

1 Sean Eskovitz (SBN 241877)
2 WILKINSON WALSH + ESKOVITZ LLP
3 11726 San Vicente Blvd., Ste. 600
4 Los Angeles, CA 90049
5 Telephone: (424) 316-4000
6 Facsimile: (202) 847-4005
7 *seskovitz@wilkinsonwalsh.com*

Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO
LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslw.com

8 Beth A. Wilkinson (*pro hac vice*)
9 Alexandra M. Walsh (*pro hac vice*)
10 Brian L. Stekloff (*pro hac vice*)
11 Rakesh N. Kilaru (*pro hac vice*)
12 WILKINSON WALSH + ESKOVITZ LLP
13 2001 M Street NW, 10th Floor
14 Washington, DC 20036
15 Telephone: (202) 847-4000
16 Facsimile: (202) 847-4005
17 *bwilkinson@wilkinsonwalsh.com*
18 *awalsh@wilkinsonwalsh.com*
19 *bstekloff@wilkinsonwalsh.com*
20 *rkilaru@wilkinsonwalsh.com*

Bruce L. Simon (SBN 96241)
PEARSON, SIMON & WARSHAW, LLP
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Telephone: (415) 433-9000
Facsimile: (415) 433-9008
bsimon@pswlaw.com

Jeffrey L. Kessler (*pro hac vice*)
David G. Feher (*pro hac vice*)
David L. Greenspan (*pro hac vice*)
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166-4193
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
jkessler@winston.com
dfeher@winston.com
dgreenspan@winston.com

21 Jeffrey A. Mishkin (*pro hac vice*)
22 Karen Hoffman Lent (*pro hac vice*)
23 SKADDEN ARPS SLATE MEAGHER &
24 FLOM LLP
25 Four Times Square
26 New York, NY 10036
27 Telephone: (212) 735-3000
28 Facsimile (212) 735-2000
jeffrey.mishkin@skadden.com
karen.lent@skadden.com
Counsel for Defendant NCAA
[Additional counsel listed on signature page]

*Class Counsel for Jenkins and Consolidated
Action Plaintiffs*
[Additional counsel listed on signature page]

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

23 IN RE NATIONAL COLLEGIATE
24 ATHLETIC ASSOCIATION ATHLETIC
25 GRANT-IN-AID CAP ANTITRUST
26 LITIGATION

Case No. 4:14-md-02541-CW
Case No. 4:14-cv-02758-CW

JOINT CASE MANAGEMENT STATEMENT

26 THIS DOCUMENT RELATES TO: ALL
27 ACTIONS

Date: January 16, 2018
Time: 2:30 p.m.
Judge: Hon. Claudia Wilken

1 Pursuant to Northern District of California Local Rule 16-10(d), counsel for all parties in the
2 above-captioned actions submit this Joint Case Management Statement in advance of the hearing
3 scheduled for January 16, 2018.

4 **I. PROGRESS SINCE LAST JOINT CASE MANAGEMENT STATEMENT**

5 After the parties submitted their last Joint Case Management Statement (ECF No. 260), the
6 Court entered its order granting Plaintiffs’ motion for Rule 23(b)(2) class certification. ECF No. 205.
7 The Court certified three injunctive relief classes in the Consolidated Action: A Division I FBS
8 Football Class, a Division I Men’s Basketball Class, and a Division I Women’s Basketball Class. *Id.*
9 at 4-5, 31. The Court certified two identical injunctive relief classes in the *Jenkins* Action, in Division
10 I FBS Football and Division I Men’s basketball. *Id.* The *Jenkins* action does not include a Division I
11 Women’s Basketball Class. The Court then appointed Plaintiffs’ counsel in the Consolidated Action
12 and *Jenkins* Action as co-lead counsel for the injunctive relief claims in both cases, agreeing with
13 Plaintiffs that doing so would “alleviate concerns regarding duplication.” *Id.* at 30. The Court further
14 concluded that “[d]uplication at trial can be mitigated by staying one action while the other proceeds
15 to trial.” *Id.*

16 On February 16, 2016, Consolidated Plaintiffs filed a motion for certification of damages
17 classes under Rule 23(b)(3). During briefing on that motion, the Parties agreed to settle all claims for
18 money damages on behalf of the three proposed damages classes. ECF No. 560-1 (“Settlement
19 Agreement”), 582 (“Joint Stipulation Amending Settlement Agreement”), 612-1 (“Second Joint
20 Stipulation Amending Settlement Agreement”).¹ On December 6, 2017, the Court entered an Order
21 Granting Plaintiffs’ Motion for Final Approval of Class Action Settlement and Final Judgment as to
22 Damages Claims (“Order and Final Judgment”). ECF No. 746. On January 3, 2018, the sole objector
23 to the Settlement filed a Notice of Appeal of the Order and Final Judgment. ECF No. 751.

24 As to the injunctive relief claims, the parties have completed fact discovery, expert discovery,
25 and all briefing related to *Daubert* motions and dispositive motions. Now pending before this Court
26 are Plaintiffs’ Motion for Summary Judgment (ECF No. 657), Motion to Exclude Proposed Testimony

27 _____
28 ¹ All further references to the Settlement Agreement shall be to the Settlement Agreement as amended
in the parties’ stipulations.

1 of Dr. Kenneth Elzinga (ECF No. 654), Motion to Exclude Testimony of Dr. James Heckman (ECF
2 No. 714); and Defendants' Motion for Summary Judgment and Exclusion of Expert Testimony (ECF
3 No. 704). Those motions have been set for hearing on January 16, 2018.

4 **II. PROPOSALS FOR REMAINDER OF CASE DEVELOPMENT PROCESS**

5 Plaintiffs' Proposal: Should a trial be necessary to resolve these cases, Plaintiffs believe that
6 roughly fifteen trial days will be required. Plaintiffs are available for such a trial beginning on or
7 around July 23, 2018 through August 24, 2018, or September 17, 2018 through the end of the year.²
8 Plaintiffs seek a trial in 2018 so that Class Members may obtain relief from the ongoing irreparable
9 harm they have suffered since Plaintiffs' complaints were first filed in March 2014, nearly four years
10 ago. In light of this continuing harm and the large number of attorneys representing Defendants,
11 Plaintiffs do not believe that trial should be delayed until 2019 on account of conflicts for unspecified
12 Defendants' counsel when Defendants have a multitude of top trial lawyers representing them (*e.g.*,
13 the NCAA alone is represented by three law firms). Once the Court has set a date for trial, Plaintiffs
14 agree to meet and confer and then submit to the Court a proposed pretrial schedule in accordance with
15 the Court's rules.

16 Plaintiffs further request that the Court delay any decision about whether to stay the *Jenkins*
17 case or Consolidated actions until after the Court rules on the motions now pending. Waiting until
18 that time will allow the Court to clarify the remaining issues in this litigation, and it will neither pose
19 a risk of duplicative trials nor impose any burden on Defendants.

20 Finally, Defendants assert that, if this case goes to trial, they may offer the testimony of (a)
21 any of the 109 individuals named in either their initial disclosures or their supplemental disclosures,
22 which were served near the then-scheduled close of fact discovery; (b) any of the unknown number of
23 unnamed individuals who fall within certain "categories of individuals" listed in Defendants'
24 disclosures; and (c) additional unknown individuals. While this issue is not yet ripe, to the extent that

25
26 ² Plaintiffs' counsel is unavailable during additional time frames due to scheduling conflicts with trials
27 in other cases, including a four-week trial scheduled to begin in May before Judge Chen in this Court
28 (ECF No. 337, *Whalen v. Ford Motor Co.*, Case No. 13-cv-03072-EMC (N.D. Cal.)) and a four-to-
six-week trial scheduled to begin in June (*In re EDNY Cathode Ray Tube Antitr. Cases*, Case No. 17-
cv-04504-BMC (E.D.N.Y.)).

1 Defendants later seek to offer the testimony of any individuals who were not properly disclosed,
2 Plaintiffs reserve all rights to object to the testimony of and/or to seek trial depositions of such
3 individuals. *See, e.g.*, Fed. R. Civ. P. 26(a)(1)(A) (requiring defendant to disclose “the name . . . of
4 each individual likely to have discoverable information . . . that the disclosing party may use to support
5 its claims or defenses.”).

6 Defendants’ Proposal: In the event the case is not resolved by summary judgment, but the
7 scope of Plaintiffs’ broad challenge is narrowed through the Court’s ruling, Defendants estimate that
8 a trial could likely be completed in fifteen full court days, depending on the issues left to be tried.
9 Defendants respectfully request that the Court set a trial date no sooner than January 2019 due to
10 several trial commitments in the second half of 2018 for the NCAA’s lead trial counsel and other trial
11 commitments for lead counsel for other Defendants. If a trial date is set, Defendants agree to meet
12 and confer regarding any proposed modifications to the Court’s Order for Pretrial Preparation.

13 Should a trial be necessary, Defendants request that a trial in the Consolidated Action be
14 scheduled in the Northern District of California, and that the Court stay *Jenkins* pending the outcome
15 of that trial.³ The Consolidated Action involves all of the parties in the *Jenkins* action, as well as the
16 additional Division I Women’s Basketball Class and six additional Defendant Conferences. And as
17 the summary judgment briefing has made clear, the injunctive relief claims are identical in both cases.
18 Plaintiffs agree that one of the cases should be stayed while the other goes to trial, (ECF No. 205 at
19 31), and judicial economy, fairness, and efficiency dictate trying the Consolidated Action first. The
20 judgment in that case will necessarily apply to every member of the *Jenkins* class, plus many additional
21 parties, as a matter of *res judicata* and collateral estoppel.

22 Finally, through their initial and supplemental disclosures, Defendants identified 12 categories
23 of individuals that may be called to testify in the event of a trial, with no objection from Plaintiffs. In
24 fact, Plaintiffs deposed certain current coaches and other individuals who fell into these categories.

25
26 ³ As Defendants have explained, *see* ECF No. 748 at 32-33, there is no basis for transferring *Jenkins*
27 back to the District of New Jersey in the event the court agrees that Defendants are entitled to summary
28 judgment. Because the MDL panel consolidated these cases for all pretrial purposes, an order granting
summary judgment to Defendants would necessarily dispose of all claims in all of the actions before
this court.

1 Defendants also specifically identified 109 individuals as potential trial witnesses, and Plaintiffs
 2 elected not to depose most of these individuals. If these cases proceed to trial, Defendants may elect
 3 to call a small number of additional individuals, particularly if the scope of the case changes in light
 4 of the Court’s summary judgment ruling. In that event, Defendants would provide ample notice to
 5 Plaintiffs and the Court.

6 **III. POSSIBILITY OF ALTERNATIVE DISPUTE RESOLUTION (“ADR”)**

7 The parties have made several attempts to resolve the above-captioned cases through a neutral
 8 mediator but have been unsuccessful. The parties remain willing to submit themselves to additional
 9 forms of ADR but recognize that there are fundamental disagreements among the parties, such that
 10 further ADR is not likely to be productive for the issues that remain in dispute in these cases.

11
 12 Dated: January 9, 2018

Respectfully submitted,

13
 14 By /s/ Steve W. Berman
 Steve W. Berman (*pro hac vice*)
 Craig Spiegel (SBN122000)
 HAGENS BERMAN SOBOL SHAPIRO
 LLP
 1918 Eighth Avenue, Suite 3300
 Seattle, WA 98101
 Telephone: (206) 623-7292
 Facsimile: (206) 623-0594
steve@hbsslaw.com
craigs@hbsslaw.com

By /s/ Jeffrey L. Kessler
 Jeffrey L. Kessler (*pro hac vice*)
 David G. Feher (*pro hac vice*)
 David L. Greenspan (*pro hac vice*)
 Jennifer M. Stewart (*pro hac vice*)
 Joseph A. Litman (*pro hac vice*)
 WINSTON & STRAWN LLP
 200 Park Avenue
 New York, NY 10166-4193
 Telephone: (212) 294-6700
 Facsimile: (212) 294-4700
jkessler@winston.com
dfeher@winston.com
dgreenspan@winston.com
jstewart@winston.com
jlitman@winston.com

17
 18
 19
 20 Jeff D. Friedman (SBN 173886)
 HAGENS BERMAN SOBOL SHAPIRO
 LLP
 715 Hearst Avenue, Suite 202
 Berkeley, CA 94710
 Telephone: (510) 725-3000
 Facsimile: (510) 725-3001
jefff@hbsslaw.com

Sean D. Meenan (SBN 260466)
 Jeanifer E. Parsigian (SBN 289001)
 WINSTON & STRAWN LLP
 101 California Street
 San Francisco, CA 94111
 Telephone: (415) 591-1000
 Facsimile: (415) 591-1400
smeenan@winston.com
jparsigian@winston.com

21
 22
 23
 24
 25 By /s/ Bruce L. Simon
 Bruce L. Simon (SBN 96241)
 Benjamin E. Shiftan (SBN 265767)
 PEARSON, SIMON & WARSHAW, LLP
 44 Montgomery Street, Suite 2450
 San Francisco, CA 94104

*Class Counsel for Jenkins and Consolidated
 Action Plaintiffs*

1
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

Telephone: (415) 433-9000
Facsimile: (415) 433-9008
bsimon@pswlaw.com
bshiftan@pswlaw.com
*Class Counsel for Jenkins and Consolidated
Action Plaintiffs*

By /s/ Elizabeth C. Pritzker
Elizabeth C. Pritzker (SBN 146267)
Jonathan K. Levine (SBN 220289)
Bethany L. Caracuzzo (SBN 190687)
PRITZKER LEVINE LLP
180 Grand Avenue, Suite 1390
Oakland, California 94612
Telephone: (415) 692-0772
Facsimile: (415) 366-6110

Additional Class Counsel

By: /s/ Beth A. Wilkinson
Beth A. Wilkinson (*pro hac vice*)
Alexandra M. Walsh (*pro hac vice*)
Brian L. Stekloff (*pro hac vice*)
Rakesh N. Kilaru (*pro hac vice*)
WILKINSON WALSH + ESKOVITZ LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000
Facsimile: (202) 847-4005
bwilkinson@wilkinsonwalsh.com
awalsh@wilkinsonwalsh.com
bstekloff@wilkinsonwalsh.com
rkilaru@wilkinsonwalsh.com

By: /s/ Jeffrey A. Mishkin
Jeffrey A. Mishkin (*pro hac vice*)
Karen Hoffman Lent (*pro hac vice*)
SKADDEN ARPS SLATE MEAGHER
& FLOM LLP
Four Times Square
New York, NY 10036
Telephone: (212) 735-3000
Facsimile (212) 735-2000
jeffrey.mishkin@skadden.com
karen.lent@skadden.com

Sean Eskovitz (SBN 241877)
WILKINSON WALSH + ESKOVITZ LLP
11726 San Vicente Blvd., Suite 600
Los Angeles, CA 90049
Telephone: (424) 316-4000
Facsimile: (202) 847-4005
seskovitz@wilkinsonwalsh.com

Raoul D. Kennedy (SBN 40892)
SKADDEN ARPS SLATE MEAGHER
& FLOM LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Telephone: (650) 470-4500
Facsimile: (650) 470-4570
raoul.kennedy@skadden.com

*Counsel for Defendant National Collegiate
Athletic Association*

*Counsel for Defendants National
Collegiate Athletic Association and
Western Athletic Conference*

1 By: /s/ Scott P Cooper
2 Scott P. Cooper (SBN 96905)
3 Kyle A. Casazza (SBN 254061)
4 Jennifer L. Jones (SBN 284624)
5 Shawn S. Ledingham, Jr. (SBN 275268)
6 PROSKAUER ROSE LLP
7 2049 Century Park East, Suite 3200
8 Los Angeles, CA 90067
9 Telephone: (310) 557-2900
10 Facsimile: (310) 557-2193
11 *scooper@proskauer.com*
12 *kcasazza@proskauer.com*
13 *jljones@proskauer.com*
14 *sledingham@proskauer.com*
15 *jferry@proskauer.com*

Counsel for Defendant Pac-12 Conference

By: /s/ Britt M. Miller
Andrew S. Rosenman (SBN 253764)
Britt M. Miller (pro hac vice)
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
arosenman@mayerbrown.com
bmiller@mayerbrown.com

Richard J. Favretto (pro hac vice)
1999 K Street, N.W.
Washington, DC 20006
Telephone: (202) 263-3000
Facsimile: (202) 263-3300
rfavretto@mayerbrown.com

*Counsel for Defendant The Big Ten
Conference, Inc.*

13 By: /s/ Leane K. Capps
14 Leane K. Capps (pro hac vice)
15 Caitlin J. Morgan (pro hac vice)
16 POLSINELLI PC
17 2950 N. Harwood Street
18 Suite 2100
19 Dallas, TX 75201
20 Telephone: (214) 397-0030
21 *lcapps@polsinelli.com*
22 *cmorgan@polsinelli.com*

Amy D. Fitts (pro hac vice)
Mit Winter (SBN 238515)
120 W. 12th Street
Kansas City, MO 64105
Telephone: (816) 218-1255
afitts@polsinelli.com
mwinter@polsinelli.com

Wesley D. Hurst (SBN 127564)
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 556-1801
whurst@polsinelli.com

*Counsel for Defendants The Big 12
Conference, Inc. and Conference USA, Inc.*

By: /s/ Robert W. Fuller
Robert W. Fuller, III (pro hac vice)
Nathan C. Chase Jr. (SBN 247526)
Lawrence C. Moore, III (pro hac vice)
Pearlynn G. Houck (pro hac vice)
Amanda R. Pickens (pro hac vice)
ROBINSON BRADSHAW & HINSON
101 N. Tryon St., Suite 1900
Charlotte, NC 28246
Telephone: (704) 377-2536
Facsimile: (704) 378-4000
rfuller@rbh.com
nchase@rbh.com
lmoore@rbh.com
phouck@rbh.com
apickens@rbh.com

Mark J. Seifert (SBN 217054)
SEIFERT LAW FIRM
425 Market Street, Suite 2200
San Francisco, CA 94105
Telephone: (415) 999-0901
Facsimile: (415) 901-1123
mseifert@seifertfirm.com

*Counsel for Defendant Southeastern
Conference*

1
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

By: /s/ D. Erik Albright
D. Erik Albright (pro hac vice)
Gregory G. Holland (pro hac vice)
SMITH MOORE LEATHERWOOD LLP
300 North Greene Street, Suite 1400
Greensboro, NC 27401
Telephone: (336) 378-5368
Facsimile: (336) 433-7402
erik.albright@smithmoorelaw.com
greg.holland@smithmoorelaw.com

Jonathan P. Heyl (pro hac vice)
101 N. Tryon Street, Suite 1300
Charlotte, NC 28246
Telephone: (704) 384-2625
Facsimile: (704) 384-2909
jon.heyhl@smithmoorelaw.com

Charles LaGrange Coleman, III (SBN
65496)
HOLLAND & KNIGHT LLP
50 California Street, Suite 2800
San Francisco, CA 94111-4624
Telephone: (415) 743-6900
Facsimile: (415) 743-6910
ccoleman@hklaw.com

*Counsel for Defendant The Atlantic Coast
Conference*

By: /s/ R. Todd Hunt
R. Todd Hunt (pro hac vice)
Benjamin G. Chojnacki (pro hac vice)
WALTER HAVERFIELD LLP
The Tower at Erieview
1301 E. 9th Street, Suite 3500
Cleveland, OH 44114-1821
Telephone: (216) 928-2935
Facsimile: (216) 916-2372
rthunt@walterhav.com
bchojnacki@walterhav.com

*Counsel for Defendant Mid-American
Conference*

By: /s/ Benjamin c. Block
Benjamin C. Block (pro hac vice)
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001-4956
Telephone: (202) 662-5205
Facsimile: (202) 778-5205
bblock@cov.com

Rebecca A. Jacobs (SBN 294430)
One Front Street
San Francisco, CA 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091
rjacobs@cov.com

*Counsel for Defendant American
Athletic Conference*

By: /s/ Meryl Macklin
Meryl Macklin (SBN 115053)
BRYAN CAVE LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105
Telephone: (415) 268-1981
Facsimile: (415) 430-4381
meryl.macklin@bryancave.com

Richard Young (pro hac vice)
Brent Rychener (pro hac vice)
90 South Cascade Avenue, Suite 1300
Colorado Springs, CO 80903
Telephone: (719) 473-3800
Facsimile: (719) 633-1518
richard.young@bryancave.com
brent.rychener@bryancave.com

1
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

Counsel for Defendant Mountain West Conference

By: /s/ Mark A. Cunningham
Mark A. Cunningham (pro hac vice)
JONES WALKER LLP
201 St. Charles Avenue
New Orleans, LA 70170-5100
Telephone: (504) 582-8536
Facsimile: (504) 589-8536
mcunningham@joneswalker.com

Counsel for Defendant Sun Belt Conference

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

/s/ Jeffrey L. Kessler
JEFFREY KESSLER