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

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

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

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

This Document Relates to:  
  
ALL ACTIONS

14-md-2541-CW  
14-cv-2758-CW

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

### 5 **PURPOSES AND LIMITATIONS**

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

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

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

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

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

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

11 **NONDISCLOSURE OF PROTECTED INFORMATION**

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

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

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

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

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

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

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

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





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

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

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

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

27 **FILING DOCUMENTS UNDER SEAL**

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



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

8 **NON-TERMINATION**

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

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



















1 DATED: January 9, 2015

**JONES WALKER LLP**

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By:                   /s/ Mark A. Cunningham                    
                  MARK A. CUNNINGHAM

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Attorneys for Defendant Sun Belt Conference

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10 DATED: January 9, 2015

**WALTER | HAVERFIELD LLP**

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

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Attorneys for Defendant Mid-American Conference

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19 DATED: January 9, 2015

**BRYAN CAVE LLP**

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By:                   /s/ Adam Brezine                    
                  ADAM BREZINE

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


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

DATED: January 15, 2015

  
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THE HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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**EXHIBIT A**

I, \_\_\_\_\_, state:

1. My address and telephone number are: \_\_\_\_\_

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

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

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

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

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

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

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

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

SIGNED: \_\_\_\_\_, 201\_\_.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_