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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 JASON WHITE, BRIAN POLAK, and
18 JOVAN HARRIS, CHRIS CRAIG on
19 Behalf of Themselves and All Others
Similarly Situated,

20 Plaintiffs,

21 vs.

22 NATIONAL COLLEGIATE ATHLETIC
23 ASSOCIATION, an unincorporated
24 association,

25 Defendant.

Case No. CV 06-0999 RGK (MANx)

CLASS ACTION

**SECOND AMENDED
COMPLAINT FOR VIOLATION
OF SECTION 1 OF THE
SHERMAN ACT, 15 U.S.C. § 1**

JURY TRIAL DEMANDED

1 Plaintiffs, on behalf of themselves and all others similarly situated, and
2 demanding trial by jury, complain and allege as follows:

3 **NATURE OF THE ACTION**

4 1. College sports – and, specifically, the “big-time” college football
5 played by athletes at National Collegiate Athletic Association (“NCAA”) Division
6 I-A schools (“Major College Football”) and men’s basketball played by athletes at
7 the NCAA Division I schools (“Major College Basketball”) – is a big, lucrative and
8 profitable business. Because of the tremendous revenues that Major College
9 Football and Major College Basketball generate for the NCAA and its member
10 institutions, those sports are commonly referred to as the “revenue sports.”
11 Television and radio contracts, advertising and promotional agreements, ticket
12 sales, license agreements, and merchandise sales collectively generate billions of
13 dollars in annual revenues. Major College Football and Major College Basketball
14 are uniquely American and are commercially and economically distinct from
15 professional and non-college sports.

16 2. Millions of fans pack football stadiums and basketball arenas to watch
17 student athletes perform, and many millions more watch games on television and
18 listen to games on the radio. Sporting goods companies lavish coaches and the
19 colleges and universities that sponsor Major College Football and Basketball teams
20 with lucrative sponsorship deals. Showcase events such as the NCAA basketball
21 tournament (“March Madness”) and the college football Bowl Championship Series
22 (or “BCS”) are among the most-watched sporting events in the United States and
23 are deeply woven into the cultural fabric of the country. The NCAA, NCAA
24 executives and administrators, NCAA member institutions, advertising and
25 promotional sponsors, schools and coaches all reap tremendous benefits from the
26 big business of big-time college sports.

27 3. While Major College Football and Major College Basketball have
28 become a huge commercial enterprise generating billions in annual revenues, the

1 NCAA and its member institutions do not allow student athletes the share of the
2 revenues that they would obtain in a more competitive market. Through an
3 unlawful horizontal agreement, the NCAA and its member institutions have agreed
4 to deny a legitimate share of the tremendous benefits of their enterprise to the
5 student athletes who make the big business of big-time college sports possible.
6 Under their longstanding express agreement, the NCAA and its member institutions
7 have short-changed student athletes by imposing an artificial cap on the amount of
8 financial aid any student athlete may receive in the form of an athletic scholarship,
9 or “grant-in-aid” (“GIA”). The artificial cap on financial aid (the “GIA cap”) is set
10 below the amount of the full cost of attendance (“COA”) that any student would
11 incur to attend the relevant colleges and universities.

12 4. As a result of the unlawful GIA cap, so-called (and demonstrably
13 misnamed) “full ride” athletic scholarships do not cover the full COA, but are
14 instead limited to amounts sufficient to cover tuition and mandatory fees; room and
15 board; and required books. So-called “full” scholarships are thus arbitrarily
16 restricted to amounts that are insufficient to cover normal and usual expenses such
17 as school supplies, recommended text books, laundry expenses, health and
18 disability insurance, travel costs and incidental expenses. On average, by the
19 NCAA’s own admission, each student athlete on a “full” scholarship must cover
20 approximately \$2500 in out-of-pocket expenses per year. Absent the unlawful
21 agreement to impose the GIA cap, schools competing against one another to attract
22 student athletes in the relevant markets for Major College Football and Major
23 College Basketball would increase the amount of financial aid available so that
24 “full” athletic scholarships would, in fact, cover the full COA.

25 5. By denying student athletes the benefits of competition, the GIA cap
26 has imposed a lower standard of living and significant hardships on many student
27 athletes, who have less time and ability to earn money through part-time jobs than
28 do other students, who are more likely to come from low-income households than

1 are other students, and who are more likely to incur substantial travel costs to attend
2 school than are other students. Indeed, the NCAA has exacerbated the effects of
3 the GIA cap by restricting the ability of student-athletes to earn extra money
4 through part-time work.

5 6. There is no cognizable justification for the GIA cap. In particular, the
6 GIA cap is not reasonably necessary to promote any interest in preserving
7 amateurism that the NCAA may claim. Rather, the GIA cap is simply a cost
8 containment mechanism that enables the NCAA and its member institutions to
9 preserve more of the benefits of their enterprise for themselves. Indeed, in rejecting
10 a recent proposal to allow GIA's covering the full COA, the NCAA cited a desire to
11 control costs – and not any procompetitive objective – as the basis for the decision
12 to maintain the GIA cap. However, under the antitrust laws, a defendant's desire to
13 save costs – and thereby increase profits at the expense of other participants in the
14 market – is not a legitimate justification for the GIA cap or any other horizontal
15 agreement to restrict price or output.

16 7. Myles Brand, the President of the NCAA, has admitted that the
17 unlawful agreement is not necessary to preserve amateurism, and that athletic
18 scholarships covering the COA would be fully compatible with the legitimate
19 purposes and objectives of the NCAA. In a letter to the editors of the *Denver Post*,
20 Brand wrote:

21 Ideally, the value of an athletically related scholarship
22 would be increased to cover the full-cost of attendance,
23 calculated at between \$2000 and \$3000 more per year
24 than is currently provided. I favor this approach of
25 providing the full cost of attendance. The Division I
26 membership, which is where the final decision will be
27 made, will continue to address the issue over the next
28 several months.

1 Myles Brand, "Welfare of Student-Athletes NCAA's Top Priority," Letter to the
2 Editor, *Denver Post*, Aug. 17, 2003. Indeed, Brand reconfirmed his support for
3 eliminating the GIA cap even after this lawsuit was filed. See Mark Alesia,
4 "Lawsuit: NCAA Should Pay 'Full Cost,'" *Indianapolis Star*, Feb. 22, 2006,
5 available at [http://www.indystar.com/apps/pbcs.dll/article?AID=/](http://www.indystar.com/apps/pbcs.dll/article?AID=/20060222/SPORTS/602220460)
6 [20060222/SPORTS/602220460](http://www.indystar.com/apps/pbcs.dll/article?AID=/20060222/SPORTS/602220460). Most recently, Brand stated that eliminating the
7 GIA cap to allow scholarships covering the full cost of attendance "strikes me as a
8 reasonable approach." Mark Alesia, "Tourney Money Fuels Pay to Play Debate:
9 Fewer than 1% of Athletes Help Make More than 90% of the NCAA's Money,"
10 *Indianapolis Star*, Apr. 1, 2006, available at [http://www.indystar.com/apps/](http://www.indystar.com/apps/pbcs.dll/article?Date=20060401&Category=SPORTS&ArtNo=604010509&SectionCat=&Template=printart)
11 [pbcs.dll/article?Date=20060401&Category=SPORTS&ArtNo=604010509&Section](http://www.indystar.com/apps/pbcs.dll/article?Date=20060401&Category=SPORTS&ArtNo=604010509&SectionCat=&Template=printart)
12 [Cat=&Template=printart](http://www.indystar.com/apps/pbcs.dll/article?Date=20060401&Category=SPORTS&ArtNo=604010509&SectionCat=&Template=printart).

13 8. Despite its President's encouraging remarks regarding his desire to lift
14 the GIA cap so that student athletes could receive athletic scholarships covering the
15 full COA, the NCAA has not increased the permissible amount of athletics-based
16 GIA's that student-athletes may receive during the two and a half years since those
17 remarks were made. Instead, the NCAA has recently taken the incremental and
18 wholly unsatisfactory step of modifying its unlawful agreement to allow certain
19 student athletes to receive need-based grants and loans and other non-athletics
20 based financial aid in amounts that may cumulatively reach the COA, but the
21 NCAA does not permit any student athlete to receive any financial aid in excess of
22 the GIA that is based in whole or in part on the student's athletic talents and
23 accomplishments, does not permit any student athlete receiving a GIA to receive
24 total financial aid in excess of the COA, and does not permit any student athlete
25 who does not qualify for need-based or other non-athletics based financial aid in
26 excess of the GIA to receive additional financial aid. As a result, the NCAA and its
27 member institutions continue to derive substantial financial benefits by denying
28 student athletes the financial aid they would receive absent the GIA cap.

1 graduated from Stanford in 2004. White received a “full” GIA, but the GIA
2 payments were insufficient to cover White’s costs of attending school at Stanford.

3 14. Plaintiff Brian Polak (“Polak”) is a resident of Hacienda Heights,
4 California. Polak attended the University of California, Los Angeles (“UCLA”),
5 and was a member of the UCLA football team. Polak received a “full” GIA, but
6 the GIA payments were insufficient to cover Polak’s costs of attending school at
7 UCLA. Polak graduated from UCLA in 2002.

8 15. Plaintiff Jovan Harris (“Harris”) is a resident of Richmond, California.
9 Harris attended the University of San Francisco (“USF”) and was a member of the
10 USF basketball team. Harris received a “full” GIA, but the GIA payments were
11 insufficient to cover Harris’s full costs of attending school at USF. Harris attended
12 USF until 2004, and since attending USF has played professional basketball for the
13 San Francisco Pilots of the American Basketball Association. Plaintiff Chris Craig
14 (“Craig”) is a resident of Price, Utah. Craig attended the University of Texas at El
15 Paso (“UTEP”) and was a member of the UTEP basketball team. Craig received a
16 “full” GIA, but the GIA payments were insufficient to cover Craig’s full costs of
17 attending school at UTEP. Craig played basketball at UTEP until 2004 and
18 graduated in December 2005.

19 **Defendant**

20 16. Defendant National Collegiate Athletic Association (“NCAA”) is an
21 unincorporated association of more than 1000 colleges and universities located
22 throughout the United States. The NCAA maintains its headquarters and principal
23 place of business in Indianapolis, Indiana. The NCAA maintains an administrative
24 staff of approximately 350 professionals at its Indianapolis headquarters and
25 manages an annual operating budget in excess of \$475 million. The NCAA derives
26 most of its revenues through the sale of television and marketing rights and from
27 ticket sales for the Division I men’s basketball tournament and other events.
28

1 17. Through agreements with its member colleges and universities, the
2 NCAA regulates and coordinates the business of college sports in the United States.
3 As alleged in paragraph 12 above, the NCAA does business and may be found in
4 this judicial district.

5 **THE CLASS**

6 18. This action is brought by plaintiffs pursuant to Rule 23(b)(2) and (3) of
7 the Federal Rules of Civil Procedure as a class action on behalf of themselves and a
8 class (the "Class").

9 19. Plaintiffs ask the Court to certify the Class as defined in the next
10 paragraph.

11 20. Proposed Class Definition: All persons who received athletic-based
12 grants-in-aid ("GIA's") from any of the (1) football programs sponsored by
13 colleges and universities included in NCAA Division I-A ("Major College
14 Football"); or (2) men's basketball programs sponsored by colleges or universities
15 in the ACC, Big East, Big 10, Big 12, Pac-10, SEC, Mountain West, WAC,
16 Atlantic 10, Conference USA, Mid-American, Sun Belt, West Coast, Horizon
17 League, Colonial Athletic Association, or Missouri Valley conferences ("Major
18 College Basketball"), at any time between February 17, 2002 and the date of
19 judgment in this matter.

20 21. The Class consists of thousands of student athletes. The members of
21 the Class are so numerous that joinder of all class members in this action is not
22 practicable.

23 22. There are questions of law and fact common to all members of the
24 Class. These common questions of law and fact predominate over questions that
25 affect only individual class members and include, without limitation, the following:

- 26 (a) Whether the NCAA and its members have contracted, combined
27 and conspired to unreasonably restrain trade in violation of 15
28

1 U.S.C. § 1 to limit financial aid to members of the Class through
2 the GIA cap;

- 3 (b) Whether the GIA cap has caused injury to plaintiffs and the
4 members of the Class by restricting the amount of athletics-
5 based financial aid paid by the colleges and universities in the
6 relevant market to members of the Class to amounts lower than
7 what would have prevailed absent the GIA cap;
- 8 (c) Whether the competitive harms that have resulted from the GIA
9 cap are outweighed by the benefits of any pro-competitive
10 justification for the GIA cap that the NCAA may assert in
11 defense of the GIA cap;
- 12 (d) Whether financial aid for student athletes who compete for
13 colleges and universities in the relevant market has been fixed,
14 depressed, or stabilized below those which would prevail absent
15 collusion;
- 16 (e) The measure of damages applicable to the Class' claims and the
17 amount of damages suffered by the Class; and
- 18 (f) Whether the NCAA should be enjoined from enforcing the GIA
19 cap.

20 23. Plaintiffs' claims are typical of the Class because the GIA cap has
21 restricted the amount of athletics-based financial aid available both to plaintiffs and
22 to the members of the Class.

23 24. Plaintiffs are adequate representatives of the Class and will fairly and
24 adequately protect the claims and interests of the Class. Plaintiffs' interests do not
25 conflict with the interests of the members of the Plaintiff Class they seek to
26 represent. Plaintiffs are committed to the vigorous prosecution of this action and
27 have retained competent counsel with extensive experience in antitrust and class
28

1 action litigation to represent them. Plaintiffs do not anticipate difficulty in the
2 management of this litigation as a class action.

3 25. A class action is the best available method for the fair and efficient
4 adjudication of this dispute. The issues raised by the GIA cap are generally
5 applicable to the entire Class. The members of the Class are so numerous that
6 requiring separate actions would result in repetitious litigation that would create the
7 risk of inconsistent results and would cause undue hardship and expense to the
8 Court and the parties. A class action will provide redress for claims which in some
9 instances may be too small to warrant the expense of individual complex litigation.
10 Absent a class action, the NCAA would unjustly retain the benefits of its unlawful
11 conduct.

12 26. The prosecution of separate actions by individual members of the
13 Class would create a risk of inconsistent or varying adjudication of novel and
14 important legal issues, or a risk of incompatible standards of conduct. The
15 prosecution of separate actions by individual members of the Class also would
16 create a risk of adjudications that would, as a practical matter, be dispositive of the
17 interests of other Class members not parties to the adjudications, or would
18 substantially impair or impede the ability of non-party Class members to protect
19 their interests.

20 27. Class certification is additionally appropriate because, through the GIA
21 cap, the NCAA has acted in a manner that is generally applicable to the Class,
22 thereby making appropriate an award of final injunctive and declaratory relief with
23 respect to the Plaintiff Class as a whole.

24 28. Proper notice of the action can be provided to members of the Class
25 through mailed notice, by appropriate publication, or by some combination thereof.

26 **THE RELEVANT MARKETS**

27 29. The relevant markets in this case are comprised of the colleges and
28 universities that compete in Major College Football (the "Major College Football

1 market”) and Major College Basketball (the “Major College Basketball market”).
2 The colleges and universities that compete in the relevant markets all are within
3 NCAA Division I, an NCAA classification that includes the colleges and
4 universities with the most extensive athletic programs.

5 30. The NCAA and the colleges and universities that compete in the
6 relevant markets sponsor athletic contests involving Major College Football and
7 Major College Basketball teams. Those athletic contests involve teams comprised
8 of players who also are receiving the higher education services of the colleges and
9 universities for which they play college sports. This association of the products of
10 Major College Football and Major College Basketball with student-athletes is a
11 unique feature that makes those products successful and distinguishes those
12 products from other sporting events and other entertainment alternatives. Because
13 of the distinct commercial appeal of Major College Football and Major College
14 Basketball, the NCAA and the colleges and universities in the relevant markets
15 generate substantial revenues by selling tickets to sporting events, selling broadcast
16 rights to television and radio outlets, and related licensing and concession activities.

17 31. The Major College Football Market includes the colleges and
18 universities in NCAA Division I-A, which the NCAA itself defines as the highest
19 level of competition in college football. To compete in Major College Football, a
20 college football program must meet game attendance levels specified by the NCAA
21 and must play nearly all of its games against other teams that compete in the
22 relevant market. From the standpoint of a prospective college football player, there
23 is no reasonably interchangeable substitute for Major College Football.
24 Participating in Major College Football provides prospective student-athletes the
25 opportunity to compete at the highest level of college football while earning a
26 college degree, and also offers prospective college football players a far greater
27 prospect for advancement to a professional football career than is available
28 anywhere else. Because of the unique combination of athletic and academic

1 benefits associated with competing in Major College Football, prospective college
2 football players who have the opportunity to participate in Major College Football
3 programs very rarely choose to pursue any alternative to Major College Football.

4 32. Consistent with the status of Major College Football as a distinct
5 product market, the NCAA and its member institutions market Major College
6 Football as a distinct product. Likewise, members of the live and television
7 audiences for Major College Football do not view other football games, other
8 sporting events, other entertainment options or any other product or category of
9 products as an acceptable substitute for Major College Football. Because there is
10 no acceptable substitute for Major College Football, participants in the relevant
11 market are able to command premium prices for, and to derive substantial profits
12 from, the sale of tickets to Major College Football events and television and radio
13 broadcast rights to Major College Football events.

14 33. The Major College Basketball market includes the colleges and
15 universities in NCAA Division I, the highest level of competition in college
16 basketball. The NCAA and its members market Major College Basketball as a
17 distinct product, and only the colleges and universities that compete in Major
18 College Basketball are eligible to compete in the NCAA's showcase event, the
19 March Madness men's basketball tournament. From the standpoint of a prospective
20 college basketball player, there is no reasonably interchangeable substitute for
21 Major College Basketball. Participating in Major College Basketball provides
22 prospective student-athletes the opportunity to compete at the highest level of
23 college basketball while earning a college degree, and also offers prospective
24 student-athletes a far greater prospect for advancement to a professional basketball
25 career than is available anywhere else. Because of the unique combination of
26 athletic and academic benefits associated with competing in Major College
27 Basketball, prospective student-athletes who have the opportunity to participate in
28

1 Major College Basketball programs very rarely choose to pursue any alternative to
2 Major College Basketball.

3 34. Consistent with the status of Major College Basketball as a distinct
4 product market, the NCAA and its member institutions market Major College
5 Basketball as a distinct product. Likewise, members of the live and television
6 audiences for Major College Basketball do not view other basketball games, other
7 sporting events, other entertainment options or any other product or category of
8 products as an acceptable substitute for Major College Basketball. Because there is
9 no acceptable substitute for Major College Basketball, participants in the relevant
10 market are able to command premium prices for, and to derive substantial profits
11 from, the sale tickets to Major College Basketball and television rights to Major
12 College Basketball events.

13 35. To field teams that can compete effectively on the field of play and
14 generate increased revenues for their athletic programs, the colleges and
15 universities in the Major College Football and Major College Basketball markets
16 compete in marketing their services to the talented student athletes whose
17 participation is necessary for the products to exist at all. The dimensions in which
18 this competition to recruit and retain student-athletes takes place include the quality
19 of the educational experiences provided to student-athletes, the quality of coaching
20 services, the quality of training amenities, the quality of athletic and non-athletic
21 opportunities following graduation, and the quality of the athletic competition on
22 the field of play. Of particular relevance to this case, the participants in the Major
23 College Football and Major College Basketball markets also compete in offering
24 student-athletes admission to their institutions and financial incentives to accept
25 their offers of admission that take the form of GIA's.

26 36. The colleges and universities in the relevant markets compete against
27 one another to recruit and retain student athletes to participate in their athletic
28 programs through agreements under which the student athletes commit to attend a

1 particular college or university in exchange for a GIA. Each year, the colleges and
2 universities in the Major College Football and Major College Basketball markets
3 award more than 11,500 GIA's to men's football and basketball players.

4 37. A limited number of colleges and universities compete on the field of
5 play in the Major College Football or Major College Basketball markets, or both
6 such markets, and may be considered participants in those markets for some
7 purposes, but do not compete in those markets by offering GIA's to student
8 athletes. Those schools include the three military service academies and the Ivy
9 League schools. The military service academies are members of NCAA Division I-
10 A and participate in Major College Football and Major College Basketball, but they
11 do not offer GIA's. Rather, the military service academies offer full scholarships
12 and stipends to all students who attend those schools, and require each student to
13 complete a military service commitment following graduation. Accordingly, the
14 military service academies are exempt from the GIA cap, and the GIA cap does not
15 have any effect on the military service academies or student athletes who attend the
16 military service academies. Because of their unique characteristics and admission
17 requirements, the military service academies are not reasonable substitutes for the
18 other colleges and universities in the Major College Football and Major College
19 Basketball markets, and are not included in the relevant markets in this case.

20 38. The Ivy League schools are Division I-AA schools that participate in
21 the Major College Basketball market, but not the Major College Football market.
22 The Ivy League Schools have relatively high academic admission standards that are
23 applicable to all prospective students, including student athletes, and do not provide
24 GIA's or athletics-based financial aid to any student-athletes. Eliminating the GIA
25 cap thus would not have any effect on the Ivy League schools or student athletes
26 who attend those schools. Because of their unique characteristics and admission
27 requirements, and because the Ivy League Schools do not offer any athletics-based
28 financial aid, the Ivy League Schools are not reasonable substitutes for the other

1 colleges and universities in the Major College Football and Major College
2 Basketball markets, and are not included in the relevant markets in this case.

3 39. Because all of the schools that compete in the relevant markets have
4 agreed to abide by the GIA cap, those schools do not compete against one another
5 with respect to the amount of financial aid they provide to student athletes in the
6 relevant markets. The NCAA and the colleges and universities in the relevant
7 markets are able to enforce that agreement because, from the standpoint of
8 prospective student-athletes, there are no acceptable substitutes for Major College
9 Football or Major College Basketball. The NCAA and the colleges and universities
10 in the relevant markets thus collectively wield market and monopoly power in the
11 relevant markets, and are able to dictate the terms upon which the student-athletes
12 who participate in Major College Football and Major College Basketball receive
13 GIA's.

14 40. The demand for student athletes is such that, absent the unlawful GIA
15 cap, the colleges and universities in the relevant markets would have competed
16 against one another by offering higher amounts of athletics-based financial aid to
17 student athletes. GIA's are therefore "capped" by the artificial rules imposed by the
18 NCAA at amounts lower than the amounts that would prevail in a more competitive
19 market. All or nearly all of the student athletes in the proposed Class receive the
20 maximum GIA amount that the colleges and universities are permitted to give
21 under the NCAA's rules and regulations. Thus, for the members of the class,
22 increased competition on the terms of athletics-based financial aid upon the
23 elimination of the GIA cap would result in additional athletics-based financial aid
24 covering the full COA for all members of the proposed Class.

25 41. The relevant geographic market is the United States.

26 **EFFECTS ON INTERSTATE COMMERCE**

27 42. Major College Football and Major College Basketball; NCAA-
28 sanctioned Division I men's college basketball and football events such as the

1 March Madness men's basketball tournament and the BCS college football series;
2 the athletics-based financial aid that the colleges and universities in the relevant
3 markets provide to student athletes; and the NCAA's GIA cap all have substantial
4 effects on interstate commerce.

5 43. Each year, the student athletes who participate in the basketball and
6 football programs included in the proposed class enable the NCAA and its member
7 institutions to generate revenues in the billions of dollars and profits in the
8 hundreds of millions of dollars. For example, in 2004-2005, the most recent
9 academic year, data collected by the U.S. Department of Education Office of
10 Postsecondary Education pursuant to the Equity in Athletics Disclosure Act show
11 that the revenues for those programs exceeded \$2.2 billion and that the profits at
12 those programs exceeded \$900 million.

13 44. In 1999, the NCAA entered into a contract with CBS for the rights to
14 televise the Division I men's basketball tournament under which the NCAA is to
15 receive \$6 billion over an 11-year period. That amount does not include the
16 substantial additional revenues derived from telecasts and radio broadcasts of
17 regular season basketball games and post-season tournaments held by the
18 conferences in the relevant market. NCAA football likewise generates hundreds of
19 millions of dollars in annual revenues.

20 45. NCAA member academic institutions that compete in the Major
21 College Football and Major College Basketball markets generate tens of millions of
22 dollars from ticket and luxury suite revenues, television, post-season tournaments
23 and bowl games, corporate sponsorships, advertising, commercial signage in
24 stadiums, licensing royalties, endowments and gifts, booster clubs and concessions.
25 As a result of their participation in the Major College Football and Major College
26 Basketball markets, those institutions also are able to attract substantial
27 contributions from alumni and other individual "boosters" who provide financial
28 support.

1 46. Data collected and reported by the NCAA show that the substantial
2 majority of the athletic programs included in the relevant markets are very
3 profitable. For 2002-2003, for instance, the NCAA reported that 68% of Division
4 I-A football programs were profitable and reported net profits averaging
5 approximately \$9.2 million per institution. The same year, 70% of the men's
6 basketball programs at those institutions were profitable, with the net profits of
7 those basketball programs averaging approximately \$3 million per institution. For
8 all Division I-A institutions, net profits for the two sports averaged approximately
9 \$8 million per institution.

10 47. College coaches share in the benefits of big-time college sports. More
11 than three dozen head coaches are paid more than \$1 million per year to coach
12 Division I men's basketball and football teams, with a few now earning more than
13 \$2 million per year, and numerous assistant coaches for those teams are paid
14 hundreds of thousands of dollars per year. In addition to their salaries, coaches use
15 their positions to earn income from television and radio shows, summer training
16 camps for high school athletes, speaking engagements and sponsorship deals.

17 48. The GIA's awarded to individual student athletes are commercial
18 transactions that affect interstate commerce. GIA's provide student-athletes with
19 financial benefits that defray the costs of attending school. In competing in the
20 Major College Football and Major College Basketball markets, colleges and
21 universities offer student athletes GIA's that collectively are worth tens of millions
22 of dollars each year. The colleges and universities in the Relevant Markets view
23 GIA's as valuable resources, and use them to attract the student-athletes they
24 consider to be most desirable for their athletic programs. Likewise, student athletes
25 consider the availability of a GIA and the financial benefits that accompany a GIA
26 to be important and often determinative factors in deciding where to attend school
27 and compete in Major College Football and Major College Basketball.

1 49. By adopting and enforcing the agreement to cap the GIA amount that
2 member institutions may provide student athletes, the NCAA deprives student
3 athletes of millions of dollars in additional financial aid each year.

4 **THE NCAA AND ITS UNLAWFUL RESTRAINT OF GIA'S**

5 **The NCAA**

6 50. The NCAA is the governing body for college sports in the United
7 States. Through the NCAA Constitution and By-Laws, the NCAA and its members
8 have adopted regulations governing all aspects of both men's and women's college
9 sports. The NCAA Constitution and By-Laws were adopted by votes of the
10 member institutions and may be amended by votes of the member institutions.
11 Thus, the rules set forth in the NCAA Constitution and By-Laws constitute
12 horizontal agreements between the NCAA and its members.

13 51. The NCAA includes 1024 active member schools, and those schools
14 are organized into three Divisions. Division I includes 326 schools with extensive
15 athletic programs, and Divisions II and III include schools with relatively less
16 extensive athletic programs. The Division I schools are further subdivided into
17 Divisions I-A, I-AA and I-AAA based on the status of their football programs. The
18 119 Division I-A schools have football programs that meet specified attendance
19 requirements; Division I-AA schools have football programs that do not meet the
20 specified attendance requirements for Division I-A; and Division I-AAA schools do
21 not have football programs.

22 52. NCAA Division I is governed by a Board of Directors and a
23 Management Council comprised of representatives from Division I member
24 institutions. Division I promulgates and enforces rules governing Division I
25 members.

26 53. As a practical matter, any academic institution that sponsors a major
27 men's football or men's basketball program must maintain membership in the
28 NCAA and abide by the rules and regulations promulgated by the NCAA and its

1 members, including the NCAA Constitution, By-laws, Executive Regulations and
2 Official Interpretations. All colleges and universities that participate in major
3 college sports are NCAA members; have conferred upon the NCAA the right to
4 negotiate television and other licensing contracts and sponsor and manage
5 championship events such as the NCAA men's basketball tournament; have agreed
6 to restrictions under which they are forbidden from competing against non-NCAA
7 teams; and have agreed to abide by all of the NCAA's rules and regulations. There
8 is no practical alternative to NCAA membership for any academic institution that
9 wishes to sponsor a major college sports program. There is no major college sports
10 program in the United States that is not an NCAA member, abiding by the NCAA
11 rules. As a result of the NCAA rules embodied in the GIA cap, no NCAA member
12 school has provided any student athlete with athletics-based financial aid in excess
13 of the GIA cap.

14 54. The academic institutions in the Major College Football and Major
15 College Basketball markets aggressively compete against one another on the field
16 of play, in recruiting student athletes, in seeking to recruit and retain talented
17 coaching staffs, in building athletic facilities that will attract athletes and coaches
18 and in soliciting revenues from television, radio and corporate sponsors. Absent the
19 unlawful GIA cap, the same competitive forces would result in GIA's that covered
20 the full COA.

21 55. The NCAA is no stranger to antitrust litigation. In prior antitrust cases
22 involving the NCAA's role in regulating, *inter alia*, football telecasts, assistant
23 coaches' salaries and pre- and post-season basketball tournaments, courts have
24 recognized that the NCAA has market power in markets relating to college sports.
25 In *Law v. NCAA*, 134 F.3d 1010 (10th Cir. 1998), a case involving the NCAA's
26 regulation of assistant coaches' salaries, the United States Court of Appeals for the
27 Tenth Circuit affirmed a district court decisions holding that the salary restriction
28 was an unlawful restraint of trade and imposing a permanent injunction against the

1 restraint. After a subsequent damages verdict in the coaches' favor, the *Law* case
2 settled for \$54.5 million. In reference to the *Law* case, Andy Geiger, the Athletic
3 Director of the Ohio State University, recently stated that “[a]ll the NCAA
4 committees in the world cannot constrain salaries, unless we act as a cartel and
5 price-fix . . . [W]e tried that already, and it didn't work.” Just as the NCAA needed
6 to act as a cartel and price-fix to restrict assistant coaches' salaries, the NCAA is
7 now able to maintain the GIA cap only through an unlawful and anticompetitive
8 agreement and would be forced to allow GIA's covering the full COA if the normal
9 competitive forces in the relevant market were allowed to work.

10 **Student Athletes in Big-Time College Sports**

11 56. Student athletes who participate in college sports for Major College
12 Basketball and Major College Football programs often spend 30-60 hours per week
13 in practice, team meetings, travel and official games during the season, and many
14 hours per week in athletics-related activities even during the off season. Although
15 NCAA rules theoretically restrict the time student athletes may spend on their sport
16 to 20 hours per week, the NCAA rules contain a large loophole for so-called
17 "voluntary" workouts that do not count toward the limit and which student athletes
18 understand to be mandatory in the eyes of their coaches.

19 57. Because of the tremendous time commitment required to participate in
20 major college sports, as well as NCAA and institutional rules in force during
21 portions of the Class Period that precluded student athletes from working part-time
22 jobs during the school year, student athletes generally are unable to earn additional
23 money from part-time jobs during the school year.

24 58. Student athletes who earn “full” GIA's and compete in Major College
25 Football and Major College Basketball generate substantial revenues for the NCAA
26 and for their schools and other member institutions. Without these athletes and
27 their contributions to their schools' sports programs, Major College Football and
28 Major College Basketball would not exist.

NCAA Regulation of Student Athletes and the Unlawful GIA Cap

1 59. The NCAA and its member institutions have adopted a broad panoply
2 of rules and regulations that govern student athletes and their participation in
3 college athletics. The rules and regulations governing Division I are published in
4 the 500-page Division I Manual, which includes provisions governing topics such
5 as recruiting, ethical conduct, academic eligibility, financial aid, playing and
6 practice seasons, and the mechanisms for enforcing NCAA rules.
7

8 60. The GIA cap is one of the rules that has been agreed to and adopted by
9 the NCAA and its member institutions. The GIA cap is included in Article 15 of
10 the Division I Manual, which governs financial aid. Under the GIA cap, which is
11 set forth in Division I By-Law 15.02.5, a “Full Grant-In Aid” to a student athlete is
12 defined as “financial aid that consists of tuition and fees, room and board, and
13 required course-related books.” The GIA for each member institution is thus
14 expressly restricted to cover an amount less than the full COA at any member
15 institution, because the COA is separately and more broadly defined by Division I
16 By-law 15.02.2 to include “an amount calculated by an institutional financial aid
17 office, using federal regulations, that includes the total cost of tuition and fees,
18 room and board, books and supplies, transportation, and other expenses related to
19 attendance at the institution.” Until August 2004, Division I By-law 15.1 further
20 set forth a “Maximum Limit on Financial Aid” under which any student-athlete
21 who received any financial aid in excess of a full GIA would be ineligible to
22 compete in intercollegiate athletics. (By-Law 15.1 contained a limited exception
23 for Pell Grants, which are available only to a limited number of student athletes
24 from low-income households.) Thus, under the by-laws governing athletics-based
25 financial aid, the NCAA and its members have agreed that athletic GIA’s will be
26 restricted to amounts that do not cover the full costs of attendance recognized by
27 the member institutions in calculating financial aid awards for the student body at
28 large.

1 61. After student athletes protested the GIA cap, and after the California
2 legislature and other legislative bodies held hearings on the effects of the GIA cap
3 on student athletes, the NCAA amended the GIA cap, effective August 1, 2004,
4 through amendments to Division I By-law 15.1. Before that date, except for the
5 relatively small number of student athletes from low-income households who were
6 eligible for Pell Grants, the NCAA and its members had agreed that student athletes
7 would not be permitted to obtain financial aid to cover the COA, and that the
8 amount of institutional financial aid paid to any student athlete would not exceed
9 the amount of a full GIA.

10 62. Under the revised GIA cap that became effective on August 1, 2004,
11 student athletes are permitted to seek and obtain non-athletic financial aid to cover
12 the COA. However, student athletes are not permitted to receive any financial aid
13 in excess of the GIA that is based in whole or in part on their athletic endeavors,
14 only those students who qualify for non-athletic financial aid covering the
15 difference between the GIA and the COA are permitted to receive financial aid in
16 excess of the GIA, and those student athletes who receive non-athletic financial aid
17 often receive it in the form of loans rather than grants. As a result, the GIA cap
18 continues to restrict the amount and terms of the financial aid received by the
19 student athletes who compete for the college football and men's basketball
20 programs included in the class.

21 63. The NCAA enforces the agreed upon GIA cap through a further
22 agreement under which any student athlete who receives athletics-based financial
23 aid in excess of the GIA cap is ineligible to compete in NCAA sports. NCAA
24 members have set up elaborate and sophisticated mechanisms to monitor
25 compliance and penalize violations of the horizontal restraints on trade. Among
26 other things, the NCAA requires members to report each student athletes' financial
27 aid information to the NCAA on or before the first day of outside competition for
28 the sport in which the student athlete participates. The NCAA makes available to

1 its members, at no charge, compliance software that applies NCAA regulations to
2 student athletes' information, generates reports to the NCAA and warns the member
3 when the jointly imposed limit on a student athletes' financial aid has been
4 exceeded. Violations are adjudicated and penalties imposed by competing member
5 institutions.

6 64. Any Division I member that deviates from the NCAA rules limiting
7 the amount, terms and conditions of financial aid to student athletes is subject to
8 severe sanctions, including expulsion, under NCAA rules. Because NCAA rules
9 prohibit members from playing games with non-NCAA members, an expelled
10 member would be unable to continue participating in major college sports.

11 65. In practice, Division I schools do not deviate from the rules limiting
12 the amount, terms and conditions of financial aid to student athletes.

13 66. For many years, the GIA cap has restricted the amount of athletics-
14 based financial aid available to student athletes in NCAA Division I, and it
15 continues to do so to this day. Through the artificial limitations on financial aid
16 embodied in the GIA cap, the NCAA and its members have agreed among
17 themselves not to include in financial aid such costs as school supplies,
18 recommended text books, laundry expenses, health and disability insurance, travel
19 costs and incidental expenses.

20 67. Without the GIA cap, the colleges and universities that sponsor the
21 major football and men's basketball programs included in the class would provide
22 athletic scholarships that would, at a minimum, cover student athletes' true full
23 costs of attendance. The same competitive forces that drive schools to provide
24 coaches with million dollar salaries and build lavish athletic facilities would also
25 compel those schools to provide athletics-based financial aid covering the full
26 COA. The GIA cap thus enables the NCAA, its member colleges and universities,
27 and the coaches to reap the full benefits of big-time colleges sports, while depriving
28 the student athletes who receive full GIA's to play Major College Football and

1 Major College Basketball of tens of millions of dollars in athletics-based financial
2 aid.

3 68. Through the GIA cap, the NCAA and its members have thus
4 contracted, combined and conspired to fix, depress or stabilize the amount, terms
5 and conditions of athletics-based financial assistance to student athletes in the
6 relevant markets.

7 69. The GIA cap has been successful and effective. As a result of the GIA
8 cap, student athletes receive lower amounts of financial assistance than they would
9 receive if student athletes were permitted to receive athletics-based financial aid
10 covering their costs of attendance.

11 70. Absent the horizontal restraint on competition imposed through the
12 GIA cap, financial aid covering the full COA would be an important means by
13 which NCAA Division I members would compete for and recruit student athletes
14 and student athletes would receive more generous scholarships as a result of
15 competition among those schools.

16
17 **FIRST CLAIM FOR RELIEF**

18 **(For Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1)**

19 71. Plaintiffs reallege and incorporate by reference paragraphs 1-70,
20 inclusive, as though fully set forth herein.

21 72. College sports are conducted across state lines in interstate commerce
22 throughout the United States. The colleges and universities that sponsor the major
23 college football and basketball programs included in the relevant market recruit,
24 offer financial aid to, and admit prospective student athletes from across the United
25 States, and the NCAA's GIA cap affects the amount and terms of the financial aid
26 provided to the student athletes who attend those schools. The antitrust violations
27 alleged herein directly and adversely affect and interfere with interstate commerce.
28

1 73. Beginning at a date unknown to plaintiffs and continuing through the
2 present, the NCAA and its member institutions in the relevant markets have
3 engaged in a contract, combination and conspiracy to fix the amount of financial
4 assistance available to student athletes and otherwise unreasonably restrain
5 competition in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, through
6 the GIA cap.

7 74. This combination and conspiracy organized through the NCAA, which
8 possesses a dominant position in the relevant markets, has produced and, unless
9 restrained, will continue to produce, the following anti-competitive effects, among
10 others:

- 11 (a) competition in the amount, terms and conditions of financial
12 assistance to student athletes at NCAA member institutions that
13 compete in the relevant markets has been and will continue to be
14 unreasonably restricted and artificially eliminated;
- 15 (b) student athletes have been and will continue to be deprived of
16 the benefits of competition as to the amount, terms and
17 conditions of financial assistance from NCAA member
18 institutions that compete in the relevant market.

19 75. As a direct and proximate result, and as intended by the NCAA,
20 plaintiffs and the members of the Class have been, are being, and will continue to
21 be, irreparably harmed in their business and property by the NCAA's continuing
22 violations, as alleged herein. Plaintiffs and the members of the Class have no
23 adequate remedy at law to compensate for such injuries, and unless the NCAA is
24 restrained by an appropriate order of this court, plaintiffs will continue to suffer
25 from the injuries alleged herein.

26 76. The amount of damages suffered by plaintiffs and the members of the
27 Class has not yet been ascertained. Pursuant to Section 4 of the Clayton Act,
28

1 plaintiffs are entitled to recover from the NCAA treble the amount of actual
2 damages as well as an award of reasonable attorneys' fees and costs of suit.

3 **WHEREFORE**, plaintiffs and the members of the Class pray for judgment
4 against the NCAA as follows:

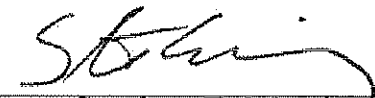
- 5 1. For actual damages according to the proof at trial;
- 6 2. For treble damages pursuant to 15 U.S.C. § 15;
- 7 3. For an injunction restraining the NCAA from enforcing its unlawful
8 and anticompetitive agreement to cap the amount of financial aid available to
9 student athletes at an amount that does not cover the full cost of attendance;
- 10 4. For plaintiffs' attorneys' fees, costs and expenses; and
- 11 5. For such other relief that the Court may deem just and equitable.

12 Dated: September 8, 2006

MARC M. SELTZER
STEPHEN E. MORRISSEY
STEVEN G. SKLAVER
TIBOR NAGY
SUSMAN GODFREY L.L.P.

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17
18 By:



Stephen E. Morrissey
Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

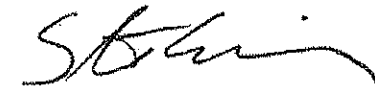
2 Plaintiffs demand a trial by jury pursuant to Rule 38 of the Federal Rules of
3 Civil Procedure.

4 Dated: September 8, 2006

MARC M. SELTZER
STEPHEN E. MORRISSEY
STEVEN G. SKLAVER
TIBOR NAGY
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9
10 By:



Stephen E. Morrissey
Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 I, the undersigned, declare:

3 I am employed in the County of Los Angeles, State of California. I am over
4 the age of 18 and not a party to the within action; my business address is 1901
Avenue of the Stars, Suite 950, Los Angeles, California 90067-6029.

5 On September 8, 2006, I served the foregoing document(s) described as
6 follows:

7 **SECOND AMENDED COMPLAINT FOR VIOLATION OF SECTION 1 OF
8 THE SHERMAN ACT, 15 U.S.C. § 1**

9 on the interested parties in this action by placing true copies thereof enclosed in
10 sealed envelopes addressed as stated on the attached service list, as follows:

11 BY MAIL:

12 I am "readily familiar" with the firm's practice of collection and processing
13 correspondence for mailing. Under that practice, it would be deposited with the
U.S. Postal Service on that same day with postage thereon fully prepaid at Los
Angeles, California in the ordinary course of business. I am aware that on motion
of the party served, service is presumed invalid if postal cancellation date or
postage meter date is more than one day after date of deposit for mailing in
affidavit.

14 BY PERSONAL SERVICE:

15 I caused to be delivered such envelope by hand to the offices of the
addressee.

16 BY FEDERAL EXPRESS OR OVERNIGHT COURIER

17 BY FAX

18 I served by facsimile as indicated on the attached service list.

19 XX BY ELECTRONIC MAIL

20 I caused said documents to be prepared in portable document format (PDF)
for e-mailing and served by electronic mail as indicated on the attached service list.

21 Executed on September 8, 2006, at Los Angeles, California

22 (State) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.

23 XX (Federal) I declare that I am employed in the office of a member of the bar
24 of this Court at whose direction the service was made.

25 Helen Danielson
26 (Type or Print Name)

Helen Danielson
(Signature)

27
28

1 MASTER SERVICE LIST

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