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

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JCS

24 JOSEPH AGNEW, on behalf of himself and all)
25 others similarly situated,)

No. **CV 10 4804**

26 Plaintiff,)

CLASS ACTION COMPLAINT

27 v.

28 NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant.)

DEMAND FOR JURY TRIAL

1 Plaintiff, by and through his attorneys, based on his individual experiences, the
2 investigation of counsel, and upon information and belief alleges as follows:

3 I. INTRODUCTION

4 1. This suit arises out of a blatant price-fixing agreement between member institutions
5 of the National Collegiate Athletic Association ("NCAA"). For years, NCAA member institutions
6 have unlawfully conspired to maintain the price of bachelor's degrees for NCAA student-athletes
7 at artificially high levels by (i) agreeing never to offer student-athletes a multi-year discount on the
8 price of a bachelor's degree and (ii) artificially reducing the total number of available athletics-
9 based discounts by imposing artificial caps on the number of athletics-based discounts that its
10 member institutions can offer. These athletics-based discounts are referred to as "grants-in-aid" by
11 the NCAA or "athletic scholarships."

12 2. These prohibitions are not necessary to protect the amateur status of NCAA student-
13 athletes; rather, they only serve the selfish interests of the NCAA and its member institutions. The
14 NCAA and its member institutions know that in a competitive market, they would be forced to
15 offer multi-year athletics-based discounts to student-athletes and would be forced to dramatically
16 increase the overall supply of athletics-based discounts.

17 3. By unlawfully agreeing not to offer multi-year athletics-based discounts, the NCAA
18 and its member institutions have ensured that student-athletes who are injured or who simply do
19 not meet the school's expectations can be cut from a team and their scholarships terminated. Once
20 their scholarships are terminated, student-athletes face two unpalatable options: They can pay
21 tuition out of pocket, often by taking on tens of thousands in loans, or they are forced to uproot
22 themselves and transfer to another institution that will provide them with a scholarship. They
23 would not incur these expenses but for the existence of the challenged agreement.

24 4. By unlawfully agreeing to limit the number of athletics-based discounts that a
25 member institution can grant in any given year, the NCAA and its member institutions have
26 ensured that student-athletes in the class pay tens of millions more for bachelor's degrees than they
27 would pay in a competitive market.

II. PARTIES

Plaintiff

5. Plaintiff Joe Agnew enrolled at Rice University on an athletic scholarship in 2006 and received an athletics-based discount equal to the yearly cost of his bachelor's degree. Prior to college, Mr. Agnew was a highly sought-after high school star at Carroll in Texas, garnering all-state honors from the Associated Press and Texas Sports Writers Association and a spot on the *Fort Worth Star-Telegram's* Fort Worth area "Super Team" as a senior. As a two-year starter for the Dragons, Mr. Agnew led his school to a perfect 32-0 overall record and served as captain on Carroll's state and national championship teams. Mr. Agnew's academic abilities made him an even more attractive college football recruit, carrying an average of 92.159 at Carroll and becoming a member of the school's Success Scholars Program. His stellar all-around high school career earned him attention from a host of top college football programs around the country, including Texas Tech, Baylor, Tulsa, Brigham Young, Air Force, Vanderbilt, Duke and Rice. Mr. Agnew received formal offers from at least three of those schools – Rice, Tulsa and Brigham Young.

Defendant

6. Defendant NCAA is an unincorporated association that acts as the governing body of college sports. Through the NCAA Constitution and Bylaws, the NCAA and its members have adopted regulations governing all aspects of college sports. The NCAA Constitution and Bylaws were adopted by votes of the member institutions and may be amended by votes of the member institutions. Thus, the rules set forth in the NCAA constitution and Bylaws constitute horizontal agreements between the NCAA and its members and between members of the NCAA.

7. The NCAA includes 1,055 active member schools and these schools are organized into three Divisions. Division I includes 335 schools with extensive athletic programs and Divisions II and III include schools with relatively less extensive athletic programs.

8. As a practical matter, any academic institution that wishes to participate in any meaningful way in college sports must maintain membership in the NCAA and abide by the rules and regulations promulgated by the NCAA and its members. There is no practical alternative to

1 NCAA membership for any academic institution that wishes to participate at the highest and most
2 lucrative levels of college sports. Consequently, there is no major college sports program in the
3 United States that is not an NCAA member, abiding by the NCAA rules.

4 9. Although it describes itself as “committed to the best interests . . . of student-
5 athletes,” the NCAA’s true interest is in maximizing revenue for itself and its members, often at the
6 expense of its student-athletes. While extolling the virtues of “amateurism” for student-athletes,
7 the NCAA itself runs a highly professionalized and commercialized licensing operation that
8 generates hundreds of millions in royalties, broadcast rights and other licensing fees each year.
9 The annual revenues for the NCAA in fiscal year 2007-08 were \$614 million. Almost 90% of the
10 NCAA’s annual budget revenues stem from marketing and television rights, with only 9-10%
11 coming from championship game revenues. The NCAA’s operations are also highly profitable.
12 The direct expenses for operating the actual games that generated the \$614 million in revenues
13 were only \$59 million.

14 10. The NCAA, its member institutions and their high level officers and employees use
15 the monies earned from college athletes to pamper themselves with plush headquarters and perks
16 normally associated with Fortune 500 companies. According to published reports, the NCAA’s
17 headquarters in Indiana cost an estimated \$50 million dollars and the NCAA is currently planning
18 an additional \$35 million expansion. NCAA top executives use money earned off the backs of
19 student-athletes to pay themselves salaries of hundreds of thousands of dollars in salaries. For
20 example, in 2007 former NCAA president Myles Brand earned a salary approaching one million
21 dollars.

22 III. JURISDICTION AND VENUE

23 11. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§
24 4 and 15 and 29 U.S.C. §§ 1331 and 1337, in that this action arises under the federal antitrust laws.

25 12. This Court has personal jurisdiction over the Plaintiff because Plaintiff Joseph
26 Agnew submits to the Court’s jurisdiction. This Court has personal jurisdiction over the Defendant
27 because it transacts business in this district, including but not limited to sporting events.
28 Furthermore, NCAA member institutions and co-conspirators are located in this district.

1 13. Venue is proper in this District pursuant to U.S.C. § 1391(b) and (c) and 15 U.S.C. §
2 22. Among other things, the NCAA transacts business in this District, including but not limited to
3 sporting events and NCAA member institutions are located in this district. In addition, actions in
4 furtherance of the conspiracy have been undertaken in this district.

5 14. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of
6 this Court is appropriate because the NCAA transacts business in this district and actions in
7 furtherance of the conspiracy have been taken in this district. Because this action arises, in part, in
8 the county of San Mateo, pursuant to Northern District of California, Local Rule 3-2(d),
9 assignment to either the San Francisco Division or the Oakland Division is proper.

10 IV. RELEVANT MARKET

11 15. Bachelor's degrees from accredited colleges and/or universities constitute a distinct
12 product market. The geographic market is the United States. The vast majority of salaried
13 positions in the United States require the applicant to possess a bachelor's degree from an
14 accredited college or university. No reasonable substitute exists for a bachelor's degree from an
15 accredited college or university. Accredited colleges and universities compete for customers i.e.
16 students on a variety of dimensions including but not limited to price, reputation, job placement,
17 and course offerings. A hypothetical entity that controlled the output of bachelor's degrees would
18 be able to raise the price of bachelor's degrees significantly for a non-transitory period of time
19 without losing customers.

20 16. Because bachelor's degrees from accredited colleges and/or universities are not
21 fungible, NCAA member institutions can and do effectively price discriminate. Specifically, the
22 goal of each NCAA member institution is to charge each customer the maximum amount possible
23 through a combination of tuition, room and board and mandatory fees. NCAA member institutions
24 accomplish this result by setting tuition as high as possible and requiring students to pay as much
25 as possible based on their income and their parents' income. Colleges and universities generally
26 then require students to finance the remainder although in some instances students receive "grants."
27 In reality, these "grants" are not gifts, charitable otherwise, but merely a method of discounting that
28 allows NCAA member institutions to charge the maximum possible to each consumer.

1 17. Students with athletic ability often are given athletics-based discounts, i.e. “grants-
2 in-aid” or “athletics scholarships,” that may sometimes equal the cost of tuition. In effect, these
3 students who receive full or partial athletics-based discounts are paying in-kind, either in whole or
4 in part, for their bachelor’s degree. NCAA member institutions give these substantial discounts to
5 student-athletes because student-athletes bring substantial collateral benefits to the school in the
6 form of: (a) enhanced publicity and recruiting, which increases overall tuition revenue, (b)
7 increased alumni donations, and (c) millions of dollars in licensing revenue.
8

9 18. Although the NCAA and its member institutions publicly claim that most athletic
10 departments “lose” money, the NCAA’s methodology for calculating the supposed profitability of
11 athletics departments is meaningless from an economic perspective. For example, athletics
12 “grants-in-aid” are considered “expenses” even though they are not actually a true expense from an
13 economic perspective but rather represent a price discount. Similarly, the NCAA does not include
14 tuition paid by student-athletes when it concludes that most athletic departments “lose” money and
15 it does not apportion any of the tuition paid by other students even though successful college sports
16 programs increase overall tuition revenue. Contrary to the NCAA’s self-serving reports, the
17 bottom line is that the NCAA and its member institutions make millions of dollars from collegiate
18 athletes.
19

20 19. The NCAA and its member institutions take the money reaped from student-athletes
21 and spend lavishly for the benefit of their own officers, directors and high ranking employees.
22 Public reports indicate that former NCAA president Myles Brand earned \$935,000 in
23 compensation in fiscal year 2007. Compensation for other high-ranking NCAA employees that
24 year was similar: Executive VP Tom Jernstedt received \$555,803; Executive VP/Governance &
25 Membership Bernard Franklin received \$448,559; CFO James Isch received \$428,314; Senior
26 VP/Basketball & Business Strategies Greg Shaheen received \$367,183; Senior VP/Branding &
27

1 Communications Dennis Cryder received \$330,482; and General Counsel Elsa Cole received
2 \$301,392.

3 20. Likewise, college presidents, coaches and athletic director salaries have soared in
4 recent years. Last college football season, at least 25 head coaches made \$2 million or more. This
5 group was led by Florida's Urban Meyer and Southern California's Pete Carroll, who take in over
6 \$4 million per year.

7 21. The average pay for a head coach in the NCAA's Football Subdivision was \$1.36
8 million, a 46 percent increase over the last three years. At least 66 assistant football coaches make
9 \$300,000 or more annually.

10 22. College basketball coaches are benefitting from huge paydays, as well. The average
11 coaching salary at the 65 schools who participated in the 2009 Men's Division I Tournament was
12 about \$1.3 million. Head coaches from power conferences such as the Atlantic Coast, Big East,
13 Big Ten, Big 12, Pacific-10 and Southeastern bank around \$1.9 million a year on average.

14 23. Duke's Mike Krzyzewski, Louisville's Rick Pitino, Kansas's Bill Self and Michigan
15 State's Tom Izzo all make \$3 million or more annually. Mr. Pitino and Mr. Self reportedly were
16 given signing bonuses of \$8.95 million and \$7 million, respectively, on top of their salaries.
17 University of Kentucky made Mr. Calipari the highest-paid coach in college basketball when the
18 school signed him to an eight-year, \$31.65 million deal.

19 24. At Kansas, Lew Perkins earned \$4.4 million in 2009 as the school's athletic
20 director, making him the highest-paid public employee in the state. In 2007, Tom Foley signed an
21 11-year extension to remain the athletic director at University of Florida. The contract reportedly
22 paid Mr. Foley as much as \$1.2 million per year. According to a 2008 survey, the Big 12 has the
23 highest-paid athletic directors at an average annual base salary of \$470,000. The Big Ten and
24 Southeastern conferences paid their athletic directors more than \$430,000 on average while
25 Atlantic Coast, Pacific-10 and Big East athletic directors all topped the \$350,000 mark.

26 V. UNLAWFUL AGREEMENT IN RESTRAINT OF TRADE

27 25. The NCAA's Division I, Division II and Division III manuals contain dozens of
28 pages of highly restrictive rules that govern the provisioning of athletics-based discounts.

1 26. For Division III schools the rule is simple: NCAA member institutions have
2 conspired to prohibit any “award [of] financial aid to any student on the basis of athletics
3 leadership, ability, participation or performance.”

4 27. NCAA rules permit Division I and Division II schools to offer athletics-based
5 discounts but these discounts are governed by a byzantine set of rules that govern everything from
6 how to account for “Sunday evening meals” that are not provided by the “regular eating facility
7 used by a student-athlete” to how to account for “benefits” received by student-athletes who
8 participate in AmeriCorps.

9 28. Most notably, the NCAA imposes highly restrictive caps on the total amount of
10 athletics-based discounts that can be granted to student-athletes. Specifically, the NCAA limits the
11 number of 100% athletics-based discounts that a school can grant each year. The precise number
12 varies by division and sport. For example, the NCAA prohibits a Division I institution from
13 offering more than 13 basketball related 100% yearly discounts or 11.7 baseball related 100%
14 yearly discounts. The equivalent limits at Division II schools are 10 and 9 respectively.

15 29. In some sports, the NCAA permits these 100% discounts to be distributed among
16 more than one student. For example, in any given year, a Division I institution could offer 11
17 baseball players a “free” year towards their bachelors degree or it could offer 22 baseball players a
18 one year 50% discount on tuition.

19 30. A school’s ability to divide its allotted price discounts, however, is not unlimited.
20 For some sports, the NCAA additionally limits the total number of students who can receive
21 athletics-based discounts of any amount. Specifically, for the major sports of baseball, football and
22 basketball, the NCAA prohibits Division I schools from providing athletics-based discounts to
23 more than 27, 85 and 13 student-athletes respectively. For Division II schools the limits for
24 baseball, football and basketball are 9, 36 and 10 respectively.

25 31. For purposes of the rules restricting the number of athletic discounts that a school
26 can grant, the NCAA refers to student-athletes as “counters.”

27 32. The NCAA and its member institutions have no legitimate interest beyond the
28 unlawful restraint of trade for the unlawful practices outlined above. Former NCAA president

1 Walter Byers candidly and publicly admitted that “collegiate amateurism . . . is an economic
2 camouflage for monopoly practice.” Far from protecting athletes amateur status, Byers admitted
3 that the NCAA’s byzantine rules regarding athletic discounts are nothing more than “a device to
4 divert [that] money elsewhere” i.e. into the pockets of the NCAA, its member institutions and their
5 high level officers and employees. That is certainly true for the specific practices challenged here
6 i.e. the NCAA’s (i) prohibition on multi-year athletics-based discounts and (ii) its unlawful caps on
7 the amount of athletics-based discounts that can be awarded by its member institutions.

8 33. The NCAA cannot justify its conduct as necessary to preserve amateurism.

9 34. Specifically, a prohibition on multi-year athletics-based discounts is not necessary
10 to maintain the “amateurism” that the NCAA supposedly cherishes (except when it comes to its
11 own bloated profits). Indeed, the NCAA itself has acknowledged this explicitly. Specifically, an
12 NCAA Presidential Taskforce concluded that:

13 The idea of a five-year scholarship reflects the fact that college
14 scholarships are fundamentally academic, even if the merit basis is
15 sports skill. Under the current structure of athletics scholarships,
16 athletes may be legitimately concerned that their continued access to
17 education depends on sports success. This can create a conflict of
18 incentives that may lead to an emphasis on athletics at the cost of
19 academics.

20 35. The NCAA’s byzantine rules regarding the number of price discounts that can be
21 awarded to student-athletes are similarly unjustified by amateurism concerns. Lifting limitations
22 on the number of athletics-based price discounts that can be offered to student-athletes would have
23 absolutely no effect on amateurism because student-athletes would continue to receive no wages
24 for their playing.

25 36. The NCAA cannot justify its anticompetitive actions on the basis of “competitive
26 balance.”

27 37. Specifically, prior to 1973 multi-year athletics-based discounts were the norm, not
28 the exception. Indeed, the Knight Commission on Intercollegiate Athletics has recommend that
schools offer five year athletics-based “scholarships” instead of the current one year renewable
scholarships. Notably, when evaluating proposed changes to the Bylaws that would have permitted
multi-year athletics discounts, “NCAA Research Staff” indicated that the “data/information” that

1 would be relevant to the decision was (i) “the impact on the total population of student-athletes”;
2 (ii) “the financial cost to institutions to award multi-year scholarships to student-athletes”; (iii) the
3 “scholarship structure for the general student body” and (iv) the “effects will multi-year
4 scholarships have with the idea of five years of eligibility.” Nowhere did the NCAA research staff
5 indicate that any concerns existed about the maintenance of competitive balance. That is because
6 no “competitive balance” concerns exist related to multi-year scholarships.

7 38. Similarly, the NCAA cannot justify its restrictions on the number of athletics-based
8 discounts it permits member institutions to award and the distribution of those discounts. The
9 NCAA already has extreme competitive imbalances between its member schools. The NCAA
10 obviates these competitive imbalances by dividing schools into divisions and then, in many cases,
11 further sub-dividing these divisions to ensure competitive balance. There is no economic reason
12 that lifting the NCAA’s wholly arbitrary caps would result in any competitive imbalance that could
13 not be obviated by less-restrictive alternatives that do not require fixing the price of bachelor’s
14 degrees sold to student-athletes, such as additional divisions or subdivisions or changes to its
15 divisions or subdivisions.

16 39. Notably, the NCAA’s current rules in many cases exacerbate competitive
17 imbalances and therefore cannot possibly be justified by a concern for competitive balance. For
18 example, the least competitive schools athletically are Division III schools but these are the very
19 schools that the NCAA *prohibits* from offering athletics-based price discounts. Likewise, Division
20 II schools are generally less competitive athletically than Division I schools but the NCAA
21 generally permits Division I schools to offer *more* athletics-based discounts. Similarly, the top
22 football schools are governed by the NCAA’s “Football Bowl Subdivision” rules, formally known
23 as Division I-A. These rules permit Bowl Subdivision members to award 85 full “scholarships,”
24 which can be divided among 85 players. In contrast, lower ranked schools that are members of the
25 Championship Subdivision, formerly known as Division I-AA, are permitted to award only 63 full
26 “scholarships,” which can likewise be divided between 85 players.

27 40. In short, the NCAA’s rules prohibiting multi-year athletics-based discounts and
28 capping the number of athletics-based discounts have nothing whatsoever to do with maintaining

1 competitive balance. But even if they did, “competitive balance” is not a valid pro-competitive
2 justification for the fixing of the price of bachelor’s degrees sold to student-athletes alleged above
3 because it does not result in any pro-competitive effects in the market for bachelor’s degrees. That
4 is, it does not increase the output or quality of bachelor’s degrees or lower the overall price of
5 bachelor’s degrees. To the contrary it severely restricts output and results in dramatically higher
6 prices. Consequently, antitrust laws require that the NCAA ensure competitive balance without
7 resorting to fixing the price of bachelor’s degrees for student-athletes.

8 VI. INJURY TO PLAINTIFF AND CLASS MEMBERS

9 41. Mr. Agnew was heavily recruited by numerous Division I colleges and universities.
10 Several schools made formal scholarship offers to Mr. Agnew who ended up selecting Rice
11 University in large part as a result of the sizable athletics-based discount promised to him by the
12 University. Specifically, Rice University promised him a 100% discount on the price of one year’s
13 tuition for a bachelor’s degree. In a competitive market, Rice University would have provided its
14 entire football team with multi-year tuition discounts of 100%.

15 42. In his first season with the Rice football program, Plaintiff Agnew saw action in all
16 13 of the Owls’ games, an impressive accomplishment for a true freshman at the Football Bowl
17 Subdivision level. For the year, Mr. Agnew recorded six tackles and blocked a punt against
18 Florida State.

19 43. Prior to his sophomore season, the head coach who recruited Mr. Agnew to Rice left
20 the university to take the same position at Tulsa. Mr. Agnew struggled to find playing time under
21 the new staff and saw time in just five games in 2007, including a career-high six-tackle effort
22 against Texas Tech on September 15.

23 44. The promising start to Mr. Agnew’s football career would also be derailed by
24 medical problems. He underwent shoulder and ankle surgeries to repair injuries sustained on the
25 football field and also battled severe migraine headaches.

26 45. Prior to his junior year, Mr. Agnew was told that his scholarship would not be
27 renewed and that he would no longer have a spot on the roster. He appealed the non-renewal of the
28 scholarship and won, receiving a full year’s tuition despite no longer being a member of the Rice

1 football team. However, he did not receive tuition money for his senior year of college and, as a
2 result, Mr. Agnew has paid tuition and room and board out-of-pocket, a major and unexpected
3 expense. In order to receive his degree, Mr. Agnew will be forced to continue to pay tuition and
4 room and board.

5 46. In a competitive market, Mr. Agnew would not have incurred these tuition or room
6 and board payments because he would have received a multi-year athletic discount sufficient to
7 cover the entire cost of his bachelor's degree.

8 47. Mr. Agnew's story is not unique.

9 48. The NCAA's wholly artificial caps on the number and distribution of athletics-
10 based discounts reduces the overall supply of athletics-based discounts available to student-athletes
11 thereby forcing them to overpay for bachelor's degrees by millions of dollars. Top tier athletes
12 routinely receive less than 100% discounts and thousands of highly talented student-athletes
13 receive no discounts at all. As a result, top tier athletes are often forced to pay full or partial tuition
14 to attend a top university in their sport or are forced to sign with lower-caliber programs that have
15 not reached their "scholarship limits" simply because the top universities are capped in the amount
16 of athletics-based discounts they can offer. In short, the supply of available scholarships is kept
17 artificially low by NCAA rules.

18 49. Similarly, the NCAA's prohibition on multiyear athletics-based discounts has
19 injured thousands of student-athletes by causing them to pay millions more in tuition when their
20 athletics-based discounts are reduced or not renewed. When these athletics-based discounts are
21 reduced or not renewed, a student is left with the decision to remain at the school and pay for
22 tuition and expenses out of pocket or consider transferring and, in many cases, being forced to sit
23 out a season per NCAA rules.

24 50. It is a common practice today for a new coach or coaching staff to push out
25 incumbent scholarship players in order to make room for student-athletes that the coaches have
26 handpicked themselves. For example, when John Calipari was hired as the University of Kentucky
27 men's basketball coach in April 2009, he brought with him an already-assembled class of recruits
28 that was lauded as one of the best in the country. However, to stay under the NCAA's limit of 13

1 “counters” per team, Mr. Calipari needed to see to it that a number of inherited players surrendered
2 their scholarships. Mr. Calipari callously made clear to these players that they were no longer
3 welcome on Kentucky’s team.

4 51. Former Kentucky Wildcat player Kevin Galloway revealed to ESPN: “[Mr.
5 Calipari] kept it real straight, kind of got to the point. Pretty much said he’s got guys coming in
6 there next year. It’s his team and his players so he’s really expecting them to produce and play a
7 lot of minutes . . . I kind of got the vibe that I needed to go to a different place.” Mr. Galloway left
8 Kentucky to enroll at Texas Southern University of the Southwestern Athletic Conference where
9 he sat out the 2009-2010 season in accordance with college basketball transfer rules.

10 52. Student-athletes who suffer injuries that prevent them from competing at a high
11 level are also at risk for non-renewal of their scholarships. Jason Whitehead, a former football
12 player for the Ohio University Bobcats, suffered a career-ending injury during a workout in 2001
13 which left him temporarily paralyzed. A team doctor declared Mr. Whitehead medically
14 disqualified and a year later his athletics-based discount was taken away by the school. Left to pay
15 tuition and mounting medical bills on his own, Mr. Whitehead told the New York Times: “The
16 coach says ‘You’re on full scholarship. If you ever get hurt, we’ll make sure to take care of you.’
17 There’s a lot of us out there that get used.”

18 53. The stakes can be even higher for foreign athletes who come to the United States for
19 NCAA competition. Many international players must obtain student visas before traveling to the
20 U.S. in order to play a collegiate sport. These students generally depend on receiving an athletics-
21 based discount equal to 100% of the yearly cost of a bachelor’s degree because they are generally
22 not eligible for federally subsidized student loans. Absent receiving that discount, the player may
23 be forced to de-enroll as a fulltime student or seek off-campus employment, both actions that could
24 cause the individual to be returned to his or her native country under federal immigration law.

25 VII. CLASS ALLEGATIONS

26 54. Plaintiff sues on his own behalf and pursuant to Federal Rule of Civil Procedure
27 23(b)(3) and (b)(2) on behalf of the following class of persons:

28

1 Any individual who, while enrolled in an NCAA member institution,
2 (i) received an athletics-based Grant-In-Aid ("GIA") from an NCAA
3 member institution for at least one year, (ii) had their GIA reduced or
not renewed and (iii) subsequently paid tuition at a college,
university or other institution of higher education.

4 55. Excluded from the proposed Class are individuals whose GIAs were reduced,
5 cancelled or not renewed due to one of the reasons enumerated in Bylaw 15.3.4.2 of the NCAA
6 Division I Manual or Bylaw15.3.4.1 of the NCAA Division II Manual. Also excluded from all the
7 class are the NCAA, its member institutions, their employees, co-conspirators, officers, directors,
8 legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated
9 companies, class counsel and their employees, and the judicial officers, and associated court staff
10 assigned to this case.

11 56. Members in the class are collective referred as "class members" or "the Class"
12 unless otherwise specified.

13 57. The persons in the Class are so numerous that individual joinder of all members is
14 impracticable under the circumstances of this case. Although the precise number of such persons is
15 unknown, the exact size of the Class is easily ascertainable, as each class member can be identified
16 by using Defendant's records. Plaintiff is informed and believes that there are many thousands of
17 Class members.

18 58. There are common questions of law and fact specific to the Class that predominate
19 over any questions affecting individual members, including:

- 20 (a) Whether the NCAA and its member institutions unlawfully contracted,
21 combined and conspired to unreasonably restrain trade in violation of section
22 1 of the Sherman Act by agreeing not to offer multi-year "Grants-in-Aid";
- 23 (b) Whether the NCAA and its member institutions unlawfully contracted,
24 combined and conspired to unreasonably restrain trade in violation of section
25 1 of the Sherman Act by agreeing to limit the number of "Grants-in-Aid"
26 available to students;
- 27 (c) Whether class members are required to prove a relevant product market and,
28 if so, the boundaries of that market;
- (d) Whether class members are required to prove a geographic market and, if so,
the boundaries of that market;

- 1 (e) Whether the NCAA has any pro-competitive justification for its conduct;
- 2 (f) Whether the pro-competitive effects of the conduct, if any, outweigh the
- 3 clear injury to class members;
- 4 (g) Whether class members have suffered antitrust injury; and
- 5 (h) The nature and scope of injunctive relief necessary to restore a competitive
- 6 market.

7 59. Plaintiff's claims are typical of the Class claims, as they arise out of the same course
8 of conduct and the same legal theories as the rest of the Class, and Plaintiff challenges the practices
9 and course of conduct engaged in by Defendant with respect to the Class as a whole.

10 60. Plaintiff will fairly and adequately protect the interests of the class. He will
11 vigorously pursue the claims and has no antagonistic conflicts. Plaintiff has retained counsel who
12 are able and experienced class action litigators and are familiar with the NCAA.

13 61. Defendant has acted or refused to act on grounds that apply generally to the class,
14 and final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a
15 whole. A class action is also appropriate because Defendant has acted and refuses to take steps that
16 are, upon information and belief, generally applicable to thousands of individuals, thereby making
17 injunctive relief appropriate with respect to the Class as a whole.

18 62. Questions of law or fact common to class members predominate over any questions
19 affecting only individual members. Resolution of this action on a class-wide basis is superior to
20 other available methods and is a fair and efficient adjudication of the controversy because in the
21 context of this litigation no individual class member can justify the commitment of the large
22 financial resources to vigorously prosecute a lawsuit against Defendant. Separate actions by
23 individual class members would also create a risk of inconsistent or varying judgments, which
24 could establish incompatible standards of conduct for Defendant and substantially impede or
25 impair the ability of class members to pursue their claims. It is not anticipated that there would be
26 difficulties in managing this case as a class action.

IX. CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Violation of Section 1 of the Sherman Act
15 U.S.C. § 1**

63. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

64. The NCAA and NCAA member institutions by and through their officers, directors, employees, agents or other representatives have entered into an unlawful agreement combination and conspiracy in restraint of trade. Specifically, the NCAA and NCAA member institutions have unlawfully agreed to artificially inflate the price of a bachelor degree for class members by agreeing amongst themselves not to offer multi-year athletics-based discounts and by agreeing among themselves to artificially limit the overall supply of athletics-based discounts.

65. Defendant and its member institutions have undertaken this conduct in the United States and its territories.

66. Defendant's business activities and operations involve and affect the interstate movement of students and the interstate flow of funds (including but not limited to tuition, room and board and mandatory fees).

67. As a direct result of the conduct of Defendant and its co-conspirators class members have been injured. Price competition among NCAA member institutions has been unreasonably restrained and as a result class members have been injured because they are paying or have paid substantially more for their bachelor degree than they would in a competitive market.

68. The conduct of the NCAA is continuing and will continue to impose antitrust injury on student-athletes unless injunctive relief is granted.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

A. Certification of the action as a Class Action pursuant to the Federal Rules of Civil Procedure, and appointment of Plaintiff as the Class Representative and his counsel of record as Class Counsel;

1 B. A declaration by this Court that Defendant's conduct constituted a conspiracy, and
2 that Defendant is liable for the conduct of or damage inflicted by any other co-conspirator;

3 C. A declaration that the prohibition on multi-year athletic-based discounts is unlawful;

4 D. A declaration that the NCAA's restrictions on the number and total amount of
5 athletic-based discounts that can be offered to student-athletes are also unlawful;

6 E. Actual damages, trebled damages, punitive damages, and such other relief as
7 provided by the statutes cited herein;

8 F. Pre-judgment and post-judgment interest on such monetary relief;

9 G. Equitable relief enjoining Defendant from prohibiting multi-year athletic-based
10 discounts and enjoining Defendant from artificially reducing the total supply of discounts available
11 to NCAA student-athletes;

12 H. The costs of bringing this suit, including reasonable attorneys' fees; and

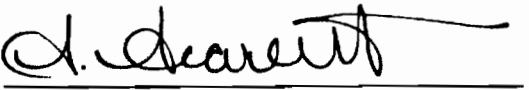
13 I. All other relief to which Plaintiff and class members may be entitled at law or in
14 equity.

15 **IX. JURY TRIAL DEMANDED**

16 69. Plaintiff demands a trial by jury on all issues triable of right by jury.

17 RESPECTFULLY SUBMITTED this 25th day of October 2010.

18 HAGENS BERMAN SOBOL SHAPIRO LLP

19 By 

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Attorneys for Plaintiff

10-25-10 JCS
CIVIL COVER SHEET

10

JS 44 (Rev. 12/07) (CAND Rev 1/10)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<p>I. (a) PLAINTIFFS JOSEPH AGNEW, on behalf of himself and all others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Shana E. Scarlett (217895) HAGENS BERMAN SOBOLO SHAPIRO LLP 715 Hearst Avenue, Suite 202, Berkeley, CA 94710 Tel: (510) 725-3000 Fax: (510) 725-3001</p>	<p>DEFENDANTS NATIONAL COLLEGIATE ATHLETIC ASSOCIATION</p> <p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 IHA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DTWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 15 U.S.C. § 1

Brief description of cause:
 Sherman Act violations resulting in inflated bachelor degree prices for NCAA student-athletes.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA

DATE: October 25, 2010

SIGNATURE OF ATTORNEY OF RECORD: *S. E. Scarlett*