**APPENDIX A**

**FOR PUBLICATION**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

---

No. 19–15566
No. 19-15662
D.C. No. 4:14–md–02541–CW

---

SHAWNE ALSTON; MARTIN JENKINS; JOHNATHAN MOORE; KEVIN PERRY; WILLIAM TYNDALL; ALEX LAURICELLA; SHARRIF FLOYD; KYLE THERET; DUANE BENNETT; CHRIS STONE; JOHN BOHANNON; ASHLEY HOLLIDAY; CHRIS DAVENPORT; NICHOLAS KINDLER; KENDALL GREGORY-MCGHEE; INDIA CHANEY; MICHEL'LE THOMAS; DON BANKS, "DJ"; KENDALL TIMMONS; DAX DELLENBACH; NIGEL HAYES; ANFORNEE STEWART; KENYATA JOHNSON; BARRY BRUNETTI; DALENTA JAMERAL STEPHENS, "D.J."; JUSTINE HARTMAN; AFURE JEMERIGBE; ALEC JAMES,
*Plaintiffs-Appellees*,

*v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, THE NCAA; PACIFIC 12 CONFERENCE; CONFERENCE USA; THE BIG TEN CONFERENCE, INC.; MID-AMERICAN CONFERENCE; SOUTHEASTERN CONFERENCE; ATLANTIC COAST CONFERENCE; MOUNTAIN WEST CONFERENCE; THE BIG TWELVE CONFERENCE, INC.; SUN BELT CONFERENCE; WESTERN ATHLETIC CONFERENCE; AMERICAN ATHLETIC CONFERENCE,
*Defendants-Appellants*,

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

AMERICAN BROADCASTING COMPANIES, INC.; CBS BROADCASTING, INC.; ESPN ENTERPRISES, INC.; ESPN, INC.; FOX BROADCASTING COMPANY, LLC.; FOX SPORTS HOLDINGS, LLC.; TURNER BROADCASTING SYSTEM, INC.,

*Intervenors.*

JOHN BOHANNON; JUSTINE HARTMAN, as representatives of the classes,

*Plaintiffs-Appellants*,

*v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, THE NCAA; PACIFIC 12 CONFERENCE; CONFERENCE USA; THE BIG TEN CONFERENCE, INC.; MID-AMERICAN CONFERENCE; SOUTHEASTERN CONFERENCE; ATLANTIC COAST CONFERENCE; MOUNTAIN WEST CONFERENCE; THE BIG TWELVE CONFERENCE, INC.; SUN BELT CONFERENCE; WESTERN ATHLETIC CONFERENCE; AMERICAN ATHLETIC CONFERENCE,

*Defendants-Appellees*,

AMERICAN BROADCASTING COMPANIES, INC.; CBS BROADCASTING, INC.; ESPN ENTERPRISES, INC.; ESPN, INC.; FOX BROADCASTING COMPANY, LLC.; FOX SPORTS HOLDINGS, LLC.; TURNER BROADCASTING SYSTEM, INC.,

*Intervenors.*

---

In Re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation

---

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, District Judge, Presiding

Argued and Submitted March 9, 2020
San Francisco, California
Filed May 18, 2020

Before: Sidney R. Thomas, Chief Judge, and
Ronald M. Gould and Milan D. Smith, Jr.,
Circuit Judges.

Opinion by Chief Judge Thomas;
Concurrence by Judge Milan D. Smith, Jr.

## SUMMARY*

### Antitrust

The panel affirmed the district court's order in an antitrust action, enjoining the National Collegiate Athletic Association from enforcing rules that restrict the education-related benefits that its member institutions may offer students who play Football Bowl Subdivision football and Division I basketball.

In *O'Bannon v. NCAA (O'Bannon II)*, 802 F.3d 1049 (9th Cir. 2015), the court affirmed in large part the district court's ruling that the NCAA illegally re-

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

strained trade, in violation of section 1 of the Sherman Act, by preventing FBS football and D1 men's basketball players from receiving compensation for the use of their names, images, and likenesses, and the district court's injunction insofar as it required the NCAA to implement the less restrictive alternative of permitting athletic scholarships for the full cost of attendance.

Subsequent antitrust actions by student-athletes were consolidated in the district court. After a bench trial, the district court entered judgment for the student-athletes in part, concluding that NCAA limits on education-related benefits were unreasonable restraints of trade, and accordingly enjoining those limits, but declining to hold that NCAA limits on compensation unrelated to education likewise violated section 1.

The panel affirmed the district court's conclusion that *O'Bannon II* did not foreclose this litigation as a matter of stare decisis or res judicata.

The panel held that the district court properly applied the Rule of Reason in determining that the enjoined rules were unlawful restraints of trade under section 1 of the Sherman Act. The panel concluded that the student-athletes carried their burden at the first step of the Rule of Reason analysis by showing that the restraints produced significant anticompetitive effects within the relevant market for student-athletes' labor on the gridiron and the court.

At the second step of the Rule of Reason analysis, the NCAA was required to come forward with evidence of the restraints' procompetitive effects. The district court properly concluded that only some of the challenged NCAA rules served the procompetitive purpose of preserving amateurism and thus improving consumer choice by maintaining a distinction between

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

college and professional sports. Those rules were limits on above-cost-of-attendance payments unrelated to education, the cost-of-attendance cap on athletic scholarships, and certain restrictions on cash academic or graduation awards and incentives. The panel affirmed the district court's conclusion that the remaining rules, restricting non-cash education-related benefits, did nothing to foster or preserve consumer demand. The panel held that the record amply supported the findings of the district court, which reasonably relied on demand analysis, survey evidence, and NCAA testimony.

The panel affirmed the district court's conclusion that, at the third step of the Rule of Reason analysis, the student-athletes showed that any legitimate objectives could be achieved in a substantially less restrictive manner. The district court identified a less restrictive alternative of prohibiting the NCAA from capping certain education-related benefits and limiting academic or graduation awards or incentives below the maximum amount that an individual athlete may receive in athletic participation awards, while permitting individual conferences to set limits on education-related benefits. The panel held that the district court did not clearly err in determining that this alternative would be virtually as effective in serving the procompetitive purposes of the NCAA's current rules, and could be implemented without significantly increased cost.

Finally, the panel held that the district court's injunction was not impermissibly vague and did not usurp the NCAA's role as the superintendent of college sports. The panel also declined to broaden the injunction to include all NCAA compensation limits, including those on payments untethered to education. The panel concluded that the district court struck the right balance in crafting a remedy that both prevented anticom-

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

**LAW FIRMS**
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

**FINANCIAL INSTITUTIONS**
Litigation and bankruptcy checks for companies and debtors.

**E-DISCOVERY AND LEGAL VENDORS**
Sync your system to PACER to automate legal marketing.