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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 IN RE: NATIONAL COLLEGIATE
7 ATHLETIC ASSOCIATION ATHLETIC
8 GRANT-IN-AID CAP ANTITRUST
9 LITIGATION
10

Case No. 14-md-2541 CW

ORDER GRANTING MOTION FOR
CLARIFICATION OF INJUNCTION

(Re: Dkt. No. 1302)

11 Now pending is Defendants' motion to clarify that "setting
12 the maximum amount of compensation that an individual student-
13 athlete can receive in an academic school year in academic and
14 graduation awards and incentives at \$5,600 complies with the
15 Injunction" issued by the Court on March 8, 2019, Docket No. 1163
16 (Injunction). Defendants argued that this maximum is consistent
17 with the Injunction because this Court and the Ninth Circuit
18 found that the NCAA permits a student-athlete to receive a
19 maximum of \$5,600 in athletics participation awards annually.

20 This Court held a hearing on the motion on November 18,
21 2020, and the parties filed additional briefs after the hearing.
22 In their supplemental brief, Defendants increased the amount they
23 contend complies with the Injunction to \$5,980. See Defs.' Supp.
24 Br. at 6, Docket No. 1325 ("[D]efendants request that the Court
25 clarify the Injunction and confirm that it permits the NCAA to
26 set the maximum amount of academic and graduation awards and
27 incentives at \$5,980 per academic year.").

28 //

1 Paragraph five of the Injunction provides that the NCAA may
2 limit academic and graduation awards and incentives at not less
3 than:

4 the maximum amount of compensation that an
5 individual student-athlete could receive in
6 an academic school year in participation,
7 championship, or special achievement awards
8 (combined) under Division I Bylaw, Article
16, and listed in Figures 16-1, 16-2, and
16-3 of the 2018-2019 Division I Manual
(hereinafter, the athletics participation
awards limit).

9 Injunction ¶ 5.

10 The factual premise for paragraph five was this Court's
11 finding that any compensation that the NCAA permits student-
12 athletes to receive is, by the NCAA's own definition of
13 amateurism, consistent with amateurism and therefore not a threat
14 to consumer demand for college sports. See In re Nat'l
15 Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust
16 Litig., 375 F. Supp. 3d 1058, 1074 (N.D. Cal. 2019), aff'd, 958
17 F.3d 1239 (9th Cir. 2020), cert. granted sub nom. Am. Athletic
18 Conference v. Alston, __ S. Ct. __, 2020 WL 7366279 (U.S. Dec.
19 16, 2020) (No. 20-520), and cert. granted sub nom. NCAA v.
20 Alston, __ S. Ct. __, 2020 WL 7366281 (U.S. Dec. 16, 2020) (No.
21 20-512). Consistent with this finding, this Court concluded
22 that, because the NCAA allows student-athletes to receive the
23 athletics participation awards described in the Injunction in
24 cash or cash-equivalents, id. at 1088, consumer demand for
25 college sports would not decrease if the NCAA permitted student-
26 athletes to receive academic awards in the same amounts, id. at
27 1089, 1104, 1106. This Court, therefore, concluded that the NCAA
28 could set a maximum for academic awards, so long as any such

1 maximum is not less than the maximum compensation the NCAA
2 permits in athletics participation awards. Id. at 1088, 1106.

3 During the bench trial, the parties had submitted evidence
4 that the maximum amount the NCAA permits a student-athlete to
5 receive in athletics participation awards in a given year was
6 \$5,600. See id. at 1072 (citing the direct testimony of
7 Plaintiffs' economics expert, Dr. Daniel Rascher, and the direct
8 testimony of Defendants' economics expert, Dr. Kenneth Elzinga).
9 This testimony appeared to be based on the maximum compensation
10 that a student-athlete could receive in an academic school year
11 in athletics participation awards under Division I Bylaw, Article
12 16, and Figures 16-1, 16-2, and 16-3.

13 Rather than specifying the \$5,600 amount in the Injunction,
14 the Court incorporated Division I Bylaw, Article 16, and Figures
15 16-1, 16-2, and 16-3. The Court did so in order to ensure that
16 if the NCAA changed its limit on athletics participation awards,
17 the allowable limit on academic awards would follow suit
18 automatically. This provided the NCAA with "ample latitude" to
19 set the maximum permissible compensation in academic awards by
20 adjusting its limit on athletics participation awards. See
21 O'Bannon v. Nat'l Collegiate Athletic Ass'n, 802 F.3d 1049, 1074
22 (9th Cir. 2015) (O'Bannon II) (noting that "we must generally
23 afford the NCAA 'ample latitude' to superintend college
24 athletics") (quoting Nat'l Collegiate Athletic Ass'n v. Bd. of
25 Regents of the Univ. of Okla., 468 U.S. 85, 120 (1984)). The
26 Ninth Circuit made note of this rationale in its affirmance of
27 the Injunction without modification. In re Nat'l Collegiate
28 Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig., 958

1 F.3d 1239, 1262 (9th Cir. 2020), cert. granted sub nom. Am.
2 Athletic Conference v. Alston, __ S. Ct. __, 2020 WL 7366279
3 (U.S. Dec. 16, 2020) (No. 20-520), and cert. granted sub nom.
4 NCAA v. Alston, __ S. Ct. __, 2020 WL 7366281 (U.S. Dec. 16,
5 2020) (No. 20-512) (Alston II) (noting that “the district court
6 did not fix the value of these academic awards: The task of
7 setting their value to protect demand, by adjusting the aggregate
8 value of athletic participation awards, remains in the NCAA’s
9 court”).

10 Nonetheless, the Ninth Circuit appears to have relied on the
11 \$5,600 amount cited by the Court, which in turn was based on the
12 calculations by the parties during the trial, as being the
13 maximum compensation the NCAA currently permits a student-athlete
14 to receive annually in athletics participation awards, as well as
15 the lowest limit that the Court would allow the NCAA to impose on
16 academic awards. See Alston II, 958 F.3d at 1252 (referring to
17 \$5,600 as the “existing limit on aggregate athletic participation
18 awards”); id. at 1262 (holding that the district court did not
19 err in concluding that “permitting student-athletes to receive up
20 to [\$5,600] in academic or graduation awards and incentives will
21 not erode consumer demand”).

22 A dispute arose recently, however, as to the maximum
23 compensation the NCAA permits for athletics participation awards
24 under Division I Bylaw, Article 16, and Figures 16-1, 16-2, and
25 16-3, which are not self-explanatory. Defendants initially
26 propounded the \$5,600 number, although they now acknowledge that
27 the NCAA permits an individual student-athlete to receive at
28 least \$5,980 annually in athletics participation, championship

1 and special achievement awards from schools, conferences, and the
2 NCAA, and up to an additional \$1,650, totaling up to \$7,630, if
3 some awards from third-party organizations described in Figure
4 16-3 are included in the calculation. See Defs.' Supp. Br. at 1-
5 5, Docket No. 1325. Plaintiffs contend that the maximum
6 compensation in athletics participation awards that the NCAA
7 permits a student-athlete to receive in an academic year is at
8 least \$12,505¹, which is comprised of the \$5,980 that Defendants
9 calculated, plus \$6,525 in permissible awards from third parties.
10 Pls.' Supp. Br. at 3-5, Docket No. 1326.

11 Because the Ninth Circuit appears to have relied, in
12 affirming the injunction, on the \$5,600 amount cited by this
13 Court based on the parties' calculations during the trial, the
14 Court declines to adopt at this juncture the much higher figure
15 that Plaintiffs propose. However, in light of Defendants'
16 request that the Court "permit[] the NCAA to set the maximum
17 amount of academic and graduation awards and incentives at \$5,980
18 per academic year," Defs.' Supp. Br. at 6, Docket No. 1325, the
19 Court grants Defendants' motion and clarifies that, pursuant to
20 paragraph five of the Injunction, the NCAA may set a limit on
21 academic and graduation awards and incentives that is not less
22 than \$5,980 in an academic year, as long as Division I Bylaw,
23 Article 16 and Figures 16-1, 16-2 and 16-3 remain unchanged.

24
25 ¹ Plaintiffs initially argued that the maximum amount that a
26 student-athlete could receive in athletics participation,
27 championship and special achievement awards in an academic school
28 year was at least \$15,415, based on a post-trial declaration of
their expert, Dr. Daniel Rascher. Plaintiffs reduced their
proposal because they now accept that "the value of trophies or
other non-cash equivalents should not be included in the
calculation[.]" Pls.' Supp. Br. at 6.

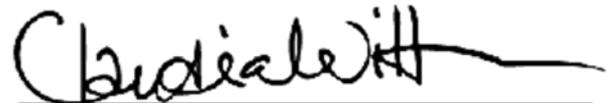
United States District Court
Northern District of California

1 Of course, consistent with paragraph five of the Injunction,
2 the NCAA could set an upper limit for academic awards at an
3 amount greater than \$5,980. On the other hand, it could set a
4 limit on academic awards at less than \$5,980, as long as it
5 decreases the maximum compensation that a student-athlete could
6 receive in athletics participation awards by modifying Division I
7 Bylaw, Article 16 and Figures 16-1, 16-2, and 16-3. Further,
8 pursuant to paragraph seven of the Injunction, any NCAA member
9 conference may, individually, set a lower limit on academic
10 awards. And NCAA member schools are not required to provide or
11 allow to any student-athlete the maximum amount in academic
12 awards that the NCAA permits an individual student-athlete to
13 receive in an academic school year.

14 Defendants' motion for clarification is GRANTED as set forth
15 in this order.

16 IT IS SO ORDERED.

17 Dated: December 30, 2020



CLAUDIA WILKEN
United States District Judge

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