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

17 JASON WHITE, et al.,
 18 Plaintiffs,

19 v.

20 NATIONAL COLLEGIATE ATHLETIC
 21 ASSOCIATION,

22 Defendant.

No. CV 06-0999 VBF (MANx)

CLASS ACTION

**ORDER PRELIMINARILY
APPROVING SETTLEMENT
AND PROVIDING FOR NOTICE
TO THE CLASS**

Hon. Valerie Baker Fairbank

1 WHEREAS, the above-entitled certified class action (the “Action”) is
2 pending before this Court;

3 WHEREAS, Plaintiffs Jason White, Brian Polak, Jovan Harris, on behalf of
4 themselves and all others similarly situated (“Plaintiffs), and Defendant National
5 Collegiate Athletic Association (“NCAA”), by and through their counsel, having
6 made application, pursuant to Federal Rule of Civil Procedure 23, for an order
7 preliminarily approving the settlement of this Action and providing for Notice to
8 the Class, in accordance with the Stipulation of Settlement (the “Stipulation”),
9 which together with the Exhibits annexed thereto, sets forth the terms and
10 conditions for a proposed class settlement of the Action (“Settlement”) and
11 dismissal of the Action as to Plaintiffs and Class Members with prejudice, and the
12 Court having read and considered the Stipulation, the supporting memorandum,
13 and the Exhibits annexed thereto, and having heard the presentations of counsel;
14 and

15 WHEREAS, all defined terms contained herein shall have the same
16 meanings as set forth in the Stipulation;

17 NOW, THEREFORE, IT IS HEREBY ORDERED:

18 1. The Class definition in this Settlement is the same as the certified
19 Class definition in the Court’s Order entered October 19, 2006, and includes all
20 persons who received athletic-based GIAs from any of the (1) football programs
21 sponsored by colleges and universities included in NCAA Division I-A; or (2)
22 men’s basketball programs sponsored by colleges and universities in the ACC, Big
23 East, Big 10, Big 12, Pac-10, SEC, Mountain West, WAC, Atlantic 10, Conference
24 USA, Mid-American, Sun Belt, West Coast, Horizon League, Colonial Athletic
25 Association, or Missouri Valley Conferences, at any time between February 17,
26 2002 through the entry of Judgment in the Action including the academic years
27 2007-8. Jason White, Brian Polak, Jovan Harris, and Chris Craig are appointed as
28 representatives of the Class. Marc M. Seltzer, Susman Godfrey L.L.P. and

1 Maxwell M. Blecher, Blecher & Collins, P.C., are designated as counsel for the
2 Class (“Class Counsel”).

3 2. The Court preliminarily approves the Settlement set forth in the
4 Stipulation as fair, reasonable, and adequate.

5 3. The Final Settlement and Class Certification Hearing shall be held
6 before this Court on Monday, June 30, 2008, at 1:30 p.m., before the Hon. Valerie
7 Baker Fairbank, United States District Judge, at the United States Courthouse, 312
8 N. Spring Street, Los Angeles, CA 90012, to determine whether the Settlement of
9 the Action on the terms and conditions set forth in the Stipulation is fair,
10 reasonable, and adequate to the Class and should be approved by the Court; and
11 whether a Judgment as provided in paragraph 9 of the Stipulation should be
12 entered herein. The Court may adjourn or vacate the Final Settlement Hearing
13 without further notice to the Class.

14 4. The Court approves, as to form and content, the Notice of Proposed
15 Settlement of Class Action (the “Settlement Notice”) annexed hereto as Exhibit 1,
16 and finds that the mailing of the Settlement Notice substantially in the manner and
17 form set forth in this paragraph meets the requirements of Federal Rule of Civil
18 Procedure 23 and constitutional due process, is the best notice practicable under
19 the circumstances, and constitutes due and sufficient notice to all Persons entitled
20 thereto. The Plaintiffs shall provide Settlement Notice in substantially the same
21 form and manner as Class Notice was provided, in accordance with the Court’s
22 July 10, 2007 Stipulated Order, as follows:

23 (a) The NCAA shall have seven calendar days after the entry of
24 this Order to provide the Settlement Notice to the Class Members’ NCAA member
25 institutions with a transmittal letter and proof of service approved by Class
26 Counsel asking NCAA member institutions to do all of the following:

27 (i) transmit by first-class mail the Settlement Notice to current
28 student-athletes who are Class Members, addressed to their last-known

1 campus and off-campus addresses that the relevant colleges and universities
2 are reasonably able to identify; or

3 (ii) provide Class Counsel with a list of Class Members and their last
4 known addresses, if the member institution has not already done so, so that
5 Settlement Notice can be provided by Class Counsel through the Settlement
6 Administrator; or

7 (iii) provide Class Counsel with any updates to the previously
8 provided list of Class Members and their last-known campus and off-campus
9 addresses, so that Settlement Notice can be provided by Class Counsel
10 through the Settlement Administrator.

11 (b) The NCAA will provide copies of the transmittal letter to Class
12 Counsel, and will refer any questions regarding time, manner, procedure,
13 reimbursement, or similar issues related to dissemination of the Settlement Notice
14 to Class Counsel. Class Counsel shall forward to the Settlement Administrator all
15 Class Member contact information they receive as a result of the NCAA's request.

16 (c) As soon as reasonably practicable and no later than 45 days from the
17 date of this Order, a copy of the Settlement Notice substantially in the form of
18 Exhibit 1 hereto shall be mailed by first-class mail to all Persons known or
19 reasonably believed to be Class Members who can be identified with reasonable
20 efforts.

21 (d) The Settlement Administrator shall use the previously generated class
22 lists, with the exclusion of those Class Members who requested exclusion, and
23 with the addition of any new lists and updates provided by the member institutions
24 in response to this Order, to transmit the Settlement Notice by first-class mail to
25 Class Members at their last-known campus and off-campus addresses.

26 (e) By agreeing to the provisions of this paragraph, the NCAA does not
27 waive or impair in any way its right and ability to contend that communications
28 with its members are subject to any joint defense privilege, and Plaintiffs do not

1 waive or impair their right and ability to challenge any privilege claim asserted by
2 the NCAA.

3 (f) By sending the agreed-upon transmittal letter to the member
4 institutions, the NCAA shall encourage Class Members' NCAA member
5 institutions to comply with the request to transmit the Settlement Notice to Class
6 Members or to provide Class Counsel with a list of Class Members' contact
7 information. The NCAA shall take no action to discourage its member
8 institutions' cooperation with that request.

9 5. The Parties' counsel may agree to reasonable modifications to the
10 plan for giving Settlement Notice to the Class, and shall report to the Court in the
11 event they require additional time to complete the mailing of Settlement Notice
12 provided in paragraph 4 above.

13 6. At least seven calendar days before the Final Settlement Hearing, the
14 Parties' counsel shall file with the Court a declaration attesting to the provision of
15 Settlement Notice in compliance with this Order.

16 7. Any Class Member who wishes to object to the proposed Settlement,
17 to Class Counsel's fee and expense application, or to entry of the Judgment must
18 submit the Objection, including copies of any papers and briefs in support thereof,
19 in writing by filing it with the Clerk of the United States Court, 312 N. Spring
20 Street, Los Angeles, California 90012, on or before May 23, 2008, and by sending
21 copies of the Objection by hand delivery or first-class mail to the Parties' counsel
22 as follows:

23 **Class Counsel**

24 Steven G. Sklaver
25 Susman Godfrey L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067

26 Courtney A. Palko
27 Blecher & Collins, P.C.
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28 Los Angeles, CA 90071

1 **Counsel for NCAA**

2 David M. Balabanian
3 Bingham McCutchen LLP
4 Three Embarcadero Center
5 San Francisco, CA 94111-4067

6 Gregory L. Curtner
7 Miller, Canfield, Paddock and Stone PLC
8 101 North Main Street, 7th Floor
9 Ann Arbor, MI 48104

10 8. Any Class Member who submits an Objection may enter an
11 appearance in the Action at his own expense individually or through counsel of the
12 Class Member's choice. All notices to appear at the Final Settlement Hearing must
13 be filed with the Clerk of the Court and served on the Parties' counsel by the
14 deadline and in the manner specified in the previous paragraph. Any Class
15 Member who does not timely submit a notice to appear and an Objection shall be
16 barred from speaking or presenting any views at the Final Settlement Hearing.
17 Class Members who do not enter an appearance shall be represented by Class
18 Counsel.

19 9. Any memoranda or other materials replying to an Objection to either
20 the Settlement or to Class Counsel's fee and expense application shall be filed with
21 the Clerk of the Court and served on all the Parties' counsel seven calendar days
22 before the Final Settlement Hearing. Such memoranda and other briefing shall be
23 served on all Parties, all non-Parties who made a proper request for appearance,
24 and any Class Member to whose Objection the memoranda or other briefing
25 responds.

26 10. Unless and until the Settlement is canceled or terminated pursuant to
27 paragraph 15 of the Stipulation, neither Plaintiffs nor any Class Member shall
28 commence or prosecute against any of the Released Persons any action or
29 proceeding in any court or tribunal asserting any of the Released Claims.

30 11. Whether or not this Settlement is consummated, neither the
31 Stipulation, the Settlement, any proceedings taken hereunder, nor any act

1 performed or document executed pursuant to or in furtherance of the Stipulation or
2 the Settlement is or may be deemed to be or may be used as an admission of, or
3 evidence of, the validity or lack thereof of any fact alleged, or any Released Claim
4 or defense asserted or that may have been asserted in the Action, or of any
5 wrongdoing or liability of the NCAA in any civil, criminal, or administrative
6 proceeding in any court, administrative agency or other tribunal, other than in such
7 proceedings as may be necessary to consummate or enforce this Stipulation or the
8 settlement provided herein, or the Judgment, except that the NCAA may file the
9 Stipulation and the Judgment in any action that may be brought against it in order
10 to support a defense or counterclaim based on principles of *res judicata*, collateral
11 estoppel, release, good faith settlement, judgment bar, or reduction or any other
12 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13 12. The Court may approve the Settlement, with such modifications as to
14 which the Parties agree, without further notice to the Class.

15 IT IS SO ORDERED.

16 DATED: February 4, 2008

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18 _____

19 UNITED STATES DISTRICT JUDGE
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1 Submitted by:

2 DATED: January __, 2008

3 SUSMAN GODFREY L.L.P.
4 Marc M. Seltzer
5 Stephen E. Morrissey
6 Steven G. Sklaver
7 Tibor L. Nagy

8 BLECHER & COLLINS, P.C.
9 Maxwell M. Blecher
10 Courtney A. Palko

11 By: _____
12 Marc M. Seltzer
13 Attorneys for Plaintiffs
14 Jason White, Brian Polak, Jovan Harris, and
15 Chris Craig

16 DATED: January __, 2008

17 MILLER, CANFIELD, PADDOCK & STONE PLC
18 Gregory L. Curtner
19 Robert J. Wierenga

20 BINGHAM McCUTCHEEN LLP
21 David M. Balabanian
22 Frank M. Hinman

23 By: _____
24 David M. Balabanian
25 Attorneys for Defendant
26 National Collegiate Athletic Association
27
28