

1 MILLER, CANFIELD, PADDOCK AND STONE PLC
 GREGORY L. CURTNER (*pro hac vice*)
 2 ROBERT J. WIERENGA (SBN 183687)
 KIMBERLY KEFALAS (*pro hac vice*)
 3 ATLEEN KAUR (*pro hac vice*)
 KIMBERLY L. SCOTT (*pro hac vice*)
 4 101 North Main Street, 7th Floor
 Ann Arbor, MI 48104-1400
 5 Telephone: (734) 663-2445
 Facsimile: (734) 663-8624
 6 email: curtner@millercanfield.com

7 BINGHAM McCUTCHEN LLP
 DAVID M. BALABANIAN (SBN 37368)
 8 FRANK M. HINMAN (SBN 157402)
 HAYWOOD S. GILLIAM, JR. (SBN 172732)
 9 DAVID BEACH (SBN 226972)
 MIT WINTER (SBN 238515)
 10 Three Embarcadero Center
 San Francisco, CA 94111-4067
 11 Telephone: (415) 393-2000
 Facsimile: (415) 393-2286
 12 email: david.balabanian@bingham.com

13 Attorneys for Defendant
 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

14

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

18 JASON WHITE, et al.,
 19 Plaintiffs,
 20 v.
 21 NATIONAL COLLEGIATE ATHLETIC
 ASSOCIATION,
 22 Defendant.
 23

No. CV06-0999 VBF (MANx)

**STIPULATION AND
 AGREEMENT OF SETTLEMENT
 BETWEEN PLAINTIFFS AND
 DEFENDANT NATIONAL
 COLLEGIATE ATHLETIC
 ASSOCIATION**

24
 25
 26
 27
 28

1 This Stipulation and Agreement of Settlement (“Stipulation”) is entered into
2 between (i) Class Representative plaintiffs Jovan Harris, Jason White, Brian Polak,
3 and Chris Craig (“Plaintiffs”), on behalf of themselves and the Class (as defined
4 below in ¶1(a)) and (ii) defendant National Collegiate Athletic Association
5 (“NCAA”) (collectively “the Settling Parties” or “Parties”). This Stipulation is
6 intended by the Settling Parties to fully and finally compromise, resolve, discharge
7 and settle the above-entitled action (“the Action”) subject to the terms and
8 conditions set forth below:

9 **WHEREAS:**

10 **The Litigation**

11 A. On February 17, 2006, Plaintiffs filed a class action complaint on
12 behalf of a putative class comprised of all student-athletes who received athletic-
13 based grants-in-aid participating in major Division I football and men’s basketball
14 programs between February 17, 2002 and the date of judgment in this matter,
15 whom, they claimed, have been, are or will be damaged by the alleged “GIA cap”
16 on athletic-based financial aid to student-athletes. On April 13, 2006, the NCAA
17 moved to dismiss that complaint. Plaintiffs opposed that motion and filed a
18 memorandum supporting their opposition. On June 16, 2006, the Court granted the
19 NCAA’s motion to dismiss, in part, with leave to amend.

20 B. On June 30, 2006, Plaintiffs filed their First Amended Complaint
21 (“FAC”). On July 20, 2006, the NCAA moved to dismiss the FAC. Plaintiffs
22 opposed this motion and filed a memorandum supporting their opposition. On
23 September 20, 2006 the Court issued an order denying the NCAA’s motion.

24 C. On September 8, 2006, Plaintiffs filed their Second Amended
25 Complaint (“SAC”), on behalf of all persons who received athletic-based grants-in-
26 aid (“GIAs”) from any of the (1) football programs sponsored by colleges and
27 universities included in NCAA Division I-A or (2) men’s basketball programs
28 sponsored by colleges or universities in the ACC, Big East, Big 10, Big 12, Pac-10,

1 SEC, Mountain West, West Coast, Horizon League, Colonial Athletic Association,
2 or Missouri Valley conferences, at any time between February 17, 2002 and the
3 date of judgment in this matter. The SAC, which is the operative complaint in this
4 matter, alleges that the NCAA and its members have, through a horizontal
5 agreement in violation of Section 1, of the Sherman Act, 15 U.S.C. § 1 capped the
6 amount of athletic-based financial aid any student-athlete may receive at the GIA
7 level, and that absent that agreement student athletes in the Class would receive
8 athletic-based financial aid covering the full cost of attendance (“COA”) at their
9 respective schools. The NCAA filed its answer to the SAC on October 5, 2006.

10 D. On August 29, 2006, Plaintiffs filed a motion and supporting
11 memoranda to certify the Action as a class action and to appoint themselves as
12 class representatives. The NCAA opposed that motion and filed memoranda
13 supporting its opposition. On October 19, 2006, the Court issued an order granting
14 the motion and certifying the Action as a class action. The class that was certified
15 is defined as the individuals who received athletic-based GIAs from colleges and
16 universities that sponsor (i) football programs included in NCAA Division I-A; or
17 (ii) men’s basketball programs sponsored by colleges or universities in the ACC,
18 Big East, Big 10, Big 12, Pac-10, SEC, Mountain West, WAC, Atlantic 10,
19 Conference USA, Mid-American, Sun Belt, West Coast, Horizon League, Colonial
20 Athletic Association, or Missouri Valley Conferences, at any time between
21 February 17, 2002 and the entry of judgment in this matter.

22 E. On August 30, 2007, the NCAA filed a motion for judgment on the
23 pleadings and supporting memoranda. Plaintiffs opposed that motion and filed a
24 memorandum supporting their opposition. The Court issued an order denying the
25 NCAA’s motion on October 11, 2007.

26 F. On October 22, 2007, the NCAA filed motions for summary judgment
27 and class decertification. The hearing dates and briefing deadlines on those
28

1 motions were vacated at the request of the Parties in anticipation of this
2 Stipulation.

3 G. Class Counsel have conducted an extensive investigation relating to
4 the allegations made in the SAC and the defenses asserted by the NCAA. As part
5 of this investigation, Class Counsel propounded document requests to the NCAA,
6 and served document subpoenas on its members and other non-parties and
7 reviewed approximately 500,000 pages of documents produced by the NCAA and
8 its members.

9 H. Through discovery and investigation, Class Counsel have inquired
10 into pertinent facts by taking depositions and conducting interviews. As of
11 December 3, 2007, Class Counsel have conducted 18 depositions of witnesses with
12 relevant knowledge, including 16 witnesses currently or formerly associated with
13 the NCAA or its members. Class Counsel have also retained and consulted
14 extensively with experts to review, advise, and offer opinions on the issues
15 germane to the claims of the Class.

16 I. This Stipulation resulted from extensive negotiations between Class
17 Counsel and the NCAA. The process included several in-person mediation
18 sessions supervised by the Hon. Daniel Weinstein, Judge of the Superior Court
19 (Ret.), and numerous telephonic and email exchanges.

20 J. Plaintiffs and Class Counsel believe that the investigation described
21 above provides an adequate and satisfactory basis for the Settlement described
22 herein.

23 **Benefits of the Settlement to the Settlement Class**

24 K. Plaintiffs and Class Counsel recognize and acknowledge the expense
25 and length of continued proceedings necessary to prosecute the Action against the
26 NCAA through trial and appeal. They have also considered the uncertain outcome
27 and the risk of protracted litigation, especially in complex litigation such as the
28 Action, as well as the difficulties and delays inherent in any such litigation. They

1 are further mindful of the inherent problems of proof and possible defenses to the
2 claims of federal antitrust law violations asserted in the Action and therefore
3 believe that it is desirable that the Released Claims be fully and finally
4 compromised, settled and resolved with prejudice and enjoined as set forth herein.
5 Based upon their evaluation, and with the concurrence of Judge Weinstein serving
6 as mediator, Plaintiffs and Class Counsel have determined that the Settlement set
7 forth in this Stipulation is fair, reasonable and adequate and in the best interests of
8 the Class.

9 **NCAA's Denial of Wrongdoing**

10 L. At all times, the NCAA has denied and continues to deny that it has
11 committed, or has threatened or attempted to commit, any wrongful act or violation
12 of law or duty of any nature, and contends that it has acted properly and lawfully.
13 Nevertheless, the NCAA desires to settle and terminate the claims asserted in the
14 Action so as to avoid the substantial expense, inconvenience and distraction of
15 continued litigation of the Action.

16 M. It is further expressly understood and agreed that the provisions
17 contained in this Stipulation and all related documents shall not be deemed a
18 presumption, concession or admission by the NCAA of any violation of law,
19 breach of duty, liability, default or wrongdoing as to any facts or claims alleged or
20 asserted in the Action, or in any other actions or proceedings, all of which are
21 denied, and shall not be interpreted, construed, deemed, invoked, offered or
22 received in evidence or otherwise used by any person in the Action or in any other
23 action or proceeding of any nature whatsoever, other than to enforce the
24 Stipulation.

25 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO
26 AND AGREED, by Plaintiffs, for themselves and on behalf of the Class, and by
27 the NCAA that, subject to the approval of the Court, the Action shall be settled,
28 compromised and dismissed on the merits and with prejudice and that the Released

1 Claims shall be fully and finally compromised, settled and released as to the
2 Released Persons, in the manner and upon the terms and conditions set forth
3 herein:

4 **Definitions**

5 1. The following terms, used in this Stipulation, shall have the meanings
6 specified below:

7 (a) For purposes of this Stipulation, and for such purposes
8 alone, "Class" means all persons who received athletic-based GIAs from any
9 of the (1) football programs sponsored by colleges and universities included
10 in NCAA Division I-A; or (2) men's basketball programs sponsored by
11 colleges and universities in the ACC, Big East, Big 10, Big 12, Pac-10, SEC,
12 Mountain West, WAC, Atlantic 10, Conference USA, Mid-American, Sun
13 Belt, West Coast, Horizon League, Colonial Athletic Association, or
14 Missouri Valley Conferences, at any time between February 17, 2002 and
15 the entry of Judgment in the Action, which period shall include the entire
16 academic year 2007-2008.

17 (b) "Class Member" means a member of the Class who has
18 not submitted a timely, signed request for exclusion.

19 (c) "Class Period" means the period beginning February 17,
20 2002 through the entry of Judgment in the Action.

21 (d) "Court" means the United States District Court for the Central
22 District of California.

23 (e) "District Court Approval" means the entry of the Judgment.

24 (f) "Effective Date" or "Final Approval" means the first day
25 following the date on which the order granting District Court Approval is finally
26 affirmed on appeal or is no longer subject to appeal or certiorari.

27 (g) "NCAA" means the National Collegiate Athletic Association,
28 its subsidiaries and predecessors.

1 (h) "Judgment" means the judgment to be entered in the Litigation
2 pursuant to paragraph 9 below.

3 (i) "Class Counsel" means the law firms of Susman Godfrey
4 L.L.P. and Blecher & Collins, P.C.

5 (j) "Plaintiffs" means Jason White, Chris Craig, Jovan Harris, and
6 Brian Polak.

7 (k) "Litigation" and "Action" mean case number CV-06-0999 VBF
8 (MANx) in the United States District Court for the Central District of California,
9 Western Division entitled *White v. NCAA*.

10 (l) "Mediator" means the Hon. Daniel Weinstein, Judge of the
11 Superior Court (Ret.).

12 (m) "Person" means any individual, corporation, partnership,
13 association, affiliate, joint stock company, estate, trust, unincorporated association,
14 entity, government and any political subdivision thereof, or any other type of
15 business or legal entity.

16 (n) "Preliminary Approval Order" means the Order that Plaintiffs
17 and the NCAA will seek from the Court, as described in paragraph 6, below. Entry
18 of a "Preliminary Approval Order" shall constitute "Preliminary Approval" of the
19 Settlement.

20 (o) "Released Persons" means and includes the "Defendant's
21 Released Persons" and the "Plaintiffs' Released Persons" as follows:

22 1. "Defendant's Released Persons" shall mean and include
23 the NCAA, the NCAA's members, the parents, affiliates, subsidiaries,
24 predecessors, successors, or assigns of the NCAA and its members, and all past,
25 present or future officers, directors, associates, stockholders, controlling persons,
26 representatives, employees, attorneys, auditors and accountants, underwriters,
27 insurers, financial or investment advisors or agents, heirs, executors, trustees,
28

1 general or limited partners or partnerships, personal representatives, estates or
2 administrators of any of the foregoing.

3 2. "Plaintiffs' Released Persons" shall mean and include the
4 Plaintiffs, and all other Class Members, and their predecessors, successors, assigns,
5 parents, heirs, administrators, executors, attorneys and personal representatives.

6 (p) "Released Claims" means and includes

7 1. any and all claims, causes of action, demands,
8 rights, or liabilities (including but not limited to claims for violation of the
9 federal antitrust laws or violations of the law of any state), and any
10 Unknown Claims that have been or that could have been asserted in this or
11 any other forum by or on behalf of the Plaintiffs or any Class Member based,
12 in whole or in part, on any of the acts, events or occurrences alleged in the
13 Second Amended Complaint, including any claim that Articles 15 and 16 of
14 the NCAA's Division I Operating Bylaws unlawfully restricted NCAA
15 members from providing athletic-based aid to Class Members in amounts at
16 the Class Member's COA level.

17 2. all claims asserted or unasserted by or on behalf of the
18 NCAA against Plaintiffs or Class Members or their predecessors, successors,
19 assigns, parents, heirs, administrators, executors, attorneys or personal
20 representatives relating to the institution or prosecution of the Action.

21 (q) "Settlement" means the settlement of the Action between
22 and among Plaintiffs on behalf of themselves and the Class Members and
23 the NCAA as set forth in this Stipulation.

24 (r) "Settlement Consideration" means the consideration the
25 NCAA has agreed to provide in return for the Settlement of this action, as
26 described in paragraph 2 below.

27 (s) "Settling Parties" or "Parties" means the Plaintiffs, on
28 behalf of themselves and the Class, and the NCAA.

1 (t) "Unknown Claims" means any claims which the
2 Plaintiffs or any Class Member does not know or suspect to exist in his or its
3 favor at the time of the release which, if known by him or it, might have
4 affected his or its settlement with and release of the Released Persons, or
5 might have affected his or its decision to enter into or not to object to this
6 Stipulation. Solely with respect to any and all Released Claims, the parties
7 hereto agree that, upon the Effective Date, the Plaintiffs and all Class
8 Members shall be deemed to have, and by operations of the Judgment shall
9 have, expressly waived, the provisions, rights and benefits of California
10 Civil Code §1542, which provides:

11 A general release does not extend to claims which the creditor does
12 not know or suspect to exist in his favor at the time of executing the
13 release, which if known by him must have materially affected his
14 settlement with the debtor.

14 Solely with respect to any and all Released Claims, the Plaintiffs shall expressly
15 and each of the Class Members shall be deemed to have, and by operation of the
16 Judgment shall have, expressly waived any and all provisions, rights and benefits
17 conferred by any law of any state or territory of the United States, or principle of
18 common law, which is similar, comparable or equivalent to California Civil Code
19 § 1542. The Plaintiffs and/or Class Members may hereafter discover facts in
20 addition to or different from those which he or it now knows or believes to be true
21 with respect to the subject matter of the Released Claims, but Plaintiffs shall
22 expressly and each Class Member, upon the Effective Date, shall be deemed to
23 have, and by operation of the Judgment shall have, fully, finally, and forever
24 settled and released any and all Released Claims, known or unknown, suspected or
25 unsuspected, contingent or non-contingent, whether or not concealed or hidden,
26 which now exist, or heretofore have existed upon any theory of law or equity now
27 existing or coming into existence in the future, including, but not limited to,
28 conduct which is negligent, intentional, with or without malice, or a breach of any

1 duty, law, or rule, without regard to subsequent discovery or existence of such
2 different or additional facts. The Plaintiffs acknowledge, and Class Members
3 shall be deemed by operation of the Judgment to have acknowledged, that the
4 foregoing waiver is separately bargained for and a key element of the Settlement.

5 **Settlement Consideration**

6 2. In full and complete settlement of the Released Claims, the NCAA
7 agrees to provide the following consideration, for the benefit of the Class
8 Members, in settlement of the claims against it:

9 (a) For the academic years 2007-08 through 2012-13, the NCAA
10 will make available a total of \$218 million to NCAA Division I member
11 institutions to use, if and to the extent they choose, for the benefit of their student-
12 athletes for purposes allowed under the current guidelines for the Student-Athlete
13 Opportunity Fund. The NCAA may use the funds currently used for the Special
14 Assistance Fund and the Academic Enhancement Fund for this purpose. The
15 NCAA will encourage the Division I member institutions to use the available funds
16 for such aid to student-athletes with demonstrated financial and/or academic needs,
17 and to include such assistance in their reports to the NCAA describing their uses of
18 these funds. Consistent with current practice, those reports will not be disclosed
19 outside the NCAA. This provision does not affect the Academic Performance
20 Program and those funds will continue to be allocated to Division I member
21 institutions that have student-athletes with specific academic needs.

22 (b) The NCAA will make available, over a three-year period, a
23 total of \$10 million to be distributed on a claims-made basis to qualifying former
24 student-athletes who are Class Members to reimburse them for bona fide
25 educational expenses hereafter incurred such as tuition, fees, books, supplies and
26 equipment required for courses of instruction, subject to the following individual
27 limits: (1) a single one-time payment from the NCAA of up to \$500 to cover
28 career development expenses such as resume preparation, career counseling, or job

1 placement services, or, at the NCAA's option, the provision of such services from
2 vendors identified by the NCAA; and (2) up to \$2,500 per year for a maximum of
3 three years to reimburse *bona fide* educational expenses incurred in connection
4 with a program at an accredited institution leading to a two or four-year
5 undergraduate degree or an accredited professional (*e.g.*, law, medical, education,
6 dentistry or other professional programs), graduate, or post-graduate degree or
7 professional certificate (*e.g.*, a teaching, paralegal, or continuing education
8 certificate offered by a two or four-year college or university). If at the end of the
9 three-year period, any portion of the \$10 million has not been expended, it will be
10 the subject of a supplemental distribution by the NCAA over the three subsequent
11 years, or fewer years if the NCAA chooses, to the Division I schools having
12 substantially the same effect as an additional contribution to the funds listed in
13 Paragraph 2(a) above. In meeting its obligations under this paragraph, the NCAA
14 may not use funds currently allocated to its degree completion program or its
15 postgraduate scholarship program. The NCAA will establish and maintain
16 throughout the three-year period a website that describes these benefits and the
17 terms on which they are available and the process by which eligible Class
18 Members may submit their applications for such benefits together with any
19 necessary documentation and provides links to the application forms for such
20 benefits. The website will also provide an address to which Class Members may
21 submit any questions they may have about the claims process. The deadline for
22 submission of claims for such benefits shall be six months prior to the end of the
23 three year period described above, in order to provide sufficient time for the
24 processing and payment of claims prior to the date fixed for the disposition of any
25 unclaimed funds.

26 (c) Arrangements have been made under which the NCAA's
27 Division I member schools can provide basic accident insurance coverage for
28 injuries sustained by student-athletes while participating in college athletics.

1 (d) Conditioned upon final approval of this Settlement, the NCAA
2 Division I Board of Directors has approved adoption of a rule permitting, but not
3 requiring, Division I member schools to provide year round, comprehensive health
4 insurance to student-athletes.

5 (e) The possibility of allowing aid through graduation to student-
6 athletes who no longer qualify for athletics-based aid has been recommended by
7 the NCAA staff and is currently under study by the NCAA's Academic/Eligibility/
8 Compliance Cabinet. The NCAA will also place before the Cabinet for study the
9 question of allowing member schools to provide multi-year scholarships to
10 student-athletes.

11 **Notice of Settlement**

12 3 Plaintiffs will be responsible for notifying the Class Members of the
13 Settlement. In addition to the Settlement Consideration detailed above, the
14 NCAA agrees to pay up to a maximum of \$100,000 to Class Counsel
15 toward the reasonable out-of pocket costs incurred in connection with
16 providing of the Class Settlement Notice to the Class. Class Counsel shall
17 provide the NCAA, upon request, appropriate documentation of all out-of-
18 pocket costs incurred in connection with providing the Class Settlement
19 Notice.

20 4 Plaintiffs shall promptly provide the NCAA with information
21 sufficient for the NCAA to determine, with reasonable specificity, the
22 number and identity of the members of the Class who have been sent notice
23 to date of the pendency of the Action, the contents of such notice and the
24 means by which they were notified and the number and identities of the
25 members of the Class who elected to opt out. If the NCAA determines, in
26 good faith, that the notice provided to date is not sufficient to secure an
27 effective release from a substantial majority of the Class, it reserves the
28 right to request that additional notice procedures be employed, including

1 without limitation, the inclusion of a further opt-out period in the Class
2 Settlement Notice. If the NCAA requires that a notice be given to the Class
3 in addition to the original class notice and the Class Settlement Notice or
4 that notice be given in some form or manner other than that prescribed by
5 the Court with respect to the original class notice, the NCAA shall bear the
6 cost of such additional or different notice.

7 5 The NCAA shall have the option to terminate the Settlement in the
8 event that more than 3% of the Class timely and validly opt out of the Class,
9 or are not bound and validly released for any reason or combination of
10 reasons.

11 **Submission of the Settlement to Court for Approval**

12 6. Promptly upon execution of the Stipulation, the Settling Parties shall
13 apply to the Court for preliminary approval of the Settlement and approval
14 of the Class Settlement Notice, and for the scheduling of a hearing for
15 consideration of final approval of the Settlement.

16 7. The Settling Parties have agreed upon the following documents to be
17 submitted to the Court for its consideration along with this Stipulation:
18 [Proposed] Order Preliminarily Approving Settlement and Providing for
19 Notice to the Class (Exhibit A); and Notice of Class Action Settlement and
20 Fairness Hearing (Exhibit B) (“Class Settlement Notice”).

21 8. The Settling Parties shall jointly apply to the Court for entry of the
22 [Proposed] Order Preliminarily Approving Settlement and Providing for
23 Notice to the Class, and a Hearing Date for Final Approval of Settlement,
24 substantially in the form attached hereto as Exhibit A, requesting, *inter alia*:

25 (a) the preliminary approval of the Settlement set forth in the
26 Stipulation;

27 (b) setting a hearing (the “Fairness Hearing”), upon notice to the
28 Class, to consider: (i) whether the Settlement should be approved as fair,

1 reasonable and adequate to the Class, and whether an order should be entered
2 dismissing on the merits and with prejudice the claims that are or ever have been
3 asserted in the Litigation by Plaintiffs and the Class Members against the NCAA
4 and Defendant's Released Persons who are or have been named as defendants in
5 the Litigation; and (ii) Lead Counsel's application for an award of attorneys' fees
6 and payment of costs and expenses;

7 (c) approving the method of giving notice of pendency and
8 proposed Settlement to the Class Members;

9 (d) approving the form of notice attached hereto as Exhibit B; and

10 (e) setting a period of time during which Class Members may serve
11 written objections to the Settlement, or the application for attorneys' fees and
12 expenses.

13 9. If the Court approves the Settlement, the Parties shall jointly request
14 entry of a Judgment, the entry of which is a condition of this Stipulation and
15 Settlement:

16 (a) approving the Settlement as fair, reasonable and adequate,
17 within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and
18 directing its consummation pursuant to its terms;

19 (b) directing that the claims of Plaintiffs and the Class Members be
20 dismissed without costs and with prejudice, and releasing the Released Claims as
21 against each of Defendants' Released Persons;

22 (c) finding that the complaints filed by Plaintiffs, and all
23 responsive pleadings and motions filed by the NCAA, or any of Defendant's
24 Released Persons who are or have been named as defendants in the Litigation,
25 were filed on a good faith basis in accordance with Rule 11 of the Federal Rules of
26 Civil Procedure;

27

28

1 (d) permanently barring and enjoining the institution and
2 prosecution by Plaintiffs and other Class Members of any other action against the
3 Defendant's Released Persons in any court asserting any Released Claim;

4 (e) permanently barring and enjoining the institution and
5 prosecution by the NCAA of any action against Plaintiffs, Plaintiffs' Released
6 Persons, and other Class Members in any court asserting any Released Claim;

7 (f) reserving jurisdiction over this Litigation, including all further
8 proceedings concerning the administration, consummation and enforcement of this
9 Settlement;

10 (g) containing such other and further provisions consistent with the
11 terms of this Settlement, to which the parties hereto expressly consent in writing.

12 **Attorneys Fees and Expenses**

13 10. In addition to the Settlement Consideration described above, the
14 NCAA has agreed as part of the Settlement not to object to Class Counsel's
15 request for approval by the Court of attorneys' fees of \$7.5 million and partial
16 reimbursement of expenses of \$1.1 million for a total amount not to exceed \$8.6
17 million.

18 11. At the Fairness Hearing, Class Counsel will request entry of an order
19 approving their application for an award of attorneys' fees and expenses. In
20 addition to the Settlement Consideration described above, Plaintiffs may also
21 apply for incentive payments in the amount of \$5,000 for each of them and for the
22 former student-athletes who provided deposition testimony in the Action.

23 12. The NCAA agrees not to oppose these applications and to pay the
24 amounts awarded by the Court in response to them in addition to the Settlement
25 Consideration described above. Thirty days after entry of the Preliminary
26 Approval Order the NCAA will deposit into an interest bearing account the sum of
27 \$8.6 million to be disbursed in accordance with the Court's order on the
28 application of Class Counsel for an award of attorneys' fees and expenses. Any

1 portion of the sum so deposited which is not awarded to Class Counsel shall be
2 returned to the NCAA.

3 **Releases**

4 13. As of the Effective Date, Plaintiffs and all Class Members release all
5 of the Released Claims described in paragraph 1(p)(1) above, against the
6 Defendant's Released Persons.

7 14. As of the Effective Date, the NCAA releases all of the Released
8 Claims described in paragraph 1(p)(2) above, against the Plaintiffs' Released
9 Persons.

10 **Effect of Disapproval, Cancellation or Termination of Agreement**

11 15. If the Court does not enter the Judgment substantially in the form
12 provided for in paragraph 9, or if the Court enters the Judgment and appellate
13 review is sought and on such review, the entry of Judgment is vacated, modified
14 or reversed, then this Stipulation shall be cancelled and terminated, unless all
15 Settling Parties who are adversely affected thereby, in their sole discretion within
16 thirty days from the date of the mailing of such ruling to such Settlement Parties,
17 provide written notice to all other Parties of their intent to proceed with the
18 settlement under the terms of the Judgment as it may be modified by the Court.
19 Such notice may be provided on behalf of Plaintiffs and the Class Members by
20 Class Counsel. No party shall have any obligation whatsoever to proceed under
21 any terms other than substantially in the form provided and agreed to herein. If
22 any party hereto engages in a material breach of the terms hereof, any other party,
23 provided that it is in substantial compliance with the terms of this Stipulation, may
24 terminate this agreement on 10-days' notice to the breaching party or sue for
25 enforcement.

26 16. In the event this Stipulation is terminated or cancelled or fails to
27 become effective for any reason, the parties to this Stipulation shall be deemed to
28 have reverted *nunc pro tunc* to their respective status as of the date and time

1 immediately before the execution of this Stipulation and they shall proceed in all
2 respects as if this Stipulation and related orders had not been executed and without
3 prejudice in any way from the negotiation, fact or terms of this Stipulation.

4 17. This Stipulation, whether or not consummated, and any proceedings
5 or agreements relating to the Stipulation, the Settlement, and any matters arising in
6 connection with settlement negotiations, proceedings, or agreements:

7 (a) shall not be offered or received against the NCAA as evidence
8 of or construed as or deemed to be evidence of any presumption, concession, or
9 admission by the NCAA of the truth of any fact alleged by Plaintiffs or the validity
10 of any claim that had been or could have been asserted in the Action or in any
11 litigation, or the deficiency of any defense that has been or could have been
12 asserted in the Action or in any litigation, or of any liability, negligence, fault, or
13 wrongdoing of the NCAA;

14 (b) shall not be deemed to be or used as an admission of any
15 liability, negligence, fault or wrongdoing of the NCAA in any civil, criminal or
16 administrative proceeding in any court, administrative agency or other tribunal;

17 (c) shall not be construed against the NCAA or the Plaintiffs or any
18 Class Member as an admission or concession that the consideration to be given
19 hereunder represents the amount which could be or would have been awarded to
20 said Plaintiffs or Class Members after trial; and

21 (d) shall not be construed as or received in evidence as an
22 admission, concession or presumption against Plaintiffs or any Class Members or
23 any of them that any of their claims are without merit.

24 **Miscellaneous Provisions**

25 18. All of the Exhibits attached hereto shall be incorporated by reference
26 as though fully set forth herein.

27 19. This Stipulation may be amended or modified only by a written
28 instrument signed by counsel for the Settling Parties or their successors-in-

1 interest.

2 20. The Settling Parties intend this Stipulation to be a final and complete
3 resolution of all disputes asserted or which could be asserted by the Class
4 Members against the Defendant's Released Parties with respect to the Released
5 Claims. Accordingly, the Parties agree not to assert in the Litigation or in any
6 other judicial forum that the Litigation was brought or defended in bad faith or
7 without a reasonable basis. The NCAA agrees not to assert any claim under Rule
8 11 of the Federal Rules of Civil Procedure or any similar law, rule or regulation
9 that the Litigation was brought in bad faith or without a reasonable basis.
10 Plaintiffs and the Class Members agree not to assert any claim under Rule 11 of
11 the Federal Rules of Civil Procedure or any similar law, rule or regulation that any
12 pleading filed, motion made or position taken by the NCAA, or their counsel, in
13 the Litigation was filed, made or taken in bad faith or without a reasonable basis.
14 The Settling Parties agree that the terms of this Stipulation were negotiated at
15 arm's length and in good faith by the Settling Parties, and reflect a settlement that
16 was reached voluntarily based upon adequate information and sufficient discovery
17 and after consultation with experienced legal counsel, and under the supervision of
18 the Mediator, and that none of the Settling Parties is a "prevailing party."

19 21. The Settling Parties agree that the Settlement set forth herein
20 constitutes a fair, reasonable and adequate resolution of the claims that Plaintiffs
21 asserted against the NCAA.

22 22. To the extent permitted by law, all agreements made and orders
23 entered during the course of the Litigation relating to the confidentiality of
24 information shall survive this Stipulation.

25 23. The waiver by one party of any breach of this Stipulation by any
26 other party shall not be deemed a waiver of any other prior or subsequent breach
27 of this Stipulation.

28 24. This Stipulation and its exhibits constitute the entire agreement

1 among these parties, and no representations, warranties or inducements have been
2 made to or relied upon by any party concerning this Stipulation or its exhibits,
3 other than the representations, warranties and covenants contained and
4 memorialized in such documents.

5 25. In the event that there exists a conflict or inconsistency between the
6 terms of this Stipulation and the terms of any exhibit attached hereto, the terms of
7 this Stipulation shall prevail.

8 26. This Stipulation may be executed in one or more counterparts. All
9 executed counterparts and each of them shall be deemed to be one and the same
10 instrument provided that counsel for the parties to this Stipulation shall exchange
11 among themselves original signed counterparts.

12 27. The Settling Parties and their respective counsel of record agree that
13 they will use their best efforts to obtain all necessary approvals of the Court
14 required by this Stipulation.

15 28. Each counsel signing this Stipulation represents that such counsel has
16 authority to sign this Stipulation on behalf of his client or clients.

17 29. Plaintiffs and Class Counsel represent, acknowledge and agree that
18 none of the claims or causes of action asserted in the Action has been assigned or
19 in any manner transferred, in whole or in part, by Plaintiffs.

20 30. Nothing in this Stipulation or the negotiations relating thereto, is
21 intended to or shall be deemed to constitute a waiver of any applicable privilege or
22 immunity, including, without limitation, attorney-client privilege, joint defense
23 privilege, or work product immunity.

24 31. Class Counsel and Plaintiffs agree not to share their work product or
25 experts with any other person or entity unless required to do so by law or court
26 order entered subsequent to the Stipulation.

27 32. This Stipulation shall be binding upon and shall inure to the benefit
28 of the successors and assigns of the parties hereto, including any and all Released

1 Parties and any corporation, partnership, or other entity into or with which any
2 party hereto may merge, consolidate or reorganize.

3 33. Notices required by this Stipulation shall be submitted either by any
4 form of email, overnight mail, or in person to:

5 SUSMAN GODFREY L.L.P.
6 Marc M. Seltzer
7 1901 Avenue of the Stars, Suite 950
8 Los Angeles, CA 90067
9 mseltzer@susmangodfrey.com

10 BLECHER & COLLINS P.C.
11 Maxwell M. Blecher
12 515 S. Figueroa St., 17th Floor
13 Los Angeles, CA 90071
14 mblecher@blechercollins.com

15 COUNSEL FOR PLAINTIFFS AND THE CLASS

16 MILLER, CANFIELD, PADDOCK AND STONE P.L.C.
17 Gregory L. Curtner
18 101 North Main St., 7th Floor
19 Ann Arbor, MI 48104
20 curtner@millercanfield.com

21 BINGHAM McCUTCHEN LLP
22 David M. Balabanian
23 Three Embarcadero Center
24 San Francisco, CA 94111
25 david.balabanian@bingham.com

26 COUNSEL FOR THE DEFENDANT NCAA


27 34. Any action based on this Stipulation or to enforce any of its terms
28 shall be venued in the United States District Court for the Central District of
California, which shall retain jurisdiction over all such disputes. All parties to this
Stipulation shall be subject to the jurisdiction of the United States District Court
for the Central District of California for all purposes related to this Litigation and
this Stipulation.

35. This Stipulation shall be governed by and construed in accordance
with the laws of the State of California, without regard to that State's rules

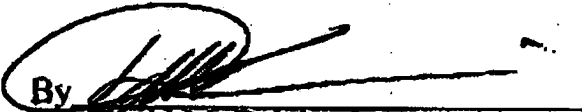
1 regarding conflict of laws, to the extent that federal law does not apply.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

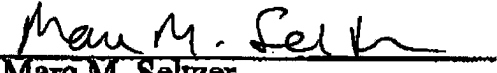
DATED: January 28, 2008 MILLER, CANFIELD, PADDOCK & STONE PLC

By 
Gregory L. Curtner (*pro hac vice*)
Attorneys for Defendant
National Collegiate Athletic Association

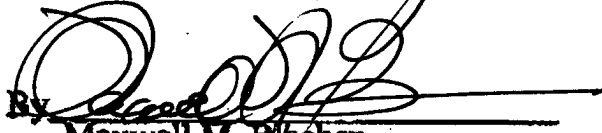
DATED: January 28, 2008 BINGHAM McCUTCHEN LLP

By 
David M. Balabanian
Attorneys for Defendant
National Collegiate Athletic Association

DATED: January 28, 2008 SUSMAN GODFREY L.L.P.

By 
Marc M. Seltzer
Attorneys for Plaintiffs

DATED: January 28, 2008 BLECHER & COLLINS P.C.

By 
Maxwell M. Blecher
Attorneys for Plaintiffs