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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 06-999-RGK (MANx)

Date September 20, 2006

Title JASON WHITE, et al. v. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Present: The Honorable R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) DEFENDANT'S MOTION TO DISMISS  
PLAINTIFFS' AMENDED COMPLAINT (DOCKET ENTRY 34)

I. INTRODUCTION

Plaintiff Jason White, on behalf of himself and other colleges athletes (collectively "Plaintiffs"), sued the National Collegiate Athletic Association ("NCAA" or "Defendant") for alleged violations of the Sherman Act.

Plaintiffs' Second Amended Complaint ("SAC") alleges that Defendant and its member institutions entered into a horizontal agreement to adhere to a grant-in-aid ("GIA") cap in their financial aid awards to student athletes. Under this GIA cap, member schools may give student athletes financial aid for their tuition, room and board, and books. Other expenses, such as travel, insurance, laundry or other incidental expenses may not be covered. Plaintiffs allege that the NCAA uses this GIA cap solely as a cost-saving measure rather than as a means to promote amateur competition. Plaintiffs further allege that this agreement harms competition because, absent any agreement, major collegiate men's basketball and football programs would compete with each other to offer student athletes financial aid packages equal to their full cost of attendance.

Presently before the Court is the NCAA's Motion to Dismiss the Second Amended Complaint.<sup>1</sup> For the reasons stated below, the Court denies the NCAA's Motion.

II. JUDICIAL STANDARD

In considering a motion to dismiss for failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(6), the Court must assume the plaintiff's allegations are true, and must construe the complaint in a light most favorable to the plaintiff. See *United States v. City of Redwood City*, 640 F.2d

<sup>1</sup> The Court addresses Plaintiffs' Second Amended Complaint which was filed on September 15, 2006 pursuant to parties Stipulation Regarding Filing of Plaintiffs' Second Amended Complaint.

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963, 967 (9th Cir. 1981). The sole issue raised by such a motion is whether the facts pleaded would, if established, support a valid claim for relief. Thus, the facts alleged, no matter how improbable, must be accepted as true for purposes of the motion. See *Neitzke v. Williams*, 490 U.S. 319, 328-29 (1989). However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations. See *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Upon review of a complaint, a court may not dismiss pursuant to Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Russell v. Landriau*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, dismissal is proper if a complaint is vague, conclusory, and fails to set forth any material facts in support of the allegation. See *N. Star Int'l v. Ariz. Corps. Comm'n*, 720 F.2d 578, 583 (9th Cir. 1983).

### III. DISCUSSION

The NCAA seeks dismissal on two grounds: 1) failure to adequately plead a relevant market; and 2) failure to adequately allege harm to competition.

#### A. Relevant Market

Section 1 of the Sherman Act prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . ." 15 U.S.C. § 1. In order to establish a claim under Section 1, a plaintiff must show a) participation in an agreement 2) that unreasonably restrains trade in a relevant market. *In re NCAA 1-A Walk-On Football Players Litig.*, 398 F. Supp. 2d 1144, 1147-48 (W.D. Wash. 2005). The plaintiff bears the burden of pleading a relevant market. *Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1063 (9th Cir. 2001).

The NCAA claims that Plaintiffs have failed to adequately define the relevant market. "When a plaintiff proposes a relevant market that does not encompass all reasonably interchangeable substitute products, even when all factual inferences are made in plaintiff's favor, the relevant product market is legally insufficient. *Tanaka v. Univ. of S. Cal.*, 252 F.3d. 1059, 1063 (9th Cir. 2001). Definition of the relevant market serves to determine whether or not market alternatives exist. Where there are market alternatives that buyers may readily use for their purposes, illegal monopoly does not exist. *United States v. E.I. duPont de Nemours & Co.*, 315 U.S. 377, 391 (1956). Definition of a relevant market is comprised of two parts: a relevant Product Market; and a relevant Geographic Market.

##### 1. Product Market

Two factors help determine whether a product or service constitutes a relevant product market: whether the defendant's product is interchangeable in use with alleged alternative products; and whether there is cross-elasticity of demand between the defendant's product and supposed substitutes for it. *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992); See William C. Holmes, *Antitrust Law Handbook* 307 (1995 ed.). To determine the interchangeability in use, the use or function of the defendant's product is compared with that of other products. If purchasers can substitute the products for one another as to use, the products will likely be included in a single market, unless considerations other than use indicate that the products are not truly in the same economic market. Cross-elasticity of demand requires a more abstract process of reasoning belonging more the field of economics than to law. Holmes at 310. The test considers the extent to which a change in the price of one product will alter demand for another product. If there is substantial interaction between the two, so that a slight change in the price of one will significantly affect the demand for the other, then both products will be included in the same product market.

These factors are only guideposts. The Supreme Court has cautioned that the various product market considerations that it has suggested are not to be applied in an overly mechanical and simplistic manner. The suggested factors are benchmarks that may or may not be relevant in a given case. Court should "recognize meaningful competition where it is found to exist." Holmes at 314 (quoting *United States v. Continental Can Co.*, 378 U.S. 441, 449 (1964)). "The relevant market for antitrust purposes is determined by the choices available to [buyers]." See *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 19 (1984).

With these considerations in mind, the Court turns to the narrower question of whether Plaintiffs have pleaded sufficient facts to survive a motion to dismiss. Plaintiffs allege two relevant product markets, the "Major College Football" market and the "Major College Basketball" market. Each of the two alleged markets is comprised of the colleges and universities that compete in that market. The Major Football Market alleged by Plaintiffs includes schools in the Division I-A, which is the highest level of competition in college football. The Major College Basketball market includes schools in Division I, the highest level of competition in college basketball.

In each alleged market, Plaintiffs assert that colleges and universities compete to attract prospective student-athletes. Plaintiffs claim that student-athletes are potential buyers of the unique combination of coaching-services and academics offered by these colleges and universities. Moreover, Plaintiffs claim that "from the standpoint of student-athletes, there are "no reasonably interchangeable substitutes" for Major College Football or Major College Basketball "because no other alternative combines the opportunity to compete at the highest level of college sports while earning a college degree, together with a greater prospect for advancement to a professional football or basketball career than is available anywhere else." (SAC ¶¶ 31-33).

Plaintiffs' relevant product market allegations are legally sufficient. On its face, Plaintiffs' SAC alleges a relevant product market. More importantly, the SAC offers a plausible explanation as to why there are no reasonably interchangeable substitutes for the "unique combination of athletic and academic benefits" which comprise the relevant product market. (SAC ¶¶ 31-33). Assuming all factual allegations to be true, and construing the complaint in the light most favorable to Plaintiffs, *City of Redwood City*, 640 F.2d at 967, the Court finds Plaintiffs' allegations legally sufficient to survive the NCAA's motion to dismiss.

## 2. Geographic Market

Determination of a relevant product market and of a relevant geographic market both address the same question: is there a grouping of sales in which the defendant has market power? The relevant geographic market "extends to the area of effective competition . . . where buyers can turn for alternative sources of supply." *Olz v. St. Peter's Cmty. Hosp.*, 861 F.2d 1440 (9th Cir. 1988).

Plaintiffs' SAC alleges simply that the relevant geographic area is the United States. (SAC ¶ 41). The NCAA argues that this sparse allegation lacks supportive facts and is, moreover, "facially implausible." The NCAA claims that it "defies common sense" to assume that colleges and universities compete on a national basis for student-athletes in any significant number of cases. Instead, the NCAA urges that most student-athletes choose from among schools in their region. The Court finds these arguments inapposite. Whether student-athletes do or do not in fact shop among colleges and universities across the nation is a question of fact which must be assumed in favor of Plaintiffs'. See *Neitzke*, 490 U.S. at 328-29. Moreover, Plaintiffs' allegation of a national market is not only not "facially implausible," but is the only rational inference that can be drawn based on the nature of the Defendants, an association of U.S. colleges and universities. Accordingly, the Court finds that Plaintiffs have plead a relevant geographic area sufficient to survive the NCAA's motion to dismiss.

**B. Harm to Competition**

NCAA claims that Plaintiffs have failed to adequately allege harm to competition in a relevant "output" market. Despite the NCAA's claims, antitrust law does not require plaintiffs to plead harm specifically to "output markets." No case cited by the NCAA stands for this narrowly stated proposition. Instead, antitrust laws protect competition. *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328 (1990). "[I]t is the impact upon competitive conditions in a definable market which distinguishes the antitrust violation from the ordinary business tort." *Tanaka* F.2d at 1064. "Failure to allege injury to competition is a proper ground for dismissal by judgment on the pleadings." *Id.* (quoting *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 812-13 (9th Cir. 1998)).

Here, Plaintiffs have adequately alleged harm to competition. Plaintiffs' SAC alleges that student-athletes are consumers of the higher education and coaching services that the NCAA schools provide. (SAC ¶¶ 35-36). Plaintiffs allege that the GIA cap operates to restrict the price at which student-athletes purchase those services by forcing student-athletes to bear a greater portion of the cost of attendance than they would have borne if the GIA cap had not been in place. Taken in a light most favorable to the Plaintiffs, these allegations suggest that the GIA cap harms would-be buyers, forcing them to pay higher prices than would result from unfettered competition. Accordingly, Plaintiffs have sufficiently alleged an impact upon competition in a definable market. The Court finds the SAC sufficient to survive the NCAA's motion to dismiss.

**IV. CONCLUSION**

For the foregoing reasons, the Court denies Defendant's Motion.

**IT IS SO ORDERED.**

Initials of Preparer

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