

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRYAN KEGANS and
IAN SMETONA

Plaintiffs,

vs.

NATIONAL COLLEGE ATHLETIC
ASSOCIATION, ELECTRONIC
ARTS, INC., COLLEGIATE
LICENSING COMPANY,

Defendants.

JURY TRIAL DEMANDED

FILED ELECTRONICALLY

COMPLAINT

1. Defendant National College Athletic Association (“NCAA”), its member schools and conferences, and its business partners, Defendant Electronic Arts, Inc. (“EA”) and Defendant Collegiate Licensing Company (“CLC”) (collectively referred to as Defendants) conspired and combined in an anticompetitive scheme to deprive Plaintiffs Bryan Kegans and Ian Smetona, former college football players at Texas Tech University, of their rights to their names, images, and likenesses. Defendants license and sell the names, images, and likenesses of all current and former student-athletes, including those of Mr. Kegans

and Mr. Smetona, while agreeing to the fix the compensation that is rightfully owed to them at zero, all under the guise of promoting “amateurism.” Plaintiffs bring this action seeking recovery under the Sherman Act, the Clayton Act, and state law.

2. The right to license or sell one’s name, image, and/or likeness is a property right with economic value. Even Myles Brand, former President of the NCAA, conceded this in public remarks that he made in 2008.

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

4. The NCAA is a member association comprised of collegiate schools and conferences. It has described itself as “a bottom-up organization in which the members rule the Association.” The NCAA, in conjunction with its members, has

established a constitution, bylaws, regulations, rules, interpretations, and policies, both written and unwritten, which regulate all aspects of collegiate athletics, including the conduct of member schools and conferences, student-athletes, and the NCAA's business partners.

5. According to the NCAA:

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

6. The conspiracy to deny compensation to current and former student-athletes for the use of their names, images, and likeness emanates from commercial bylaws, regulations, rules, and policies, both written and unwritten, developed and interpreted by the NCAA. Additionally, recognizing that the student-athletes hold the right to control the use of their names, images, and likenesses, the NCAA and its member schools and conferences require student-athletes to sign form releases to be eligible for intercollegiate athletics. These releases are not explained to student-athletes, the student-athletes receive no consideration for the release, and as such, the releases are, among other things, unenforceable contracts of adhesion.

7. While the NCAA rules, on their face, apply only to current student-athletes, they are also viewed as binding on former student-athletes as well. NCAA

President Mark Emmert testified that neither the NCAA nor its members can pay former student-athletes; “They [NCAA members] are not free to do so if that was a—an agreement that was struck before or during the time that the individual was a student-athlete . . . [W]e [the NCAA] don’t share revenue with student-athletes after they have left their NCAA participation.”

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

9. The conspiracy has both horizontal and vertical aspects. The horizontal aspects emanate from the fact that NCAA’s member schools, which are horizontal competitors for student-athletes, restrain competition by agreeing, through the NCAA, not to compete for student-athletes on the basis of monetary compensation promised, current, or deferred. The vertical aspects emanate from the fact that the NCAA and its member schools and conferences, in order not to undermine their horizontal agreement, further have agreed with EA, the CLC, and other unnamed vertical business partner co-conspirators to impose the same

restrictions. EA and CLC (including affiliates, predecessors, and successors of CLC) have affirmatively participated in the NCAA's efforts to usurp the student-athletes' rights to their names, images, and likenesses without compensation to the athletes and to foreclose them from participating in the market.

10. As set forth in more detail below, the relief sought includes damages sustained by Plaintiffs for the license or sale of their name, image, and/or likeness in connection with game footage, videogames, and similar sources of revenue for Defendants of which Plaintiffs were unlawfully deprived.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1337 because the case is brought under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, U.S.C. § 1.

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

located in, or doing business throughout the United States, including in this District.

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

PARTIES

I. PLAINTIFFS

14. Plaintiff Bryan Kegans, an individual, is a resident of Corinth, Texas and a former football player for Texas Tech University, a Division I member school of the NCAA. Mr. Kegans competed from 2001 through the January 2, 2006 Cotton Bowl as an offensive lineman and as a starter for the entire 2005-2006 season. Mr. Kegans wore the number 62 jersey.

15. Plaintiff Ian Smetona, an individual, is a resident of San Clemente, California and a former football player for Texas Tech University, a Division I member school of the NCAA. Mr. Smetona competed from 2003 through the January 2, 2006 Cotton bowl as deep snapper. Mr. Smetona wore the number 58 jersey.

16. Both Mr. Kegans and Mr. Smetona competed pursuant to the NCAA's rules and regulations and have been deprived of compensation by Defendants for the continued use of their names, images, and likenesses during and following the end of their intercollegiate career.

II. DEFENDANTS

17. Defendant National College Athletic Association is the acting governing body of college sports. NCAA is an unincorporated association with its principal place of business located in Indianapolis, Indiana.

18. Defendant Electronic Arts, Inc. is a for-profit corporation incorporated under the laws of Delaware with its principal place of business located at 209 Redwood Shores Parkway, Redwood City, California 94065. EA is publicly traded on the NASDAQ stock exchange (ticker symbol: ERTS) and identifies itself as “the world's leading interactive entertainment software company” and states that it “develops, publishes, and distributes interactive software worldwide for video game systems, personal computers, cellular handsets and the Internet.”

19. Defendant Collegiate Licensing Company is a for-profit corporation incorporated under the laws of Georgia with its principal place of business located at 290 Interstate N Circle SE, Suite 200, Atlanta, Georgia 30339.

III. INTERSTATE TRADE AND COMMERCE

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

21. During all relevant times, Defendants transacted business in multiple states in a continuous and uninterrupted flow of interstate commerce throughout the United States.

IV. NCAA AND CLC'S CONSPIRACY WITH EA

A. Rights to Publicity

22. EA produces the NCAA Football, NCAA Basketball and NCAA March Madness videogame franchises. Videogame titles within these franchises simulate basketball and football games between NCAA member schools. Consumers demand that these games simulate actual college games in the most realistic manner possible. In the words of CLC President Pat Battle: "A failure to keep up with technology and take full advantage from a consumer standpoint may make the NCAA [video game] titles less valuable." As a result, each year EA spends millions of dollars to ensure the realism of the games, and advertises this realism in the promotion of its products. Specifically, pursuant to a license with CLC, the NCAA's licensing company, EA replicates team logos, uniforms, mascots and member school stadiums with almost photographic realism. In addition to computer-generated images, EA includes actual photographs of uniformed student-athletes in the games.

23. As discussed in more detail below, the NCAA-granted license does not permit EA to use player names and likenesses. In reality, however, EA with the knowledge, participation and approval of the NCAA and CLC extensively uses actual player names and likenesses, allowing a player of an EA game to identify the college athlete playing the game. Defendants' motivation is simple -- money.

As the NCAA, CLC, and EA know, heightened realism in NCAA videogames translates directly into increased sales, and therefore, increased revenues for EA and increased royalties for CLC and the NCAA.

B. Prohibitions on Use of Names or Likenesses

24. The NCAA does not officially permit the licensing of NCAA athlete likenesses or the use of their names. In fact, NCAA Bylaw 12.5 specifically prohibits the commercial licensing of an NCAA athlete's "name, picture or likeness."

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

26. Likewise, the contract prohibits the NCAA from using Plaintiffs' names, images, and/or likenesses for commercial purposes.

27. The NCAA, however, sanctions, facilitates and profits from EA's use of student-athletes' names, images, and/or likenesses despite contractual obligations prohibiting such conduct.

C. The Contract Between the NCAA and the Student-Athletes

28. The contract each incoming freshman and transfer student-athlete signs is titled Form 05-3a Student-Athlete Statement –Division I (the “Contract”). See Exhibit A.

29. Plaintiffs signed the Contract in exchange for certification from the NCAA that allowed them to participate in sanctioned NCAA Division I sporting events. The Contract has seven parts, all of which must be executed by the student to receive certification that he is eligible to participate in NCAA Division I sporting events.

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

31. Part II requires the student-athlete to waive certain privacy rights under the Family Educational Rights and Privacy Act of 1974. Among other things, the student-athlete agrees to permit the disclosure of education records, drug test results, social security numbers, race and gender identification, diagnosis

of certain education related disabilities, financial aid records, and “any other papers or information pertaining to your NCAA eligibility.”

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

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

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

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

36. The NCAA Constitution and Bylaws require that student-athletes execute the Contract to be eligible to participate in any intercollegiate competition. In return and in consideration for the above disclosures, waivers, affirmations and limited license, the NCAA agrees to grant players eligibility to participate in

Division I athletics. The Contract is an adhesion contract due to the unequal bargaining power of the parties and the “take it or leave it” nature of the Contract.

37. EA is not a third party acting on behalf of the NCAA, as contemplated by section IV of the Contract. Nor is EA using student-athletes’ names, images, and likenesses to generally promote an NCAA championship or other NCAA event, activity, or program as contemplated by section III of the Contract. Instead, EA used Plaintiffs’ names, images, and likenesses for commercial purposes.

38. The NCAA has a duty to NCAA athletes to honor its own rules prohibiting and contractual obligations relating to the use of student likenesses and pictures. CLC is likewise contractually obligated to honor NCAA prohibitions on the use of student likenesses. Specifically, the licensing agreements between the NCAA and CLC and between EA and CLC explicitly prohibit the use of NCAA athlete names and/or likenesses in NCAA branded videogames. Under the NCAA’s licensing program, the NCAA and its member institutions, through CLC, must approve every EA videogame produced pursuant to the license before its release. Ostensibly, NCAA athletes are the intended beneficiaries of the NCAA likeness prohibitions and the contractual provisions that incorporate them in contracts between and among CLC, NCAA, and EA.

D. EA's Blatant Use of Player Names and Likenesses

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

40. The answer can be found in the games themselves. EA seeks to precisely replicate each school's entire team. With rare exception, virtually every real-life Division I football or basketball player in the NCAA has a corresponding player in EA's games with the same jersey number, and virtually identical height, weight, build, and home state. In addition, EA matches the player's skin tone, hair color, and often even a player's hairstyle, although this last characteristic can be highly variable over even a single season.

41. 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.

42. 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.



43. 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.

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

45. For example, in the 2009 NCAA Football game, Texas Tech wide receiver "No. 5" plays with a back plate under his uniform just like the real number

5, Texas Tech All-American wide receiver Michael Crabtree. Additionally, both are 6'3" red-shirt sophomore wide receivers from Texas.

46. These are not unique examples. Defendants deliberately and systematically misappropriate players' likenesses to increase revenues and royalties at the expense of student-athletes.

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

48. When players have unique highly identifiable playing behaviors, EA attempts to match those as well.

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

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

51. Despite the lack of players' names on jerseys, gamers rarely if ever distinguish between the "real" player and the player in EA's videogames. For example, through its website www.easportsworld.com, EA allows gamers to post

short video clips from the videogame. Clips that feature unique plays are often labeled with actual player names even though they feature only EA's computer generated simulations.

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

53. In the most recent versions of its games for the Sony Play Station 3, EA intentionally made the process of obtaining actual player names even easier by allowing players to share rosters online using its "EA Locker" feature. The EA Locker feature allows gamers to upload rosters from other gamers while in the game itself. Prior to the EA Locker, gamers had to download rosters from a computer, upload the files to the gaming console and then transfer the rosters to the

game. Furthermore, numerous websites, such as www.freencaa09rosters.com, keep a list of players who offer free NCAA rosters utilizing the EA Locker feature.

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

55. These are not isolated examples. These examples do, however, illustrate the blatant and continued use of student-athlete likenesses in NCAA-related games.

V. THE NCAA AND ITS CONTROL OF THE COLLEGIATE LICENSING MARKET

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

A. The NCAA and Its Structure and Governance

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

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

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

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

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

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

61. The NCAA has also established an enforcement program to ensure that institutions and student-athletes comply with NCAA rules. Through the enforcement program, the NCAA has the authority to impose severe penalties on member schools and student-athletes for noncompliance.

B. The Challenged Restraints

62. The right to control the use of one’s name, image, and/or likeness is a property right with economic value. Notwithstanding the existence of this right and its accompanying economic value, Defendants have conspired to use the names, images, and/or likenesses of current and former student athletes without compensation for the use thereof.

63. Defendants engaged in and continue to engage in an overarching conspiracy to: (a) fix the amount current and former student athletes are paid for the licensing, use, and sale of their names, images, and likenesses at zero; and (b) foreclose current and former student athletes from the market for the licensing, use, and sale of their names, images, and likenesses.

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

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

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

67. These various constitutional provisions, bylaws, regulations, rules, interpretations, and policies, include NCAA Constitution 3.2.4.6 and Bylaws 2.8; 12.02.2; 12.02.3; 12.1.2; 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; 16.02.4; 18.4.2.1; 22.2.1.2; 31.6.4; 31.6.4.3 ("Bylaws"), and their predecessors, as interpreted by NCAA Membership Services.

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

1. Bylaw 12.5.1.1.1 and related forms, bylaws and constitutional provisions

69. One of the NCAA bylaws at issue is Bylaw 12.5.1.1.1 ("Promotions Involving NCAA Championships, Events, Activities or Programs") states the following:

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

70. Before a student-athlete commences athletic participation each year, the NCAA requires that he or she sign its “Form 05-3a” (attached as Exhibit A) (or its predecessors or successors) titled “Student-Athlete Statement.” The form is of particular importance due to its provision regarding student-athletes’ release of rights in connection with use of their names, images, and/or likenesses. It appears that the title of this form changes each year in connection with the applicable year.

71. In no uncertain terms, the NCAA’s Constitution and Bylaws mandate student-athletes agree to the terms of Bylaw 12.5.1.1.1. Article 3.2.4.6 of the Constitution (“Student-Athlete Statement”) states the following:

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

72. Bylaw 14.1.3.1 (“Content and Purpose”), referred to in Article 3.2.4.6 of the Constitution, details the contents of the required form and states the following:

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

tion's governing legislation. Failure to complete and sign the statement shall result in the student-athlete's ineligibility for participation in all intercollegiate 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.

73. 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 intercollegiate competition each year. Details about the content, administration, and disposition of the statement are set forth in Bylaw 30.12."

74. Bylaw 30.12 ("Student-Athlete Statement"), referred to in Article 3.2.4.6 of the Constitution and in Bylaw 14.1.3.2, states the following:

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

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

75. Form 05-3a states that it is “required by NCAA Constitution 3.2.4.6 and NCAA Bylaws 14.1.3.1 and 30.13,” and that its purpose is “[t]o assist in certifying eligibility.” It further notes that “[t]his NCAA Division I statement/consent form shall be in effect from the date this document is signed and shall remain in effect through August 31 of the following year or until a subsequent Division I Student-Athlete Statement/Drug-Testing Consent form is executed, whichever occurs earlier.”

76. Under Part III (“Promotion of NCAA Championships, Events, Activities or Programs”), student athletes must sign and agree to the following:

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 NCAA championships or other NCAA events, activities or programs.

77. The “authorization” described above in Form 05-3a is entirely coerced and uninformed and is even signed, in some cases, by minors.

78. Form 05-3a is evidence of the NCAA’s repeated attempts to obfuscate issues about sales of merchandise by referring to the vague and ambiguous concept of “promot[ion] of NCAA championships or other NCAA events, activities or programs of college athletics.” The ambiguous word “support” also appears in the “Institutional, Charitable, Education or Nonprofit Promotions Release” mandated by Article 12.5.1.1 of the Bylaws. No reasonable person, upon reading Form 05-3a, and the “Institutional, Charitable, Education or Nonprofit Promotions Release”

described below, would interpret phrases such as “support educational activities,” or “generally promote NCAA championships or other NCAA events, activities or programs” to specifically grant a license for student-athletes’ names, images, and likenesses to be used for profit, over many years, in broadcasts, DVDs, on-demand video, video games, photographs for sale, “stock footage” sold to corporate advertisers, “classic games” for re-broadcast on television, jersey and apparel sales, and other items.

79. The NCAA’s releases described herein are also notable for their failure to indicate that legal rights are being relinquished, and for their failure to counsel student-athletes, who are sometimes minors, that they may wish to seek legal advice in connection with the release of future compensation rights. These forms thus operate as unfair contracts of adhesion. As Professor Elizabeth (“Betsy”) Altmaier of the University of Iowa pointed out in a December 2008 e-mail to the NCAA Division I Task Force on Commercial Activity in Intercollegiate Athletics: “Student athletes don’t have much discretion as it is, and they sign these ‘release’ forms in a single meeting with literally a stack in front of each of them.”

80. The Des Moines Register confirmed that schools do in fact require student-athletes to sign the NCAA’s mandated consent forms, and reported the following in an article that also described two schools’ receipt of funds relating to

the NCAA's video game license agreement with Defendant EA (as further detailed herein):

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

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

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

82. At a hearing on December 17, 2009 in a similar matter in the District Court for the Northern District of California (09-cv-01967), upon questioning from the court, counsel for the NCAA confirmed the NCAA's interpretation of its release forms as follows:

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

[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 REALLY DO CONTINUE TO APPLY?

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

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

[NCAA Counsel]: NO, THAT CONTINUES.

Hearing Tr., at 44:19 – 45:9 (Dec. 17, 2010).

83. 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, “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 use an agent can retain his eligibility if he chooses to return to school and not become a professional. The court ruled, "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."

84. The court in *Oliver* further stated that the effect of the Bylaw "is akin to a patient hiring a doctor but the doctor is told by the hospital board and the insurance company that he (the doctor) cannot be present when the patient meets with a surgeon because the conference may improve his patient's decision making power." The court additionally stated, "If the Defendant [NCAA] intends to deal with this athlete or any athlete in good faith, the student- athlete should have the opportunity to have the tools present (in this case an attorney) that would allow him to make a wise decision without automatically being deemed a professional, especially when such contractual negotiations can be overwhelming, even to those who are skilled in their implementation."

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

2. Bylaws 12.5.1.1 and 12.5.1.7

86. Another bylaw at issue here is Bylaw 12.5.1.1 ("Institutional, Charitable, Education or Nonprofit Promotions"), which also results in the creation

of an unconscionable release that benefits members. This release also is the product of the anticompetitive agreement described herein among the NCAA and its members. Bylaw 12.5.1.1 states in pertinent part the following:

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

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

(b) The specific activity or project in which the student-athlete participates does not involve co-sponsorship, advertisement or promotion by a commercial agency other than through the reproduction of the sponsoring company's officially registered regular trademark or logo on printed materials such as pictures, posters or calendars. The company's emblem, name, address, telephone number and Web site address may be included with the trademark or logo. Personal names, messages and slogans (other than an officially registered trademark) are prohibited;

(c) The name or picture of a student-athlete with remaining eligibility may not appear on an institution's printed promotional item (e.g., poster, calendar) that includes a reproduction of a product with which a commercial entity is associated if the commercial entity's officially registered regular trademark or logo also appears on the item;

(d) The student-athlete does not miss class;

(e) All moneys derived from the activity or project go directly to the member institution, member conference or the charitable, educational or non-profit agency (emphases added);

(f) The student-athlete may accept actual and necessary expenses from the member institution, member conference or the charitable, educational or nonprofit agency related to participation in such activity;

(g) The student-athlete's name, picture or appearance is not used to promote the commercial ventures of any nonprofit agency;

(h) Any commercial items with names, likenesses or pictures of multiple student-athletes (other than highlight films or media guides per Bylaw 12.5.1.7) may be sold only at the member institution at which the student-athletes are enrolled, institutionally controlled (owned and operated) outlets or outlets controlled by the charitable or educational organization (e.g., location of the charitable or educational organization, site of charitable event during the event). Items that include an individual student-athlete's name, picture or likeness (e.g., name on jersey, name or likeness on a bobble-head doll), other than informational items (e.g., media guide, schedule cards, institutional publications), may not be sold; and

(i) The student-athlete and an authorized representative of the charitable, educational or nonprofit agency sign a release statement ensuring that the student-athlete's name, image or appearance is used in a manner consistent with the requirements of this section. (emphasis added).

87. Bylaw 12.5.1.1, with its mandated release pursuant to subsection (i), has been used by the NCAA's members to engage in the unlawful licensing of Plaintiffs' rights. This mandated release constitutes an unconscionable contract that is both procedurally and substantively unconscionable.

88. Bylaw 12.5.1.7 ("Promotion by Third Party of Highlight Film, Videotape or Media Guide") states the following:

Any party other than the institution or a student-athlete (e.g., a distribution company) may sell and distribute an institutional highlight film

or videotape or an institutional or conference media guide that contains the names and pictures of enrolled student-athletes only if:

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

89. The above-provision appears to purport to give third parties (meaning for-profit "distribution companies") the right to "sell and distribute" highlight films upon approval from the school, without even mandating a release from the student-athlete. However, the NCAA used the release that the NCAA mandates in Bylaw 12.5.1.1(h) to unlawfully license and use the commercial rights of former student-athletes' rights in the use of their images.

3. Bylaws 12.5.2.1 and 12.5.2.2

90. Other NCAA bylaws at issue here are Bylaws 12.5.2.1 and 12.5.2.2.

Bylaw 12.5.2.1 states:

After becoming a student-athlete, an individual shall not be eligible for participation in intercollegiate athletics if the individual:

(a) Accepts any remuneration for or permits the use of his or her name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind; or

(b) Receives remuneration for endorsing a commercial product or service through the individual's use of such product or service.

91. Bylaw 12.5.2.2 states:

If a student-athlete's name or picture appears on commercial items (e.g., T-shirts, sweatshirts, serving trays, playing cards, posters) or is used to promote a commercial product sold by an individual or agency without the 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.

92. Bylaw 12.5.2.1 precludes a student-athlete from accepting remuneration for use of his name, image, and likeness; Bylaw 12.5.2.2 requires NCAA member institutions to take steps to stop the use of a student-athlete's name, image, and likeness for commercial purposes.

93. Bylaws compelling obedience to the aforementioned bylaws. The aforementioned bylaws govern the conduct of all NCAA member institutions.

Pursuant to Bylaw 2.8.1:

Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests

shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

94. Other NCAA bylaws require certification of compliance with NCAA legislation or adherence to NCAA rules (Bylaws 3.2.1.2, 14.01.3, 18.4.2.1, 22.2.1.2).

4. NCAA administrative interpretations

95. The NCAA used administrative interpretations and administrative exceptions to certain rules that permitted designated licensees such as EA to engage in commercial exploitation. These types of administrative interpretations are permitted under the NCAA's bylaws. Bylaw 12.02.3 defines a "professional athlete" as "one who receives any kind of payment, directly or indirectly, for athletics participation *except as permitted by the governing legislation of the Association.*" (Emphasis added). Bylaw 12.02.2 defines "pay" as "receipt of funds, awards or benefits *not permitted by the governing legislation of the Association* for participation in athletics." (emphasis added). The NCAA, through its total control of intercollegiate athletics, and due to a gross disparity in bargaining power, requires student-athletes to sign forms containing non-negotiable terms. The NCAA bars any college athlete that declines to accept the NCAA's terms of engagement from all intercollegiate athletic competition.

C. The Restrained Market

96. The challenged restraints affected and continue to affect the market for the acquisition of group licensing rights for the use of student-athletes' names, images, and likenesses in the broadcasts or rebroadcasts of Division I basketball and football games and in videogames featuring Division I basketball and football in the United States. The group licensing market is a submarket of the collegiate licensing market in the United States, which is also affected by the alleged restraints.

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

98. The NCAA and its members have the ability to control price and exclude competition. The NCAA and its members control the output and set the price for licensing rights (including group licensing rights) and have the power to exclude from this market any member who is found to violate its rules. The NCAA can and does exclude both current and former student-athletes from this market.

The NCAA and its members have obtained a 100% share in the relevant markets. Former student-athletes, including Plaintiffs, also would have a share of the market, absent the anticompetitive practices described herein.

99. Thus, the NCAA (through its members) totally controls the licensing rights market (including the group licensing market), and is able to dictate the supply and the terms upon which licensed products and licenses are bought and sold.

100. Another indicator of the NCAA's power is that regardless of whether the student-athlete received a scholarship, all student-athletes are required to abide by the NCAA constitution, bylaws, regulations, rules, interpretations, and policies, both written and unwritten and to sign the forms described herein, pursuant to which the NCAA has unlawfully licensed the rights of former student-athletes are forced to release all future rights to the commercial use of their images. The NCAA has the power to impose and enforce the releases, and to exclude non-signing athletes from participation in all future intercollegiate competition, as well as penalize schools whose athletes violate the terms of the forms and related rules, regardless of whether the athlete receives any scholarship funds.

101. The NCAA, through its member schools and conferences, imposes a wide variety of conditions on student-athletes. For example, they may not receive compensation beyond educational expenses approved by the NCAA; they may not

retain an agent for exploitation of their future professional career; they must meet minimum requirements for educational progress; and they are strictly limited in receiving compensation for non-athletic services that might be understood to reflect on their athletic ability. If student-athletes had the opportunity to receive a college education and compete at an elite level of intercollegiate competition without these restrictions, many student-athletes would choose to do so. The fact that they agree to these conditions demonstrates the market power of the NCAA member schools, i.e., the lack of any reasonable substitute for those who wish to receive a college education and compete in elite intercollegiate athletic competition.

102. The demand for student-athletes is such that, absent the NCAA constitution, bylaws, regulations, rules, interpretations, and policies, both written and unwritten unlawful, discussed above, Form 05-3a (and its predecessors and successors), the “Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement,” and any other similar device that the NCAA has used to attempt to eliminate compensation owed to current and former student-athletes, the colleges and universities participating in the relevant markets would have competed against each other by offering higher amounts of licensing revenues to student athletes. For example, schools, in order to compete with each other, could offer players a portion of the revenue that the schools in turn receive via the NCAA

and other sources for commercial exploitation of those players' images. But under current anticompetitive conditions, compensation is "capped" at zero by artificial rules imposed by the NCAA that result in lower compensation than would otherwise prevail in a more competitive market.

103. Thus, increased competition on the terms of post-career revenue distribution for former athletes would result in additional revenue for Plaintiffs.

104. All NCAA members have agreed to use and abide by the NCAA's constitution, bylaws, regulations, rules, interpretations, and policies, both written and unwritten, including the provisions detailed herein that mandate the use of Form 05-3a (and its predecessors and successors), Bylaws 12.5.2.1 and 12.5.2.2, and the "Institutional, Charitable, Educational, or Nonprofit Promotions Release Statement" discussed herein, which have been used by the NCAA and its member institutions and conferences to fix the prices at which former student-athletes are paid for their commercial licensing rights and to foreclose student-athletes from exercising any such rights.

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

106. The agreement among the NCAA and its members to jointly appropriate student-athletes' rights after the expiration of the students' eligibility

as an amateur athlete is not necessary to achieve the NCAA's stated goal of clearly demarcating between college and professional sports, or to serve any pro-educational purpose, or any other legitimate, procompetitive purpose in the marketing of college sports. In January of 2008, David Berst, Vice-President for the NCAA's Division I, conducted a study of amateurism in the NCAA and concluded it was "a definition that was not steeped in any sacred absolute principle that had to be preserved. It continues to be a balancing of vocation vs. avocation influences and can be modified as views change while preserving the line between us and the pros."

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

D. Defendants Admit the Alleged Restraints.

108. The NCAA's executives and member conferences and schools have admitted the alleged restraints.

109. The Bowl Championship Series (“BCS”) stated, “Whether a payment is made to a student-athlete during his years in college or a promise is made to pay the student-athlete after he leaves school is of no moment. Deferred compensation remains just that - compensation - and is forbidden by the NCAA’s amateurism rules.”

110. This sentiment was echoed by current NCAA President Mark Emmert who, when asked if an NCAA member could share revenue with former student-athletes if it wished to do so, responded: “They are not free to do so if that was a-- an agreement that was struck before or during the time that the individual was a student-athlete.” Mr. Emmert further stated that “we don’t share revenue with student-athletes after they have left their NCAA participation ... because ... we have made policy decisions to focus revenue streams on the -- the opportunities that are provided during their time as student-athletes, while they are student-athletes” and that “it is a general policy that’s decided every time we make budgetary allocations.”

111. Likewise, Jonathan LeCrone, Commissioner of the Horizon League, testified that mandated “payments to any individual student-athletes or group of student-athletes just runs contrary to the fundamental purpose of our business.”

112. Kevin Lennon, the NCAA’s Vice-President of Membership & Academic Affairs, has stated: “[t]hese are the rules that also prevent Division I

member institutions from paying student-athletes for agreeing to attend the school as a potential quarterback, or winning the starting point guard position on a men's basketball team, or leading the football team in touchdown receptions, or making any other payment to a student based on his status or performance as an athlete."

113. The SEC has taken the position that a 1984 Supreme Court opinion "allows the NCAA to condition participation in college sports on maintenance of amateur status. Paying athletes for appearing in broadcasts—either while they are enrolled or promising to do so after they leave college—would fly in the face of the precedent set by *Board of Regents*."

E. The Recognition of the Impropriety of the Alleged Restraints.

114. The NCAA's own executives and officials of its member institutions have recognized the impropriety of the alleged restraints.

115. Thus, for example, an October 2010 e-mail from NCAA Chief Policy Advisor Wallace Renfro to Mr. Emmert stated:

There is a general sense that intercollegiate athletics is as thoroughly commercialized as professional sports. Some believe that athletics departments study how to emulate the pros on marketing their sports (primarily football and basketball), and sometimes lead the way. And the public would generally agreed [sic] that has all taken place at the expense 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.

116. Similarly, Walter Byers, Executive Director of the NCAA from 1951 to 1987, laid out some of the background on amateurism and the NCAA in his 1995 book *Unsportsmanlike Conduct*. He noted that suggestions for changing the compensation rules for student-athletes (a term he disfavored) were proposed at the 89th NCAA Conference in January of 1995 and were met with a “defensive circling of the wagons”; “the NCAA leadership unanimously agreed that it would be heresy to permit athletes to have equal access to the marketplace, say, for example, like coaches.” He called the NCAA’s position “an economic camouflage for monopoly practice.” As Byers went on to note, “[p]rotecting young people from commercial evils is a transparent excuse for monopoly operations that benefit others.”

117. The NCAA considered over a number of years legislation to change Bylaw 12.5.1.1. One of the goals of such legislation was to “replace[] outdated aspects of the NCAA’s current legislation in this area with more modern legislation that are [sic] clear, easier to apply and accommodate legal concerns (e.g. UBIT, antitrust, [student-athlete] rights).” The legislation was not enacted, but during the consideration process, the question was asked as early as 2004: “Does this open the door to future claims from [student-athletes] contributing the most to the funds? Are we creating the NCAAPA?” In 2006, an internal NCAA document discussed “potential legal challenges” and the “potential need to provide

additional benefits for the [student-athletes] given more permissive use of their likenesses?” Other internal documents mentioned “legal challenges” or igniting the “[student-athlete] likeness debate.”

118. The filing of the *O’Bannon* suit in July of 2009 put to the test whether the NCAA’s policy of zero compensation to student-athletes for use of their name, image, and likeness should continue. Dan Beebe, former Commissioner of the Big 12, said in a July 27, 2009 email that with respect to the suit, the Big 12’s board was “uneasy with the exploitation of player’s names and likenesses for commercial purposes.” Bill Powers, the President of the University of Texas at Austin, wrote an email to Beebe saying “it looks like the NCAA makes money from the licenses. Why should we be defendants in this, rather than plaintiffs representing our students?” Harvey Perlman, Chancellor of the University of Nebraska-Lincoln stated, “This whole area of name and likeness and the NCAA is a disaster leading to a catastrophe as far as I can tell.” Despite these concerns, the NCAA’s zero compensation policy continues in force and continues to be enforced by its member institutions.

119. Similarly, soon after the filing of the *O’Bannon* lawsuit, the Senior Vice-President of CLC Cory Moss, wrote, “Should we really begin work on a formal College Student Athlete Players Association (current and former) to be ready depending on the results of the EA lawsuits?” The proposed CSAPA would

have a Board of Directors and would do “whatever is necessary to ensure that licensing and marketing rights of former collegiate student-athletes are protected and revenue opportunities are pursued.”

120. In June of 2013, James Duderstadt, Former President of University of Michigan, stated: “In a sense, the NCAA's objective is to preserve the brand so that it provides revenue primarily for a small number of people who get very, very rich on the exploitation of young students who really lose opportunities for their futures ... And that's what's corrupt about it. The regulations are designed to protect the brand, to protect the playing level and keep it exciting, not to protect the student athletes.”

F. EA's and CLC's Participation in the Alleged Restraints

121. During the relevant time period, CLC and EA entered into a series of licensing agreements whereby CLC licensed EA to produce a series of NCAA Division I and FBS-themed videogames. EA paid no current student-athlete for the use of his name, image, and likeness in those games. Apart from certain very limited short-term promotions, EA also paid no former student-athlete for the use of his name, image, and likeness in those games. In those agreements, EA agreed to be bound by the NCAA's rules and subjected its games to the approval of the NCAA and/or certain of its member institutions.

122. However, EA and CLC did not merely follow the NCAA's rules, they actively lobbied for, and obtained, administrative interpretations of those rules that permitted greater uncompensated exploitation of student-athletes' names, images, and likenesses. Where their formal efforts were unsuccessful, EA and CLC obtained agreement from the NCAA to permit greater uncompensated exploitation of student-athletes' names, images, and likenesses notwithstanding the rules.

123. CLC gave multiple presentations to NCAA committees, imploring them to adopt a revision to the NCAA bylaws that was designed, in the NCAA's own words, to expand the scope of student athlete image use and to "accommodate legal concerns (e.g., unrelated business income tax, antitrust, student-athlete rights.)." When EA complained that the proposed amendment to NCAA Bylaw 12.5.1 would not allow the unfettered use of student athletes' names, images, and likenesses without compensation, CLC's President, Pat Battle, told Greg Shaheen, former NCAA Senior Vice-President, Basketball and Business Strategies that he would "tell Joel [Linzner, General Counsel of EA] just to hold off and that we have things under control working behind the scenes."

124. EA, CLC, and the NCAA worked together to affirmatively mislead the public and student athletes about the lengths EA went to model the avatars after real players. Defendants circulated an FAQ sheet after the *O'Bannon* suit was filed to "align our messaging." In internal talking points for the NCAA'09 Football

videogame that were jointly developed and approved by all Defendants, it was claimed that “[w]hile NCAA policy also permits the accurate recreation of skin tones, EA does not model faces or body types after student athletes.”

125. However, Defendants’ own documents and testimony show that EA, CLC, and the NCAA colluded to use former and current student-athletes’ names, images, and likenesses in their videogames without compensation. All of EA’s videogame avatars were modeled in the same way and were tied to the characteristics of actual student-athletes, and show that EA wanted to use the names, images, and likenesses of all student-athletes incorporated in its videogames. The NCAA knew that student-athletes’ names, images, and likenesses were used, but approved the practice even though its attempt to get “expanded waivers” via bylaw changes failed.

126. EA developed its NCAA-themed basketball and football videogames by modeling every single avatar in the games on a real student-athlete. EA tested how gamers rated the avatars: “how closely players look and feel [to] their real-life counterparts.” EA noted “legal restrictions” internally but emphasized that “[m]atching hair and body type” were permissible—and paramount. It painstakingly modeled each avatar to match a current or former student-athlete. EA’s internal spreadsheets show that each avatar was matched to dozens of the real student-athlete’s identifying characteristics. For example, for the NCAA football

videogame, EA matched: (1) the name of the real student-athlete; (2) his real-life jersey number; (3) his position played; (4) his hometown; (5) his year of eligibility; (6) his athletic abilities (on at least 22 dimensions, including speed, strength, agility, etc.); (7) his physical characteristics (on at least 26 dimensions, including, weight, height, skin color, face geometry, hair style, muscle shape, etc.); and (8) how he dressed for games in real life (on at least 28 dimensions, including shoes, how they taped, braces worn, undershirts, facemask and helmet styles, etc.). EA's employees admitted that the avatars are modeled on real life student-athletes.

127. Former NCAA President Brand and Shaheen made it clear to EA and CLC that they were “on board” with EA's desire to use student-athletes' names, images, and likenesses. NCAA administrators noted “real concern” that use of student-athletes' names, images, and likenesses in videogames “adds to the argument that student-athletes should be unionized and receive a cut of the profits, etc.” Numerous NCAA employees—including those that were technically in charge of approving EA's videogames—knew that the videogames were depicting real student-athletes, but were overruled by Brand and Shaheen. For example, Peter Davis, the former NCAA Director of Corporate Alliances, admitted that there are “likenesses of student-athletes” in the videogame. At least five other high-level NCAA employees expressed concern about the “obvious” use of likenesses. Despite these numerous internal misgivings, Brand and Shaheen were undeterred.

The former suggested that “[w]e can take care of the legal issues through an expanded waiver.” Shaheen also worked “behind the scenes” to obtain a series of increasingly liberal “interpretations” of existing bylaws to give EA what it wanted.

128. The NCAA looked the other way on the increasingly obvious misuse of names, images, and likenesses. First, it took the position that the images were not “likenesses” unless they were developed using “mapping technology.” Second, the NCAA reversed its interpretation from one month before, that “the download of actual rosters [] violates student athletes rights.” EA considered the NCAA’s permission to create an online “locker room” in which name rosters could be exchanged freely to be the equivalent of shipping the game with the names on the jerseys: “[i]ts huge, its just like we shipped the game with them.” EA bragged to the press that “100 percent count on having rosters with names available for all schools shortly after release.”

129. EA was confident that name rosters would be available shortly after release because it supplied the name rosters to gaming sites. It did so, even though acknowledging internally that if EA got caught, it would “expose the company to risk of lawsuit.”

VI. FURTHER FACTUAL ALLEGATIONS

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

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

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

Call this the condition of non-exploitation.

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

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

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

But most cases of exploitation are subtle and indirect.

Instead of obvious product endorsement, the marketing can include 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.

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

But exploitation may be the result, nonetheless. Generation of much needed revenue does not justify the exploitation of student-athletes.

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

Period.

B. The NCAA's Web of Licensing Agreements with For-Profit Entities

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

132. A review of even the limited public information available regarding the NCAA's financial operations details the explosive growth in revenue that it has

received in connection with sales of NCAA-related merchandise. In its 2002-03 Revenue Report, the NCAA listed receipt of “royalties” of \$3.8 million, and \$6.2 million in “sales and services” (along with \$370 million in television revenue).

133. In its 2007-08 report, the NCAA listed \$552 million in total revenue for “television and marketing rights fees” of which \$529 million was elsewhere attributed to revenues from its television contract with CBS, leaving an apparent \$23 million difference attributable to royalties. Additionally, the NCAA reported approximately \$14.5 million in revenue for “sales and services.” Thus, in just a few years, it appears that the combination of royalties and sales and services went from \$10 million for the 2002-03 fiscal year (\$3.8 million plus \$6.2 million), to \$37.5 million (\$23 million plus \$14.5 million) in for the 2007-08 fiscal year. That number represents only the NCAA’s portion obtained pursuant to currently unknown royalty rates, and does not represent the total value of the associated sales via the NCAA’s licensees, or sales made by member conferences and schools of goods.

134. In recent years, the NCAA has entered into some of the licensing partnerships detailed herein that unlawfully use Plaintiffs’ images. The related available content featuring likeness of former student-athletes, such as DVDs, photos, and video games, continues to grow in both availability and popularity, and growth will continue to explode as merchandise continues to be made available in

new delivery formats as developing technology and ingenuity permits, as exemplified by the substantial library of “on demand” internet content now available for sale for NCAA games going back several decades.

135. Through the NCAA’s web of licensing agreements with for-profit companies, the NCAA sells Plaintiffs’ rights, which it unlawfully obtained via the anticompetitive and unconscionable conduct described herein. On its website, the NCAA directs interested parties to contact Defendant CLC for licensing information.

136. In the “Frequently Asked Questions” portion of its Web site, the NCAA provides various information with respect to licensing. Most notably, there is no information whatsoever regarding the rights of players—current or former—with regard to licensed merchandise. The CLC website mirrors NCAA’s total absence of information regarding the rights of players in the commercial licensing and usage of their images. The NCAA states the following regarding CLC:

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

1. CLC

137. On its Web site, under “Terms of Use,” Defendant CLC states the following:

The Collegiate Licensing Company (“CLC”) is the trademark licensing representative for nearly 200 colleges, universities, bowl 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 licensing professionals with the capability to establish and manage every aspect of a collegiate licensing program.

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

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

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

Today, the CLC Consortium represents the consolidated retail power of the many colleges, universities, athletic conferences, 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.

2. IMG

139. As noted above, Defendant CLC identifies itself as a division of IMG.

One of IMG's divisions and/or brands appears to be known as "IMG College."

IMG has stated the following with respect to IMG College:

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

...

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

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

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

140. IMG also has stated the following regarding IMG College:

Host Communications, Inc. (HOST) and the Collegiate Licensing Company (CLC) were joined to form IMG College, the premier 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.

141. 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 the complexity of the space makes it challenging for marketers to tap the full potential. With our expertise, broad relationships and portfolio of properties, IMG College can help brands create platforms to reach millions of passionate, loyal fans.”

142. IMG has also stated that “[o]ur licensing team, The Collegiate Licensing Company, is the unrivaled leader in collegiate brand licensing,

managing the licensing rights for nearly 200 leading institutions that represent more than \$3 billion in retail sales and more than 75% share of the college licensing market.”

C. Description of Revenue Streams Relating to the Commercial Exploitation of Images of Former Student Athletes

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

1. Media Rights for Televising Games

144. The NCAA, as well as individual conferences and schools, negotiate various deals with television networks to televise regular season and post-season games.

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

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

147. In 2012 the Big 12 extended their media contract with ABC/ESPN to also include Fox for a total of \$2.6 billion for 13 years. For 2006 the Big 12 earned \$105.4 million from television revenue.

148. In addition, many telecasts of games show video clips of former student-athletes competing in prior tournament games as means of further enhancing viewers' experience of the current games.

149. No Defendant obtained a valid and lawful release with informed consent from Plaintiffs for those broadcast rights or the use of those clips, and any purported transfer of former student-athletes' rights relating to this usage is the product of the anticompetitive agreement described herein.

2. Photos

150. Replay Photos, LLC ("Replay Photos") operates "The Official NCAA Photo Store" in conjunction with the NCAA through which photographs of

Plaintiffs are available for purchase, as well as a separate website, through which additional photographs of Plaintiffs are available for purchase. Thousands of photographs from postseason tournaments in numerous sports are offered for sale.

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

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

...

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

...

The new agreement between the NCAA and AP Images will allow the NCAA to include NCAA photos in the AP Images archives, where they will then be made available for editorial and commercial use. In addition, the partnership will provide the NCAA with access to AP Images' archive of NCAA photography.

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

152. 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 soccer; softball; men's and women's swimming and diving; men's and women's tennis; men's and women's track and field; men's and women's volleyball; water polo; and wrestling.

153. No valid rights from Plaintiffs have been obtained by the NCAA, its members or its licensees for the use of Plaintiffs' images, likenesses and names in the aforementioned photos, and any purported transfer of former student-athletes' rights relating to this usage is the product of the anticompetitive agreements described herein.

3. Video Games

154. 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 executed a license for video games with Defendant EA, a global interactive software company. EA identifies itself as "the world's leading interactive entertainment software company" and states that it "develops,

publishes, and distributes interactive software worldwide for video game systems, personal computers, cellular handsets and the Internet.”

155. EA and the NCAA enjoy a unique relationship. For example, on the NCAA’s “Official Licensee List as of April 2011,” available on the NCAA’s website, EA is nearly the only non-apparel manufacturer listed, and the others make items such as chairs and basketball hoops. EA appears to be the only listed NCAA official licensee using images of current or former players in products. EA further is unique in that it is the only NCAA licensee or business partner that is making brand-new products, not based on pre-existing actual content such as filmed images or photographs, that uses the images of current and former student-athletes. This explains in part, as detailed below, the yearly meetings involving the NCAA, EA and CLC regarding the product approval process. The relationship thus is exceptionally close, and different from that involving other third parties.

156. EA markets a wide variety of sports-based video games under the label EA Sports. EA Sports describes their video games as including “simulated sports titles with realistic graphics based on real-life sports leagues, players, events and venues.” Their advertising taglines—“If it’s in the game, it’s in the game,” subsequently shortened to “It’s in the game”—expressly and openly makes a major selling point out of the fact that all aspects of the real-life games appear in their video games. EA Sports releases new iterations of most of their games annually,

three of which are titled “NCAA Football,” “NCAA Basketball” and “NCAA Basketball: March Madness Edition.”

157. EA’s NCAA football games consistently have enjoyed sales of more than one million units per year and have been estimated at more than two million units per year. On EA’s website, NCAA Football 10 for the Playstation 3 game platform is offered for sale at \$59.95 per unit. In 2008, with respect to its basketball games, EA stated that “[t]he market leader in basketball videogame sales, EA SPORTS basketball franchises (NBA LIVE, NBA STREET and NCAA March Madness) have combined generated more than \$1 billion in retail sales over the past 10 years.” On EA’s Web site, NCAA Basketball 09 had a suggested retail price of \$59.95 per unit when it was released.

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

159. Additionally, in its 2010 SEC Form 10-K, EA advised investors that “[i]f we are unable to maintain or acquire licenses to include intellectual property owned by others in our games, or to maintain or acquire the rights to publish or distribute games developed by others, we will sell fewer hit titles and our revenue, profitability and cash flows will decline. Competition for these licenses may make

them more expensive and reduce our profitability. . . . Competition for these licenses may also drive up the advances, guarantees and royalties that we must pay to licensors and developers, which could significantly increase our costs and reduce our profitability.”

160. The photorealistic nature of EA’s NCAA College Football and NCAA College Basketball video games has been noted. Legal Affairs magazine reported the following in 2006 regarding EA’s NCAA Football 06, which is instructive for its description of the game’s use of player images, as well as the interaction among the NCAA and Defendants CLC and EA:

THE BEST PLAYER IN COLLEGE FOOTBALL THIS SEASON is arguably the quarterback at the University of Southern California. He is a senior, listed at 6-foot-5 inches and 225 pounds. He wears 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 and 225 pounds. And, not coincidentally, he wears number 11. His name, however, is QB #11.

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

their student-athletes for commercial purposes, and, in order to prohibit them from doing that, it has to restrain itself as well.

Even though QB #11 is not identified by name, however, EA and the NCAA might struggle to keep straight faces when they claim that he is not supposed to represent Leinart for the purpose of making a profit. EA is the North Star of a burgeoning sports video game industry, which made revenues of \$1.9 billion in 2004, and the company's hallmark is precise, nay obsessive, attention to detail. EA's slogan boasts, "If it's in the game, it's in the game." That means nailing the little stuff, capturing nuances like a player's wristband placement and facemask style. In its annual iterations of "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.

Especially since an owner of the video game can change QB #11 to Matt Leinart by fiddling with a few buttons. Once the owner inputs a player's name, it appears on the back of the player's jersey and can be shouted by the virtual announcers who do the play-by-play for the games within the game. Game owners can also adjust a virtual player's facial hair, adding, say, a goatee to match the real player's face, since players are known to change their looks from time to time. Although not approved by the NCAA, memory cards for automatically uploading each school's roster are available from independent manufacturers.

Oddly, the main difference between the players and their video facsimiles are their hometowns, which in the game are intentionally off by a few suburbs (QB #11's "hometown" of La Habra, Calif., is 15 miles from Leinart's native Santa Ana). But the point is, in EA's hyper-detailed world, video game characters now have hometowns. The NCAA's amateurism regulations, originally designed to guard against things like posters and trading cards featuring individual athletes, likely never contemplated a day when an amateur's digital likeness could fetch a profit.

...

A key player in managing that distinction is the Collegiate Licensing Company or CLC, which handles product licensing for collegiate sports organizations like bowl games committees, athletic conferences, and the NCAA. CLC performs two tasks for the association: protecting the amateur standing of its members' athletes and obtaining for members the most lucrative licensing deals. Last summer, an NCAA subcommittee on amateurism invited Pat Battle, 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 Gonzalez told The Indianapolis Star earlier this year.

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

THIS IS NOT THE FIRST TIME that the NCAA's rules about amateurism have struggled to address new licensing opportunities. About 15 years ago, college-apparel sales exploded into a substantial source of revenue for major athletic programs, and one of the touchiest issues involved replica jerseys. They featured a star player's number and school colors, but not his name, even though every fan knew whose jersey he was buying. Replica jerseys are still big business: Every Saturday, Matt Leinart looks up to see USC's stands swelling with a sea of maroon No. 11 jerseys, which sell for about \$50 each online and at the campus bookstore.

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

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

161. EA has incorporated Plaintiff Bryan Kegans' likenesses specifically into NCAA Football 2006.



162. All of EA's NCAA-related video games use photographic-like realism in the depiction of all aspects of the visual presentation, including the player uniforms, school logos, stadiums and mascots. While not identifying them by name, EA also uses likenesses of numerous specific former student-athletes in their games. The players on the virtual college teams in the games correspond exactly to their real-life counterparts in many characteristics, such as position, jersey number, race, size, height, weight and home state. Even uniquely identifiable idiosyncratic characteristics of real-life players appear in their video game virtual counterparts.

163. Each year, the NCAA games sold by EA feature the likenesses of players, including ones that no longer are NCAA athletes.

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

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

There are 14 new All-time teams to the game this year. Highlights include All-Georgia (Dominique Wilkins), All-Gonzaga (we have such depth now we can start compiling all time teams for the best 'mid-majors'), All-NC State (David Thompson), and All-Time teams for the

ACC, Big East, Big Ten, Big 12, SEC, PAC 10, and CUSA.....basically the best players ever from each of the 'major conferences.

We select a wide range of players from each school/conference using websites and the respective Hall of Fame. From there we send the list out to as many basketball experts as possible.... for example I asked Kenny Smith who he thought should be on the All-Time Carolina team when he was recording here last year.

Occasionally, player's names are passed by Dick Vitale, we use existing lists such as the ACC Top 50 players of all time...etc. After we have the short list we look at the ratings, historical stats, and achievements as well as players who will be popular with our consumers and we come up with the bench and the starting 5.

166. In a November 12, 2008 interview, Novell Thomas, EA's Associate

Producer for NCAA Basketball 09 stated the following:

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

... The Tournament of Legends is a customizable, 64 team, single elimination tournament. Top teams from the 50's, 60's, 70's, 80's, 90's and 2000's are selectable. Coming up with and nailing down the legendary teams was not an easy process. A lot of time was 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 college) or 1954 LaSalle's ball handling big man.

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

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

80's....The talent level and number of elite players continued to pour in during this era. Indiana's point guard #11 dazzled the competition with his smooth controlling style; Houston's center #34 and small forward #22, members of Phi Slama Jama were great to watch with their up-tempo style; North Carolina's shooting guard #23 (aka. "the great one") needs no introduction and #52 their power forward was also known for having a few 'Big Games' of his own; there was also the center from Navy, "the Admiral" 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 playing in the association), which further emphasizes how talented they were. But the most talented player probably came from the 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.

2000's....2005 Illinois and 2005 North Carolina had some future NBA talent as well but nothing during this era was bigger than the Florida Gators back to back championships. 4 out of their 5 starters 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.

There were a ton of teams and players who I did not mention but as 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 load up the Tournament of Legends mode and take your favorite 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.

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

Following is a list of all the teams in the ESPN Classic Tournament of Legends:

Arizona	1997
Arkansas	1991, 1994
Cal	1959
Cincinnati	1962
Connecticut	2004, 1999
Duke	2001, 1986, 1992
Florida Gators	2007
George Mason	2006
Georgetown	1991, 1984
Georgia Tech	1990
Houston	1983
Houston	1968
Illinois	2005
Indiana	1981, 1976, 1987
Indiana State	1979
Kansas	1952, 1957, 1988, 2008
Kentucky	1996, 1978, 1954
LaSalle	1954
Louisville	1980, 1986
Loyola	1990
Marmount	
LSU	1970, 1990
Marquette	1977
Maryland	2002
Michigan	1993, 1989
Michigan State	1979
Navy	1986
North Carolina	1957, 1982, 1993, 2005

North Carolina State	1974, 1983
Ohio State	1960
San Francisco	1956
St. John's	1985
Syracuse	1989, 2003
Texas Western	1966
UCLA	1968, 1967, 1972, 1975, 1995
Umass	1996
UNLV	1991
Villanova	1985
Virginia	1981
Wake Forest	1995
West Virginia	1959

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

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

168. In an interview dated June 23, 2006, Adam Morrison, former Gonzaga University men's basketball player and a player featured on the cover of EA's March Madness 07, stated: "“Everyone always thinks they should be faster. You

look at what your overall rating is, and on the EA college basketball game last year, if you had that three-point icon under your feet, you were happy.”

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

170. Kevin Love, who played college basketball at UCLA, said in a 2008 ESPN interview about EA’s NCAA Basketball ’09 video game that “[y]ou go into the replay and zoom in and it looks exactly like me. It’s incredible.”

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

172. There is rampant commercialization within the context of EA’s games. A multitude of non-player individuals and corporations are featured in the game, all presumably pursuant to lucrative contractual arrangements with EA. Each year, more and more third parties participate in revenue derived from and relating to EA’s games, and each year, student athletes excluded from such participation. With respect to various items of athletic-related gear and apparel, as described below, all college athletes have being used as walking-billboards for corporate interests without compensation.

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

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

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

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

177. With respect to EA's NCAA Football 09, the commercialization is even more prevalent. There are a myriad of branding options per player, including an option to select Riddell Revolution, Adams or Schutt helmets and facemasks.

For visors, there are options for video game players to select options for at least the Nike, Under Armour, and Oakley brands. For shoes, there are options to select at least the Nike and Adidas brands. Those corporate logos also appear on player jerseys. There is an additional option to select Nike gloves.

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

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

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

181. EA has a unique partnership with the NCAA with respect to the development of electronic video games featuring the images and likenesses of current and former student-athletes who play or have played Division I college football and basketball. EA has unrivaled access to the highest levels of the NCAA's hierarchy that it has used to advocate and obtain agreement on making its NCAA-themed videogames as photorealistic as possible, all the while knowing and agreeing with the NCAA's position that student-athletes would receive no remuneration for the use of their enhanced images and likenesses. Indeed, EA and the NCAA have had extensive discussions about the use of the names of student-athletes in its videogames and EA reached agreement with the NCAA to propose amendments to the NCAA's bylaws that would accomplish just that. The timeline of EA's recent involvement and agreements with the NCAA may be summarized as follows.

182. EA has entered into three licensing agreements with CLC, on behalf of the NCAA and NCAA member institutions, in connection with its NCAA-themed video games: (a) a 2005- 11 football agreement, (b) a 2005-10 basketball agreement, and (c) a 2008-11 EA football license agreement. Each of these agreements constitutes an overt act in furtherance of the conspiracy alleged herein. In each of these contracts, EA expressly agreed to abide by the NCAA's rules with respect to student-athletes. As described in this Complaint, those rules prohibited

EA from offering any student-athlete compensation for the use of the athlete's name, image or likeness in its NCAA-themed video games. EA further agreed to extend its agreement with the NCAA, prohibiting compensation to student-athletes, to former student-athletes.

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

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

185. The *NCAA News*, on June 21, 2004, provided detail on discussions involving the NCAA, CLC, and EA, and also served as a conduit to further

communicate the message to the NCAA's members the importance of video game licensing revenues. Specifically, The *NCAA News* reported that the NCAA's Agents and Amateurism Subcommittee of its Academics / Eligibility / Compliance Cabinet met on June 9th and 10th, 2004; Pat Battle of the Defendant CLC made a presentation to the group, which as well as the following panelists: Ohio State University Athletics Director Andy Geiger, University of Connecticut Athletics Director Jeff Hathaway, Miami (Ohio) University Athletics Director Brad Bates and University of Notre Dame Associate Athletics Director Bill Scholl. The *NCAA News* specifically stated the following:

The CLC's Battle, however, indicated interest in seeing the NCAA allow more latitude in the marketing areas, specifically in video games. His concerns centered on the risk of losing business rather than gaining it, though he did project that licensing revenues would increase dramatically under more flexible rules. Battle said video 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.

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

186. The *Madden Nation* blog site reported on a June 2005 interview with a member of EA's Development Team for NCAA College Football 06 video game where the interviewee stated that EA wanted to put student-athlete names in future editions of the video game and was "working with the NCAA on this matter...."

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

Last summer, an NCAA subcommittee on amateurism invited Pat Battle, 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 Gonzalez told *The Indianapolis Star* earlier this year.

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

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

189. In a GameTrailers.com interview conducted in 2007, Sean O'Brien, the producer of EA's NCAA Basketball 08 video game, when asked about real players in the game, said that that was "[s]omething that we are constantly exploring and continuing to explore with the NCAA. I think we have made a lot of progression so I hope to be there one day soon."

190. In an interview conducted in 2008, O'Brien, who was then the producer of EA's NCAA Basketball 09 video game, talked about how "[h]aving the partnership with the NCAA gives us the opportunity to work directly with all of the partners that are part of the NCAA...." With respect to the inclusion of actual student-athlete names and likenesses in EA's NCAA-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 us." In another interview from 2008 disseminated by IGN, O'Brien defended EA's making available college team rosters for use in NCAA Basketball 09, O'Brien stated that "[i]t's all above board to add names to rosters and post them for other gamers to use....It's above board with the NCAA and it's perfectly legal—100 percent count on having rosters with names available for all schools shortly after release."

191. In an Operation Sports interview conducted in 2010, Ben Haumiller, designer of EA's NCAA Football 10 said that EA has a "laundry list" of topics that

are discussed with the NCAA every year including: (1) player names, (2) coaches, and (3) playoffs. EA would create “pitches” for the NCAA to review to incorporate certain items into the videogame.

192. EA and the NCAA have also colluded to allow third parties to use the names of student-athletes in connection with televised presentations of EA video games without compensation. A 2008 article reported as follows:

The broadcasting crew represented in EA Sports annual NCAA Football 09 are ESPN’s “College Game Day” broadcasters: Brad Nessler, Kirk Herbstreit, and Lee Corso (“Sportcasters”). One can assume the Sportcasters receive compensation for the use of their likenesses in NCAA Football 09. Followers of college football are well acquainted with this crew. They are seen live on Saturdays throughout college football season on ESPN’s College Game Day coverage. The College Game Day set travels to the location of the biggest NCAA football games of each week.

During College Game Day coverage, Sportcaster commentary is regularly combined with simulated game action featuring NCAA Football 09 video game representations. The student-athlete counterparts to the video game representations play for their 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 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.

193. 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 preseason 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 in-game players go nameless because of

NCAA regulations—well, at least until someone fills up their EA Locker with a roster—we’ve got the real names here, so you don’t have to think.”

194. Similarly, EA and the NCAA have colluded to purposefully and knowingly allow third parties to create and market modifications to the NCAA video games which allow players to upload complete roster information for various teams, including player names. The NCAA and CLC have allowed this because it benefits them financially by increasing the popularity of EA’s NCAA games, thereby increasing the royalty payments to the NCAA. As explained in an article in the website abovethelaw.com:

So, game publishers like Electronic Arts, essentially, cheat. If you pick up the copy of a college sports game, you’ll see all the players, with their accurate numbers, positions, player attributes, pretty much everything except the players’ actual names. Luckily, you can change the names of players, and every year hundreds of users sit there and change all of the names of all the players to their real life counterparts. Then people like me pay for the “updated rosters” (back in the day) or simply download them for free.

And everybody is happy. Except, of course, the college athletes. Especially the college athletes that have only a limited chance of going pro but are very popular college athletes and want to get a little more than a diploma out of it.

195. In 2009, EA went even further, developing and launching on its website its “TeamBuilder” page that lets users create and upload profiles of current and former NCAA football players to be incorporated into EA’s games. On the page, EA states “Create Your School On-Line” and “Play with Your School on

Your Console” and “Share your teams—upload your creations to a shared library for everyone to enjoy.” The page further features official logos of CLC and the NCAA and links to those entities’ webpages.

196. 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, 2011, a full profile was on EA’s website for current Stanford quarterback Andrew Luck as a part of the 2009 Stanford Cardinal team, as well as a full profile for former player Auburn quarterback Cam Newton as a part of the Auburn Tigers 2010 team.

197. In its “Terms of Service” on the site, EA states, “EA respects the intellectual property rights of others. You must have the legal right to upload Content to EA Services. You may not upload or post any Content on EA Services that is protected by copyright, trademark or other intellectual property rights unless (i) you are the owner of all of those rights; or (ii) you have the prior written consent of the owner(s) of those rights to make such use of that Content. EA may, without prior notice to you and in its sole judgment, remove Content that may infringe the intellectual property rights of a third party. If you are a repeat infringer of EA's or a third party's intellectual property rights, EA may terminate your Account without notice to you.” On information and belief, EA has not invoked

any of these provisions with respect to the use of current and former collegiate players on its website.

198. EA further states that “[i]n exchange for EA enabling your contribution of Content, when you contribute Content to an EA Service, you expressly grant to EA a nonexclusive, perpetual, worldwide, complete and irrevocable right to quote, re-post, use, reproduce, modify, create derivative works from, syndicate, license, print, sublicense, distribute, transmit, broadcast, and otherwise communicate, and publicly display and perform the Content, or any portion thereof, in any manner or form and in any medium or forum, whether now known or hereafter devised, without notice, payment or attribution of any kind to you or any third party.” EA thus expressly takes the rights to this content on its website.

199. EA has continued to seek to further collude with the NCAA to deprive current and former student-athletes of rights with respect to EA’s video-games. In 2010, the NCAA’s Amateurism Cabinet presented Proposal 2010-26, which would have modified NCAA Bylaw 12.5.1.1 to formalize the ability of commercial entities to use student-athletes’ names and likenesses. EA was a big supporter of this proposal and, on information and belief, was instrumental in getting the NCAA to present it for consideration. Minutes of the NCAA Division I Student-Athlete Advisory Committee meeting held in Indianapolis, Indiana on November

19-21, 2010, at which Proposal 2010-26 was discussed, indicate that “[r]epresentatives from EA Sports gave a presentation to the committee regarding the NCAA College Football video game and answered questions regarding the use of student-athletes' likeness in the game.” Joel Linzer, EA’s Executive Vice-President for Business and Legal Affairs, and Todd Sitrin, EA’s Group Vice-President of Marketing, attended this meeting. After Antitrust Plaintiffs indicated that they would move to enjoin the implementation of Proposal 2010-26, the NCAA shelved it, at least for the time.

200. No valid rights from Plaintiffs have been obtained by the NCAA, its members, or its licensees for the use of their images, likenesses, and names in video games, and any purported transfer or usage of student-athletes’ rights relating to this usage is the product of the anticompetitive agreements described herein.

4. Rebroadcasts of Classic Games

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

ESPN Classic is a 24-hour, all-sports network devoted to telecasting the greatest games, stories, heroes and memories in the history of

sports. ESPN Classic presents programming from the NFL, NBA, MLB, NHL, NASCAR, boxing (including the ESPN Big Fights Library), tennis, golf, college football and basketball, Olympics and others. ESPN Classic is a wholly owned subsidiary of ESPN, The Worldwide Leader in Sports.

202. As indicated above ESPN Classic has acquired the rights to rebroadcast various “classic” college basketball and football games, and does so. These rebroadcasts feature and use the image of Plaintiffs.

5. Jerseys, T-shirts, and Other Apparel

203. Defendants and their co-conspirators, through the release process described herein, also have allowed former players’ indicia of identity, namely, their uniform numbers and names, to be used in connection with sales of replica and actual jerseys and other apparel offered for sale. In addition to featuring current players, replica jerseys also are sold featuring the numbers and names of former players.

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

205. The NCAA’s President, Myles Brand, was referenced in a 2004 article in *The New York Times* in connection with jersey sales featuring current players as

follows: “Even Myles Brand, the President of the N.C.A.A. said he had ethical concerns about the marketing of star players’ numbers, although he ruled out permitting athletes to make money from the sale of replicas of their uniforms.” The article further stated that “[p]layers’ number are a meaningful substitute for their names....”

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

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

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

209. In addition to replica jersey sales, dozens of the NCAA’s members sell the actual jerseys worn by former players to the operators of websites such as www.collegejersey.com, which then offers the jerseys for sale, typically for prices ranging from several hundred dollars up to \$1,000 or more. These jerseys often bear the players’ names on the back. For example, on June 16, 2009, there were more than 30 former UCLA football players’ jerseys offered for sale that bear players’ names on the back. Additional information is supplied regarding the year the jersey was worn, and often additional details on the particular player, such as the position that he played. In the UCLA example, the players played between 1995 and 2004.

210. Additionally, certain schools sell “game worn” uniforms directly. For example, as of June 16, 2009, Ohio State University was offering for sale via its online memorabilia store approximately 30 “game worn” jerseys from the 2005 season bearing various uniform numbers. Each one is offered at \$200. The

complete player roster from that season, which lists player names and uniform numbers, is readily available on-line from websites such as scout.com.

211. No valid rights from Plaintiffs have been obtained by the NCAA, its members, or its licensees for the use of their images, likenesses, and names in apparel sales, and any purported transfer of former student-athletes' rights relating to this usage is the product of the anticompetitive agreements described herein.

D. The Reality for Players after College

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

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

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

215. Moreover, many former student-athletes have continuing medical bills and treatments resulting from their participation in intercollegiate athletics. These medical treatments and attendant financial responsibility can continue long after the conclusion of a student-athlete’s collegiate sports career. On July 16, 2009, *The New York Times*, in an article titled “College Athletes Stuck With the Bill After Injuries,” reported the following:

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

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

...

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

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 coverage. Its catastrophic insurance carries a \$75,000 deductible, which will increase to \$90,000 next year.

...

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

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

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

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

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

But Whitehead, now a 28-year-old district manager for Frito Lay in the Cleveland area, said he discovered he owed roughly \$1,800 in un-

paid medical bills while reviewing paperwork to buy his first car about six years after his injury.

“The coach says: ‘You’re on full scholarship. If you ever get hurt, we’ll make sure to take care of you,’ ” he said. “There’s a lot of us out there that get used.”

216. The overwhelming majority of players do not turn professional, and those that do 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.

217. 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, the rare player who reaches the professional ranks does *not* have a guaranteed contract and can be cut from the team at any time due to injury or non-performance.

218. Whatever the realities of student-athlete life may be, the NCAA is not entitled to abridge those student-athletes’ economic rights.

VII. ANTITRUST CONSPIRACY

219. Defendants’ contract, combination, and conspiracy described herein consisted of a continuing horizontal and vertical agreement, understanding, and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to artificially fix, depress, maintain, and/or stabilize prices

received by Plaintiffs for use and sale of their images, likenesses, and/or names at zero dollars in the United States, its territories and possessions.

220. Defendants also engaged in a group boycott/ refusal to deal.

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

222. In formulating and effectuating the contract, combination, or conspiracy, Defendants:

- a. agreed to artificially fix, depress, maintain, and/or stabilize prices paid to Plaintiffs for use and sale of their images, likenesses, and/or names;
- b. agreed to limit output of the use or sale of the their images, likenesses, and/or names of Plaintiffs;
- c. agreed to boycott and refuse to deal with Plaintiffs regarding compensation for the use and sale of their images, likenesses, and/or names; and
- d. implemented and monitored the conspiracy among cartel members.

223. The activities described above have been engaged in by Defendants for the purpose of effectuating the unlawful agreement to fix, depress, maintain and/or stabilize prices paid to Plaintiffs for the sale and use of their images, likenesses, and/or names..

224. Defendants' actions constitute an unreasonable restraint of trade.

VIII. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Violation of Section 1 of the Sherman Act – 15 U.S.C. § 1 Unreasonable Restraint of Trade (Against All Defendants)

225. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

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

227. Defendants' unlawful conduct deprived Plaintiffs of compensation for the use of their images, likenesses, and/or names—property rights with economic value. This unreasonable restraint on competition has artificially limited supply

and depressed prices paid by Defendants to Plaintiffs for use of their images, likenesses, and/or names after cessation of participation in intercollegiate sports.

228. Plaintiffs received less than they otherwise would have received for the use of their images, likenesses, and/or names in a competitive marketplace, were thus damaged, and seek to recover for those damages.

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

230. Defendants' total abridgment of compensation rights for current and former student-athletes is not connected to any legitimate non-commercial goal. Defendants' actions are solely to enhance revenue for themselves and their for-profit business partners, by cutting costs, i.e., eliminating the need to pay any compensation for the continuing commercial exploitation of players' images, likenesses, and/or names. Defendants' actions have no relationship to any legitimate goal of "amateurism," or pro-educational purposes. Thus, the NCAA's actions directly regulate a commercial market and therefore are illegal.

231. Defendant CLC has facilitated this illegal scheme, and has financially benefited from it.

232. Defendant EA has participated in this illegal scheme, and has financially benefited from it.

233. As a direct and proximate result of Defendants' scheme, Plaintiffs have been injured and financially damaged in amounts which are presently undetermined. Plaintiffs' injuries consist of receiving lower prices for use of their images, likenesses, and/or names than Plaintiffs would have received absent Defendants' conduct. Plaintiffs' injuries are of the type the antitrust laws were designed to prevent and flow from that which makes Defendants' conduct unlawful.

234. Defendants have conspired to illegally limit and depress the compensation of current and former student-athletes for continued use of their images to zero. This anticompetitive and illegal scheme has unreasonably restrained trade.

235. The anticompetitive effects of Defendants' scheme substantially outweigh any alleged procompetitive effects that may be offered by Defendants. Reasonable and less restrictive alternatives are available to Defendants' current anticompetitive practices.

236. Plaintiffs are entitled to a declaratory judgment declaring as void and unenforceable all forms that purport to grant, transfer, or convey the rights of former student-athletes in the use of their images.

237. Plaintiffs are entitled to a permanent injunction that terminates the ongoing violations alleged in this Complaint.

SECOND CLAIM FOR RELIEF

Violation of Section 1 of the Sherman Act – 15 U.S.C. § 1 Unreasonable Restraint of Trade – Group Boycott / Refusal to Deal (Against All Defendants)

238. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

239. Defendants by and through Defendants' and coconspirators' officers, directors, employees, agents, or other representatives, entered into a continuing horizontal and vertical contract, combination, and conspiracy in restraint of trade to effectuate a horizontal group boycott against Plaintiffs. Defendants' group boycott / refusal to deal encompasses Defendants' concerted refusal to compensate Plaintiffs for the use of their images, likenesses, and/or names and to otherwise concertedly act to prevent Plaintiffs from being compensated for use of their images, likenesses, and/or names in the United States and its territories and possessions, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

240. Defendants' group boycott / refusal to deal includes Defendants' concerted action to require all current student-athletes to sign forms each year that

purport to require each of them to relinquish all rights for use of their images, likenesses and/or names. This concerted action is in effect a refusal to deal with student athletes on compensation rights issues, and forecloses Plaintiffs' access to the market. Defendants use the eligibility rules as a threat of a boycott to force all student-athletes, including Plaintiffs, to sign the forms.

241. Defendants' group boycott / refusal to deal also includes Defendants' ongoing concerted action to deny Plaintiffs compensation in the form of royalties for the continued use of their images, likenesses, and/or names for profit, including, but not limited to, through restrictions in the Bylaws.

242. Plaintiffs received less than they otherwise would have received for the use of their images, likenesses, and/or names in a competitive marketplace, were thus damaged, and seek to recover for those damages.

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

244. Defendants' total abridgment of compensation rights for current and former student-athletes is not connected to any legitimate non-commercial goal.

Defendants' actions are solely to enhance revenue for themselves and their for-profit business partners, by cutting costs, i.e., eliminating the need to pay any compensation for the continuing commercial exploitation of players' their images, likenesses, and/or names. Defendants' actions have no relationship to any legitimate goal of "amateurism," or pro-educational purposes. The NCAA's actions directly regulate a commercial market and therefore are illegal.

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

246. Defendant EA has participated in this illegal scheme, and has financially benefited from it.

247. As a direct and proximate result of Defendants' group boycott, Plaintiffs have been injured and financially damaged in amounts which are presently undetermined. Plaintiffs' injuries consist of denial of compensation for use of their images, likenesses, and/or names. Plaintiffs' injury is of the type the antitrust laws were designed to prevent and flow from that which makes Defendants' conduct unlawful.

248. Defendants have collectively conspired to illegally deny compensation to current and former student-athletes for use of their images, likenesses and/or names in unreasonable restraint of trade.

249. The anticompetitive effects of Defendants' group boycott substantially outweigh any alleged pro-competitive effects that may be offered by Defendants. Reasonable and less restrictive alternatives are available to Defendants' current anticompetitive practices.

250. Plaintiffs are entitled to a permanent injunction that terminates the ongoing violations alleged in this Complaint.

THIRD CLAIM FOR RELIEF

Unjust Enrichment (Against All Defendants)

251. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

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

253. Plaintiffs seek disgorgement of all Defendants' profits resulting from the wrongful conduct described herein and establishment of a constructive trust from which Plaintiffs may seek restitution.

FOURTH CLAIM FOR RELIEF

**Accounting
(Against All Defendants)**

254. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

255. As a result of the illegal conduct alleged herein, Defendants have received licensing revenues in various forms and amounts, including both licensing fees and royalty payments. As an alternative to their damage claims, Plaintiffs seeks to recover a share of these revenues generated from the exploitation of their images, likenesses, and/or names..

256. Upon a determination of liability, an accounting of the licensing revenues that Defendants have wrongfully diverted to themselves and other entities will be required in order to determine damages in the form of Plaintiffs' share of these licensing revenues.

257. These licensing revenues are collected by Defendants as a result of numerous licensing agreements among many different entities, including the Defendants and their co-conspirators, and likely thousands of companies that license, manufacture, market and sell various products and services bearing Plaintiffs' images, likenesses, and/or names. The structure of the many relationships between these entities and terms of the various agreements governing the licensing transactions are not known to Plaintiffs..

258. Plaintiffs cannot identify at this time, among other things; (a) all of the entities that have entered into licensing and/or royalty agreements with the Defendants and their co-conspirators, (b) how the licensing revenue due to the Defendants and their co-conspirators from each of those agreements is calculated, (c) the amount of that revenue, and (d) which agreements are associated with Plaintiffs. Plaintiffs seek to recover for themselves a percentage of the revenue from Defendants and their coconspirators for every unlawful licensing and/or royalty agreement involving their images, likenesses, and/or names; this percentage and amount is ascertainable and will be decided by this Court upon a determination of liability.

259. The amount of licensing revenue generated from the exploitation of Plaintiffs' images, likenesses, and/or names, including the tracing the revenue resulting from each transaction, requires a full and complete accounting. This is so because determining the amount due will involve a fuller understanding and accounting of the various transactions, agreements, parties and revenues involved.

260. Calculation of the amounts due to Plaintiffs may well be complex. Industry accounting standards may need to be determined, understood and applied, revenues may need to be traced through the various Defendants and their co-conspirators and parties involved in the transactions, and tax consequences may also be considered.

FIFTH CLAIM FOR RELIEF

**(Deprivation of Rights of Publicity, Violation of Indiana Code § 32-36-1-1)
(Against All Defendants)**

261. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

262. College athletes' names, voices, signatures, photographs, images, likenesses, distinctive appearances, gestures, and mannerisms have commercial value. For commercial purposes, Defendants used and/or continue to use players' names, images, likenesses and distinctive appearances without consent in connection with and for the purposes of, among other things, advertising, selling, and soliciting purchases of broadcast rights, videogames and game footage.

263. For example, EA has used college athletes', including Plaintiffs', names, images, likenesses and distinctive appearances by incorporating such items into its virtual players in its NCAA Football videogames that are sold in Indiana. It has used these items in creating and crafting its games by gathering information in Indiana that is used to model the content of its NCAA-related games. The use of college athletes' rights of publicity increases the realism of the games by including, among other things, literal depictions of them in the game. This allows Defendants to increase sales and profits.

264. Defendants never received Plaintiffs' consent, written or otherwise, to use their likenesses, images, names, or other distinctive appearances.

265. Defendants' actions are pursuant to, and in furtherance of, an unlawful conspiracy to misappropriate Plaintiffs' images, likenesses, and/or names, and distinctive appearance for commercial purposes.

266. Defendants have willfully and intentionally used and continued to use college athletes', including Plaintiff's, rights of publicity.

267. Defendants undertook actions in furtherance of their conspiracy within the State of Indiana. Specifically, Defendant NCAA is located in Indiana and conduct of the NCAA alleged herein took place or was ratified in Indiana. In addition, NCAA has hosted meetings in Indiana, contracted in Indiana, and NCAA's decisions and approvals for the use of player names and likenesses arose in and emanated from Indiana.

268. Likewise, EA has solicited, advertised, and sold its games in Indiana directly to Indiana consumers, and developed information in Indiana to be used in its games' development. Upon information and belief, EA has sold thousands of games to Indiana consumers during the class periods via its website, and has sold tens of thousands of games through retailers.

269. As a result of Defendants' conduct, Plaintiffs have been injured.

SIXTH CLAIM FOR RELIEF

**(Deprivation of Rights of Publicity Violation of California Civil Code § 3344)
(Against All Defendants)**

270. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

271. Defendants knowingly and intentionally used and continue to use the names and likenesses of all college athletes, including Plaintiffs', with their consent.

272. This conduct has occurred in and emanated from California. Specifically, most of EA's decisions and policy relating to its conduct has occurred in and emanated from California, where EA is headquartered.

273. EA has used and continues to use college athletes', including Plaintiffs', names, images, and/or likenesses for the purposes of advertising, selling and soliciting purchases of Electronic Arts' videogames, including its NCAA Football franchise.

274. As a result of Defendants' misappropriation of Plaintiffs' rights, they have been injured.

SEVENTH CLAIM FOR RELIEF

**(Violation of Rights of Publicity under California Common Law)
(Against All Defendants)**

275. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

276. Pursuant to their unlawful conspiracy, Defendants used and continue to use the names, likenesses and identities of all college athletes, including Plaintiffs', without consent and for Defendants' own commercial advantage.

277. As a result of Defendant's misappropriation, Plaintiffs have been injured.

EIGHTH CLAIM FOR RELIEF
(Misappropriation of Plaintiffs' Name and Identity under Texas Common Law)
(Against All Defendants)

278. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

279. Pursuant to their unlawful conspiracy, Defendants used and continue to use the names, likenesses, and identities of all college athletes, including Plaintiffs', for their own commercial advantage.

280. For example, the 2006 AT&T Cotton Bowl Classic, held on January 2, 2006 in Dallas, Texas, specifically featured Mr. Kegans' name as the starting offensive lineman for Texas Tech. Not only did the game generate millions in revenue to the NCAA, but also generated a payout of \$2,850,000 to each team.

281. As a result of Defendants' misappropriation, Plaintiffs have been injured.

NINTH CLAIM FOR RELIEF
(Civil Conspiracy)
(Against All Defendants)

282. Plaintiffs incorporate by reference the allegations in this Complaint as if fully set forth herein.

283. Defendants have conspired and combined with each other, and with third parties, to use college athletes', including Plaintiffs', likenesses without permission, and have achieved a meeting of the minds, through either express or tacit agreement, on an object or course of action of the conspiracy, including depriving Plaintiffs of their right to protect their name, likenesses and rights to publicity and their contractual, property rights.

284. Defendants have formed and operated a civil conspiracy with each other, performing as a part of the conspiracy numerous overt acts in furtherance of the common design, including one or more unlawful acts which were performed to accomplish a lawful or unlawful goal, or one or more lawful acts which were performed to accomplish an unlawful goal.

285. As a result of the conduct of Defendants and the conspiracy, Plaintiffs have been damaged as described herein.

IX. JURY DEMAND

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

Dated: March 10, 2014

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