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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

SAMUEL MICHAEL KELLER, et al., on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

ELECTRONIC ARTS, INC.; NATIONAL  
COLLEGIATE ATHLETICS ASSOCIATION;  
COLLEGIATE LICENSING COMPANY,

Defendants.

Case No. 4:09-cv-1967 CW

**FINAL JUDGMENT AND ORDER OF  
DISMISSAL WITH PREJUDICE**

Judge: Hon. Claudia Wilken  
Courtroom: 2, 4<sup>th</sup> Floor  
Complaint Filed: May 5, 2009

1 This matter (the “Lawsuits”) came before the Court for hearing on July 16, 2015, pursuant  
2 to Plaintiffs’ Notice of Motion and Motion for Final Approval of Class Action Settlement, Dkt. No.  
3 1224, filed by *Keller* Named Plaintiffs Samuel Michael Keller, Bryan Cummings, LaMarr Watkins,  
4 and Bryon Bishop, individually and as representatives of the Settlement Class defined in Paragraph  
5 3 below, filed on July 2, 2015, on the application of the settling Parties for approval of the  
6 Settlement set forth in the Amended Class Action Settlement Agreement and Release (including  
7 Exhibits) (“Settlement Agreement” or “Settlement”).<sup>1</sup>

8 Due and adequate notice of the Settlement having been given to the Settlement Class; the  
9 Court having carefully considered all papers filed and proceedings held herein, including the  
10 objections to the proposed Settlement and/or fee petitions, the Memorandum of Points and  
11 Authorities in Support of the Motion and the associated Declarations, the Settlement Agreement,  
12 the arguments of counsel, and the record in this case; the Court otherwise being fully informed in  
13 the premises; and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED,  
14 AND DECREED that:

15 1. The Court grants the Motion for Final Approval of Class Action Settlement and  
16 grants final approval to the Settlement. The Settlement Agreement is hereby incorporated into this  
17 District Court Final Approval Order (“Order and Final Judgment”), and all terms used herein shall  
18 have the same meanings set forth in the Settlement Agreement.

19 2. This Court has personal jurisdiction over all Settlement Class Members and subject  
20 matter jurisdiction to approve the Settlement Agreement.

21 3. The Court confirms its previous certification of the following Settlement Class, for  
22 settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3):

23  
24 <sup>1</sup> Dkt. No. 1158-2. This Court also has before it a motion for final approval of a proposed class  
25 action settlement in *NCAA Player Likeness Litigation*, No. 4:09-cv-1967-CW (Dkt. No. 1158-1),  
26 between Electronic Arts Inc. (“EA”), Collegiate Licensing Company LLC (“CLC”), and various  
27 named plaintiffs (the “EA Settlement”). The two proposed class action settlements both concern  
28 the alleged use of NCAA men’s football and basketball players’ names, images, and likenesses in  
certain NCAA-Branded Videogames manufactured and distributed by EA. The parties have  
coordinated the notice and claims administration of both settlements, as well as the various class  
settlement deadlines. Because the two settlements are separate, however, the Court will issue  
separate orders in each settlement, and has evaluated each proposed settlement on its own terms.

1 All NCAA Division I football and men’s basketball players (1) listed on a  
2 roster published or issued by a school whose team was included in an NCAA-  
3 Branded Videogame originally published or distributed from May 4, 2003  
4 through September 3, 2014 and (2) whose assigned jersey number appears on  
5 a virtual player in the software, or whose photograph was otherwise included  
6 in the software.

7 Excluded from the Settlement Class are EA, CLC, the NCAA, and their  
8 officers, directors, legal representatives, heirs, successors, and wholly or  
9 partly owned subsidiaries or affiliated companies; Class Counsel and their  
10 employees and immediate family members; and the judicial officers and  
11 associated court staff assigned to the Lawsuits and their immediate family  
12 members.

13 The NCAA and the Released Parties shall retain all rights to assert that the Lawsuits may not be  
14 certified as a class action except for settlement purposes.

15 4. The Court confirms its previous appointment of Plaintiffs Samuel Michael Keller,  
16 Bryan Cummings, LaMarr Watkins, and Bryon Bishop as the class representatives (“Class  
17 Representatives” or “*Keller* Named Plaintiffs”) for the Settlement Class. The Court finds that these  
18 Class Representatives have adequately represented the Settlement Class for purposes of entering  
19 into and implementing the Settlement.

20 5. The Court hereby approves Incentive Awards in the amount of \$5,000 to Samuel  
21 Michael Keller, \$5,000 to Bryan Cummings, \$5,000 to LaMarr Watkins, and \$5,000 to Bryon  
22 Bishop in accordance with Right of Publicity Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and  
23 Incentive Awards (NCAA Settlement); finds that such awards are fair and reasonable; and orders  
24 said awards to be paid pursuant to the Settlement Agreement.

25 6. The Court confirms its previous appointment of Hagens Berman Sobol Shapiro LLP  
26 and The Paynter Law Firm PLLC as Class Counsel for the Settlement Class. The Court finds that  
27 Class Counsel have adequately represented the Settlement Class for purposes of entering into and  
28 implementing the Settlement.

7. The Court hereby awards to Class Counsel (a) attorneys’ fees in the amount of  
\$5,800,000 (29% of the Settlement Fund) and (b) reimbursement of expenses in the amount of  
\$224,434.20. In making this award of attorneys’ fees and reimbursement of expenses, the Court has  
considered and finds as follows.

1           8.       This Court has discretion to award fees either as a percentage of the common fund  
2 established or pursuant to the lodestar method. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir.  
3 2000). Under either approach the focus should be on whether the “end result is reasonable.”

4 *Id.* The Court finds that under both methods the requested fees are reasonable.

5           9.       The Court finds that the attorneys’ fees award is fair and reasonable under the  
6 percentage-of-the-recovery method based on the following factors:

7           (a)       The results obtained by counsel in this case. *See Vizcaino v. Microsoft Corp.*, 142  
8 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001), *aff’d*, 290 F.3d 1043 (9th Cir. 2002).

9           The Settlement provides significant relief to Settlement Class Members in the form  
10 of a large cash fund from which they can claim damages. Indeed, it appears that the  
11 combined fund from the NCAA and EA settlements represents approximately 50-  
12 75% of the potential recovery at trial—an exceptional result.

13           (b)       The risks and complex issues involved in this case, which were significant and  
14 required a high level of skill and high-quality work to overcome. *See In re*  
15 *Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). Class Counsel  
16 devoted significant time and effort to the prosecution of this case, which presented  
17 unique legal issues involving, among other things, choice of law, copyright, First  
18 Amendment issues, agency law, and ascertainability of a class in the context of right  
19 of publicity claims.

20           (c)       The attorneys’ fees requested were entirely contingent upon success and counsel  
21 risked time and effort and advanced costs with no guarantee of compensation. *See In*  
22 *re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

23           Class Counsel bore a high degree of risk in bringing and pursuing this action,  
24 including the considerable risk of non-payment, in particular because the case was  
25 the first nationwide class action of its kind and thus untested. In addition, Class  
26 Counsel faced the substantial risk of having to pay Defendant’s fees pursuant to the  
27 fee-shifting provisions of California’s publicity rights statute, Cal. Civ. Code  
28 § 3344, and California’s Anti-SLAPP statute, Cal. Code Civ. P. § 425.16.

1 (d) The range of awards made in similar cases justifies an award of 29% here, *see In re*  
2 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989).

3 (e) The Settlement Class Members have been notified of the requested fees and had an  
4 opportunity to inform the Court of any concerns they have with the request.

5 10. These factors justify an upward adjustment of the Ninth Circuit’s 25% benchmark.  
6 As such, the Court finds that the requested fee award comports with the applicable law and is  
7 justified by the circumstances of this case.

8 11. Alternatively, the Court also finds the fees awarded reasonable using the “lodestar”  
9 method. Under this method, the Court first calculates Class Counsel’s “lodestar” by multiplying the  
10 hours worked by their hourly rate(s). This lodestar may then be adjusted upwards by a multiplier  
11 based on the results obtained and the risk borne by Class Counsel. Here, the declarations submitted  
12 by Class Counsel indicate that their lodestar is \$6,771,390.75, based on a total of 20,061.3 hours  
13 expended in the litigation. The Court finds that Class Counsel’s hourly rates are consistent with  
14 hourly rates charged by firms and attorneys of comparable skill and experience located in this  
15 district and nationwide. The Court also finds that the hours devoted to this case were reasonable  
16 given the complexity of the legal issues involved, which were addressed in extensive briefing  
17 before both at the District Court and Court of Appeals, as well as the extensiveness of both  
18 discovery and settlement negotiations. The fees awarded in this settlement and the amount to be  
19 awarded from the settlement with EA and CLC will represent an appropriate positive multiplier  
20 based on the significant recovery Class Counsel have achieved for Settlement Class Members, as  
21 well as the risks faced by Class Counsel, as explained above.

22 12. In light of the above, the Court finds the requested fees reasonable and that an award  
23 of \$5,800,000 for this Settlement is appropriate under both the lodestar and common fund  
24 approaches.

25 13. The Court also awards reimbursement of reasonable costs and expenses in the  
26 amount of \$224,443.20. The Court finds that these amounts were reasonably incurred in the  
27 ordinary course of prosecuting this case and were necessary given the complex nature and  
28 nationwide scope of the case, and that the total costs and expenses granted are allowable under the

1 Settlement.<sup>2</sup>

2 14. The Court confirms its previous appointment of Gilardi & Co. LLC as the Notice  
3 and Claims Administrator (“Administrator”) and finds that the Administrator has so far fulfilled its  
4 duties under the Settlement.

5 15. The Court orders that, by agreement between Class Counsel and the Administrator,  
6 \$133,436.27 be paid to the Administrator for past and future unreimbursed expenses relating to  
7 notice and administration of the Settlement. This is in addition to the \$185,476 already received by  
8 the Administrator for the fulfillment of its duties.

9 16. The Court confirms its previous findings in the Preliminary Approval Order that, for  
10 settlement purposes only, the Lawsuits meet all the requirements of Federal Rule of Civil  
11 Procedure 23(a) and (b)(3).

12 17. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court approves  
13 the Settlement set forth in the Settlement Agreement, and finds that the Settlement Agreement is, in  
14 all respects, fair, reasonable, and adequate, and in the best interests of, the Class Representatives,  
15 the Settlement Class, and each of the Settlement Class Members, and is consistent and in  
16 compliance with all requirements of due process and federal law. This Court further finds that the  
17 Settlement is the result of arm’s-length negotiations between experienced counsel representing the  
18 interests of the Class Representatives, the Settlement Class Members, and the Settling Defendant.  
19 The Court further finds that the Parties have evidenced full compliance with the Court’s  
20 Preliminary Approval Order and other Orders relating to this Settlement. The Settlement shall be  
21 consummated pursuant to the terms of the Settlement Agreement, which the Parties are hereby  
22 directed to perform.

23 18. The Court finds that the Class Notice plan as performed by the Parties—including  
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25 <sup>2</sup> The NCAA agreed not to object to an award of attorneys’ fees up to 29% of the Settlement  
26 Fund, or to an award of expenses and costs up to \$500,000, and on that basis does not object to  
27 Class Counsel’s request for such awards. The NCAA, however, takes no position on the  
28 reasonableness of Class Counsel’s request for fees and costs, or their asserted bases. The NCAA’s  
lack of objection to Class Counsel’s filings or to the awards of fees and costs in this Order and  
Final Judgment shall not be deemed to be an admission by the NCAA or the Released Parties of the  
reasonableness of the requested or awarded fees and costs.

1 the form, content, and method of dissemination of the Class Notice to Settlement Class Members,  
2 as well as the procedures followed for locating current addresses for potential Settlement Class  
3 Members for notice purposes—(i) constituted the best practicable notice; (ii) was reasonably  
4 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the  
5 Lawsuits and of their right to object to or exclude themselves from the Settlement; (iii) was  
6 reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive  
7 notice; and (iv) met all applicable requirements of Federal Rule of Civil Procedure 23 and due  
8 process, and any other applicable rules or law.

9           19. Fed. R. Civ. P. 23(c)(2)(B) requires that class notice “must clearly and concisely  
10 state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class  
11 certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an  
12 appearance through an attorney if the member so desires; (v) that the court will exclude from the  
13 class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and  
14 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).”

15           20. The Court finds that the notice program, previously approved by the Court in its  
16 Preliminary Approval Order, has been implemented and complies with Fed. R. Civ. P. 23(c)(2)(B).  
17 The Preliminary Approval Order outlined the form and manner by which the Settlement Class  
18 Members would be provided with notice of the Settlement, the Fairness Hearing, and related  
19 matters.

20           21. The nationwide notice program was extensive and robust. Among other things, it  
21 included individual mailed notice to members of the Settlement Class who could be identified  
22 through reasonable efforts; a dedicated settlement website; publication of a summary notice in  
23 leading sports publications; and the extensive use of Internet advertising to inform Settlement Class  
24 Members of the proposed Settlement. In order to create a database for mailed notice, the  
25 Administrator received 92,732 addresses of potential Settlement Class members via a website set  
26 up for NCAA member institutions, as well as via email. Notice and claims forms were mailed to  
27 over 90,000 potential Settlement Class Members. Summary notice was also published in *Sports*  
28 *Illustrated* and *ESPN the Magazine*. Mail and publication notice was supplemented by Internet

1 advertising and promotion through various sources, including Google, Facebook, and Twitter.  
2 Proof that mailing, publication, and advertising complied with the Preliminary Approval Order has  
3 been filed with the Court. This notice program fully complied with Fed. R. Civ. P. 23 and the  
4 requirements of due process. It provided due and adequate notice to the Class; in fact, the “reach  
5 rate” of the class notice was almost 95%. Furthermore, the large number of claim requests received  
6 as of July 2, 2015—20,241, which is an approximate estimate subject to change and final  
7 confirmation—provides further evidence of the sufficiency of notice.

8           22. The Court has reviewed Exhibit E to the Declaration of Kenneth Jue, Dkt. No.  
9 1223-5, and determines that Dkt. No. 1223-5 contains the complete list of all Persons who have  
10 submitted timely and untimely requests for exclusion from the Settlement Class. The Court rules  
11 that all Persons who requested exclusion shall be excluded from the Settlement Class. Exhibit 1 to  
12 this Order and Final Judgment is the complete list of all Persons who are excluded from the  
13 Settlement Class, and who therefore shall neither share in nor be bound by this Order and Final  
14 Judgment.

15           23. The Court finds that the Plan of Allocation is fair, reasonable, and adequate. The  
16 Plan of Allocation provides monetary recovery in some form, on a pro rata basis based on the  
17 number of their Season Roster Appearance Points, to all Settlement Class Members who filed a  
18 timely claim. *See In re Oracle Secs. Litig.*, No. 90-0931-VRW, 1994 U.S. Dist. LEXIS 21593, at  
19 \*3 (N.D. Cal. June 18, 1994). The Court hereby adopts Class Counsel’s proposal to extend the  
20 current Bar Date (July 2, 2015) such that claims will also be considered timely if they are either  
21 (1) submitted online through the Settlement website by 11:59 p.m. Pacific time on July 31, 2015, or  
22 (2) postmarked by 11:59 p.m. Pacific time on July 31, 2015. The Court also has reviewed the  
23 procedures set forth in the Joint Filing of Claim Dispute Resolution Procedure, including Exhibits  
24 A and B thereto (Dkt. No. 1241-3). The Court exercises its discretion to approve these procedures,  
25 which make non-substantive changes to the Plan of Allocation with respect to the timing of the  
26 claim dispute and payment disbursement processes outlined in Subparagraphs 62(e)-(h) of the  
27 Settlement Agreement. The Court also notes that there is no reversion to the NCAA of the  
28 Settlement Fund, maximizing the amount of payments to Settlement Class Members, as set forth in



1 Subparagraphs 62(a)-(i) of the Agreement. Accordingly, with the changes noted above, the Plan of  
2 Allocation is approved.

3 24. The Court has reviewed the objections of Darrin Duncan, Nathan Harris, and Tate  
4 George to this Settlement and overrules them. The Court notes that despite an extensive and robust  
5 nationwide class notice program, only three objections have been filed; the response to the  
6 proposed Settlement has been overwhelmingly positive. The Court overrules the objections and  
7 finds that they are without merit for the reasons set forth in Class Counsel’s filings, in open Court,  
8 and for the additional reasons set out in this Order and Final Judgment. In brief, the Court rules as  
9 follows:

- 10 a. First, the objections regarding the requested Attorneys’ Fees and Expenses Award  
11 are without merit. The requested fees and expenses are fair and reasonable under  
12 both the lodestar method and as a percentage of the common fund, and are awarded  
13 as detailed in this Order and Final Judgment. The objection that Class Counsel is  
14 seeking a double recovery for fees from both the EA Settlement and this Settlement  
15 is incorrect: the requested fees are sought based on Class Counsel’s efforts to  
16 secure both settlements.
- 17 b. Second, the objection that the claims process was burdensome and that checks  
18 should simply have been sent to Settlement Class Members’ last-known addresses  
19 is likewise without merit. The Court finds that the claims process is reasonable and  
20 appropriate given the challenges of locating all Settlement Class Members. The  
21 Settlement claims process minimizes waste, fraud, and administrative costs and is  
22 typical of class action cases like this one. The claims process, which this Court  
23 previously approved, is simple, straightforward, and designed to make submitting a  
24 claim as easy as possible—as demonstrated by the high claim rate: approximately  
25 29% as of July 2, 2015. Moreover, simply sending checks (many quite large) to the  
26 last-known addresses of Settlement Class Members, without confirmation from the  
27 Settlement Class Member, would have been irresponsible.
- 28 c. Third, the Court overrules objections regarding the size and scope of the relief

1 provided by the Settlement. The Court finds that the relief provided by the  
2 Settlement is fair, reasonable, and adequate to Settlement Class Members.

3 d. Fourth, the objections regarding the scope of the release are without merit because  
4 the objections do not accurately characterize the Released Claims. The Released  
5 Claims are appropriately limited to claims relating to the NCAA-Branded  
6 Videogames, as set forth in the Agreement.

7 e. Fifth, the objections to the Class Representatives' Incentive Awards are also  
8 without merit, and are awarded as detailed in this Order and Final Judgment. The  
9 requested Incentive Awards are fair and reasonable.

10 f. All other arguments of the objectors are overruled as without merit.

11 25. The Lawsuits and all individual and class claims contained therein, including all of  
12 the Released Claims, are dismissed with prejudice and on the merits as to the Class Representatives  
13 and all other Settlement Class Members (other than those listed in Exhibit 1 hereto), and as against  
14 each and all of the Released Parties, without fees or costs except as provided in the Settlement  
15 Agreement, in this Order and Final Judgment. The Court also approves the striking and dismissal  
16 with prejudice of the *Keller* Right of Publicity Claims in the Third Consolidated Amended  
17 Complaint in the *O'Bannon* case, as set forth in the Agreement.

18 26. As of the Effective Date, the Class Representatives and all other Settlement Class  
19 Members (other than those listed in Exhibit 1 hereto), and their heirs, estates, trustees, executors,  
20 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and  
21 anyone claiming through them or acting or purporting to act for them or on their behalf, regardless  
22 of whether they have received actual notice of the Settlement, have conclusively compromised,  
23 settled, discharged, and released all Released Claims against the NCAA and the Released Parties,  
24 and are bound by the provisions of the Settlement, as further provided by the Agreement, including  
25 but not limited to Paragraphs 33-34 and 73-78 of the Agreement.

26 27. This Order and Final Judgment shall be binding on, and have res judicata and  
27 preclusive effect in, all pending and future lawsuits or other proceedings encompassed by the  
28 Released Claims maintained by or on behalf of the Class Representatives and all other Settlement

1 Class Members (other than those listed in Exhibit 1 hereto), and their heirs, estates, trustees,  
2 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors,  
3 and anyone claiming through them or acting or purporting to act for them or on their behalf,  
4 regardless of whether the Settlement Class Member previously initiated or subsequently initiates  
5 individual litigation or other proceedings encompassed by the Released Claims, and even if such  
6 Settlement Class Member never received actual notice of the Lawsuits or the Settlement.

7 28. The Court permanently bars and enjoins the Class Representatives and all other  
8 Settlement Class Members (other than those listed in Exhibit 1 hereto) from (i) filing, commencing,  
9 prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or  
10 administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the  
11 Released Claims and (ii) organizing Settlement Class Members into a separate group, class, or  
12 subclass for purposes of pursuing as a purported class action any lawsuit or administrative,  
13 regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to  
14 include class allegations, or seeking class certification in a pending action) based on the Released  
15 Claims.

16 29. EA, CLC, and any other Party or Person who may assert a claim against any  
17 Released Party or Releasee based upon, relating to, or arising out of the Released Claims, the  
18 Lawsuits, any EA NCAA-Branded Videogame, or the Settlement are barred, enjoined, and  
19 permanently restrained from instituting, commencing, pursuing, prosecuting, or asserting any claim  
20 against the Released Parties for contribution, indemnity (with the exception of contractual  
21 indemnity claims to the extent that any may exist), or otherwise denominated (including but not  
22 limited to any other claim that arises out of, involves, or relates to any potential or actual liability  
23 owed to the *Keller* Named Plaintiffs and/or the Settlement Class, and/or for related costs or fees in  
24 connection with that asserted liability), as claims, cross-claims, counterclaims, or third-party claims  
25 in any court, arbitration, administrative agency, or forum, or in any other manner, including but not  
26 limited to a request for offset. All such claims are hereby extinguished, discharged, satisfied, and  
27 unenforceable, and nothing in this Paragraph shall be deemed to imply that EA, CLC, or any Party  
28 or Person has a right to contribution or indemnity against any of the Released Parties.

1           30.     The Settlement Agreement and the Settlement provided for therein, and any  
2 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or  
3 construed as evidence of, a presumption, concession, or an admission by any Party of liability or  
4 non-liability or of the certifiability or non-certifiability of a litigation class, or of any  
5 misrepresentation or omission in any statement or written document approved or made by any  
6 Party; provided, however, that reference may be made to the Agreement and the Settlement  
7 provided for therein in such proceedings as may be necessary to effectuate the provisions of the  
8 Settlement Agreement, as further set forth in the Agreement.

9           31.     Without further approval from the Court, the Parties are authorized to agree to and  
10 adopt such amendments, modifications, and expansions of the Settlement Agreement, including all  
11 Exhibits thereto, as (i) shall be consistent in all material respects with this Order and Final  
12 Judgment and (ii) do not limit the rights of Settlement Class Members.

13           32.     The Court orders that the certification of the Settlement Class and final approval of  
14 the Settlement, and all actions associated with them, are undertaken on the condition that they shall  
15 be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by any  
16 appellate court and/or other court of review, or if any of the Parties invokes the right to withdraw  
17 from the Settlement as provided in Paragraphs 86-87 of the Settlement Agreement, or if the  
18 Settlement does not become Final for any other reason, in which event the Settlement Agreement  
19 and the fact that it was entered into shall not be offered, received, or construed as an admission or  
20 as evidence for any purpose, including but not limited to an admission by any Party of liability or  
21 non-liability or of any misrepresentation or omission in any statement or written document  
22 approved or made by any Party, or of the certifiability of a litigation class, or otherwise be used by  
23 any Person for any purpose whatsoever, in any trial of these Lawsuits or any other action or  
24 proceedings, as further provided in the Settlement Agreement.

25           33.     The Court finds the Settlement is in good faith pursuant to federal law and  
26 California Code of Civil Procedure 877.6, including that the amount to be paid in the Settlement is  
27 in accord with the Class Representatives' and the Settlement Class Members' potential total  
28 recovery and the NCAA's potential liability; that the allocation of the Settlement is fair; that the

1 Settlement is not meant to be the equivalent of liability damages; that the Settlement considers the  
2 relevant financial circumstances of the NCAA; and that the Settlement is not the product of and  
3 does not evince collusion, fraud, or tortious conduct aimed to injure the interests of defendants  
4 other than the NCAA.

5 34. The Court finds that the CAFA Notices sent by the NCAA complied with 28 U.S.C.  
6 § 1715 and all other provisions of the Class Action Fairness Act of 2005.

7 35. The Escrow Account established by Class Plaintiffs' Co-Lead Counsel is approved  
8 as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 4688 and the Treasury  
9 Regulations promulgated thereunder.

10 36. The Court finds, under Fed. R. Civ. P. 54(b), that there is no just reason for delay in  
11 entering final judgment, and directs that this Order and Final Judgment shall be final and entered  
12 forthwith.

13 37. Without affecting the finality of this Order and Final Judgment, the Court reserves  
14 jurisdiction over the Class Representatives, the Settlement Class, and the NCAA as to all matters  
15 concerning the administration, consummation, and enforcement of the Settlement Agreement.

16  
17 IT IS SO ORDERED.

18  
19 

20 Dated: August 18, 2015

21 \_\_\_\_\_  
22 Judge Claudia Wilken  
23 Senior District Judge  
24  
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**EXHIBIT 1**

**Persons Excluded from Settlement Class**

| <b>Name</b>         | <b>City</b> | <b>State</b> |
|---------------------|-------------|--------------|
| Michael K. Taylor   | Anniston    | AL           |
| Michael Bolling     | Miami       | FL           |
| Chaz L. Anderson    | Inglewood   | CA           |
| Thomas P. Nardo     | Lancaster   | PA           |
| David Jeremy Schatz | Birmingham  | AL           |
| Anthony Khalife     | Plains      | PA           |
| Kristoff Williams   | Antioch     | CA           |

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