

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: NATIONAL COLLEGIATE ATHLETIC

Civil Action No. 4:14-md-2541-CW

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Kent State University
P.O. Box 5190 Kent, Ohio 44242

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: ATTORNEY SERVICES OF NORTHEAST OHIO
221 Springside Drive
Akron, Ohio 44333

Date and Time:

12/23/2015 @ 10:00 a.m.

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached -- Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: November 25, 2015

CLERK OF COURT

OR

Handwritten signature of Benjamin E. Shiftan

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

PLAINTIFFS Benjamin E. Shiftan, ESQ. (265767) PEARSON I SIMON IWARSHAW, LLP
44 Montomerv Street, Suite San Francisco, California 94104 415.433.9000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena: Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A
SCHEDULE OF DOCUMENTS TO BE PRODUCED

DEFINITIONS

1. The following rules of construction shall apply to all document requests: (a) the terms “ALL” and “EACH” shall be construed as all and each; and (b) the use of the singular form of any word includes the plural and vice versa.
2. “DOCUMENT” and “DOCUMENTS” shall mean and include all “writings,” “recordings” or “photographs” as those terms are defined in Federal Rule of Civil Procedure 34 and Rule 1001 of the Federal Rules of Evidence. Without limiting the generality of the foregoing, the term “DOCUMENTS” includes both hard copy DOCUMENTS as well as electronically stored data files including e-mail, instant messaging, shared network files and databases. With respect to electronically stored data, “DOCUMENTS” also includes, without limitation, any data on magnetic or optical storage media (e.g., servers, storage area networks, hard drives, backup tapes, CDs, DVDs, thumb flash drives, floppy disks or any other type of portable storage device, etc.) stored as an “active” or backup file, in its native format.
3. The terms “YOU” and “YOUR” mean the responding party, its predecessors, successors, subsidiaries, departments, divisions, joint ventures and/or affiliates, including, without limitation, any organization or entity which the responding party manages or controls, together with all present and former directors, officers, employees, agents, representatives, consultants or any persons acting or purporting to act on behalf of the responding party.
4. The “SPORTS AT ISSUE” means NCAA Division I (a) Football Bowl Subdivision (“FBS”) football; (b) men’s basketball; and (c) women’s basketball.
5. Unless otherwise noted, the term “RELEVANT TIME PERIOD” means the period from January 1, 2008 through the present.

INSTRUCTIONS

1. This subpoena and any and all DOCUMENTS produced in response thereto are governed by a court-approved “Stipulated Protective Order Regarding Confidentiality of Documents and Materials,” dated January 15, 2015 (the “Protective Order”). A copy of the Protective Order is attached. The Protective Order ensures that information meeting the standards of confidential or personally private information shall be maintained as confidential by the requesting parties and all receiving parties, and shall not be disclosed to anyone outside of the litigation absent court order. DOCUMENTS responsive to this subpoena that contain such confidential or personally private information may be marked “Confidential” pursuant to paragraph seven of the Protective Order, or “Highly Confidential – Counsel Only” pursuant to paragraph eight of the Protective Order, as appropriate, but shall otherwise be produced in complete, unredacted form.

2. These requests call for the production of all responsive DOCUMENTS that are within the possession, custody or control of YOU or in the possession, custody, or control of YOUR present or former employees, representatives, agents, and persons consulted or otherwise available to YOU.

3. If any responsive DOCUMENT was but no longer is in YOUR possession, custody, or control, state the reason it is no longer in YOUR possession, custody, or control (i.e., lost, missing, destroyed, transferred, disposed of) and explain the circumstances surrounding the disposition of the DOCUMENT and the date it occurred.

4. If any DOCUMENT covered by these requests is withheld by reason of a claim of attorney-client privilege, attorney work product protection, or any other privilege or protection, please furnish a log providing the following information with respect to each such withheld DOCUMENT: date, author, recipients, general subject matter sufficient to make a prima facie

determination whether the asserted privilege has been properly invoked, and the legal basis upon which the DOCUMENT has been withheld.

5. If any DOCUMENT is redacted on the basis of privacy, please identify such in the redaction or by furnishing a log providing the following information with respect to each redaction: date, author, recipients, and type of information withheld on the basis of privacy.

6. With respect to any DOCUMENT maintained or stored electronically, please harvest it in a manner that maintains the integrity and readability of all data, including all metadata.

7. Please produce ALL DOCUMENTS maintained or stored electronically in native, electronic format with ALL relevant metadata intact. Encrypted or password-protected DOCUMENTS should be produced in a form permitting them to be reviewed. YOU are also requested to immediately meet and confer regarding the manner in which YOU shall produce DOCUMENTS stored electronically in order for the parties to try and reach agreement in this regard and avoid any unnecessary expense.

8. To the extent responsive DOCUMENTS reside on databases and such other systems and files, YOU are requested to produce the relevant database in useable form and/or permit access for inspection, review and extraction of responsive information.

9. These requests shall be deemed continuing so as to require further and supplemental production in accordance with Federal Rule of Civil Procedure 26(e).

DOCUMENT REQUESTS

Request No. 1:

All “squad list forms” prepared by YOUR institution during the RELEVANT TIME PERIOD for the SPORTS AT ISSUE. *See, e.g.*, 2015-16 NCAA Division I Manual, Bylaw 15.5.11.2 (“**Squad-List Form**. The institution shall compile a list of the squad members in each sport on the first day of competition and shall indicate thereon the status of each member in the categories listed (see Bylaw 12.10.2)”) (emphasis in original).

Request No. 2:

All “supplementary forms” prepared by YOUR institution during the RELEVANT TIME PERIOD in connection with any “squad list form” for the SPORTS AT ISSUE. *See, e.g.*, NCAA Division I Manual, Bylaw 15.5.11.2.1(b) (“A supplementary form may be filed to add names of persons not initially on the squad or to indicate a change of status.”).

Request No. 3:

DOCUMENTS sufficient to identify, by person’s name and sport, (1) every college athlete in the SPORTS AT ISSUE at YOUR institution that received any distribution from the NCAA’s Student Assistance Fund, Student-Athlete Opportunity Fund, or Special Assistance Fund during the RELEVANT TIME PERIOD (whether directly from YOUR institution, the NCAA, and/or any NCAA member Conference); (2) the precise source and amount of each such distribution to that college athlete; and (3) the purposes(s) for which the funds were requested and provided.

Request No. 4:

DOCUMENTS sufficient to identify, by person’s name and sport, (1) every college athlete in the SPORTS AT ISSUE at YOUR institution that received any athletics-related or non-athletics related financial aid during the RELEVANT TIME PERIOD; (2) the precise amounts and sources of each distribution of financial aid; and (3) the bases and calculations for each individual college athlete’s calculated cost of attendance and any cost of attendance payments, whether athletics-related or not.

Request No. 5:

DOCUMENTS sufficient to show YOUR institution’s basis for calculating the amounts for each component of athletics-related financial aid in the SPORTS AT ISSUE during the RELEVANT TIME PERIOD, for example, tuition, fees, room, board, books, and cost-of-attendance payments. *See, e.g.*, 2015-16 NCAA Division I Manual, Bylaw 15.02.5 (“A full grant-in-aid is financial aid that consists of tuition and fees, room and board, books, and other expenses related to attendance at the institution up to the cost of attendance established pursuant to Bylaws 15.02.2 and 15.02.2.1”).

ATTACHMENT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION ATHLETIC
GRANT-IN-AID CAP ANTITRUST
LITIGATION

CASE NO. 14-md-2541-CW
CASE NO. 14-cv-2758-CW

**STIPULATED ~~PROPOSED~~
PROTECTIVE ORDER REGARDING
CONFIDENTIALITY OF DOCUMENTS
AND MATERIALS**

This Document Relates to:
ALL ACTIONS

1 In order to protect confidential information obtained from or disclosed by the respective
2 parties or nonparties in connection with this litigation and pursuant to the Court's authority under
3 Federal Rule of Civil Procedure 26(c) and Federal Rule of Evidence 502, the parties submit as
4 follows:

5 **PURPOSES AND LIMITATIONS**

6 1. Disclosure and discovery activity in these actions are likely to involve production
7 of trade secrets, confidential, proprietary, or private information for which special protection from
8 public disclosure and from use for any purpose other than prosecuting this litigation would be
9 warranted. The unrestricted disclosure of such information would cause undue damage to the
10 parties and their businesses or to third parties. The disclosure of trade secrets, proprietary
11 information, and confidential business and financial information would harm the disclosing party
12 if it was made known to the disclosing party's competitors, and in some cases, could violate the
13 confidentiality agreements between the disclosing party and third parties or parties to those
14 agreements. Disclosure of private information and educational information is also governed by
15 statute and other laws such that disclosure of that information may be inconsistent with those
16 statutes and other laws. Accordingly, the parties in these actions hereby stipulate to and petition
17 the Court to enter the following Protective Order. The parties acknowledge that this Order does
18 not confer blanket protections on all disclosures or responses to discovery, and that the protections
19 outlined herein extend only to the limited information or items that are entitled to treatment as
20 confidential under applicable legal principles. This Protective Order is, therefore, entered into
21 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to protect information entitled to be
22 kept confidential.

23 2. The parties further acknowledge, as set forth in Paragraph 17, below, that this
24 Protective Order creates no entitlement to file confidential information under seal; the relevant
25 court rules (e.g., Civil Local Rule 79-5) set forth the procedures that must be followed, and reflect
26 the standards that will be applied, when a party seeks permission from the Court to file material
27 under seal.

28 3. Documents and other information produced by the parties or nonparties in

1 connection with these actions shall be used solely for purposes of prosecuting, defending or
2 attempting to settle these actions, whether such information is designated “Confidential” or
3 “Highly Confidential – Counsel Only” or not.

4 4. The protections outlined in this Order apply only to information appropriately
5 designated as “Confidential” or “Highly Confidential – Counsel Only” pursuant to the terms of
6 this Order (collectively, the “Protected Information”).

7 5. The parties have reviewed the Case Management Order (Dkt. 132), which includes
8 Judge Wilken’s Civil Pretrial Order, and Magistrate Judge Nathanael M. Cousins’ Civil Standing
9 Order. The parties represent that nothing contained in this Protective Order conflicts with any of
10 the provisions in those orders.

11 **NONDISCLOSURE OF PROTECTED INFORMATION**

12 6. Except with the prior written consent of the party or non-party originally
13 designating a document, discovery response, or deposition transcript (the “Disclosing Party”),
14 Protected Information may not be disclosed to any person except as specifically authorized herein.

15 7. Any Disclosing Party may designate as Confidential (by stamping the relevant page
16 or portion “Confidential”) any document, response to discovery, or deposition transcript which
17 that Disclosing Party considers in good faith to contain information involving trade secrets,
18 proprietary information, confidential business, educational or financial information, private
19 information or other information subject to protection under California or federal law, or another
20 applicable legal standard (“Confidential Information”). Where a document or response consists of
21 more than one page, the first page and each page on which Confidential Information appears shall
22 be so designated. Confidential Information may only be disclosed to those persons set forth in
23 Paragraph 12 below.

24 8. Any Disclosing Party may designate as Highly Confidential (by stamping the
25 relevant page or portion “Highly Confidential – Counsel Only”) any document, response to
26 discovery, or deposition transcript which that Disclosing Party considers in good faith to contain
27 Confidential Information, the disclosure of which to another party or non-party would create a
28 substantial risk of serious harm that could not be avoided by less restrictive means (“Highly

1 Confidential – Counsel Only Information”). Where a document or response consists of more than
2 one page, the first page and each page on which Highly Confidential Information appears shall be
3 so designated. Highly Confidential – Counsel Only Information may only be disclosed to those
4 persons set forth in Paragraph 13 below.

5 9. A Disclosing Party may designate information disclosed by it during a deposition
6 or in response to written discovery as “Confidential” or “Highly Confidential – Counsel Only” by
7 so indicating in said responses or on the record at the deposition. Additionally a party may
8 designate in writing, within 21 days after receipt of said responses or of the deposition transcript
9 for which the designation is proposed, the specific pages of the transcript and/or specific responses
10 that are “Confidential” or “Highly Confidential – Counsel Only.” Any party may object to such
11 proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures
12 described in Paragraph 14 below. Unless otherwise designated during the deposition, deposition
13 transcripts shall be treated in their entirety as “Highly Confidential – Counsel Only” Information
14 for 21 days after receipt. All parties shall affix the relevant legend required by paragraphs 7
15 and/or 8 of this Order on each page of the deposition transcript designated “Confidential” or
16 “Highly Confidential – Counsel Only” at the deposition or by subsequent written notice.

17 10. The inadvertent failure to designate Protected Information that has been disclosed
18 as Confidential or Highly Confidential – Counsel Only shall be without prejudice to any claim by
19 the Disclosing Party that it is Confidential or Highly Confidential – Counsel Only and shall not
20 waive the Disclosing Party’s right to secure protection under this Order for such material. In the
21 event a Disclosing Party designates material as Confidential or Highly Confidential – Counsel
22 Only after it has been inadvertently disclosed, the receiving party will treat such material pursuant
23 to the relevant designation pursuant to this Order and shall make arrangements with the Disclosing
24 Party to have the Protected Information, including copies, marked “Confidential” or “Highly
25 Confidential – Counsel Only.”

26 11. If it comes to a Disclosing Party’s attention that information or items that it
27 designated for protection do not qualify for protection, the Disclosing Party must promptly notify
28 all other parties that it is withdrawing the designation.

PERMISSIBLE DISCLOSURES

12. Confidential Information that is designated as such in accordance with the terms of this Protective Order shall not be disclosed to any person other than the following, and only to the extent necessary to litigate these actions:

a. counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for these actions;

b. employees of such counsel, including a party's in-house legal staff;

c. plaintiffs, or any officer or employee of a party, to the extent deemed necessary by counsel for the prosecution or defense of these actions;

d. consultants or expert witnesses retained for the prosecution or defense of these actions, provided that each such person shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information;

e. the original author, addressees, or recipients of the Confidential Information;

f. the Court, court personnel and court reporters; and

g. witnesses (other than persons described in Paragraph 12(d)) who testify at deposition or at trial, provided that such witnesses shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information; and

h. persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that such persons or entities shall execute a copy of the certification annexed to this Protective Order as Exhibit A before being shown or given any Confidential Information.

13. Highly Confidential – Counsel Only Information that is designated as such in accordance with the terms of this Protective Order shall not be disclosed to any person other than the following, and only to the extent necessary to litigate these actions:

a. counsel for the respective parties to this litigation, including in-house

1 counsel and co-counsel retained for these actions;

2 b. employees of such counsel, including a party's in-house legal staff;

3 c. consultants or expert witnesses retained for the prosecution or defense of
4 these actions, provided that each such person shall execute a copy of the certification annexed to
5 this Protective Order as Exhibit A before being shown or given any Highly Confidential – Counsel
6 Only Information;

7 d. the original author, addressees, or recipients of the Highly Confidential –
8 Counsel Only Information;

9 e. the Court, court personnel and court reporters;

10 f. persons or entities that provide litigation support services (e.g.,
11 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
12 retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that
13 such persons or entities shall execute a copy of the certification annexed to this Protective Order as
14 Exhibit A before being shown or given any Confidential Information; and

15 g. witnesses (other than persons described in Paragraph 13(c)) who testify at
16 deposition or at trial, provided that (1) the Receiving Party has a good faith belief that such
17 witness previously had access to or otherwise had obtained knowledge of the Highly Confidential
18 – Counsel Only Information; and (2) such witnesses shall execute a copy of the certification
19 annexed to this Protective Order as Exhibit A before being shown or given any Highly
20 Confidential – Counsel Only Information.

21 **RESOLVING DISPUTED CLASSIFICATIONS**

22 14. Should a party wish to object to a Confidential or Highly Confidential – Counsel
23 Only designation of any material, that party shall make a written Designation Objection to the
24 Disclosing Party, as set forth below:

25 a. Designation Objection: The objecting party shall identify with specificity
26 (i.e., by document control numbers, deposition transcript page and line reference, or other means
27 sufficient to locate such materials) each document bearing a disputed Confidential or Highly
28 Confidential – Counsel Only designation. A Designation Objection will trigger an obligation on

1 Parties are provided a meaningful opportunity to be heard by the Court regarding the proposed use
2 of Protected Information at any court hearing or trial, and may not offer such information until the
3 Affected Parties have been given an opportunity to provide an objection on the record.

4 16. Any party or interested non-party may move the Court for an order that the
5 evidence be received in camera or under other conditions to prevent unnecessary disclosure. That
6 court will then determine whether the proffered evidence should continue to be treated as either
7 Confidential Information or Highly Confidential – Counsel Only Information and, if so, what
8 protection, if any, may be afforded to such information at the trial.

9 **PROTECTED INFORMATION SUBPOENAED OR**
10 **ORDERED PRODUCED IN OTHER LITIGATION**

11 17. If at any time any Protected Information is subpoenaed by a court, administrative or
12 legislative body, or by any other person or entity purporting to have authority to require the
13 production of such information, the person to whom the subpoena is directed shall give written
14 notice thereof to the Disclosing Party as soon as reasonably practicable but in no event more than
15 five (5) days after receipt of the subpoena. After receipt of the notice specified under this
16 paragraph, the Disclosing Party shall have the sole responsibility for obtaining any order it
17 believes necessary to prevent disclosure of the Protected Information that has been subpoenaed. If
18 the Disclosing Party does not move for or obtain a court order prohibiting such production or
19 disclosure within the time allowed for production by the subpoena (or within such time as a court
20 may direct or as may be agreed upon between the Disclosing Party and the subpoenaing party) and
21 give written notice of such motion to the subpoenaing party and the person to whom the subpoena
22 is directed, the person to whom the subpoena is directed may commence production in response
23 thereto. The person to whom the subpoena is directed shall not produce any Protected Information
24 while a motion for a protective order brought pursuant to this paragraph is pending or while any
25 appeal from or request for appellate review of such motion is pending, unless ordered by a court to
26 do so.

27 **FILING DOCUMENTS UNDER SEAL**

28 18. No Protected Information shall be filed in the public record without the written

1 permission of the Disclosing Party, or a court order. The parties shall comply with the relevant
2 court rules (e.g., N.D. Cal. Civil L.R. 79-5) regarding filing of documents under seal. Copies of
3 any pleading, brief, or other document containing Protected Information which is served on
4 opposing counsel shall be stamped “**CONFIDENTIAL PURSUANT TO PROTECTIVE**
5 **ORDER**” or “**HIGHLY CONFIDENTIAL – COUNSEL ONLY PURSUANT TO**
6 **PROTECTIVE ORDER**”, shall be transmitted via email or cover letter and envelope bearing
7 similar designation, and shall be treated in accordance with the provisions of this Protective Order.

8 **NON-TERMINATION**

9 19. All provisions of this Protective Order restricting the communication or use of
10 Protected Information shall continue to be binding after the conclusion of this action unless
11 otherwise agreed or ordered. In addition, the court retains jurisdiction to resolve any dispute
12 concerning the disclosure of Protected Information in violation of the terms of this Order, unless
13 otherwise agreed or ordered.

14 20. Unless otherwise ordered or agreed to in writing by the Disclosing Party, within
15 sixty (60) days after the final termination of this litigation by settlement or exhaustion of all
16 appeals all parties in receipt of Protected Information shall use reasonable efforts to either return
17 such materials and copies thereof to the Disclosing Party or destroy such Protected Information
18 and certify that fact. The Receiving Party’s reasonable efforts shall not require the return or
19 destruction of Protected Information that (i) is stored on backup storage media made in accordance
20 with regular data backup procedures for disaster recovery purposes, (ii) is located in the email
21 archive system or archived electronic files of departed employees, or (iii) is subject to legal hold
22 obligations. Backup storage media will not be restored for purposes of returning or certifying
23 destruction of Protected Information, but such retained information shall continue to be treated in
24 accordance with the Order. Counsel for the parties shall be entitled to retain copies of court papers
25 (and exhibits thereto), correspondence, pleadings, deposition and trial transcripts (and exhibits
26 thereto), expert reports and attorney work product that contain or refer to Protected Information,
27 provided that such counsel and employees of such counsel shall not disclose such Protected
28 Information to any person, except pursuant to court order.

1 21. Nothing in this Order shall be interpreted in a manner that would violate any
2 applicable canons of ethics or codes of professional responsibility.

3 **MODIFICATION PERMITTED**

4 22. Nothing in this Protective Order shall prevent any party or other person from
5 seeking modification of this Protective Order or from objecting to discovery that it believes to be
6 otherwise improper.

7 **RESPONSIBILITY OF ATTORNEYS**

8 23. The counsel for the parties are responsible for employing reasonable measures,
9 consistent with this Protective Order, to control duplication of, access to, and distribution of copies
10 of Protected Information.

11 24. The counsel for the parties are responsible for administering and keeping the
12 executed original copy of Exhibit A pursuant to ¶¶ 12(d), 12(g), 12(h), 13(c), 13(f) and 13(g)
13 above.

14 **NO WAIVER**

15 25. Nothing herein shall be deemed to waive any applicable privilege or work product
16 protection or to affect the ability of a party to seek relief for an inadvertent disclosure of material
17 protected by privilege or work product protection. Pursuant to the Court's authority under Federal
18 Rule of Evidence 502 and any other applicable law, rule, or legal principal, the inadvertent
19 production of documents or information subject to the attorney-client privilege or work-product
20 immunity shall not waive the privilege or immunity if a request for the return of such documents
21 or information is made promptly after the Disclosing Party learns of its inadvertent production.

22 26. Nothing contained in this Protective Order and no action taken pursuant to it shall
23 prejudice the right of any party to contest the alleged relevancy, admissibility or discoverability of
24 the confidential documents and information sought.

25
26 IT IS SO STIPULATED.
27
28

1 DATED: January 9, 2015

MAYER BROWN LLP

2
3 By: /s/ Andrew S. Rosenman
4 **ANDREW S. ROSENMAN**

5 Andrew S. Rosenman (SBN 253764)
6 Britt M. Miller (pro hac vice)
7 71 South Wacker Drive
8 Chicago, IL 60606-4637
9 Telephone: (312) 782-0660
10 Facsimile: (312) 701-7711
11 Email: arosenman@mayerbrown.com
12 Email: bmillier@mayerbrown.com

13 Richard J. Favretto (*pro hac vice*)
14 **MAYER BROWN LLP**
15 1999 K Street, N.W.
16 Washington, D.C. 20006-1101
17 Telephone: (202) 263-3000
18 Facsimile: (202) 263-3300
19 Email: rfavretto@mayerbrown.com

Attorneys for Defendant The Big Ten Conference, Inc.

20 DATED: January 9, 2015

ROBINSON BRADSHAW & HINSON

21 By: /s/ Robert W. Fuller
22 **ROBERT W. FULLER**

23 Nathan C. Chase, Jr. (SBN 247526)
24 Robert W. Fuller, III (*pro hac vice*)
25 Mark W. Merritt (*pro hac vice*)
26 Lawrence C. Moore, III (*pro hac vice*)
27 Amanda R. Pickens (*pro hac vice*)
28 101 N. Tryon St., Suite 1900
Charlotte, NC 28246
Telephone: (704) 377-2536
Facsimile: (704) 378-4000
Email: nchase@rbh.com
Email: rfuller@rbh.com
Email: mmerritt@rbh.com
Email: lmoore@rbh.com
Email: apickens@rbh.com

Mark J. Seifert (SBN 217054)

1 DATED: January 9, 2015

JONES WALKER LLP

2
3 By: /s/ Mark A. Cunningham
4 MARK A. CUNNINGHAM

5 Mark A. Cunningham (pro hac vice)
6 201 St. Charles Avenue
7 New Orleans, LA 70170-5100
8 Telephone: (504) 582-8536
9 Facsimile: (504) 589-8536
10 Email: mcunningham@joneswalker.com

Attorneys for Defendant Sun Belt Conference

11 DATED: January 9, 2015

WALTER | HAVERFIELD LLP

12 By: /s/ R. Todd Hunt
13 R. TODD HUNT

14 R. Todd Hunt (*pro hac vice*)
15 The Tower at Erievue
16 1301 E. 9th Street, Suite 3500
17 Cleveland, OH 44114-1821
18 Telephone: (216) 928-2935
19 Facsimile: (216) 916-2372
20 Email: rthunt@walterhav.com

Attorneys for Defendant Mid-American Conference

21 DATED: January 9, 2015

BRYAN CAVE LLP

22 By: /s/ Adam Brezine
23 ADAM BREZINE


24 Adam Brezine (SBN 220852)
25 560 Mission Street, 25th Floor
26 San Francisco, CA 94105
27 Telephone: (415) 674-3400
28 Facsimile: (415) 675-3434
Email: adam.brezine@bryancave.com

Richard Young (*pro hac vice* application to be filed)
Brent Rychener (*pro hac vice* application to be filed)
90 South Cascade Avenue, Suite 1300

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**PURSUANT TO STIPULATION,
IT IS SO ORDERED.**

DATED: January 15, 2015



THE HON. CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

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I, _____, state:

1. My address and telephone number are: _____

2. My present employer and my employer's address are: _____

3. I have received a copy of the Stipulated Protective Order Regarding Confidentiality of Documents and Materials (the "Protective Order") entered in the case of *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, in the United States District Court for the Northern District of California, No. 4:14-MD-2541-CW.

4. I have carefully read the Protective Order and understand its provisions.

5. I will comply with all the provisions of the Protective Order.

6. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order any documents designated Confidential or Highly Confidential – Counsel Only, and I will use such Confidential Information and/or Highly Confidential – Counsel Only Information only for the allowed purposes stated in the Order.

7. I will return all documents that are designated Confidential or Highly Confidential – Counsel Only to counsel for the party from whom I obtained such documents.

8. I will submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of the enforcement of the Protective Order, and understand that violation of the Protective Order can constitute contempt of Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

SIGNED: _____, 201__.

Signature: _____

Printed Name: _____