expand it beyond the Sweet
11 Sixteen round, and beyond the last decade. Additional games will
12 be added to the Vault as soon as this year’s tournament is complete,
13 with more on the horizon.

14 “We’re talking with the NCAA about expanding this to other sports
15 of theirs as well,” Weiner says. That means that a NCAA baseball
16 or soccer vault could soon be on the way.

17 173. No valid and lawful releases with informed consent from Antitrust Class members
18 have been obtained for the use of their images, likenesses and/or names in this new vault website,
19 and any purported transfer of former student-athletes’ rights relating to this usage is the product
20 of the anticompetitive agreement described herein.

21 **d. Video-Clip Sales to Corporate Advertisers and Others.**

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

1 175. In a brochure describing its partnership with the NCAA, TEM makes clear the
2 unmistakable pecuniary purpose of its venture with the NCAA. For example, Thought Equity
3 touts its role in “[d]elivering value through the preservation and monetization of the NCAA’s
4 footage assets.” Thought Equity further states that “[i]n 2005, the NCAA was searching for a
5 partner to preserve and manage the vast NCAA content library with two primary directives in
6 mind: 1. Preservation of historic footage and current content [and] 2. Accessibility to the entire
7 NCAA footage library to drive revenue generation.” TEM goes on to state that “[a]s the NCAA’s
8 exclusive licensing agent, Thought Equity drives revenue through the licensing of NCAA sports
9 content for use in films, commercials, corporate productions, documentaries and emerging media
10 applications.” TEM further states that it has assisted the NCAA in being “among the first-to-
11 market with innovative ways to monetize their video assets across the entire spectrum of
12 emerging media.” TEM claims that it “is committed to the continued growth of this amazing
13 library, enhancing its value through the preservation and monetization of the NCAA’s valuable
14 footage assets, [and] providing the premiere online destination” for NCAA footage.
15

16 176. TEM further states that “[y]ear over year, Thought Equity Motion has grown
17 licensing revenue by nearly 100%.” Kevin Schaff, TEM’s founder and CEO is quoted as stating
18 that its NCAA collection “is one of the most unique and valuable content collections in the
19 world.”
20

21 177. TEM also stresses its cost-saving function as follows: “Thought Equity also staffs
22 the functions of receiving and fulfilling all footage requests, including research and technical
23 support – costs that previously added to the NCAA national office overhead.” TEM further states
24 that it provides services including restoration, digitizing content, and making content available
25 on-line “at no charge to the NCAA.”
26
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1 178. TEM further notes that “[t]o date, Thought Equity has digitized and brought online
2 nearly 7,000 hours of NCAA sports action and manages more than 20,000 hours of content in the
3 NCAA library.” TEM further notes that “[n]ew NCAA content is continually added to ensure the
4 online library is a timely resource for NCAA content.”

5
6 179. TEM additionally states that “NCAA footage is sought-after content for
7 advertisers, corporations and entertainment producers as it delivers all the action, drama and
8 emotion unique to athletic competition.” TEM further states that “[b]ringing the NCAA content
9 online has been a key component to unlocking the value of the library.” TEM also states that its
10 online platform has “help[ed] drive revenue growth by making purchasing content easy and fast.”

11 180. TEM further states that “NCAA Corporate Champions and Partner companies as
12 diverse as Coca-Cola, AT&T, State Farm Insurance, and Lowe’s have tapped the NCAA library
13 to create messaging to inform and inspire their audiences.” TEM further states that it has
14 “licensed NCAA content for use in hundreds of television programs, films, commercials and
15 corporate productions.” Moreover, Thought Equity states that “[l]ooking to the future, exploding
16 growth in emerging media such as online and mobile advertising and entertainment translates to
17 significant new revenue streams for footage licensing and programming opportunities.”

18
19 181. TEM further states that its library can be utilized to allow NCAA member
20 institutions to create other revenue centers, e.g., “to create original programs and promotions such
21 as coaches’ shows, Hall of Fame and museum exhibits, web sites and entertainment featured on
22 in-venue video boards.”

23
24 182. TEM further states that it “brings value to the NCAA by continually creating
25 innovative ways to leverage their video assets,” and touting its “ability to drive revenue
26 employing its deep licensing expertise.”

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

5
6 184. No valid rights from Antitrust Damages Class members have been obtained by the
7 NCAA, its members or its licensees for the use of those class members’ images, likenesses and/or
8 names in video clips for sales to corporate advertisers and others, and any purported transfer of
9 former student-athletes’ rights relating to this usage is the product of the anticompetitive
10 agreements described herein.

11 **e. Premium Content on Websites.**

12
13 185. Numerous NCAA schools and conferences make available, or plan to make available,
14 streaming on-demand video content available to users for one-time and/or subscription fees. This
15 video content utilizes the images of Antitrust Damages Class members.

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

19 187. Similarly, CSTV’s website indicates that CSTV.com “includes a network of
20 approximately 215 official college athletic websites.” CSTV further states that it “was founded in
21 1999 by Brian Bedol and Stephen D. Greenberg, co-founders of Classic Sports Network, and
22 Chris Bevilacqua, a former Nike executive. CSTV officially launched in April 2003 from the
23 network's New York City based Chelsea Piers Studio, the Field House. In January 2006, CSTV
24 was purchased by CBS Corporation and became the 24-hour college sports network from CBS
25 Sports.”
26
27
28

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

6
7 **f. Photos.**

8 189. Replay Photos, LLC ("Replay Photos") operates "The Official NCAA Photo
9 Store" in conjunction with the NCAA through which photographs of Class members are available
10 for purchase, as well as a separate website, through which additional photographs of Class
11 members are available for purchase. Thousands of photographs from postseason tournaments in
12 numerous sports are offered for sale.
13

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

16 The NCAA and The Associated Press this week announced a three-year
17 content partnership making AP the worldwide distributor of NCAA
18 Championship photography and creating the largest collection
19 anywhere of collegiate sports photos. Under the agreement, AP Images
20 will serve as the NCAA's exclusive photo licensing agent, including
21 retail sales of archival photos, for all NCAA Championships and
22 events.

23 ...

24 "In partnership with Rich Clarkson and Associates, the NCAA has
25 compiled an archive of photos representing the greatest moments in
26 NCAA Championship history," said Greg Weitekamp, NCAA director
27 of broadcasting. "Combine the history of the NCAA photo archives
28 with the depth of photos compiled by AP Images over the last 100
years, and the NCAA and the AP Images partnership will create the
single greatest collection of collegiate sports photos."

...

The new agreement between the NCAA and AP Images will allow the
NCAA to include NCAA photos in the AP Images archives, where they

1 will then be made available for editorial and commercial use. In
2 addition, the partnership will provide the NCAA with access to AP
3 Images' archive of NCAA photography.

4 The partnership with the NCAA, headquartered in Indianapolis, will
5 also include a consumer outlet at NCAA.com, where consumers will be
6 able to purchase photos. NCAA Championship photos will be available
7 on the APImages.com site.

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

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

19
20 **g. Action Figures, Trading Cards, and Posters.**

21 193. On April 27, 2009, *Sports Business Daily* reported that certain former college
22 football players will be paid a royalty for the sale of action figures depicting them in their college
23 uniforms, and that their former schools also will be paid a royalty. Specifically, *Sports Business*
24 *Daily* stated the following:

25
26 Phoenix-based McFarlane Toys has been producing action figures
27 of professional athletes for more than a decade, but never before has
28 the company tapped the college market. That will change later this
year with the release of six action figures that portray NFL stars in
their college gear, including Tom Brady in his Michigan uniform

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and Peyton Manning in his Tennessee garb.

“There’s not much out there on the college market that’s player-centric,” said founder Todd McFarlane, whose businesses include everything from comics to toys and film animation. “If a guy had a decent career, let’s see if the fans are still fond of him.”

Tennessee’s Peyton Manning is one of three SEC alumni in the six-figure set.

...

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

...

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

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

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

...

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

...

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

4 195. No valid rights from Antitrust Damages Class members have been obtained by the
5 NCAA, its members or its licensees for the use of those class members’ images, likenesses and/or
6 names in the aforementioned items, and any purported transfer of former student-athletes’ rights
7 relating to this usage is the product of the anticompetitive agreements described herein.
8

9
10 **h. Video Games.**

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

18 197. EA markets a wide variety of sports-based video games under the label EA
19 Sports. EA Sports describes their video games as including “simulated sports titles with realistic
20 graphics based on real-life sports leagues, players, events and venues.” Their advertising taglines
21 - “If it’s in the game, it’s in the game,” subsequently shortened to “It’s in the game” - expressly
22 and openly makes a major selling point out of the fact that all aspects of the real-life games
23 appear in their video games. EA Sports releases new iterations of most of their games annually,
24 three of which are titled “NCAA Football,” “NCAA Basketball” and “NCAA Basketball: March
25 Madness Edition.”
26

1 198. EA's NCAA football games consistently have enjoyed sales of more than one
2 million units per year, and currently sales are estimated at more than two million units per year.
3 On EA's website, NCAA Football 10 for the Playstation 3 game platform is offered for sale at
4 \$59.95 per unit. In 2008, with respect to its basketball games, EA stated that "[t]he market leader
5 in basketball videogame sales, EA SPORTS basketball franchises (NBA LIVE, NBA STREET
6 and NCAA March Madness) have combined generated more than \$1 billion in retail sales over
7 the past 10 years." On EA's website, NCAA Basketball 09 is currently listed with a
8 manufacturers' suggested retail price of \$59.95 per unit.
9

10 199. EA has acknowledged that its NCAA games are among its major revenue drivers.
11 For example, in an SEC Form 10-K, EA stated that "[f]or fiscal year 2008, net revenue in North
12 America was \$1,942 million, driven by Rock Band, Madden NFL 08, and NCAA Football 08."
13

14 200. *Legal Affairs* magazine reported the following in 2006 regarding EA's NCAA
15 Football 06, which is instructive for its description of the game's use of player images, as well as
16 the interaction among the NCAA and Defendants CLC and EA:

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

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

1 accuracy. Under the current regulations, the only thing off-limits is
2 the use of players' names and recognizable facial features. The
3 NCAA doesn't want member-schools marketing their student-
4 athletes for commercial purposes, and, in order to prohibit them
5 from doing that, it has to restrain itself as well.

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

23 "NCAA Football 06" has pinpoint-accurate rosters for all 117
24 Division 1-A football programs (which engage in the highest level
25 of collegiate competition), not to mention graphics so advanced that
26 you can see the stadium reflected in a quarterback's helmet, the face
27 paint on a cheerleader's cheeks, the Nike swoosh on a tailback's
28 cleats, and the haze around the lights during a night game at the
University of Florida's stadium, the Swamp. For all these reasons,
the omission of players' names seems little more than a formality,
done with a wink and a nudge in order to keep the NCAA satisfied.

Especially since an owner of the video game can change QB #11 to
Matt Leinart by fiddling with a few buttons. Once the owner inputs
a player's name, it appears on the back of the player's jersey and can
be shouted by the virtual announcers who do the play-by-play for
the games within the game. Game owners can also adjust a virtual
player's facial hair, adding, say, a goatee to match the real player's
face, since players are known to change their looks from time to
time. Although not approved by the NCAA, memory cards for
automatically uploading each school's roster are available from
independent manufacturers. Oddly, the main difference between
the players and their video facsimiles are their hometowns, which in
the game are intentionally off by a few suburbs (QB #11's
"hometown" of La Habra, Calif., is 15 miles from Leinart's native
Santa Ana). But the point is, in EA's hyper-detailed world, video

1 game characters now have hometowns. The NCAA's amateurism
2 regulations, originally designed to guard against things like posters
3 and trading cards featuring individual athletes, likely never
4 contemplated a day when an amateur's digital likeness could fetch a
5 profit.

6 ...

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

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

26 ...

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

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

THIS IS NOT THE FIRST TIME that the NCAA's rules about
amateurism have struggled to address new licensing opportunities.
About 15 years ago, college-apparel sales exploded into a
substantial source of revenue for major athletic programs, and one
of the touchiest issues involved replica jerseys. They featured a star

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

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

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

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

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

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

...

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Battle. EA seems to think it will, too. "This has been an ongoing

1 discussion: 'O.K., how far can we go?' " EA spokeswoman Jennifer
2 Gonzalez told The Indianapolis Star earlier this year.

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

6 202. The above information regarding the ongoing discussions between Defendants
7 NCAA, CLC, and EA is significant. Each agreed to allow more and more realistic depictions of
8 player likeness including former players, to act as if they had the rights to do so, and to not tender
9 any compensation to former players for doing so.
10

11 203. The *NCAA News*, on June 21, 2004, provided more detail on the discussions
12 involving the NCAA, CLC, and EA, and also served as a conduit to further communicate the
13 message to the NCAA's members the importance of video game licensing revenues. Specifically,
14 *The NCAA News* reported that the NCAA's Agents and Amateurism Subcommittee of its
15 Academics / Eligibility / Compliance Cabinet met on June 9th and 10th, and stated that Pat Battle
16 of the Defendant CLC made a presentation to the group, which as well as the following panelists:
17 Ohio State University Athletics Director Andy Geiger, University of Connecticut Athletics
18 Director Jeff Hathaway, Miami (Ohio) University Athletics Director Brad Bates and University of
19 Notre Dame Associate Athletics Director Bill Scholl. The *NCAA News* specifically stated the
20 following:
21

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

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

1 204. EA has expressly incorporated the likenesses of Antitrust Damages Class members
2 into its games. As one example, NCAA Basketball 09 has a “Classic Teams” feature in which
3 game players can choose to play with “classic teams.” These “classic teams” expressly use the
4 likenesses of Class members, in a fashion identical to that described above. A post on EA’s game
5 forum website dated March 12, 2009 identifies the roster of each of these classic teams, and
6 provides the players’ name; position; uniform number; type of t-shirt worn underneath a jersey;
7 sock length; and use of ankle braces, knee braces, wrist taping. The post further specifically
8 identifies the following “classic teams” as being incorporated into the game: 2008 Kansas
9 Jayhawks; 2007 Florida Gators; 2006 George Mason Patriots; 2005 North Carolina Tarheels;
10 2005 Illinois Fighting Illini; 2004 Connecticut Huskies; 2003 Syracuse Orangemen; 2002
11 Maryland Terrapins; 2001 Duke Blue Devils; 1999 Connecticut Huskies; 1997 Arizona Wildcats;
12 1996 University of Massachusetts Minutemen; 1996 Kentucky Wildcats; 1995 Wake Forest
13 Demon Deacons; 1995 UCLA Bruins; 1994 Arkansas Razorbacks; 1993 North Carolina Tarheels;
14 1993 Michigan Wolverines; 1992 Duke Blue Devils; 1991 UNLV Runnin’ Rebels; 1991
15 Georgetown Hoyas; 1991 Arkansas Razorbacks; 1990 LSU Tigers; 1990 Loyola Marymount
16 Lions; 1990 Georgia Tech Yellow Jackets; 1989 Syracuse Orangemen; 1989 Michigan
17 Wolverines; 1988 Kansas Jayhawks; 1987 Indiana Hoosiers; 1986 Navy Midshipmen; 1986
18 Louisville Cardinals; 1986 Duke Blue Devils; 1985 Villanova Wildcats; 1985 St. John’s Redmen;
19 1984 Georgetown Hoyas; 1983 North Carolina State Wolfpack; 1983 Houston Cougars; 1982
20 North Carolina Tarheels; 1981 Virginia Cavaliers; 1981 Indiana Hoosiers; 1980 Louisville
21 Cardinals; 1979 Michigan State Spartans; and 1979 Indiana State Sycamores.

22 205. All of EA’s NCAA-related video games use photographic-like realism in the
23 depiction of all aspects of the visual presentation, including the player uniforms, school logos,
24 stadiums and mascots. While not identifying them by name, EA also uses likenesses of numerous

1 specific former student-athletes in their games. The players on the virtual college teams in the
2 games correspond exactly to their real-life counterparts in many characteristics, such as position,
3 jersey number, race, size, height, weight and home state. Even uniquely identifiable idiosyncratic
4 characteristics of real-life players appear in their video game virtual counterparts.

5
6 206. Each year, the NCAA games sold by EA feature the likenesses of players, including
7 ones that no longer are NCAA athletes. For example, NCAA Football 09 and NCAA Basketball
8 09 are currently for sale, and feature substantial numbers of former NCAA players. Additionally,
9 versions based on prior years are also for sale. For example, “March Madness 06,” “March
10 Madness 07,” and “March Madness 08” are all listed for sale via Electronic Arts’ website, which
11 also notes that the games are available via retailers. These games also feature the likenesses of
12 substantial numbers of former players.

13
14 207. On April 23, 2009, EA announced that former college players Michael Crabtree,
15 Brian Johnson, Brian Orakpo and Mark Sanchez “will be featured on platform exclusive covers of
16 EA SPORTS NCAA[®] Football 10, available in stores July 14th” and that “[e]ach cover athlete led
17 his team on a memorable run toward the BCS National Championship, helping to shape the
18 competitive landscape of college football in 2008.” Electronic Arts further stated that
19 “[d]eveloped in Orlando, Florida by EA Tiburon, and licensed by The Collegiate Licensing
20 Company, NCAA Football 10 will be available on the Xbox 360[®] video game and entertainment
21 system, the PlayStation[®] 2 and PLAYSTATION[®] 3 computer entertainment systems, and the PSP[®]
22 (PlayStation[®] Portable).” On EA’s website, the players’ mentioned above appear in mock-ups of
23 packaging covers for the game, as well as sample screen shots from the game, in their college
24 team uniforms. The cover of NCAA Basketball 09 features the likeness of former UCLA
25 basketball player Kevin Love in his collegiate uniform. It appears that licensing deals have been
26 struck with the players depicted on the covers.
27
28

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

7 209. EA and the NCAA also purposefully and knowingly allow third parties to create and
8 market modifications to the NCAA games which allow players to upload complete roster
9 information for various teams, including player names. The NCAA and CLC have allowed this
10 because it benefits them financially by increasing the popularity of EA’s NCAA games, thereby
11 increasing the royalty payments to the NCAA.
12

13 210. The NCAA, as well as individual schools and conferences, benefits financially from
14 the NCAA’s license agreement with EA. For example, the *Des Moines Register* recently reported
15 that one school alone, Iowa State University, has received royalties from football and basketball
16 video games averaging \$17,600 a year in the last two years. It was further reported that for the
17 University of Iowa, “such [video game royalty] allocations come from the Big Ten Conference as
18 part of a package that includes television and other licensing revenue.”
19

20 211. The NCAA also had a license with 2K Sports, a subsidiary of Take-Two Interactive
21 Software, Inc., for video games rights for college basketball. 2K Sports has produced several
22 iterations of their college basketball video game between 2005 and 2008 (College Hoops 2K6,
23 College Hoops 2K7, and College Hoops 2K8.) which they still market and sell. 2K Sports
24 discontinued the series and the NCAA subsequently granted EA the exclusive license for college
25 basketball.
26

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

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

8 We select a wide range of players from each school/conference
9 using websites and the respective Hall of Fame. From there we
10 send the list out to as many basketball experts as possible....for
11 example I asked Kenny Smith who he thought should be on the
12 All-Time Carolina team when he was recording here last year.
13 Occasionally, player's names are passed by Dick Vitale, we use
14 existing lists such as the ACC Top 50 players of all time...etc.
15 After we have the short list we look at the ratings, historical stats,
16 and achievements as well as players who will be popular with our
17 consumers and we come up with the bench and the starting 5.

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

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

22 ...

23 The Tournament of Legends is a customizable, 64 team, single
24 elimination tournament. Top teams from the 50's, 60's, 70's, 80's,
25 90's and 2000's are selectable. Coming up with and nailing down
26 the legendary teams was not an easy process. A lot of time was
27 spent researching the best teams and players from the various eras.
28 Some of the factors we looked at were: championships won,
win/loss records, team personnel and memorable team and player
performances. To ensure that we had the correct teams selected, we
leveraged our partners and contacts at ESPN and Blue Ribbon. We
also got Basketball Hall of Fame contributor, Dick Vitale's
thoughts and recommendations - after all, he's been around college
basketball for years and has seen all of these teams and players
first hand.

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

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

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

9 70's....there were some great players from this era but I've got to
10 start off with the guy nicknamed "Pistol" who averaged 44 points
11 per game. He wore #23 and played point guard for LSU and
12 averaged 44 points per game. Did I say that he averaged 44 ppg.
13 That's unbelievable. The 70's started off with a bang and ended off
14 with an even bigger bang. Two of college basketball's greatest
15 players, in Indiana States forward #33 and Michigan State's
16 Magician #33. They went head to head for the national
17 championship in 1979 and this game is said to have changed
18 basketball forever and very few disagree.

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

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

1 ACC's Wake Forest, "the Big Fundamental" - a true big man who
2 had a great feel for the game. He knew when to kick it out and
when to go to work in the post.

3 2000's....2005 Illinois and 2005 North Carolina had some future
4 NBA talent as well but nothing during this era was bigger than the
5 Florida Gators back to back championships. 4 out of their 5 starters
6 are now in the NBA but for them to win back to back
7 championships during this day and age, when parity is at an all
8 time high, is really impressive. There weren't too many people who
9 believed it could be done but they proved us all wrong.

10 There were a ton of teams and players who I did not mention but as
11 you can tell, we've now granted users the ability to determine who
12 the best legendary teams of all time are. I encourage all of you to
13 load up the Tournament of Legends mode and take your favorite
14 team to the winners circle. Or better yet, try to win the
15 championship with a team from each era and see the difference in
16 the various teams styles of play.

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

21 Here's a list of all the teams in the ESPN Classic Tournament of
22 Legends:

23	Arizona	1997
24	Arkansas	1991, 1994
25	Cal	1959
26	Cincinnati	1962
27	Connecticut	2004, 1999
28	Duke	2001, 1986, 1992
	Florida Gators	2007
	George Mason	2006
	Georgetown	1991, 1984
	Georgia Tech	1990
	Houston	1983
	Houston	1968
	Illinois	2005

28

1	Indiana	1981, 1976, 1987
2	Indiana State	1979
3	Kansas	1952, 1957, 1988, 2008
4	Kentucky	1996, 1978, 1954
5	LaSalle	1954
6	Louisville	1980, 1986
7	Loyola Maramount	1990
8	LSU	1970, 1990
9	Marquette	1977
10	Maryland	2002
11	Michigan	1993, 1989
12	Michigan State	1979
13	Navy	1986
14	North Carolina	1957, 1982, 1993, 2005
15	North Carolina State	1974, 1983
16	Ohio State	1960
17	San Francisco	1956
18	St. John's	1985
19	Syracuse	1989, 2003
20	Texas Western	1966
21	UCLA	1968, 1967, 1972, 1975, 1995
22	Umass	1996
23	UNLV	1991
24	Villanova	1985
25	Virginia	1981
26	Wake Forest	1995
27	West Virginia	1959
28		

1 214. Numerous athletes featured on the covers of EA’s various games have made telling
2 admissions about the use of their likenesses in the games. For example, in a November 21, 2005
3 interview with Raymond Felton, former point guard for the University of North Carolina men’s
4 basketball team, Mr. Felton stated:

5 I usually play the sports games like March Madness, NBA Live,
6 Madden, and MVP Baseball. We used to play in the dorms all the
7 time last year, but I never played as North Carolina. I'm not the
8 type of person who really likes to play as himself. I always check
9 out what I look like, but I don't want to spend time working on my
 jumper in the game when I can work on it in real life.

10 215. In an interview dated June 23, 2006, Adam Morrison, former Gonzaga University
11 men’s basketball player and a player featured on the cover of EA’s March Madness 07, stated:
12 ““Everyone always thinks they should be faster. You look at what your overall rating is, and on
13 the EA college basketball game last year, if you had that three-point icon under your feet, you
14 were happy.”

15 216. In an interview dated June 16, 2009, former Oklahoma University men’s basketball
16 player Blake Griffin, who appears on the cover of EA’s NCAA Basketball 10, stated: “It’s crazy
17 how much it looks like the guys on our team.”

18 217. EA’s representative regularly attend practices for NCAA teams with the permission
19 of NCAA member schools to study in detail the physical attributes and playing characteristics of
20 players.

21 218. There is rampant commercialization within the context of EA’s games. A multitude
22 of non-player individuals and corporations are featured in the game, all presumably pursuant to
23 lucrative contractual arrangements with EA. Each year, more and more third parties participate in
24 revenue derived from and relating to EA’s games, and each year, class members are entirely
25 excluded from such participation. With respect to various items of athletic-related gear and
26
27
28

1 apparel, as described below, class members are being used as walking-billboards for corporate
2 interests without compensation.

3 219. For example, in EA's NCAA Basketball 09, video game players can make various
4 shoe selections to have players choose among at least the Nike, Adidas and Reebok brands, all of
5 which are identified by name as well as by their logos on the shoes. Those logos additionally
6 appear on team uniforms.
7

8 220. The box cover for NCAA Basketball 09 prominently notes that the game is
9 "Featuring ESPN." Dick Vitale, a prominent announcer on the ESPN television network, serves
10 as a game announcer in EA's game, and his image appears on posters in crowds.

11 221. Moreover, there are numerous references to arenas with corporate sponsorships. As
12 just a few examples, Ohio State's Value City Arena, the University of Colorado's Coors Event
13 Center, and DePaul University's Allstate Arena are all featured.
14

15 222. In 2008, EA announced a deal with the National Association of Basketball Coaches, a
16 group representing NCAA Division I and other basketball coaches. Pursuant to the deal, coaches'
17 names and likenesses began appearing in EA's NCAA Basketball 10, released in December of
18 2009. In NCAA Basketball 09, Kansas Coach Bill Self is featured to provide an introduction to
19 the game.
20

21 223. With respect to EA's NCAA Football 09, the commercialization is even more
22 prevalent. There are a myriad of branding options per player, including an option to select
23 Riddell Revolution, Adams or Schutt helmets and facemasks. For visors, there are options for
24 video game players to select options for at least the Nike, Under Armour, and Oakley brands. For
25 shoes, there are options to select at least the Nike and Adidas brands. Those corporate logos also
26 appear on player jerseys. There is an additional option to select Nike gloves.
27
28

1 224. During the process of loading the game, there is a prominent full-screen devoted to
2 the Coca-Cola Company's "Coke-Zero Season Showdown" promotion. A pre-game weather
3 report is sponsored by The Weather Channel / Weather.com, and game players can also select a
4 "live-feed" from the Weather Channel.

5 225. There also is substantial ESPN branding. ESPN college football announcers Kirk
6 Herbstreet and Lee Corso are utilized, and ESPN personality Erin Andrews provides side-line
7 reports. There also is a Lee Corso "Ask Corso" default setting for assistance in choosing which
8 play to run that appears along with an image of him.

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

13
14
15 **i. Rebroadcasts of Classic Games.**

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

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

27 228. As indicated above ESPN Classic has acquired the rights to rebroadcast various
28 "classic" college basketball and football games, and does so. These rebroadcasts feature and
utilize the images of Damages Class Members.

1 229. Various conferences and universities also run their own networks that replay
2 classic games. For example, the Big Ten Network states the following on its website:

3 **Big Ten's Greatest Games**

4 They are epic sports battles that are etched in hearts and minds of
5 Big Ten fans across the nation. They are unforgettable moments
6 that stir passion and pride. They are echoes of both triumphant
7 victories and devastating defeats.

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

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

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

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

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

 231. It appears that by the next season, The Big Ten Network had reached an agreement
to show NCAA tournament games. Whereas the first season's offerings did not appear to be
NCAA tournament games, nearly all games shown in the next season were from the NCAA
CLASS ACTION COMPLAINT

1 tournament. The Big Ten Network's "Season 2" of classic men's basketball games, which was
2 broadcast in late 2008 through March of 2009, featured 16 games ranging from 1979 to 2008
3 featuring the following teams: Arizona, Florida, Illinois, Indiana, Indiana State, Iowa, Kansas,
4 Kentucky, Maryland, Michigan State, Minnesota, North Carolina, Northwestern, Ohio State,
5 Oklahoma, Purdue, Seton Hall, St. John's University, Syracuse, Wake Forest, and Wisconsin.
6 The games included NCAA tournament championship games, and games from the NCAA
7 tournament's "Sweet Sixteen," "Elite Eight" and "Final Four" rounds.

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

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

20 234. No valid rights from Antitrust Damages Class members have been obtained by the
21 NCAA, its members, or its licensees for the use of their images, likenesses and/or names in
22 rebroadcasts of "classic" games, and any purported transfer of former student-athletes' rights
23 relating to this usage is the product of the anticompetitive agreements described herein.

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

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

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

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

20 238. The NCAA, in fact, has examined, and blessed, its members' use of players'
21 uniform numbers for replica jersey sales. As a 2008 article on CNBC.com stated, "For years, the
22 NCAA has turned a blind eye to the fact that its member institutions give the [apparel companies]
23 of the world specific numbers that match up to their best players. The schools know the reality of
24 the situation, which is that numbers that correspond to the stars will sell better than a generic No.
25 1. And just because the NCAA forbids the selling of the jerseys with the names on the back
26 doesn't mean you can cut the player out of the equation. Everyone knows what's going on."
27
28

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

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

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

18 242. Additionally, certain schools sell “game worn” uniforms directly. For example, as
19 of June 16, 2009, Ohio State University was offering for sale via its online memorabilia store
20 approximately 30 “game worn” jerseys from the 2005 season bearing various uniform numbers.
21 Each one is offered at \$200. The complete player roster from that season, which lists player
22 names and uniform numbers, is readily available on-line from websites such as scout.com.

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

1 apparel sales, and any purported transfer of former student-athletes' rights relating to this usage is
2 the product of the anticompetitive agreements described herein.

3 D. **The Reality for Players After College.**

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

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

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

21 247. Moreover, many former student-athletes have continuing medical bills and
22 treatments resulting from their participation in intercollegiate athletics. These medical treatments
23 and attendant financial responsibility can continue long after the conclusion of a student-athlete's
24

1 collegiate sports career. On July 16, 2009, *The New York Times*, in an article titled “College
2 Athletes Stuck With the Bill After Injuries,” reported the following:

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

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

11 ...

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

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

20 ...

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

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

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

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

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

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

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

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

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

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

24 **ANTITRUST ALLEGATIONS**

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

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

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

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

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

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

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

25 256. Defendants' actions constitute an unreasonable restraint of trade.

26 **CAUSES OF ACTION**

1 **FIRST CLAIM FOR RELIEF**

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

3 **Unreasonable Restraint of Trade**

4 **(Against All Defendants)**

5
6 257. Plaintiffs incorporate and re-allege each allegation set forth in the preceding
7 paragraphs dealing with the claims of the Antitrust Class.

8 258. Defendants and their co-conspirators, by and through Defendants' and co-
9 conspirators' officers, directors, employees, agents, or other representatives, have entered into a
10 continuing contract, combination, and conspiracy in restraint of trade to artificially depress, fix,
11 maintain, and/or stabilize the prices paid (specifically, depressing, fixing, maintaining and
12 stabilizing them at zero dollars) to Antitrust Class members for the use of, and to limit supply for,
13 licensing and sale of their images, likenesses and/or names in the United States and its territories
14 and possessions, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). If Plaintiffs and
15 Antitrust Class members were free to license and sell the rights to their images, likenesses and/or
16 names, many more licenses would be sold. This output restriction also has the effect of raising
17 the prices charged by the NCAA and CLC for licensing rights.
18

19
20 259. Defendants' unlawful conduct resulted in Antitrust Plaintiffs and Class members
21 losing their freedom to compete. This unreasonable restraint on competition has artificially
22 limited supply and depressed prices paid by Defendants and their co-conspirators to Antitrust
23 Plaintiffs and the members of the Antitrust Class for use of their images images, likenesses and/or
24 names after cessation of participation in intercollegiate sports.

25
26 260. Antitrust Plaintiffs and the members of the Antitrust Class received less than they
27 otherwise would have received for the use of their images, likenesses and/or names in a
28 competitive marketplace, were thus damaged, and seek to recover for those damages.

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

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

17 263. Defendant CLC has facilitated this illegal scheme, and has financially benefited
18 from it.

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

21 265. As a direct and proximate result of Defendants’ scheme, Antitrust Plaintiffs and
22 the members of the Antitrust Class have been injured and financially damaged in amounts which
23 are presently undetermined. Antitrust Plaintiffs’ and Antitrust Class members’ injuries consist of
24 receiving lower prices for use of their images than they would have received absent Defendants’
25 conduct. Antitrust Plaintiffs’ and Antitrust Class members’ injuries are of the type the antitrust
26 laws were designed to prevent and flow from that which makes Defendants’ conduct unlawful.
27
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1 from being compensated for use of their images, likenesses and/or names, in the United States
2 and its territories and possessions, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

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

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

16 274. Plaintiffs and the members of the Antitrust Class received less than they otherwise
17 would have received for the use of their images in a competitive marketplace, were thus damaged,
18 and seek to recover for those damages.

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

25 276. Defendants and their co-conspirators' total abridgment of compensation rights for
26 former student-athletes are not connected to any legitimate non-commercial goal. Defendants'
27 actions are solely to enhance revenue for themselves and their for-profit business partners, by
28

1 cutting costs, *i.e.*, eliminating the need to pay any compensation to former student-athletes for the
2 continuing commercial exploitation of their images, likenesses and/or names. Defendants’
3 actions have no relationship to any alleged goal of “amateurism,” or pro-educational purposes, as
4 former student-athletes by definition are no longer members of athletic teams under the NCAA’s
5 control. Thus, the NCAA’s actions directly regulate a commercial market and therefore are
6 illegal.
7

8 277. CLC has facilitated this illegal group boycott/refusal to deal, and has financially
9 benefited from it.

10 278. Defendant EA has participated in this illegal scheme, and has financially benefited
11 from it.

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

19 280. Defendants’ and their co-conspirators’ have collectively conspired to illegally
20 deny compensation to former student-athletes for continued use of their images, likenesses and/or
21 names in unreasonable restraint of trade.
22

23 281. The anticompetitive effects of Defendants’ group boycott substantially outweigh
24 any alleged pro-competitive effects that may be offered by Defendants, including that their
25 collusive conduct is shielded by its concept of “amateurism” or pro-educational purpose.
26 Reasonable and less restrictive alternatives are available to Defendants’ current anticompetitive
27 practices.
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282. Antitrust Plaintiffs and the Antitrust Class are entitled to a permanent injunction that terminates the ongoing violations alleged in this Complaint.

THIRD CLAIM FOR RELIEF

Unjust Enrichment

(Against All Defendants)

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

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

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

FOURTH CLAIM FOR RELIEF

Accounting

(Against All Defendants)

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

287. As a result of the illegal conduct alleged herein, Defendants have received licensing revenues in various forms and amounts, including both licensing fees and royalty payments. As an alternative to their damage claims, Antitrust Plaintiffs and the members of the

1 Antitrust Class seek to recover a share of these revenues generated from the exploitation of their
2 likenesses and images, likenesses and/or names.

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

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

16 290. Antitrust Plaintiffs and the members of the Antitrust Class cannot identify at this
17 time, among other things; (a) all of the entities that have entered into licensing and/or royalty
18 agreements with the Defendants and their co-conspirators, (b) how the licensing revenue due to
19 the Defendants and their co-conspirators from each of those agreements is calculated, (c) the
20 amount of that revenue, and (d) which members of the Antitrust Class' images, likenesses and/or
21 names are associated with which agreements. Antitrust Plaintiffs seek to recover for themselves
22 and the members of the Antitrust Class a percentage of the revenue from Defendants and their co-
23 conspirators for every unlawful licensing and/or royalty agreement involving their image,
24 likenesses, and/or names; this percentage and amount is ascertainable and will be decided by this
25 Court upon a determination of liability.
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1 F. That Antitrust Plaintiffs and Antitrust Class members are entitled to Declaratory
2 relief declaring as void and unenforceable any releases that purport to have caused Antitrust
3 Plaintiffs and Class member to relinquish rights to compensation for use of their images after they
4 no longer are student-athletes, and further declaring as void and unenforceable all NCAA and
5 member license agreements that purport to represent that Antitrust Class members have released
6 future compensation rights for the use of their images after they no longer are student-athletes;
7

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

16 H. That Antitrust Plaintiffs and Antitrust Class members are further entitled to
17 equitable relief permanently enjoining the future use of the release forms described herein, and
18 enjoining Defendants and their co-conspirators from selling, licensing or using former student-
19 athletes' rights that Defendants do not own; and
20

21 I. That Antitrust Plaintiffs and Antitrust Class members have such other, further, and
22 different relief as the case may require and the Court may deem just and proper under the
23 circumstances.
24

JURY DEMAND

25 Plaintiffs demand a jury trial, pursuant to Federal Rule of Civil Procedure 38(b), of all
26 triable issues.
27
28

1 Dated: January __, 2011

2

3 HAUSFELD LLP

4 By: _____

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