

EXHIBIT 1

1 Steve W. Berman (*Pro Hac Vice*)
2 Robert B. Carey (*Pro Hac Vice*)
3 Leonard W. Aragon (*Pro Hac Vice*)
4 HAGENS BERMAN SOBOL SHAPIRO LLP
5 11 West Jefferson, Suite 1000
6 Phoenix, Arizona 85003
7 Telephone: (602) 840-5900
8 Facsimile: (602) 840-3012
9 Email: rob@hbsslaw.com
10 leonard@hbsslaw.com

6 Michael P. Lehmann (Cal. Bar No. 77152)
7 Arthur N. Bailey, Jr. (Cal. Bar No. 248460)
8 HAUSFELD LLP
9 44 Montgomery St., 34th Floor
10 San Francisco, CA 94104
11 Tel: (415) 633-1908
12 Fax: (415) 358-4980
13 E-mail:mlehmann@hausfeldllp.com
14 abailey@hausfeldllp.com

11 Interim Co-Lead Counsel for Antitrust and Right of Publicity Plaintiffs

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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17
18 In re NCAA Student-Athlete Name & Likeness
19 Licensing Litigation

Case No. 4:09-cv-1967 CW (NC)

20 **CLASS ACTION SETTLEMENT**
21 **AGREEMENT AND RELEASE**

22 Complaint Filed: May 5, 2009
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1 **I. PARTIES TO THE SETTLEMENT AGREEMENT**

2 This Class Action Settlement Agreement and Release (“Settlement Agreement” or
3 “Agreement”) is entered into by, between, and among the following Plaintiffs and Settling
4 Defendant:

5 **PLAINTIFFS**

- 6 (i). Keller Right of Publicity Plaintiffs: Samuel Michael Keller, Bryan Cummings,
7 Lamar Watkins, and Byron Bishop (collectively *Keller* Plaintiffs)
8 (ii). Antitrust Plaintiffs: Edward C. O’Bannon Jr., Oscar Robertson, William Russell,
9 Harry Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David Lattin, Patrick Maynor, Tyrone
10 Prothro, Damien Rhodes, Eric Riley, Bob Tallent, Danny Wimprine, Ray Ellis, Tate George, Jake
11 Fischer, Jake Smith, Darius Robinson, Moses Alipate and Chase Garnham (collectively *O’Bannon*
12 Plaintiffs); and
13 (iii). Alston/Hart Right of Publicity Plaintiffs: Shawne Alston and Ryan Hart.

14 The *Keller* Right of Publicity Plaintiffs, Antitrust Plaintiffs, and *Alston/Hart* Right of
15 Publicity Plaintiffs are collectively referred to as “Plaintiffs,” and enter into this agreement on
16 behalf of themselves and the Settlement Class as defined below.

17 **SETTLING DEFENDANT**

18 Defendant Electronic Arts Inc. may be referred to as “EA” or “Settling Defendant.”
19 Defendant Collegiate Licensing Company (“CLC”) is not a party to this Agreement, but is a
20 Released Party (as that term is defined below). The National Collegiate Athletic Association
21 (“NCAA”) is not a party to this Agreement and nothing in this Agreement shall be construed as
22 waiving any right, cause of action, or claim against the NCAA, provided however that nothing in
23 the foregoing shall affect the contribution bar described below in Paragraph 8(c).

24 Plaintiffs and Settling Defendant are each a “Party” and collectively referred to herein as
25 “the Parties.” This Agreement shall apply to all Settlement Class Members.

1 **LAWSUITS**

2 This Agreement is entered into in order to effect a full and final settlement and dismissal
3 with prejudice of all claims brought or that could have been brought against EA and CLC in the
4 following actions:

- 5 • *Keller v. Electronic Arts, Inc. et al.*, Case No. 4:09-cv-01967-CW;
- 6 • *O'Bannon, Jr. v. National Collegiate Athletic Association et al.*, 4:09-cv-03329-CW;
- 7 • *Bishop v. Electronic Arts, Inc., et al.*, 4:09-cv-04128-CW;
- 8 • *Hart v. Electronic Arts, Inc.*, Case No. 09-CV-05990-FLW-LHG (removed from
9 Case No. SOM-L-1094-09);
- 10 • *Anderson v. National Collegiate Athletic Association et al.*, 4:09-cv-05100-CW;
- 11 • *Thrower, et al. v. National Collegiate Athletic Association, et al.*, Case No. C-10-
12 632;
- 13 • *Maze, et al. v. National Collegiate Athletic Association, et al.*, Case No. C-10-5569;
- 14 • *Robertson, et al. v. National Collegiate Athletic Association, et al.*, Case No. CV-
15 11-0388;
- 16 • *Hubbard, et al. v. Electronic Arts, Inc.*, Case No. 27858;
- 17 • *Nuckles, et al. v. National Collegiate Athletic Association, et al.* Case No. 27864;
- 18 • *Jacobson v. National Collegiate Athletic Association et al.*, Case No. 4:09-cv-
19 05372-CW;
- 20 • *Maze et al v. National Collegiate Athletic Association et al.*, 3:10-cv-05569-MEJ;
- 21 • *Newsome v. National Collegiate Athletic Association et al.*, 4:09-cv-04882-CW;
- 22 • *Rhodes v. National Collegiate Athletic Association et al.*, 4:09-cv-05378-CW
- 23 • *Wimprine v. National Collegiate Athletic Association et al.*, 4:09-cv-05134-CW; and
- 24 • *Russell v. National Collegiate Athletic Association et al.*, Case No. 4:11-cv-04938-
25 CW;
- 26 • *Alston v. Electronic Arts Inc.*, Case No. 13-cv-05157-FLW-LHG
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1 WHEREAS, EA removed the First Amended Complaint filed by Hart to the United States
2 District Court for the District of New Jersey. After removal, Hart filed a Second Amended
3 Complaint on October 12, 2010;

4 WHEREAS, on August 27, 2013, Plaintiff Shawne Alston filed a lawsuit in the United
5 States District Court for the District of New Jersey against EA on behalf of himself and two
6 proposed classes of: (1) all NCAA football and basketball players listed in the opening day roster
7 of a school whose team was included in any interactive software produced by EA, and whose
8 assigned jersey number appears on a virtual player in the software, and (2) all persons whose
9 photographed image was included in any NCAA-related interactive software produced by EA;

10 WHEREAS, *Alston* and *Hart* are pending before the Honorable Freda Wolfson in the
11 United States District Court for the District of New Jersey

12 WHEREAS, Plaintiff Hart and the proposed class are represented by The McKenna Law
13 Firm LLC and Lum, Drasco & Positan LLC, and Plaintiff Alston and the putative class described
14 in the complaint are represented by Hagens Berman.

15 WHEREAS, Timothy J. McIlwain, Esq. voluntarily withdrew as counsel in the *Hart* action
16 on November 14, 2013, and The Lanier Law Firm, PLLC, voluntarily withdrew as counsel in the
17 *Hart* action on October 15, 2013.

18 WHEREAS, the *Keller*, *Hart*, and *Alston* complaints allege generally that Defendants
19 misappropriated NCAA football and basketball players' rights of publicity by using student
20 athletes' names, images, and likenesses in EA's NCAA-Branded Videogames and that Plaintiffs
21 and all putative class members were harmed by Defendants' conduct.

22 **Antitrust Plaintiffs**

23 WHEREAS, on July 21, 2009, Plaintiff Edward C. O'Bannon Jr. filed a lawsuit against the
24 CLC and NCAA on behalf of himself and a proposed class of current and former NCAA Division I
25 basketball players and Football Bowl Subdivision football players, and subsequently amended his
26 Complaint to add EA as a defendant;

1 WHEREAS, Plaintiff O’Bannon alleged, among other things, that the NCAA, its member
2 schools and conferences, CLC and EA committed violations of the federal antitrust laws by
3 engaging in a price fixing conspiracy and a group boycott/refusal to deal that unlawfully foreclosed
4 class members from receiving compensation in connection with the commercial exploitation of
5 their names, images, and likenesses during the years in which they played Division I college
6 basketball or football and after their intercollegiate athletic competition ceased;

7 WHEREAS, on July 18, 2013, Plaintiff O’Bannon filed a Third Consolidated Amended
8 Complaint, adding certain plaintiffs and making other modifications, as ordered by the Court;

9 **Consolidation**

10 WHEREAS, the *Keller* and *O’Bannon* lawsuits were consolidated under the name *In re*
11 *NCAA Student-Athlete Name and Likeness Licensing Litigation* on January 15, 2010, and all
12 subsequent cases filed by the *Keller* Plaintiffs and Antitrust Plaintiffs were also consolidated into
13 *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*;

14 WHEREAS, on January 15, 2010, Judge Wilken appointed Hagens Berman Sobol Shapiro
15 LLP and Hausfeld LLP as “Interim Co-Lead Counsel” (collectively, Interim Class Counsel) in *In*
16 *re NCAA Student-Athlete Name and Likeness Licensing Litigation*, with Hagens Berman having
17 “primary responsibility” for claims related to the allegations made in *Keller v. EA* and Hausfeld
18 LLP having primary responsibility for claims related to the allegations made in *O’Bannon v.*
19 *NCAA*.

20 **Settlement**

21 WHEREAS, Class Members’ claims against EA in the Lawsuits, as well as the claims that
22 remain pending, involve Licensed Indicia (but are not limited to Licensed Indicia), and relate to
23 EA’s right to use Licensed Indicia in accordance with the terms of the EA-CLC License
24 Agreements, as the term “Licensed Indicia” is defined in the EA-CLC License Agreements;

25 WHEREAS, EA denies the allegations in the Lawsuits, denies that it has engaged in any
26 wrongdoing, denies that Class Members have been harmed in any way, denies that Class Members

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1 are entitled to any relief, and denies that California, Indiana, or New Jersey law applies to Class
2 Members who reside outside of those respective states;

3 WHEREAS, the Parties engaged the services of mediator Randall W. Wulff to assist in
4 their negotiations, attended a full-day mediation with Mr. Wulff, and engaged in subsequent
5 communications with Mr. Wulff before agreeing to the terms of this arm's-length settlement;

6 WHEREAS, Plaintiffs and their counsel believe that the settlement provides a favorable
7 recovery for the Settlement Class, based on the claims asserted, the evidence developed, and the
8 damages that might be proven against EA and CLC in the Lawsuits. Plaintiffs and their counsel
9 further recognize and acknowledge the expense and length of continued proceedings necessary to
10 prosecute the Lawsuits against EA and CLC through trial and appeals. They have also considered
11 the uncertain outcome and the risk of any litigation, especially in complex litigation such as this
12 Lawsuit, as well as the difficulties and delays inherent in any such litigation. They are also mindful
13 of the inherent challenges of proof and the strength of the defenses to the alleged claims, and
14 therefore believe that it is desirable that the Released Claims be fully and finally compromised,
15 settled, and resolved with prejudice and enjoined as set forth herein;

16 WHEREAS, after a thorough review of the discovery record amassed in this litigation, the
17 Antitrust Plaintiffs have concluded that (1) neither EA nor CLC has had any role with respect to
18 the preparation or adoption of NCAA legislation, including the NCAA constitution, rules, bylaws,
19 and regulations that are the focus of the anticompetitive restraint alleged; (2) neither EA nor CLC
20 has had any role with respect to the form releases signed by student-athletes in order to be eligible
21 to participate in intercollegiate athletics; and (3) neither EA nor CLC has had any role in the
22 enforcement of the NCAA constitution or any NCAA rules, bylaws, or regulations;

23 WHEREAS, Plaintiffs and their counsel have examined the benefits to be obtained under
24 the terms of this Settlement Agreement, have considered the risks associated with the continued
25 prosecution of the Lawsuits and the likelihood of success on the merits of the Lawsuits, and believe
26 that, after considering all of the circumstances, the proposed settlement set forth in this Settlement
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1 Agreement is fair, reasonable, adequate, in the best interests of the Plaintiffs and the Settlement
2 Class, and confers substantial benefits upon the Settlement Class;

3 WHEREAS, EA denies that it has committed any act or omission giving rise to any liability
4 and/or violation of law, and state that it is entering into this Settlement Agreement solely to
5 eliminate the uncertainties, burden, and expense of further protracted litigation;

6 WHEREAS, the Parties further agree that the Settlement Agreement, the fact of this
7 Settlement, any of the terms in the Settlement Agreement, and any documents filed in support of
8 the settlement shall not constitute an admission or finding of (i) wrongdoing, (ii) violation of any
9 statute or law, or (iii) liability on the claims or allegations in the Lawsuits on the part of any
10 Releasees, and shall not be used for any purpose whatsoever in any legal proceeding, including but
11 not limited to arbitrations, other than a proceeding to enforce the terms of the Settlement
12 Agreement;

13 WHEREAS, the Parties agree and understand that neither this settlement nor this
14 Settlement Agreement shall be construed as, or be admissible as, an admission by EA or CLC that
15 the Plaintiffs' claims or any similar claims are suitable for class treatment;

16 WHEREAS, the Parties agree that no party will use this settlement nor this Settlement
17 Agreement in any legal proceeding for any purpose whatsoever other than to effectuate the
18 proposed settlement; and

19 WHEREAS, the Parties desire to compromise and settle all issues and claims that have
20 been brought or could have been brought against EA and CLC in the Lawsuits, but nothing in this
21 Agreement shall be construed as waiving, compromising, or extinguishing any issues or claims that
22 have been brought or could have been brought against the NCAA in the Lawsuits.

23 **NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND**
24 **AGREED**, by Plaintiffs, for themselves and on behalf of the Settlement Class, and EA that, subject
25 to the approval of the Court, the Lawsuits shall be settled, compromised, and dismissed, on the
26 merits and with prejudice, and the Released Claims shall be finally and fully compromised, settled,
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1 and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter
2 set forth:

3 **III. DEFINITIONS**

4 The following terms, used in this Settlement Agreement, shall have the meanings specified
5 below:

- 6 1. “Antitrust Class Period” means the period of July 21, 2005 through the Preliminary
7 Approval Date.
- 8 2. “Antitrust Plaintiffs” means Edward C. O’Bannon Jr., Oscar Robertson, William
9 Russell, Harry Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David Lattin,
10 Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric Riley, Bob Tallent, Danny
11 Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake Smith, Darius Robinson,
12 Moses Alipate and Chase Garnham.
- 13 3. “Antitrust Class” means the Antitrust Class Members.
- 14 4. “Antitrust Class Members” means all current and former student-athletes residing in
15 the United States who competed on an NCAA Division I (formerly known as
16 “University Division” before 1973) college or university men’s basketball team or
17 on an NCAA Football Bowl Subdivision (formerly known as Division I-A until
18 2006) men’s football team and whose images, likenesses and/or names allegedly
19 have been included or could have been included (by virtue of their appearance in a
20 team roster) in or used in connection with NCAA Branded Videogames published or
21 distributed from July 21, 2005 until the Preliminary Approval Date. Antitrust Class
22 Members excludes EA, CLC, the NCAA, and their officers, directors, legal
23 representatives, heirs, successors, and wholly or partly owned subsidiaries or
24 affiliated companies, class counsel and their employees, and the judicial officers,
25 and associated court staff assigned to cases listed in Section I. Within the Antitrust
26 Class Members is a subclass consisting of the “Antitrust Roster-Only Class
27 Members”, which consist of all current and former student-athletes residing in the
28 United States who competed on an NCAA Division I (formerly known as
“University Division” before 1973) college or university men’s basketball team or
on an NCAA Football Bowl Subdivision (formerly known as Division I-A until
2006) men’s football team and whose images, likenesses and/or names allegedly
could have been included (by virtue of their appearance in a team roster), but were
not included in or used in connection with NCAA Branded Videogames published
or distributed from July 21, 2005 until the Preliminary Approval Date.
5. “Authorized Claimant” means any member of the Settlement Class who submits a
Claim that is permitted pursuant to the terms of this Settlement Agreement.
6. “Bar Date” is the final date by which a Claim Form must be received by the Notice
and Claims Administrator in order for a Settlement Class Member to be entitled to
any of the settlement consideration set forth in this Settlement Agreement. The Bar

1 Date shall be specifically identified and set forth in the Preliminary Approval Order
2 and the Class Notice.

3 7. “Claim” means the submission to be made by Settlement Class Members, on the
4 Claim Form.

5 8. “Claim Form” means the claim form substantially in the form attached hereto as
6 Exhibit D.

7 9. “Class Counsel” means the law firms of Hagens Berman Sobol Shapiro LLP, The
8 McKenna Law Firm LLC, Lum, Drasco & Positan LLC, and Hausfeld LLP.

9 10. “Class Member” means the Antitrust Class Members, the *Hart/Alston* Right of
10 Publicity Class Members and the *Keller* Right of Publicity Class Members.

11 11. “Class Notice” means the notice of settlement to be provided to Class Members
12 pursuant to Federal Rule of Civil Procedure 23, the Preliminary Approval Order,
13 and this Settlement Agreement.

14 12. “CLC” means the Collegiate Licensing Company.

15 13. “Court” means the United States District Court for the Northern District of
16 California.

17 14. “District Court Approval Order” means the final Judgment and order entered by the
18 Court finally approving the Settlement and this Settlement Agreement in all respects
19 pursuant to Paragraph 8 below of this Settlement Agreement.

20 15. “EA” means Electronic Arts Inc.

21 16. “Effective Date” means seven (7) business days following the date after which both
22 of the following events have occurred: (a) the District Court Approval Order has
23 been entered (“District Court Approval Date”) and (b) the time for any appeal from
24 the District Court Approval Order has expired, or, if appealed, the District Court
25 Approval Order has been affirmed in its entirety by the court of last resort to which
26 any such appeal has been taken and such affirmance is no longer subject to further
27 appeal or review.

28 17. “Escrow Account” means the bank account maintained by the Escrow Agent into
which the Settlement Fund shall be deposited.

18. “Escrow Agent” means the entity to be mutually agreed upon by Class Counsel to
maintain the bank account into which the Settlement Fund shall be deposited.

19. “Exclusion/Objection Deadline” means the final date by which a Settlement Class
Member may either (a) object to any aspect of the Settlement (pursuant to the
Preliminary Approval Order and Paragraph 31 of this Settlement Agreement), or (b)
request to be excluded from the Settlement (pursuant to the Preliminary Approval
Order and Paragraph 32 of this Settlement Agreement). The Exclusion/Objection

1 Deadline shall be specifically identified and set forth in the Preliminary Approval
2 Order and the Class Notice.

- 3 20. "Execution Date" means the latest date upon which this Settlement Agreement is
4 executed by any of the signatory counsel.
- 5 21. "Fairness Hearing" means the hearing at or after which the Court will make a final
6 decision pursuant to Fed. R. Civ. P. 23 as to whether the Settlement is fair,
7 reasonable, and adequate and, therefore, approved by the Court.
- 8 22. "Fee and Expense Award" means the attorneys' fees and expenses as awarded by
9 the Court.
- 10 23. "*Hart/Alston* Right of Publicity Class" means the *Hart/Alston* Right of Publicity
11 Class Members.
- 12 24. "*Hart/Alston* Right of Publicity Class Members" means all NCAA football and
13 basketball players listed on the roster of a school whose team was included in an
14 NCAA Branded Videogame published or distributed during the *Hart/Alston* Right
15 of Publicity Class Period and whose assigned jersey number appears on a virtual
16 player in the software, or whose likeness was otherwise included in the software.
17 Excluded from the class are EA, CLC, the NCAA, and their officers, directors, legal
18 representatives, heirs, successors, and wholly or partly owned subsidiaries or
19 affiliated companies, class counsel and their employees, and the judicial officers,
20 and associated court staff assigned to cases listed in Section I.
- 21 25. "*Hart/Alston* Right of Publicity Class Period" means the period May 4, 2003 to
22 May 4, 2007.
- 23 26. "*Hart/Alston* Right of Publicity Plaintiffs" means Ryan Hart and Shawne Alston.
- 24 27. "Judgment" means the judgment to be entered in the Lawsuits pursuant to paragraph
25 8 below of this Settlement Agreement.
- 26 28. "*Keller* Right of Publicity Class" means the *Keller* Right of Publicity Class
27 Members.
- 28 29. "*Keller* Right of Publicity Class Members" means all NCAA football and basketball
players listed on the roster of a school whose team was included in an NCAA
Branded Videogame published or distributed during the *Keller* Right of Publicity
Class Period and whose assigned jersey number appears on a virtual player in the
software, or whose photograph was otherwise included in the software. Excluded
from the class are EA, CLC, the NCAA, and their officers, directors, legal
representatives, heirs, successors, and wholly or partly owned subsidiaries or
affiliated companies, class counsel and their employees, and the judicial officers,
and associated court staff assigned to cases listed in Section I.
30. "*Keller* Right of Publicity Class Period" means the period May 5, 2007 to the
Preliminary Approval Date.

- 1 31. “*Keller* Right of Publicity Plaintiffs” means Samuel Michael Keller, Bryan
2 Cummings, Lamarr Watkins, and Byron Bishop.
- 3 32. “Lawsuits” shall have the meaning described on pages 1-3, above.
- 4 33. “NCAA Branded Videogame” means every edition of *NCAA Football*, *NCAA*
5 *Basketball*, and *NCAA March Madness* published or distributed by EA during the
6 Antitrust Class Period, the *Hart/Alston* Right of Publicity Class Period, or the *Keller*
7 *Right of Publicity* Class Period, and related products and services.
- 8 34. “Net Settlement Fund” means the Settlement Fund less any taxes, attorneys’ fees,
9 participation awards, expert fees, costs, and expenses (including, but not limited to,
10 any cost and expenses paid out of the Notice and Administration Fund) approved by
11 the Court.
- 12 35. “Notice and Administration Fund” means the fund consisting of up to \$500,000
13 advanced by EA from the Settlement Amount to the Notice and Claims
14 Administrator to be used at the direction of Class Counsel to pay the costs of
15 notifying the Class Members, soliciting the filing of claims by Settlement Class
16 Members, assisting Settlement Class Members in making their claims, and
17 otherwise administering, on behalf of the Settlement Class Members, the Settlement
18 embodied in this Settlement Agreement. The monies in the Notice and
19 Administrative Fund are part of the Settlement Amount to be paid by EA. If for any
20 reason the Settlement does not become Final or the Effective Date does not occur,
21 the remaining money deposited into the Notice and Administration Fund shall be
22 returned to EA.
- 23 36. “Notice and Claims Administrator” means shall an administrator that will be
24 selected by Class Counsel following a competitive bid process.
- 25 37. “Parties” means: (i) the Antitrust Plaintiffs, (ii) the *Keller* Right of Publicity
26 Plaintiffs, (iii) the *Alston/Hart* Right of Publicity Plaintiffs, on behalf of themselves
27 and the Settlement Class (as defined in paragraph 47 below), and (iv) EA.
- 28 38. “Person” means any individual, corporation, partnership, association, affiliate, joint
stock company, estate, trust, unincorporated association, entity, government and any
political subdivision thereof, or any other type of business or legal entity.
39. “Plaintiffs” means Samuel Michael Keller, Bryan Cummings, Lamarr Watkins,
Byron Bishop, Edward C. O’Bannon Jr., Oscar Robertson, William Russell, Harry
Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David Lattin, Patrick Maynor,
Tyrone Prothro, Damien Rhodes, Eric Riley, Bob Tallent, Danny Wimprine, Ray
Ellis, Tate George, Jake Fischer, Jake Smith, Darius Robinson, Moses Alipate,
Chase Garnham, Ryan Hart, and Shawne Alston.
40. “Plan of Allocation” means the plan for allocating the Net Settlement Fund between
and among Settlement Class Members as approved by the Court.

- 1 41. “Preliminary Approval Order” means the Order that Plaintiffs and EA will seek
2 from the Court, substantially in the form of Exhibit A. Entry of the “Preliminary
3 Approval Order” shall constitute “Preliminary Approval” of the Settlement
4 Agreement.
- 5 42. “Preliminary Approval Date” means the date that the Preliminary Approval Order is
6 entered.
- 7 43. “Released Claims” means any and all actions, causes of action, claims, demands,
8 liabilities, obligations, damage claims, restitution claims, injunction claims,
9 declaratory relief claims, fees (including attorneys’ fees), costs, sanctions,
10 proceedings and/or rights of any nature and description whatsoever, whether legal or
11 equitable, including, without limitation, violations of any state or federal statutes
12 and laws, rules or regulations, or principles of common law, whether known or
13 unknown, suspected or unsuspected, had, possessed, owned or held, in law, equity,
14 arbitration or otherwise, that were or could have been asserted by Plaintiffs and/or
15 the Settlement Class Members against Releasees based on, arising out of, or related
16 to the subject matter of, or the allegations in the Lawsuits. Notwithstanding the
17 prior sentence, nothing in this paragraph or Agreement shall be construed as
18 releasing any action, cause of action, claim, demand, liability, obligation, damage
19 claim, restitution claim, injunction claim, declaratory relief claim, fees (including
20 attorneys’ fees), costs, sanctions, proceedings, and/or rights of any nature and
21 description whatsoever, whether legal or equitable, including, without limitation,
22 violations of any state or federal statutes and laws, rules, or regulations or principles
23 of common law, whether known or unknown, suspected or unsuspected, Plaintiffs
24 and/or the Settlement Class have, had, possessed, owned or held, in law, equity,
25 arbitration or otherwise against the NCAA.
- 26 44. “Released Parties” or “Releasees” means EA and CLC and all of their present,
27 former, and future officers, directors, employees, agents, attorneys, insurers,
28 insurance agents and brokers, independent contractors, successors, assigns, parents,
29 subsidiaries, affiliates, shareholders, members, and any person or entity whose
30 conduct in the development, sale, distribution, or marketing of NCAA Branded
31 Videogames could cause EA or CLC to be held directly or indirectly liable
32 (including but not limited to liability as an indemnitor) to any such person or entity.
33 Notwithstanding the prior sentence, the NCAA, its present, former, and future
34 officers, directors, employees, agents (other than CLC), attorneys, insurers,
35 insurance agents and brokers, independent contractors, successors, assigns, parents,
36 subsidiaries, affiliates, and members, including schools and conferences, are not
37 Released Parties or Releasees.
- 38 45. “Settlement” means the settlement of the Lawsuits between and among the
39 Plaintiffs, the Settlement Class Members, and Settling Defendant, as set forth in this
40 Settlement Agreement.
- 41 46. “Settlement Amount” means Forty Million Dollars (\$40,000,000.00).
- 42 47. “Settlement Class” means the Settlement Class Members.

1 3. The Parties hereby stipulate for purposes of this settlement only that the
2 requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and,
3 subject to Court approval, the Settlement Class shall be certified for settlement purposes as to EA
4 and CLC. Each Party agrees that it will not use the foregoing stipulation for any purpose
5 whatsoever other than to effectuate the Settlement.

6 4. The Parties and their counsel shall use their best efforts to obtain a District Court
7 Approval Order approving of the Settlement.

8 5. The Parties have agreed upon the following documents to be submitted to the Court
9 for its consideration along with this Settlement Agreement: Preliminary Approval Order (Exhibit
10 A), Notice of Settlement of Class Action (Exhibit B), Summary Notice of Settlement of Class
11 Action (Exhibit C), and Claim Form (Exhibit D),and Fourth Consolidated Amended Complaint
12 (Exhibit E).

13 6. In addition, the Parties have agreed to file Stipulations to Stay Proceedings and
14 Request for Voluntary Dismissal Pending Class Settlement Approval with the United States
15 District Court for the District of New Jersey in *Alston* and *Hart* (Exhibit F and G).

16 7. The Parties shall jointly apply to the Court for entry of the Preliminary Approval
17 Order, substantially in the form attached hereto as Exhibit A, preliminarily approving the
18 Settlement, and barring prosecution of any action or claims that are subject to the release and
19 dismissal contemplated by this Settlement Agreement by any Settlement Class Member.

20 8. At the Fairness Hearing, the Parties shall jointly request entry of a Judgment, the
21 entry of which is a material condition of this Settlement Agreement, barring and enjoining
22 Plaintiffs and all Settlement Class Members from instituting or prosecuting against the Releasees
23 any Released Claims, in this or any other action or proceeding, or from pursuing outside of these
24 Lawsuits any claim against the Releasees that arises from or relates to the facts alleged in the
25 Lawsuits, and further:

- 26 a. approving finally the Settlement as fair, reasonable, and adequate, within the
27 meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its
28 consummation pursuant to the terms of the Settlement Agreement;

1 to terminate the Settlement Agreement, or (iii) impose any obligation on Settling Defendant to
2 increase the consideration paid in connection with the Settlement.

3 10. At the Fairness Hearing, Class Counsel may also request entry of an Order
4 approving Class Counsel's application for an award of attorneys' fees and expenses. Any award of
5 attorneys' fees and expenses to Class Counsel shall be paid exclusively from the Settlement Fund
6 and shall be payable seven days after the Effective Date. In no event shall EA otherwise be
7 obligated to pay for any attorneys' fees and expenses. The disposition of Class Counsel's
8 application for an award of attorneys' fees and reimbursement of expenses is within the sound
9 discretion of the Court and is not a material term of this Settlement Agreement, and it is not a
10 condition of this Settlement Agreement that such application be granted. Any disapproval or
11 modification of the application for an award of attorneys' fees and reimbursement of expenses by
12 the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the
13 Parties with the right to terminate the Settlement Agreement, or (iii) impose any obligation on
14 Settling Defendant to increase the consideration paid in connection with the Settlement.

15 **V. SETTLEMENT CONSIDERATION**

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17 11. The total monetary component of the Settlement is the Settlement Amount
18 (\$40,000,000.00). This is an "all in" number which includes, without limitation, all monetary
19 benefits to the Settlement Class, participation awards for Plaintiffs, attorneys' fees, and all costs
20 and expenses (including, but not limited to, administration costs and expenses, notice costs and
21 expenses, and settlement costs and expenses). Under no circumstances will EA be required to pay
22 anything more than the Settlement Amount. As of the Effective Date, EA shall not have any right
23 to the return or reversion of the Settlement Fund, or any portion thereof, irrespective of the number
24 of Claims filed or the amounts to be paid to Authorized Claimants from the Settlement Fund.

25 12. In full and complete settlement of: (i) all claims asserted in the Lawsuits against EA
26 and CLC and (ii) all other Released Claims, EA shall pay into the Escrow Account, for the benefit
27 of the Settlement Class as follows: (1) within thirty (30) days of entry of the Preliminary Approval
28 Order, EA shall pay into the Escrow Account \$500,000 to be used by the Notice and Claims

1 Administrator at the direction of Class Counsel for reasonable costs in connection with providing
2 notice of the Settlement to the Class Members and for other administrative expenses (“Notice and
3 Administration Fund”), according to the terms in paragraphs 20-23, below; and (2) within twenty
4 (20) days of the District Court Approval Order, EA shall pay into the Escrow Account the
5 remaining amount of the Settlement Amount (\$39,500,000).

6 13. The Settlement Fund shall be deposited, at the times specified in paragraph 12, into
7 an interest-earning escrow account designated by Class Counsel, and all interest accruing thereon
8 shall be deemed to be in the custody of the Court, and will remain subject to the jurisdiction of the
9 Court, until such time as it is distributed in compliance with the Settlement Agreement and Court
10 order. The Escrow Agent shall invest the Settlement Fund exclusively in instruments backed by the
11 full faith and credit of the United States Government or fully insured by the United States
12 Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank
13 account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC
14 limit. The Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar
15 instruments at their then-current market rates. The Parties and the Escrow Agent agree to treat the
16 Settlement Fund as a “qualified settlement fund” within the meaning of Treasury Regulation §
17 1.468B-1, and the Escrow Agent, as administrator of the Escrow Account within the meaning of
18 Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Escrow
19 Account and paying from the Escrow Account any and all taxes, including any interest or penalties
20 thereon (the “Taxes”), owed with respect to the Escrow Account. In addition, the Escrow Agent
21 shall timely make such elections as necessary or advisable to carry out the provisions of this
22 paragraph, including if necessary the “relation-back election” (as defined in Treas. Reg. § 1.468B-
23 1) back to the earliest permitted date. Such elections shall be made in compliance with the
24 procedures and requirements contained in such regulations. It shall be the responsibility of the
25 Escrow Agent to timely and properly prepare and deliver the necessary documentation for
26 signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

1 14. All Taxes arising with respect to the income earned by the Settlement Fund,
2 (including any Taxes that may be imposed upon Defendants with respect to any income earned by
3 the Settlement Fund for any period during which the Settlement Fund does not qualify as a
4 “qualified settlement fund” for federal or state income tax purposes), and any expenses and costs
5 incurred in connection with the payment of Taxes pursuant to this paragraph (including without
6 limitation, expenses of tax attorneys and/or accountants and mailing, administration, and
7 distribution costs and expenses relating to the filing or the failure to file all necessary or advisable
8 tax returns (the “Tax Expenses”)), shall be paid out of the Settlement Fund. EA shall not have any
9 liability or responsibility for the Taxes or the Tax Expenses. The Escrow Agent shall timely and
10 properly file all informational and other tax returns necessary or advisable with respect to the
11 Settlement Fund and the distributions and payments therefrom, including, without limitation, the
12 tax returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable, Treas. Reg. §
13 1.468B-2(1). Such tax returns shall be consistent with the terms herein, and in all events shall
14 reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the
15 Settlement Fund. The Escrow Agent shall also timely pay Taxes and Tax Expenses out of the
16 Settlement Fund, and are authorized to withdraw from the Escrow Account amounts necessary to
17 pay Taxes and Tax Expenses. The Parties hereto agree to cooperate with the Escrow Agent, each
18 other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the
19 provisions of this Settlement Agreement. The Parties shall not have any responsibility or liability
20 for the acts or omissions of the Escrow Agent.

21 15. Upon entry of Judgment, EA will withdraw its Petition for Certiorari with the
22 Supreme Court in the case captioned *Electronic Arts v. Keller*, No. 13-377 and *Electronic Arts v.*
23 *Hart*, No. 13-376.

24 16. Upon entry of Judgment, EA and Plaintiffs Alston and Hart shall stipulate to the
25 dismissal with prejudice of *Alston v. Electronic Arts*, No. CV-05157 and *Hart v. Electronic Arts*,
26 No. CV-05990, all parties to bear their own costs and fees except as set forth in this Agreement.

1 17. EA agrees not to oppose a request for a participation award for Plaintiffs as awarded
2 by the Court, up to a maximum of \$15,000. Plaintiffs and Class Counsel agree not to seek a
3 participation award in excess of the above amounts. Plaintiffs and Class Counsel agree to seek an
4 award of \$15,000 for Samuel Michael Keller, Edward C. O'Bannon, and Ryan Hart; \$5,000 for the
5 remaining Plaintiffs who were deposed and Plaintiff Shawne Alston; and \$2,500 for all other
6 named Plaintiffs. The participation awards will be payable from the Settlement Fund contained in
7 the Escrow Account 30 days after the Effective Date.

8 18. Class Counsel agrees not to seek an award of fees from the Court in excess of thirty-
9 three percent (33%) of the Settlement Fund and a maximum of \$2,500,000 in costs (not including,
10 but in addition to, costs of administration). EA agrees not to oppose a request for attorneys' fees up
11 to 33% of the Settlement Fund and such costs not exceeding \$2,500,000. Any attorneys' fees and
12 expenses, as awarded by the Court, shall be payable from the Settlement Fund contained in the
13 Escrow Account, as ordered, within seven (7) days after the Effective Date. In the event that the
14 Effective Date does not occur, or the Judgment is reversed or modified, or the order making the
15 Fee and Expense Award is reversed or modified, or the Settlement Agreement is canceled or
16 terminated for any other reason, and in the event that the Fee and Expense Award has been paid to
17 any extent, then Class Counsel shall within ten (10) business days from receiving notice from EA's
18 counsel or from a court of appropriate jurisdiction, refund to EA the Fee and Expense Award or
19 any portion thereof previously paid to them plus interest thereon at the same rate as earned by the
20 account into which the balance of the Settlement Fund is deposited pursuant to paragraphs 13-14
21 above.

22 19. Plaintiffs and Class Counsel have determined that the Net Settlement Fund shall be
23 allocated to benefit Settlement Class Members per the following Plan of Allocation:

- 24 a. Antitrust Roster-Only Subclass Members: \$5,000,000 of the Settlement
25 Fund.

26 The Parties will attempt in good faith to identify the Antitrust Roster-Only
27 Subclass Members and will deliver, by First-Class Mail, a payment equal to
28 a pro-rata share of \$5,000,000 of the Settlement Fund to each Antitrust
Roster-Only Subclass Member who submits a valid Claim Form no later

1 than the Bar Date and is a Settlement Class Member. After the time period
2 described in Paragraph 19(d), the Claims Administrator will deliver by First-
3 Class Mail a second payment equal to a pro-rata share of the remaining
4 portion of the Net Settlement Fund attributable to the Antitrust Roster-Only
5 Subclass to those Antitrust Roster-Only Subclass Members who cashed their
6 check from the first distribution.

- 7 b. Hart/Alston Right of Publicity Class Members: \$4,000,000 of the
8 Settlement Fund.

9 The Parties will attempt in good faith to identify the *Hart/Alston* Right of
10 Publicity Class Members and will deliver, by First-Class Mail, a payment
11 equal to a pro rata share of \$4,000,000 of the Settlement Fund to each
12 *Hart/Alston* Right of Publicity Class Member who submits a valid Claim
13 Form no later than the Bar Date and is a Settlement Class Member. After
14 the time period described in Paragraph 19(d), the Claims Administrator will
15 deliver by First-Class Mail a second payment equal to a pro-rata share of the
16 remaining portion of the Net Settlement Fund attributable to the *Hart/Alston*
17 Right of Publicity Class to *Hart/Alston* Right of Publicity Class Members
18 who cashed their check from the first distribution.

- 19 c. Antitrust Class Members other than Antitrust Roster-Only Subclass
20 Members and Keller Right of Publicity Class Members: The remainder of
21 the Settlement Fund.

22 The Parties will attempt in good faith to identify Antitrust Class Members
23 (other than Antitrust Roster-Only Subclass Members) and *Keller* Right of
24 Publicity Class Members and will deliver by First-Class Mail, a cash
25 payment equal to a pro-rata share of the remaining Settlement Fund to each
26 such individual who submits a valid Claim Form no later than the Bar Date
27 and is a Settlement Class Member. After the time period described in
28 Paragraph 19(d), the Claims Administrator will deliver by First-Class Mail a
second cash payment equal to a pro-rata share of the remaining Net
Settlement Fund to each Antitrust Class Member other than Antitrust Roster-
Only Subclass Members, *Keller* Right of Publicity Class Member, and *Hart*
Right of Publicity Class Member who cashed their check from the first
distribution.

- d. Settlement Class Members will have ninety (90) days to cash their
settlement checks from the date the checks are mailed by the Claims
Administrator. All outstanding, un-cashed checks will become void after
ninety (90) days and the associated funds will revert to the Net Settlement
Fund. If after three months beyond the second mailing of checks described
in paragraphs 19 (a)–(c), the Net Settlement Fund is not exhausted
(including any amount remaining as the result of uncashed checks), a pro-
rata payment shall be made to each state under its escheat statute in an
amount that will exhaust the Net Settlement Fund. Under no circumstances
shall any money escheat to EA.

- e. All costs, including but not limited to costs associated with notice and
administration, participation awards, escrow costs, and attorneys' fees and
costs shall be paid by Settlement Class Members equally on a pro rata basis
based on the amounts attributable to each subclass. By way of example, the
Hart/Alston Right of Publicity Class is allocated 10% of the Settlement Fund
and therefore is responsible for 10% of all costs.

VI. NOTICE AND ADMINISTRATION FUND

1 20. The Notice and Administration Fund shall be used by Class Counsel to pay the costs
2 of identifying and notifying Class Members, and, as allowed by the Court, soliciting the filing of
3 claims, facilitating the claims process, and otherwise administering the Settlement on behalf of the
4 Settlement Class Members. Any notice and administration costs, as well as all applicable taxes,
5 shall be paid out of the Notice and Administration Fund and, if the Notice and Administration Fund
6 is exhausted, out of the Settlement Fund. Notice and administration costs shall include, among
7 other things, identifying the last known mailing address Class Members, the cost of publishing
8 notice, printing and mailing notice, as directed by the Court, and the cost of processing Claims and
9 distributing the Net Settlement Fund to Settlement Class Members.

10 21. Class Counsel, by and through the Notice and Claims Administrator, will attempt in
11 good faith to identify Class Members last known address and will provide Class Notice by (i) First-
12 Class Mail (where available) notice substantially similar to the form attached as Exhibit B; (ii) a
13 content neutral settlement website managed by a third-party administrator that will contain further
14 information about the Settlement and claims process, including relevant pleadings; and (iii)
15 nationwide publication on the internet through directed advertising to likely Class Members.
16 Settling Defendant will also provide notice by mail, pursuant to the Class Action Fairness Act, to
17 state attorneys general and the U.S. Attorney General.

18 22. As of the Effective Date, any balance, including interest, remaining in the Notice
19 and Administration Fund, less expenses incurred but not yet paid, shall be deposited into the
20 Settlement Fund.

21 23. If the Settlement is not approved, is overturned, or is modified on appeal or as a
22 result of further proceedings on remand of any appeal with respect to the Settlement, or if the
23 Effective Date otherwise does not occur, the balance of the Notice and Administration Fund which
24 has not been expended pursuant to paragraph 20 above, and the balance of the Settlement Fund,
25 including all earned or accrued interest, shall be returned to EA within five days, or as soon as
26 practicable, as set forth in paragraph 43 below.

VIII. RELEASES

1
2 24. The Released Claims against each and all of the Released Parties shall be released
3 and dismissed with prejudice and on the merits (without an award of costs to any party other than
4 those provided in paragraph 18 of this Settlement Agreement) upon entry of the Judgment.

5 25. As of the Effective Date, Plaintiffs and all Settlement Class Members agree to
6 release and by operation of the Judgment shall have fully and finally released, relinquished, and
7 discharged all Released Claims against each and all of the Released Parties.

8 26. As of the Effective Date, Named Plaintiffs and all Settlement Class Members shall
9 be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released
10 Parties in any federal or state court or tribunal any and all Released Claims.

11 27. Without in any way limiting the scope of the Released Claims, the release covers,
12 without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class
13 Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or any of them,
14 in connection with or related in any manner to the Lawsuits, the settlement of the Lawsuits, the
15 administration of such settlement, and/or the Released Claims.

16 28. The Plaintiffs and the Settlement Class expressly acknowledge that they are familiar
17 with principles of law such as Section 1542 of the Civil Code of the State of California and Section
18 20-7-11 of the South Dakota Codified Laws, which provide:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
21 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
22 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
23 SETTLEMENT WITH THE DEBTOR.

24 29. Plaintiffs and the Settlement Class hereby expressly agree that the provisions, rights,
25 and benefits of Section 1542 of the Civil Code of the State of California and Section 20-7-11 of the
26 South Dakota Codified Laws and all similar federal or state laws, rights, rules, or legal principles
27 of any other jurisdiction that may be applicable herein are hereby knowingly and voluntarily
28 waived and relinquished by Plaintiffs and the Settlement Class to the fullest extent permitted by
law in connection with all unknown claims constituting Released Claims, and Plaintiffs and the

1 Settlement Class hereby agree and acknowledge that this is an essential term of the Settlement
2 Agreement. In connection with the release, the Plaintiffs and the Settlement Class acknowledge
3 that they are aware that they may hereafter discover claims presently unknown and unsuspected or
4 facts in addition to or different from those which they now know or believe to be true with respect
5 to matters released herein. Nevertheless, it is the intention of Plaintiffs and the Settlement Class in
6 executing this release fully, finally, and forever to settle and release all matters and all claims that
7 exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in
8 any action), constituting Released Claims.

9 30. Subject to Court approval, all Settlement Class Members shall be bound by this
10 Settlement Agreement, and all of their claims shall be dismissed with prejudice and released, even
11 if they never received actual notice of the Lawsuits or this Settlement.

12 **IX. ADMINISTRATION AND DISTRIBUTION OF THE SETTLEMENT FUND**

13 31. Class Members who wish to object to any aspect of the Settlement must file with the
14 Court a written statement containing their objection by the Exclusion/Objection Deadline, as
15 provided in the Class Notice. Any Class Member who does not make his or her objection in the
16 manner provided in the Class Notice shall be deemed to have waived such objection and shall
17 forever be foreclosed from making any objection to the fairness or adequacy of the Settlement as
18 set forth in this Settlement Agreement, to the Plan of Allocation, and/or to the award of attorney's
19 fees and expenses to Class Counsel.

20 32. Class Members who wish to exclude themselves from the Settlement must serve on
21 the Notice and Claims Administrator a written request for exclusion by the Exclusion/Objection
22 Deadline, as provided in the Class Notice. Class Counsel shall submit the name, city, and state of
23 residence of all Class Members who request exclusion to the Court at the time Class Counsel file
24 their motion for final approval of the Settlement. All Class Members will be bound by the
25 Judgment dismissing the Lawsuits with prejudice unless such Class Members timely file valid
26 written request for exclusion or opt out in accordance with this paragraph and the Preliminary
27 Approval Order.
28

1 Plaintiffs, such payment not to be made until funds are distributed to the
2 Settlement Class pursuant to paragraph 36(e), below;

- 3 c. subject to the approval and further order(s) of the Court, and according to the
4 terms of paragraph 18, above, to pay any attorneys fees and/or costs that
5 may be awarded or ordered by the Court;
- 6 d. to pay Taxes and Tax Expenses owed by the Settlement Fund, according to
7 the terms in paragraph 14, above;
- 8 e. to pay any costs and expenses incurred in connection with the services
9 provided by the Escrow Agent; and
- 10 f. subject to the approval and further order(s) of the Court, to distribute the
11 balance of Net Settlement Fund for the benefit of the Settlement Class
12 pursuant to paragraph 19 above, or as otherwise ordered by the Court. No
13 funds from the Net Settlement Fund shall be disbursed until after the
14 Effective Date.

15 37. Settlement Class Members shall be subject to and bound by the provisions of the
16 Settlement Agreement, the releases contained herein, and the Judgment with respect to all Released
17 Claims, regardless of whether they seek or obtain any distribution from the Settlement Fund.

18 38. EA shall bear no responsibility for the costs, fees, or expenses related to the
19 administration and distribution of the Settlement Fund. Neither EA nor their counsel shall have
20 any responsibility for, interest in, or liability whatsoever with respect to the Settlement Fund, any
21 plan of allocation, the determination, administration, or calculation of claims, the payment or
22 withholding of taxes, the distribution of the Net Settlement Fund, or any losses incurred in
23 connection with any such matters.

24 39. EA shall have no responsibility for, or liability concerning, the appointment of the
25 Notice and Claims Administrator and any actions taken by it.

26 40. Payment from the Settlement Fund and Net Settlement Fund made pursuant to and
27 in the manner set forth above shall be deemed conclusive of compliance with this Settlement
28 Agreement as to all Settlement Class Members.

41. No Class Member or Settlement Class Member shall have any claim against the
Plaintiffs, Class Counsel, the Notice and Claims Administrator, EA, CLC, or any of their counsel,

1 based on distributions made substantially in accordance with this Settlement Agreement and/or
2 orders of the Court.

3
4 **IX. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
5 **SETTLEMENT AGREEMENT**

6 42. If the Court does not approve the Settlement as set forth in this Settlement
7 Agreement, or does not enter the Judgment substantially in the form provided for in paragraph 8, or
8 if the Court enters the Judgment and appellate review is sought, and on such review, the entry of
9 Judgment is vacated, modified in any way, or reversed, then this Settlement Agreement shall be
10 cancelled and terminated, unless all Parties who are adversely affected thereby, in their sole
11 discretion within thirty days from the date of such ruling, provide written notice to all other Parties
12 hereto of their intent to proceed with the settlement under the terms of the Judgment as it may be
13 modified by the Court or any appellate court. No Party shall have any obligation whatsoever to
14 proceed under any terms other than substantially in the form provided and agreed to herein, except
15 to the extent provided for in paragraphs 9 and 10, relating to the Plan of Allocation and award of
16 attorneys' fees. If any Party hereto engages in a material breach of the terms hereof, any other
17 Party, provided that it is in substantial compliance with the terms of this Settlement Agreement,
18 may terminate this Settlement Agreement on notice to the breaching Party or sue for enforcement.

19 43. In the event that (i) the Settlement is not approved, is overturned, or is materially
20 modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this
21 Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then
22 within five business days after written notice is sent by Class Counsel or counsel for Settling
23 Defendant to all Parties hereto, the balance of the Notice and Administration Fund, less any funds
24 paid or expenses incurred but not yet paid, the Settlement Fund, and any other cash deposited by
25 EA into the Escrow Account pursuant to paragraph 12 above of this Settlement Agreement, shall
26 be refunded to EA, including interest earned or accrued.

27 44. In the event that (i) the Settlement is not approved, is overturned, or is materially
28 modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this

1 Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then (a)
2 the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its
3 terms shall be effective or enforceable, with the exception of this paragraph, which shall remain
4 effective and enforceable; and (b) the Parties shall be deemed to have reverted nunc pro tunc to
5 their respective status as of the date and time immediately before the execution of the Settlement
6 Agreement, and they shall proceed in all respects as if the Settlement Agreement and related
7 documentation and orders had not been executed, and without prejudice in any way from the
8 negotiation or fact of the Settlement or the terms of the Settlement Agreement. The Settlement
9 Agreement, the Settlement, the fact of their existence, any of their terms, any press release or other
10 statement or report by the Parties or by others concerning the Settlement Agreement, the
11 Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or
12 documents executed pursuant to or in furtherance of the Settlement Agreement or the Settlement
13 shall not be offered or received in evidence, or otherwise used by any party or witness for any
14 purpose whatsoever, in any trial of these Lawsuits or any other action or proceedings, nor shall
15 they be deemed to constitute any evidence or admission of liability or wrongdoing on the part of
16 Settling Defendant or the other Releasees, which is expressly and unequivocally denied by Settling
17 Defendant.

18 45. EA does not agree or consent to certification of the Settlement Class (as to EA or
19 CLC) for any purpose other than to effectuate the Settlement of the Lawsuits. If this Settlement
20 Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur,
21 the order certifying the Settlement Class for purposes of effecting this Settlement Agreement, and
22 all preliminary and/or final findings regarding the Settlement Class certification order, shall be
23 automatically vacated upon notice to the Court, the Lawsuits shall proceed as though the
24 Settlement Class had never been certified pursuant to this Settlement Agreement and such findings
25 had never been made, and the Lawsuits shall revert nunc pro tunc to the procedural status quo as of
26 the date and time immediately before the execution of the Settlement Agreement, in accordance
27 with this Settlement Agreement.

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2 **IX. MISCELLANEOUS PROVISIONS**

3 46. All of the Exhibits to be attached hereto shall be incorporated by reference as
4 though fully set forth herein.

5 47. Plaintiffs acknowledge that Class Members' claims against EA in the Lawsuits, as
6 well as the claims that remain pending, involve Licensed Indicia (but are not limited to Licensed
7 Indicia), and relate to EA's right to use Licensed Indicia in accordance with the terms of the EA-
8 CLC License Agreements, as the term "Licensed Indicia" is defined in the EA-CLC License
9 Agreements. Notwithstanding any other provision to the contrary, EA may use the
10 acknowledgement in this paragraph in other legal proceedings.

11 48. Antitrust Plaintiffs acknowledge that, after a thorough review of the discovery
12 record amassed in this litigation, the Antitrust Plaintiffs have concluded that (1) neither EA nor
13 CLC has had any role with respect to the preparation or adoption of NCAA legislation, including
14 the NCAA constitution, rules, bylaws, and regulations that are the focus of the anticompetitive
15 restraint alleged; (2) neither EA nor CLC has had any role with respect to the form releases signed
16 by student-athletes in order to be eligible to participate in intercollegiate athletics; and (3) neither
17 EA nor CLC has had any role in the enforcement of the NCAA constitution or any NCAA rules,
18 bylaws, or regulations. Notwithstanding any other provision to the contrary, EA may use the
19 acknowledgement in this paragraph in other legal proceedings.

20 49. Class Counsel agrees that they will not directly or indirectly, explicitly or implicitly,
21 encourage any Class Member to object to or opt-out of the Settlement and/or file a separate lawsuit
22 against any of the Released Parties.

23 50. Plaintiffs acknowledge that, given the amount of discovery taken by them of EA and
24 CLC, including extensive document and other written discovery, as well as numerous depositions,
25 expert discovery, and the records developed through briefing and submissions of motion, Plaintiffs
26 are satisfied that an adequate factual record has been established that supports the Settlement and,
27 apart from the limited discovery described in the next sentence, hereby waive any right to conduct
28

1 further discovery to assess or confirm the Settlement. Notwithstanding the prior sentence, the
2 Parties agree to reasonably cooperate with respect to limited confirmatory discovery to be agreed
3 upon related to the rosters of student-athletes whose images Plaintiffs claim are included in NCAA
4 Branded Videogames. And notwithstanding this paragraph, the *Keller* Right of Publicity plaintiffs
5 shall have any and all discovery rights, subject to the Court's orders and the Federal Rules of Civil
6 Procedure, as to EA and CLC in connection with their lawsuit against the NCAA.

7 51. This Settlement Agreement may be amended or modified only by a written
8 instrument signed by counsel for all Parties or the Parties' successors-in-interest.

9 52. The Settlement Agreement, the Settlement, the fact of the settlement's existence,
10 any of terms of the Settlement Agreement, any press release or other statement or report by the
11 Parties or by others concerning the Settlement Agreement or the Settlement, and/or any
12 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance of
13 the Settlement Agreement or the Settlement: (i) may not be deemed to be, may not be used as, and
14 do not constitute an admission or evidence of the validity of any Released Claims or of any
15 wrongdoing or liability of EA or CLC; and (ii) may not be deemed to be, may not be used as, and
16 do not constitute an admission or evidence of any fault, wrongdoing, or omission by EA or CLC in
17 any trial, civil, criminal, or administrative proceeding of the Lawsuits or any other action or
18 proceedings in any court, administrative agency, or other tribunal.

19 53. EA and the other Releasees shall have the right to file the Settlement Agreement
20 and/or the Judgment in any action that may be brought against them in order to support a defense
21 or counterclaim based on principles of res judicata, collateral estoppel, release, good faith
22 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion or
23 similar defense or counterclaim.

24 54. The Parties intend the Settlement to be a final and complete resolution of all
25 disputes asserted or which could be asserted by Plaintiffs and the Settlement Class in the Lawsuits
26 against EA and CLC.

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1 55. The Parties to the Settlement Agreement agree that the Settlement Amount and the
2 other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
3 resulted from an arm's length mediation before Randy Wulff, and reflect a settlement that was
4 reached voluntarily based upon adequate information and sufficient discovery and after
5 consultation with experienced legal counsel.

6 56. Plaintiffs and Class Counsel have concluded that the Settlement set forth herein
7 constitutes a fair, reasonable, and adequate resolution of the claims that Plaintiffs asserted against
8 EA and CLC, including the claims on behalf of the Settlement Class, and that it promotes the best
9 interests of the Settlement Class.

10 57. To the extent permitted by law, all agreements made and orders entered during the
11 course of the Lawsuits relating to the confidentiality of information shall survive this Settlement
12 Agreement.

13 58. The Parties agree that Plaintiffs are not required to return any documents produced
14 by Settling Defendant until the resolution of the Lawsuits, including the resolution of any and all
15 claims against the NCAA. Within sixty (60) days following resolution of the Lawsuits, Counsel
16 for Plaintiffs shall return to EA and CLC, respectively, all documents produced in the Lawsuits or
17 confirm in writing that all such documents have been destroyed, in a manner consistent with the
18 terms of any applicable Protective Order in any of the Lawsuits, and to the extent practicable.

19 59. The waiver by one Party of any breach of this Settlement Agreement by any other
20 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
21 Agreement.

22 60. This Settlement Agreement and its exhibits constitute the entire agreement among
23 the Parties, and no representations, warranties, or inducements have been made to any Party
24 concerning this Settlement Agreement or its exhibits, other than the representations, warranties and
25 covenants contained and memorialized in this Settlement Agreement and its exhibits. In the event
26 that there exists a conflict or inconsistency between the terms of this Settlement Agreement and the
27 terms of any exhibit to be attached hereto, the terms of this Settlement Agreement shall prevail.

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1 61. This Settlement Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same instrument
3 provided that counsel for the Parties to this Settlement Agreement shall exchange among
4 themselves original signed counterparts.

5 62. The Parties hereto and their respective counsel agree that they will use their best
6 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement.

7 63. Each counsel signing this Settlement Agreement represents that such counsel has
8 authority to sign this Settlement Agreement on behalf of his/her clients.

9 64. This Settlement Agreement shall be binding upon and shall inure to the benefit of
10 the successors and assigns of the Parties hereto, including any and all Released Parties and any
11 corporation, partnership, or other entity into or with which any Party hereto may merge,
12 consolidate, or reorganize.

13 65. This Settlement Agreement shall not be construed more strictly against one Party
14 than another merely because of the fact that it may have been prepared by counsel for one of the
15 Parties, it being recognized that because of the arm's-length negotiations resulting in the Settlement
16 Agreement, all Parties hereto have contributed substantially and materially to the preparation of the
17 Settlement Agreement.

18 66. All terms, conditions, and exhibits are material and necessary to this Settlement
19 Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

20 67. This Settlement Agreement shall be governed by federal law. To the extent that
21 federal law does not apply, this Settlement Agreement shall be governed by and construed in
22 accordance with the laws of the State of California, without regard to choice of law principles. Any
23 action based on this Settlement Agreement, or to enforce any of its terms, shall be venued in the
24 United States District Court for the Northern District of California, which shall retain jurisdiction
25 over all such disputes. All Parties to this Settlement Agreement shall be subject to the jurisdiction
26 of the United States District Court for the Northern District of California for all purposes related to
27 this Settlement Agreement. This paragraph relates solely to the law governing this Settlement
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1 Agreement and any action based thereon, and nothing in this paragraph shall be construed as an
2 admission or finding that California, Indiana, or New Jersey law applies to the Released Claims of
3 any Class Members who reside outside of those respective states.

4 68. The Court shall retain continuing and exclusive jurisdiction over the Parties to this
5 Settlement Agreement for the purpose of the administration and enforcement of this Settlement
6 Agreement.

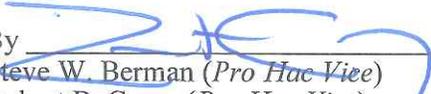
7 69. The headings used in this Settlement Agreement are for the convenience of the
8 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement. In
9 construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa)
10 and the use of the masculine includes the feminine (and vice-versa).

11 70. Each Party to this Settlement Agreement warrants that he, she or it is acting upon
12 his, her or its independent judgment and upon the advice of his, her or its counsel, and not in
13 reliance upon any warranty or representation, express or implied, of any nature of any kind by any
14 other Party, other than the warranties and representations expressly made in this Settlement
15 Agreement.

16
17 SIGNED AND AGREED:

18
19 Dated: May __, 2014

HAGENS BERMAN SOBOL SHAPIRO LLP

20 By 
21 Steve W. Berman (*Pro Hac Vice*)
22 Robert B. Carey (*Pro Hac Vice*)
23 Leonard W. Aragon (*Pro Hac Vice*)
24 11 West Jefferson Street, Suite 1000
25 Phoenix, Arizona 85003
26 Telephone: (602) 840-5900
27 Facsimile: (602) 840-3012
28 Email: rob@hbsslw.com
leonard@hbsslw.com

Stuart M. Paynter (226147)
Celeste H.G. Boyd (*Pro Hac Vice*)
THE PAYNTER LAW FIRM PLLC
1200 G Street N.W., Suite 800
Washington, DC 20005

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Telephone: (202) 626-4486
Facsimile: (866) 734-0622
Email: stuart@smplegal.com
cboyd@smplegal.com

Interim Co-Lead Counsel for Antitrust and
Right of Publicity Plaintiffs

Dated: May 14, 2014

HAUSFELD LLP

By HK Scherrer
Michael D. Hausfeld (*pro hac vice*)
Hilary K. Scherrer (Cal. Bar No. 209451)
Sathya S. Gosselin (Cal. Bar. No. 269171)
HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
E-mail: mhausfeld@hausfeldllp.com
hscherrer@hausfeldllp.com
sgosselin@hausfeldllp.com

Michael P. Lehmann
Arthur N. Bailey, Jr.
44 Montgomery Street, 34th Floor
San Francisco, CA 94101
Telephone: (415) 633-1908
Facsimile: (415) 358-4980
E-mail: mlehmann@hausfeldllp.com
abailey@hausfeldllp.com

Interim Co-Lead Counsel for Antitrust and
Right of Publicity Plaintiffs

Dated: May __, 2014

THE MCKENNA LAW FIRM, LLC

By _____
Keith McKenna, Esq.
96 Park Street
Montclair, New Jersey 07042
Telephone: 973-509-0050
Facsimile: 973-509-3580
keith.mckenna@mcklaw.net

Dennis J. Drasco, Esq.
Arthur M. Owens, Esq.
Lum, Drasco & Positan LLC
103 Eisenhower Pkwy
Roseland, New Jersey, 07068
Telephone: 973-403-900

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Telephone: (202) 626-4486
Facsimile: (866) 734-0622
Email: stuart@smplegal.com
cboyd@smplegal.com

Interim Co-Lead Counsel for Antitrust and
Right of Publicity Plaintiffs

Dated: May ___, 2014

HAUSFELD LLP

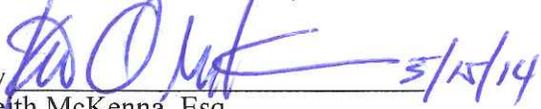
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Michael D. Hausfeld (*pro hac vice*)
Hilary K. Scherrer (Cal. Bar No. 209451)
Sathya S. Gosselin (Cal. Bar. No. 269171)
HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
E-mail: mhausfeld@hausfeldllp.com
hscherrer@hausfeldllp.com
sgosselin@hausfeldllp.com

Michael P. Lehmann
Arthur N. Bailey, Jr.
44 Montgomery Street, 34th Floor
San Francisco, CA 94101
Telephone: (415) 633-1908
Facsimile: (415) 358-4980
E-mail: mlehmann@hausfeldllp.com
abailey@hausfeldllp.com

Interim Co-Lead Counsel for Antitrust and
Right of Publicity Plaintiffs

Dated: May 15 2014

THE MCKENNA LAW FIRM, LLC

By  5/15/14
Keith McKenna, Esq.
96 Park Street
Montclair, New Jersey 07042
Telephone: 973-509-0050
Facsimile: 973-509-3580
keith.mckenna@mcklaw.net

Dennis J. Drasco, Esq.
Arthur M. Owens, Esq.
Lum, Drasco & Positan LLC
103 Eisenhower Pkwy
Roseland, New Jersey, 07068
Telephone: 973-403-900

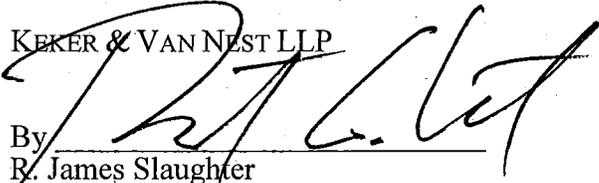
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Facsimile: 973-403-9021
ddrasco@lumlaw.com
aowens@lumlaw.com

Attorneys For Plaintiff Hart

Dated: May 15, 2014

KEKER & VAN NEST LLP

By 
R. James Slaughter
Robert Van Nest
633 Battery Street
San Francisco, CA 94111
Telephone: 415.391.5400
Facsimile: 415.397.7188
rslaughter@kvn.com
rvannest@kvn.com

Attorneys For Defendant Electronic Arts Inc.

EXHIBIT A

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

SAMUAL KELLER et al.,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION; COLLEGIATE
LICENSING COMPANY; and
ELECTRONIC ARTS INC.,

Defendants.

Case No. 09-cv-1967 CW

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT WITH
DEFENDANT ELECTRONIC ARTS, INC.**

EDWARD O'BANNON, et al.,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION; COLLEGIATE
LICENSING COMPANY; and
ELECTRONIC ARTS INC.,

Defendants.

Case No. 09-cv-3329 CW

Upon considering the Motion for Preliminary Approval of Class Action Settlement with Defendant Electronic Arts Inc., (“EA”) filed by Plaintiffs and, seeking preliminary approval of the Settlement, together with all of its Exhibits attached thereto, dated May 15, 2014, as well as the record of these proceedings, the representations, argument, and recommendation of counsel for the moving parties, and the requirements of law, the Court finds that (1) this Court has jurisdiction over the subject matter and parties to this proceeding; (2) the proposed Class meets the requirements of Federal Rule of Civil Procedure 23(e) and should be certified for purposes of settlement only, and the persons set forth below should be appointed Class Representative and

1 Class Counsel; (3) the Proposed Settlement (“Settlement” or “Agreement”) is the result of arms-
2 length negotiations between the parties, is not the result of collusion, bears a probable, reasonable
3 relationship to the claims alleged by the Plaintiffs and the litigation risks of EA, and its terms put
4 it within the range of possible judicial approval; (4) the Settlement Notices substantially in the
5 form attached as Exhibits B and C to the Settlement and the proposed Notice Plan will provide
6 the best practicable notice to the putative Class under the circumstances and satisfy the
7 requirements of due process; (5) reasonable cause exists to conduct a hearing, pursuant to Federal
8 Rule of Civil Procedure 23(e), to consider whether the Settlement is fair, reasonable and adequate
9 and whether it should be approved; and (6) the other related matters pertinent to the preliminary
10 approval of the Settlement should also be approved.

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 12 1. As used in this Preliminary Approval Order, capitalized terms shall have the
13 definitions and meanings accorded them in the Settlement.
- 14 2. The Court has jurisdiction over the subject matter and parties to this proceeding
15 under 28 U.S.C. § 1332.
- 16 3. Venue is proper in this district.
- 17 4. The Court finds, for settlement only, that the Federal Rule of Civil Procedure 23
18 factors are present and that certification of the Settlement Class, as defined and set forth below, is
19 appropriate under Rule 23. The Court, therefore, certifies a Settlement Class comprising:

20 (a) Antitrust Class Members: All current and former student-athletes residing
21 in the United States who competed on an NCAA Division I (formerly known as
22 “University Division” before 1973) college or university men’s basketball team or on an
23 NCAA Football Bowl Subdivision (formerly known as Division I-A until 2006) men’s
24 football team and whose images, likenesses and/or names allegedly have been included or
25 could have been included (by virtue of their appearance in a team roster) in or used in
26 connection with NCAA Branded Videogames published or distributed from July 21, 2005
27 until [INSERT DATE]. Excluded from the class are EA, CLC, the NCAA, and their
28

1 officers, directors, legal representatives, heirs, successors, and wholly or partly owned
2 subsidiaries or affiliated companies, class counsel and their employees, and the judicial
3 offers, and associated court staff assigned to cases listed in paragraph I of the Settlement
4 Agreement.

5 (b) Hart/Alston Right of Publicity Class Members: All NCAA football and
6 basketball players listed on the roster of a school whose team was included in an NCAA
7 Branded Videogame published or distributed during the period May 4, 2003 to May 4,
8 2007 and whose assigned jersey number appears on a virtual player in the software, or
9 whose likeness was otherwise included in the software. Excluded from the class are EA,
10 CLC, the NCAA, and their officers, directors, legal representatives, heirs, successors, and
11 wholly or partly owned subsidiaries or affiliated companies, class counsel and their
12 employees, and the judicial offers, and associated court staff assigned to cases listed in
13 paragraph I of the Settlement Agreement.

14 (c) Keller Right of Publicity Class Members: All NCAA football and
15 basketball players listed on the roster of a school whose team was included in an NCAA
16 Branded Videogame published or distributed during the period May 5, 2007 to [INSERT
17 DATE] and whose assigned jersey number appears on a virtual player in the software, or
18 whose likeness was otherwise included in the software. Excluded from the class are EA,
19 CLC, the NCAA, and their officers, directors, legal representatives, heirs, successors, and
20 wholly or partly owned subsidiaries or affiliated companies, class counsel and their
21 employees, and the judicial offers, and associated court staff assigned to cases listed in
22 paragraph I of the Settlement Agreement.

23 5. The Court finds for settlement only that the Settlement Class described above
24 satisfies the following factors of Federal Rule of Civil Procedure 23:

25 (a) Numerosity: Class Counsel estimate that over 100,000 individuals have
26 potential claims. This satisfies the Rule 23(a)(1) numerosity requirement.

27

28

1 (b) Commonality: The threshold for commonality under Rule 23(a)(2) is not
2 high and a single common issue will suffice. Plaintiffs allege, among others, antitrust and
3 right of publicity claims related to the Defendants' license, use, and/or sale of class
4 members' name, image, and likeness rights without compensation. This issue is common
5 to the Settlement Class.

6 (c) Typicality: The Plaintiffs' claims are typical of those of the Settlement
7 Class and satisfy Rule 23(a)(3).

8 (d) Adequacy: There are no disabling conflicts of interest between the
9 Plaintiffs and Settlement Class Members and the Plaintiffs have retained competent
10 counsel to represent the Settlement Class. Class Counsel regularly engage in complex
11 litigation similar to the present case and have dedicated substantial resources to the
12 prosecution of this matter. The adequacy requirement is satisfied.

13 (e) There is predominance and superiority. The common legal and factual
14 issue listed is predominant of all claims. Resolution of the common question constitutes a
15 significant part of Plaintiffs' and Settlement Class Members' claims. Further, because the
16 Settlement Class is being certified for purposes of settlement only, the Court need not
17 consider factors that might render a class action unmanageable.

18 6. The Court's findings regarding the class certification requirements of Rule 23 are
19 subject to the Fairness Hearing and are done without prejudice to the facts, record, and argument
20 that will be before the Court in connection with any class proposed for litigation of any remaining
21 claims against any other party.

22 7. The Court appoints the following people as Class Representatives for the
23 Antitrust Class: Edward C. O'Bannon Jr., Oscar Robertson, William Russell, Harry Flournoy,
24 Alex Gilbert, Sam Jacobson, Thad Jaracz, David Lattin, Patrick Maynor, Tyrone Prothro, Damien
25 Rhodes, Eric Riley, Bob Tallent, Danny Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake
26 Smith, Darius Robinson, Moses Alipate, and Chase Garnham. The Court appoints the following
27 people as Class Representatives for the *Keller* Right of Publicity Class: Samuel Michael Keller,
28

1 Bryan Cummings, Lamarr Watkins, and Byron Bishop. The Court appoints Ryan Hart and
2 Shawne Alston as Class Representatives for the *Hart/Alston* Right of Publicity Class.

3 8. The Court appoints the following law firms as Class Counsel: Hausfeld LLP,
4 Hagens Berman Sobol Shapiro LLP, The McKenna Law Firm LLC, and Lum, Positan & Drasco
5 LLP.

6 9. The Court preliminarily approves the Settlement, together with all of its Exhibits,
7 attached hereto as Exhibit A, as fair, reasonable and adequate, entered into in good faith, free of
8 collusion, and within the range of possible judicial approval.

9 10. The Court approves the form and content of the Settlement Notices, substantially
10 in the form attached as Exhibits B and C to the Settlement. This Court finds that the Notice Plan,
11 described in the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for
12 Preliminary Approval of Class Action Settlement is the best practicable under the circumstances.
13 The Notice Plan is reasonably calculated to apprise the Settlement Class Members of class
14 certification, the Settlement, and Class Counsel's application for fees and expenses. It constitutes
15 sufficient notice to all persons entitled to notice, and satisfies all requirements of law, including,
16 but not limited to, Rule 23 of the Federal Rules of Civil Procedure and the Constitutional
17 requirement of due process.

18 11. The Court directs that _____ act as the Notice and Claims Administrator
19 ("Administrator") and directs the Administrator to disseminate the Settlement Notices in the
20 following manner, which satisfies the requirements of Federal Rule of Civil Procedure 23 and due
21 process:

22 (a) Within ___ days following entry of the Preliminary Approval Order, the
23 Administrator shall mail, or cause to be mailed, copies of the Notice of Settlement of
24 Class Action, by first class United States mail, postage prepaid, to all potential Settlement
25 Class Members at the most recent address obtained by the methods described in the
26 Notice Plan.

1 (b) Within ___ days following entry of the Preliminary Approval Order, the
2 Administrator shall cause to be published the Summary Notice of Settlement of Class
3 Action by the methods described in the Notice Plan.

4 (c) The Administrator shall also create and manage a settlement website where
5 settlement-related documents, such as the Settlement, the Notice of Settlement of Class
6 Action, court-filed documents, and case updates and information shall be posted.

7 (d) The Administrator shall also create and manage a toll free number with an
8 automated system providing information about the Settlement, with the ability to request
9 copies of the Settlement Notice or the Settlement, and to speak with live operators.

10 12. _____ is directed to perform all other responsibilities under the Notice Plan
11 assigned to the Administrator.

12 13. The Court directs that a hearing be scheduled for _____, 2014, at 2 o'clock
13 p.m. (the "Fairness Hearing") to assist the Court in determining whether the Settlement is fair,
14 reasonable and adequate; whether Final Judgment should be entered dismissing with prejudice
15 Defendants Electronic Arts Inc. and Collegiate Licensing Company in the above-captioned action
16 and any other actions by Settlement Class Members pending before this Court; whether Class
17 Counsel's application for fees and expenses should be approved; and whether Class Counsel's
18 request for incentive payments to the Class Representatives should be approved.

19 14. The Court further directs that any Settlement Class Member who wishes to object
20 to the Settlement may do so in writing. All written objections and supporting papers must: (a)
21 identify the case name and number (*In re NCAA Student-Athlete Name and Likeness Licensing*
22 *Litigation*, Case No. 09-CV-1967-CW); be submitted to the Court either by mailing them to the
23 Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay
24 Street, Oakland, CA 94612, or by filing them in person at any location of the United States
25 District Court for the Northern District of California; and (c) be filed or postmarked on or before
26 _____. Before the Fairness Hearing, all objections will be scanned into the electronic case
27 docket and the parties will receive electronic notices of the filing.
28

1 15. The Court further directs that any Settlement Class Member may appear at the
2 Fairness Hearing, either in person or through personal counsel, retained at the Settlement Class
3 Member's expense, to voice an objection to the Settlement or to Class Counsel's application for
4 fees and expenses or request for incentive payments.

5 16. The Court further directs that any person within the Settlement Class definition
6 who wishes to be excluded from the Settlement Class must mail a written Request for Exclusion
7 to the Administrator postmarked on or before the Opt Out Deadline. Any Request for Exclusion
8 must include the name of the person seeking exclusion and a statement that he requests exclusion
9 from the class and does not wish to participate in the Settlement.

10 17. The cost of providing Notice, as provided for by this Order and the Settlement,
11 shall be paid from the Notice and Administration Fund and from the Settlement Fund if the cost
12 of providing Notice exceeds the amount in the Notice and Administration Fund.

13 18. The Court further directs the Administrator to promptly provide unredacted copies
14 of any Requests for Exclusion, and any withdrawals thereof, to EA, CLC, and Class Counsel.
15 Prior to the Fairness Hearing, the Administrator will submit to the Court, under seal, a report
16 identifying all persons making Requests for Exclusion not thereafter timely withdrawn and the
17 date on which each request was postmarked (or if there is no legible postmark date, the date
18 received by the Administrator). A copy of the report will be provided to EA, CLC, and Class
19 Counsel, who will keep the report confidential.

20 19. Neither the Settlement, nor any exhibit, document or instrument delivered
21 thereunder shall be construed as or deemed to be evidence of an admission or concession by EA,
22 CLC, or the other Released Parties of an interpretation of, any liability or wrongdoing by EA or
23 CLC, or of the truth of any allegations asserted by Plaintiffs, Settlement Class Members or any
24 other person.

25 20. The Court finds that the Settlement, along with all related drafts, motions, court
26 papers, conversations, negotiations, mediations and correspondence, including statements made in
27 mediations or written submissions to the mediator, constitute an offer to compromise and a
28

1 compromise within the meaning of Federal Rule of Evidence 408, California Rule of Evidence
2 1152 and any equivalent rule of evidence of any state; and are privileged under Section 1119 of
3 the California Evidence Code.

4 21. Except as explicitly provided in the Settlement Agreement, neither the
5 Settlement—approved or not approved—nor any exhibit, document or instrument delivered
6 thereunder, nor any statement, transaction or proceeding in connection with the negotiation,
7 execution or implementation of the Settlement, shall be admissible in evidence in this or any
8 other proceeding for any purpose, including as evidence. Without limitation of the foregoing,
9 nothing contained in the Settlement, approved or not approved, nor any exhibit, document or
10 instrument delivered thereunder, nor any statement, transaction or proceeding in connection with
11 the negotiation, execution or implementation of the Settlement, shall be given any form of res
12 judicata, collateral estoppel or judicial estoppel effect against EA, CLC or the other Released
13 Parties in any administrative or judicial forum or proceeding.

14 22. Notwithstanding the foregoing, the Settlement, any order granting preliminary or
15 final approval of the Settlement and any appellate decision affirming Final Judgment is
16 admissible as follows.

17 (a) The Settlement is admissible by any Party for the purpose of obtaining
18 approval of, implementing and/or enforcing the Settlement.

19 (b) The Settlement, any order granting preliminary or final approval to the
20 Settlement, any appellate decision affirming Final Judgment, and any proceedings and
21 submissions in connection with this Settlement are admissible for purposes of determining
22 Class Counsel's application for attorneys' fees and costs or in connection with any appeal
23 of an award of Class Counsel's attorneys' fees and costs in this Action.

24 (c) If finally approved, the Settlement, any order granting preliminary or final
25 approval of the Settlement and any appellate decision affirming any order of this Court
26 with respect to the Settlement, may be pleaded by EA, CLC, or the Released Parties as a
27 full and complete defense (including any defense based upon release, res judicata, or
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1 injunction) to any action, suit or other proceeding that has been or may be instituted,
2 prosecuted or attempted with respect to any of the Released Claims; and the Settlement,
3 any order granting preliminary or final approval to the Settlement and any appellate
4 decision affirming this Final Judgment, or any other proceedings in connection therewith,
5 may be filed, offered or submitted by EA, CLC, or the Released Parties or otherwise used
6 to support such defense.

7 23. If the Settlement is not approved, or the Effective Date does not occur, or the
8 Settlement is terminated under its terms, then (a) all parties will proceed as if the Settlement
9 (except those provisions that, by their terms, expressly survive disapproval or termination of the
10 Settlement) had not been executed and the related orders and judgment had not been entered,
11 preserving in that event all of their respective claims and defenses in the Action; and (b) all
12 releases given will be null and void. In such an event, this Court's orders regarding the
13 Settlement, including this Preliminary Approval Order, shall not be used or referred to in
14 litigation for any purpose. Nothing in the foregoing paragraph is intended to alter the terms of the
15 Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

16 24. The Court further directs that the following deadlines are established by this
17 Preliminary Approval Order:

18 Opt Out Deadline: [INSERT]

19 Objection Deadline: [INSERT]

20 Fairness Hearing: [INSERT] (This date could change. The parties should check the
21 Court's website to confirm.)

22
23 Dated this ____ day of _____, 2014.

24 _____
25 The Honorable Claudia Wilken
26 United States District Judge
27
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EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If You Were Listed on the Roster of an NCAA Men’s Football or Basketball Team Any Time Between May 4, 2003 and [PRELIMINARY APPROVAL DATE], You Could be Affected by a Proposed Class Action Settlement

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- Class action lawsuits are currently pending against Defendants Electronic Arts Inc. (“EA”), Collegiate Licensing Company (“CLC”), and the National Collegiate Athletic Association (“NCAA”).
- A proposed settlement of \$40 million has been reached with EA. If the settlement is approved, it will resolve the lawsuits as to EA and CLC.
- The Plaintiffs in the lawsuits allege, among other claims, violations of antitrust and right of publicity laws stemming from the Defendants’ alleged license, use, and/or sale of class members’ name, image, and likeness rights without compensation in NCAA-branded videogames manufactured and distributed by EA. Defendants deny using Plaintiffs’ names, image or likenesses and any wrong-doing.
- Even if the proposed settlement is approved, the lawsuits will continue against the NCAA.
- This notice includes information regarding the litigation and proposed settlement with EA. Your legal rights and options – **and the deadlines to exercise them** – are also explained in this notice. Please read the entire notice carefully.
- **Your legal rights will be affected whether you act or don’t act, but the only way you receive money from the settlement fund is by submitting a valid claim as described below.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM	The only way to get a payment. To obtain a payment from the settlement fund, you must submit a valid claim form.
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against EA and/or CLC about the legal claims in this case.
OBJECT	Write to the Court about what you don’t like about the settlement.
GO TO A HEARING	Ask to speak to the Court about the fairness of the settlement.
DO NOTHING	Get no payment and give up your rights.

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BASIC INFORMATION

1. Why did I get this Notice?

You may have been on the roster of an NCAA men's basketball or football team during the period from and including May 4, 2003 up to and including [PRELIMINARY APPROVAL DATE].

You were sent this Notice because, as a possible class member, you have the right to know about the proposed settlement in these class action lawsuits, and about all your options, before the Court decides whether to approve the settlement. If the Court approves it and after objections and appeals are resolved, an administrator appointed by the Court will make payments, as described below, to settlement class members who submit a valid claim.

This Notice explains the litigation, the proposed settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. **You must submit a valid claim to receive a payment under the settlement.**

The Court supervising the case is the United States District Court for the Northern District of California. The case is called *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*, Case No. 09-CV-1967-CW. The people who sued are the Plaintiffs, and the companies they sued, EA, CLC, and NCAA, are called Defendants.

2. What is this lawsuit about?

There are two types of lawsuits involved in this case. The first type, called the Antitrust Lawsuits, allege, among other things, that the NCAA, its member schools and conferences, CLC and EA committed violations of the federal antitrust laws by engaging in a price fixing conspiracy and a group boycott/refusal to deal that unlawfully foreclosed class members from receiving compensation in connection with the commercial exploitation of their names, images, and likenesses during the years in which they played Division I college basketball or football and after their intercollegiate athletic competition ceased.

The second type, called the Right of Publicity Lawsuits, allege, among other things, that the Defendants misappropriated NCAA football and basketball players' rights of publicity by using student athletes' names, images, and likenesses in EA's NCAA-branded videogames.

Defendants have denied these claims and have asserted various defenses to the claims.

3. Who are the Parties?

The plaintiffs in the Antitrust Lawsuits are: Edward C. O'Bannon Jr., Oscar Robertson, William Russell, Harry Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David Lattin, Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric Riley, Bob Tallent, Danny Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake Smith, Darius Robinson, Moses Alipate, and Chase Garnham.

The plaintiffs in the Right of Publicity Lawsuits are: Samuel Michael Keller, Ryan Hart, Shawne Alston, Bryan Cummings, Lamarr Watkins, and Byron Bishop.

The Defendants are: Electronic Arts, Inc. ("EA"); Collegiate Licensing Company ("CLC"); and the National Collegiate Athletic Association ("NCAA").

4. What is a class action settlement?

In a class action, one or more individuals, called Class Representatives, sue on behalf of others who have similar claims, and the claims are decided together by the Court. All of these people with similar claims are called a class or class members. A class action settlement resolves the case for all class members as to those defendants who are included in the settlement, except for those class members who exclude themselves from the class by following the procedure set by the Court.

5. Why is there a Proposed Settlement?

EA and CLC have denied all liability in this case and have asserted various defenses to the Plaintiffs' claims. The Court did not decide in favor of the Plaintiffs, EA, or CLC. Instead, both sides agreed to the Proposed Settlement. That way, they avoid the cost and risk of a trial, and the class members affected will get compensation. The Class Representatives and Class Counsel think the Proposed Settlement is best for all class members. The case is proceeding against the NCAA.

WHO IS AFFECTED BY THE PROPOSED SETTLEMENT

To see if you are affected by this Proposed Settlement, you first have to determine if you are a class member.

6. How do I know if I am part of the Proposed Settlement?

If the Settlement is approved, everyone who fits one or more of the class or subclass descriptions below (and not within one of the excluded groups) will be a class member for settlement purposes only:

Antitrust Class Members: All current and former student-athletes residing in the United States who competed on an NCAA Division I (formerly known as "University Division" before 1973) college or university men's basketball team or on an NCAA Football Bowl Subdivision (formerly known as Division I-A until 2006) men's football team and whose images, likenesses and/or names allegedly have been included or could have been included (by virtue of their appearance in a team roster) in or used in connection with NCAA Branded Videogames published or distributed from July 21, 2005 until [PRELIMINARY APPROVAL DATE].

Antitrust Roster-Only Subclass Members: Those Antitrust Class Members whose images, likenesses and/or names were not included in or used in connection with NCAA Branded Videogames.

Keller Right of Publicity Class Members: All NCAA football and basketball players listed on the roster of a school whose team was included in an NCAA Branded Videogame published or distributed during the period May 5, 2007 to [PRELIMINARY APPROVAL DATE] and whose assigned jersey number appears on a virtual player in the software, or whose photograph was otherwise included in the software.

Hart/Alston Right of Publicity Class Members: All NCAA football and basketball players listed on the roster of a school whose team was included in an NCAA Branded Videogame published or distributed during the period May 4, 2003 to May 4, 2007 and whose assigned jersey number appears on a virtual player in the software, or whose likeness was otherwise included in the software.

Excluded from all classes are EA, CLC, the NCAA, and their officers, directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies, class counsel and their employees, and the judicial offers, and associated court staff assigned to cases listed in Section I of the Settlement Agreement.

7. I'm still not sure if I am included.

If you are still not sure if you are a class member, you can ask for free help by visiting the official settlement website at www._____.com; contacting the Claims Administrator toll-free at _____; or contacting any of the Class Counsel listed in Question 24 below. You are not required to pay anyone to assist you in filing a claim.

THE PROPOSED SETTLEMENT BENEFITS

8. What does the Proposed Settlement provide?

The Proposed Settlement provides for a total cash payment of \$40 million (the "Settlement Fund").

9. How do I get a payment?

If you are a settlement class member, you do not exclude yourself from the class, and you submit a valid and timely claim, you are eligible to get a payment. In order to receive a payment, you must submit a valid and timely claim. If you did not receive a claim form by mail, you may fill out an online claim form or you may request a claim form at www._____.com or by calling the Claims Administrator toll-free at _____.

Completed Claim Forms must be filled out online or be post-marked by [_____] and returned to the Claims Administrator at the following address:

[INSERT]

If you do not submit a timely, properly addressed claim form, your claim may be rejected and you may not be able to get any payment.

10. How much will my payment be?

Class Counsel have proposed a Plan of Allocation describing the division of the Settlement Fund.

Under the Plan of Allocation, the Settlement Fund will first be used to pay attorneys' fees and expenses approved by the Court, and the entire balance (the "Net Settlement Fund") will be distributed to class members that submit valid and timely claims as follows:

- 12.5% of the Net Settlement Fund will be allocated, *pro rata* per season roster appearance, to Antitrust Roster-Only Subclass Members;
- 10% of the Net Settlement Fund will be allocated, *pro rata* per season roster appearance, to *Hart/Alston* Right of Publicity Class Members; and
- 77.5% of the Net Settlement Fund will be allocated, *pro rata* per season roster appearance, to Antitrust Class Members other than Antitrust Roster-Only Subclass Members, and *Keller* Right of Publicity Class Members.
- YOU MAY BE IN MORE THAN ONE OF THESE GROUPS.

Below is a chart with estimated recovery amounts per roster year appearance at various claims rates that can be used to estimate total recovery by class members. The amount of money distributed to each class member will vary depending on: (1) which class(es) you are part of; (2) how many years you were listed on a roster; (3) the

total number of class members; (4) the number of class members that submit valid claims; and (5) the amount of fees and costs awarded by the court. Each amount below is the recovery amount for an appearance on a single season roster or one version of the game. If, for example, a class member appeared in four versions of the videogame from 2007-2011, he would receive 4 x \$665-951 (assuming a 25% claims rate). For additional calculation examples, please visit www._____.com.

Estimated Amount Per Roster Year Appearance at Various Claims Rates				
	100%	75%	50%	25%
In Game 2003-2005	\$96-129	\$129-172	\$193-259	\$386-517
In Game 2005-2014	\$166-238	\$222-317	\$332-476	\$665-951
Roster Only 2005-2014	\$48-69	\$64-92	\$96-138	\$193-276

11. When will I receive a payment?

The Net Settlement Fund will be distributed to Settlement Class Members after the claim forms are processed and the Court has authorized distribution.

12. What am I giving up to get a payment or stay in the class?

Unless you exclude yourself from the settlement, you are staying in the class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against EA and/or CLC involving the legal issues in the lawsuits. This is called a release. It also means that all of the Court's orders will apply to you and legally bind you.

In exchange for the benefits described in this notice, the proposed settlement states that there will be a release of claims against EA, CLC, and the other Released Parties (as defined in the Settlement Agreement). The Proposed Settlement, however, does not release any claims against the NCAA.

The settlement agreement, which is available at www._____.com describes the legal claims that you give up if you stay in the class.

EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

If you want to keep the right to sue or continue to sue EA and/or CLC on your own about the legal issues in this case, then you must take steps to get out of the settlement with EA. This is called excluding yourself—or sometimes referenced as opting out of the class. If you opt out of a settlement, you will not get any payment from the settlement.

13. How do I get out of the Proposed Settlement?

To exclude yourself from the Proposed Settlement, you must send a letter by mail saying that you want to be excluded from the settlement class. You cannot exclude yourself on the phone or by e-mail. The letter must include the following information:

- Your name
- A statement indicating that you want to be excluded from the settlement class and do not wish to participate in the Proposed Settlement.

Your letter must be postmarked by _____ and sent to:

[INSERT]

Unless you exclude yourself, you cannot sue EA or CLC for the claims that the settlement resolves. If you have a pending lawsuit against EA or CLC involving the same legal issues in this case, speak to your lawyer in that case immediately. (You must exclude yourself from *this* class in order to continue your own lawsuit against EA and/or CLC.)

14. If I exclude myself, can I get money from the proposed settlement or object to the proposed settlement?

No. If you decide to exclude yourself from the Proposed Settlement, you will not be able to get money from the Proposed Settlement, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) EA and/or CLC in the future.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Hausfeld LLP, Hagens Berman Sobol Shapiro LLP, The McKenna Law Firm LLC, and Lum, Positan & Drasco LLP to represent the class. You will not be charged for these lawyers. If you want to be represented by your own lawyer and have that lawyer appear in court for you in this case, you may hire one at your own expense.

16. How will the lawyers be paid?

You are not personally responsible for payment of attorney's fees or expenses for Class Counsel. Instead as compensation for their time and risk in litigating the case on a contingent basis, Class Counsel will ask the Court to approve payment from the settlement fund of attorney's fees of up to 33% of the \$40 million dollar Settlement Fund, as well as for reimbursement for costs and expenses incurred in the prosecution of the lawsuits not to exceed \$2,500,000.

Class Counsel will also ask the Court to approve from the settlement fund incentive payments for each of the three class representatives for their work in representing Class Representatives: \$15,000 for Samuel Michael Keller, Edward C. O'Bannon, and Ryan Hart; \$5,000 for Oscar Robertson, William Russell, Harry Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David Lattin, Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric Riley, Bob Tallent, Danny Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake Smith, Darius Robinson, Moses Alipate, Chase Garnham, and Shawne Alston; and \$2,500 for Bryan Cummings, Lamarr Watkins, and Byron Bishop.

17. How do I tell the Court that I don't like all or part of the proposed settlement?

You can object to the proposed settlement if you are a member of the settlement class and have not opted-out. You can object if you don't like any part of the proposed settlement, or if you disagree with the plan of allocation, the request for attorneys' fees and reimbursement of expenses, or the request for incentive payments. You can give reasons why you think the Court should not approve any or all of them. The Court will consider your views.

You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

All written objections and supporting papers must:

- clearly state your name;
- identify the case name and number (*In re NCAA Student-Athlete Name and Likeness Licensing Litigation*, Case No. 09-CV-1967-CW);
- be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California.
- be filed or postmarked on or before _____.

18. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Proposed Settlement, plan of allocation, the request for attorneys' fees and reimbursement of expenses, or the request for incentive payments. You can object to the Proposed Settlement only if you stay in the class. If you exclude yourself, you have no right to object because the Proposed Settlement no longer affects you.

THE COURT'S FAIRNESS HEARING

Class counsel will file a motion for final approval of the Proposed Settlement, the plan of allocation, the request for attorneys' fees and reimbursement of expenses, and the request for incentive payments, which will contain additional information. These papers are currently due to be filed by [at least fourteen days before the deadline for objections] and will be available at www._____.com.

The Court will hold a final fairness hearing to decide whether to approve the Proposed Settlement, the plan of allocation, the request for attorneys' fees and reimbursement of expenses, and the request for incentive payments. You may attend but need not attend. If you do attend, you may ask the Court's permission to speak (see Question 21 for instructions), but you don't have to participate in the hearing if you do attend.

19. When and where will the Court decide whether to approve the Proposed Settlement?

The Court will hold a Fairness Hearing at _____ a.m. on _____, 2014, at the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612. The hearing may be moved to a different date or time without additional notice, so you should check the settlement website www._____.com before making travel plans. If there are objections, the Court will consider them. Judge Wilken will listen to class members who ask to speak at the hearing. We do not know when the Court will approve the Proposed Settlement, the plan of allocation, the request for attorneys' fees and reimbursement of expenses, or the request for incentive payments. It may be at the Fairness Hearing or not until afterward.

20. Do I have to come to the hearing?

No. Class Counsel will be prepared to answer any questions the Court may have at the hearing. However, you are welcome to attend the hearing at your own expense. If you send a comment or objection, you do not have to come to court to explain. As long as you mailed your written comment or objection on time as set out in this Notice, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

21. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing.

IF YOU DO NOTHING**22. What happens if I do nothing at all?**

If you do nothing, you will remain in the settlement class for the Proposed Settlement, but you will not receive a payment unless you submit a Claim Form. To submit a claim form, follow the instructions described in Question 9.

GETTING MORE INFORMATION**23. Are there more details about the Proposed Settlement?**

This Notice summarizes the Proposed Settlement. For the precise terms and conditions of the settlement, please see the settlement agreement, available at www._____.com, by contacting the Claims Administrator toll-free at _____, by contacting Class Counsel as set forth below, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

24. How do I get more information?

If you have questions or want more information, you can visit the official settlement website at www._____.com; contact the Claims Administrator toll-free at _____; or contact any of the following Class Counsel:

<p>Michael D. Hausfeld Hilary K. Scherrer Sathya S. Gosselin Hausfeld LLP 1700 K Street, N.W., Suite 650 Washington, DC 20006 202-540-7200</p>	<p>Steve W. Berman Hagens Berman Sobol Shapiro LLP 1918 Eighth Ave., Suite 3300 Seattle, WA 98101 206-623-7292</p>
<p>Rob Carey Leonard Aragon Hagens Berman Sobol Shapiro LLP 11 W. Jefferson, Suite 1000 Phoenix, Arizona 85014 602-840-5900</p>	<p>Dennis J. Drasco Lum, Drasco & Positan LLC 103 Eisenhower Pkwy Roseland, New Jersey, 07068 973-403-9000</p>
<p>Keith McKenna The McKenna Law Firm, LLC 96 Park Street Montclair, New Jersey 07042 973-509-0050</p>	

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE
ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS**

DATED: _____, 2014

BY ORDER OF THE COURT

UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

4841-3231-0810, v. 5

EXHIBIT C

Legal Notice

If You Were Listed on the Roster of an NCAA Men’s Football or Basketball Team at Any Time Between May 4, 2003 and [PRELIMINARY APPROVAL DATE], You Could be Affected by a Proposed Class Action Settlement

What is the settlement about?

Class action lawsuits are currently pending against Defendants Electronic Arts, Inc. (“EA”), Collegiate Licensing Company (“CLC”), and the National Collegiate Athletic Association (“NCAA”). A Proposed Settlement of \$40 million has been reached that would resolve these lawsuits as to EA and CLC. The Plaintiffs in the lawsuits allege, among other claims, violations of antitrust and right of publicity laws stemming from the Defendants’ license, use, and/or sale of NCAA men’s football and basketball players’ name, image, and likeness rights in NCAA branded videogames without compensation. Defendants have denied these claims and have asserted various defenses to the claims. The settlement provides the class with a significant financial recovery and helps the parties avoid the cost and risk of a trial against EA and CLC. The litigation is continuing against the NCAA.

Who is a Settlement Class Member?

Everyone who fits one or more of these descriptions (and is not within one of the excluded groups) is a class member:

Antitrust Class Members: All current and former student-athletes residing in the United States who competed on an NCAA Division I (formerly known as “University Division” before 1973) college or university men’s basketball team or on an NCAA Football Bowl Subdivision (formerly known as Division I-A until 2006) men’s football team and whose images, likenesses and/or names allegedly have been included or could have been included (by virtue of their appearance in a team roster) in or used in connection with NCAA Branded Videogames published or distributed from July 21, 2005 until [PRELIMINARY APPROVAL DATE].

Keller Right of Publicity Class Members: All NCAA football and basketball players listed on the roster of a school whose team was included in an NCAA Branded Videogame published or distributed during the period May 4, 2003 to [PRELIMINARY APPROVAL DATE] and whose assigned jersey number appears on a virtual player in the software, or whose photograph was otherwise included in the software.

Hart/Alston Right of Publicity Class Members: All NCAA football and basketball players listed on the roster of a school whose team was included in an NCAA Branded Videogame published or distributed during the period May 4, 2003 to May 4, 2007 and whose assigned jersey number appears on a virtual player in the software, or whose likeness was otherwise included in the software.

Excluded from all classes are EA, CLC, the NCAA, and their officers, directors, legal representatives, heirs, successors, class counsel and their employees, and the judicial officers, and associated court staff assigned to cases listed in Section I of the Settlement Agreement.

Will I get a payment?

If you are a settlement class member, and do not opt out, you will be eligible to receive a payment **but must submit a claim form which you can obtain by visiting the website or by calling the number listed below.**

What are my rights?

If you do not want to take part the settlement, you have the right to opt out of the settlements. To opt out, you must do so by ____, 2014. Class members who choose not to opt out also have the right to object to the settlement, the Plan of Allocation and the Application for Attorneys’ Fees and Reimbursement of Expenses. If you object, you must do so by ____, 2014. You may speak to your own attorney at your own expense for help.

A Final Approval Hearing to consider approval of the settlement will be held at the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612 on ____, 2014 at _____.

This is a Summary, where can I get more information?

You can get complete settlement information, including a copy of the full Notice, by visiting www._____.com, calling _____, or writing to _____.

You can also obtain additional information by contacting any of the following Class Counsel:

Michael D. Hausfeld Hausfeld LLP 1700 K Street, N.W., Suite 650 Washington, DC 20006 Tel: 202-540-7200	Steve W. Berman Hagens Berman Sobol Shapiro LLP 1918 Eighth Ave., Suite 3300 Seattle, WA 98101 Tel: 206-623-7292
Rob Carey Leonard Aragon Hagens Berman Sobol Shapiro LLP 11 W. Jefferson, Suite 1000 Phoenix, Arizona 85003 Tel: 602-840-5900	Dennis J. Drasco Lum, Drasco & Positan LLC 103 Eisenhower Pkwy Roseland, New Jersey, 07068 Tel: 973-403-900
Keith McKenna The McKenna Law Firm, LLC 96 Park Street Montclair, New Jersey 07042 973-509-0050	

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www._____.com

EXHIBIT D

CLAIM FORM

To receive benefits from this Settlement, your
 Claim Form must be postmarked on or before _____, 2014.
 You may submit your claim form online at www._____.com
 or mail your completed and signed claim form to:

[INSERT]

You must complete all sections and sign below in order to receive any benefits from this Settlement.

NAME	EMAIL ADDRESS		
MAILING ADDRESS			
CITY	STATE	ZIP	ZIP4 (optional)

FOR EACH SCHOOL, COLLEGE, OR UNIVERSITY ATTENDED, PLEASE IDENTIFY WHAT YEAR(S) YOU WERE LISTED ON AN NCAA MEN'S BASKETBALL OR FOOTBALL TEAM ROSTER. If you don't know whether you were listed on the team roster, include the years that you attended school and played NCAA men's basketball or football.

SCHOOL, COLLEGE, OR UNIVERSITY	YEAR(S) LISTED ON NCAA MEN'S BASKETBALL OR FOOTBALL TEAM ROSTER	THE SPORT FOR WHICH YOU WERE LISTED ON A ROSTER

I declare, under penalty of perjury, that I have accurately filled out this form to the best of my knowledge.

Signature: _____

Name (please print): _____

Date: _____

EXHIBIT E

1 Robert B. Carey (*Pro Hac Vice*)
2 Leonard W. Aragon (*Pro Hac Vice*)
3 HAGENS BERMAN SOBOL SHAPIRO LLP
4 11 West Jefferson Street, Suite 1000
5 Phoenix, Arizona 85003
6 Telephone: (602) 840-5900
7 Facsimile: (602) 840-3012
8 Email: rcarey@hbsslw.com
9 leonard@hbsslw.com

7 Michael P. Lehmann (Cal. Bar No. 77152)
8 Arthur N. Bailey, Jr. (Cal. Bar No. 248460)
9 HAUSFELD LLP
10 44 Montgomery Street
11 Suite 3400
12 San Francisco, CA 94104
13 Tel: (415) 633-1908
14 Fax: (415) 358-4980
15 Email: mlehmann@hausfeldllp.com
16 abailey@hausfeldllp.com

13 *Plaintiffs' Interim Co-Lead Class Counsel*
14 (Additional Counsel Listed on Signature
15 Page)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE NCAA STUDENT-ATHLETE) Case No. C 09-01967 CW
NAME & LIKENESS LICENSING)
LITIGATION) **FOURTH CONSOLIDATED AMENDED**
) **CLASS ACTION COMPLAINT**
)
)
)
_____)

1 1. Plaintiffs (as defined below) submit this amended complaint pursuant to a
2 settlement agreement and stipulation with Defendant Electronic Arts, Inc. (“EA”). This
3 amendment adds claims by Plaintiffs Ryan Hart and Shawn Alston (collectively *Hart/Alston*
4 Right of Publicity Plaintiffs) against EA only. This amendment makes no changes to the factual
5 allegations or claims made by the *Keller* Right of Publicity Plaintiffs or the *O’Bannon* Antitrust
6 Plaintiffs.
7

8 2. With respect to the right of publicity and related claims pertaining to video
9 games, as brought in the *Keller* complaint, Plaintiffs Samuel Keller, Bryan Cummings, Lamarr
10 Watkins, and Bryon Bishop (collectively “*Keller* Right of Publicity Plaintiffs”) bring this action
11 individually and as putative class representatives as further described herein. The terms “*Keller*
12 Right of Publicity”, as used herein, refers to the various claims described in the *Keller* Right of
13 Publicity Causes of Action set forth below.
14

15 3. With respect to the antitrust and related claims pertaining to multiple products, as
16 brought in the *O’Bannon* complaint, Plaintiffs Edward C. O’Bannon, Jr. (“Ed O’Bannon”), Oscar
17 Robertson, William Russell, Harry Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David
18 Lattin, Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric Riley, Bob Tallent, Danny
19 Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake Smith, Darius Robinson, Moses Alipate,
20 Chase Garnham, and Victor Keise (collectively “Antitrust Plaintiffs” or “Antitrust Class
21 Representatives”) bring this action individually and as putative class representative as further
22 described herein. The terms “Antitrust Claims” and “Antitrust”, as used herein, refer to the claims
23 described in the Antitrust Causes of Action set forth below.
24

25 4. Plaintiffs, by and through their attorneys, based on their individual experiences,
26 the investigation of counsel, and upon information and belief allege as follows.
27

28 **INTRODUCTION TO THE KELLER RIGHT OF PUBLICITY AND RELATED CLAIMS**

1 5. This suit arises out of the blatant and unlawful use of National Collegiate Athletic
2 Association (“NCAA”) student-athlete likenesses in videogames produced by EA. Despite clear
3 prohibitions on the use of student names and likenesses in NCAA bylaws, contracts and licensing
4 agreements, EA utilizes the likenesses of individual student-athletes in its NCAA basketball and
5 football videogames to increase sales and profits. EA also intentionally circumvents the
6 prohibitions on utilizing student-athletes’ names in commercial ventures by allowing gamers to
7 upload entire rosters, which include players’ names and other information, directly into the game
8 in a matter of seconds. Rather than enforcing its own rules, the NCAA and its licensing arm, the
9 Collegiate Licensing Company (“CLC”), have sanctioned EA’s violations. In fact, the NCAA
10 and the CLC have expressly investigated and approved EA’s use of player names and likenesses.
11 They have done so because EA’s use of player names and likenesses benefits the NCAA and
12 CLC by increasing the popularity of the relevant games and thus the royalties that the NCAA and
13 CLC can collect.

14
15
16 6. This is a proposed class action on behalf of NCAA student-athletes whose
17 likenesses and distinctive appearances have been used without their permission or consent, to
18 increase revenues and profits for Defendants, and in violation of state law.

19 **INTRODUCTION TO ANTITRUST AND RELATED CLAIMS**

20
21 7. This case involves anticompetitive conduct, namely a conspiracy by Defendant
22 National College Athletic Association (“NCAA”), its member schools and conferences, and its
23 vertical business partners, such as Defendants Electronic Arts, Inc. (“EA”), and the Collegiate
24 Licensing Company (“CLC”), to license and sell the names, images, and likeness of current and
25 former student-athletes without compensation to those student-athletes, under the guise of
26 “amateurism.”

27
28 8. The right to license or sell one’s name, image, and likeness is a property

1 right with economic value. Myles Brand, then-President (“Brand”), former President of the
2 NCAA, conceded this in public remarks that he made in 2008.

3 9. Despite the fact that each and every current and former student-athlete
4 possesses that right and therefore is entitled to control the use and attendant revenue from the
5 use of their name, image, and likeness, Defendants and their co-conspirators have collectively
6 reaped billions of dollars in revenue from the license and sale of game footage (including games
7 and clips used in television broadcasts and rebroadcasts, DVDs, on-demand streaming, and
8 “stock footage”), video games, photographs, jerseys and other apparel, trading cards, and other
9 memorabilia containing the names, images, and likenesses of current and former student-
10 athletes without paying a cent to those whose names, images, and likenesses were used.

11 10. The NCAA is a member association comprised of collegiate schools and
12 conferences. It has described itself as “a bottom-up organization in which the members rule the
13 Association.” The NCAA, in conjunction with its members, has established a constitution,
14 bylaws, regulations, rules, interpretations, and policies, both written and unwritten, which
15 regulate all aspects of collegiate athletics, including the conduct of member schools and
16 conferences, student-athletes, and the NCAA’s business partners.

17 11. According to the NCAA:

18 Bylaw 12 and other legislation are highly nuanced in language and
19 implementation to ensure that student-athletes **do not receive**
20 **benefits that could be construed as remuneration for athletics**
21 **participation, do not trade on their public standing as a**
22 **student-athlete**, and are not exploited by professional or
23 commercial interests that would abridge their status as amateurs in
24 their sport. (Emphasis added)

25 12. The conspiracy to deny compensation to current and former student-athletes for
26 the use of their names, images, and likeness emanates from a commercial bylaws, regulations,
27 rules, and policies, both written and unwritten developed and interpreted by the NCAA.

1 Additionally, recognizing that the student-athletes hold the right to control the use of their
2 names, images and likenesses, the NCAA and its member schools and conferences require
3 student-athletes to sign form releases to be eligible for intercollegiate athletics. These releases
4 are not explained to student-athletes, the student-athletes receive no consideration for the
5 release, and as such, the releases are, among other things, unenforceable contracts of adhesion.
6

7 13. While the NCAA rules, on their face, apply only to current student-athletes, they
8 are also viewed as binding on former student-athletes as well. NCAA President Mark Emmert
9 (“Emmert”) testified that neither the NCAA nor its members can pay former student-athletes:

10 They [NCAA members] are not free to do so if that was a--an
11 agreement that was struck before or during the time that the
12 individual was a student-athlete.

12 ...

13 “[W]e [the NCAA] don’t share revenue with student-athletes after
14 they have left their NCAA participation.

15 14. Defendants conduct is in violation Section 1 of the Sherman Act, 15 U.S.C. § 1.
16 Specifically, Defendants and their co-conspirators have engaged and continue to engage in an
17 overarching conspiracy to: (a) fix the amount current and former student-athletes are paid for
18 the licensing, use, and sale of their names, images, and likenesses at zero; and (b) foreclose
19 current and former student-athletes from the market for the licensing, use, and sale of their
20 names, images, and likenesses.
21

22 15. The conspiracy has both horizontal and vertical aspects. The horizontal aspects
23 emanate from the fact that NCAA’s member schools, which are horizontal competitors for
24 student-athletes, restrain competition by agreeing, through the NCAA, not to compete for
25 student-athletes on the basis of compensation in any form, promised, current, or deferred. The
26 vertical aspects emanate from the fact that the NCAA and its member schools and conferences,
27 in order not to undermine their horizontal agreement, further have agreed to impose, and EA,
28

1 CLC and other unnamed vertical business partner co-conspirators have agreed to abide by, the
2 same compensation restrictions. EA and CLC (including affiliates, predecessors, and
3 successors of CLC) have affirmatively participated in the NCAA's efforts to usurp the student-
4 athletes' name, image and likeness rights without compensation to the athletes and to foreclose
5 them from participating in the market.

6
7 16. Antitrust Plaintiffs and putative Class Representatives Ed O'Bannon, Oscar
8 Robertson, William Russell, Harry Flournoy, Alex Gilbert, Sam Jacobson, Thad Jaracz, David
9 Lattin, Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric Riley, Bob Tallent, Danny
10 Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake Smith, Darius Robinson, Moses Alipate,
11 Chase Garnham, and Victor Keise bring this action both individually and on behalf of two
12 classes—the the “Antitrust Declaratory and Injunctive Relief Class,” comprised of current and
13 former student-athletes and the “Antitrust Damages Class,” comprised of former student-
14 athletes, as follows:

15
16 The Antitrust Declaratory and Injunctive Relief Class

17 All current and former student-athletes residing in the United States
18 who compete on, or competed on, an NCAA Division I (formerly
19 known as “University Division” before 1973) college or university
20 men's basketball team or on an NCAA Football Bowl Subdivision
21 (formerly known as Division I-A until 2006) men's football team
22 and whose images, likenesses and/or names may be, or have been,
23 included or could have been included (by virtue of their appearance
24 in a team roster) in game footage or in videogames licensed or sold
25 by Defendants, their co-conspirators, or their licensees. The Class
26 excludes the officers, directors, and employees of Defendants, the
27 officers, directors and employees of any NCAA Division I college
28 or university, and the officers, directors, or employees of any
NCAA Division I athletic conference.

The Antitrust Damages Class

All former student-athletes residing in the United States who
competed on an NCAA Division I (formerly known as “University
Division” before 1973) college or university men's basketball team
or on an NCAA Football Bowl Subdivision (formerly known as

1 Division I-A until 2006) men's football team whose images,
2 likenesses and/or names have been included or could have been
3 included (by virtue of their appearance in a team roster) in game
4 footage or in videogames licensed or sold by Defendants, their co-
5 conspirators, or their licensees from July 21, 2005 and continuing
6 until a final judgment in this matter. The class excludes current
7 student-athletes. The Class also excludes the officers, directors,
8 and employees of Defendants, the officers, directors, and
9 employees of any NCAA Division I college or university, and the
10 officers, directors, or employees of any NCAA Division I athletic
11 conference.

12 17. As set forth in more detail below, the relief sought includes damages sustained by
13 the Antitrust Damages Class with respect to the license or sale of names, images, and/or
14 likeness in connection with game footage or videogames and injunctive relief enjoining the
15 anticompetitive conduct alleged herein.

16 **HART/ALSTON RIGHT OF PUBLICITY AND RELATED CLAIMS**

17 18. This suit arises out of the blatant and unlawful use of NCAA student-athlete
18 likenesses in videogames produced by EA. As a proximate result of EA's conduct, Plaintiffs,
19 Ryan Hart, Samuel Keller and Class Members have sustained and will continue to sustain injury
20 and damages, in an amount to be proved at trial.

21 19. Defendant EA's products, specifically the NCAA Football and NCAA Basketball
22 videogame franchises, use without authorization the names, images, and likenesses of Plaintiff
23 and Class Members. This misappropriation was done in disregard of the rights of the Plaintiffs
24 and Class Members and with the intent of increasing EA's sales and profits.

25 20. Through EA's course of action and inaction, EA has caused and will continue to
26 cause injury and damage to Plaintiffs and Class Members in an amount to be proved at trial.

27 21. Accordingly, Plaintiff and Class Members bring this suit to stop EA from
28 continuing its unlawful course of conduct and to recover all monetary losses EA has caused to
Plaintiff and Class Members.

1 **JURISDICTION AND VENUE WITH RESPECT TO RIGHT OF PUBLICITY CLAIMS**

2 22. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C.
3 § 1332(a) and (d) because the amount in controversy for the Class exceeds \$5,000,000, and the
4 Right of Publicity Plaintiffs and other putative Class members are citizens of different states
5 than Defendants.

6
7 23. This Court has personal jurisdiction over the Right of Publicity Plaintiffs because
8 Plaintiffs Samuel Keller, Bryan Cummings, Bryon Bishop Lamarr Watkins, Ryan Hart and
9 Shawne Alston submit to the Court’s jurisdiction. This Court has personal jurisdiction over
10 Defendants because Defendant Electronic Arts is headquartered in the District and Defendants
11 CLC and NCAA conduct substantial business in the District. Furthermore, many of the actions
12 giving rise to the complaint took place in the District, including the creation of the software that
13 is the subject of the complaint.

14
15 24. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants, as
16 corporations, are “deemed to reside in any judicial district in which they are subject to personal
17 jurisdiction,” and because many of the decisions behind the scheme to use student-athletes’
18 names and likenesses were made in this District. Because Electronic Arts resides in the
19 District, Defendants all transact business within the District, and a substantial part of the events
20 giving rise to the claims arose in this District, venue is proper.

21
22 25. Assignment to the Oakland division of this Court is appropriate because Defendant
23 EA’s headquarters and principal place of business is in Redwood City, California. Because this
24 action arises in the county of San Mateo, pursuant to Northern District of California, Local Rule
25 3-2(d), assignment to the Oakland Division is proper.

26 **JURISDICTION AND VENUE WITH RESPECT TO ANTITRUST CLAIMS**

27 26. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
28

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

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

13 28. This Court has personal jurisdiction over Defendants because, *inter alia*, they:
14 (a) transacted business throughout the United States, including in this District; (b) participated
15 in organizing intercollegiate athletic contests, and/or licensing or selling merchandise
16 throughout the United States, including in this District; (c) had substantial contacts with the
17 United States, including in this District; and (d) were engaged in an illegal anticompetitive
18 scheme that was directed at and had the intended effect of causing injury to persons residing in,
19 located in, or doing business throughout the United States, including in this District.
20

21 Additionally, Defendant EA maintains its headquarters in this District. Numerous NCAA
22 Division I universities or colleges also are found within this District, *i.e.*, the University of
23 California's Berkeley campus ("Cal"), Stanford University, Santa Clara University, the
24 University of San Francisco ("USF"), and St. Mary's College.
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1 **KELLER RIGHT OF PUBLICITY PLAINTIFFS**

2 29. Plaintiff Samuel Keller, an individual, is an Arizona resident and the former
3 starting quarterback for the Arizona State University and University of Nebraska football teams.

4 30. Plaintiff Bryan Cummings, an individual, is a New York resident and a former
5 linebacker for the University of Buffalo football team.

6 31. Plaintiff Lamarr Watkins, an individual, is a New Jersey resident and a former
7 linebacker for the University of Wisconsin football team.

8 32. Plaintiff Byron Bishop, an individual, is a South Carolina resident and a former
9 left guard for the University of North Carolina football team.

10 **ANTITRUST PLAINTIFFS**

11 33. The Plaintiffs described below are set forth as Class Representatives for the
12 Antitrust Claims as separately defined and detailed herein.

13 **Ed O'Bannon**

14
15 34. Antitrust Plaintiff Ed O'Bannon filed the first antitrust action in these consolidated
16 matters, and is a resident of Henderson, Nevada. Mr. O'Bannon competed on the University of
17 California, Los Angeles ("UCLA") men's basketball team in the 1991-92, 1992-93, 1993-94,
18 and 1994-95 seasons. UCLA was and is a member of the Pac-10 Conference. In the 1994-95
19 season, Mr. O'Bannon led his team to a national championship, and scored 30 points and had
20 17 rebounds in the championship game. Mr. O'Bannon received the John R. Wooden award as
21 the nation's most outstanding men's basketball player for the 1994-95 season, and also was
22 selected by the Associated Press as the 1994-95 NCAA postseason tournament's Most
23 Outstanding Player ("MOP"). Mr. O'Bannon competed pursuant to the NCAA's rules and
24 regulations, and has been deprived of compensation by Defendants and their co-conspirators for
25 the continued use of his image following the end of his intercollegiate athletic career. Mr.
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1 O'Bannon signed one or more of the release forms discussed herein (or the precursors to them,
2 including scholarship and eligibility papers that the NCAA has interpreted as a release of the
3 student-athlete's rights with respect to his image, likeness and/or name in connection with
4 merchandise sold by the NCAA, its members, and/or its licensees).

5
6 35. Mr. O'Bannon's image, likeness and/or name along with those of other Antitrust
7 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
8 in at least the ways described below, without informed consent from him and without
9 compensation paid to him. For example, on the NCAA's On Demand on-line store, operated in
10 connection with its for-profit business partner Thought Equity Motion ("TEM"), a two DVD
11 "1995 Men's Basketball National Championship Box Set" is offered for \$39.99, and described
12 as follows: "Ed O'Bannon, earning MOP honors, lead UCLA back to prominence by defeating
13 Arkansas 89-78 for their 11th title in school history. The box set also includes the 1995 Final
14 Four Highlights Video featuring UCLA, Arkansas, North Carolina, Oklahoma St." The Final
15 Four Highlights Video is separately offered for sale for \$24.99. UCLA's NCAA tournament
16 first round game against Florida International from 1994-95 is offered for sale at \$24.99, and its
17 description includes the following: "UCLA was led by All-Tournament Team selections Toby
18 Bailey and Ed O'Bannon, the tournament's Most Outstanding Player." UCLA's regional semi-
19 final game against Missouri is offered for \$24.99, and its description includes the following:
20 "UCLA was led by All-Tournament Team selections Toby Bailey and Ed O'Bannon, the
21 tournament's Most Outstanding Player." UCLA's national semi-final game against Oklahoma
22 State is offered for sale at \$24.99, and its description includes the following: "UCLA was led
23 by All-Tournament Team selections Toby Bailey and Ed O'Bannon, the tournament's Most
24 Outstanding Player."
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27 36. As additional examples, other DVDs offered for sale utilizing the image of Mr.
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1 O'Bannon and other Antitrust Damages Class members from the 1994-95 season include DVDs
2 of UCLA's regional final game versus the University of Connecticut, available for \$24.99, and
3 the championship game versus Arkansas offered for sale at \$24.99. An NCAA tournament
4 first-round game against Tulsa from the 1994-95 season is available for "pre-order," and a
5 description notes that "production of this game has been delayed." For the 1992-93 season, a
6 "Michigan Men's Basketball Fab Five 1993" three DVD set is offered for \$59.99, and one of
7 the games included is a regional game versus UCLA. That game is also separately offered for
8 sale at \$24.99. Also available for "pre-order" is UCLA's first round game versus Iowa State.
9 For the 1991-92 season, four UCLA NCAA tournaments games (against Robert Morris,
10 Louisville, Indiana, and New Mexico State) are available for pre-order.
11

12 37. The DVDs described above are available through numerous other outlets,
13 including UCLA's Official On-Line DVD store, where the 1995 championship game is
14 currently listed as the number three top-selling basketball DVD, amazon.com, CBS Sports'
15 "Online DVD Store," and wal-mart.com, on which the description of the 1995 championship
16 game includes the following: "The following content was provided by the publisher . . . The
17 Bruins held off the Razorbacks for a convincing 89-78 victory as Ed O'Bannon, the
18 tournament's Most Outstanding Player, led the Bruins back to the top of the college basketball
19 mountain as the 1995 National Champions."
20

21 38. As an additional example, a DVD of the 1995 Championship game, featuring
22 Mr. O'Bannon and other Antitrust Damages Class members, is available for rental from
23 Blockbuster Video and Netflix.
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25 39. As another example of formats in which Antitrust Damages Class members'
26 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
27 detailed herein, on one of the NCAA's on-line photo stores, at least three images of Mr.
28

1 O'Bannon are offered for sale. Interested purchasers must call the website's operator to discuss
2 pricing options. The photos are described as follows: "UCLA center George Zidek (25) and
3 Oklahoma State center Bryant Reeves (50) and UCLA forward Ed O'Bannon (31) during the
4 NCAA Final Four basketball championship semifinal game held in Seattle, WA at the
5 Kingdome."; "UCLA forward Ed O'Bannon (31) and Arkansas center Dwight Stewart (15)
6 during the NCAA Men's National Basketball Final Four championship game held in Seattle,
7 WA at the Kingdome. UCLA defeated Arkansas 89-78 for the title. O'Bannon was named
8 MVP for the tournament."; "UCLA's Ed O'Bannon turns cameraman as he cuts the net
9 following UCLA's 89-78 victory over Arkansas in the Division I Men's Basketball
10 Championship April 3, 1995 in Seattle, Washington. O'Bannon was named MVP of the
11 tournament."
12

13
14 40. As another example of formats in which Antitrust Damages Class members'
15 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
16 detailed herein, the NCAA and its partner TEM also offer for sale to corporate advertisers and
17 others a "stock footage" clip running 1 minute and 7 seconds that features Mr. O'Bannon's
18 performance in the 1994-95 NCAA championship game, as well as interview footage with Mr.
19 O'Bannon and others. The clip is described as follows: "Ed O'Bannon helps carry UCLA in
20 the 1995 Men's NCAA Division I Basketball Championship against Arkansas." It appears that
21 at least one additional clip featuring Mr. O'Bannon (titled "1995 UCLA vs. Missouri Ed
22 O'Bannon (#31)") is available. Interested parties must contact Thought Equity for pricing,
23 which appears to vary depending on intended usage.
24

25 41. As another example of formats in which Antitrust Damages Class members'
26 images are being utilized subject to the anticompetitive restraints detailed herein, Mr.
27 O'Bannon's likeness is utilized by the NCAA's business partner and Defendant Electronic Arts,
28

1 Inc. as a part of its NCAA Basketball 09 video game's "Classic Teams" feature (as described
2 more herein) where game players can select Mr. O'Bannon's 1995 UCLA team.

3 42. As another example of formats in which Antitrust Damages Class members'
4 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
5 detailed herein, UCLA games featuring Mr. O'Bannon also are periodically rebroadcast on
6 ESPN Classic.
7

8 43. On information and belief, Mr. O'Bannon's image, likeness and/or name has been
9 used and sold in additional ways for additional uses via the licensing entities such as Defendant
10 CLC and TEM described herein.

11 44. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
12 O'Bannon was injured in his business or property, and was unfairly deprived of compensation
13 in connection with the use and sale of his image, likeness and/or name.
14

15 **Oscar Robertson**

16 45. Plaintiff Oscar P. Robertson is a resident of Cincinnati, Ohio. It is impossible to
17 overstate Mr. Robertson's continuing stature in the game of basketball. He is generally
18 considered the greatest all-around player in the history of the sport. In 2000, he was named
19 "Player of the Century" by the National Association of Basketball Coaches in recognition of his
20 spectacular and unmatched body of work at the collegiate, professional, and Olympic levels.
21 Additionally, as described below, he was at the forefront of players' rights issues and forever
22 transformed the business of professional basketball via antitrust litigation that resulted in the
23 establishment of today's free-agent system.
24

25 46. In his remarkable collegiate career, Mr. Robertson competed on the University
26 of Cincinnati's men's basketball team in the 1957-58, 1958-59, and 1959-60 seasons. He was
27 the first player in history to lead the NCAA in scoring for three straight years, and he finished
28

1 with a career average of 33.8 points per game. Mr. Robertson also was the first player in
2 NCAA history to win National College Player of the Year honors three times. He was a
3 three-time first team All-American, and led the University of Cincinnati to two “Final Four”
4 appearances and a stunning 79-9 record over his three years of collegiate competition.

5
6 47. At the professional level, Mr. Robertson was an NBA star from 1960-61 to
7 1973-74, playing 10 years with the Cincinnati Royals (now the Sacramento Kings), and
8 four with the Milwaukee Bucks. He is the only player in NBA history ever to average a
9 “triple double” (double figures in scoring, 30.8 points per game; assists, 11.4 per game;
10 and rebounding, 12.5 per game) for an entire season, 1961-62. Mr. Robertson is by a wide
11 margin the all-time NBA leader in career triple-double games with 181 and single-season
12 triple-double games with 41 (1961-62). He also was the first player to lead the NBA in
13 scoring average (29.2) and assists average (9.7) in the same season, 1967-68. Mr.
14 Robertson led the Bucks to the 1971 NBA championship and three additional playoff
15 appearances including the NBA finals in 1974, and led the Royals to six consecutive
16 playoff appearances, 1962-1967. He was named the NBA's Most Valuable Player in 1964,
17 NBA Rookie of the Year, 1961, selected to 12 consecutive NBA All-Star Teams from
18 1961-1972, and named All-Star Game MVP 1961, 1964, 1969. He set a career record
19 with 9887 assists /9.5 average per game which stood for 17 years, and ranks among all-
20 time NBA scoring leaders with 26,710 points I 25.7 average.

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22
23 48. Mr. Robertson was the co-captain of undefeated, gold-medal winning 1960
24 U.S. Olympic Team, acknowledged as one of the greatest basketball teams ever, and was
25 the team's co leading scorer.

26 Some of Mr. Robertson's numerous honors and awards include the following:

- 27
28
- Selected Player of the Century by National Association of Basketball Coaches

- 1 • Inducted in Naismith Memorial Basketball Hall of Fame, 1979
- 2 • Inducted in International Basketball (FIBA) Hall of Fame, 2009
- 3 • Inducted in National Collegiate Basketball Hall of Fame, 2006
- 4 • Inducted in Olympic Games Hall of Fame
- 5 • Named one of NBA's 50 Greatest Players of All Time, 1997
- 6 • Named one of 20th Century's greatest athletes by *Sports Illustrated*
- 7 • Named one of the top ten basketball players of the 20th Century by the Associated Press, 1999
- 8 • Named one of five top college basketball players of the 20th Century by *Sports Illustrated*, 1999
- 9 • Selected by ESPN as one of Fifty Greatest Athletes of the 20th Century, 1999
- 10 • Honored by the NCAA as one of the premier student-athletes of all time
- 11 • US Basketball Writers Association renamed its Player of the Year award the Oscar Robertson Trophy in 1998

12 49. Mr. Robertson was the President of the NBA Players Association from 1965-1974.

13 "The Oscar Robertson Rule" was instituted as a result of antitrust litigation that he initiated
14 through the NBAPA. The litigation, among other things, sought to end the option clause that
15 bound a player to a single NBA team in perpetuity, and its settlement set the stage for free
16 agency in the NBA.

17 50. Mr. Robertson competed pursuant to the NCAA's rules and regulations, and
18 has been deprived of compensation by Defendants and their co-conspirators for the
19 continued use of his image following the end of his intercollegiate athletic career. Mr.
20 Robertson signed one or more of the release forms discussed herein (or the precursors to
21 them, including scholarship and eligibility papers that the NCAA has interpreted as a
22 release of the student-athlete's rights with respect to his image, likeness and/or name in
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1 connection with merchandise sold by the NCAA, its members, and/or its licensees and
2 licenses granted by the NCAA or its members with respect to broadcasts/rebroadcasts of
3 Division I men's basketball games).

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5 51. Mr. Robertson's image, likeness and/or name along with those of other
6 Antitrust Damages Class members, is being offered for sale and/or used during the
7 Antitrust Class Period in at least the ways described below, without informed consent from
8 him and without compensation paid to him.

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

20
21 53. The "Greats of the Game" cards described above featuring Mr. Robertson's
22 image bear the logo of defendant CLC. In a press release dated April 8, 2010, Upper Deck
23 and Defendant CLC stated the following: "[T]he Upper Deck Company is proud to announce
24 the release of its first collegiate-focused sports trading card set: 2010 Great of the Game
25 Basketball. With its recently inked exclusive contract with The Collegiate Licensing
26 Company (CLC), Upper Deck pulled out all the stops with its slam-dunk launch featuring
27 some of the greatest collegiate roundball stars in history," The press release continues that
28

1 “[t]he 200-card base set is chock full of the biggest names who have ever played collegiate
2 basketball ... Beyond the aforementioned base-level cards, Upper Deck’s Greats of the Game
3 Basketball brings collectors some of the most sought-after insert cards ever assembled. The
4 memorabilia insert card lineup is entitled ‘Old School Swatches’ ... “The press release
5 further quotes David Kilpatrick, Vice President of Non- Apparel Marketing for defendant
6 CLC as stating: “The collegiate institutions and CLC are looking forward to working closely
7 with Upper Deck to maximize the tremendous opportunities that exist for licensed collegiate
8 trading cards.”

10 54. In another 2009 set issued by the Upper Deck Company in conjunction with
11 defendant CLC, known as the “Old School” set and as identified in the press release
12 detailed above, Mr. Robertson's image was used on at least three cards, identified as the
13 “Old School” card (bearing card number 159), the “Old School Auto” card (bearing card
14 number 159), and the “Old School Swatches” card (bearing card number OS-33). These
15 cards bear actions photos of Mr. Robertson on the front and back, and include portions of
16 his cut-up uniforms in various colors. The back of the cards state: “You have received a
17 trading card with Oscar Robertson Game-Used basketball memorabilia. The
18 memorabilia has been certified as having been used in an official basketball game. We
19 hope you enjoy this piece of basketball history, as we continue to keep you as close as
20 you can get.” The card bears the signature of Richard P. McWilliam of The Upper Deck
21 Company, Inc., and bears the logo of defendant CLC.

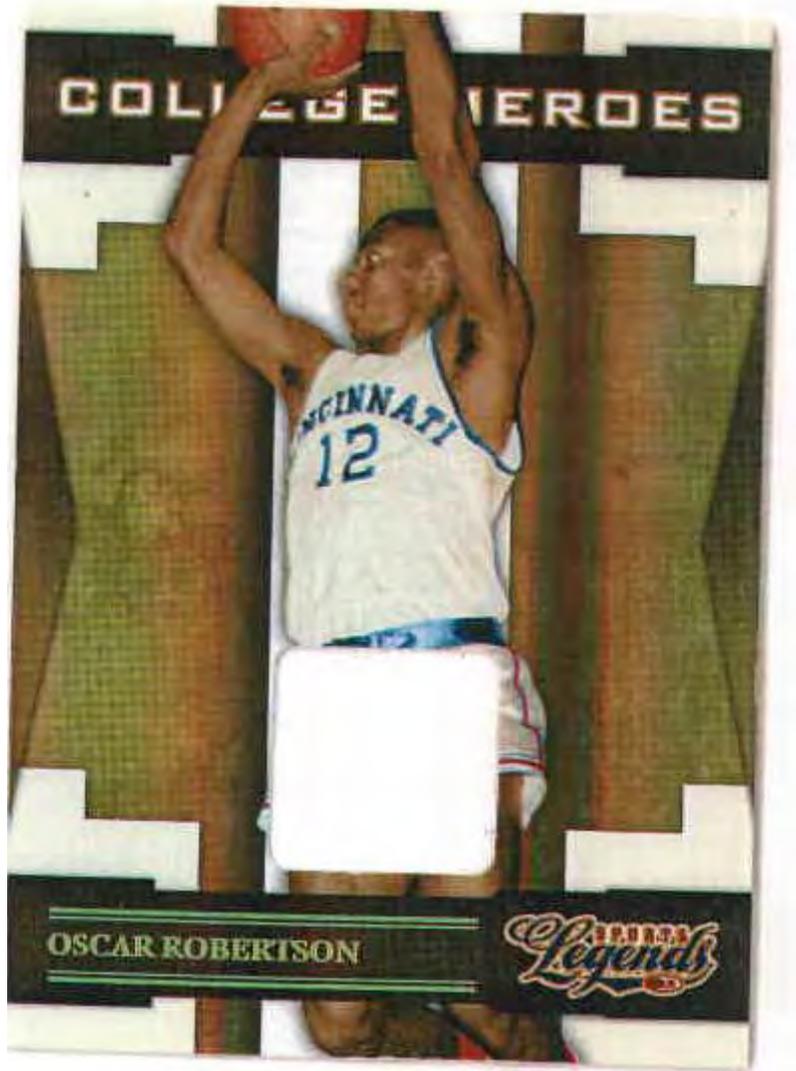
24 55. As another example, defendant CLC participated in another trade card
25 licensing deal, this time with the trading card company Donruss, and again using Mr.
26 Robertson’s collegiate image as well as cut-up pieces of his uniform. In the 2008 Sports
27 Legends set, Mr. Robertson’s image was used on the front and back of a card, and the
28

1 card states on the back that “[t]he enclosed piece of material was personally worn by
2 Oscar Robertson. The material was obtained and is guaranteed by Donruss Playoff L.P.”
3 The card is identified as card 7. The card bears the logo of defendant CLC.
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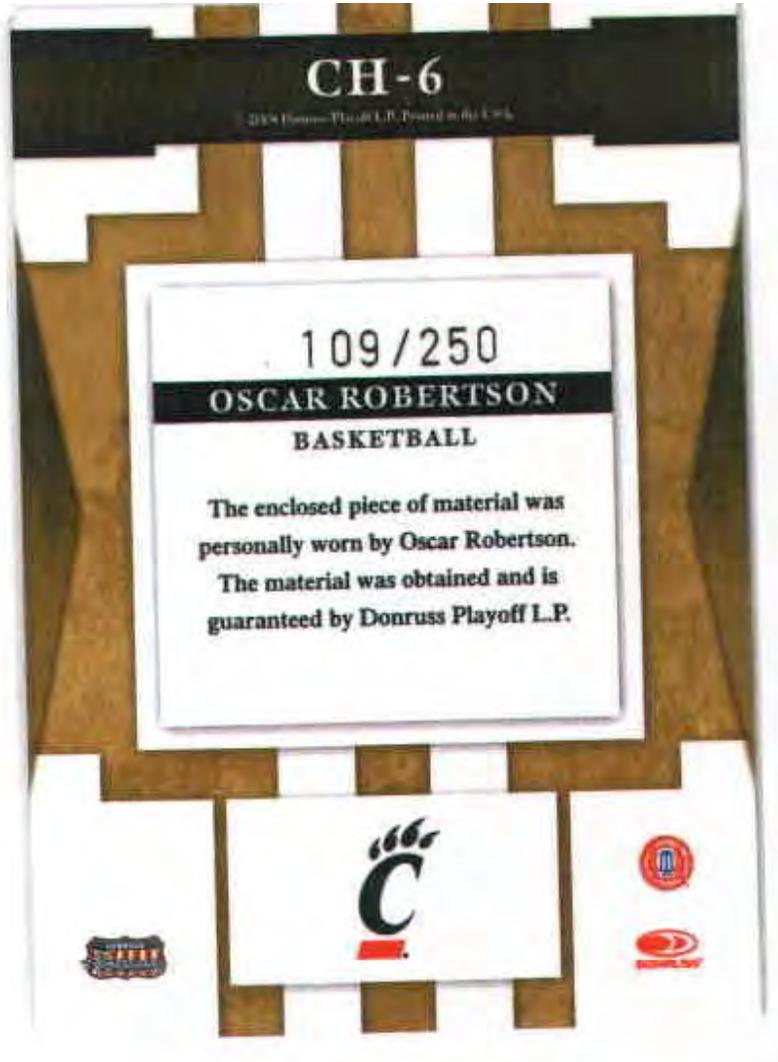
5 56. Another Donruss-issued card featuring Mr. Robertson's image is identified as a
6 2008 Sports Legends/College Heroes set again using Mr. Robertson's collegiate image as
7 well as cut- up pieces of his uniform. Mr. Robertson's image was used on the front and
8 back of a card, and the card states on the back that “[t]he enclosed piece of material was
9 personally worn by Oscar Robertson. The material was obtained and is guaranteed by
10 Donruss Playoff L.P.” The card is identified as card “CH-6” and 109/250. The card
11 bears the logo of defendant CLC.
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13 57. Copies of the front and back of the trading cards discussed above, including
14 those containing cut-up pieces of Mr. Robertson's uniforms, are set forth as follows:
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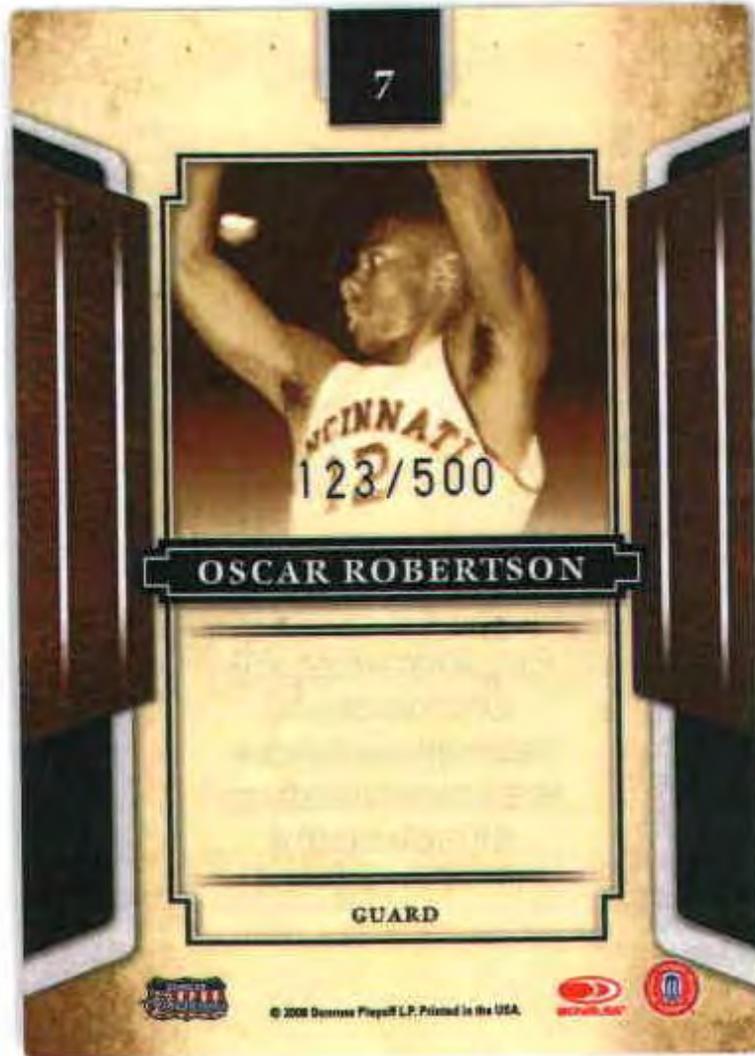
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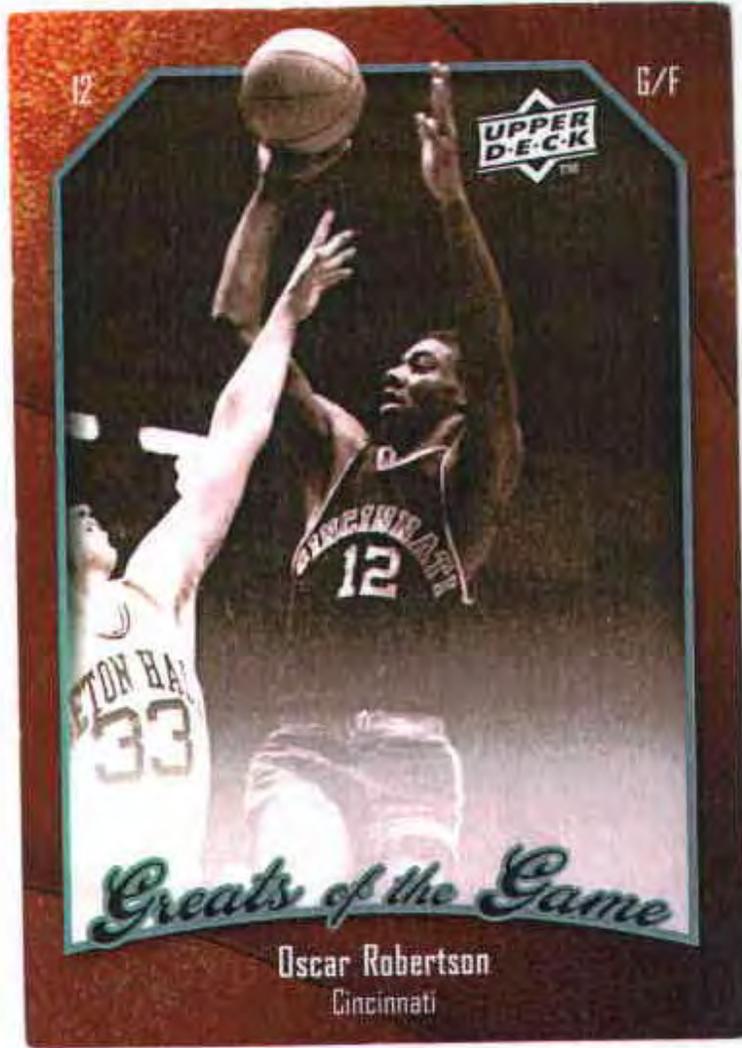


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(Material in center of card states: “The enclosed piece of material was personally worn by Oscar Robertson. The material was obtained and is guaranteed by Donruss Playoff L.P.)

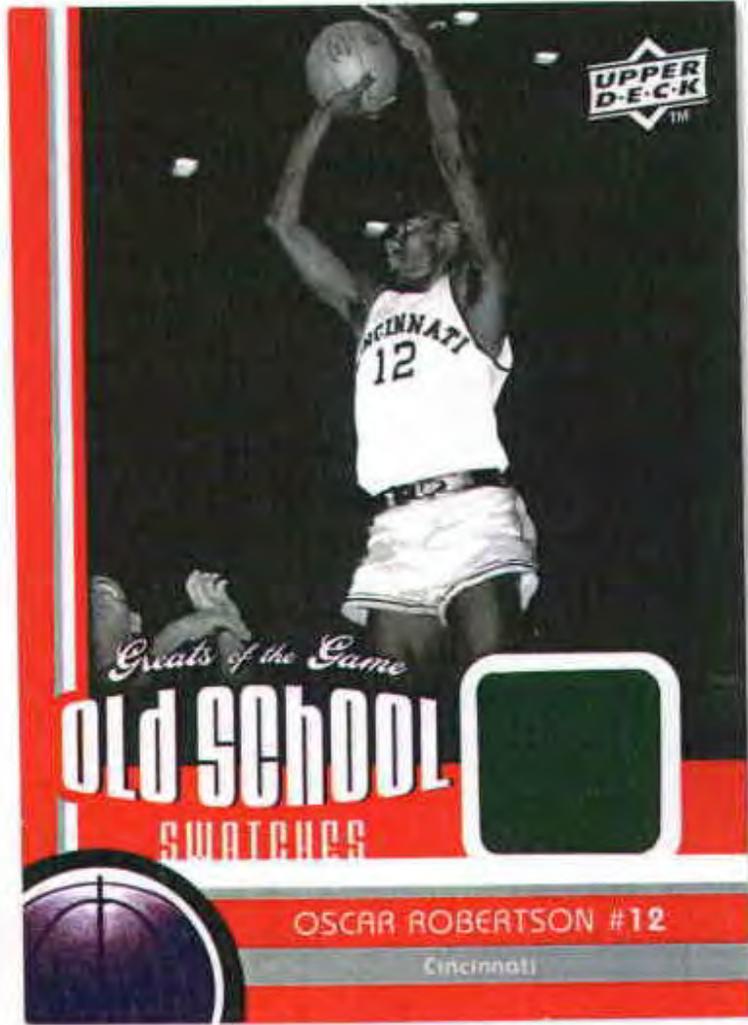
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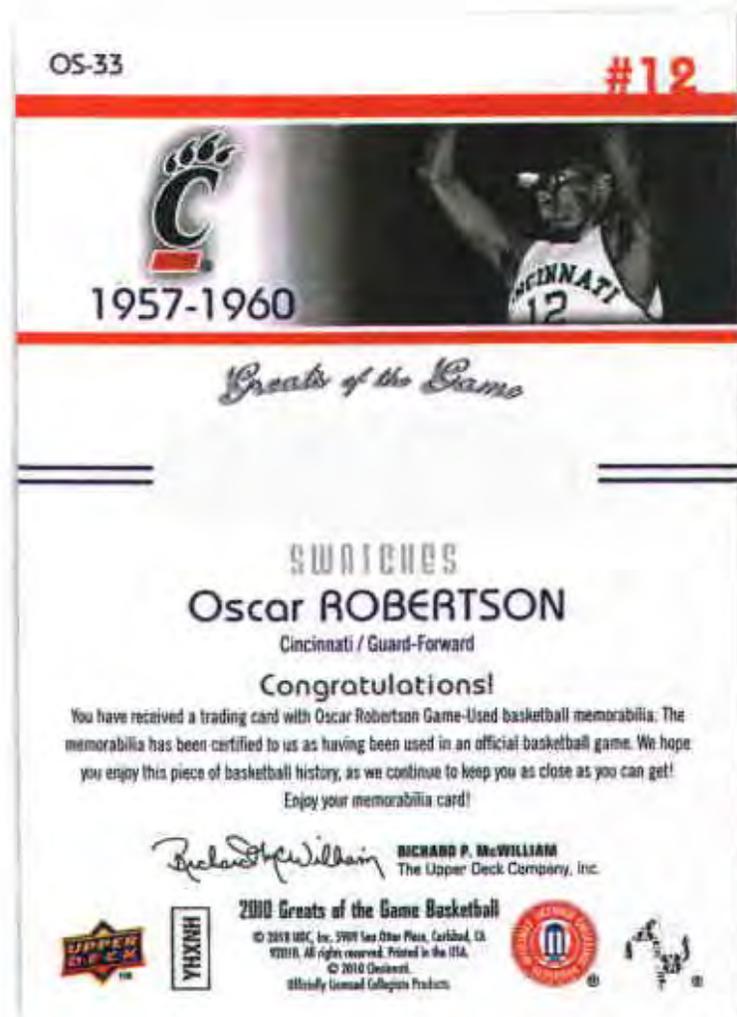


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58. Another example of a format in which Antitrust Damages Class members images, likenesses and/or names are being utilized subject to the anticompetitive restraints detailed herein is the NCAA's On Demand on-line store, operated in connection with its for-profit business partner Thought Equity Motion (1EM). 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. The 1960 NCAA regional game between Cincinnati and Kansas

1 featuring Mr. Robertson is offered for \$150. Another example of a format in which Antitrust
2 Damages Class members' images, likenesses and/or names are being utilized subject to the
3 anticompetitive restraints detailed herein is the NCAA's on-line photo store. At least one
4 image of Mr. Robertson is offered for sale in this format at prices ranging from \$15 to
5 \$200. On another photo site run by Replay Photos, one of the NCAA's and the University
6 of Cincinnati's business partners, another photograph of Mr. Robertson is available for sale
7 at prices ranging from \$15.95 to \$179.95. Another image of Mr. Robertson is offered for
8 sale on that site, identified as of the site's "top 10 photos," with pricing again beginning at
9 \$15.95.
10

11 59. Another example of a format in which Antitrust Damages Class members'
12 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
13 detailed herein is "stock footage" offered by the NCAA and its partner TEM. They offer
14 for sale to corporate advertisers and others a "stock footage" film clip that features Mr.
15 Robertson's performance in the NCAA tournament and captioned "[m]ontage featuring
16 Oscar Robertson of Cincinnati making lay-ups and a basket off a rebound." Interested
17 parties must contact TEM for pricing, which appears to vary depending on intended usage.
18 The NCAA and TEM offer another film clip for sale captioned "Bird's-eye view of Oscar
19 Robertson of Cincinnati getting a pass and making a basket." The NCAA and TEM offer
20 another film clip for sale captioned "[m]ontage featuring NCAA highlights of Oscar
21 Robertson of Cincinnati." The NCAA and TEM offer another film clip for sale captioned
22 "[m]ontage featuring Oscar Robertson of Cincinnati taking it all the way despite defense."
23
24

25 60. On information and belief, Mr. Robertson's image, likeness and/or name has
26 been used and sold in additional ways for additional uses via the licensing entities such as
27 Defendant CLC and TEM described herein.
28

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

4 **William Russell**

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

23 63. Mr. Russell competed pursuant to the NCAA's rules and regulations, and has
24 been deprived of compensation by Defendants and their co-conspirators for the continued
25

1 use of his image following the end of his intercollegiate athletic career. Mr. Russell signed
2 one or more of the release forms discussed herein (or the precursors to them, including
3 scholarship and eligibility papers that the NCAA has interpreted as a release of the student-
4 athlete's rights with respect to his image, likeness and/or name in connection with
5 merchandise sold by the NCAA, its members, and/or its licensees).

6
7 64. Mr. Russell's image, likeness and/or name, along with those of other Antitrust
8 Damages Class members, is being offered for sale and/or used during the Antitrust Class
9 Period in at least the ways described below, without informed consent from him and without
10 compensation paid to him. For example, on the NCAA's On Demand on-line store,
11 operated in connection with its for-profit business partner Thought Equity Motion, a 1955
12 NCAA national championship game featuring University of San Francisco vs. La Salle is
13 offered for sale at \$150 per DVD, or via bulk orders for 25 or more DVDs at pricing
14 available on request. A 1955 NCAA national semi-final game featuring Colorado vs.
15 University of San Francisco is offered for sale at \$150 per DVD, or via bulk orders for 25
16 or more DVDs at pricing available on request. Similar materials are available for the 1956
17 NCAA championship game featuring University of San Francisco vs. Iowa, the NCAA
18 regional final game featuring University of San Francisco vs. Utah, and the national
19 semifinal game vs. Southern Methodist.
20

21
22 65. The championship game is also offered for sale via other outlets, for example,
23 via efootage.com, which licenses out the footage of the game for varying prices depending
24 on the use and length of footage.

25 66. On Thought Equity Motion's footage licensing website, at least 54 video-clips
26 featuring Mr. Russell's collegiate images are currently available for licensing with "custom
27 pricing."
28

1 67. As another example of formats in which Antitrust Damages Class members'
2 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
3 detailed herein, on one of the NCAA's on-line photo stores, at least four images of Mr.
4 Russell are offered for sale. On NCAAPhotos.com, an image with the caption "University
5 of San Francisco's Bill Russell (6) gets a ride off the court by fans after defeating La Salle
6 77-63 to win the NCAA National Basketball title in Kansas City, MO..." is offered for sale
7 at price points ranging from \$15 to \$200. A team photo featuring Mr. Russell and his
8 teammates with the national championship trophy is available at the same price points. At
9 least two additional images of Mr. Russell in his USF uniform are for sale via Getty
10 Images' website, and upon information and belief, Getty Images has had a contractual
11 relationship with the NCAA relating to photo sales.
12

13 68. Additionally, Mr. Russell's image, likeness and/or name has been used in
14 replays of the championship game and clips from the game including on the ESPN Classic
15 network, as well as on broadcasts of University of San Francisco basketball games during
16 telecasts of West Coast Conference games including within the last two years.
17

18 69. Upon information and belief, Mr. Russell's image, likeness and/or name has
19 been used and sold in additional ways for additional uses via the licensing entities such as
20 Defendant CLC and TEM described herein.
21

22 70. Additionally, Defendant EA utilized Mr. Russell's name, image and/or likeness
23 in connection with its NCAA licensed videogames, including in 2009. In a November 12,
24 2008 interview, Novell Thomas, EA's Associate Producer for NCAA Basketball 09 stated
25 the following:

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

28 ...

1
2 The Tournament of Legends is a customizable, 64 team, single
3 elimination tournament. Top teams from the 50's, 60's, 70's, 80's, 90's
4 and 2000's are selectable. Coming up with and nailing down the
5 legendary teams was not an easy process. A lot of time was spent
6 researching the best teams and players from the various eras. Some of
7 the factors we looked at were: championships won, win/loss records,
8 team personnel and memorable team and player performances. To
9 ensure that we had the correct teams selected, we leveraged our
10 partners and contacts at ESPN and Blue Ribbon. We also got Basketball
11 Hall of fame contributor, Dick Vitale's thoughts and recommendations -
12 after all, he's been around college basketball for years and has seen all of
13 these teams and players first hand.

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

17 50's ...One of the best players of all time played during this era. The
18 University of San Francisco's center, #6, is arguably one of the best
19 players to play that position. He won two championships and many
20 many more at the professional level. Any player who averages 20
21 points and 20 rebounds per game during his college career, is
22 definitely worth playing with.

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

26 **Harry Flournoy**

27 72. Antitrust Plaintiff Harry Flournoy is a resident of McDonough, Georgia. Mr.
28 Flournoy was the captain of the 1966 NCAA men's Division I basketball champion Texas
Western (now University of Texas-El Paso a/k/a "UTEP") team, and competed on the team
during the 1963-64, 1964-65, and 1965-66 seasons. In the 1965-66 season, Mr. Flournoy lead
the team in rebounding and shooting percentage, and was one of the top rebounders in the
nation.

73. In the championship game, Texas Western defeated the University of Kentucky in
a game that to this day is frequently termed as the most socially significant college basketball

1 game ever played. Texas Western's legendary coach Don Haskins utilized for the first time in
2 NCAA championship history an all-black starting lineup. The team's experience was
3 documented in the popular 2006 movie "Glory Road," created by Walt Disney Pictures and
4 produced by Jerry Bruckheimer. The game is credited with forever changing college
5 basketball, particularly in the South, and the team's dignity throughout the season is credited as
6 a source of inspiration for generations of players. Legendary NBA coach Pat Riley (who played
7 on the Kentucky team) has called the game the "Emancipation Proclamation of 1966 . . . at least
8 in sports." As the *El Paso Times* noted in 2010, "Today, the game remains one of the most-
9 discussed sporting events in history."
10

11 **74.** In 2003, ESPN reported:

12 In the years immediately after Texas Western's title, the integration
13 of college sports took a great leap forward. Between 1966 and
14 1985, the average number of blacks on college teams jumped from
15 2.9 to 5.7.

16 At Northern colleges, where the unwritten rule for coaches had
17 been, "Two blacks at home. Three on the road. And four when
18 behind", things changed quickly.

19 Blacks now were recruited as reserves as well as starters. Athletes
20 who had been directed to small black schools now were being
21 lured to major state universities.

22 The bigger change, of course, came in the South. In the 1966-67
23 season, every Southern conference, even the SEC, had integrated
24 basketball teams. "It was quite clear after March 1966 that
25 Southern basketball teams would have to change or become
26 increasingly noncompetitive nationally," wrote historian Charles
27 Martin.

28 **75.** In 2007, Mr. Flournoy's 1966 Texas Western Team was inducted into the James
Naismith Basketball Hall of Fame, along with other luminaries such as L.A. Lakers coach Phil
Jackson, and Mr. Flournoy delivered the acceptance speech on behalf of his teammates and
coaches. In 2007, Mr. Flournoy also addressed the United States troops with his teammates on

1 teamwork and diversity issues, focusing on the strength of a unit based on collective individual
2 talents and not outward appearances throughout Germany, England, and the Netherlands while
3 touring with Armed Forces Entertainment. Additionally in 2007, Mr. Flournoy was inducted
4 into the Texas Black Sports Hall of Fame. In 2008, Mr. Flournoy was named a “Texas Hero”
5 by the NAACP. In 2002, Mr. Flournoy also was inducted in the University of Texas, El Paso
6 Sports Hall of Fame.
7

8 76. The NCAA has featured the Texas Western team in its NCAA Hall of Champions
9 in Indianapolis. Additionally, during broadcasts of the yearly NCAA tournament, the NCAA
10 has run commercials for its NCAA on-demand and DVD website store featuring the Texas
11 Western team. The NCAA also prominently features the 1966 Texas Western team on the first
12 page of its DVD / on-demand website in connection with products for sale utilizing the names,
13 images, and/or likenesses of the members of the Texas Western and Kentucky teams, including
14 Mr. Flournoy. The site elsewhere states: “On March 19, 1966, Texas Western College, now
15 known as the University of Texas at El Paso (UTEP), put an all-black starting five on the floor
16 for the first time in an NCAA basketball championship. That night the Texas Western Miners . .
17 . . defeated coach Adolph Rupp's #1 ranked all-white Kentucky Wildcats, 72-65.”
18

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

27 78. Mr. Flournoy’s image, likeness and/or name, along with those of other Antitrust
28

1 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
2 in at least the ways described below, without informed consent from him and without
3 compensation paid to him. For example, on the NCAA's On Demand on-line store, operated in
4 connection with its for-profit business partner Thought Equity Motion, a two-DVD pack is
5 offered for sale featuring a DVD of the 1966 championship game and the Glory Road movie for
6 \$44.99. The individual game DVD is one of the NCAA's "Featured Games" offered for sale at
7 \$24.99. A 1966 NCAA regional final game featuring Texas Western vs. Kansas University is
8 offered for sale at \$150 per DVD, or via bulk orders for 25 or more DVDs at pricing available
9 on request. A 1966 NCAA national semi-final game featuring Texas Western vs. the University
10 of Utah is offered for sale at \$150 per DVD, or via bulk orders for 25 or more DVDs at pricing
11 available on request.
12

13
14 79. The NCAA also offers one-time viewings of the 1966 championship game via its
15 "NCAA On Demand Theatre" and "Watch Now" on-demand streaming video features, with
16 pricing for such offerings listed at "starting at \$3.99." The game is the first game listed in the
17 list of "our top 50 NCAA games."

18
19 80. The championship game is also offered for sale via myriad other outlets. For
20 example, via Amazon.com (for \$24.99), Walmart.com (\$38.21 for the game plus the Glory
21 Road movie; \$13.86 for the game); CBS Sports on-line DVD store (\$25.00 for the game plus
22 the Glory Road move, and \$14.95 for the game, noting that "Other key players for the Miners
23 included Harry Flournoy . . ."). The game also is available for rental via Netflix.

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

1 Hill (14) and Harry Flournoy (44) are surrounded . . .” is offered for sale at price points ranging
2 from \$15 to \$200. A team photo featuring Mr. Flournoy and his teammates with the national
3 championship trophy is available at the same price points. An image featuring Mr. Flournoy
4 and certain teammates leaving the floor with the trophy is offered at the same price points. An
5 image of Mr. Flournoy and his team in a huddle at a time out is offered for sale at the same
6 price points. At least two additional images of Mr. Flournoy playing in the championship game
7 are for sale via Getty Images’ website, and upon information and belief, Getty Images has had a
8 contractual relationship with the NCAA relating to photo sales.
9

10 82. Mr. Flournoy’s likeness additionally has been used in Defendant EA’s video
11 games, such as NCAA 09 in its Classic Teams feature, as well as in one or more additional
12 video games authorized by the NCAA.
13

14 83. Additionally, Mr. Flournoy’s image, likeness and/or name has been used in replays
15 of the championship game and clips from the game including on the ESPN Classic network.
16

17 84. Upon information and belief, Mr. Flournoy’s image, likeness and/or name has
18 been used and sold in additional ways for additional uses via the licensing entities such as
19 Defendant CLC and TEM described herein.
20

21 85. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
22 Flournoy was injured in his business or property, and was unfairly deprived of compensation in
23 connection with the use and sale of his image, likeness and/or name.

24 **Thad Jaracz**

25 86. Antitrust Plaintiff Thad Jaracz is a resident of Crestwood, Kentucky. Mr. Jaracz
26 was a member of, and a three year starter for, the University of Kentucky basketball team in the
27 1965-66, 1966-67, and 1967-68 seasons under legendary coach Adolph Rupp, and competed for
28 Kentucky in the Southeastern Conference (“SEC”). Mr. Jaracz competed in the 1966

1 championship game as described above with respect to Mr. Flournoy, and was Kentucky's
2 starting center. Mr. Jaracz was an All-American and All-SEC player in the 1965-66 season.
3 Mr. Jaracz was appointed as Team Captain for the 1968 season. During Mr. Jaracz's career, his
4 Kentucky teams won two SEC championships, enjoyed a number one national ranking, and
5 finished as the NCAA national champion runners-up in 1966.
6

7 **87.** Mr. Jaracz was drafted by the Boston Celtics in 1968, and drafted by the United
8 States Army in 1969. He served 21 years as an Army Officer and retired as a Lieutenant
9 Colonel in 1990.

10 **88.** Mr. Jaracz competed pursuant to the NCAA's rules and regulations, and has been
11 deprived of compensation by Defendants and their co-conspirators for the continued use of his
12 image following the end of his intercollegiate athletic career. Mr. Jaracz signed one or more of
13 the release forms discussed herein (or the precursors to them, including scholarship and
14 eligibility papers that the NCAA has interpreted as a release of the student-athlete's rights with
15 respect to his image, likeness and/or name in connection with merchandise sold by the NCAA,
16 its members, and/or its licensees).
17

18 **89.** Mr. Jaracz's image, likeness and/or name, along with those of other Antitrust
19 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
20 in at least the ways described below, without informed consent from him and without
21 compensation paid to him.
22

23 **90.** Mr. Jaracz's image, likeness and/or name is being offered for sale and use in
24 connection with the Texas Western vs. Kentucky game as described above with respect to Mr.
25 Flournoy and the description of game films and clips and myriad distribution channels.
26

27 **91.** Additionally, Mr. Jaracz's image, likeness and/or name is offered for sale in
28 connection with additional games on the NCAA's website, *i.e.*, the 1966 Kentucky vs. Duke

1 national semi-final game (offered for \$150 or orders of 25 or more with pricing available on
2 request); the 1966 Kentucky vs. Michigan NCAA tournament regional game (same pricing);
3 and the 1968 Kentucky vs. Ohio State NCAA regional tournament game (same pricing).

4 92. Mr. Jaracz's image, likeness and/or name is also offered for sale and use on one of
5 the NCAA's photo store websites, NCAAPhotos.com, i.e., one that is captioned "Texas
6 Western ""UTEP"" Bobby Joe Hill (14) and Harry Flournoy (44) are surrounded by Kentucky's
7 Larry Conley (40), Tommy Kron (30) and Thad Jaracz (55) during the NCAA Men's National
8 Basketball Final Four championship
9 game . . ." and offered at price points ranging from \$15 to \$200, and another captioned "Kentucky
10 forward/center Thad Jaracz (55) during the NCAA Men's National Basketball Final Four
11 championship game against Texas Western ""UTEP"" held in College Park, MD, at the Cole
12 Fieldhouse." (same price points).

13 93. Mr. Jaracz's image, likeness, and/or name also is utilized in connection with one
14 or more video games licensed by the NCAA.

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

18 95. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
19 Jaracz was injured in his business or property, and was unfairly deprived of compensation in
20 connection with the use and sale of his image, likeness and/or name.

21 **David Lattin**

22 96. Antitrust Plaintiff David Lattin is a resident of Houston, Texas. Mr. Lattin (known
23 as "Big Daddy D") was one of the stars of the 1966 NCAA men's Division I basketball
24 champion Texas Western (now University of Texas-El Paso a/k/a "UTEP") team described
25

1 above in the section regarding Antitrust Plaintiff Flournoy, and competed on the team during
2 the 1965-66 and 1966-67 seasons. In the championship season, Mr. Lattin was the second-
3 leading scorer on the team, and was the team's leading rebounder in 4 out of 5 of the NCAA
4 tournament games, including the championship game. In the championship game, Mr. Lattin
5 scored 16 points and had 9 rebounds, and had a pivotal, game-changing slam dunk whose
6 importance was highlighted in the Glory Road movie, and continues to resonate today as one of
7 the most significant plays in NCAA tournament history.

9 **97.** Mr. Lattin was named an All-American during both his 1965-66 and 1966-67
10 seasons. He established and still holds a number of school NCAA tournament records. Over
11 the eight NCAA tournament games in which he participated in during two seasons, Mr. Lattin
12 averaged 19.5 points per game and 11 rebounds per game.

14 **98.** In 1967, Mr. Lattin was a first round draft pick of the San Francisco (now Golden
15 State) Warriors, and played professionally for eight seasons including with the world-famous
16 Harlem Globetrotters.

17 **99.** In 2007, Mr. Lattin along with teammates including Antitrust Plaintiff Flournoy
18 addressed the United States troops on teamwork and diversity issues, as discussed above,
19 throughout Germany, England, and the Netherlands while touring with Armed Forces
20 Entertainment.

22 **100.** Mr. Lattin 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. Lattin signed one or more of
25 the release forms discussed herein (or the precursors to them, including scholarship and
26 eligibility papers that the NCAA has interpreted as a release of the student-athlete's rights with
27 respect to his image, likeness and/or name in connection with merchandise sold by the NCAA,
28

1 its members, and/or its licensees).

2 **101.** Mr. Lattin’s image, likeness and/or name, along with those of other Antitrust
3 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
4 in at least the ways described below, without informed consent from him and without
5 compensation paid to him.
6

7 **102.** Mr. Lattin’s image, likeness and/or name has been used in all of the DVD, on-
8 demand, video game and classic game broadcast products as discussed above in the section
9 regarding Antitrust Plaintiff Flournoy, and distributed through the same channels.

10 **103.** Additionally, Mr. Lattin’s image, likeness and/or name has been used in several
11 images offered for sale by the NCAA on one of its photo stores located at NCAAPhotos.com.
12 For example, a photo captioned “David Lattin (42) and a Texas Western teammate compete for
13 control of a rebound” is offered for sale at various price points ranging from \$15 to \$200.
14 Additionally, Mr. Lattin’s image, likeness and/or name is used in the team photo described
15 above, as well as the huddle photo described above.
16

17 **104.** Upon information and belief, Mr. Lattin’s image, likeness and/or name has been
18 used and sold in additional ways for additional uses via the licensing entities such as Defendant
19 CLC and TEM described herein.
20

21 **105.** As a result of the federal antitrust violations described herein, Antitrust Plaintiff
22 Lattin was injured in his business or property, and was unfairly deprived of compensation in
23 connection with the use and sale of his image, likeness and/or name.

24 **Bob Tallent**

25 **106.** Antitrust Plaintiff Bob Tallent is a resident of Arlington, Virginia. Mr. Tallent
26 played basketball for the University of Kentucky, and competed in the SEC under the legendary
27 coach Adolf Rupp through his junior year of college. He was a member of the UK team known
28

1 as "Rupp's Runts" because the two tallest members of the team were "only" 6'5". He was a
2 sophomore when they played in the finals of the 1966 NCAA Championship against Texas
3 Western, as described above.

4 107. Mr. Tallent played one phenomenal season at the NCAA Division I George
5 Washington University after transferring from Kentucky, set several single-season school
6 records including for scoring (28.9 points per game), and was the fifth leading scorer in the
7 country. After his MVP season and first team All-Southern Conference selection, he was
8 drafted by teams in the NBA and ABA before an injury cut his playing career short.

9 108. Mr. Tallent later served as head coach for the George Washington University team
10 for seven seasons (1974 – 1981), including a 20-win season in 1976. He also served for several
11 prior seasons as the school's freshman team coach, and assistant coach. He was elected to the
12 George Washington Athletic Hall of Fame team in 1990. In 2001, Mr. Tallent was elected to
13 the George Washington All-Century basketball team.

14 109. Mr. Tallent competed pursuant to the NCAA's rules and regulations, and has been
15 deprived of compensation by Defendants and their co-conspirators for the continued use of his
16 image, likeness and/or name following the end of his intercollegiate athletic career. Mr. Tallent
17 signed one or more of the release forms discussed herein (or the precursors to them, including
18 scholarship and eligibility papers that the NCAA has interpreted as a release of the student-
19 athlete's rights with respect to his image, likeness and/or name in connection with merchandise
20 sold by the NCAA, its members, and/or its licensees).

21 **110.** Mr. Tallent's image, likeness and/or name, along with those of other Antitrust
22 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
23 in at least the ways described below, without informed consent from him and without
24 compensation paid to him.

1 **111.** Mr. Tallent’s image, likeness and/or name has been used in all of the DVD, on-
2 demand, video game and classic game broadcast products as discussed above in the section
3 regarding Plaintiff Flournoy with respect to the Texas Western vs. Kentucky game, and
4 distributed through the same channels. Mr. Tallent’s image has further been used in the
5 connection with sales regarding the other Kentucky games identified in the section above
6 regarding Antitrust Plaintiff Jaracz.
7

8 **112.** Upon information and belief, Mr. Tallent’s image, likeness and/or name has been
9 used and sold in additional ways for additional uses via the licensing entities such as Defendant
10 CLC and TEM described herein.

11 **113.** As a result of the federal antitrust violations described herein, Antitrust Plaintiff
12 Tallent was injured in his business or property, and was unfairly deprived of compensation in
13 connection with the use and sale of his image, likeness and/or name.
14

15 **Alex Gilbert**

16 **114.** Antitrust Plaintiff Alex Gilbert is a resident of St. Louis, Missouri. Mr. Gilbert
17 competed for the Indiana State University men’s NCAA Division I basketball team in the 1978-
18 79 and 1979-80 seasons. Mr. Gilbert was a starting forward for the team described below that
19 competed in the landmark 1979-80 NCAA championship game, along with his teammate,
20 legendary college and NBA Hall of Fame player Larry Bird. In that game, the Indiana State
21 team competed against the Michigan State University team, led by the charismatic and
22 transcendent superstar Earvin “Magic Johnson,” who would go on to fame along with Mr. Bird
23 as one of the very greatest collegiate and professional players of all time.
24

25 **115.** In the 1979-80 tournament, Mr. Gilbert, playing as a starter alongside Mr. Bird,
26 contributed in numerous ways including in the championship game. For example, in the
27 national semifinal game against DePaul prior to the Michigan State game, Mr. Gilbert had 12
28

1 points and 5 rebounds, second only to Mr. Bird in both categories. In the regional final game
2 against Arkansas, Mr. Gilbert also had 12 points, and in the regional semi-final against
3 Oklahoma, Mr. Gilbert again had 12 points as well as 9 rebounds. In the opening round game
4 against Virginia Tech, Mr. Gilbert had 12 points to go with 7 rebounds (second only to Mr.
5 Bird).

6
7 116. In 1999, the 1978-79 team including Mr. Gilbert was inducted into the Indiana
8 State University Athletics Hall of Fame. Mr. Gilbert was chosen by the Milwaukee Bucks in
9 the 1980 NBA Draft.

10 117. It is impossible to overstate the importance of the 1979 championship game to the
11 business of college sports. In 2010, Seth Davis, the CBS Sports television studio analyst and
12 writer for *Sports Illustrated* published the book “When March Went Mad: The Game That
13 Transformed Basketball.” The book’s liner notes state:
14

15 On March 26, 1979, basketball as we know it was born. The NCAA
16 championship game played that day not only launched the epic rivalry
17 between Earvin “Magic” Johnson and Larry Bird, it also transformed
18 the NCAA tournament into a multibillion-dollar enterprise and laid
19 the foundation for the resurgence of the NBA. To this day, it remains
20 the highest-rated basketball game, college or pro, in this history of
21 television.

22 The book further states the following:

23 By one measure, the impact of the 1979 NCAA championship game
24 would be apparent a few days later. Nielsen Media Research reported
25 that the contest had generated a 24.1 rating, which meant that nearly a
26 quarter of all television sets in America were tuned in that night.
27 Thirty years later, that remains the highest Nielsen rating for any
28 basketball game, college or pro, in the history of the sport. Thanks to
the proliferation of channels that has taken place since then, it’s
unlikely the number will ever be surpassed by another basketball
game.

The book further states the following:

1 The game of basketball was about to change forever. The 1979
2 championship game helped to catapult college basketball, and
3 especially the NCAA tournament, into the national consciousness.

4 ...

5 The television rights fees have undergone a similar explosion. The
6 1979 NCAA tournament gross \$5.2 million in TV revenue. That
7 figure doubled when NBC renewed its contract for two years in 1980.
8 When CBS wrested the rights from NBC prior to the 1982
9 tournament, it paid \$48 million for three years. CBS's price doubled
again when it forked over \$96 million for another three years in 1985.
The fees grew so fast that in 1999 CBS and the NCAA agreed to an
eleven-year, \$6 billion deal that commenced with the 2003
tournament.

10 118. In Mr. Davis' book, he quotes Larry Bird as follows:

11 "We didn't have a lot of NBA talent on our team, but we were a
12 team," Bird said. "When you have a team of guys who know their
13 roles and stick to their roles, you can't get any better than that. Yeah,
14 I was the focal point, and I was the one scoring the points and getting
the rebounds, but if it wasn't for these other four guys with me, it
would have never worked."

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

22 **120.** Mr. Gilbert'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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28 **121.** The NCAA through its DVD website offers the 1979 championship game for

1 \$24.99. It additionally offers for sale a pack of all of the Final Four games from that year.
2 Additional tournament games such as the ones described above against Oklahoma and Virginia
3 Tech also are available for purchase.

4 122. Games utilizing the image, likeness and/or name of Mr. Gilbert are made available
5 through numerous other distribution channels. For example, the 1979 championship game is
6 available via amazon.com for \$24.99, and a Final Four highlight DVD also is available for
7 \$24.99. The game also is available via CBS Sports' DVD site individually, as for \$39.90 as a
8 part of a "Michigan State NCAA DVD Bundle set" including another game from the 2009
9 tournament and a highlight DVD. The championship game also is available for sale for \$24.95
10 via Michigan State's on-line DVD store, as are various Final Four highlight and bundle DVDs
11 featuring the game, and also available for sale via the Big 10 Network's on-line DVD store.
12

13 123. The championship game is a mainstay of "classic sports" and other networks to
14 this day. As just a few examples, in 2009, ESPN Classic and ESPN2 replayed the game on
15 March 26th, April 3rd, and April 5th. The Big 10 Network replayed the game on March 24,
16 2009 and June 1, 2009.
17

18 124. Mr. Gilbert's name, image, and/or likeness also has been used in connection with
19 video games authorized by the NCAA.
20

21 125. Upon information and belief, Mr. Gilbert's image, likeness and/or name has been
22 used and sold in additional ways for additional uses via the licensing entities such as Defendant
23 CLC and TEM described herein.

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

1
2 **Eric Riley**

3 **127.** Antitrust Plaintiff Eric Riley is a resident of Cleveland, Ohio. Mr. Riley competed
4 on the University of Michigan men's Division I basketball team in the Big 10 Conference. Mr.
5 Riley was a redshirt on Michigan's 1988-89 national championship team, and additionally
6 competed for the team in the 1989-90, 1990-91, 1991-92, and 1992-93 seasons. Mr. Riley's
7 teams in 1991-92 and 1992-93 are famous teams known as the "Fab Five" teams, and reached
8 the NCAA championship game in both seasons. In 1991-92, Mr. Riley led the team in
9 rebounding and blocked shots, and was second in the Big-10 Conference in rebounding. Mr.
10 Riley had exceptional performances in various games including in the NCAA tournament, such
11 as a 15 point and 10 rebound performance in the 1991-92 tournament against Oklahoma State in
12 the regional finals, one of the games described below that is offered for sale.
13
14

15 **128.** The "Fab Five" was the nickname given to the Michigan 1991 recruiting class that
16 joined Mr. Riley and his teammates already at Michigan. In their freshman season, these five
17 players were starters, and along with Mr. Riley and his other teammates, the team reached the
18 national championship game and caused a nationwide sensation due to their collective youth,
19 energetic style of play, and fashion style. *USA Today* stated the following in 2002 with respect
20 to the team:
21

22 Their talent was breathtaking; their trash-talking, baggy-shorts
23 style endearing; their influence profound, even to this day.

24 They drew record television audiences, set fashion trends and
25 touched off a licensing and merchandising boom that perhaps
26 nudged all of college athletics along its current marketing-crazed
27 course.

28 ...

 The [1992 championship game against Duke] remains the most-
watched game in college basketball history, with nearly 21 million

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homes tuned to the telecast. The [1993 championship game against the University of North Carolina] the following year remains the second-most-watched game, viewed in almost 20.7 million homes.

...

The Fab Five made the Michigan brand red-hot, and the school cashed in. Annual athletic royalties more than tripled, from \$2 million in the pre-Fab year of 1990-91 to a peak of \$6.2 million in '93-94.

...

"Kids could relate to the Fab Five and wanted to emulate them. Wearing Michigan merchandise became a way that you could transform yourself into being as 'cool' as the Fab Five," says Derek Eiler of the Atlanta-based Collegiate Licensing Co.

"The increase in sales of Michigan merchandise started first in Ann Arbor and then (spread) in the state, and then in the Midwest, and pretty soon there was Michigan merchandise in almost every retail channel in the U.S. The trend has continued today. Michigan is still one of only a handful of universities that are successful selling their products at the national level."

Even admissions soared

With the Fab Five came another kind of bump in sales. Applications for admission went from 17,744 in 1991, the year before the Five arrived, to 19,687 in 1996, a year after the last had left.

From '91 to last year, when more than 24,000 applications poured in, the climb was 36%.

"We've done a lot of things to make that happen. I'm reluctant to say it was strictly athletics," says Ted Spencer, Michigan's director of admissions. "But ... many, many would come to our table and our sessions (at college fairs) and say, 'Boy, I want to go to Michigan because of the Fab Five.' Not all of them were the kind of kids we were looking for. But a number of them were the kind of kids we were."

1 **129.** Mr. Riley was drafted by the Dallas Mavericks in the
2 1993 NBA draft, and competed in the NBA for five seasons for
3 teams including the Boston Celtics and Houston Rockets.

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

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

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18 **132.** For example, on the NCAA's On Demand on-line store, operated in connection
19 with its for-profit business partner Thought Equity Motion, the following NCAA tournament
20 games and highlight DVDs are each available for sale prices ranging from \$24.99 to \$150,
21 sometimes including in multi-DVD sets: 1990 Michigan vs. Illinois; 1990 Michigan vs.
22 Loyola; 1992 "Michigan Men's Basketball Fab Five 1992" DVD; 1992 Duke Championship
23 collection (featuring various games including vs. Michigan); 1992 Final Four Highlights DVD;
24 1992 Michigan vs. Cincinnati; 1992 Michigan vs. Duke; 1992 Michigan vs. East Tennessee
25 State; 1992 Michigan vs. Ohio State; 1992 Michigan vs. Oklahoma State; 1992 Michigan vs.
26 Temple; 1992 National Championship Box Set; 1993 Final Four Highlights DVD; 1993
27
28

1 Michigan vs. Coastal Carolina; 1993 Michigan vs. George Washington; 1993 Michigan vs.
2 Temple; 1993 Michigan vs. UCLA; 1993 Michigan vs. North Carolina; 1993 Michigan vs.
3 Kentucky; 1993 National Championship Box Set; “Michigan Men’s Basketball Fab Five 1993”
4 DVD; “North Carolina Basketball National Championship Collection.”

5
6 **133.** Additionally, the NCAA offers the 1992 and 1993 national championship games
7 featuring the Michigan teaming for one-viewing streaming video purchase at price points of
8 “\$3.99 and up.”

9 **134.** Many of the game and highlights DVDs are available through myriad other
10 distribution outlets such as Amazon.com; walmart.com; and CBS Sports’ DVD store.

11 **135.** Numerous of Mr. Riley’s games have been replayed on various “classic” game
12 broadcasts, such as on the Big 10 Network this year and on ESPN Classic.

13
14 **136.** Through one of its on-line photo stores, the NCAA currently sells as least four
15 pictures of Mr. Riley, *i.e.*, ones captioned “University of North Carolina center Eric Montross
16 (00) guards against University of Michigan center Eric Riley (42) during the NCAA National
17 Basketball Championship game at the Superdome in New Orleans” (offered at various pricing
18 points between \$15 and \$200); “University of Michigan center Eric Riley (42) muscles his way
19 into North Carolina center Eric Montross (00) during the NCAA National Basketball
20 Championship game at the Superdome in New Orleans, LA” (same pricing points); “University
21 of Michigan center Eric Riley (42) puts the ball up on the glass while North Carolina center
22 Eric
23 Eric
24 Montross (00) among others waits for the rebound during the NCAA National Basketball
25 Championship game at the Superdome in New Orleans, LA” (same pricing points); and
26 “University of North Carolina center Eric Montross (00), University of Michigan center Eric
27 Riley (42) and Michigan forward Ray Jackson (21) wait for the ball to drop in the hoop during the
28

1 NCAA National Basketball Championship game at the Superdome in New Orleans, LA” (same
2 pricing points).

3 137. Upon information and belief, Mr. Riley’s image, likeness and/or name has been
4 used and sold in additional ways for additional uses via the licensing entities such as Defendant
5 CLC and TEM described herein.
6

7 138. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
8 Riley was injured in his business or property, and was unfairly deprived of compensation in
9 connection with the use and sale of his image, likeness and/or name.

10 **Patrick Maynor**

11 139. Antitrust Plaintiff Patrick Maynor, an individual, is a resident of Palm Beach
12 Gardens, Florida. Mr. Maynor competed on the Stanford University football team from 2004-
13 08 as a linebacker, and was a three year starter. He was a Butkus Award candidate, the annual
14 award given to the top college linebacker in the nation, and was recognized as a 2008 All-
15 Pacific-10 Conference Honorable Mention linebacker.
16

17 140. In 2007, Mr. Maynor led his team with a career-high 16.5 tackles for loss and a
18 1.50 tackles for loss per game average that ranked second in the Pac-10 Conference and tied for
19 12th in the entire NCAA. In 2007, he also had five double-digit tackle games in 2007,
20 including a career-high-tying 13 versus Washington and Oregon, and 10 against UCLA as well
21 as at Oregon State and at Washington State. In 2009, Mr. Maynor spent time with the NFL’s
22 Chicago Bears in training camp.
23

24 141. Mr. Maynor competed pursuant to the NCAA’s rules and regulations, and has been
25 deprived of compensation by Defendants and their co-conspirators for the continued use of his
26 image following the end of his intercollegiate athletic career. Mr. Maynor signed one or more
27 of the release forms discussed herein (or the precursors to them, including scholarship and
28

1 eligibility papers that the NCAA has interpreted as a release of the student-athlete's rights with
2 respect to his image, likeness and/or name in connection with merchandise sold by the NCAA,
3 its members, and/or its licensees).

4 142. Mr. Maynor's image, likeness and/or name, along with those of other Antitrust
5 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
6 in at least the ways described below, without informed consent from him and without
7 compensation paid to him.
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9 143. As an example of formats in which Antitrust Damages Class members' images,
10 likenesses and/or names are being used subject to the anticompetitive restraints detailed herein,
11 Mr. Maynor's likeness was used by the NCAA's business partner and co-conspirator Electronic
12 Arts, Inc. as a part of, for example, its NCAA Football 07 game, in addition to other games.
13 As another example of formats in which Antitrust Damages Class members' images, likenesses
14 and/or names are being used subject to the anticompetitive restraints detailed herein, several
15 photos of Mr. Maynor are being sold in Reply Photos, *i.e.*, one captioned "Chike Amajoyi, Sione
16 Fua, Tom Keiser and Pat Maynor of the Stanford Cardinal during Stanford's 23-10 win over the
17 San Jose State Spartans on September 20, 2008 at Stanford Stadium in Stanford, California"
18 (offered at various price points between \$29.95 and \$425.95); one captioned "16 September 2006:
19 Walt Harris, Jon Cochran, Chris Marinelli, Alex Fletcher, Jeff Edwards, Josiah Vinson, Tavita
20 Pritchard, Nate Wilcox-Fogel, Chris Horn, David Lofton, Patrick Danahy, Derek Belch, Jay
21 Ottovegio, Jim Dray, Andrew Phillips, Aaron Zagory, Leon Peralto, Marcus Rance, Will Powers,
22 Austin Yancy, Josh Catron, Pat Maynor, Matt Kopa, Brian Bulcke, Trevor Hooper, David
23 Jackson, Jason Evans and the team run out on the field after the anthem for the first time
24 during Stanford's 37-9 loss to Navy during the grand opening of the new Stanford Stadium in
25 Stanford, CA." (same price points); and one captioned "6 October 2007: Pat Maynor, Erik Lorig,
26
27
28

1 Clinton Snyder, and Bo McNally during Stanford's 24-23 win over the #1 ranked USC Trojans in
2 the Los Angeles Coliseum in Los Angeles, CA” (same price points).

3 **144.** As another example of formats in which Antitrust Damages Class members’
4 images, likenesses and/or names are being used subject to the anticompetitive restraints detailed
5 herein, another photo of Mr. Maynor is offered for sale via Getty Images website captioned
6 “STANFORD, CA - SEPTEMBER 1: Linebacker Pat Maynor #44 of the Stanford Cardinal is
7 congratulated by teammate Tim Sims #14 after Maynor made a big play during the UCLA
8 Bruins 45-17 defeat of Stanford at Stanford Stadium September 1, 2007 in Stanford,
9 California.” Upon information and belief, the NCAA and/or its members have had a
10 contractual relationship with Getty Images allow for the sale of photographs containing the
11 images of current and former NCAA student-athletes.
12

13 145. On information and belief, Mr. Maynor’s image has been used and sold in
14 additional ways for additional uses via the licensing entities such as Defendant CLC and TEM
15 described herein.
16

17 146. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
18 Maynor was injured in his business or property, and was unfairly deprived of compensation in
19 connection with the use and sale of his image, likeness and/or name.
20

21 **Tyrone Prothro**

22 147. Terrence “Tyrone” Prothro, an individual, is a resident of Tuscaloosa, Alabama
23 and a former football player for the University of Alabama, a Division I member school of the
24 NCAA. Mr. Prothro competed from 2003-2005 as a wide receiver and kick returner, was a
25 three year starter, and wore the number 4 jersey.

26 148. During his time at Alabama, he was named Second-Team All SEC both as a return
27 specialist and a wide receiver in 2004 and 2005. In 2004, he led the SEC in kick returns. Mr.
28

1 Prothro achieved notoriety for an outstanding catch during a game against Southern Mississippi
2 in 2005 which has become known as “The Catch.” He won the “Best Play” award at the 2006
3 ESPYS, and “The Catch” won the Pontiac “Game Changing Award of the Year”, which
4 resulted in a \$100,000 donation to the general scholarship fund for the University of Alabama.
5 Fox Sports’ “The Best Damn Sports Show” ranked his catch as the eighth greatest catch of all
6 time.
7

8 149. In high school, Mr. Prothro played cornerback and running back for Cleburne
9 County. He amassed 92 touchdowns and 8,099 career all-purpose yards, third best in Alabama
10 high school history.

11 150. In 2005, during a game against the Florida Gators, Mr. Prothro suffered an open
12 compound fracture of both major bones (tibula and fibula) of his lower left leg, ending his
13 junior season. Despite extensive rehabilitation and numerous surgeries, Mr. Prothro was unable
14 to resume his football career. He continues to suffer the debilitating effects of his injury, and
15 will require additional future surgeries.
16

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

25 152. Mr. Prothros’s image, along with those of other Antitrust Damages Class
26 members, is being offered for sale and/or used during the Antitrust Class Period in at least the
27 ways described below, without informed consent from him and without compensation paid to
28

1 him.

2 153. Mr. Prothro's image, along with those of other Antitrust Damages Class members,
3 is being offered for sale and/or used during the Class Period in at least the ways described
4 below, without informed consent from him and without compensation paid to him.

5 154. As an example of formats in which Antitrust Damages Class members' images are
6 being used subject to the anticompetitive restraints detailed herein, Mr. Prothro's likeness was
7 used by the NCAA's business partner and co-conspirator Electronic Arts, Inc. EA's NCAA
8 College Football 04, 05 and 06 editions for the Playstation 2 game system contain teams that
9 include the Alabama Crimson Tide. In 2006, the player wearing jersey number 4 and playing
10 wide receiver was 5'8" 176 lb, with dark skin and close cropped dark hair. Mr. Prothro is a
11 5'8" African American who played wide receiver and wore jersey number 4. In the 2005
12 version, EA's game includes distinctive black ankle braces worn by Prothro.

13 155. Photographs of "The Catch" are also available for purchase from a website,
14 www.alabamacrimsonstideprints.com, where prices range from \$17.99 to \$34.99, and from
15 www.gettyimages.com, which has numerous photographs of Mr. Prothro accepting his ESPY
16 award and playing in the September 17, 2005 game against University of South Carolina. Upon
17 information and belief, the NCAA and/or its members have had a contractual relationship with
18 Getty Images that allows for the sale of photographs containing the images of current and
19 former NCAA student athletes.

20 156. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
21 Prothro was injured in his business or property, and was unfairly deprived of compensation in
22 connection with the use and sale of his image, likeness and/or name.

23 **Sam Jacobson**

24 157. Antitrust Plaintiff Samuel Jacobson ("Sam Jacobson") is a resident of Apple
25

1 Valley, Minnesota. Mr. Jacobson played high school basketball at Park of Cottage Grove High
2 School, where in 1994 he was named “Mr. Basketball” for the state of Minnesota.

3 158. Mr. Jacobson competed on the University of Minnesota (“Minnesota”) men’s
4 basketball team from 1994-95, 1995-96, 1996-97 and 1997-98 seasons in the Big 10
5 Conference. Mr. Jacobson was named to the All Big Ten Second Team in 1997 and 1998, to
6 the NABC All District Team in 1997 and 1998, and was the MVP of the 1998 Minnesota
7 Gophers. Mr. Jacobson was named Honorable Mention All-America by the AP in 1998, and
8 was a nominee for the 1998 Naismith Player of the Year award. Mr. Jacobson was also named
9 to the Under 22 National USA Men’s basketball team.

10 159. Mr. Jacobson finished as the eighth leading scorer in the history of the University
11 of Minnesota. He led University of Minnesota to the Final Four of the 1997 NCAA Men’s
12 Basketball national tournament, where Mr. Jacobson was named to the Midwest Regional
13 Team. In his final season with the University of Minnesota, Mr. Jacobson led the Minnesota’s
14 basketball team to the National Invitational. After his collegiate career ended, Mr. Jacobson
15 was selected by the Los Angeles Lakers with their first pick in the 1998 NBA draft (26th
16 overall). Mr. Jacobson played in the NBA for four seasons, and then played a few more
17 seasons in overseas leagues.

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

1 161. Mr. Jacobson's image, likeness and/or name, along with those of other Antitrust
2 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
3 in at least the ways described below, without informed consent from him and without
4 compensation paid to him. For example, on the NCAA's On Demand on-line store, operated in
5 connection with its for-profit business partner Thought Equity Motion, the following DVD's are
6 offered at a cost of \$24.99 each: "1997 NCAA Division I Men's Basketball Regional Semi
7 Finals - Clemson vs. Minnesota" and "1997 NCAA Division I Men's Basketball Regional
8 Finals - UCLA vs. Minnesota." This site sells copies of other games utilizing the image of Mr.
9 Jacobson and other Antitrust Damages Class members from the 1995 and 1997 seasons,
10 including the following: "1995 NCAA Division I Men's Basketball 1st Round - Minnesota vs.
11 St. Louis;" "1997 NCAA Division I Men's Basketball 1st Round – Southwest Texas State vs.
12 Minnesota;" "1997 NCAA Division I Men's Basketball 1st Round - Temple vs. Minnesota;"
13 "1997 NCAA Division I Men's Basketball 2nd Round - Minnesota vs. Temple" and "1997
14 NCAA Division I Men's Basketball National Semi Final - Kentucky vs. Minnesota." While not
15 currently in production, these games are available for purchase via custom order at a cost of
16 \$150 each.
17

18
19 162. As additional examples, DVDs available for purchase from Amazon.com which
20 feature Mr. Jacobson while he was playing basketball for the University of Minnesota include
21 the following: "1997 NCAA Division 1 Men's basketball final four highlight video;" "1997
22 NCAA Division 1 Men's basketball regional final - UCLA v. MN" and "1997 NCAA Division
23 1 Men's basketball regional semi-final - Clemson v. MN." These DVD's are available from
24 Amazon.com for \$24.99 each.
25

26 163. Similarly, photos of Mr. Jacobson are offered by Getty Images, including games
27 from the 1997 NCAA tournament: Minnesota v. Kentucky (photos Editorial #298338, #298165,
28

1 #297832, #297776, #254791, #254715, and #254589); and Minnesota v. Clemson (photos:
2 Editorial #294053, #291649 and #1396224). The website also offers photos of Mr. Jacobson
3 playing against other Big 10 teams: Minnesota v. Purdue (photos Editorial #352735, #352273,
4 #349385, #346565, #346543, and #296263); Minnesota v. Iowa (photos: Editorial #347377);
5 and Minnesota v. Northwestern (photo: Editorial #298159). On information and belief, Getty
6 Images has had a contractual relationship with the NCAA relating to photo sales.
7

8 164. As another example of formats in which Antitrust Damages Class members'
9 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
10 detailed herein, numerous images of Mr. Jacobson are for sale on several on-line photo stores.
11 For example, Photoshelter.com has available for download, a photo from the March 29, 1997
12 semi-final game between Minnesota and Kentucky. The photo is described as follows: "29
13 MAR 1997: University of Kentucky guard Wayne Turner (5) scores against University of
14 Minnesota center Trevor Winter (50), guard Sam Jacobson (5) and forward Courtney James (4)
15 during the Final Four semifinal game. Kentucky defeated Minnesota 78-69 in the semifinal
16 game held at the RCA Dome in Indianapolis, IN. Rich Clarkson/NCAA Photos." No pricing is
17 available, however, according to Photoshelter.com, NCAA photos is the owner of the copyright
18 on this photo.
19

20
21 165. As another example of formats in which Antitrust Damages Class members'
22 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
23 detailed herein, Minnesota games featuring Mr. Jacobson also are periodically rebroadcast on
24 ESPN Classic and/or one or more other networks.

25 166. As another example of formats in which Antitrust Damages Class members'
26 images, likenesses and/or names are being utilized subject to the anticompetitive restraints
27 detailed herein, the video game College Hoops 2K6 licensed by the NCAA has a "Legacy
28

1 Mode” in which the 1997 Minnesota Gophers’ team can be “unlocked.”

2 167. On information and belief, Mr. Jacobson’s image, likeness and/or name has been
3 used and sold in additional ways for additional uses via the licensing entities such as Defendant
4 CLC and TEM described herein.
5

6
7
8 **Damien Rhodes**

9 168. Antitrust Plaintiff Damien Rhodes is a resident of Manlius, New York. Mr.
10 Rhodes was a member of the Syracuse University football team in the Big East Conference
11 from the 2002 – 2005 seasons, and a highly-accomplished running back. He was honored as a
12 member of the Big East Conference All-Freshman Team, and as a 2nd Team All-Big East
13 Running Back during his career. He finished first in Syracuse University history for total yards
14 gained by a player.
15

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

24 170. Mr. Rhodes’ image, likeness and/or name, along with those of other Antitrust
25 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
26 in at least the ways described below, without informed consent from him and without
27 compensation paid to him. For example, in 2002, Syracuse played (and Mr. Rhodes played in)
28

1 a game against Virginia Tech that went into three overtimes has been featured as “Classic”
2 game and replayed on one or more networks, and will continue to be replayed.

3 171. From 2003 to 2006, Rhodes was the featured back for the Syracuse football team
4 in the NCAA College Football videogames created by Defendant EA Sports. The featured
5 running back was African-American (as is Mr. Rhodes) and had the same height, weight and
6 jersey number (1) as Mr. Rhodes. The internet application for the game (such as Xbox Live for
7 Xbox) allowed a user to download names of players, and his name would appear on the running
8 back with Number 1 on the jersey.
9

10 172. Mr. Rhodes’ images, likenesses and/or name also has been utilized in various
11 Getty Images’ photographs. Upon information and belief, the NCAA and/or its members have
12 had a contractual relationship with Getty Images allow for the sale of photographs containing
13 the images of current and former NCAA student-athletes.
14

15 173. On information and belief, Mr. Rhodes’ image, likeness and/or name has been
16 used and sold in additional ways for additional uses via the licensing entities such as Defendant
17 CLC and TEM described herein.

18 174. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
19 Rhodes was injured in his business or property, and was unfairly deprived of compensation in
20 connection with the use and sale of his image, likeness and/or name.
21

22 **Danny Wimprine**

23 175. Antitrust Plaintiff Danny Wimprine is a resident of River Ridge, Louisiana. Mr.
24 Wimprine was the starting quarterback on the University of Memphis ("Memphis") Tigers
25 men's football team during the 2001 through 2004 seasons and competed for Memphis in
26 Conference USA. He holds numerous Memphis football records, including passing yards
27 (10,215), completions (808), and touchdown passes (81). Mr. Wimprine was the first player in
28

1 school history to throw for more than 7,000 yards in a career. He was named Conference USA
2 Player of the Week many times during his college career. Mr. Wimprine also holds the
3 Conference USA record for second most touchdown passes in one game (5). He was named the
4 2003 New Orleans Bowl MVP. In 2004, Mr. Wimprine was a candidate for the Davey O'Brien
5 National Quarterback Award, an award given annually to the nation's top quarterback. During
6 his senior year, he was named to the All-Conference USA second team. In 2009, Mr. Wimprine
7 was listed as one of the top five Memphis Athletes of the Decade in the *Memphis Flyer*.

9 176. Following his career at the University of Memphis, Mr. Wimprine earned a
10 position on the Canadian Football League's Edmonton Oilers (2005) and Calgary Stampeders
11 (2006). From there, he returned home to New Orleans and joined the Arena Football League's
12 New Orleans VooDoo. Wimprine learned the system in 2007 and, in 2008, became the starter,
13 tying the league record with five wins in his first five starts and earning Player of the Week
14 Honors. In 2008, Mr. Wimprine earned a quarterback rating of 113.45, completing 60.6% of
15 his passes while throwing 85 touchdowns and only 11 interceptions. During the 2008 season,
16 Mr. Wimprine tied an AFL record for the most consecutive games won in a row (5) by a rookie,
17 and was also voted mid-season AFL 1st team quarterback and was on the "Watch List" for
18 player of the year.

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

1 178. Mr. Wimprine's image, likeness and/or name, along with those of other Antitrust
2 Damages Class members, is being offered for sale and/or used during the Antitrust Class Period
3 in at least the ways described below, without informed consent from him and without
4 compensation paid to him. For example, Mr. Wimprine's likeness has been used in the video
5 game "NCAA Football", published by Defendant Electronic Arts, Inc.
6

7 179. DVDs of games in which Danny Wimprine played were also sold. These games
8 include: the September 6, 2003 game between the Mississippi Rebels and the Memphis Tigers;
9 the 2003 New Orleans Bowl; and the 2004 GMAC Bowl.

10 180. Mr. Wimprine has been featured in numerous broadcasts of "classic" games,
11 including games against Louisville from his senior year, Mississippi, and others.
12

13 181. Mr. Wimprine wore number 18 while a quarterback at Memphis and at least
14 thousands of replica Memphis football jerseys bearing his number were sold.

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

18 183. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
19 Wimprine was injured in his business or property, and was unfairly deprived of compensation
20 in connection with the use and sale of his image, likeness and/or name.
21

22 **Ray Ellis**

23 184. Plaintiff Ray Ellis is a resident of Gilbert, Arizona. Mr. Ellis competed for
24 The Ohio State University's men's football team as a defensive back from the 1976 through
25 1979 seasons, including in the 1980 Rose Bowl game. A four-year letterman and three-
26 year starter, Mr. Ellis won All-Big 10 Conference first team honors with five interceptions
27 as a senior co-captain. In the 1979 season, the Ohio State team compiled an 11 and 0
28

1 record and possessed a number one national ranking before falling 17-16 to the University
2 of Southern California (USC) in the Rose Bowl on January 1, 1980. That game is ranked
3 by ESPN.com as the eighth greatest college football bowl game of all time, and featured
4 USC star running back and Reisman Trophy winner Charles White running for a stunning
5 Rose Bowl record 247 yards including the winning touchdown, as well as USC running
6 back Marcus Allen, a future NFL Hall of Fame player, USC's defensive standout Ronnie
7 Lott, another future NFL Hall of Fame player, and numerous other future NFL players.
8 Mr. Ellis intercepted the first pass of the game by USC, and that image continues to be
9 licensed to this day as described herein.
10

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

27 186. Mr. Ellis competed pursuant to the NCAA's rules and regulations, and has
28

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

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

12 188. Mr. Ellis' image appears in the "Buckeye Classics" DVD, Volume 2, which
13 includes an extensive section on Ohio State's 1979 season, described on packaging
14 material as a season in which the "Buckeyes shocked the nation and rose from relative
15 obscurity to come within seconds of the national title." The packaging material bears a
16 logo stating it is a "Collegiate Licensed Product" right next to the logo for The Ohio State
17 University. Several video clips of Mr. Ellis appear on the DVD, including an interception
18 to clinch the Big 10 Conference title in a game against Michigan, and Mr. Ellis
19 additionally appears in footage from the Rose Bowl game. Additionally, a still photo of
20 Mr. Ellis appears in the section regarding the 1979 season.
21

22 189. The DVD is currently available through numerous outlets, including the Rose
23 Bowls website, where it is identified as an "Officially Licensed NCAA Product" and sold
24 for \$19.95. The DVD also is currently sold by the NCAA itself through its on-line DVD
25 store for \$19.99.
26

27 190. The NCAA currently sells another DVD via its on-line DVD store titled
28

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

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

21 192. In 2008, USC created the “USC Football Classics Volume I” DVD, which
22 contains an extensive section on the 1980 Rose Bowl game as well as other games. Mr.
23 Ellis' image is used in the footage, and at one point the narrator notes “[the game] finally
24 got going under perfect weather conditions, not so perfect as [USC Quarterback]
25 McDonald gets picked [intercepted] by Ray Ellis’ as Mr. Ellis’ interception is shown. The
26 DVD is currently sold through USC's website, operated by CBS' CSTV entity, for \$19.95.
27
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1 Additionally, the DVD is advertised on one of defendant NCAA's websites, NCAA.com,
2 which identifies itself as "The Official Website of NCAA Championships."

3 193. Given the continuing tremendous interest in college football powerhouses
4 Ohio State, as well as USC, there remains a very substantial likelihood that new licensing
5 agreements will be made in the future regarding footage of Mr. Ellis and his teammates and
6 opponents, including from the 1980 Rose Bowl, as exemplified by the new DVD product
7 created by USC in 2008, as well as the new agreement to license the 1979 Michigan game
8 for use on Hulu.com. As an additional example, in 2007, the HBO television channel
9 created a new television special entitled 'Michigan vs. Ohio State "chronicling the rivalry
10 between the two schools. The program airs to this day, including as recently as November
11 14, 2010, and also is available on DVD for sale. New licensing deals were struck for use
12 of footage, including from games from Mr. Ellis' era, and the credits indicate that footage
13 was licensed from, among other entities, "Thought Equity Motion & the NCAA," Ohio
14 State University, and the University of Michigan. This exemplifies the continuing
15 licensing deals being made to this day for footage pertaining to Mr. Ellis' teams, and the
16 likelihood of continuing licensing deals being made in the future by Defendants and their
17 co-conspirators for footage including the images of Mr. Ellis and his teammates.
18
19
20

21 194. As a result of the federal antitrust violations described herein, Plaintiff Ellis was
22 injured in his business or property, and was unfairly deprived of compensation in
23 connection with the use and sale of his image, likeness and/or name.

24 **Tate George**

25 195. Plaintiff Tate George is a resident of Boca Raton, Florida. Mr. George
26 competed for the University of Connecticut's (UCONN) men's basketball team as a
27 starting guard in the 1986-87 through 1989-90 seasons. UCONN named Mr. George to its
28

1 All-Century men's basketball team, and he is the school's all-time career assist leader, as
2 well as number two in career steals, and finished with more than 1,000 career points. He
3 was named to the 1986-87 Big East Conference All-Rookie Team, and as a senior in 1990,
4 he was named to the Big East All- Tournament team as the Huskies won their first-ever
5 Big East Conference tournament title. Mr. George was named to the NCAA East Regional
6 All-Tournament Team.
7

8 196. Mr. George was selected by the New Jersey Nets in the first round of the 1990
9 NBA draft, and played for five seasons in the NBA with the Nets and Milwaukee Bucks,
10 and additionally played professional basketball in Europe for three years.

11 197. In the 1990 NCAA tournament in the Sweet Sixteen round, Mr. George hit an
12 iconic, game-winning, buzzer-beating shot to defeat Clemson, known to this day simply
13 as "The Shoe." With one second remaining in the game, and UCONN down by one
14 point, UCONN's Scott Burrell inbounded the ball by throwing it nearly 90 feet to Mr.
15 George, who caught the ball with his back to the basket and in one motion turned around
16 and launched a successful 15 foot shot as time expired. Ever since, the play has been
17 considered one of the greatest in NCAA tournament history. For example, in 2006,
18 ESPN's SportsCenter ranked it as number five on its list of "Top NCAA Buzzer Beater"
19 of all time.
20

21 198. Strong interest in Mr. George continues to this day. For example, in an article
22 in the commercial real estate section of the July 20, 2010 edition of The New York Times
23 titled "After Sports Careers, Vying in the Real Estate Arena," Mr. George was pictured,
24 discussed, and quoted regarding his affordable housing development projects. The
25 article stated in part that "[w]hatever their projects' details, some of these former athletes
26 seem content to leave the bright lights of their playing days behind. 'What I'm doing is
27
28

1 not self-serving, but other-serving,' Mr. George said. 'When you don't work for fanfare,
2 you can get a lot more done.'

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

22 200. In a 2008 profile of Mr. George titled "Success, by George!" in Conde Nast's
23 Portfolio, the publication noted, with respect to Mr. George's shot, that the "moment may
24 have immortalized George forever, thanks to YouTube and ESPN Classic..."

25 201. Mr. George serves as a member of the Board of Directors of the National
26 Basketball Retired Players Association ("NBRPR") as well as its Vice-President. The
27 NBRPA was founded in 1992 by NBA Legends Dave DeBusschere, Dave Bing, Archie
28

1 Clark, Dave Cowens and Oscar Robertson, and is a non-profit Association comprised of
2 former professional basketball players of the NBA, ABA and Harlem Globetrotters. It
3 works in direct partnership with the NBA, and its mission is to promote basketball and
4 enhance the sports image by assisting members, including in building community
5 relationships and fostering support for charitable activities and offering the Dave
6 DeBusschere NBRPA Scholarship Fund for members and their children in need.
7

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

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

25 204. Mr. George's image, likeness and/or name along with those of other Antitrust
26 Damages Class members, is being offered for sale and/or used during the Antitrust Class
27 Period in at least the ways described below, without informed consent from him and without
28

1 compensation paid to him. For example, on the NCAA's On Demand on-line store, operated
2 in connection with its for-profit business partner Thought Equity Motion (TEM), the 1990
3 UCONN game vs. Clemson is offered for sale for \$24.99, and the NCAA captions the game
4 solely as follows: "Tate George hit a heart-stopping 17 footer to lead UCONN past Clemson
5 71-70," and includes a video-clip of Mr. George's shot as a part of the advertisement for the
6 game on the site. The NCAA further offers at least three other 1990 tournament games
7 featuring Mr. George and his teammates and opponents for a custom-order price of \$150
8 first and second round regional games versus the University of California, Berkeley and
9 Boston University, and a regional final game versus Duke University.

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

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

27 207. A separate version of the clip running 3 minutes 30 seconds is also offered by
28

1 TEM and captioned: “Connecticut’s Tate George misses a game-winning jumper with 4
2 seconds left in the game; the Huskies get a reprieve when Sean Tyson couldn’t convert a
3 free throw; with one second on the clock, Scott Burrell throws the ball to George, who
4 lets the ball fly toward the basket from 15 feet out.” TEM includes the same warning
5 regarding intellectual property rights as detailed above.
6

7 208. On information and belief, the stock footage licensing described above is the
8 way that the NCAA has licensed the famous clip of Mr. George in numerous ways, and
9 will continue to do so.

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

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

27 211. The first image in the McDonald's commercial advertisement is a clip of Mr.
28

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

9 212. Mr. George has not given his consent for his image to be licensed for
10 commercial purposes to promote the interests of McDonald's Corporation and its Egg
11 McMuffin breakfast sandwiches.
12

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

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

22 215. As a result of the federal antitrust violations described herein, Plaintiff George was
23 injured in his business or property, and was unfairly deprived of compensation in connection
24 with the use and sale of his image, likeness and/or name.

Jake Fischer

25 216. Plaintiff Jake Fischer is a resident of Tucson, Arizona and a rising senior at the
26 University of Arizona. Mr. Fischer is a three-time captain of the University of Arizona
27 Wildcats men's football team and will be a starting inside linebacker this coming season. In
28

1 September 2012, Mr. Fischer was named PAC-12 Defensive Player of the Week after
2 recording 13 tackles in a single game. He led the Wildcats with 119 tackles in 2012. An
3 integral part of the Wildcats' defensive scheme, Mr. Fischer helped lead the team to a 49-48
4 overtime victory over the University of Nevada in the 2012 New Mexico Bowl.

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

13
14 218. Mr. Fischer's likeness has been used in the video game "NCAA Football,"
15 published by Defendant EA.

16
17 219. Mr. Fischer has been featured in numerous broadcasts and rebroadcasts of
18 Arizona Wildcats games, including the 2012 New Mexico Bowl.

19 220. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
20 Fischer has been and continues to be injured in his business or property and has been and
21 continues to be unfairly deprived of compensation in connection with the use and sale of his
22 image, likeness and/or name.

23 **Jake Smith**

24
25 221. Plaintiff Jake Smith is a resident of Tucson, Arizona and a rising senior at the
26 University of Arizona. Mr. Smith is a kicker for the University of Arizona Wildcats men's
27 football team and will be a starter this coming season. Before transferring to the University of
28 Arizona, he played football for the Youngstown State Penguins (2010) and the Syracuse

1 Orangemen (2009). Mr. Smith was a football and baseball letterman in high school and a first-
2 team all-conference honoree during his junior and senior years. He was designated Special
3 Teams Most Valuable Player as a junior and senior in high school.

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

11 223. Mr. Smith's likeness has been used in the video game "NCAA Football,"
12 published by Defendant EA.

13 224. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
14 Smith has been and continues to be injured in his business or property and has been and
15 continues to be unfairly deprived of compensation in connection with the use and sale of his
16 image, likeness and/or name.

17
18
19 **Darius Robinson**

20 225. Plaintiff Darius Robinson is a resident of College Park, Georgia and a rising senior
21 at Clemson University. Mr. Robinson will be a starting cornerback this coming season for the
22 Clemson Tigers men's football team. Last season, he recorded 13 tackles, one interception, and
23 two pass breakups over seven games—including five tackles against Auburn on September 1,
24 2012—before fracturing his ankle. Rivals.com ranked Mr. Robinson the 16th best cornerback
25 in the nation while he was in high school. As a senior at Westlake High School, he recorded 80
26 tackles, two interceptions, two forced fumbles, a fumble return for a score, and a punt return for
27
28

1 a score.

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

10 227. Mr. Robinson's likeness has been used in the video game "NCAA Football,"
11 published by Defendant EA.

12 228. Mr. Robinson has been featured in numerous broadcasts and rebroadcasts of
13 Clemson Tigers games, including the 2012 Orange Bowl.

15 229. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
16 Robinson has been and continues to be injured in his business or property and has been and
17 continues to be unfairly deprived of compensation in connection with the use and sale of his
18 image, likeness and/or name.

19 **Moses Alipate**

20 230. Plaintiff Moses Alipate is a resident of Minneapolis, Minnesota and a rising senior
21 at the University of Minnesota. The Gophers recruited Alipate as a quarterback out of
22 Bloomington, Minnesota. In 2009, Mr. Alipate was ranked as the No. 2 player in the state of
23 Minnesota by Rivals.com. Mr. Alipate was ranked by Scout.com as the No. 3 quarterback in
24 the nation and a three-star recruit at that position. At 6 foot 5 and 290 pounds, Mr. Alipate
25 recently transitioned from the University of Minnesota's backup quarterback to a tight end
26 position.
27
28

1 231. Mr. Alipate competes pursuant to the NCAA's rules and regulations, and has been
2 deprived of compensation by Defendants and their co-conspirators for the continuing use of his
3 image, likeness and/or name during his intercollegiate athletic career. Mr. Alipate signed one
4 or more of the release forms discussed herein (or the successors to them, including scholarship
5 and eligibility papers that the NCAA has interpreted as a release of the student-athlete's rights
6 with respect to his image, likeness and/or name in connection with merchandise sold by the
7 NCAA, its members and/or its licensees).

9 232. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
10 Alipate has been and continues to be injured in his business or property and has been and
11 continues to be unfairly deprived of compensation in connection with the use and sale of his
12 image, likeness and/or name.

13
14 **Chase Garnham**

15 233. Plaintiff Chase Garnham is a resident of Nashville, Tennessee and a rising senior
16 at Vanderbilt University. Mr. Garnham will be a starting middle linebacker this coming season
17 for Vanderbilt University Commodores men's football team. In 2012, Mr. Garnham led the
18 Commodores defense with seven quarterback sacks and 12.5 tackles for loss. Mr. Garnham
19 contributed career highs in 2012 with 43 solo tackles and 84 total tackles. His 2012 campaign
20 includes a three-sack performance in Vanderbilt's victory over Auburn and a 10-tackle effort in
21 the Commodores' win over Tennessee. Mr. Garnham ranked among the league's top five
22 linebackers last year and will compete for All-SEC honors in 2013.

24 234. Mr. Garnham competes pursuant to the NCAA's rules and regulations, and has
25 been deprived of compensation by Defendants and their co-conspirators for the continuing use
26 of his image, likeness and/or name during his intercollegiate athletic career. Mr. Garnham
27 signed one or more of the release forms discussed herein (or the successors to them, including
28

1 scholarship and eligibility papers that the NCAA has interpreted as a release of the student-
2 athlete's rights with respect to his image, likeness and/or name in connection with merchandise
3 sold by the NCAA, its members and/or its licensees).

4 235. Mr. Garnham's likeness has been used in the video game "NCAA Football,"
5 published by Defendant EA.

6 236. Mr. Garnham has been featured in numerous broadcasts and rebroadcasts of
7 Vanderbilt University Commodores games.

8 237. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
9 Garnham has been and continues to be injured in his business or property and has been and
10 continues to be unfairly deprived of compensation in connection with the use and sale of his
11 image, likeness and/or name.
12

13
14 **Victor Keise**

15 238. Plaintiff Victor Keise is a resident of Minneapolis, Minnesota and a rising senior at
16 the University of Minnesota. The University of Minnesota men's football team recruited Mr.
17 Keise as a wide receiver out of Coral Springs, Florida, where he helped lead his North Broward
18 Prep team to a 10-0 regular-season record and a berth in the state playoffs. In 2008, Rivals.com
19 ranked Mr. Keise as the No. 98 wide receiver in the nation and he was named a two-star
20 prospect by Scout.com.

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

2 240. As a result of the federal antitrust violations described herein, Antitrust Plaintiff
3 Keise has been and continues to be injured in his business or property and has been and
4 continues to be unfairly deprived of compensation in connection with the use and sale of his
5 image, likeness and/or name.
6

7 **HART/ALSTON RIGHT OF PUBLICITY PLAINTIFFS**

8 241. Plaintiff Ryan Hart, an individual, is a New Jersey resident and a former starting
9 quarterback for the University of Rutgers football team.

10 242. Plaintiff Shawne Alston, an individual, is a West Virginia resident and a former
11 starting running back for the University of West Virginia football team.
12

13 **KELLER RIGHT OF PUBLICITY DEFENDANTS**

14 243. Defendant EA, a Delaware corporation, is a multi-billion dollar interactive
15 entertainment software company that produces the NCAA Football, NCAA Basketball and
16 NCAA March Madness videogame franchises. It describes itself as the “world’s leading
17 interactive entertainment software company.” Its revenues support this claim. In just one fiscal
18 year (2008), Electronic Arts posted net revenues, calculated under GAAP, of \$3.67 billion.
19 Electronic Arts’ principal place of business is Redwood City, California, but Electronic Arts
20 sells its games directly to consumers throughout the country through its website www.ea.com
21 and indirectly through major retailers in all fifty states.
22

23 244. Defendant NCAA is an unincorporated association that acts as the governing body
24 of college sports. Although it describes itself as “committed to the best interests . . . of student
25 athletes,” the NCAA’s true interest is in maximizing revenue for itself and its members, often at
26 the expense of its student-athletes. While extolling the virtues of “amateurism” for student-
27
28

1 athletes, the NCAA itself runs a highly professionalized and commercialized licensing
2 operation that generates hundreds of millions in royalties, broadcast rights and other licensing
3 fees each year. The annual revenues for the NCAA in fiscal year 2007-08 were \$614 million.
4 Almost 90% of the NCAA's annual budget revenues stem from marketing and television rights,
5 with only 9-10% coming from championship game revenues. The NCAA's operations are also
6 highly profitable. The direct expenses for operating the actual games that generated the \$614
7 million in revenues was only \$59 million

9 245. Defendant CLC, a Georgia corporation headquartered in Atlanta, Georgia, is the
10 nation's leading collegiate trademark, licensing, and marketing company. CLC represents
11 nearly 200 colleges, universities, bowl games, and athletic conferences, including the NCAA.
12 Its primary service is to market and sell its clients.

13 ANTITRUST DEFENDANTS

14 246. Defendant NCAA is an unincorporated association with its principal place
15 of business located in Indianapolis, Indiana.

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

23 248. Defendant EA is a for-profit corporation incorporated under the laws of Delaware
24 with its principal place of business located in this District at 209 Redwood Shores Parkway,
25 Redwood City, California 94065. EA is publicly traded on the NASDAQ stock exchange
26
27
28

1 (ticker symbol: ERTS) and identifies itself as “the world’s leading interactive entertainment
2 software company” and states that it “develops, publishes, and distributes interactive software
3 worldwide for video game systems, personal computers, cellular handsets and the Internet.” In
4 its 2008 fiscal year, EA had revenues of \$3.67 billion and 27 of its titles sold more than one
5 million copies. As described herein, the NCAA has entered into license agreements with EA
6 relating to the use of the likenesses of members of the Antitrust Classes in video games
7 available via various platforms.
8

9 249. Whenever in this Complaint reference is made to any act, deed, or transaction of
10 the Defendants, the allegation means that the Defendants engaged in the act, deed, or
11 transaction by or through their officers, directors, agents, employees, or representatives while
12 they were actively engaged in the management, direction, control or transaction of Defendants’
13 business or affairs.
14

15 **HART/ALSTON RIGHT OF PUBLICITY DEFENDANT**

16 250. Defendant EA, a Delaware corporation, is a multi-billion dollar interactive
17 entertainment software company that produces the NCAA Football, NCAA Basketball and
18 NCAA March Madness videogame franchises. It describes itself as the “world’s leading
19 interactive entertainment software company.” Its revenues support this claim. In just one fiscal
20 year (2008), Electronic Arts posted net revenues, calculated under GAAP, of \$3.67 billion.
21 Electronic Arts’ principal place of business is Redwood City, California, but Electronic Arts
22 sells its games directly to consumers throughout the country through its website www.ea.com
23 and indirectly through major retailers in all fifty states.
24

25 **ANTITRUST CO-CONSPIRATORS**

26 251. Various other persons, firms, corporations, and entities (including, but not limited
27 to, the NCAA’s members schools and conferences, TEM, Collegiate Images (“CI”), XOS,
28

1 andT3 Media) have participated as unnamed co-conspirators with Defendants in the violations
2 and conspiracy alleged herein. In order to engage in the offenses charged and violations alleged
3 herein, these co-conspirators have performed acts and made statements in furtherance of the
4 antitrust violations and other violations alleged herein.

5
6 252. At all relevant times, each co-conspirator was an agent of Defendants and each of
7 the remaining co-conspirators, and in doing the acts alleged herein, was acting within the course
8 and scope of such agency. Defendants and each co-conspirator ratified and/or authorized the
9 wrongful acts of Defendants and each of the other co-conspirators. Defendants and the co-
10 conspirators, and each of them, are participants as aiders and abettors in the improper acts and
11 transactions that are the subject of this action.

12 **INTERSTATE TRADE AND COMMERCE WITH RESPECT TO ANTITRUST CLAIMS**

13
14 253. The business activities of Defendants that are the subject of this action were within
15 the flow of, and substantially affected, interstate trade and commerce.

16 254. During the Antitrust Class Period, Defendants transacted business in multiple
17 states in a continuous and uninterrupted flow of interstate commerce throughout the United
18 States.

19 **KELLER RIGHT OF PUBLICITY ALLEGATIONS¹**

20
21 255. EA produces the NCAA Football, NCAA Basketball and NCAA March Madness
22 videogame franchises. Videogame titles within these franchises simulate basketball and
23 football matches between NCAA member schools. Consumers demand that these matches
24 simulate actual college matches in the most realistic manner possible. In the words of CLC
25 President Pat Battle: “A failure to keep up with technology and take full advantage from a
26

27
28 ¹ These allegations pertain to the putative *Keller* Right of Publicity Class and the putative
Hart/Alston Right of Publicity Class.

1 consumer standpoint may make the NCAA [video game] titles less valuable.” As a result, each
2 year EA spends millions of dollars to ensure the realism of the games, and advertises this
3 realism in the promotion of its products. Specifically, pursuant to a license with CLC, the
4 NCAA’s licensing company, EA replicates team logos, uniforms, mascots and member school
5 stadiums with almost photographic realism. In addition to computer generated images,
6 Electronic Arts includes actual photographs of uniformed student-athletes in the games.
7

8 256. As discussed in more detail below, EA is not permitted to utilize player names and
9 likenesses. In reality, however, EA with the knowledge, participation and approval of the
10 NCAA and CLC extensively utilizes actual player names and likenesses allowing a player of an
11 EA game to identify the college athlete playing the game. The motivation of Defendants is
12 simple: more money. As the NCAA, CLC and EA know, heightened realism in NCAA
13 videogames translates directly into increased sales, and therefore, increased revenues for
14 Electronic Arts and increased royalties for CLC and the NCAA.
15

16 **A. Prohibitions on Use of Names or Likenesses**
17

18 257. The NCAA does not officially permit the licensing of NCAA athlete likenesses or
19 the use of their names. In fact, NCAA Bylaw 12.5 specifically prohibits the commercial
20 licensing of an NCAA athlete’s “name, picture or likeness.”
21

22 258. To help enforce this rule, all incoming freshman and transfer students, including
23 Right of Publicity Plaintiffs and class members, are required to enter into a contract with the
24 NCAA that prohibits the student-athlete from using his name, picture or likeness for
25 commercial purposes.

26 259. Likewise, the contract prohibits the NCAA from using Right of Publicity
27 Plaintiffs’ and class members’ names, pictures and likeness for commercial purposes.
28

1 260. The NCAA, however, sanctions, facilitates and profits from EA’s use of student-
2 athletes’ names, pictures and likenesses despite contractual obligations prohibiting such
3 conduct.

4
5 **B. The Contract Between the NCAA and the Student-Athletes**

6 261. The contract each incoming freshman and transfer student-athlete signs is titled
7 Form 08-3a Student-Athlete Statement –Division I. *See* Exhibit A.

8
9 262. The contracts used during the class period are, upon information and belief,
10 substantively analogous to Exhibit A, if not identical, and are also titled Form 08-3a.

11 263. All Plaintiffs and putative class members entered into such contracts and signed
12 Form 08-3a in exchange for certification from the NCAA that allows them to participate in
13 sanctioned NCAA Division I sporting events. The contract has seven parts, all of which must
14 be executed by the student to receive certification that he is eligible to participate in NCAA
15 Division I sporting events.

16
17 264. Part I requires the student-athlete to affirm his eligibility to participate in NCAA
18 events. Among other things, the student-athlete affirms that he has received a copy of the
19 NCAA rules and that he had an opportunity to ask questions about them. He also affirms that
20 he “meet[s] the NCAA regulations for student-athletes regarding eligibility recruitment,
21 financial aid, amateur status and involvement in gambling activity.”

22
23 265. Part II requires the student-athlete to waive certain privacy rights under the Family
24 Educational Rights and Privacy Act of 1974. Among other things, the student-athlete agrees to
25 permit the disclosure of education records, drug test results, social security numbers, race and
26 gender identification, diagnosis of certain education related disabilities, financial aid records,
27 and “any other papers or information pertaining to your NCAA eligibility.”

1 266. Part III requires the student-athlete to affirm that he has read and understands the
2 NCAA amateurism rules.

3 267. Part IV requires the student to authorize and grant a limited license to the “NCAA
4 [or a third party acting on behalf of the NCAA (*e.g.*, host institution, conference, local
5 organizing committee)] to use the student-athlete’s “name or picture to generally promote
6 NCAA championships or other NCAA events, activities or programs.”
7

8 268. Part V requires the student-athlete to disclose whether he has ever tested positive
9 for a banned substance by the NCAA and/or by a non-NCAA national or international athletics
10 organization.

11 269. Part VI is for transfer students only. The contractual provision requires the
12 student-athlete to identify himself, if appropriate, as a transfer student and to describe, if
13 applicable, any previous involvement in NCAA rules violation(s).
14

15 270. Part VII is for incoming freshmen only. The contractual provision requires the
16 student-athlete to confirm that he has a validated ACT and/or SAT score.

17 271. The contract is valid from the date the document is signed and remains in effect
18 until a subsequent Division I Student-Athlete Statement/Drug Testing Consent form is
19 executed.
20

21 272. The contract is required by the NCAA Constitution and Bylaws, and student-
22 athletes are ineligible to participate in any intercollegiate competition unless they execute the
23 contract. In return and in consideration for the above disclosures, waivers, affirmations and
24 limited license, the NCAA agrees to grant players eligibility to participate in Division I
25 athletics. The contract is an adhesion contract due to the unequal bargaining power of the
26 parties and the take it or leave it nature of the contract.
27

28 273. EA is not a third party acting on behalf of the NCAA, as contemplated by section

1 IV of the contract. Nor is Electronic Arts using Plaintiffs' or class members' names, pictures,
2 or likenesses to generally promote an NCAA championship or other NCAA event, activity or
3 program as contemplated by section IV of the contract. Instead, EA is using Right of Publicity
4 Plaintiffs' and class members' names, pictures, and likenesses for commercial purpose and
5 without consent.

6
7 274. The NCAA has a duty to NCAA athletes to honor its own rules prohibiting and
8 contractual obligations relating to the use of student likenesses and pictures. CLC is likewise
9 contractually obligated to honor NCAA prohibitions on the use of student likenesses.
10 Specifically, the licensing agreements between the NCAA and CLE and between EA and CLC
11 explicitly prohibit the use of NCAA athlete names and/or likenesses in NCAA branded
12 videogames. Under the NCAA's licensing program, the NCAA and its member institutions,
13 through CLC, are required to approve every EA videogame produced pursuant to the license
14 before its release. Ostensibly NCAA athletes are the intended beneficiaries of the NCAA
15 likeness prohibitions and the contractual provisions that incorporate them in contracts between
16 and among CLC, NCAA and EA.

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19 **C. EA's Blatant Use of Player Names and Likenesses**

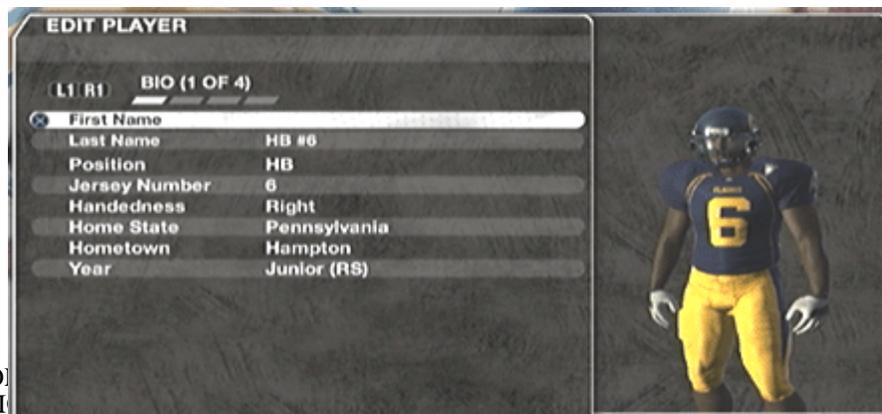
20 275. Ea purports to honor the NCAA's rule nominally prohibiting the use of player
21 likenesses. In fact, it does not. As an EA spokesperson candidly acknowledged in a 2006
22 interview with *The Indianapolis Star*, its real mindset with regard to the use of player names
23 and likenesses can be summed up in one sentence: "Ok, how far can we go?"

24
25 276. The answer can be found in the games themselves. EA seeks to precisely replicate
26 each school's entire team. With rare exception, virtually every real-life Division I football or
27 basketball player in the NCAA has a corresponding player in EA's games with the same jersey
28

1 number, and virtually identical height, weight, build, and home state. In addition, EA matches
2 the player's skin tone, hair color, and often even a player's hair style, although this last
3 characteristic can be highly variable over even a single season.

4
5 277. EA's misappropriation of player likenesses is not limited to superstars at large
6 schools or top programs. Kent State Golden Flashes running back Eugene Jarvis, for example,
7 stands a mere 5'5" and weighs only 170 pounds. He is also an African-American red-shirt
8 junior from Pennsylvania who wears number 6 for the Golden Flashes. And although he is
9 extremely talented, Mr. Jarvis is unusually small for a college football player. For these
10 reasons, one would expect a randomly generated virtual running back for the Golden Flashes to
11 be somewhat dissimilar to Mr. Jarvis. But here are the first two profile pages for Golden
12 Flashes player number 6 from the NCAA 2009 Football game:

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278. Number 6 for the Golden Flashes is clearly Mr. Jarvis. Both players are 5’5”, 170 pound African-American players. Both are also red-shirt juniors from Pennsylvania, and both are the starting running back for the Golden Flashes. This is not a mere coincidence.

279. EA’s blatant misappropriation of player likenesses is highlighted by a comparison of EA’s NCAA titles to its titles based on professional leagues for which EA has the legal right to player likenesses through license agreements with the relevant players’ unions. If EA were not utilizing actual player likenesses, one would expect significant changes to the virtual player once the corresponding real player entered a professional league. In fact, the likeness of NCAA players who later enter a professional league remains virtually identical across titles.

280. For example, the profile below on the left, taken from the 2008 NCAA football game, shows number 77, an offensive lineman for the Michigan Wolverines. During that period of time, Jake Long wore number 77 for the Wolverines. On the right is a screenshot of Jake Long from the Madden NFL 2009 football game. The two pictures are virtually identical.



281. The similarities in the two images are not mere coincidence. Indeed, it would be nearly statistically impossible for randomly generated players to match so closely their real-world counterparts. Mr. Long and Mr. Jarvis are not unique examples. They were randomly chosen to show how similar almost all players are to their virtual counterparts.

282. Misappropriation of basketball players is equally egregious. For example, Georgetown All-American center Roy Hibbert is 7'2" – unusually tall even for a college basketball player – and weighs 275 pounds. In the 2007 season, Mr. Hibbert was also an African-American senior from Maryland who often played with an arm or elbow sleeve. He also wore jersey number 55 for the Georgetown Hoyas. One would expect a randomly generated "No. 55" for Georgetown to have, at most, a couple of these characteristics. But here is the profile for Georgetown number 55.

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283. Number 55 in EA's NCAA 08 March Madness is clearly supposed to be Mr. Hibbert. The two match in every respect. Both have the exact same height and weight. Both are African-American players from Maryland. Both are seniors in the 2007 season, and both are the starting center for the Georgetown Hoyas. In fact, both even wear an arm sleeve.

284. And like football players, the misappropriation of likenesses is not limited to superstars or top programs. For example, Travis Pinick is a guard/forward who wears number 5 for the Yale Bulldogs, a school known more for academics than basketball. Mr. Pinick is 6'7", weighs 210 pounds, and went to high school in California. Unsurprisingly, virtual "No. 5" for the Bulldogs is also a guard/forward from California with the exact same height and weight.

1 285. In addition to the physical features, EA even matches players' idiosyncratic
2 equipment preferences such as wristbands, headbands, facemasks and visors.

3 286. For example, in the 2009 NCAA Football game, Texas Tech wide receiver "No. 5"
4 plays with a back plate under his uniform just like the real number 5, Texas Tech All-American
5 wide receiver Michael Crabtree. Additionally, both are 6'3" red-shirt sophomore wide
6 receivers from Texas.
7

8 287. In the same game, Kansas State quarterback "No. 1" plays with an arm sleeve just
9 like the real number 1, Kansas State All-American quarterback Josh Freeman. Mr. Freeman is
10 also a 6'6", 250 pound, junior quarterback from Missouri, just like his virtual twin.

11 288. Likewise, Ohio State linebacker "No. 33" plays with thin arm-bands on his upper
12 arm, just below his bicep, wrist wraps and gloves. Interestingly, so does the real number 33,
13 Ohio State All-American, Nagurski Trophy² winner, and Butkus Award³ winner, linebacker
14 James Laurinaitis. Both are also 6'3", 244 pound seniors from Minnesota.
15

16 289. Once again, these are not unique examples. Defendants deliberately and
17 systematically misappropriate players' likenesses to increase revenues and royalties at the
18 expense of student-athletes.

19 290. In fact, to ensure it matches these unique player equipment preferences as
20 accurately as possible, Electronic Arts sends detailed questionnaires to NCAA team equipment
21 managers to glean precisely the idiosyncratic individual player details.
22

23 291. When players have unique highly identifiable playing behaviors, 'EA's attempts to
24 match those as well.

25 292. EA also matches the virtual player's home state to the player's actual home state,
26 and often lists a city close to the player's real hometown as the virtual player's home town.
27

28 ² The award given to the top defensive player in the country.

³ The award given to the top college linebacker.

1 293. The only detail that EA omits is the real-life player's name on the jersey of his
2 electronic equivalent. As one commentator observed, "the omission of players' names seems
3 little more than a formality, done with a wink and a nudge."

4 294. Despite the lack of players' names on jerseys, gamers rarely if ever distinguish
5 between the "real" player and the player in EA's videogames. For example, through its website
6 www.easportsworld.com, EA allows gamers to post short video clips from the videogame.
7 Clips that feature unique plays are often labeled with actual player names even though they
8 feature only EA's computer generated simulations.

9 295. The omission of players' names has little consequence because EA has
10 intentionally designed its game so that players of the game can easily upload entire rosters of
11 actual player names. Companies such as Gamerosters.com LLC each year release data files that
12 contain the complete rosters for each NCAA Division I school. These rosters can be placed on
13 a flash drive or memory card, and then easily uploaded to the game. Once uploaded, the default
14 jerseys in the game that contain only players' numbers are replaced with jerseys that contain
15 both players' actual names and actual numbers and in-game announcers then refer to players by
16 their real names. These third parties often correct minor and insignificant mistakes in height or
17 weight thus making EA's representations all the more accurate.

18 296. In the most recent versions of its games for the Sony Play Station 3, EA
19 intentionally made the process of obtaining actual player names even easier by allowing players
20 to share rosters online using its "EA Locker" feature. The EA Locker feature allows gamers to
21 upload rosters from other gamers while in the game itself. Prior to the EA Locker, gamers had
22 to download rosters from a computer, upload the files to the gaming console and then transfer
23 the rosters to the game. Now the gamer can obtain full NCAA rosters in a matter of seconds
24 without using a computer. Furthermore, numerous websites, such as

1 www.freencaa09rosters.com, keep a list of players who offer free NCAA rosters utilizing the
2 EA Locker feature.

3 297. EA could easily block users from uploading actual player names and in fact, does
4 block users from uploading certain names, for example, names that contain profanities.

5 298. EA additionally encourages and facilitates the use of players' names and
6 likenesses by allowing gamers to post screen shots – electronic pictures taken from their game –
7 containing players' real names on its website. For example, the following is a screenshot taken
8 directly from www.easportsworld.com that clearly shows the names of three players from the
9 UCLA Bruins. In addition to the names, the virtual players match their real life counterparts in
10 all other material respects:
11



23 299. The 2010 version of NCAA basketball, which came out after this lawsuit was
24 filed, proudly points out the realism in the game and the likeness is startling. What you see in
25 the game aims to replicate what you see on a broadcast. Here are a few examples of overlays
26 you will see at different points in the game.
27

1 **Pre-game**



13 **Starting Lineups**



300. No. 13 of Stanford is recognizable as Stanford Guard Emmanuel Igbinosa and

1 No. 10 is Guard Drew Shiller.

2 301. No. 12 in the game, identified as a Junior forward, is recognizable as Duke's Kyle
3 Singler, and the remaining starting lineup directly corresponds to actual Duke players with the
4 same jersey numbers.

5 302. These are not isolated examples. These examples do, however, illustrate the
6 blatant and continued use of student-athlete likenesses in NCAA-related games, especially
7 when one considers that these images are taken from a game that was released after the filing of
8 this lawsuit.
9

10 **V. INJURY TO RIGHT OF PUBLICITY CLASS MEMBERS AND PLAINTIFFS**
11

12 303. Player names and likenesses and publicity rights are extremely valuable, intangible
13 property. For example, it has been publicly reported that EA paid the NFL Players Union,
14 through their licensing arm, nearly thirty-five million dollars each year for the use of players'
15 names and likenesses.
16

17 304. Despite contractual provisions prohibiting the use of player names and likenesses
18 and in clear violation of the NCAA's own rules, the NCAA, CLC and EA have agreed between
19 and among each other, and conspired to permit the use of player names and likenesses in EA's
20 videogames for their own monetary gain and without any compensation to the individual
21 athletes. In furtherance of the conspiracy, EA produced these games improperly using player
22 likenesses with the knowledge and consent of the CLC and the NCAA. Specifically, despite
23 their affirmative duties to prevent the utilization of player names and likenesses and in
24 furtherance of the conspiracy, the CLC and the NCAA have intentionally ignored EA's blatant
25 use of NCAA athlete names and likenesses and in fact have explicitly approved the utilization
26 of NCAA athlete names and likenesses.
27
28

1 to NCAA transfer rules, he was forced to sit out his senior season, but red-shirted to save his
2 final year of eligibility.

3 310. In 2007, as a red-shirt senior, Keller finished the season with 2,422 yards and 14
4 touchdowns in nine games. Keller also set a Nebraska career and single-season record by
5 completing 63.1 percent of his passes, as well as a record for passing yards per game in a single
6 season and career.
7

8 311. Keller wore number 9 on his jersey at Arizona State. The virtual player who wears
9 number 9 for Arizona State in NCAA Football 2005 has the same height, weight, skin tone, hair
10 color, hair style, handedness, home state, play style (pocket passer), visor preference, and facial
11 features as Sam Keller. Player number 9 is also the starting quarterback for Arizona State and
12 his school year corresponds with Keller's school year.
13

14 312. Upon his arrival at Nebraska, Keller wore number 5, which he kept throughout
15 2006. He continued to use number 5 during the spring game in 2007, but later, shortly before
16 playing in his first game at Nebraska in fall 2007, Keller switched to number 9.
17

18 313. The 2008 game, however, was researched before Keller made his switch, perhaps
19 as early as 2007 when Keller was a red-shirt senior (not playing for a year), and was too late to
20 catch Keller's abrupt switch to number 9. Although named by year, the game incorporates the
21 team that began playing the preceding year—*e.g.*, the 2007-2008 team would appear in the
22 2008 game.
23

24 314. Virtual player number 5 has the same height, weight, skin tone, home state,
25 handedness, and facial features as Sam Keller. Virtual player number 5 is also the starting
26 quarterback for the University of Nebraska. Remarkably, the virtual player also wears a dark
27 visor, which Keller wore for the first time at Nebraska. But Keller only wore it prior to his first
28 real game, switching at that time to a clear visor. That is, he only wore a dark visor when he

1 was wearing the number 5 jersey.

2 315. The virtual Nebraska player wearing number 5 a year before Keller played at
3 Nebraska was a senior wide receiver from North Carolina who was African American, 6'1,"
4 and 195 pounds. This virtual player's description perfectly describes the actual player, Shamus
5 McKoy.
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7 316. It is not coincidental that the virtual number 5 is virtually identical in all material
8 respects to the former Arizona State quarterback who just transferred to Nebraska. Compare
9 the two images and it is obvious they are not randomly generated:

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1 Keller, a graduate of the University of Nebraska with a degree in Political Science, never
2 consented to the use of his name or likeness in any Electronic Arts product.

3
4 **Bryan Christopher Cummings**

5 317. Right of Publicity Plaintiff Bryan Cummings enrolled at the The State University
6 of New York at Buffalo on a scholarship offer in 2002. He started eight games as a true
7 freshman at middle linebacker.
8

9 318. In 2003, as a sophomore, Cummings started all 11 games at middle linebacker, and
10 was fifth on the team in tackles.

11 319. As a junior in 2004, Cummings was voted captain (the only junior captain), started
12 every game and was second on the team in tackles.

13 320. In 2005, as a senior, Cummings was unanimously chosen as team captain, started
14 every game and was second on the team in tackles.
15

16 321. Cummings wore number 46 throughout his career at the University at Buffalo.
17 According to the official school roster, Mr. Cummings was 6'3 and weighed 223 pounds his
18 junior year and 226 pounds his senior year. Cummings finished his career with top ten school
19 records in career tackles, career solo tackles, and forced fumbles.

20 322. The virtual player who wears number 46 for the University of Buffalo in NCAA
21 Football 2005 has the same height, weight, skin tone, hair color, hair style, handedness, home
22 state (Ohio), and facial features as Bryan Cummings. Player number 46 is also the starting
23 middle linebacker for the University at Buffalo.
24

25 323. In addition to having a virtual player in NCAA Football 2005 that matches
26 Cummings in almost all aspects, there is an actual picture of Cummings in NCAA Football
27 2010 that is shown when a player selects the University of Buffalo as his or her team.
28

1 Cummings never consented to any use of his likeness, image, or picture by EA Sports.

2 324. Right of Publicity Plaintiff Bryon Bishop is a South Carolina resident and the
3 former starting left guard for the University of North Carolina football team.

4 325. Bishop enrolled at the University of North Carolina in 2004. He did not play in
5 his freshman season. Instead, he took a “red-shirt” year that preserved four years of NCAA
6 eligibility. He did not play in 2005 due to a back injury, but saw action in five football games
7 as a sophomore in 2006.

8 326. In 2007, Bishop’s junior year, he played in two football games at left guard. And
9 in 2008, as a red-shirt senior, Bishop started in four games at left guard and played in nine
10 games.

11 327. Bishop wore North Carolina jersey number 76. In 2007, Bishop was officially
12 listed at 6’3” and weighed 300 pounds. In 2008, Bishop was officially listed at 6’4” and
13 weighed 310 pounds. The player who wears number 76 for North Carolina in NCAA Football
14 2008 and 2009 has the same height, weight, skin tone, hair color, hair style and home state as
15 Bryon Bishop.

16 328. North Carolina player number 76 is also the starting left guard for the University
17 of North Carolina in NCAA Football 2009, and his school year corresponds with Bishop’s
18 school year . Bishop never consented to any use of his likeness or image by EA Sports.

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21
22 **Lamarr Watkins**

23 329. Right of Publicity Plaintiff Lamarr Watkins enrolled at the University of
24 Wisconsin – Madison in 2002. As a true freshman, Watkins played in all 14 games, including
25 starts at outside linebacker in each of the final six games.

26 330. As a sophomore, Watkins played in 12 of 13 games, including two starts at
27

1 Football game, wherein an image and/or video footage of Hart throwing a pass during the
2 Insight Bowl game against Arizona State was utilized.

3 339. Hart never consented to any use of his image or likeness by EA Sports.

4 340. Unquestionably, Defendant EA has copied, recreated and otherwise
5 misappropriated plaintiff Ryan Hart's identity and likeness as a quarterback on the Rutgers
6 University Football team without his consent, authorization or permission.

7
8 341. This misappropriation of Ryan Hart's name, image, and likeness was committed
9 with the intent of increasing the sales and profits for the EA since the heightened realism in
10 NCAA Football video games translates directly into increased sales and revenues for EA.
11 Consumers of these video games demand that these "virtual" football matches simulate actual
12 college football matches in the most realistic manner possible, including the use of the "virtual"
13 players that are modeled after real-life NCAA Football players such as Rutgers University
14 quarterback, Ryan Hart.
15

16 **Shawne Alston**

17 342. Plaintiff Shawne Alston was a heavily recruited three-star athlete from Hampton
18 Virginia. In high school, Alston ran for over 2400 yards and 38 touchdowns and was named a
19 first team all-state running back his senior year. After leading Phoebus High School to a
20 Virginia state championship, the high school football star committed to play at West Virginia
21 University.
22

23 343. Alston enrolled at WVU in the summer of 2009 and graduated three years later.
24 After graduating, he continued taking classes at WVU until enrolling in graduate school in
25 2013.

26 344. Alston played his first football game at WVU in the fall 2009 as a true freshman.
27 In the official roster, he was listed as No. 35, a 6'0", 218-pound freshman running back from
28

1 Hampton, Virginia. Alston only had one recorded running statistic during his freshman year,
2 and played mostly on special teams and in pass blocking schemes.

3 345. For his sophomore year (2010-2011), Alston switched to No. 34. In the official
4 roster, he was listed as a 5'11", 222-pound sophomore running back from Hampton, Virginia.

5 346. In the 2011 NCAA Football game, virtual No. 34⁴ has the same height, weight,
6 position, home state, skin tone, hair color, facial features, and handedness as Alston. Both are
7 also the backup running back for the WVU Mountaineers.

8 347. During his junior year (2011-2012), Alston switched to jersey No. 20. In the WVU
9 official roster, he was listed as a 5'11", 221-pound junior running back from Hampton,
10 Virginia. That year, Alston led his team in touchdowns and yards per carry. The WVU
11 Mountaineers were ranked in the top 25 for most of the season and played Clemson in the BCS
12 Orange Bowl. The WVU Mountaineers were underdogs against the 14th ranked Clemson
13 Tigers. Alston and his fellow Mountaineers, however, would go on to crush the Tigers 70-33
14 and set several bowl records for scoring.

15 348. In the 2012 NCAA Football game, virtual No. 20 has the same height, weight,
16 position, home state, skin tone, hair color, facial features, and handedness as Alston. Both are
17 also the backup running back for the WVU Mountaineers.

18 349. During his senior year (2012-2013), Alston continued to wear No. 20 and was
19 listed as a 5'11", 236-pound senior running back from Hampton, Virginia in the team's official
20 roster. That year, Alston scored seven touchdowns and again led his team in yards per carry.
21 The team was ranked as high as eighth in the nation during the year, and went on to play in the
22 Pinstripe Bowl against Syracuse University.

23 350. In the 2013 NCAA Football videogame, virtual No. 20 has virtually the same
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27
28 ⁴ Alston wore No. 20 in practice.

1 height, weight, position, home state, skin tone, hair color, facial features, and handedness as
 2 Alston. Both are also the backup running back for the WVU Mountaineers.

3 351. Alston's virtual doppelganger—WVU No. 20—also appears on the back cover of
 4 the 2013 NCAA Football game for the Xbox—thousands of copies of which were sold or
 5 caused to be sold by EA in New Jersey.



23 352. Above Alston's virtual twin, is Robert Griffin III. Mr. Griffin was paid—after
 24 exhausting his collegiate eligibility and becoming a professional player—to appear on the back
 25 cover of the game. Plaintiff and the other students on the back cover were not paid for use of
 26 their likenesses, nor did they consent to the use.

27 353. In 2013, after completing his college career and graduating from WVU, Alston
 28

1 signed a free agent contract with the New Orleans Saints. Alston was released in June 2013 and
2 retired from organized football shortly thereafter.

3 354. Alston is now in graduate school pursuing a Master's degree in Business
4 Administration.

5
6 **VI. COMMON COURSE OF CONDUCT EMANATING FROM**
7 **CALIFORNIA AND INDIANA**

8 355. EA is headquartered in Redwood City, California and is therefore a California
9 resident and citizen. As a California resident and citizen, Electronic Arts is subject to
10 California laws. Moreover, the primary executives responsible for negotiating the licensing
11 agreements for NCAA games reside and work in California. Upon information and belief, the
12 administration of licenses and negotiation of contracts with the NCAA and CLC have required
13 frequent contact in Indiana by EA, including but not limited to meeting at the NCAA's
14 headquarters in Indiana. Further, EA has used and continues to use Right of Publicity
15 Plaintiffs' and class members' likenesses in Indiana by selling – as well as promoting and
16 advertising – its games in Indiana, causing its games to be sold in Indiana, transporting its
17 games into Indiana, causing its games to be transported into Indiana, and by, upon information
18 and belief, sending personnel to NCAA members schools located in Indiana to use student-
19 athletes likenesses to help them form its game images. EA's personnel obtain information
20 regarding player equipment preferences, playing style and appearances for use in its games to
21 increase realism by creating virtual payers that approximate their real-life counterparts as
22 realistically as possible. In addition, through its website www.easportsworld.com and other
23 similar and successor websites, EA has knowingly and intentionally published, disseminated,
24 distributed and exhibited player likenesses in Indiana.

25
26
27 356. The NCAA has its principal place of business in Indiana and is therefore an
28

1 Indiana resident and citizen. As an Indiana resident and citizen, the NCAA is subject to Indiana
2 laws. The primary executives responsible for negotiating the licensing agreements for the
3 NCAA games produced by EA reside and work in Indiana. Approval to unlawfully utilize
4 player likenesses was granted by NCAA executives located in Indiana. Upon information and
5 belief, the administration of licenses and negotiation of contracts with the NCAA and CLC has
6 required frequent contact with California, including but not limited to meetings at Electronic
7 Arts' headquarters in California regarding player likenesses and frequent reaching out to
8 individuals in the state via interstate wires and the internet. Further, the NCAA has approved
9 and facilitated EA personnel visiting member schools for the purpose of using player likenesses
10 to develop the virtual players in its games. They have done so because EA's use of player
11 names and likenesses benefits the NCAA by increasing the popularity of the relevant games and
12 thus the royalties that the NCAA and CLC can collect.
13

14
15 357. The CLC has its principal headquarters in Atlanta, Georgia. Its contracts with the
16 NCAA were negotiated in Indiana and are governed by Indiana law. The administration of the
17 contracts, including the provisions regarding player likenesses, requires frequent contact and
18 travel to Indiana. Its contracts with EA were negotiated, in whole or in part, with executives
19 located in California and are subject to California law. The administration of the contracts,
20 including the provisions regarding player likenesses, requires frequent contact with California.
21 In negotiating and executing the player likeness provisions of the license with Electronic Arts,
22 CLC was directed by the NCAA and executives of the NCAA in Indiana.
23

24 VII. RIGHT OF PUBLICITY CLASS ACTION ALLEGATIONS

25 358. *Keller* Right of Publicity Plaintiffs sue on their own and on behalf of a class of
26 persons pursuant to Federal Rule of Civil Procedure 23. The putative *Keller* Right of Publicity
27
28

1 Class⁵ is defined as:

2 Virtual Player Class:

3 All NCAA football and basketball players listed on the official
4 opening-day roster of a school whose team was included in any
5 interactive software produced by Electronic Arts, and whose assigned
6 jersey number appears on a virtual player in the software.

6 Photograph Class:

7 All persons whose photographed image was included in any NCAA-
8 related interactive software produced by Electronic Arts.

9 359. *Hart/Alston* Right of Publicity Plaintiffs sue on their own and on behalf of a class
10 of persons pursuant to Federal Rule of Civil Procedure 23. The putative *Hart/Alston* Right of
11 Publicity Class is defined as:

12 All NCAA football and basketball players listed on the opening day
13 roster of a school whose team was included in an NCAA Branded
14 Videogame published or distributed during the *Hart/Alston* Right of
15 Publicity Class Period, and either had their assigned jersey number
16 appear on a virtual player in the software or had their image or likeness
17 otherwise included in the software.

17 360. Excluded from the classes are Defendants, their employees, co-conspirators,
18 officers, directors, legal representatives, heirs, successors and wholly or partly owned
19 subsidiaries or affiliated companies, class counsel and their employees, and the judicial officers,
20 and associated court staff assigned to this case. Also excluded from the Virtual Player Class are
21 the limited number of players whose assigned jersey number appears in the game, but the
22 virtual players' height is not within one inch of the player's roster height and the virtual player's
23 weight is not within 10% of the player's roster weight. Also excluded from the Photograph
24 Class are those people who gave written consent to be included in the NCAA-related interactive
25

26 ⁵ Though it consists of two components, the Right of Publicity class is, for convenience, referred to
27 throughout in the singular.

1 software produced by Electronic Arts. For purposes of the Civil Conspiracy and Breach of
2 Contract claims only, excluded from the Photograph Class are persons who did not sign form
3 08-3a.

4 361. The persons in each Right of Publicity Class described above are so numerous that
5 individual joinder of all members is impracticable under the circumstances of this case.

6 Although the precise number of such persons is unknown, the exact size of each Right of
7 Publicity Class is easily ascertainable, as each class member can be identified by using
8 Defendants' records. Plaintiffs are informed and believe that there are many thousands of class
9 members in each Right of Publicity Class.
10

11 362. There are common questions of law and fact specific to each Right of Publicity
12 Class that predominate over any questions affecting individual members, including:

- 13 (a) Whether Electronic Arts utilizes NCAA player likenesses in its
14 videogames;
- 15 (b) Whether such use is unlawful;
- 16 (c) Whether NCAA's duty of good faith and fair dealing requires them to
17 protect players' likeness rights when dealing with Electronic Arts,
- 18 (d) Whether NCAA and CLC have conspired with Electronic Arts to illegally
19 use players' likenesses,
- 20 (e) Whether Defendants have authorized, approved, or permitted Electronic
21 Arts' use of NCAA player likenesses in its videogames;
- 22 (f) Whether Electronic Arts' conduct violates Indiana Code § 32-36-1-1;
- 23 (g) Whether Electronic Arts' conduct violates California Civil Code § 3344;
- 24 (h) Whether Electronic Arts' conduct constitutes an unfair trade practice;
- 25 (i) Whether class members have been damaged by Defendants' conduct and
26 the amount of such damages;
- 27 (j) Whether treble damages are appropriate and the amount of such damages;
- 28 (k) Whether punitive damages are appropriate and the amount of such
damages;

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- (l) Whether statutory damages are appropriate and the amount of such damages; and
- (m) Whether Defendants should disgorge their unlawful profits and the amount of such profits.

363. For each respective Right of Publicity Class described above, the proposed class representatives' claims for each class are typical, as they arise out of the same course of conduct and the same legal theories as the rest of putative class's claims, and Right of Publicity Plaintiffs challenge the practices and course of conduct engaged in by Defendants with respect to each class as a whole.

364. Plaintiffs The proposed class representative for each Right of Publicity Class described above will fairly and adequately protect the interests of the class. They will vigorously pursue the claims and have no antagonistic conflicts. Right of Publicity Plaintiffs have retained counsel who are able and experienced class action litigators and are familiar with the videogame industry.

365. Defendants have acted or refused to act on grounds that apply generally to each Right of Publicity Class, and final injunctive relief or corresponding declaratory relief is appropriate respecting each class as a whole. A class action is also appropriate because Defendants have acted and refuse to take steps that are, upon information and belief, generally applicable to thousands of individuals, thereby making injunctive relief appropriate with respect to each Class as a whole. Questions of law or fact common to class members predominate over any questions affecting only individual members. Resolution of this action on a class-wide basis is superior to other available methods and is a fair and efficient adjudication of the controversy because in the context of this litigation no individual class member can justify the commitment of the large financial resources to vigorously prosecute a lawsuit against Defendants. Separate actions by individual class members would also create a risk of

1 inconsistent or varying judgments, which could establish incompatible standards of conduct for
 2 Defendant and substantially impede or impair the ability of class members to pursue their
 3 claims. It is not anticipated that there would be difficulties in managing this case as a class
 4 action.

5 ANTITRUST ALLEGATIONS

6 CLASS ACTION ALLEGATIONS WITH RESPECT TO ANTITRUST CLAIMS

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 8
 9 366. Antitrust Plaintiffs bring this action under Federal Rule of Civil Procedure
 10 23(b)(2) and (b)(3) on their own behalf and on behalf of the following Antitrust Classes:

11 The “Antitrust Declaratory and Injunctive Relief Class”:

12 All current and former student-athletes residing in the United States
 13 who compete on, or competed on, an NCAA Division I (formerly
 14 known as “University Division” before 1973) college or university
 15 men’s basketball team or on an NCAA Football Bowl Subdivision
 16 (formerly known as Division I-A until 2006) men’s football team
 17 and whose images, likenesses and/or names may be, or have been,
 18 included or could have been included (by virtue of their appearance
 19 in a team roster) in game footage or in videogames licensed or sold
 20 by Defendants, their co-conspirators, or their licensees. The Class
 21 excludes the officers, directors, and employees of Defendants, the
 22 officers, directors and employees of any NCAA Division I college
 23 or university, and the officers, directors, or employees of any
 24 NCAA Division I athletic conference.

25 The “Antitrust Damages Class”:

26 All former student-athletes residing in the United States who
 27 competed on an NCAA Division I (formerly known as “University
 28 Division” before 1973) college or university men’s basketball team
 or on an NCAA Football Bowl Subdivision (formerly known as
 Division I-A until 2006) men’s football team whose images,
 likenesses and/or names have been included or could have been
 included (by virtue of their appearance in a team roster) in game
 footage or in videogames licensed or sold by Defendants, their co-
 conspirators, or their licensees from July 21, 2005 and continuing
 until a final judgment in this matter. The class excludes current
 student-athletes. The Class also excludes the officers, directors,
 and employees of Defendants, the officers, directors, and
 employees of any NCAA Division I college or university, and the

1 officers, directors, or employees of any NCAA Division I athletic
2 conference.

3 367. As utilized above, the term “former student athletes” refers to those individuals
4 that have permanently ceased competing on teams because of, for example, graduation;
5 exhaustion of eligibility; injury; voluntary decisions to cease competition; and involuntary
6 separations from teams due to decisions by coaches, schools, conferences, and/or the NCAA,
7 and also includes those individuals that subsequently became professional athletes, whether
8 prior to or after the exhaustion of their intercollegiate eligibility, and further includes current
9 students that have remained in school but ceased competing on a collegiate athletic team. The
10 term “current student-athlete” refers to those individuals that are presently competing on NCAA
11 Division I basketball and FBS football teams. In addition to seeking certification of nationwide
12 classes for the antitrust claims, Plaintiffs also seek certification of a nationwide class for
13 purposes of their unjust enrichment / constructive trust and accounting claims.
14
15

16 368. Antitrust Plaintiffs do not know the exact number of Antitrust Class members,
17 because that information is in the exclusive control of Defendants and third parties, including
18 the NCAA’s members. However, due to the nature of the trade and commerce involved,
19 Plaintiffs believe that the Antitrust Class members number in the thousands and are
20 geographically diverse so that joinder of all Antitrust Class members is impracticable. Given
21 that the NCAA is selling and licensing the images, likenesses and/or names of players from
22 many decades, as described herein, it stands to reason that there are more former student
23 athletes than current ones affected by the NCAA’s anticompetitive practices described herein.
24

25 369. There are questions of law and fact common to members of both the Antitrust
26 Damages Class and the Antitrust Declaratory and Injunctive Relief Class, including but not
27 limited to the following:
28

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

24 370. Additional common questions of law of fact specific to the Antitrust Damages
25 Class include the following:

- 26 a. the appropriate measure of damages sustained by Plaintiffs and class members;
27 and
- 28 b. whether Defendants have been unjustly enriched.

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

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

- a. whether injunctive relief is appropriate;

- 1 b. if injunctive relief is appropriate, what types of such relief are suitable in this
- 2 matter;
- 3 c. whether declaratory relief is appropriate;
- 4 d. whether a constructive trust for the benefit of class members should be
- 5 established; and
- 6 e. whether an accounting is appropriate.

7 373. With respect to members of the Antitrust Declaratory and Injunctive Relief Class,
8 Defendants have acted or refused to act on grounds generally applicable to the Antitrust Class,
9 thereby making appropriate final injunctive relief or corresponding declaratory relief with
10 respect to the Antitrust Declaratory and Injunctive Relief Class as a whole.

11 374. Antitrust Plaintiffs' claims are typical of, and not antagonistic to, the claims of the
12 other Antitrust Class members. By advancing their claims, Antitrust Plaintiffs will also
13 advance the claims of all Antitrust Class members, because Defendants participated in activity
14 that caused all Antitrust Class members to suffer similar injuries.

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

21 376. A class action is superior to other methods for the fair and efficient resolution of
22 this controversy. The class action device presents fewer management difficulties, and provides
23 the benefit of a single adjudication, economy of scale, and comprehensive supervision by a
24 single court. The damages suffered by Antitrust Plaintiffs and each Antitrust Damages Class
25 member are relatively small as compared to the expense and burden of individual prosecution of
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27
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1 the claims asserted in this litigation. Thus, absent class certification, it would not be feasible for
2 Plaintiffs and Antitrust Class members to redress the wrongs done to them. It also would be
3 grossly inefficient for the judicial system to preside over large numbers of individual cases.
4 Further, individual litigation presents the potential for inconsistent or contradictory judgments
5 and would greatly magnify the delay and expense to all parties and to the judicial system.
6 Therefore, the class action device presents far fewer case management difficulties and will
7 provide the benefits of unitary adjudication, economy of scale, and comprehensive supervision
8 by a single court.
9

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

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

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

15 378. In its Consolidated Statement of Financial Position, dated August 31, 2008, the
16 NCAA stated the following:

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

The NCAA operates through a governance structure which
empowers each division to guide and enhance their ongoing
division-specific activities. In Division I, the legislative system is

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

9 379. On its website, the NCAA further describes itself as being "comprised of
10 institutions, conferences, organizations and individuals committed to the best interests,
11 education and athletics participation of student-athletes." The NCAA further states that its
12 members are the "colleges, universities and conferences that make up the NCAA," and that
13 "[t]he members appoint volunteer representatives that serve on committees which introduce and
14 vote on rules called bylaws. The members also establish programs to govern, promote and
15 further the purposes and goals of intercollegiate athletics."

17 380. According to the NCAA, "[m]any believe the Association rules college athletics;
18 however, it is actually a bottom-up organization in which the members rule the Association."

20 381. The NCAA has established a constitution, bylaws, regulations, rules,
21 interpretations, and policies, both written and unwritten, which regulate all aspects of collegiate
22 athletics. For example, the 2008-09 NCAA "Division I Manual," which is discussed in more
23 detail below, is comprised of the NCAA's Constitution, its Operating Bylaws, and its
24 Administrative Bylaws, which together span more than 400 pages.

25 382. The NCAA has also established an enforcement program to ensure that institutions
26 and student-athletes comply with NCAA rules. Through the enforcement program, the NCAA
27 has the authority to impose severe penalties on member schools and student-athletes for non-
28

1 compliance.

2 **B. The Challenged Restraints.**

3 383. The right to control the use of one's name, image, and likeness is a property right
4 with economic value. Notwithstanding the existence of this right and its accompanying
5 economic value, Defendants and their co-conspirators have conspired to use the names, images,
6 and likenesses of current and former student athletes without compensation for the use.
7

8 384. Defendants and their co-conspirators have engaged and continue to engage in an
9 overarching conspiracy to: (a) fix the amount current and former student athletes are paid for
10 the licensing, use, and sale of their names, images, and likenesses at zero; and (b) foreclose
11 current and former student athletes from the market for the licensing, use, and sale of their
12 names, images, and likenesses.
13

14 385. The conspiracy has both horizontal and vertical aspects. The horizontal aspects
15 emanate from the fact that NCAA member schools are horizontal competitors—they compete
16 for student-athletes but have restrained this competition by agreeing not to do so on the basis of
17 compensation to student-athletes for any purpose. *See, e.g., American Needle, Inc. v. National*
18 *Football League*, 560 U.S. 183 (2010). There is virtual unanimity among economists that the
19 NCAA is a cartel. Indeed, one economist has described the NCAA as “the best little monopoly
20 in America.”
21

22 386. The vertical aspects emanate from the fact that EA, CLC and other unnamed co-
23 conspirators, including affiliates, predecessors, and successors of CLC, are or were vertical
24 business partners of the NCAA and its member schools and conferences. In order to avoid
25 undermining their horizontal conspiracy, the NCAA and its member schools and conferences
26 agree to impose and EA, CLC and other unnamed co-conspirators agree to abide by the same
27 compensation restrictions as a means of restraining competition.
28

1 387. The alleged restraints are effectuated through the NCAA’s constitution, bylaws,
2 regulations, rules, interpretations, and policies, both written and unwritten, by purported release
3 forms disseminated by the NCAA and by its member conferences and schools, by the NCAA’s
4 administrative interpretations of its bylaws and rules, by the agreements of non-NCAA
5 members like EA and CLC to be bound by those bylaws and rules, and by the efforts of EA and
6 CLC to obtain administrative interpretations or agreement otherwise that permit them to exploit
7 the names, images, and likenesses of current and former student-athletes.
8

9 388. These various constitutional provisions, bylaws, regulations, rules, interpretations,
10 and policies, include NCAA Constitution 3.2.4.6 and Bylaws 2.8; 12.02.2; 12.02.3; 12.1.2;
11 12.1.2.1; 12.5.1.1.1; 12.5.1.7; 12.5.1.8; 12.5.2.1; 12.5.2.2; 13.2.1; 14.1.3.1; 14.1.3.2; 16.01;
12 16.02.4; 18.4.2.1; 22.2.1.2; 31.6.4; 31.6.4.3 (“Bylaws”), and their predecessors, as interpreted
13 by NCAA Membership Services.
14

15 389. As the NCAA’s website explains: “Bylaw 12 and other legislation are highly
16 nuanced in language and implementation to insure that student-athletes do not receive benefits
17 that could be construed as remuneration for athletics participation, do not trade on their public
18 standing as a student-athlete, and are not exploited by professional or commercial interests that
19 would abridge their status as amateurs in their sport.”
20

21 390. Some of the specific NCAA bylaws, constitutional provisions, and standardized
22 forms that create this restraint are discussed below.

23 391. **Bylaw 12.5.1.1.1 and related forms, bylaws and constitutional provisions.** One
24 of the NCAA bylaws at issue is Bylaw 12.5.1.1.1 (“Promotions Involving NCAA
25 Championships, Events, Activities or Programs”) states the following:

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

1 programs.

2 392. Before a student-athlete commences athletic participation each year, the NCAA
3 requires that he or she sign its “Form 08-3a” (attached as Exhibit A) (or its predecessors and
4 successors) titled “Student-Athlete Statement.” The form is of particular importance due to its
5 provision regarding student-athletes’ release of rights in connection with use of their images,
6 likenesses and/or names. It appears that the title of this form changes each year in connection
7 with the applicable year.
8

9 393. The mandatory nature of the form on which student-athletes must agree to the
10 terms of Bylaw 12.5.1.1.1 is detailed in the Constitution and Bylaws. Specifically, Article
11 3.2.4.6 of the Constitution (“Student-Athlete Statement”) states the following:

12 An active member shall administer annually, on a form prescribed
13 by the Legislative Council, a signed statement for each student-
14 athlete that provides information prescribed in Bylaws 14.1.3 and
15 30.12.

16 394. Bylaw 14.1.3.1 (“Content and Purpose”), referred to in Article 3.2.4.6 of the
17 Constitution, details the contents of the required form and states the following:

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

395. Bylaw 14.1.3.2 (“Administration”) continues that “[t]he institution shall administer
this form individually to each student-athlete prior to the individual’s participation in

1 intercollegiate competition each year. Details about the content, administration, and disposition
2 of the statement are set forth in Bylaw 30.12.”

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

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

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

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

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

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

1 NCAA championships or other NCAA events, activities or
2 programs.

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

7 400. The "authorization" described above in Form 08-3a is entirely coerced and
8 uninformed and is even signed, in some cases, by minors.

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

21 402. The NCAA's releases described herein are also notable for their failure to indicate
22 that legal rights are being relinquished, and for their failure to counsel student-athletes, who are
23 sometimes minors, that they may wish to seek legal advice in connection with the release of
24 future compensation rights. These forms thus operate as unfair contracts of adhesion. As

25 Professor Elizabeth ("Betsy") Altmaier of the University of Iowa pointed out in a December
26 FOURTH CONSOLIDATED AMENDED
27 CLASS ACTION COMPLAINT
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1 2008 e-mail to the NCAA Division I Task Force on Commercial Activity in Intercollegiate
2 Athletics: "Student athletes don't have much discretion as it is, and they sign these 'release'
3 forms in a single meeting with literally a stack in front of each of them."

4 403. The *Des Moines Register* recently confirmed that schools do in fact require
5 student-athletes to sign the NCAA's mandated consent forms, and reported the following in an
6 article that also described two schools' receipt of funds relating to the NCAA's video game
7 license agreement with Defendant EA (as further detailed herein):
8

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

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

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

21 405. At a hearing in this matter on December 17, 2009, upon questioning from the
22 Court, counsel for the NCAA confirmed the NCAA's interpretation of its release forms as
23 follows:

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

28 **[NCAA Counsel]:** IT DEPENDS ON WHICH THING WE ARE
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 O8-3A 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)

406. The use of such NCAA standardized release forms 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."

407. 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

1 (the doctor) cannot be present when the patient meets with a surgeon because the conference
2 may improve his patient's decision making power." The court additionally stated that "[i]f the
3 Defendant [NCAA] intends to deal with this athlete or any athlete in good faith, the student-
4 athlete should have the opportunity to have the tools present (in this case an attorney) that
5 would allow him to make a wise decision without automatically being deemed a professional,
6 especially when such contractual negotiations can be overwhelming, even to those who are
7 skilled in their implementation."

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

11 409. **Forms developed by NCAA member institutions.** A few NCAA member
12 conferences have disseminated their own student-athlete release forms that reflect NCAA
13 policy. James Delany ("Delany"), Commissioner of the Big Ten, has stated that the conference
14 does require student-athletes to sign releases for the use of their names, images, and likenesses.
15 He characterized this as "simply the way it's been done for many, many years", that institutions
16 use a "form release," and that the Big Ten adopted a "uniform release" in 2007. The release is a
17 condition for participating in intercollegiate sports. Delany called it "the practice that
18 institutions participated in" so that each such institution would be "in compliance with NCAA
19 rules and have the necessary permissions to do what it was doing." Delany acknowledged that
20 the student-athlete received no consideration for signing the "form release."
21

22 410. **Article Bylaw 12.5.1.1.** Another bylaw at issue here is Bylaw 12.5.1.1
23 ("Institutional, Charitable, Education or Nonprofit Promotions"), which also results in the
24 creation of an unconscionable release that benefits members. This release also is the product of
25 the anticompetitive agreement described herein among the NCAA and its members. Bylaw
26 12.5.1.1 states in pertinent part the following:
27
28

1 A member institution or recognized entity thereof (e.g., fraternity,
2 sorority or student government organization), a member conference
3 or a non-institutional charitable, educational or nonprofit agency
4 may use a student-athlete's name, picture or appearance to support
5 its charitable or educational activities or to support activities
6 considered incidental to the student-athlete's participation in
7 intercollegiate athletics, provided the following conditions are met:

- 8
- 9 (a) The student-athlete receives written approval to participate
10 from the director of athletics (or his or her designee who may
11 not be a coaching staff member), subject to the limitations on
12 participants in such activities as set forth in Bylaw 17;
- 13
- 14 (b) The specific activity or project in which the student-athlete
15 participates does not involve co-sponsorship, advertisement or
16 promotion by a commercial agency other than through the
17 reproduction of the sponsoring company's officially registered
18 regular trademark or logo on printed materials such as pictures,
19 posters or calendars. The company's emblem, name, address,
20 telephone number and Web site address may be included with
21 the trademark or logo. Personal names, messages and slogans
22 (other than an officially registered trademark) are prohibited;
- 23
- 24 (c) The name or picture of a student-athlete with remaining
25 eligibility may not appear on an institution's printed
26 promotional item (e.g., poster, calendar) that includes a
27 reproduction of a product with which a commercial entity is
28 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

1 institution at which the student-athletes are enrolled,
 2 institutionally controlled (owned and operated) outlets or
 3 outlets controlled by the charitable or educational organization
 4 (e.g., location of the charitable or educational organization, site
 5 of charitable event during the event). Items that include an
 6 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

- 7 (i) **The student-athlete and an authorized representative of the**
 8 **charitable, educational or nonprofit agency sign a release**
 9 **statement ensuring that the student-athlete's name, image**
 10 **or appearance is used in a manner consistent with the**
 11 **requirements of this section.** (emphasis added).

12 411. This Bylaw, with its mandated release pursuant to subsection (i), has been utilized
 13 by the NCAA's members to engage in the unlawful licensing of Antitrust Class members'
 14 rights, as intended by the NCAA. Just as described herein with respect to the NCAA's Form
 15 08-3a, this mandated release constitutes an unconscionable contract that is both procedurally
 and substantively unconscionable.

16 412. **Bylaw 12.5.1.7.** Similarly, Bylaw 12.5.1.7 ("Promotion by Third Party of
 17 Highlight Film, Videotape or Media Guide") states the following:

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

- 22 (a) The institution specifically designates any agency that is
 23 authorized to receive orders for the film, videotape or media
 guide;
 24 (b) Sales and distribution activities have the written approval of
 the institution's athletics director;
 25 (c) The distribution company or a retail store is precluded from
 26 using the name or picture of an enrolled student-athlete in any
 27 poster or other advertisement to promote the sale or
 28 distribution of the film or media guide; and

1 (d) There is no indication in the makeup or wording of the
2 advertisement that the squad members, individually or
3 collectively, or the institution endorses the product or services
of the advertiser.”

4 413. The above-provision appears to purport to give third parties (meaning for-profit
5 “distribution companies”) the right to “sell and distribute” highlight films upon approval from
6 the school, without even mandating a release from the student-athlete. However, the release
7 that the NCAA mandates in its Bylaw 12.5.1.1(h), described a few paragraphs above, has been
8 utilized by the NCAA and its members to unlawfully license and use the commercial rights of
9 former student-athletes’ rights in the use of their images.
10

11 414. **Bylaws 12.5.2.1 and 12.5.2.2.** Other NCAA bylaws at issue here are Bylaws
12 12.5.2.1 and 12.5.2.2. Bylaw 12.5.2.1 states:

13 After becoming a student-athlete, an individual shall not be eligible for
14 participation in intercollegiate athletics if the individual:

15 (a) Accepts any remuneration for or permits the use of his or her name or
16 picture to advertise, recommend or promote directly the sale or use of a
commercial product or service of any kind; or

17 (b) Receives remuneration for endorsing a commercial product or service
through the individual’s use of such product or service.
18

19 415. Bylaw 12.5.2.2 states:

20 If a student-athlete’s name or picture appears on commercial items (e.g.,
21 T-shirts, sweatshirts, serving trays, playing cards, posters) or is used to
22 promote a commercial product sold by an individual or agency without the
23 student-athlete’s knowledge or permission, the student-athlete (or the
institution acting on behalf of the student-athlete) is required to take steps
to stop such an activity in order to retain his or her eligibility for
intercollegiate athletics.

24 416. Bylaw 12.5.2.1 precludes a student-athlete from accepting remuneration for use of
25 his name, image, and likeness; Bylaw 12.5.2.2 requires NCAA member institutions to take steps
26 to stop the use of a student-athlete’s name, image, and likeness for commercial purposes.
27

28 417. **Bylaws compelling obedience to the aforementioned bylaws.** The

1 aforementioned bylaws govern the conduct of all NCAA member institutions. Pursuant to

2 Bylaw 2.8.1:

3 Each institution shall comply with all applicable rules and regulations of
4 the Association in the conduct of its intercollegiate athletics programs. It
5 shall monitor its programs to assure compliance and to identify and report
6 to the Association instances in which compliance has not been achieved.
7 In any such instance, the institution shall cooperate fully with the
8 Association and shall take appropriate corrective actions. Members of an
9 institution's staff, student-athletes, and other individuals and groups
10 representing the institution's athletics interests shall comply with the
11 applicable Association rules, and the member institution shall be
12 responsible for such compliance.

13 418. Other NCAA bylaws require certification of compliance with NCAA legislation or
14 adherence to NCAA rules (Bylaws 3.2.1.2, 14.01.3, 18.4.2.1, 22.2.1.2).

15 419. **NCAA administrative interpretations.** As explained below in connection with
16 EA and CLC, the NCAA's management at times issued "administrative exceptions" to certain
17 rules that permitted designated licensees such as EA to engage in just such commercial
18 exploitation. These types of administrative interpretations are permitted under the NCAA's
19 bylaws. In its Bylaw 12.02.3, a "professional athlete" is defined as "one who receives any kind
20 of payment, directly or indirectly, for athletics participation except as permitted by the
21 governing legislation of the Association." (Emphasis added). Similarly, "pay" is defined in
22 Bylaw 12.02.2 as "receipt of funds, awards or benefits not permitted by the governing
23 legislation of the Association for participation in athletics." *Id.* (emphasis added). The NCAA,
24 through its total control of intercollegiate athletics, and due to a gross disparity in bargaining
25 power, requires student-athletes to sign forms containing non-negotiable terms. Any Class
26 member declining to do so is barred by the NCAA and the relevant member institution from all
27 further intercollegiate athletic competition.

28 **The Markets Allegedly Restrained.**

 420. The challenged restraints affected and continues to affect two relevant markets: (a)
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1 the student-athlete Division I college education market in the United States (the “education
2 market”); and (b) the market for the acquisition of group licensing rights for the use of student-
3 athletes’ names, images, and likenesses in the broadcasts or rebroadcasts of Division I
4 basketball and football games and in videogames featuring Division I basketball and football in
5 the United States (the “group licensing market”). The group licensing market is a submarket of
6 the collegiate licensing market in the United States, which is also affected by the alleged
7 restraints.

8
9 421. The NCAA and its members control the collegiate licensing and group licensing
10 markets in the United States, including licensing rights to current and former players’ images
11 and likenesses (which are utilized in, for example, items such as DVDs of game films, on-
12 demand sales of game films, “stock footage” for corporate advertisers, “classic” games shown
13 on the cable television network “ESPN Classic” and other networks, photographs, video games,
14 and in other merchandise).

15
16 422. IMG, the owner of the NCAA’s licensing arm, Defendant CLC, recognizes the
17 college market on its website as follows: “IMG College is a leading collegiate marketing,
18 licensing and media company that can create and build comprehensive marketing platforms that
19 leverage the marketing potential of the college sports and on-campus market. “ IMG continues
20 that “[c]onsumer devotion to college institutions is unrivaled, but the complexity of the space
21 makes it challenging for marketers to tap the full potential. With our expertise, broad
22 relationships and portfolio of properties, IMG College can help brands create platforms to reach
23 millions of passionate, loyal fans.” IMG further states that “[o]ur licensing team, The
24 Collegiate Licensing Company, is the unrivaled leader in collegiate brand licensing, managing
25 the licensing rights for nearly 200 leading institutions that represent more than \$3 billion in
26 retail sales and more than 75% share of the college licensing market.” IMG on its website
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1 further states: “[h]aving originally contracted with IMG College in 1976, the NCAA has
2 trusted the Company for nearly 30 years to lead the industry in delivering the power of the
3 collegiate market to consumers nationwide.”

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

15 424. The NCAA (through its members) thus totally controls the licensing rights market
16 (including the group licensing market), and is able to dictate the supply and the terms upon
17 which licensed products and licenses are bought and sold.

18 425. Another indicator of the NCAA and its members’ power includes the fact that *all*
19 student-athletes are required to abide by the NCAA constitution, bylaws, regulations, rules,
20 interpretations, and policies, both written and unwritten and to sign the forms described herein,
21 pursuant to which the NCAA has unlawfully licensed the rights of former student-athletes are
22 forced to release all future rights to the commercial use of their images. Student-athletes must
23 sign these forms, even if he or she does not receive a scholarship. The NCAA has the power to
24 impose and enforce the releases, and to exclude non-signing athletes from participation in all
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1 future intercollegiate competition, as well as penalize schools whose athletes violate the terms
2 of the forms and related rules, regardless of whether the athlete receives any scholarship funds.

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

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

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

5 429. All NCAA members have agreed to utilize and abide by the NCAA's constitution,
6 bylaws, regulations, rules, interpretations, and policies, both written and unwritten, including
7 the provisions detailed herein that mandate the use of Form 08-3a (and its predecessors and
8 successors), Bylaw 12.5.2.1 and 12.5.2.2, and the "Institutional, Charitable, Educational, or
9 Nonprofit Promotions Release Statement" discussed herein, which have been used by the
10 NCAA and its member institutions and conferences to fix the prices at which former student-
11 athletes are paid for their commercial licensing rights and to foreclose student-athletes from
12 exercising any such rights.
13
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15 430. The NCAA and its members are able to engage in these anticompetitive
16 agreements and arrangements, as there are no acceptable substitutes for major college football
17 or major college basketball.

18 431. The agreement among the NCAA and its members to jointly appropriate student-
19 athletes' rights after the expiration of the students' eligibility as an amateur athlete is not
20 necessary to achieve the NCAA's stated goal of clearly demarcating between college and
21 professional sports, or to serve any pro-educational purpose, or any other legitimate, pro-
22 competitive purpose in the marketing of college sports. In January of 2008, David Berst, Vice-
23 President for the NCAA's Division I, conducted a study of amateurism in the NCAA and
24 concluded it was "a definition that was not steeped in any sacred absolute principle that had to
25 be preserved. It continues to be a balancing of vocation vs. avocation influences and can be
26 modified as views change while preserving the line between us and the pros."
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1 432. Moreover, reasonable and less restrictive alternatives are available than the
2 NCAA’s “zero compensation” policy for current and former student-athletes’ licensing rights.
3 For example, all of the major professional sports, including basketball and football, have
4 identified and utilized group-licensing methods to share revenues among teams and players.
5 Additionally, other reasonable and less restrictive alternatives could include the establishment
6 of funds for health insurance, additional educational or vocational training, and/or pension plans
7 to benefit former student athletes.
8

9 **D. Defendants Admit The Alleged Restraints.**

10 433. The NCAA’s executives and member conferences and schools have admitted the
11 alleged restraints.

12 434. The Bowl Championship Series stated in a letter arising from another discovery
13 dispute in this case, “[w]hether a payment is made to a student-athlete during his years in
14 college or a promise is made to pay the student-athlete after he leaves school is of no moment.
15 Deferred compensation remains just that - compensation - and is forbidden by the NCAA’s
16 amateurism rules.”
17

18 435. This sentiment was echoed by current NCAA President Mark Emmert (“Emmert”) who, when asked if an NCAA member could share revenue with former student-athletes if it
19 wished to do so, he responded: “They are not free to do so if that was a--an agreement that was
20 struck before or during the time that the individual was a student-athlete.” Emmert further
21 stated that “we don’t share revenue with student-athletes after they have left their NCAA
22 participation . . . because . . . we have made policy decisions to focus revenue streams on the --
23 the opportunities that are provided during their time as student-athletes, while they are student-
24 athletes” and that “it is a general policy that’s decided every time we make budgetary
25 allocations.”
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1 436. Likewise, Jonathan LeCrone, Commissioner of the Horizon League, testified that
2 mandated “payments to any individual student-athletes or group of student-athletes just runs
3 contrary to the fundamental purpose of our business.”

4 437. Kevin Lennon, the NCAA’s Vice-President of Membership & Academic Affairs,
5 has stated: “[t]hese are the rules that also prevent Division I member institutions from paying
6 student-athletes for agreeing to attend the school as a potential quarterback, or winning the
7 starting point guard position on a men’s basketball team, or leading the football team in
8 touchdown receptions, or making any other payment to a student based on his status or
9 performance as an athlete.”

10 438. The SEC has taken the position that a 1984 Supreme Court opinion “allows the
11 NCAA to condition participation in college sports on maintenance of amateur status. Paying
12 athletes for appearing in broadcasts—either while they are enrolled or promising to do so after
13 they leave college—would fly in the face of the precedent set by *Board of Regents*.”

14
15
16 **E. The Recognition Of The Impropriety Of The Alleged Restraints.**

17 439. The NCAA’s own executives and officials of its member institutions have
18 recognized the impropriety of the alleged restraints.

19 440. Thus, for example, an October 2010 e-mail from NCAA Chief Policy Advisor
20 Wallace Renfro to Emmert stated:

21
22 There is a general sense that intercollegiate athletics is as thoroughly
23 commercialized as professional sports. Some believe that athletics
24 departments study how to emulate the pros on marketing their sports
25 (primarily football and basketball), and sometimes lead the way. And the
26 public would generally agreed [sic] that has all taken place at the expense
27 of the student-athlete whose participation is exploited to make another
buck for a bigger stadium, the coaches, the administrators or for other
teams who can’t pay their own way. It is a fairness issue, and along with
the notion that athletes are students is the great hypocrisy of intercollegiate
athletics.

28 441. Similarly, Walter Byers (“Byers”), Executive Director of the NCAA from 1951 to

1 1987, laid out some of the background on amateurism and the NCAA in his 1995 book
2 Unsportsmanlike Conduct. He noted that suggestions for changing the compensation rules for
3 student-athletes (a term he disfavored) were proposed at the 89th NCAA Conference in January
4 of 1995 and were met with a “defensive circling of the wagons”; “the NCAA leadership
5 unanimously agreed that it would be heresy to permit athletes to have equal access to the
6 marketplace, say, for example, like coaches.” He called the NCAA’s position “an economic
7 camouflage for monopoly practice.” As Byers went on to note, “[p]rotecting young people from
8 commercial evils is a transparent excuse for monopoly operations that benefit others.”

9
10 442. The NCAA considered over a number of years legislation to change Bylaw
11 12.5.1.1. One of the goals of such legislation was to “replace[] outdated aspects of the NCAA’s
12 current legislation in this area with more modern legislation that are [sic] clear, easier to apply
13 and accommodate legal concerns (e.g. UBIT, antitrust, SA rights).” The legislation was not
14 enacted, but during the consideration process, the question was being asked as early as 2004:
15 “[d]oes this open the door to future claims from SAs contributing the most to the funds? Are we
16 creating the NCAAPA?” In 2006, an internal NCAA document discussed “potential legal
17 challenges” and the “potential need to provide additional benefits for the SAs given more
18 permissive use of their likenesses?” Other internal documents mentioned “legal challenges” or
19 igniting the “SA likeness debate.”
20
21

22 443. The filing of the O’Bannon suit in July of 2009 put to the test whether the
23 NCAA’s policy of zero compensation to student-athletes for use of their name, image, and
24 likeness should continue. Dan Beebe (“Beebe”), former Commissioner of the Big 12, said in a
25 July 27, 2009 e-mail that with respect to the suit, the Big 12’s board was “uneasy with the
26 exploitation of player’s names and likenesses for commercial purposes.” Bill Powers of UT
27 wrote an e-mail to Beebe, saying “it looks like the NCAA makes money from the licenses. Why
28

1 should we be defendants in this, rather than plaintiffs representing our students?” Harvey
2 Perlman, Chancellor of the University of Nebraska-Lincoln stated, “[t]his whole area of name
3 and likeness and the NCAA is a disaster leading to a catastrophe as far as I can tell.” Despite
4 these concerns, the NCAA’s zero compensation policy continues in force and continues to be
5 enforced by its member institutions.
6

7 444. Similarly, Cory Moss, Senior Vice-President of CLC, wrote in 2009, soon after the
8 O’Bannon lawsuit was filed, that “[s]hould we really begin work on a formal College Student
9 Athlete Players Association (current and former) to be ready depending on the results of the EA
10 lawsuits?” The proposed CSAPA would have a Board of Directors and would do “whatever is
11 necessary to ensure that licensing and marketing rights of former collegiate student-athletes are
12 protected and revenue opportunities are pursued.”
13

14 445. In June of 2013, James Duderstadt, Former President of University of Michigan,
15 stated: “[i]n a sense, the NCAA's objective is to preserve the brand so that it provides revenue
16 primarily for a small number of people who get very, very rich on the exploitation of young
17 students who really lose opportunities for their futures ... And that's what's corrupt about it. The
18 regulations are designed to protect the brand, to protect the playing level and keep it exciting,
19 not to protect the student athletes.”
20

21 **F. EA’s And CLC’s Participation In The Alleged Restraints.**

22 446. During the Class period, CLC and EA entered into a series of licensing agreements
23 whereby the latter was allowed to produce a series of NCAA Division I and FBS-themed
24 videogames. EA paid no current student-athlete for the use of his name, image, and likeness in
25 those games. Apart from certain very limited short-term promotions, EA also paid no former
26 student-athlete for the use of his name, image, and likeness in those games. In those
27 agreements, EA agreed to be bound by the NCAA’s rules and subjected its games to the
28

1 approval of the NCAA and/or certain of its member institutions.

2 447. However, EA and CLC did not merely follow the NCAA's rules. They actively
3 lobbied for, and obtained, administrative interpretations of those rules that permitted greater
4 uncompensated exploitation of student-athletes' names, images, and likenesses. Where their
5 formal efforts were unsuccessful, EA and CLC obtained agreement from the NCAA to permit
6 greater uncompensated exploitation of student-athletes' names, images, and likenesses
7 notwithstanding the rules.
8

9 448. CLC gave multiple presentations to NCAA committees, imploring them to adopt a
10 revision to the NCAA bylaws that was designed, in the NCAA's own words, to expand the
11 scope of student athlete image use and to "accommodate legal concerns (e.g., unrelated business
12 income tax, antitrust, student-athlete rights)." When EA complained that the proposed
13 amendment to NCAA Bylaw 12.5.1 would not allow the unfettered use of student athletes'
14 names, images, and likenesses without compensation, CLC's President, Pat Battle, told Greg
15 Shaheen ("Shaheen"), former NCAA Senior Vice-President, Basketball and Business Strategies
16 that he would "tell Joel [Linzner, General Counsel of EA] just to hold off and that we have
17 things under control working behind the scenes."
18

19 449. EA, CLC and the NCAA worked together to affirmatively mislead the public and
20 student athletes about the lengths EA went to model the avatars after real players. Defendants
21 circulated an FAQ sheet after the O'Bannon suit was filed to "align our messaging." In internal
22 talking points for the NCAA'09 Football videogame that were jointly developed and approved
23 by all Defendants, it was claimed that "[w]hile NCAA policy also permits the accurate
24 recreation of skin tones, EA does not model faces or body types after student athletes."
25

26 450. Defendants' own documents and testimony show, however, that EA, CLC and the
27 NCAA colluded to use former and current student-athletes' names, images, and likenesses in
28

1 their videogames without compensation. All of EA’s videogame avatars were modeled in the
2 same way and were tied to the characteristics of actual student-athletes, and show that EA
3 wanted to use the names, images, and likenesses of all student-athletes incorporated in its
4 videogames. The NCAA knew that student-athletes’ names, images, and likenesses were used,
5 but approved the practice even though its attempt to get “expanded waivers” via bylaw changes
6 failed.
7

8 451. EA developed its NCAA-themed basketball and football videogames by modeling
9 every single avatar in the games on a real student-athlete. EA tested how gamers rated the
10 avatars: “how closely players look and feel [to] their real-life counterparts.” EA noted “legal
11 restrictions” internally but emphasized that “[m]atching hair and body type” were permissible—
12 and paramount. It painstakingly modeled each avatar to match a current or former student-
13 athlete. EA’s internal spreadsheets show that each avatar was matched to dozens of the real
14 student-athlete’s identifying characteristics. For example, for the NCAA football videogame,
15 EA matched: (1) the name of the real student-athlete; (2) his real-life jersey number; (3) his
16 position played; (4) his hometown; (5) his year of eligibility; (6) his athletic abilities (on at least
17 22 dimensions, including speed, strength, agility, etc.); (7) his physical characteristics (on at
18 least 26 dimensions, including, weight, height, skin color, face geometry, hair style, muscle
19 shape, etc.); and (8) how he dressed for games in real life (on at least 28 dimensions, including
20 shoes, how they taped, braces worn, undershirts, facemask and helmet styles, etc.). EA’s
21 employees admitted that the avatars are modeled on real life student-athletes.
22
23

24 452. Former NCAA President Brand and Shaheen made it clear to EA and CLC that
25 they were “on board” with EA’s desire to use student-athletes’ names, images, and likenesses.
26 Throughout the Class Period, NCAA administrators noted “real concern” that use of student-
27 athletes’ names, images, and likenesses in videogames “adds to the argument that student-
28

1 athletes should be unionized and receive a cut of the profits, etc.” Numerous NCAA
2 employees--including those that were technically in charge of approving EA’s videogames--
3 knew that the videogames were depicting real SAs, but were overruled by Brand and Shaheen.
4 For example, Peter Davis, the former NCAA Director of Corporate Alliances, admitted that
5 there are “likenesses of student-athletes” in the videogame. At least five other high-level NCAA
6 employees expressed concern about the “obvious” use of likenesses. Despite these numerous
7 internal misgivings, Brand and Shaheen were undeterred. The former suggested that “[w]e can
8 take care of the legal issues through an expanded waiver.” Shaheen also worked “behind the
9 scenes” to obtain a series of increasingly liberal “interpretations” of existing bylaws to give EA
10 what it wanted.
11

12 453. The NCAA looked the other way on the increasingly obvious misuse of names,
13 images, and likenesses. First, it took the position that the images were not “likenesses” unless
14 they were developed using “mapping technology.” Second, the NCAA reversed its
15 interpretation from one month before, that “the download of actual rosters [] violates student
16 athletes rights.” EA considered the NCAA’s permission to create an online “locker room” in
17 which name rosters could be exchanged freely to be the equivalent of shipping the game with
18 the names on the jerseys: “[i]ts huge, its just like we shipped the game with them.” EA
19 bragged to the press that “100 percent count on having rosters with names available for all
20 schools shortly after release.”
21

22 454. EA was confident that name rosters would be available shortly after release
23 because it supplied the name rosters to gaming sites. It did so, even though acknowledging
24 internally that if EA got caught, it would “expose the company to risk of lawsuit.”
25

26 **FACTUAL ALLEGATIONS**

1 **A. The NCAA’s 2009 “State of the Association” Speech Regarding Commercial**
2 **Exploitation of Student-Athletes.**

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

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

11 Call this the condition of non-exploitation.

12 This condition is further delineated in the paper you received as
13 you arrived today. When we say “student-athlete exploitation in
 commercial activity,” we should have a specific definition in mind.

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

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

18 But most cases of exploitation are subtle and indirect.

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

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

23 But exploitation may be the result, nonetheless.

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

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

28 Period.

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

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

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

17 **458.** In its 2007-08 report, the NCAA listed \$552 million in total revenue for “television
18 and marketing rights fees” of which \$529 million was elsewhere attributed to revenues from its
19 television contract with CBS, leaving an apparent \$23 million difference attributable to
20 royalties. Additionally, the NCAA reported approximately \$14.5 million in revenue for “sales
21 and services.” Thus, in just a few years, it appears that the combination of royalties and sales
22 and services went from \$10 million for the 2002-03 fiscal year (\$3.8 million plus \$6.2 million),
23 to \$37.5 million (\$23 million plus \$14.5 million) in for the 2007-08 fiscal year. That number
24 only represents the NCAA’s portion obtained pursuant to currently unknown royalty rates, and
25 does not represent the total value of the associated sales via the NCAA’s licensees, or sales
26 made by member conferences and schools of goods.
27

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

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

13 461. In the “Frequently Asked Questions” portion of its website, the NCAA provides
14 various information with respect to licensing. Most notably, there is no information whatsoever
15 regarding the rights of players – current or former – with regard to licensed merchandise. This
16 total absence of information regarding the rights of players in the commercial licensing and
17 usage of their images also is observed on the websites of the NCAA’s licensing arm, Defendant
18 CLC. The NCAA states the following regarding CLC:

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

24 **i) CLC.**

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

26 The Collegiate Licensing Company (“CLC”) is the trademark
27 licensing representative for nearly 200 colleges, universities, bowl
28 games, athletic conferences, the Heisman Trophy and the NCAA
 (“CLC Institutions”). Based in Atlanta, CLC is a full-service
 licensing company, which employs a staff of more than 80

1 licensing professionals with the capability to establish and manage
2 every aspect of a collegiate licensing program.

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

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

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

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

29 **ii) IMG.**

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

33 Named by the *Sports Business Journal* as America's Top Sports
34 Marketing Agency, IMG College (formerly HOST) provides
35 extensive, yet varied sports marketing services for several

1 NCAA® Division I universities and conferences. IMG College
2 represents Arizona, Cincinnati, Connecticut, Florida, Furman,
3 Gonzaga, Kansas, Kentucky, Michigan, Nebraska, Ohio State,
4 Oklahoma State, Oregon, Rice, South Alabama, Tennessee, Texas,
5 Western Kentucky, Wofford and several conferences, including the
6 Southeastern Conference, the Ohio Valley Conference, the
7 Southern Conference and the West Coast Conference.

8 . . .

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

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

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

25 465. IMG also has stated the following regarding IMG College:

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

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

466. IMG also has stated that it “helps marketers leverage the passion and loyalty of
America’s strongest collegiate brands.” It further has stated that “IMG College is a leading
collegiate marketing, licensing and media company that can create and build comprehensive
marketing platforms that leverage the marketing potential of the college sports and on-campus
market.” IMG also has stated that “[c]onsumer devotion to college institutions is unrivaled, but

1 the complexity of the space makes it challenging for marketers to tap the full potential. With
2 our expertise, broad relationships and portfolio of properties, IMG College can help brands
3 create platforms to reach millions of passionate, loyal fans.”

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

8
9 **c. Description of Revenue Streams Relating to the Commercial Exploitation of**
10 **Images of Former Student-Athletes.**

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

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

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

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

1 potentially require a \$2.8 billion payment to the Big Ten Conference over the course of 25
2 years.

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

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

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

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

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

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

474. TEM identifies itself as the "world's largest supplier of online motion content,

licensing and professional representation services to the agency, entertainment and corporate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 into all of its notable plays, and assigned a Web address to each of
2 them. It lets fans watch any of the games, or thin slices of them, and
3 link to social networking sites like Facebook or Twitter or to their
blogs.

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

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

8 . . .

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

11 . . .

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

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

17 . . .

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

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

24 485. In a trade publication published by the Sports Video Group (“SVG”), an
25 organization formed “to bring the entire sports industry closer together so that it can more
26 effectively share information about best practices and new technologies that impact the
27 industry,” SVG, in connection with an interview with Thought Equity’s Dan Weiner, Vice
28

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

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

8 . . .

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

12 . . .

13 “Over time, it’s not about this one site that we built,” Weiner says.
14 “It’s about being able to go to SI, ESPN, USA Today, and anyone
15 else who can get the specs for the API and create a licensing deal
16 with the NCAA. The Web-development team at ESPN or SI can
17 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.”

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

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

25 . . .

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

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

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

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

9 487. Via another of TEM’s websites, there are more than 12,000 NCAA related clips
10 spanning several decades offered for sale as “stock footage.” The overwhelming majority of
11 them are from NCAA Division I men’s basketball games. The clips run for varying time
12 periods, generally ranging from 10 seconds to several minutes. Many of them indicate that the
13 full game for which from which the clips were culled, as well as related highlight films, also are
14 available for sale via TEM. For many items, prices are not shown, and prospective buyers are
15 asked to contact the company for pricing. One interview clip appeared to cost approximately
16 \$150.
17 18

19 488. In a brochure describing its partnership with the NCAA, TEM makes clear the
20 unmistakable pecuniary purpose of its venture with the NCAA. For example, Thought Equity
21 touts its role in “[d]elivering value through the preservation and monetization of the NCAA’s
22 footage assets.” Thought Equity further states that “[i]n 2005, the NCAA was searching for a
23 partner to preserve and manage the vast NCAA content library with two primary directives in
24 mind: 1. Preservation of historic footage and current content [and] 2. Accessibility to the entire
25 NCAA footage library to drive revenue generation.” TEM goes on to state that “[a]s the
26 NCAA’s exclusive licensing agent, Thought Equity drives revenue through the licensing of
27 28

1 emerging media applications.” TEM further states that it has assisted the NCAA in being
2 “among the first-to-market with innovative ways to monetize their video assets across the entire
3 spectrum of emerging media.” TEM claims that it “is committed to the continued growth of
4 this amazing library, enhancing its value through the preservation and monetization of the
5 NCAA’s valuable footage assets, [and] providing the premiere online destination” for NCAA
6 footage.
7

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

12 490. TEM also stresses its cost-saving function as follows: “Thought Equity also staffs
13 the functions of receiving and fulfilling all footage requests, including research and technical
14 support – costs that previously added to the NCAA national office overhead.” TEM further
15 states that it provides services including restoration, digitizing content, and making content
16 available on-line “at no charge to the NCAA.”
17

18 491. TEM further notes that “[t]o date, Thought Equity has digitized and brought online
19 nearly 7,000 hours of NCAA sports action and manages more than 20,000 hours of content in
20 the NCAA library.” TEM further notes that “[n]ew NCAA content is continually added to
21 ensure the online library is a timely resource for NCAA content.”
22

23 492. TEM additionally states that “NCAA footage is sought-after content for
24 advertisers, corporations and entertainment producers as it delivers all the action, drama and
25 emotion unique to athletic competition.” TEM further states that “[b]ringing the NCAA content
26 online has been a key component to unlocking the value of the library.” TEM also states that its
27 online platform has “help[ed] drive revenue growth by making purchasing content easy and
28

1 fast.”

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

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

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

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

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

2 **e. Premium Content on Websites.**

3 498. Numerous NCAA schools and conferences make available, or plan to make
4 available, streaming on-demand video content available to users for one-time and/or
5 subscription fees. This video content utilizes the images of Antitrust Damages Class members.
6

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

10 500. Similarly, CSTV's website indicates that CSTV.com "includes a network of
11 approximately 215 official college athletic websites." CSTV further states that it "was founded
12 in 1999 by Brian Bedol and Stephen D. Greenberg, co-founders of Classic Sports Network, and
13 Chris Bevilacqua, a former Nike executive. CSTV officially launched in April 2003 from the
14 network's New York City based Chelsea Piers Studio, the Field House. In January 2006, CSTV
15 was purchased by CBS Corporation and became the 24-hour college sports network from CBS
16 Sports."
17

18 501. No valid rights from Antitrust Damages Class members have been obtained by the
19 NCAA, its members or its licensees for the use of those class members' images, likenesses
20 and/or names in premium website content, and any purported transfer of former student-
21 athletes' rights relating to this usage is the product of the anticompetitive agreements described
22 herein.
23

24 **f. Photos.**

25 502. Replay Photos, LLC ("Replay Photos") operates "The Official NCAA Photo
26 Store" in conjunction with the NCAA through which photographs of Class members are
27 available for purchase, as well as a separate website, through which additional photographs of
28

1 Class members are available for purchase. Thousands of photographs from postseason
2 tournaments in numerous sports are offered for sale.

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

5 The NCAA and The Associated Press this week announced a three-year
6 content partnership making AP the worldwide distributor of NCAA
7 Championship photography and creating the largest collection
8 anywhere of collegiate sports photos. Under the agreement, AP Images
9 will serve as the NCAA's exclusive photo licensing agent, including
10 retail sales of archival photos, for all NCAA Championships and
11 events.

12 ...

13 "In partnership with Rich Clarkson and Associates, the NCAA has
14 compiled an archive of photos representing the greatest moments in
15 NCAA Championship history," said Greg Weitekamp, NCAA director
16 of broadcasting. "Combine the history of the NCAA photo archives
17 with the depth of photos compiled by AP Images over the last 100
18 years, and the NCAA and the AP Images partnership will create the
19 single greatest collection of collegiate sports photos."

20 ...

21 The new agreement between the NCAA and AP Images will allow the
22 NCAA to include NCAA photos in the AP Images archives, where they
23 will then be made available for editorial and commercial use. In
24 addition, the partnership will provide the NCAA with access to AP
25 Images' archive of NCAA photography.

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

504. Replay Photo also has entered into contractual arrangements with at least 62
universities by which it offers for sale thousands of photographs of current and former student-
athletes. Framed versions of the photographs can cost up to several hundred dollars. The list of
available sports include at least the following: men's and women's basketball; football;
baseball; crew; men's and women's cross country; golf; gymnastics; men's and women's

1 soccer; softball; men's and women's swimming and diving; men's and women's tennis; men's
2 and women's track and field; men's and women's volleyball; water polo; and wrestling.

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

9 **g. Action Figures, Trading Cards, and Posters.**

10 506. On April 27, 2009, *Sports Business Daily* reported that certain former college
11 football players will be paid a royalty for the sale of action figures depicting them in their
12 college uniforms, and that their former schools also will be paid a royalty. Specifically, *Sports*
13 *Business Daily* stated the following:
14

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

21 "There's not much out there on the college market that's player-
22 centric," said founder Todd McFarlane, whose businesses include
23 everything from comics to toys and film animation. "If a guy had a
24 decent career, let's see if the fans are still fond of him."
25 Tennessee's Peyton Manning is one of three SEC alumni in the six-
26 figure set.

27 . . .

28 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).

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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.

...

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

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

h. Video Games.

509. The images and likenesses of college student-athletes and former student-athletes also appear in video games devoted to NCAA college basketball and football. The NCAA has

1 executed a license for video games with Defendant EA, a global interactive software company.
2 EA identifies itself as “the world's leading interactive entertainment software company” and
3 states that it “develops, publishes, and distributes interactive software worldwide for video
4 game systems, personal computers, cellular handsets and the Internet.”

5
6 510. EA and the NCAA enjoy a unique relationship. For example, on the NCAA’s
7 “Official Licensee List as of April 2011,” available on the NCAA’s website, EA is nearly the
8 only non-apparel manufacturer listed, and the others make items such as chairs and basketball
9 hoops. EA appears to be the only listed NCAA official licensee using images of current or
10 former players in products. EA further is unique in that it is the only NCAA licensee or
11 business partner that is making brand-new products, not based on pre-existing actual content
12 such as filmed images or photographs, that utilizes the images of current and former student-
13 athletes. This explains in part, as detailed below, the yearly meetings involving the NCAA, EA
14 and CLC regarding the product approval process. The relationship thus is exceptionally close,
15 and different from that involving other third parties.

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

25
26 512. EA’s NCAA football games consistently have enjoyed sales of more than one
27 million units per year, and currently sales are estimated at more than two million units per year.
28

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

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

11 514. Additionally, in its 2010 SEC Form 10-K, EA advised investors that "[i]f we are
12 unable to maintain or acquire licenses to include intellectual property owned by others in our
13 games, or to maintain or acquire the rights to publish or distribute games developed by others,
14 we will sell fewer hit titles and our revenue, profitability and cash flows will decline.
15 Competition for these licenses may make them more expensive and reduce our profitability. . . .
16 Competition for these licenses may also drive up the advances, guarantees and royalties that we
17 must pay to licensors and developers, which could significantly increase our costs and reduce
18 our profitability."
19

20 515. The photorealistic nature of EA's NCAA College Football and NCAA College
21 Basketball video games has been noted. *Legal Affairs* magazine reported the following in 2006
22 regarding EA's NCAA Football 06, which is instructive for its description of the game's use of
23 player images, as well as the interaction among the NCAA and Defendants CLC and EA:
24

25 THE BEST PLAYER IN COLLEGE FOOTBALL THIS SEASON
26 is arguably the quarterback at the University of Southern California.
27 He is a senior, listed at 6-foot-5 inches and 225 pounds. He wears
28 number 11. His name is Matt Leinart. The best player in the wildly
popular video game called "NCAA Football 06" also happens to be
a quarterback at USC. He, too, is a senior, listed at 6-foot-5 inches

1 and 225 pounds. And, not coincidentally, he wears number 11. His
2 name, however, is QB #11.

3 You don't have to know a PlayStation from a train station to get
4 what's going on. QB #11 is the digitized analogue of Leinart; he
5 resembles the living version right down to the mop of dark hair on
6 his head. So why doesn't the game from Electronic Arts use
7 Leinart's name? National Collegiate Athletic Association
8 regulations prohibit companies from profiting off a student-athlete's
9 likeness, so EA does this two-step - with the NCAA's blessing. In
10 exchange for a cut of revenues from the video game, the association
11 has granted the software company the right to reproduce the
12 stadiums, uniforms, and mascots of schools that are members of the
13 NCAA, and the game-makers do so with almost photographic
14 accuracy. Under the current regulations, the only thing off-limits is
15 the use of players' names and recognizable facial features. The
16 NCAA doesn't want member-schools marketing their student-
17 athletes for commercial purposes, and, in order to prohibit them
18 from doing that, it has to restrain itself as well.

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

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

1 Especially since an owner of the video game can change QB #11 to
2 Matt Leinart by fiddling with a few buttons. Once the owner inputs
3 a player's name, it appears on the back of the player's jersey and can
4 be shouted by the virtual announcers who do the play-by-play for
5 the games within the game. Game owners can also adjust a virtual
6 player's facial hair, adding, say, a goatee to match the real player's
7 face, since players are known to change their looks from time to
8 time. Although not approved by the NCAA, memory cards for
9 automatically uploading each school's roster are available from
10 independent manufacturers. Oddly, the main difference between
11 the players and their video facsimiles are their hometowns, which in
12 the game are intentionally off by a few suburbs (QB #11's
13 "hometown" of La Habra, Calif., is 15 miles from Leinart's native
14 Santa Ana). But the point is, in EA's hyper-detailed world, video
15 game characters now have hometowns. The NCAA's amateurism
16 regulations, originally designed to guard against things like posters
17 and trading cards featuring individual athletes, likely never
18 contemplated a day when an amateur's digital likeness could fetch a
19 profit.

20 ...

21 A key player in managing that distinction is the Collegiate
22 Licensing Company or CLC, which handles product licensing for
23 collegiate sports organizations like bowl games committees, athletic
24 conferences, and the NCAA. CLC performs two tasks for the
25 association: protecting the amateur standing of its members' athletes
26 and obtaining for members the most lucrative licensing deals. Last
27 summer, an NCAA subcommittee on amateurism invited Pat Battle,
28 the president of CLC, and athletic directors and athletes 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."

...

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

1 Gonzalez told *The Indianapolis Star* earlier this year.

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

8 THIS IS NOT THE FIRST TIME that the NCAA's rules about
9 amateurism have struggled to address new licensing opportunities.
10 About 15 years ago, college-apparel sales exploded into a
11 substantial source of revenue for major athletic programs, and one
12 of the touchiest issues involved replica jerseys. They featured a star
13 player's number and school colors, but not his name, even though
14 every fan knew whose jersey he was buying. Replica jerseys are
15 still big business: Every Saturday, Matt Leinart looks up to see
16 USC's stands swelling with a sea of maroon No. 11 jerseys, which
17 sell for about \$50 each online and at the campus bookstore.

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

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

37 516. EA has expressly incorporated the likenesses of Antitrust Damages Class members
38 into its games. As one example, NCAA Basketball 09 has a "Classic Teams" feature in which
39 game players can choose to play with "classic teams." These "classic teams" expressly use the
40 likenesses of Class members, in a fashion identical to that described above. A post on EA's

1 game forum website dated March 12, 2009 identifies the roster of each of these classic teams,
2 and provides the players' name; position; uniform number; type of t-shirt worn underneath a
3 jersey; sock length; and use of ankle braces, knee braces, wrist taping. The post further
4 specifically identifies the following "classic teams" as being incorporated into the game: 2008
5 Kansas Jayhawks; 2007 Florida Gators; 2006 George Mason Patriots; 2005 North Carolina
6 Tarheels; 2005 Illinois Fighting Illini; 2004 Connecticut Huskies; 2003 Syracuse Orangemen;
7 2002 Maryland Terrapins; 2001 Duke Blue Devils; 1999 Connecticut Huskies; 1997 Arizona
8 Wildcats; 1996 University of Massachusetts Minutemen; 1996 Kentucky Wildcats; 1995 Wake
9 Forest Demon Deacons; 1995 UCLA Bruins; 1994 Arkansas Razorbacks; 1993 North Carolina
10 Tarheels; 1993 Michigan Wolverines; 1992 Duke Blue Devils; 1991 UNLV Runnin' Rebels;
11 1991 Georgetown Hoyas; 1991 Arkansas Razorbacks; 1990 LSU Tigers; 1990 Loyola
12 Marymount Lions; 1990 Georgia Tech Yellow Jackets; 1989 Syracuse Orangemen; 1989
13 Michigan Wolverines; 1988 Kansas Jayhawks; 1987 Indiana Hoosiers; 1986 Navy
14 Midshipmen; 1986 Louisville Cardinals; 1986 Duke Blue Devils; 1985 Villanova Wildcats;
15 1985 St. John's Redmen; 1984 Georgetown Hoyas; 1983 North Carolina State Wolfpack; 1983
16 Houston Cougars; 1982 North Carolina Tarheels; 1981 Virginia Cavaliers; 1981 Indiana
17 Hoosiers; 1980 Louisville Cardinals; 1979 Michigan State Spartans; and 1979 Indiana State
18 Sycamores.
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22 517. 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
25 numerous specific former student-athletes in their games. The players on the virtual college
26 teams in the games correspond exactly to their real-life counterparts in many characteristics,
27 such as position, jersey number, race, size, height, weight and home state. Even uniquely
28

1 identifiable idiosyncratic characteristics of real-life players appear in their video game virtual
2 counterparts.

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

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

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

1 year's game:

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

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

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

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

23 . . .

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

1 college) or 1954 LaSalle's ball handling big man.

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

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

20 80's....The talent level and number of elite players continued to
21 pour in during this era. Indiana's point guard #11 dazzled the
22 competition with his smooth controlling style; Houston's center
23 #34 and small forward #22, members of Phi Slama Jama were
24 great to watch with their up-tempo style; North Carolina's shooting
25 guard #23 (aka. "the great one") needs no introduction and #52
26 their power forward was also known for having a few 'Big Games'
27 of his own; there was also the center from Navy, "the Admiral"
28 who brought some excitement to that program; and you can't forget
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

1 playing in the association), which further emphasizes how talented
 2 they were. But the most talented player probably came from the
 3 ACC's Wake Forest, "the Big Fundamental" - a true big man who
 had a great feel for the game. He knew when to kick it out and
 when to go to work in the post.

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

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

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

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

16	Arizona	1997
17	Arkansas	1991, 1994
18	Cal	1959
19	Cincinnati	1962
20	Connecticut	2004, 1999
21	Duke	2001, 1986, 1992
22	Florida Gators	2007
23	George Mason	2006
24	Georgetown	1991, 1984
25	Georgia Tech	1990
26	Houston	1983
27	Houston	1968

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

1 West Virginia 1959

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

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

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

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

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

23 526. EA's representative regularly attend practices for NCAA teams with the
24 permission of NCAA member schools to study in detail the physical attributes and playing
25 characteristics of players.

26 527. There is rampant commercialization within the context of EA's games. A
27 multitude of non-player individuals and corporations are featured in the game, all presumably
28

1 pursuant to lucrative contractual arrangements with EA. Each year, more and more third parties
2 participate in revenue derived from and relating to EA's games, and each year, class members
3 are entirely excluded from such participation. With respect to various items of athletic-related
4 gear and apparel, as described below, class members are being used as walking-billboards for
5 corporate interests without compensation.
6

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

11 529. The box cover for NCAA Basketball 09 prominently notes that the game is
12 "Featuring ESPN." Dick Vitale, a prominent announcer on the ESPN television network,
13 serves as a game announcer in EA's game, and his image appears on posters in crowds.
14

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

18 531. In 2008, EA announced a deal with the National Association of Basketball
19 Coaches, a group representing NCAA Division I and other basketball coaches. Pursuant to the
20 deal, coaches' names and likenesses began appearing in EA's NCAA Basketball 10, released in
21 December of 2009. In NCAA Basketball 09, Kansas Coach Bill Self is featured to provide an
22 introduction to the game.
23

24 532. With respect to EA's NCAA Football 09, the commercialization is even more
25 prevalent. There are a myriad of branding options per player, including an option to select
26 Riddell Revolution, Adams or Schutt helmets and facemasks. For visors, there are options for
27 video game players to select options for at least the Nike, Under Armour, and Oakley brands.
28

1 For shoes, there are options to select at least the Nike and Adidas brands. Those corporate
2 logos also appear on player jerseys. There is an additional option to select Nike gloves.

3 533. During the process of loading the game, there is a prominent full-screen devoted to
4 the Coca-Cola Company's "Coke-Zero Season Showdown" promotion. A pre-game weather
5 report is sponsored by The Weather Channel / Weather.com, and game players can also select a
6 "live-feed" from the Weather Channel.
7

8 534. There also is substantial ESPN branding. ESPN college football announcers Kirk
9 Herbstreit and Lee Corso are utilized, and ESPN personality Erin Andrews provides side-line
10 reports. There also is a Lee Corso "Ask Corso" default setting for assistance in choosing which
11 play to run that appears along with an image of him.
12

13 535. An EA press release dated September 11, 2008, in which EA announced the
14 release of NCAA Basketball 09, also stated that "*NCAA Basketball 09* will feature Division I
15 coaches in-game for the first time. Each coach will provide real time instruction and feedback,
16 helping gamers control the tempo by executing their team's offense and defense to perfection."
17 It appears that licensing deals have been struck with these coaches for use of their likenesses.
18

19 536. EA has a unique partnership with the NCAA with respect to the development of
20 electronic video games featuring the images and likenesses of current and former student-
21 athletes who play or have played Division I college football and basketball. EA has unrivaled
22 access to the highest levels of the NCAA's hierarchy that it has used to advocate and obtain
23 agreement on making its NCAA-themed videogames as photorealistic as possible, all the while
24 knowing and agreeing with the NCAA's position that student-athletes would receive no
25 remuneration for the use of their enhanced images and likenesses. Indeed, EA and the NCAA
26 have had extensive discussions about the use of the names of student-athletes in its videogames
27 and EA reached agreement with the NCAA to propose amendments to the NCAA's bylaws that
28

1 would accomplish just that. The timeline of EA's recent involvement and agreements with the
2 NCAA may be summarized as follows.

3 537. EA has entered into three licensing agreements with CLC, on behalf of the NCAA
4 and NCAA member institutions, in connection with its NCAA-themed video games: (a) a 2005-
5 11 football agreement, (b) a 2005-10 basketball agreement, and (c) a 2008-11 EA football
6 license agreement. Each of these agreements constitutes an overt act in furtherance of the
7 conspiracy alleged herein. In each of these contracts, EA expressly agreed to abide by the
8 NCAA's rules with respect to student-athletes. As described in this Complaint, those rules
9 prohibited EA from offering any student-athlete compensation for the use of the athlete's name,
10 image or likeness in its NCAA-themed video games. EA further agreed to extend its agreement
11 with the NCAA, prohibiting compensation to student-athletes, to former student-athletes.
12

13
14 538. The NCAA, as well as individual schools and conferences, benefits financially
15 from the NCAA's license agreement with EA. For example, the *Des Moines Register* recently
16 reported that one school alone, Iowa State University, has received royalties from football and
17 basketball video games averaging \$17,600 a year in the last two years. It was further reported
18 that for the University of Iowa, "such [video game royalty] allocations come from the Big Ten
19 Conference as part of a package that includes television and other licensing revenue."
20

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

27 540. The *NCAA News*, on June 21, 2004, provided detail on discussions involving the
28

1 NCAA, CLC, and EA, and also served as a conduit to further communicate the message to the
2 NCAA's members the importance of video game licensing revenues. Specifically, *The NCAA*
3 *News* reported that the NCAA's Agents and Amateurism Subcommittee of its Academics /
4 Eligibility / Compliance Cabinet met on June 9th and 10th, 2004; Pat Battle of the Defendant
5 CLC made a presentation to the group, which as well as the following panelists: Ohio State
6 University Athletics Director Andy Geiger, University of Connecticut Athletics Director Jeff
7 Hathaway, Miami (Ohio) University Athletics Director Brad Bates and University of Notre
8 Dame Associate Athletics Director Bill Scholl. The *NCAA News* specifically stated the
9 following:
10

11 The CLC's Battle, however, indicated interest in seeing the NCAA
12 allow more latitude in the marketing areas, specifically in video
13 games. His concerns centered on the risk of losing business rather
14 than gaining it, though he did project that licensing revenues would
15 increase dramatically under more flexible rules. Battle said video
16 game manufacturers appear to be more and more frustrated with
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.

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

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

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

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

27 At that meeting, Battle suggested something Brand probably didn't
28 want to hear: that revenues for the NCAA would increase if the
association's limits on video games were eased. He indicated that

1 game manufacturers were growing frustrated with the restrictions,
2 and that the NCAA needed to address that frustration or risk
3 diminishing a valuable source of revenue. "It's a concern, and I
4 stand by that," Battle said recently. "A failure to keep up with
5 technology and take full advantage from a consumer standpoint
6 may make the NCAA [video game] titles less valuable."

7 ...

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

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

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

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

24 545. In an interview conducted in 2008, O'Brien, who was then the producer of EA's
25 NCAA Basketball 09 video game, talked about how "[h]aving the partnership with the NCAA
26 gives us the opportunity to work directly with all of the partners that are part of the NCAA..."
27 With respect to the inclusion of actual student-athlete names and likenesses in EA's NCAA-
28 themed video games, O'Brien said that he would like to see those in the games and that the
NCAA "know[s] how we feel....The NCAA knows we want it and they're investigating it for

1 us.” In another interview from 2008 disseminated by IGN, O’Brien defended EA’s making
2 available college team rosters for use in NCAA Basketball 09, O’Brien stated that “[i]t’s all
3 above board to add names to rosters and post them for other gamers to use....It’s above board
4 with the NCAA and it’s perfectly legal – 100 percent count on having rosters with names
5 available for all schools shortly after release.”
6

7 546. In an Operation Sports interview conducted in 2010, Ben Haumiller, designer of
8 EA’s NCAA Football 10 said that EA has a "laundry list" of topics that are discussed with the
9 NCAA every year including: (1) player names, (2) coaches, and (3) playoffs. EA would create
10 "pitches" for the NCAA to review to incorporate certain items into the videogame.
11

12 547. EA and the NCAA have also colluded to allow third parties to use the names of
13 student-athletes in connection with televised presentations of EA video games without
14 compensation. A 2008 article reported as follows:

15 The broadcasting crew represented in EA Sports annual NCAA
16 Football 09 are ESPN’s “College Game Day” broadcasters: Brad
17 Nessler, Kirk Herbstreit, and Lee Corso (“Sportcasters”). One can
18 assume the Sportcasters receive compensation for the use of their
19 likenesses in NCAA Football 09. Followers of college football are
20 well acquainted with this crew. They are seen live on Saturdays
21 throughout college football season on ESPN’s College Game Day
22 coverage. The College Game Day set travels to the location of the
23 biggest NCAA football games of each week.

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

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Sports Licensing Agreement.

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

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

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

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

The ESPN website contains articles discussing and reviewing NCAA Football 09. Many such examples illustrate the instantly recognizable nature of the video game representations to their student-athlete counterparts. An interesting example explains EA Sports attribute rating system concerning the video game representations and refers to the representations by the written name of the student-athlete counterpart. This article contains a statement demonstrating bad faith on the part of both EA Sports and ESPN in their dealings with the NCAA and its student-athletes; “[w]hile the

1 in-game players go nameless because of NCAA regulations -- well,
2 at least until someone fills up their EA Locker with a roster – we’ve
3 got the real names here, so you don’t have to think.”

4 549. Similarly, EA and the NCAA have colluded to purposefully and knowingly allow
5 third parties to create and market modifications to the NCAA video games which allow players
6 to upload complete roster information for various teams, including player names. The NCAA
7 and CLC have allowed this because it benefits them financially by increasing the popularity of
8 EA’s NCAA games, thereby increasing the royalty payments to the NCAA. As explained in an
9 article in the website abovethelaw.com:
10

11 So, game publishers like Electronic Arts, essentially, cheat. If you
12 pick up the copy of a college sports game, you’ll see all the
13 players, with their accurate numbers, positions, player attributes,
14 pretty much everything except the players’ actual names. Luckily,
15 you can change the names of players, and every year hundreds of
16 users sit there and change all of the names of all the players to their
17 real life counterparts. Then people like me pay for the “updated
18 rosters” (back in the day) or simply download them for free.

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

23 550. In 2009, EA went even further, developing and launching on its website its
24 “TeamBuilder” page that lets users create and upload profiles of current and former NCAA
25 football players to be incorporated into EA’s games. On the page, EA states “Create Your
26 School On-Line” and “Play with Your School on Your Console” and “Share your teams –
27 upload your creations to a shared library for everyone to enjoy.” The page further features
28 official logos of CLC and the NCAA and links to those entities’ webpages.

551. The profiles expressly state the player’s name, number, position, year in school,
height, weight, have an avatar of a player reflecting racial characteristics, and have fully
developed player profiles featuring ratings in dozens of categories. For example, on May 12,

1 2011, a full profile was on EA's website for current Stanford quarterback Andrew Luck as a
2 part of the 2009 Stanford Cardinal team, as well as a full profile for former player Auburn
3 quarterback Cam Newton as a part of the Auburn Tigers 2010 team.

4
5 552. In its "Terms of Service" on the site, EA states that "EA respects the intellectual
6 property rights of others. You must have the legal right to upload Content to EA Services. You
7 may not upload or post any Content on EA Services that is protected by copyright, trademark or
8 other intellectual property rights unless (i) you are the owner of all of those rights; or (ii) you
9 have the prior written consent of the owner(s) of those rights to make such use of that Content.

10 EA may, without prior notice to you and in its sole judgment, remove Content that may
11 infringe the intellectual property rights of a third party. If you are a repeat infringer of EA's or a
12 third party's intellectual property rights, EA may terminate your Account without notice to
13 you." On information and belief, EA has not invoked any of these provisions with respect to
14 the use of current and former collegiate players on its website.

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

24
25 554. EA has continued to seek to further collude with the NCAA to deprive current and
26 former student-athletes of rights with respect to EA's video-games. In 2010, the NCAA's
27 Amateurism Cabinet presented Proposal 2010-26, which would have modified NCAA Bylaw
28

1 12.5.1.1 to formalize the ability of commercial entities to use student-athletes' names and
2 likenesses. EA was a big supporter of this proposal and, on information and belief, was
3 instrumental in getting the NCAA to present it for consideration. Minutes of the NCAA
4 Division I Student-Athlete Advisory Committee meeting held in Indianapolis, Indiana on
5 November 19-21, 2010, at which Proposal 2010-26 was discussed, indicate that
6
7 "[r]epresentatives from EA Sports gave a presentation to the committee regarding the NCAA
8 College Football video game and answered questions regarding the use of student-athletes'
9 likeness in the game." According to EA's interrogatory responses in this action, Joel Linzer,
10 EA's Executive Vice-President for Business and Legal Affairs, and Todd Sitrin, EA's Group
11 Vice-President of Marketing, attended this meeting. After Antitrust Plaintiffs indicated that they
12 would move to enjoin the implementation of Proposal 2010-26, the NCAA shelved it, at least
13 for the present.
14

15 555. Other indicia of conspiratorial activity involving the NCAA, CLC and EA and
16 marked departures from other practices include the fact that neither the NCAA nor CLC has
17 brought any legal action, or encouraged any member school or CLC client, or current or former
18 student-athlete, to stop EA's use of player images and likenesses in EA's NCAA-themed
19 games. The NCAA and CLC, on behalf of CLC's school clients, aggressively enforce
20 intellectual property and contractual rights in a myriad of other contexts.
21

22 556. No valid rights from Antitrust Class members have been obtained by the NCAA,
23 its members, or its licenses for the use of their images, likenesses, and/or names in video games,
24 and any purported transfer or usage of student-athletes' rights relating to this usage is the
25 product of the anticompetitive agreements described herein.
26

27 **i. Rebroadcasts of Classic Games.**

28 557. In 1997, the ESPN cable television network acquired the Classic Sports Network

1 for an amount reported to be between \$175 and \$200 million, and renamed it “ESPN Classic.”
2 ESPN Classic replays games from a variety of sports and seasons that are considered to be
3 “classics” in some way. ESPN describes ESPN Classic as follows:

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

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

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

16 **Big Ten's Greatest Games**

17 They are epic sports battles that are etched in hearts and minds of
18 Big Ten fans across the nation. They are unforgettable moments
19 that stir passion and pride. They are echoes of both triumphant
20 victories and devastating defeats.

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

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

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

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

560. The Big Ten Network's "Season 1" of classic men's basketball games, which was broadcast in late 2007 and early 2008, featured 36 games ranging from 1983 to 2007 featuring the 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.

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

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

563. As another example, the Brigham Young University cable television network, available via cable systems around the country such as the Comcast network in the San

1 rebroadcasts various games. For example, on May 30, 2009, the network was scheduled to run
2 a “BYU Classic Sports” presentation of a 2002 men’s basketball game between BYU and Utah,
3 followed by a 1988 game between BYU and Hawaii. Later that day, the network was scheduled
4 to rebroadcast a 1986 football game between BYU and the University of New Mexico.

5
6 564. No valid rights from Antitrust Damages Class members have been obtained by the
7 NCAA, its members, or its licensees for the use of their images, likenesses and/or names in
8 rebroadcasts of “classic” games , and any purported transfer of former student-athletes’ rights
9 relating to this usage is the product of the anticompetitive agreements described herein.

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

11 565. Defendants and their co-conspirators, through the release process described herein,
12 also have allowed former players’ indicia of identity, namely, their uniform numbers and
13 names, to be utilized in connection with sales of replica and actual jerseys and other apparel
14 offered for sale. In addition to featuring sometimes current players, replica jerseys also are sold
15 featuring the numbers and names of former players.
16

17 566. For example, the University of Connecticut, through its online athletics store, sells
18 a replica basketball jersey bearing the number 4. This number clearly corresponds to former
19 star player Ben Gordon, who played for three years at UConn before turning professional in
20 2004. Indeed, many other websites sell similar jerseys and specifically reference Mr. Gordon
21 and his number 4.
22

23 567. The NCAA’s President, Myles Brand, was referenced in a 2004 article in *The New*
24 *York Times* in connection with jersey sales featuring current players as follows: “Even Myles
25 Brand, the President of the N.C.A.A. said he had ethical concerns about the marketing of star
26 players’ numbers, although he ruled out permitting athletes to make money from the sale of
27 replicas of their uniforms.” The article further stated that “[p]layers’ number are a meaningful
28

1 substitute for their names . . .”

2 568. The NCAA, in fact, has examined, and blessed, its members’ use of players’
3 uniform numbers for replica jersey sales. As a 2008 article on CNBC.com stated, “For years,
4 the NCAA has turned a blind eye to the fact that its member institutions give the [apparel
5 companies] of the world specific numbers that match up to their best players. The schools
6 know the reality of the situation, which is that numbers that correspond to the stars will sell
7 better than a generic No. 1. And just because the NCAA forbids the selling of the jerseys with
8 the names on the back doesn't mean you can cut the player out of the equation. Everyone
9 knows what's going on.”

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

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

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

3 572. Additionally, certain schools sell “game worn” uniforms directly. For example, as
4 of June 16, 2009, Ohio State University was offering for sale via its online memorabilia store
5 approximately 30 “game worn” jerseys from the 2005 season bearing various uniform numbers.
6 Each one is offered at \$200. The complete player roster from that season, which lists player
7 names and uniform numbers, is readily available on-line from websites such as scout.com.
8

9 573. No valid rights from Antitrust Damages Class members have been obtained by the
10 NCAA, its members, or its licensees for the use of their images, likenesses and/or names in
11 apparel sales, and any purported transfer of former student-athletes’ rights relating to this usage
12 is the product of the anticompetitive agreements described herein.
13

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

15 574. There is a vast amount of information available that documents the realities of
16 student-athlete life in the Division I revenue producing sports, i.e., men’s basketball and
17 football. Those athletes typically do not enjoy an academic experience anything like that of
18 “regular” students. Such athletes frequently are required by the university to devote more than
19 40 hours a week to their sports, can have enormous travel demands placed upon them, are often
20 spoon-fed a curriculum of athlete-friendly classes that are nothing like those experienced by the
21 general student population, and their graduation rates frequently are abysmal.
22

23 575. Two Michigan State University law professors, Robert A. McCormick and Amy
24 Christian McCormick, recently conducted a study regarding Division I athletes in the revenue
25 generating sports, and concluded that those athletes “daily burdens and obligations not only
26 meet the legal standard of employee, but far exceed the burdens and obligations of most
27 university employees.”
28

1 576. After they spend their college years juggling athletic and academic requirements,
2 many student-athletes wind up substantially in debt because their scholarships did not fully
3 cover the basic necessities of life. A recent study illustrated that so-called “full scholarships”
4 can leave student-athletes with as much as \$30,000 in normal student expenses uncovered over
5 the course of their collegiate athletic careers.
6

7 577. Moreover, many former student-athletes have continuing medical bills and
8 treatments resulting from their participation in intercollegiate athletics. These medical
9 treatments and attendant financial responsibility can continue long after the conclusion of a
10 student-athlete’s collegiate sports career. On July 16, 2009, *The New York Times*, in an article
11 titled “College Athletes Stuck With the Bill After Injuries,” reported the following:
12

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

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

24 ...

25 Other athletes discover their financial problems long after their
26 bodies have healed. An Ohio University football player,
27 temporarily paralyzed during a workout, learned that he still owed
28 \$1,800 in unpaid medical bills when he went to buy a car six years
after his injury.

 Many students, whether athletes or not, have medical insurance
through their parents. But these plans often exclude varsity sports
injuries, limit out-of-state treatment or do not cover much of the
bill. Some colleges buy secondary policies to fill the gaps,
although even these plans have holes. And only players hurt badly
enough to require extensive care can turn to the N.C.A.A. for

1 coverage. Its catastrophic insurance carries a \$75,000 deductible,
2 which will increase to \$90,000 next year.

3 ...

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

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

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

12 He said he took the bills not covered by his father’s insurance to
13 the Ohio University trainers. His father’s insurance and Ohio
14 University refused to pay the claims.

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

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

24 “The coach says: ‘You’re on full scholarship. If you ever get hurt,
25 we’ll make sure to take care of you,’ ” he said. “There’s a lot of us
26 out there that get used.”

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

579. The rare player who reaches the top professional ranks in basketball and is drafted
at least likely will have a guaranteed contract for a few years; in the National Football League,

1 the rare player who reaches the professional ranks does *not* have a guaranteed contract and can
2 be cut from the team at any time due to injury or non-performance.

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

5
6 **ANTITRUST ALLEGATIONS**

7 581. Defendants' contract, combination, and conspiracy described herein consisted of a
8 continuing horizontal and vertical agreement, understanding, and concert of action among the
9 Defendants and their co-conspirators, the substantial terms of which were to artificially fix,
10 depress, maintain, and/or stabilize prices received by Antitrust Plaintiffs and Antitrust Class
11 members for use and sale of their images, likenesses and/or names at zero dollars in the United
12 States, its territories and possessions.

13 582. Defendants' and their co-conspirators' actions also can be understood as a group
14 boycott/ refusal to deal.

15 583. Defendants CLC, EA and various co-conspirators facilitated the contract,
16 combination and conspiracy described herein, and benefited financially from its operation.

17 584. In formulating and effectuating the contract, combination, or conspiracy,
18 Defendants and their co-conspirators did those things that they unlawfully combined and
19 conspired to do, including, among other things:
20

- 21
- 22 a. agreeing to artificially fix, depress, maintain, and/or stabilize prices paid to
23 Antitrust Plaintiffs and Antitrust Class members for use and sale of their
24 images, likenesses and/or names;
 - 25 b. agreeing to limit output of the use or sale of the images, likenesses and/or
26 names of Antitrust Plaintiffs and Antitrust Class Members;
 - 27 c. agreeing to boycott and refuse to deal with Antitrust Plaintiffs and Antitrust
28 Class members regarding compensation for the use and sale of their images,
likenesses and/or names; and
 - d. implementing and monitoring the conspiracy among cartel members.

1 members in the game. This allows EA to increase sales and profits.

2 590. EA never received Right of Publicity Plaintiffs' or class members' consent, written
3 or otherwise, to use their likenesses, images, names, or other distinctive appearances.

4 591. EA's actions are pursuant to, and in furtherance of, its unlawful conspiracy with
5 the NCAA and CLC to misappropriate Right of Publicity Plaintiffs' and class members' names,
6 images, likenesses and distinctive appearances for commercial purposes.

7 592. Defendants have willfully and intentionally used and continued to use Right of
8 Publicity Plaintiffs' and class members' rights of publicity.

9 593. Defendants undertook actions in furtherance of their conspiracy within the State of
10 Indiana. Specifically, Defendant NCAA is located in Indiana and all conduct of the NCAA
11 alleged herein took place or was ratified in Indiana. In addition, NCAA has hosted meetings in
12 Indiana, contracted in Indiana, and NCAA's decisions and approvals for the use of player
13 names and likenesses arose in and emanated from Indiana.

14 594. Likewise, EA has solicited, advertised, and sold its games in Indiana directly to
15 Indiana consumers, and developed information in Indiana to be used in its games' development.
16 Upon information and belief, EAs has sold thousands of games to Indiana consumers during the
17 class periods via its website, and has sold tens of thousands of games through retailers.

18 595. As a result of Electronic Arts' conduct, Plaintiffs have been injured.

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20
21
22 **SECOND CAUSE OF ACTION**
23 **(Deprivation of Rights of Publicity Violation of California Civil Code § 3344)**
24 **(As Against EA)**

25 596. Right of Publicity Plaintiffs incorporate by reference the allegations in the above
26 paragraphs as if fully set forth herein.

27 597. EA has knowingly and intentionally utilized and continue to utilize the names and
28 likenesses of Right of Publicity Plaintiffs and class members in videogames produced by EA

1 without the consent of Right of Publicity Plaintiffs and class members. This conduct has
2 occurred in and emanated from California, specifically EA's headquarters.

3 598. EA has used and continues to use Right of Publicity Plaintiffs' and class members'
4 names and likenesses for the purposes of advertising, selling and soliciting purchases of
5 Electronic Arts' videogames, including its NCAA Football, NCAA Basketball and NCAA
6 March Madness franchises. Most decisions and policy relating to this conduct has occurred in
7 and emanated from California, specifically Electronic Arts' headquarters.

8 599. As a result of EA's misappropriation of their publicity rights, Right of Publicity
9 Plaintiffs and class members have been injured.

10
11
12 **THIRD CAUSE OF ACTION**
13 **(Violation of Rights of Publicity California Common Law)**
14 **(As Against EA)**

15 600. Right of Publicity Plaintiffs incorporate by reference the allegations in the above
16 paragraphs as if fully set forth herein.

17 601. Pursuant to its unlawful conspiracy, EA has utilized and continues to utilize the
18 names, likenesses and identities of Plaintiffs and class members in Electronic Arts' videogames
19 without their consent and for their own commercial advantage.

20 602. As a result of EA's misappropriation of their publicity rights Right of Publicity
21 Plaintiffs and class members have been injured.

22
23 **FOURTH CAUSE OF ACTION**
24 **(Civil Conspiracy)**
25 **(As Against All Defendants)**

26 603. Right of Publicity Plaintiffs incorporate by reference the allegations in the above
27 paragraphs as if fully set forth herein.

28 604. On information and belief, Defendants, and each of them, have conspired and

1 combined with each other, and possibly with third parties, to use class members' likenesses
2 without permission, and have achieved a meeting of the minds, through either express or tacit
3 agreement, on an object or course of action of the conspiracy, including depriving class
4 members of their right to protect their names, likenesses and rights to publicity and their
5 contractual, property rights.
6

7 605. Defendants have formed and operated a civil conspiracy with each other,
8 performing as a part of the conspiracy numerous overt acts in furtherance of the common
9 design, including one or more unlawful acts which were performed to accomplish a lawful or
10 unlawful goal, or one or more lawful acts which were performed to accomplish an unlawful
11 goal.
12

13 606. As a result of the conduct of Defendants and the conspiracy, Right of Publicity
14 Plaintiffs and class members have been damaged as described above.
15

16 **FIFTH CAUSE OF ACTION**

17 **(Violation of the Unfair Competition Act,**

18 **California Business & Professions Code § 17200, et seq.)**
19 **(As Against EA)**

20 607. Right of Publicity Plaintiffs incorporate by reference the allegations in the above
21 paragraphs as if fully set forth herein.

22 608. EA's conduct and unlawful conspiracy, as alleged above, constituted and
23 constitutes unfair, unlawful and fraudulent business practices in violation of Section 17200, et
24 seq. of the California Business and Professions Code. The conduct is unfair, unlawful, and
25 fraudulent because among other things it violates California Civil Code § 3344.

26 609. EA's conduct has further caused and is causing damage and irreparable injury to
27 Plaintiffs and class members. Plaintiffs and class members are accordingly entitled to
28 disgorgement of EA's profits and injunctive relief, plus interest and attorneys' fees, pursuant to

1 California Code of Civil Procedure § 1021.5 and request the following injunctive relief: (a) that
2 EA be ordered to cease and desist from continuing to unlawfully utilize Right of Publicity
3 Plaintiffs and class members names and likenesses and (b) that EA disgorge all its profits
4 obtained from the utilization of Right of Publicity Plaintiffs and class members names and
5 likenesses.
6

7
8 **SIXTH CAUSE OF ACTION**

9 **(Breach of Contract)**
10 **(As Against NCAA)**

11 610. Defendant NCAA entered into uniform or substantially similar contracts (which
12 are identical in material terms) with class members. See Exhibit A.

13 611. Right of Publicity Plaintiffs and class members are required to enter into the
14 contract attached as Exhibit A. The contract prohibits the student-athlete from using his name,
15 picture or likeness for commercial purposes, but authorizes and licenses the NCAA, and certain
16 authorized representatives, to use the student-athletes' name or picture to promote NCAA
17 championships or other NCAA events, activities or programs.

18 612. Likewise, the contract prohibits the NCAA from using Right of Publicity
19 Plaintiffs' and class members' names, pictures and likeness for commercial purposes, but grants
20 a limited license to the NCAA, and certain authorized representatives, to use the student-
21 athletes' name or picture to promote NCAA championships or other NCAA events, activities or
22 programs.

23 613. In consideration for the above disclosures, waivers, affirmations and limited
24 license, the NCAA agrees to grant players eligibility to participate in Division I athletics.

25 614. EA is not an authorized NCAA representative under the contract, and in fact EA is
26 contractually prohibited from using player names and likenesses.
27
28

1 615. The NCAA videogames produced by EA do not promote NCAA events, activities,
2 programs or championships, as contemplated by the contract.

3 616. The NCAA videogames produced by EA are for commercial purposes only.

4 617. The NCAA sanctions, facilitates and profits from EA's commercial use of
5 student-athletes' names, pictures and likenesses despite contractual obligations prohibiting such
6 conduct.
7

8 618. Additionally, the contracts impose specified duties on Defendant NCAA and
9 require it to fulfill certain obligations to class members, including a duty to deal fairly and in
10 good faith with Plaintiffs and class members.

11 619. In furtherance of the unlawful conspiracy alleged above and with the knowledge
12 and consent of CLC and EA, the NCAA breached its contracts with class members by, among
13 other things, (1) seeking to accomplish indirectly through its relationship and agreements with
14 Defendant Electronic Arts that which it could not do directly (profit from class members'
15 likenesses); (2) failing to insure and protect class members' rights of when it established
16 contractual relationships with the other Defendants; (3) permitting the other Defendants to use
17 Right of Publicity Plaintiffs and class members' names and likenesses – such as when it
18 expressly permitted EA to utilize players' names and likenesses; (4) purposely ignoring that the
19 other Defendants were using class members' likenesses, despite the fact that class members
20 only gave Defendant NCAA limited publicity rights and for NCAA events; and (5) not abiding
21 by the terms of its own contracts.
22

23 620. As a proximate result of Defendants' conduct, Right of Publicity Plaintiff and class
24 members have been injured.
25
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28

1 **SEVENTH CAUSE OF ACTION**

2 **(Unjust Enrichment)**
3 **(As Against EA and CLC)**

4 621. Right of Publicity Plaintiffs incorporate by reference the allegations in the above
5 paragraphs as if fully set forth herein.

6 622. To the detriment of Right of Publicity Plaintiffs and class members, Defendants
7 EA and CLC have been and continue to be unjustly enriched as a result of the unlawful and/or
8 wrongful conduct alleged herein. EA and CLC have been unjustly benefited through the sale of
9 videogames that utilize the names and likenesses of Plaintiffs and Class Members.

10 623. Between Defendants EA/CLC and Right of Publicity Plaintiffs/class members, it
11 would be unjust for Electronic Arts and CLC to retain the benefits attained by their wrongful
12 actions. Accordingly, Right of Publicity Plaintiffs and class members seek full restitution of
13 EA's and CLC's enrichment, benefits and ill-gotten gains acquired as a result of the unlawful
14 and/or wrongful conduct alleged herein.
15

16
17 **ANTITRUST CASE CAUSES OF ACTION**

18
19 **FIRST CLAIM FOR RELIEF**

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

21 **Unreasonable Restraint of Trade**

22 **(Against All Defendants)**

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

26 625. Defendants and their co-conspirators, by and through Defendants' and co-
27 conspirators' officers, directors, employees, agents, or other representatives, have entered into a
28

1 continuing horizontal and vertical contract, combination, and conspiracy in restraint of trade to
2 artificially depress, fix, maintain, and/or stabilize the prices paid (specifically, depressing,
3 fixing, maintaining and stabilizing them at zero dollars) to Antitrust Class members for the use
4 of, and to limit supply for, licensing and sale of their images, likenesses and/or names in the
5 United States and its territories and possessions, in violation of Section 1 of the Sherman Act
6 (15 U.S.C. § 1). If Plaintiffs and Antitrust Class members were free to license and sell the rights
7 to their images, likenesses and/or names, many more licenses would be sold. This output
8 restriction also has the effect of raising the prices charged by the NCAA and CLC for licensing
9 rights.
10

11 626. Defendants' unlawful conduct deprived Antitrust Plaintiffs and Class members of
12 compensation for the use of their names, images, and likenesses—property rights with
13 economic value. This unreasonable restraint on competition has artificially limited supply and
14 depressed prices paid by Defendants and their co-conspirators to Antitrust Plaintiffs and the
15 members of the Antitrust Class for use of their images, likenesses and/or names after cessation
16 of participation in intercollegiate sports.
17

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

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

28 629. Defendants and their co-conspirators' total abridgment of compensation rights for

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

8 630. Defendant CLC has facilitated this illegal scheme, and has financially benefited
9 from it.

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

12 632. As a direct and proximate result of Defendants' scheme, Antitrust Plaintiffs and
13 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 receiving lower prices for use of their images than they would have received absent
16 Defendants' conduct. Antitrust Plaintiffs' and Antitrust Class members' injuries are of the type
17 the antitrust laws were designed to prevent and flow from that which makes Defendants'
18 conduct unlawful.
19

20 633. Defendants' and their co-conspirators' have collectively conspired to illegally limit
21 and depress the compensation of current and former student-athletes for continued use of their
22 images to zero. This anticompetitive and illegal scheme has unreasonably restrained trade.
23

24 634. The anticompetitive effects of Defendants' scheme substantially outweigh any
25 alleged procompetitive effects that may be offered by Defendants, including that their collusive
26 conduct is shielded by its concept of "amateurism." Reasonable and less restrictive alternatives
27 are available to Defendants' current anticompetitive practices.
28

1 competition compensation rights issues, and forecloses them from access to the market.

2 Defendants use the eligibility rules as a threat of a boycott to force all student-athletes to sign
3 the forms.

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

8
9 641. Plaintiffs and the members of the Antitrust Class received less than they otherwise
10 would have received for the use of their images in a competitive marketplace, were thus
11 damaged, and seek to recover for those damages.

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

17
18 643. Defendants and their co-conspirators' total abridgment of compensation rights for
19 current and former student-athletes are not connected to any legitimate non-commercial goal.
20 Defendants' actions are solely to enhance revenue for themselves and their for-profit business
21 partners, by cutting costs, *i.e.*, eliminating the need to pay any compensation for the continuing
22 commercial exploitation of their images, likenesses and/or names. Defendants' actions have no
23 relationship to any alleged goal of "amateurism," or pro-educational purposes, as former
24 student-athletes by definition are no longer members of athletic teams under the NCAA's
25 control. Thus, the NCAA's actions directly regulate a commercial market and therefore are
26 illegal.
27
28

1 preceding paragraphs dealing with the claims of the Antitrust Class.

2 651. Defendants have been unjustly enriched as a result of the unlawful conduct
3 detailed herein at the expense of Antitrust Plaintiffs and Antitrust Class members. Under
4 common law principles of unjust enrichment, Defendants should not be permitted to retain the
5 benefits conferred upon them via their wrongful conduct, and it would be unjust for them to be
6 allowed to do so.
7

8 652. Antitrust Plaintiffs seek disgorgement of all Defendants' profits resulting from the
9 wrongful conduct described herein and establishment of a constructive trust from which
10 Antitrust Plaintiffs and the Class members may seek restitution.

11 **FOURTH CLAIM FOR RELIEF**

12 **Accounting**

13 **(Against All Defendants)**

14 653. Antitrust Plaintiffs incorporate and re-allege each allegation set forth in the
15 preceding paragraphs dealing with the claims of the Antitrust Class.
16

17 654. As a result of the illegal conduct alleged herein, Defendants have received
18 licensing revenues in various forms and amounts, including both licensing fees and royalty
19 payments. As an alternative to their damage claims, Antitrust Plaintiffs and the members of the
20 Antitrust Class seek to recover a share of these revenues generated from the exploitation of their
21 likenesses and images, likenesses and/or names.
22

23 655. Upon a determination of liability, an accounting of the licensing revenues that
24 Defendants have wrongfully diverted to themselves and other entities will be required in order
25 to determine damages in the form of each Antitrust Plaintiff's and Antitrust Class members'
26 share of these licensing revenues.
27

28 656. These licensing revenues are collected by Defendants as a result of numerous

1 licensing agreements among many different entities, including the Defendants and their co-
2 conspirators, and likely thousands of companies that license, manufacture, market and sell
3 various products and services bearing the likenesses and images of Antitrust Plaintiffs and the
4 members of the Antitrust Class. The structure of the many relationships between these entities
5 and terms of the various agreements governing the licensing transactions are not known to
6 Antitrust Plaintiffs and the members of the Antitrust Class.
7

8 657. Antitrust Plaintiffs and the members of the Antitrust Class cannot identify at this
9 time, among other things; (a) all of the entities that have entered into licensing and/or royalty
10 agreements with the Defendants and their co-conspirators, (b) how the licensing revenue due to
11 the Defendants and their co-conspirators from each of those agreements is calculated, (c) the
12 amount of that revenue, and (d) which members of the Antitrust Class' images, likenesses
13 and/or names are associated with which agreements. Antitrust Plaintiffs seek to recover for
14 themselves and the members of the Antitrust Class a percentage of the revenue from Defendants
15 and their co-conspirators for every unlawful licensing and/or royalty agreement involving their
16 image, likenesses, and/or names; this percentage and amount is ascertainable and will be
17 decided by this Court upon a determination of liability.
18

19 658. The amount of licensing revenue generated from the exploitation of these images,
20 likenesses and/or names, including the tracing the revenue resulting from each transaction,
21 requires a full and complete accounting. This is so because determining the amounts due will
22 involve a fuller understanding and accounting of the various transactions, agreements, parties
23 and revenues involved.
24

25 659. Calculation of the amounts due to Antitrust Plaintiffs and Antitrust Class members
26 may well be complex. Industry accounting standards may need to be determined, understood
27 and applied, revenues may need to be traced through the various Defendants and their co-
28

1 conspirators and parties involved in the transactions, and tax consequences may also be
2 considered.

3 **HART/ALSTON RIGHT OF PUBLICITY CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **(New Jersey Common Law Right of Publicity)**
6 **(As to EA only)**

7 660. Plaintiffs Hart and Alston incorporate by reference all relevant allegations in the
8 above paragraphs as if fully set forth herein.

9 661. The *Hart/Alston* Right of Publicity class members' names, voices, signatures,
10 photographs, images, likenesses, distinctive appearances, biographical data, gestures, and
11 mannerisms have commercial value.

12 662. For commercial purposes, EA has used and continues to use Plaintiffs and
13 *Hart/Alston* class members' names, images, likenesses, biographical data, and distinctive
14 appearances without their consent in connection with and for the purposes of advertising, selling,
15 and soliciting purchases of its videogames, including its NCAA Football, NCAA Basketball and
16 NCAA March Madness franchises.

17 663. Specifically, EA has used Plaintiffs' name, image, likeness, biographical data, and
18 distinctive appearance by incorporating such items into a virtual player in NCAA Football
19 videogames sold in New Jersey. Plaintiffs' name, image, likeness, biographical data, and
20 distinctive appearance increases the realism of the games. This allows EA to increase sales and
21 profits.
22

23 664. The use of Plaintiffs' and *Hart/Alston* class members' names, images, likenesses,
24 biographical data, and distinctive appearance is not merely incidental to the total presentation, but
25 rather the sum and substance of the game. EA wants the game to be as realistic as possible, with
26 as little variation from actual NCAA rosters as humanly possible. The inclusion of Plaintiffs' and
27
28

1 *Hart/Alston* class members’ names, images, likenesses, biographical data, and distinctive
2 appearance is a necessary component of the game.

3 665. EA never received Plaintiffs’ or *Hart/Alston* class members’ consent, written or
4 otherwise, to use their likenesses, images, names, or other distinctive appearances, and neither
5 Plaintiffs nor the Class consented to such use.

6 666. EA has willfully and intentionally used and continued to use Plaintiffs’ and
7 *Hart/Alston* class members’ rights of publicity. Indeed, EA admits it uses “all the attributes and
8 jersey numbers of the players.” EA also facilitates the use of Plaintiffs and *Hart/Alston* class
9 members’ names by updating rosters on a weekly basis so that players injured or “dominating in
10 real life” would have their attributes “pumped up” to reflect real life success.

11 667. EA has solicited, advertised, sold, and caused to be sold NCAA football and
12 basketball games in New Jersey directly to New Jersey consumers, and upon information and
13 belief, developed information in New Jersey to be used in its game’s development. Upon
14 information and belief, EA has sold thousands of games to New Jersey consumers during the
15 class period via its website, and has sold tens of thousands of games through retailers.

16 668. As a result of EA’s conduct, Plaintiffs and *Hart/Alston* class members have been
17 injured.

18
19
20
21 **SECOND CAUSE OF ACTION**
22 **(New Jersey Common Law Unjust Enrichment)**
23 **(As to EA only)**

24 669. Plaintiff incorporates by reference the allegations in the above paragraphs as if
25 fully set forth herein.

26 670. To the detriment of Plaintiffs and *Hart/Alston* class members, EA has been and
27 continues to be unjustly enriched as a result of the unlawful and/or wrongful conduct alleged
28

1 herein. EA has been unjustly benefited through the sale of videogames that utilize the names,
2 images, and likenesses of Plaintiffs and *Hart/Alston* class members.

3 671. The NCAA and CLC represent and purport to protect Plaintiffs and *Hart/Alston*
4 putative class members when entering into contracts with commercial entities such as EA. EA
5 contractually agrees to abide by NCAA rules, to include the rules and regulations prohibiting the
6 use of student-athlete names and likenesses for commercial purposes.
7

8 672. If Plaintiffs and *Hart/Alston* class members knew that EA was intentionally using
9 student-athlete names and likenesses in contravention of NCAA rules, regulations, and
10 contractual obligations, they would have expected remuneration given that the NCAA and CLC
11 condone such acts despite rules protecting student-athletes from commercial exploitation.
12

13 673. Between EA and Plaintiffs/ *Hart/Alston* class members, it would be unjust for EA
14 to retain the benefits attained by its wrongful actions. Accordingly, Plaintiffs and *Hart/Alston*
15 class members seek full restitution of EA's enrichment, benefits and ill-gotten gains acquired as a
16 result of the unlawful and/or wrongful conduct alleged herein.

17 **KELLER RIGHT OF PUBLICITY PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

19 A. Certification of the action as a Class Action pursuant to the Federal Rules of Civil
20 Procedure, and appointment of Right of Publicity Plaintiffs as the Class Representatives and their
21 counsel of record as Class Counsel;
22

23 B. A declaration by this Court that Defendants' conduct constituted a conspiracy, and
24 that they are each jointly and severally liable for the conduct of or damage inflicted by any other
25 defendant;

26 C. Actual damages, statutory damages, punitive damages, and such other relief as
27 provided by the statutes cited herein;
28

1 D. Disgorgement of all profits earned by Defendants from the sale of videogames
2 containing the likenesses of Plaintiffs and class members;

3 E. Prejudgment and post-judgment interest on such monetary relief;

4 F. Equitable relief in enjoining future use of the names or likenesses of Right of
5 Publicity Plaintiffs and class members in videogames, and declaring null, void and/or
6 unenforceable any contractual provisions or NCAA rules purporting to limit the rights of
7 Plaintiffs and class members to receive compensation for their injuries;

8 G. Seizure and destruction of all copies of any videogames in the possession, custody
9 or control of Defendants or third parties (to the extent permitted by law) that infringe upon Right
10 of Publicity Plaintiffs' and class members' rights of publicity;

11 H. The costs of bringing this suit, including reasonable attorneys' fees; and

12 I. All other relief to which Plaintiffs and class members may be entitled at law or in
13 equity.

14 **X. ANTITRUST PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs prays as follows:

16 a. That the Court determine that this action may be maintained as a
17 class action under Rule 23 of the Federal Rules of Civil Procedure and certify
18 the Antitrust Declaratory and Injunctive Relief Class and the Antitrust
19 Damages Class;

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

23 c. That judgment be entered for members of the Antitrust Damages
24 Class against Defendants for three times the amount of damages sustained by
25 the Antitrust Damages Class as allowed by law with respect to the license or
26 sale of names, images, and/or likeness in connection with game footage or
27
28

1 videogames licensed or sold by Defendants, their co-conspirators, or their
2 licensees from July 21, 2005 and continuing until a final judgment in this
3 matter, together with the costs and expenses of this action, including
4 reasonable attorneys' fees;

5
6 d. That Defendants be ordered to disgorge all profits earned via the
7 wrongful license or sale of Antitrust Damages Class members' images,
8 likenesses and/or names in connection with game footage or videogames
9 licensed or sold by Defendants, their co-conspirators, or their licensees from
10 July 21, 2005 and continuing until a final judgment in this matter;

11 e. That Antitrust Damages Class members be awarded any available
12 prejudgment and post-judgment interest;

13
14 f. That Antitrust Plaintiffs and Antitrust Class members are entitled to
15 Declaratory relief declaring as void and unenforceable any releases that
16 purport to have caused Antitrust Plaintiffs and Class member to relinquish
17 rights to compensation for use of their names, images, and/or likenesses, and
18 further declaring as void and unenforceable all NCAA and member license
19 agreements that purport to represent that Antitrust Class members have
20 released future compensation rights for the use of their images;

21
22 g. That Defendants, their affiliates, successors, transferees, assignees,
23 and the officers, directors, partners, agents, and employees thereof, and all
24 other persons acting or claiming to act on their behalf, be permanently enjoined
25 and restrained from, in any manner, continuing, maintaining, or renewing the
26 contract, combination, or conspiracy alleged herein, or from engaging in any
27 other contract, combination, or conspiracy having a similar purpose or effect,
28

1 and from adopting or following any practice, plan, program, or device having a
2 similar purpose or effect;

3 h. That Antitrust Plaintiffs and Antitrust Declaratory and Injunctive
4 Relief Class members are further entitled to equitable relief permanently
5 enjoining the future use of the release forms described herein, and enjoining
6 Defendants and their co-conspirators from selling, licensing or using current
7 and former student-athletes' rights that Defendants do not own; and

8 i. That Antitrust Plaintiffs and Antitrust Class members have such
9 other, further, and different relief as the case may require and the Court may
10 deem just and proper under the circumstances.

11
12 **Y. HART/ALSTON RIGHT OF PUBLICITY PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

14 A. Certification of the action as a Class Action pursuant to the Rules of Civil Procedure
15 and appointment of Plaintiffs Ryan Hart and Shawne Alston as Class Representatives and their
16 counsel of record as Class Counsel;

17 B. Actual damages, compensatory damages, punitive damages and such other relief
18 permitted by law;

19 C. Disgorgement of all profits earned by Defendant EA from the sale of videogames
20 containing the identities and likenesses of Plaintiff and Class Members;

21 D. Prejudgment and post-judgment interest on such monetary relief;

22 F. Equitable relief in enjoining future use of the identities or likenesses of Plaintiff and
23 Class Members in video games, and declaring null, void and/or unenforceable any contractual
24 provisions or NCAA rules purporting to limit the right of Plaintiff and Class Members to receive
25 compensation for their injuries;

1 G. Seizure and destruction of all copies of any NCAA Football and NCAA Basketball
2 video games in the possession, custody or control of Defendant EA or third parties (to the extent
3 permitted by law) that infringe upon plaintiffs and Class Members' rights of publicity;

4 H. The costs of bringing this suit, including reasonable attorneys' fees; and

5 I. All other relief which Plaintiffs and *Hart/Alston* Class Members may be entitled at
6 law or in equity.
7

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10
11 **Z. KELLER RIGHT OF PUBLICITY**
12 **JURY DEMAND**

13
14 Right of Publicity Plaintiffs demand a jury trial, pursuant to Federal Rule of Civil
15 Procedure 38(b), of all triable issues.

16 **ANTITRUST JURY DEMAND**

17 Antitrust Plaintiffs demand a jury trial, pursuant to Federal Rule of Civil Procedure 38(b),
18 of all triable issues.

19
20 **AA. HART/ALSTON RIGHT OF PUBLICITY**
21 **JURY DEMAND**

22 // *Hart/Alston* Right of Publicity Plaintiffs demand a jury trial, pursuant to Federal Rule of
23 Civil Procedure 38(b), of all triable issues.

24
25 //

26 //

27 //

1 //
2 //
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4 //

5 Dated: May __, 2014

6 HAGENS BERMAN SOBOL SHAPIRO LLP

HAUSFELD LLP

7 /s/ Robert B. Carey

/s/ Michael P. Lehmann

8 Robert B. Carey (*pro hac vice*)
9 Leonard W. Aragon (*pro hac vice*)
10 11 West Jefferson
11 Suite 1000 Phoenix, AZ, 85003
12 Telephone: (602) 840-5900
13 Facsimile: (602) 840-3012
14 Email: rcarey@hbsslaw.com
leonard@hbsslaw.com

Michael P. Lehmann (Cal. Bar No. 77152)
Arthur N. Bailey, Jr. (Cal. Bar No. 248460)
44 Montgomery Street, 34th Floor
San Francisco, CA 94104
Tel: (415) 633-1908
Fax: (415) 358-4980
Email: mlehmann@hausfeldllp.com

abailey@hausfeldllp.com

15 Steve W. Berman WSBA #12536 (*pro hac vice*)
16 HAGENS BERMAN SOBOL SHAPIRO LLP
17 1918 Eighth Avenue, Suite 3300
18 Seattle, Washington 98101
19 Telephone: (206) 623-7292
20 Facsimile: (206) 623-0594
21 E-Mail: steve@hbsslaw.com

Michael D. Hausfeld (*pro hac vice*)
Hilary K. Scherrer (Cal. Bar No. 209451)
Sathya S. Gosselin (Cal. Bar No. 269171)
HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
Tel: (202) 540-7200
Fax: (202) 540-7201
Email: mhausfeld@hausfeldllp.com
hscherrer@hausfeldllp.com

22 ***Plaintiffs' Interim Co-Lead Class Counsel***

Plaintiffs' Interim Co-Lead Class Counsel

23 By _____
24 Keith McKenna, Esq. (*pro hac vice pending*)
25 96 Park Street
26 Montclair, New Jersey 07042
27 Telephone: 973-509-0050
28 Facsimile: 973-509-3580
keith.mckenna@mcklaw.net

Dennis J. Drasco, Esq. (*pro hac vice pending*)
Arthur M. Owens, Esq. (*pro hac vice pending*)

1 Lum, Drasco & Positan LLC
103 Eisenhower Pkwy
2 Roseland, New Jersey, 07068
Telephone: 973-403-900
3 Facsimile: 973-403-9021
ddrasco@lumlaw.com
4 aowens@lumlaw.com

5 ***Hart/Alston Class Counsel***

6
7 ***Additional Counsel for Right of Publicity and
Related Claims:***

9 Shana E. Scarlett (Cal. Bar No. 217895)
10 HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
11 Berkeley, CA 94710
Telephone: (510) 725-3000
12 Facsimile: (510) 725-3001
Email: shanas@hbsslaw.com

Stuart M. Paynter (Cal. Bar. No. 226147)
THE PAYNTER LAW FIRM PLLC
1200 G Street N.W., Suite 800
Washington DC 20005
Telephone: (202) 626-4486
Facsimile: (866) 734-0622
Email: stuart@smplegal.com

14
15
16
17 Howard J. Sedran
Austin B. Cohen
18 LEVIN FISHBEIN SEDRAN & BERMAN
Suite 500
19 510 Walnut Street
Philadelphia, PA 19106
20 Phone: 215-592-1500
21 Fax: 215-592-4663
Email: hsedran@lfsblaw.com
22 acohen@lfsblaw.com

Steven A. Asher
David H. Weinstein
Mindee J. Reuben
Jeremy S. Spiegel
WEINSTEIN KITCHENOFF & ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, Pennsylvania 19103
Telephone: (215) 545-7200
Email: asher@wka-law.com

23 Michael Ram
24 Karl Olson
RAM & OLSON
25 555 Montgomery Street, Suite 820
San Francisco, California 94111
26 Phone: (415) 433-4949
27 Email: mram@ramolson.com

Joseph C. Kohn
Robert J. LaRocca
KOHNSWIFT & GRAF, P.C.
One South Broad Street, Suite 2100
Philadelphia, Pennsylvania 19107
Phone: (215) 238-1700
Email: jkohn@kohnsswift.com

28 Roberta D. Liebenberg
FOURTH CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT
Case No. C 09-01967 CW

Gerald J. Rodos
Jeffrey B. Gittleman

1 Donald L. Perelman
FINE, KAPLAN AND BLACK, R.P.C.
2 1835 Market Street, Suite 2800
Philadelphia, Pennsylvania 19103
3 Phone: (215) 567-6565
Email: rliebenberg@finekaplan.com
4

BARRACK RODOS & BACINE
3300 Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19130
Phone: (215) 963-0600
Email: grodos@barrack.com

5 Howard J. Sedran
Austin B. Cohen
6 LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street, Suite 500
Philadelphia, Pennsylvania 19106
7 Phone: (215) 592-1500
8 Email: hsedran@lfsblaw.com

9 ***Additional Counsel for Antitrust and Related
Claims:***

10 Renae Steiner
11 Vincent J. Esades
HEINS MILLS & OLSON, P.L.C.
12 310 Clifton Avenue
13 Minneapolis, MN 55403
Tel: (612) 338-4605
14 Fax: (612) 338-4692
15 Email: rsteiner@heinsmills.com
vesades@heinsmills.com
16

Steven J. Greenfogel
LITE DEPALMA GREENBERG, LLC
1521 Locust Street, 7th Floor
Philadelphia, PA 19102
Tel: (973) 877-3819
Email: sgreenfogel@litedepalma.com

17 William A. Isaacson (*pro hac vice*)
Tanya Chutkan (*pro hac vice*)
18 Jack Simms (*pro hac vice*)
BOIES, SCHILLER & FLEXNER LLP
19 5301 Wisconsin Avenue, 8th Floor
Washington, DC 20015
20 Tel: (202) 237-2727
21 Fax: (202) 237-6131
Email: wisaacson@bsflp.com
22 tchutkan@bsflp.com
23 jsimms@bsflp.com

John F. Cove, Jr. (Cal. Bar No. 212213)
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
Tel: (510) 874-1000
Fax: (510) 874-1480
Email: jcove@bsflp.com

24 Thomas V. Girardi
25 Stephen Gerard Larson
GIRARDI & KEESE
26 1126 Wilshire Boulevard
Los Angeles, CA 90017
27 213-977-0211
28 Fax: 213-481-1554

Jay L. Himes
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005
Tel: (212) 907-0700
Fax: (212) 818-0477
Email: jhimes@labaton.com

1 Email: slarson@girardikeese.com

2 Bonny E. Sweeney (176174)
3 Carmen A. Medici (248417)
4 COUGHLIN STOIA GELLER
5 RUDMAN & ROBBINS LLP
6 655 West Broadway, Suite 1900
7 San Diego, CA 92101
8 Telephone: 619/231-1058
9 619/231-7423 (fax)
10 Email: bonnyS@csgrr.com
11 cmedici@csgrr.com

12 Jonathan W. Cuneo
13 CUNEO GILBERT & LADUCA LLP
14 507 C. Street, NE
15 Washington, DC 20002
16 Telephone: (202) 789-3960
17 Facsimile: (202) 789-1813
18 Email: Jonc@cuneolaw.com

19 Daniel Cohen
20 CUNEO GILBERT & LADUCA LLP
21 106-A S. Columbus Street
22 Alexandria, VA 22314
23 Telephone: (202) 789-3960
24 Facsimile: (202) 789-1813
25 Danielc@cuneolaw.com

26 Bruce L. Simon (Cal. Bar. No. 96241)
27 PEARSON, SIMON, WARSHAW
28 & PENNY, LLP
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Tel: (415) 433-9000
Fax: (415) 433-9008
Email: bsimon@pswplaw.com

Shawn D. Stuckey (MN Bar No. 0388976)
ZELLE HOFMANN VOELBEL & MASON
LLP
500 Washington Avenue South, Suite 400
Minneapolis, MN 55415

FOURTH CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT
Case No. C 09-01967 CW

Daniel S. Mason (Cal. Bar No. 54065)
Jiangxiao Hou (Cal. Bar # 215256)
ZELLE HOFMANN VOELBEL & MASON
LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Tel: (415) 693-0700
Fax: (415) 693-0770
Email: dmason@zelle.com
ahou@zelle.com

Bryan L. Clobes
Ellen Meriwether
Michael Tarringer
Tim Fraser
CAFFERTY FAUCHER LLP
1717 Arch Street, Suite 3610
Philadelphia, PA 19103
Tel: 215-864-2800
Fax: 215-864-2810
bclobes@caffertyfaucher.com

Joseph R. Saveri (State Bar No. 130064)
Kelly M. Dermody (State Bar No. 171716)
Eric B. Fastiff (State Bar No. 182260)
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
Fax: (415) 956-1008
Email: jsaveri@lchb.com

Brian M. Sund
Joshua G. Hauble
Jackson D. Bigham
MORRISON FENSKE & SUND, P.A.
5125 County Road 101, Suite 202

1 Telephone: (612) 339-2020
2 Facsimile: (612) 336-9100
3 Email: mrapp@zelle.com
4 sstuckey@zelle.com

Minnetonka, MN 55345
Tel: (952) 975-0050
Fax: (952) 975-0058
Email: bsund@morrisonfenske.com
jhauble@morrisonfenske.com

5 Eugene A. Spector
6 Jeffrey J. Corrigan
7 Jay S. Cohen
8 Jeffrey L. Spector
9 SPECTOR ROSEMAN KODROFF & WILLIS,
10 P.C.
11 1818 Market Street, Suite 2500
12 Philadelphia, Pennsylvania 19103
13 Tel: (215) 496-0300
14 Fax: (215) 496-6611
15 Email: espector@srkw-law.com
16 jcorrigan@srkw-law.com
17 jcohen@srkw-law.com
18 jspector@srkw-law.com

Jason A. Zweig
KAPLAN FOX & KILSHEIMER
850 Third Avenue, 14th Floor
New York, NY 10022
Tel.: 212-687-1980
Fax: 212-687-7714
jzweig@kaplanfox.com

Mary Jane Fait
Adam J. Levitt
WOLF HALDENSTEIN ADLER FREEMAN
& HERZ LLP
55 West Monroe Street
Suite 1111
Chicago, IL 60603
Tel: 312-984-0000
Fax: 312-984-0001
fait@whafh.com
levitt@whafh.com

17 Rosemary M. Rivas
18 Tracy H. Tien
19 FINKELSTEIN THOMPSON LLP
20 100 Bush Street, Suite 1450
21 San Francisco, CA 94104
22 Telephone: 415-398-8700
23 Facsimile: 415-398-8704
24 Email: rrivas@finkelsteinthompson.com

Lee Albert
MURRAY, FRANK & SAILER LLP
275 Madison Avenue
Suite 801
New York, NY 10016
Tel: 212-682-1818
Fax: 212-682-1892
Email: lalbert@murrayfrank.com

21 Richard M. Volin
22 FINKELSTEIN THOMPSON LLP
23 1050 30th Street, N.W.
24 Washington, DC 20007
25 Tel: 202-337-8000
26 Fax: 202-337-8090
27 Email: rvolin@finkelsteinthompson.com

Eric L. Cramer
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
215-875-3000
Fax: 215-875-4604
Email: ecramer@bm.net

25 Michael J. Flannery
26 CAREY & DANIS, LLC
27 8235 Forsyth Boulevard, Suite 1100
28 St. Louis, MO 63105
Tel: 314-725-7700
Fax: 314-721-0905

Joshua P. Davis
LAW OFFICES OF JOSHUA P. DAVIS
437A Valley Street
San Francisco, CA 94131

1 Email: mflannery@careydanis.com

Tel: 415-422-6223
Email: davisj@usfca.edu

2 Stephen A. Weiss
3 SEEGER WEISS LLP
4 One William Street
5 New York, NY 10004
6 Tel: 212-584-0700
7 Fax: 212-584-0799
8 Email: sweiss@seegerweiss.com

Kendall S. Zylstra
Stephen E. Connolly
FARUQI & FARUQI LLP
2600 Philmont Avenue
Suite 324
Huntingdon Valley, PA 19006
Tel: 215-914-2460
Fax: 215-914-2462
Email: kzylstra@faruqilaw.com

6 Harris L. Pogust
7 POGUST BRASLOW & MILLROOD, LLC
8 161 Washington Street, Suite 1520
9 Conshohocken, PA 19428
10 Tel: 610-941-4204
11 Fax: 610-941-4245
12 Email: hpogust@cpm-law.com

FARUQI & FARUQI, LLP
2600 Philmont Avenue
Suite 324
Huntingdon Valley, PA 19006
Tel: 215-914-2460
Fax: 215-914-2462
Email: sconolly@faruqilaw.com

10 Michael E. Criden
11 Kevin B. Love
12 CRIDEN & LOVE, P.A.
13 7301 S.W. 57th Court, Suite 515
14 South Miami, FL 33143
15 Tel: 305-357-9000
16 Fax: 305-357-9050
17 Email: mcriden@cridenlove.com
18 Email: klove@cridenlove.com

17 Gordon Ball
18 BALL & SCOTT, A PROFESSIONAL
19 ASSOCIATION
20 550 Main Avenue, Suite 750
21 Knoxville, TN 37902
22 Tel: (865) 525-7028
23 Fax: (865) 525-4679
24 Email: GBall@ballandscott.com

Stanley D. Bernstein
Ronald J. Aranoff
Dana Statsky Smith
BERSTEIN LIEBHARD LLP
10 East 40th Street, 22nd Floor
New York, New York 10016
Tel: (212) 779-1414
Fax: (212) 779-3218
Email: bernstein@bernlieb.com
aranoff@bernlieb.com

23 Allan Steyer
24 D. Scott Macrae
25 Lucas E. Gilmore
26 STEYER LOWENTHAL BOODROOKAS
27 ALVAREZ & SMITH LLP
28 One California Street, Third Floor
San Francisco, CA 94111
Tel: (415) 421-3400
Fax: (415) 421-2234

Carl A. Taylor Lopez
LOPEZ & FANTEL
1510 114th Avenue
Seattle, WA 98122-4024
Tel: (206) 322-5200
Email: clopez@lopezfantel.com

Daniel E. Gustafson

1 Email: asteyer@steyerlaw.com
2 smacrae@steyerlaw.com
3 lgilmore@steyerlaw.com

4 Derek G. Howard
5 MINAMI TAMAKI LLP
6 360 Post Street
7 8th Floor
8 San Francisco, CA 94108
9 Tel: 415-788-9000
10 Fax: 415-398-3887
11 Email: dhoward@minamitamaki.com

12 Garrett D. Blanchfield, Jr.
13 REINHARDT WENDORF & BLANCHFIELD
14 E-1250 First National Bank Building
15 332 Minnesota Street
16 St. Paul, MN 55101
17 Tel: (651) 287-2100
18 Fax: (651) 287-2103
19 Email: g.blanchfield@rwblawfirm.com

20 K.A.D. Camara
21 Joe Sibley
22 CAMARA & SIBLEY LLP
23 2339 University Boulevard
24 Houston, Texas 77005
25 Tel: (713) 893 7973
26 Fax: (713) 583-1131
27 Email: camara@camarasibley.com
28 sibley@camarasibley.com

Kimberly A. Kralowec
THE KRALOWEC LAW GROUP
188 The Embarcadero, Suite 800
San Francisco, CA 94105
Tel: (415) 546-6800
Fax: (415) 546-6801
Email: kkralowec@kraloweclaw.com

Chris T. Hellums
PITTMAN DUTTON AND HELLUMS, P.C.
2001 Park Place North
Suite 1100
Birmingham, AL 35203

FOURTH CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT
Case No. C 09-01967 CW

Jason S. Kilene
David A. Goodwin
GUSTAFSON GLUEK PLLC
650 Northstar East
608 Second Avenue South
Minneapolis, MN 55402
Telephone: (612) 333-8844
Fax: (612) 339-6622
Email: dgustafson@gustafsongluek.com
jkilene@gustafsongluek.com

SALTZ MONGELUZZI BARRETT &
BENDESKY, PC
Simon Paris
Patrick Howard
One Liberty Place
52nd Floor 1650 Market Street
Philadelphia, PA 19103
Telephone: (215) 575-3986
Fax: (215) 496-0999
Email: sparis@smbb.com

Dianne M. Nast
RODA NAST, P.C.
801 Estelle Drive
Lancaster, PA 17601
Telephone: (717) 892-3000
Fax: (717) 892-1200
Email: dnast@rodanast.com

Douglas A. Millen
Robert J. Wozniak
FREED KANNER LONDON & MILLEN
LLC
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
Tel. (224) 632-4500
Fax (224) 632-4519
Email: dmillen@fkmlmlaw.com
rwozniak@fkmlmlaw.com

Robert G. Eisler
GRANT & EISENHOFER, P.A.

1 Tel: 205-322-8880
2 Fax: 205-328-2711
3 Email: chrish@pittmandutton.com

485 Lexington Ave., 29th Floor
New York, NY 10017
Tel: 212-838-7797
Fax: 212-838-7745
Email: reisler@gelaw.com

4 Edgar D. Gankendorff
5 PROVOSTY & GANKENDORF LLC
6 650 Poydras Street
7 Suite 2700
8 New Orleans, La 70130
9 Tel: 504-410-2795
10 Fax: 504-410-2796
11 Email: egankendorff@provostylaw.com

12 W.B. (Bill) Markovits
13 Terence (Terry) R. Coates
14 MARKOVITS, STOCK & DEMARCO, LLC
15 119 East Court Street, Suite 530
16 Cincinnati, OH 45202
17 Tel: (513) 513-651-3700
18 Fax: (513) 513-665-0219
19 Email: BMarkovits@msdlegal.com
20 TCoates@msdlegal.com

21
22
23
24
25
26
27
28

EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SHAWNE ALSTON, on behalf of himself and a
class of persons similarly situated

Plaintiffs,

-vs-

ELECTRONIC ARTS, INC,

Defendant.

Civil Action No.: 3:13-cv-05157-FLW-LHG

**CONSENT ORDER AND STIPULATION
TO STAY PROCEEDING AND REQUEST
FOR VOLUNTARY DISMISSAL
PENDING CLASS SETTLEMENT
APPROVAL**

WHEREAS, Shawne Alston and the putative class filed suit against Defendant, Electronic Arts, Inc. (“EA”) on August 27, 2009.

WHEREAS, on September 26, 2013, the parties entered into a settlement in principle resolving all claims asserted in this action, as well as claims against EA filed in *Ryan Hart v. Electronic Arts, Inc.*, Docket No. 09-CV-05990, s pending in this district and the claims against EA in the consolidated actions in the Northern District of California: *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*, Docket No. 09-cv-1967.

WHEREAS, on February 19, 2004 this matter was stayed by a Letter Order from the Honorable Freda L. Wolfson, U.S.D.J. (ECF Doc #13). This stay remains in place.

WHEREAS, the parties and counsel have agreed to seek approval of the class action settlement with EA from Chief Judge Claudia Wilken, United States District Court for the Northern District of California in the consolidated case *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*.

WHEREAS, the parties and counsel are prepared to move for preliminary approval of the global settlement with EA in the case *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*.

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, that the stay of this action, previously entered on February 19, 2014, shall remain in full force and effect until a final determination of the certification and approval motion of the proposed class settlement with EA is reached by the Court in *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*

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IT IS FURTHER STIPULATED AND AGREED, that if the Northern District of California grants final approval of the class action settlement with EA, this action shall be voluntarily dismissed with prejudice.

IT IS FURTHER STIPULATED AND AGREED, that if the Northern District of California denies final approval of the class settlement with EA, the stay entered on February 19, 2014 shall be lifted and this action shall proceed in the District of New Jersey. Counsel agrees to notify this Court of the final result of the motion for approval and certification of the class settlement in the Northern District of California.

It is so stipulated on this __ Day of May 2014.

Pinilis Halpern

McCusker, Anselmi, Rosen & Carvelli, PC

By _____

By _____

William J. Pinlis, Esq.
Pinlis Halpern
160 Morris Street
Morristown, NJ 07962
Telephone: 973-401-1111
Facsimile: 973-401-1114
wpinilis@consumerfraudlawyer.com

Bruce R. Rosen, Esq.
McCusker, Anselmi, Rosen & Carvelli, PC
210 Park Avenue, STE 301
PO BOX 240
Florham Park, NJ 07932
(973) 635-6300
Fax: (973) 635-6363
brosen@marc-law.com

Robert B. Carey (Pro Hac Vice)
Leonard W. Aragon (Pro Hac Vice)
Hagens Berman Sobol Shapiro LLP
11 West Jefferson Street, Suite 1000
Phoenix, Arizona 85003
Telephone: 602-840-5900
Facsimile: 602-840-3012
Email: rcarey@hbsslaw.com
leonard@hbsslaw.com

R. James Slaughter
Robert Van Nest
Keker & Van Nest LLP
633 Battery Street
San Francisco, CA 94111
Telephone: 415.391.5400
Facsimile: 415.397.7188
rslaughter@kvn.com
rvannest@kvn.com

ATTORNEYS FOR PLAINTIFF SHAWNE
ALSTON AND THE PROPOSED CLASS

ATTORNEYS FOR
DEFENDANT ELECTRONIC ARTS INC.

SO ORDERED

The Honorable Freda L. Wolfson, U.S.D.J.

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RYAN HART, Individually and on behalf of all
others similarity situated

Plaintiffs,

-vs-

ELECTRONIC ARTS, INC., a Delaware
Corporation

Defendant.

Civil Action No.: 09-CV-05990-FLW-LHG

**CONSENT ORDER AND STIPULATION
TO STAY PROCEEDING AND REQUEST
FOR VOLUNTARY DISMISSAL
PENDING CLASS SETTLEMENT
APPROVAL**

WHEREAS, the complaint on behalf of Ryan Hart and the putative class against Defendant, Electronic Arts, Inc. (“EA”), was removed to this Court on November 11, 2009.

WHEREAS, on September 26, 2013, the parties entered into a settlement in principle resolving all claims asserted in this action, as well as the claims against EA in Shawne Alston v. Electronic Arts, Inc., Docket No. 3:13-cv-05157, which is pending in this district and the claims against EA in the consolidated actions in the Northern District of California: In re NCAA Student-Athlete Name and Likeness Licensing Litigation, Docket No. 09-cv-1967.

WHEREAS, on October 22, 2013, this matter was stayed pursuant to the Order of the Hon. Freda L. Wolfson, U.S.D.J. (ECF Doc #84), and this stay remains in place and has not been lifted by the Court.

WHEREAS, the parties and counsel have agreed to seek approval of the class action settlement with EA from the Hon. Judge Claudia Wilken, U.S.D.J. in the Northern District of California in the consolidated In re NCAA Student-Athlete Name and Likeness Licensing Litigation case and that present counsel for Hart shall serve as class counsel for the purposes of the

settlement along with interim co-lead counsel, previously appointed in In re NCAA Student-Athlete Name and Likeness Licensing Ligation.

WHEREAS, the parties and counsel are prepared to move for preliminary approval of the global settlement with EA in the In re NCAA Student-Athlete Name and Likeness Licensing Ligation case.

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, that the stay of this action, previously entered on October 22, 2013 shall remain in full force and effect until such time as a final determination of the certification and approval motion of the proposed class settlement with EA is reached by the Court in In re NCAA Student-Athlete Name and Likeness Licensing Ligation.

IT IS FURTHER STIPULATED AND AGREED, that if the Northern District of California grants final approval of the class settlement with EA, the above-entitled action shall be dismissed voluntarily and with prejudice against all defendants in this action, pursuant to the terms and conditions of the Long Form Settlement Agreement, reached between all parties and counsel the Orders entered in In re NCAA Student-Athlete Name and Likeness Licensing Ligation approving the class settlement.

IT IS FURTHER STIPULATED AND AGREED, that if the Northern District of California denies final approval of the class settlement with EA, the stay entered on October 22, 2013 shall be lifted and this action shall proceed in the District of New Jersey. Counsel agrees to notify this Court of the final result of the motion for approval and certification of the class settlement in the Northern District of California.

It is so stipulated on this __ Day of May 2014.

The McKenna Law Firm, LLC

McCusker, Anselmi, Rosen & Carvelli, PC

By _____

By _____

Keith McKenna, Esq.
The McKenna Law Firm, LLC
96 Park Street
Montclair, New Jersey 07042
Telephone: 973-509-0050
Facsimile: 973-509-3580
keith.mckenna@mcklaw.net

Bruce R. Rosen, Esq.
McCusker, Anselmi, Rosen & Carvelli, PC
210 Park Avenue, STE 301
PO BOX 240
Florham Park, NJ 07932
(973) 635-6300
Fax: (973) 635-6363
brosen@marc-law.com

Dennis J. Drasco, Esq.
Arthur M. Owens, Esq.
Lum, Drasco & Positan LLC
103 Eisenhower Pkwy
Roseland, New Jersey, 07068
Telephone: 973-403-900
Facsimile: 973-403-9021
ddrasco@lumlaw.com
aowens@lumlaw.com

R. James Slaughter
Robert Van Nest
Keker & Van Nest LLP
633 Battery Street
San Francisco, CA 94111
Telephone: 415.391.5400
Facsimile: 415.397.7188
rslaughter@kvn.com
rvannest@kvn.com

ATTORNEYS FOR PLAINTIFF RYAN
HART AND THE PROPOSED CLASS

ATTORNEYS FOR
DEFENDANT ELECTRONIC ARTS INC.

SO ORDERED

The Honorable Freda L. Wolfson, U.S.D.J.