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8	UNITED STATES	DISTRICT COURT
9	NORTHERN DISTR	ICT OF CALIFORNIA
10	OAKLAN	D DIVISION
11		
12	IN RE: NATIONAL COLLEGIATE	CASE NO. 14-md-2541-CW
13	ATHLETIC ASSOCIATION ATHLETIC GRANT-IN-AID CAP ANTITRUST	CASE NO. 14-cv-2758-CW
14	LITIGATION	STIPULATED [PROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS
15	This Document Relates to:	AND MATERIALS
16	ALL ACTIONS	
17	ALL ACTIONS	
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40		14-md-2541-CW 14-cv-2758-CW
	STIPULATED [PROPOSED] PROTECTIVE	E ORDER REGARDING CONFIDENTIALITY
		Dockets.Justia.dom

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

5

PURPOSES AND LIMITATIONS

1. Disclosure and discovery activity in these actions are likely to involve production 6 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 information, and confidential business and financial information would harm the disclosing party 11 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 agreements. Disclosure of private information and educational information is also governed by 14 15 statute and other laws such that disclosure of that information may be inconsistent with those statutes and other laws. Accordingly, the parties in these actions hereby stipulate to and petition 16 the Court to enter the following Protective Order. The parties acknowledge that this Order does 17 not confer blanket protections on all disclosures or responses to discovery, and that the protections 18 19 outlined herein extend only to the limited information or items that are entitled to treatment as confidential under applicable legal principles. This Protective Order is, therefore, entered into 20 21 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to protect information entitled to be kept confidential. 22

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

connection with these actions shall be used solely for purposes of prosecuting, defending or
 attempting to settle these actions, whether such information is designated "Confidential" or
 "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.

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

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

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

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

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 Only after it has been inadvertently disclosed, the receiving party will treat such material pursuant 22 23 to the relevant designation pursuant to this Order and shall make arrangements with the Disclosing Party to have the Protected Information, including copies, marked "Confidential" or "Highly 24 Confidential – Counsel Only." 25

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.

1	PERMISSIBLE DISCLOSURES		
2	12. Confidential Information that is designated as such in accordance with the terms of		
3	this Protective Order shall not be disclosed to any person other than the following, and only to the		
4	extent necessary to litigate these actions:		
5	a. counsel for the respective parties to this litigation, including in-house		
6	counsel and co-counsel retained for these actions;		
7	b. employees of such counsel, including a party's in-house legal staff;		
8	c. plaintiffs, or any officer or employee of a party, to the extent deemed		
9	necessary by counsel for the prosecution or defense of these actions;		
10	d. consultants or expert witnesses retained for the prosecution or defense of		
11	these actions, provided that each such person shall execute a copy of the certification annexed to		
12	this Protective Order as Exhibit A before being shown or given any Confidential Information;		
13	e. the original author, addressees, or recipients of the Confidential		
14	Information;		
15	f. the Court, court personnel and court reporters; and		
16	g. witnesses (other than persons described in Paragraph 12(d)) who testify at		
17	deposition or at trial, provided that such witnesses shall execute a copy of the certification annexed		
18	to this Protective Order as Exhibit A before being shown or given any Confidential Information;		
19	and		
20	h. persons or entities that provide litigation support services (e.g.,		
21	photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,		
22	retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that		
23	such persons or entities shall execute a copy of the certification annexed to this Protective Order as		
24	Exhibit A before being shown or given any Confidential Information.		
25	13. Highly Confidential – Counsel Only Information that is designated as such in		
26	accordance with the terms of this Protective Order shall not be disclosed to any person other than		
27	the following, and only to the extent necessary to litigate these actions:		
28	a. counsel for the respective parties to this litigation, including in-house		
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1 || counsel and co-counsel retained for these actions;

b. employees of such counsel, including a party's in-house legal staff;
c. 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 Highly Confidential – Counsel
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

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

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RESOLVING DISPUTED CLASSIFICATIONS

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

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

the part of the Disclosing Party to make a good faith determination of whether the disputed
designation(s) is entitled to be treated as Confidential Information or Highly Confidential –
Counsel Only Information pursuant to the terms of this Protective Order. Within ten (10) court
days the Disclosing Party shall respond in writing to the Designation Objection either agreeing to
remove the disputed designation(s) or stating the Disclosing Party's refusal to do so. During that
period, the parties will meet and confer in good faith.

b. Court Determination: If the Disclosing Party refuses to agree to remove the 7 8 Confidential or Highly Confidential – Counsel Only designation pursuant to subsection (a) above, 9 the Objecting Party may make a written application to the Court to remove the protective 10 treatment in compliance with applicable court rules and orders. The application will be made within ten (10) court days of receiving the Disclosing Party's refusal to remove the disputed 11 designation(s). In any judicial proceeding challenging a Confidential or Highly Confidential – 12 13 Counsel Only designation, the burden of persuasion with respect to the propriety of the designation shall remain upon the Disclosing Party. If the Objecting Party fails to make such 14 timely application, the Disclosing Party's designation will remain in effect. 15

16 c. Pending a ruling, all parties shall continue to treat the information subject to
17 the Designation Objection pursuant to the disputed designation under the terms of this Protective
18 Order.

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PROTECTED INFORMATION AT TRIAL

15. The terms of this Protective Order do not preclude, limit, restrict or otherwise apply 20 21 to the use of documents at trial. Subject to the Federal Rules of Evidence, Protected Information may be offered at any court hearing (including trial) provided that the offering party confers in 22 23 good faith with the Disclosing Party (and, if the Disclosing Party is not a party to these actions, a 24 representative of the offering party's opposing parties (hereinafter together the "Affected Parties")) over the proposed use of that information five days prior to the anticipated use. If it is 25 not practicable for the offering party to provide the Affected Parties with five days' notice, the 26 27 offering party must provide the Affected Parties with as much notice as practicable. Regardless of 28 the notice provided, the offering party must take all reasonable steps to ensure that the Affected

Parties are provided a meaningful opportunity to be heard by the Court regarding the proposed use
 of Protected Information at any court hearing or trial, and may not offer such information until the
 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 ORDERED PRODUCED IN OTHER LITIGATION

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

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FILING DOCUMENTS UNDER SEAL

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

permission of the Disclosing Party, or a court order. The parties shall comply with the relevant
court rules (e.g., N.D. Cal. Civil L.R. 79-5) regarding filing of documents under seal. Copies of
any pleading, brief, or other document containing Protected Information which is served on
opposing counsel shall be stamped "CONFIDENTIAL PURSUANT TO PROTECTIVE
ORDER" or "HIGHLY CONFIDENTIAL – COUNSEL ONLY PURSUANT TO
PROTECTIVE ORDER", shall be transmitted via email or cover letter and envelope bearing
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.

20. Unless otherwise ordered or agreed to in writing by the Disclosing Party, within 14 15 sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals all parties in receipt of Protected Information shall use reasonable efforts to either return 16 such materials and copies thereof to the Disclosing Party or destroy such Protected Information 17 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 (and exhibits thereto), correspondence, pleadings, deposition and trial transcripts (and exhibits 25 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			
	10 14-md-2541-CW 14-cv-2758-CW		
	STIPULATED [PROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY		

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	STIPULATED [#4	COPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY	

1 DATED: January 9, 2015

WINSTON & STRAWN LLP

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		ROPOSED PROTECTIVE ORDER REGARDING CONFIDENTIALITY	14-cv-2758-CW	

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	STIPULATED [P	ROPOSED PROTECTIVE ORDER REGARDING CONFIDENTIALITY	14-cv-2758-CW

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	STIPULATED [PRO	POSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY

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		15	14-md-2541-CW
	STIPULATED [P	ROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY	14-cv-2758-CW

1 DATED: January 9, 2015

POLSINELLI PC

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		By: /s/ Karen Hoffman Lent KAREN HOFFMAN LENT		
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		ROPOSED PROTECTIVE ORDER REGARDING CONFIDENTIALITY	14-cv-2758-CW	
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16	DATED: January 9, 2015	COVINGTON & BURLING LLP	
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	STIPULATED [P	ROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY	14-UV-2/30-UW

1	DATED: January 9, 2015	JONES WALKER LLP	
	DATED. January 9, 2015	JOILES WALKER LEI	
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	STIPULATED [PROPOS	14-cv-2758 ED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY	<u></u>

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5 6	DATED: January 9, 2015 BRADLEY DEVITT HAA	AS & WATKINS, P.C.
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12		.com
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	Attorneys for Defendant we	estern Athletic Conference
14	14	
15	15	
16	16 FILER'S ATTESTATION	
17	17 I, KAREN HOFFMAN LENT, am the ECF user whose identi	fication and password are
18	18 being used to file this STIPULATED [PROPOSED] PROTECTIV	'E ORDER REGARDING
19	19 CONFIDENTIALITY OF DOCUMENTS AND MATERIALS.	n compliance with Local
20	20 Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this	s filing.
21	21 /s/ Karen Hoffma	an Lent
22	22	
23	23	
24	24	
25	25	
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	19	14-cv-2758-CW
	STIPULATED [PROPOSED] PROTECTIVE ORDER REGARDING CON	FIDENTIALITY

1		
2	PURSUANT TO STIPULATION,	
3	IT IS SO ORDERED.	
4	DATED: January <u>15</u> , 2015	
5		
6	THE HON. CLAUDIA WILKEN	
7	UNITED STATES DISTRICT JUDGE	
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	14-cv-2758 STIPULATED [PROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY	3-CW

1	EXHIBIT A
2	
3	I,, state:
4	1. My address and telephone number are:
5	2. My present employer and my employer's address are:
6	3. I have received a copy of the Stipulated Protective Order Regarding Confidentiality of
7	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
8	Court for the Northern District of California, No. 4:14-MD-2541-CW.
9	4. I have carefully read the Protective Order and understand its provisions.
10	5. I will comply with all the provisions of the Protective Order.
11	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,
12	and I will use such Confidential Information and/or Highly Confidential – Counsel Only Information only for the allowed purposes stated in the Order.
13	7. I will return all documents that are designated Confidential or Highly Confidential –
14	Counsel Only to counsel for the party from whom I obtained such documents.
15	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
16	violation of the Protective Order can constitute contempt of Court.
17	I declare under penalty of perjury under the laws of the United States that the foregoing
18	is true and correct.
19	SIGNED:, 201
20	Signature:
21	~ -g
22	Printed Name:
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	21 14-md-2541-CW 14-cv-2758-CW
	STIPULATED [PROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIALITY