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14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 16 **OAKLAND DIVISION**

17 IN RE NATIONAL COLLEGIATE
 ATHLETIC ASSOCIATION ATHLETIC
 18 GRANT-IN-AID CAP ANTITRUST
 LITIGATION
 19

MDL Docket No. 14-md-02541-CW

20 This Document Relates to:
 21 ALL ACTIONS

22 MARTIN JENKINS, et al.,
 23
 Plaintiffs,
 24
 v.
 25
 NATIONAL COLLEGIATE ATHLETIC
 26 ASSOCIATION, et al.,
 27
 Defendants.
 28

Case No. 14-cv-02758-CW

**REPLY MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 DEFENDANTS' MOTION TO DISMISS
 THE COMPLAINTS**

Date: October 9, 2014
 Time: 2:00 p.m.
 Courtroom: Courtroom 2, 4th Floor
 Before: Hon. Claudia Wilken

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PRELIMINARY STATEMENT

1
2 This Court's decision in *O'Bannon v. NCAA*, No. C 09-3329 CW, 2014 WL 3899815 (N.D.
3 Cal. Aug. 8, 2014), leaves no room for doubt that the National Collegiate Athletic Association
4 ("NCAA"), the Conference defendants and their respective members lawfully may agree to appro-
5 priate limits on the payments that may be made to student-athletes. For that reason alone, plain-
6 tiffs' theory of antitrust liability—that the antitrust laws categorically forbid any agreement among
7 the NCAA and its members imposing any limits on the compensation student-athletes may receive
8 for their participation in amateur intercollegiate athletics—is not plausible. Their complaints
9 should therefore be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for fail-
10 ure to state a claim upon which relief can be granted.

11 Plaintiffs' oppositions never offer an adequate explanation for how the basic premise of
12 their claims can be reconciled with the decision in *O'Bannon*. Instead, plaintiffs contend that de-
13 fendants' motion to dismiss is premised on the availability or scope of the particular remedies
14 plaintiffs seek. But the remedies sought by plaintiffs are irrelevant to the issue of whether they
15 have stated a plausible antitrust claim. Because they have not, plaintiffs are entitled to no relief
16 whatsoever.

17 Plaintiffs attempt to construe the *O'Bannon* decision too narrowly, and mischaracterize the
18 claims in their complaints as factually and legally distinct from the issues decided in that case. The
19 *Jenkins* plaintiffs even suggest that the primary NCAA bylaw they seek to invalidate was not at
20 issue in *O'Bannon* despite the fact that the Court expressly addressed it in its written decision. But,
21 plaintiffs cannot escape dismissal of their claims on the purported ground that the antitrust analysis
22 of *O'Bannon* applies only to compensation of student-athletes for the use of their names, images or
23 likenesses. While the plaintiffs' claim in *O'Bannon* certainly involved the issue of compensation
24 for the use of student-athletes' names, images and likenesses, the decision in *O'Bannon* encom-
25 passes the restraint, the relevant market and the alleged anticompetitive effects asserted here—i.e.,
26 the allegation that NCAA Bylaw 15.1 unreasonably and illegally restricts the payments that stu-
27 dent-athletes can receive in a market for their "athletic services."

1 Although *O'Bannon* held that restraint to be unduly restrictive to a certain, limited extent,
 2 this Court, consistent with prior federal court decisions endorsing NCAA limitations on payments
 3 to student-athletes, clearly rejected the premise on which the current complaints are founded—that
 4 any NCAA limit on payments to student-athletes constitutes an antitrust violation. Hence, plain-
 5 tiffs' federal antitrust claims, as well as the consolidated plaintiffs' California Unfair Competition
 6 Act claim which relies upon the same implausible theory, should be dismissed. The Unfair Com-
 7 petition Act claim also should be dismissed for the independent reason that plaintiffs are not eligi-
 8 ble as a matter of law for injunctive or restitutionary relief, the only forms of relief authorized un-
 9 der that statute.

10 ARGUMENT

11 I. DEFENDANTS' MOTION CHALLENGES THE PLAUSIBILITY OF THE THEO- 12 RY OF PLAINTIFFS' ANTITRUST CLAIMS, NOT THE AVAILABILITY OF THE RELIEF THEY SEEK

13 Defendants do not assert that plaintiffs' antitrust claims should be dismissed on the basis of
 14 the remedies that plaintiffs seek. Rather, as defendants made clear in their opening brief, defend-
 15 ants move to dismiss the complaints under Rule 12(b)(6) because, in light of this Court's rejection
 16 in *O'Bannon* of the notion that the NCAA and its member schools cannot impose any limit on the
 17 amount of compensation that can be paid to student-athletes while they are in school, plaintiffs'
 18 theory of antitrust liability is not plausible.¹

19 A. *Plaintiffs' Claims are Implausible Based on this Court's Decision in O'Bannon*

20 Plaintiffs cannot and do not dispute that, to state a claim upon which relief can be granted, a
 21 plaintiffs' claim must be plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009);
 22 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Nor do plaintiffs dispute that a complaint
 23 that fails to state a cognizable legal theory under existing precedents cannot survive a motion to
 24 dismiss. *Iqbal*, 556 U.S. at 679; *see also In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104,

25
 26 ¹ The CAC, the *Jenkins* complaint and the *O'Bannon* decision repeatedly use the word "compensa-
 27 tion" to describe the financial aid and support that NCAA schools provide to student-athletes. De-
 28 fendants used that shorthand in their moving brief and herein, but do not agree that it is an accurate
 characterization.

1 1107 (9th Cir. 2013). Instead, plaintiffs simply choose not to address the primary argument set
 2 forth in defendants’ motion to dismiss—that plaintiffs’ claims are implausible, and must be dis-
 3 missed, because they do not state a cognizable legal theory.

4 Plaintiffs’ complaints allege that Section 1 of the Sherman Act, 15 U.S.C. § 1, prohibits the
 5 NCAA’s member institutions from agreeing to limit compensation provided to student-athletes for
 6 their athletic services. (CAC Br. at 3 (citing CAC ¶ 7 (“The NCAA and Conference Defendants
 7 have agreed to unlawfully cap the value of a grant-in-aid at an amount substantially below what a
 8 football or basketball player would receive for his or her services in a competitive market, and at an
 9 amount below what it costs to attend school. This agreement violates the Sherman Act.”)); Jenkins
 10 Br. at 1-2 (citing JC ¶ 7 (“These agreements to price-fix players’ compensation, and to boycott any
 11 institutions or players who refuse to comply with the price fixing agreement, are *per se* illegal acts
 12 under Section 1 of the Sherman Act, 15 U.S.C. § 1. They also constitute an unreasonable restraint
 13 of trade under the rule of reason.”)).² To state a Section 1 claim that can survive a motion to dis-
 14 miss, plaintiffs must substantiate the proposition that any agreement among the NCAA and its
 15 member institutions to limit payments to student-athletes for their athletic services “unreasonably
 16 restrain[s] trade.” *Tanaka v. University of S. Cal.*, 252 F.3d 1059, 1062 (9th Cir. 2001). This
 17 plaintiffs simply cannot do.

18 In *O’Bannon*, this Court held that the legitimate procompetitive goals of maximizing con-
 19 sumer demand for the NCAA’s amateur sports product and integrating student-athletes into their
 20 academic communities are furthered by appropriate agreed-upon limits on student-athlete compen-

22 ² “CAC Br.” refers to Plaintiffs’ Opposition to Motion to Dismiss the Complaints with Prejudice,
 23 *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*,
 24 4:14-md-02541-CW, Dkt. 94 (N.D. Cal. Sept. 18, 2014). “Jenkins Br.” refers to Plaintiffs’ Opposi-
 25 tion to Defendants’ Motion to Dismiss, *In re: National Collegiate Athletic Association Athletic*
 26 *Grant-in-Aid Cap Antitrust Litigation*, 4:14-md-02541-CW, Dkt. 98 (Sept. 18, 2014). “CAC” and
 27 “JC” refer respectively to the Consolidated Amended Complaint, *In re: National Collegiate Athlet-*
 28 *ic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 4:14-md-02541-CW, Dkt. 60 (July
 11, 2014), and Complaint and Jury Demand—Class Action Seeking Injunction and Individual
 Damages, *Jenkins, et al. v. NCAA, et al.*, Case No. 4:14-cv-02758-CW, Dkt. 1 (N.D. Cal. Mar. 17,
 2014). “NCAA Br.” will refer to defendants’ Memorandum of Points and Authorities in Support
 of Motion to Dismiss the Complaints, *In re: National Collegiate Athletic Association Athletic*
Grant-in-Aid Cap Antitrust Litigation, 4:14-md-02541-CW, Dkt. 89 (N.D. Cal. Sept. 4 2014).

1 sation. Although the Court found that the challenged rules were overly restrictive, it then “en-
2 ter[ed] an injunction to remove any unreasonable elements from the restraint,” while preserving the
3 NCAA’s lawful discretion to impose appropriate limits on the financial payments that student-
4 athletes may receive. *O’Bannon*, 2014 WL 3899815, at *36. In explaining the contours of its de-
5 cision, the Court expressly held that its ruling did “not preclude the NCAA from implementing
6 rules capping the amount of compensation that may be paid to student-athletes while they are en-
7 rolled in school; however, the NCAA will not be permitted to set this cap below the cost of attend-
8 ance.” *Id.* The *O’Bannon* decision thus necessarily holds that the NCAA and its members may
9 adopt and enforce some rules limiting student-athlete compensation without unreasonably restrain-
10 ing trade. Plaintiffs’ complaints, however, rest on the legal theory that the NCAA and its members
11 may not agree to *any* limits on compensation to student-athletes for their athletic services. Because
12 plaintiffs’ theory of antitrust liability directly conflicts with this Court’s holding in *O’Bannon*,
13 plaintiffs have failed to state a plausible Section 1 claim.

14 Under plaintiffs’ theory of liability, if defendants complied with this Court’s injunction in
15 *O’Bannon* and adopted the very limitations on student-athlete compensation endorsed there, de-
16 fendants nonetheless would unreasonably restrain trade in violation of Section 1. That is an im-
17 plausible result. Moreover, plaintiffs have not in any way explained how a restraint from which
18 this Court expressly “remove[d] any unreasonable elements” can still be an unreasonable restraint
19 of trade. *Id.* Instead, they assert that defendants are arguing that the *O’Bannon* injunction affords
20 them blanket antitrust immunity for any NCAA restraint that does not conflict with the injunction’s
21 terms, or that all rules not enjoined in *O’Bannon* are *per se* procompetitive and lawful. (Jenkins
22 Br. at 4-5 (“*O’Bannon* cannot be read as ruling upon the antitrust legality of every rule in the 400-
23 plus-page NCAA Division I Manual—or of future restraints—that were never litigated in
24 *O’Bannon*.”).) Defendants have made no such arguments. Defendants’ arguments are limited to
25 the implausibility of plaintiffs’ allegation that no NCAA restriction on student-athlete payments is
26 permissible under the Sherman Act given this Court’s contrary conclusion in *O’Bannon*.

27 Finally, with respect to the putative class of women’s Division I basketball players, it is ir-
28 relevant that those plaintiffs were not parties in the *O’Bannon* litigation. Defendants’ arguments

1 regarding the plausibility of plaintiffs' claims apply equally to all plaintiffs, whether or not they are
2 members of the *O'Bannon* class, and therefore the claims of all plaintiffs, including the women's
3 basketball players, should be dismissed.

4 ***B. Defendants' Motion to Dismiss is Not Based on the Remedies Sought by Plaintiffs***

5 Plaintiffs claim that defendants are improperly contesting the availability and scope of the
6 *remedies* that plaintiffs may obtain in the event that the Court finds their claims meritorious. (CAC
7 Br. at 2, 5-6; Jenkins Br. at 1, 3-4.) But defendants are arguing no such thing. Rather, defendants
8 assert that where—as here—a plaintiff's complaint rests on an implausible theory of liability, the
9 plaintiff is not entitled to *any* relief, whether an injunction or damages on an individual or class-
10 wide basis.

11 Consolidated plaintiffs claim that defendants mischaracterize their request for relief by ig-
12 noring that they seek a “less-restrictive alternative [that would] allow the Conference Defendants to
13 compete among themselves . . . as to the financial aid terms that conference members will make
14 available to college players.” (CAC Br. at 8 (quoting CAC ¶ 10).) Even if the particular form of
15 requested relief mattered on a motion to dismiss for failure to state a legally cognizable antitrust
16 claim—and as plaintiffs themselves assert, it does not—this Court in *O'Bannon* already held that
17 the NCAA and all Division I member schools do not violate the antitrust laws by adopting and en-
18 forcing rules imposing appropriate limits on student-athlete compensation. Thus, plaintiffs' claims
19 are implausible on their face and the Court need not reach the question of either available remedies
20 or less-restrictive alternatives.

21 Nor is it relevant that the consolidated plaintiffs claim to limit their request for class-wide
22 damages to the difference between the grants-in-aid awarded and cost of attendance for each puta-
23 tive class member. (CAC Br. at 7-8.) Consolidated plaintiffs' theory of liability, as alleged, is not
24 that defendants have violated the antitrust laws by adopting and enforcing financial aid rules that
25 result in student-athletes receiving financial aid packages that fall short of their full cost of attend-
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1 ance.³ Instead, like the *Jenkins* plaintiffs, consolidated plaintiffs seek “a truly competitive market”
 2 (CAC ¶¶ 221, 502), and the invalidation of any and all NCAA limits on student-athlete compensa-
 3 tion,⁴ including those expressly approved by this Court’s *O’Bannon* decision.

4 **II. THESE ACTIONS INVOLVE THE SAME ALLEGED RESTRAINT AS O’BANNON**

5 Plaintiffs contend that these actions challenge a different restraint from that at issue in
 6 *O’Bannon* because, in their view, *O’Bannon* was limited to the narrow issue of name, image and
 7 likeness. (CAC Br. at 6; *Jenkins* Br. at 5-6.) Defendants do not believe the Court intended the
 8 *O’Bannon* decision to be so limited. As this Court explained, the decision in *O’Bannon* resolved
 9 “whether the NCAA violates antitrust law by agreeing with its member schools to restrain their
 10 ability to compensate Division I men’s basketball and FBS football players any more than the cur-
 11 rent association rules allow.” 2014 WL 3899815, at *37.

12 A comparison of the restraint as described in the operative complaints with this Court’s de-
 13 cision in *O’Bannon* demonstrates that the restraint challenged in the instant cases and *O’Bannon* is

15 ³ To the extent consolidated plaintiffs are now seeking to reformulate their theory of liability so
 16 that their antitrust claim is limited only to the assertion that it is illegal to set a cap below the cost
 17 of attendance (but legal to set a cap at or above the cost of attendance), that new theory of liability
 18 should be ignored because plaintiffs cannot amend their theory of liability through their opposition
 19 to defendants’ motion to dismiss. *Parker v. Nishiyama*, 438 F. App’x 642, 643 (9th Cir. 2011) (“In
 20 determining the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint
 to a plaintiff’s moving papers, such as a memorandum in opposition to a defendant’s motion to
 dismiss.” (quoting *Broam v. Bogan*, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003))); *Toro v. Napolitano*,
 No. 12-CV-2804, 2013 WL 4102158, at *3 (S.D. Cal. Aug. 13, 2013) (dismissing claim with prej-
 udice because “Plaintiff’s statements in his opposition brief cannot amend the Complaint” (quoting
Fabbrini v. City of Dunsmuir, 544 F. Supp. 2d 1044, 1050 (E.D. Cal. 2008))).

21 ⁴ See, e.g., CAC ¶ 8 (“In the highly competitive marketplace of Division I FBS football and bas-
 22 ketball, every player unquestionably would receive a grant-in-aid that actually covers the Cost of
 Attendance. . . . Moreover, if collusion among conferences were eliminated, every player likely
 23 would receive further *additional* compensation above the Cost of Attendance.” (emphasis in origi-
 24 nal)); *id.* ¶ 15 (“The artificial cap on grants-in-aid is set well below what schools would choose to
 25 offer to athletes in the absence of collusion. And it is clear that among members of the Conference
 Defendants, non-collusive scholarship offers would rise to at least cover the full Cost of Attend-
 26 ance, *and likely much more*. The NCAA thus arbitrarily restricts athletics financial aid to amounts
 that are *less than the athletes would receive in a competitive market*.” (emphasis added)); *id.* ¶ 316
 27 (“If a given conference felt that payment in excess of this new Cost of Attendance level were in its
 28 best financial interest, it could make such an offer. On the other hand, if a conference felt that such
 payments would be detrimental to overall demand, then even absent a national collusive cap, that
 conference need not offer more, and would live with the quality of team it could attract with a Cost
 of Attendance offer.”); see also *infra* p. 8 and note 6.

1 the same. For example, the CAC describes the challenged restraint as the NCAA and Conference
 2 defendants' agreement "that no college will pay an athlete any amount for his or her work that ex-
 3 ceeds the value of a grant-in-aid." (CAC ¶ 1.) Similarly, plaintiffs in *Jenkins* describe the chal-
 4 lenged restraint as "an artificial and unlawful ceiling on the remuneration that players may receive
 5 for their services . . . defined by the NCAA as a 'full grant-in-aid.'" (JC ¶ 6.) This Court's de-
 6 scription of the restraint at issue in *O'Bannon* is substantively indistinguishable: "[T]he restraint is
 7 the agreement among schools not to offer any recruit more than the value of a full grant-in-aid."
 8 2014 WL 3899815, at *23.

9 In fact, these coordinated and consolidated actions challenge the very same bylaw identified
 10 as the basis for the restraint in *O'Bannon*. Both complaints in this action specifically challenge
 11 NCAA Bylaw 15.1, which states:

12 A student-athlete shall not be eligible to participate in intercollegiate athletics if he
 13 or she receives financial aid that exceeds the value of the cost of attendance as de-
 14 fined in Bylaw 15.02.2. A student-athlete may receive institutional financial aid
 15 based on athletics ability (per Bylaw 15.02.4.1) and educational expenses awarded
 16 per Bylaw 15.2.6.4 up to the value of a full grant-in-aid, plus any other financial aid
 17 up to the cost of attendance. (See Bylaws 15.01.6.1, 16.3, 16.4 and 16.12.)

18 (CAC ¶ 297; JC ¶ 42.)⁵ And contrary to plaintiffs' assertion that "*O'Bannon* did not adjudicate or
 19 evaluate the legality of Bylaw 15.1" (*Jenkins* Br. at 6), this Court expressly cited to and quoted By-
 20 law 15.1 in describing the "challenged restraint" in *O'Bannon*. See 2014 WL 3899815, at *7-8
 21 ("[The NCAA] prohibits any student-athlete from receiving 'financial aid based on athletics abil-
 22 ity' that exceeds the value of a full 'grant-in-aid.' . . . [T]he NCAA also imposes a separate cap on
 23 the total amount of financial aid that a student-athlete may receive. Specifically, it prohibits any
 24 student-athlete from receiving financial aid in excess of his 'cost of attendance.'"). The Court went
 25 on to hold that its "injunction will not preclude the NCAA from implementing rules capping the

25 ⁵ The *Jenkins* plaintiffs challenge at least 19 NCAA bylaws relating to limitations on financial aid,
 26 benefits and recruiting visits, "including but not limited to NCAA Bylaws 12.01.4, 12.1.2, 12.1.2.1,
 27 13.2.1, 13.2.1.1, 13.5.1, 13.5.2, 13.6.2, 13.6.4, 13.6.7.1, 13.6.7.4, 13.6.7.5, 13.6.7.7, 15.02.2,
 28 15.02.5, 15.1, 16.02.3, 16.1.4, and 16.11.2 (individually, and as interpreted and applied in conjunc-
 tion with each other)." (JC ¶ 42.) The *Jenkins* plaintiffs also quote in their entirety NCAA Bylaws
 12.1.2 and 16.02.3 that prohibit "any payment to athletes on the basis of the athletic services that
 they provide" and "benefits on the basis of athletic ability." (JC ¶¶ 44, 46.)

1 amount of compensation that may be paid to student-athletes while they are enrolled in school;
 2 however, the NCAA will not be permitted to set this cap below the cost of attendance.” *Id.* at *36.
 3 Such a ruling necessarily encompasses plaintiffs’ challenge to NCAA Bylaw 15.1 here.

4 The anticompetitive effects alleged in these actions also are addressed in the *O’Bannon* de-
 5 cision. Specifically, the CAC alleges that absent the grant-in-aid cap, “the Conference Defendants’
 6 member schools and those of their co-conspirator conferences would compete vigorously to attract
 7 talent using increased financial aid and other direct forms of compensation.” (CAC ¶ 220.)⁶ Like-
 8 wise, *Jenkins* alleges that “Defendants’ member institutions would, absent the restrictions at issue
 9 in this action, compete with each other for the services of athletes” and thus plaintiffs “would have
 10 received and would receive greater remuneration for [their] services.” (JC ¶¶ 36, 114.) Those al-
 11 legations are indistinguishable from this Court’s conclusion regarding the anticompetitive effects in
 12 *O’Bannon*: “In the absence of this restraint, schools would compete against one another by offer-
 13 ing to pay more for the best recruits’ athletic services and licensing rights—that is, they would en-
 14 gage in price competition.” 2014 WL 3899815, at *23. As this Court further explained, “[i]f the
 15 grant-in-aid limit were higher, schools would compete for the best recruits by offering them larger
 16 grants-in-aid. Similarly, if total financial aid was not capped at the cost of attendance, schools
 17 would compete for the best recruits by offering them compensation exceeding the cost of attend-
 18 ance.” *Id.* at *8 (relying on testimony of plaintiffs’ expert).

19 These actions do not, as consolidated plaintiffs contend, “frame[] different antitrust mar-
 20 kets” than those involved in *O’Bannon*. (CAC Br. at 3.) Both the CAC and *Jenkins* complaint de-
 21

22 ⁶ See also CAC ¶ 221 (“The demand for college athletics is such that, absent the unlawful athletics
 23 grant-in-aid cap, the colleges and universities in the Football Bowl Subdivision Labor Market
 24 would have competed against one another by offering higher amounts of athletics-based financial
 25 aid to college athletes, up to and likely past the true Cost of Attendance. Grants-in-aid are there-
 26 fore artificially ‘capped’ by the common scheme imposed by the NCAA at amounts lower than the
 27 amounts that would prevail in a truly competitive market.”); *id.* ¶ 308 (“Without the grant-in-aid
 28 cap, the colleges and universities that sponsor college football and basketball and compete in the
 relevant markets would provide athletic scholarships in an amount in line with the college athlete’s
 value in a competitive market. The same competitive forces that drive schools to provide coaches
 with million-dollar salaries and build lavish athletic facilities would also compel those schools to
 provide athletics-based grants-in-aid at a truly competitive level At least some student-athletes
 would likely gravitate toward schools that would ‘pay’ them the most amount of money.”).

1 scribe the relevant markets as those for student-athlete “player services.” (CAC ¶ 1; JC ¶ 54.) This
 2 Court in *O’Bannon* similarly described the relevant market under plaintiffs’ alternative monopsony
 3 theory as the “market for recruits’ athletic services.” 2014 WL 3899815, at *23. Indeed, the *Jen-*
 4 *kins* plaintiffs concede that the present cases involve “markets substantially similar to, or even the
 5 same as, the relevant markets pleaded in *O’Bannon*.” (Jenkins Br. at 7.)

6 Consolidated plaintiffs also acknowledge the overlap between the procompetitive justifica-
 7 tions evaluated in *O’Bannon* and those likely to be at issue here. (CAC Br. at 4; *see also* CAC ¶¶
 8 477-90.) Yet, plaintiffs ignore this Court’s conclusion that the NCAA’s legitimate procompetitive
 9 goals of maximizing consumer demand for intercollegiate amateur sports and integrating student-
 10 athletes into their academic communities justify certain limits on compensation to student-athletes.
 11 *O’Bannon*, 2014 WL 3899815, at *12, 15, 29-34.

12 Just as the Ninth Circuit in *Century Aluminum* affirmed dismissal for failure to state a plau-
 13 sible claim when plaintiffs did not allege facts showing “that their situation [was] different” from
 14 earlier precedent, plaintiffs here have not alleged facts showing that their challenge is substantively
 15 different than *O’Bannon*. *Century Aluminum*, 729 F.3d at 1107-08. In light of this Court’s conclu-
 16 sion in *O’Bannon* that certain legitimate, procompetitive goals permit the NCAA and its members
 17 lawfully to adopt and enforce rules imposing appropriate limits on student-athlete compensation,
 18 plaintiffs’ claim that any and all such rules constitute a violation of the Sherman Act is not plausi-
 19 ble on its face, and thus plaintiffs’ claims should be dismissed.

20 **III. PLAINTIFFS MISCHARACTERIZE DEFENDANTS’ JOINT VENTURE AND** 21 **RULE OF REASON ARGUMENTS**

22 In addition to establishing that this Court’s decision in *O’Bannon* definitively rejected
 23 plaintiffs’ fundamental legal theory, defendants’ motion to dismiss further explains that founda-
 24 tional antitrust principles permit the NCAA to adopt and enforce eligibility rules—including the
 25 rules at issue in this case—because those rules allow the NCAA as a joint venture to define and
 26 maintain its product: intercollegiate amateur athletics. (NCAA Br. at 9-10, 14 (citing *Texaco, Inc.*
 27 *v. Dagher*, 547 U.S. 1 (2006), and *American Needle, Inc. v. National Football League*, 560 U.S.
 28 183 (2010)).) In stating as much, defendants are not seeking blanket antitrust immunity under

1 principles of joint venture law. Nor are defendants contending that plaintiffs' actions should be
 2 dismissed on the basis that the NCAA and its members are a single economic entity that by defini-
 3 tion cannot violate Section 1 of the Sherman Act. (CAC Br. at 8-9; Jenkins Br. at 8.)

4 Defendants' moving brief simply demonstrates that *O'Bannon's* conclusion that the NCAA
 5 and its members may lawfully adopt and enforce appropriate limits on payments to student-athletes
 6 is consistent with extensive and uniform Supreme Court and federal court precedent. *See*
 7 *O'Bannon*, 2014 WL 3899815, at *30-31 (relying on the Supreme Court's decision in *NCAA v.*
 8 *Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984), in holding that "some re-
 9 strictions on compensation may still serve a limited procompetitive purpose if they are necessary to
 10 maintain the popularity of FBS football and Division I basketball," and thus would not violate the
 11 antitrust laws). Under this precedent, this Court need not conduct a full rule of reason analysis to
 12 determine that the NCAA may adopt appropriate limits on payments to student-athletes. Rather,
 13 those limits should be found lawful "in the twinkling of an eye." *See American Needle, Inc.*, 560
 14 U.S. at 203 (quoting *Bd. of Regents*, 468 U.S. at 109 n.39); *Agnew v. NCAA*, 683 F.3d 328, 343 n.7,
 15 347 n.8 (7th Cir. 2012). These cases further demonstrate the implausibility of plaintiffs' theory of
 16 antitrust liability, and support dismissal of their claims.⁷

17 **IV. CONSOLIDATED PLAINTIFFS' UNFAIR COMPETITION ACT CAUSE OF AC-**
 18 **TION FAILS TO STATE A CLAIM AND SHOULD BE DISMISSED**

19 ***A. Consolidated Plaintiffs Have Failed to Plead Legally Unlawful or Unfair Conduct***

20 Consolidated plaintiffs fail to plead any predicate acts legally capable of constituting un-
 21 lawful or unfair conduct under the Unfair Competition Act, Cal. Bus. & Prof. Code § 17200, *et seq.*
 22 ("UCL"). The primary basis for plaintiffs' claim is that the NCAA's and Pac-12's conduct violates
 23 the antitrust laws. (CAC Br. at 14-15.) Where, as here, plaintiffs' alleged predicate is a failed stat-
 24 utory claim that does not qualify as "unlawful" conduct, they may not manufacture a UCL claim

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 26 ⁷ Defendants have not, as plaintiffs contend, moved to dismiss these actions on the independent
 27 ground that the challenged rules are non-commercial. (CAC Br. at 11; Jenkins Br. at 9.) Instead,
 28 *Smith v. NCAA*, 139 F.3d 180 (3d Cir. 1998), *vacated on other grounds*, 525 U.S. 459 (1999), and
Bassett v. NCAA, 528 F.3d 426 (6th Cir. 2008), simply add to the federal precedent refusing—on
 one ground or another—to question the procompetitive nature of the NCAA's eligibility rules.

1 simply by calling the underlying conduct “unfair.” *See Chavez v. Whirlpool Corp.*, 93 Cal. App.
 2 4th 363, 375 (2001); *DocMagic, Inc. v. Ellie Mae, Inc.*, 745 F. Supp. 2d 1119, 1146-47 (N.D. Cal.
 3 2010). Because the antitrust claims should be dismissed for the reasons explained above, the UCL
 4 claim should be dismissed as well. *LiveUniverse, Inc. v. MySpace, Inc.*, 304 F. App’x 554, 557-58
 5 (9th Cir. 2008).

6 The only conduct plaintiffs allege that differs from their antitrust claims is based on Cali-
 7 fornia’s Student Athlete Bill of Rights. Plaintiffs claim that the NCAA and Pac-12 violated the
 8 “policy and spirit” of that law, alleging that it requires universities to provide student-athletes with
 9 the “financial resources to meet their budgetary needs,” and thus, by implication, requires them to
 10 provide the full cost of attendance. (CAC Br. at 15.) Plaintiffs’ selective citation to a few words in
 11 a single section of the Student Athlete Bill of Rights does not support their argument, as that sec-
 12 tion relates solely to the provision of financial and budgeting *information* to student-athletes,⁸ and
 13 in no way plausibly requires—in policy or spirit—any *payments* to student-athletes. Plaintiffs have
 14 failed to allege any unlawful or unfair conduct, and thus their UCL claim should be dismissed.

15 ***B. Consolidated Plaintiffs Are Not Entitled to Any Relief Authorized by the UCL***

16 Independent of the fate of their antitrust claims, consolidated plaintiffs’ UCL cause of ac-
 17 tion also fails to state a claim because they have not alleged and cannot allege any basis for enti-
 18 tlement to relief available under the UCL. Unlike their antitrust claims, plaintiffs do not contest
 19 that courts may, and routinely do, dismiss UCL claims on this basis at the motion to dismiss stage.
 20 *See, e.g., Ice Cream Distribs. of Evansville, LLC v. Dreyer’s Grand Ice Cream, Inc.*, No. 09-5815
 21 CW, 2010 WL 3619884, at *9 (N.D. Cal. Sept. 10, 2010) (Wilken, J.), *aff’d*, 487 F. App’x 362 (9th
 22 Cir. 2012); *Berman v. Knife River Corp.*, No. C 11-3698 PSG, 2012 WL 646068, at *7 (N.D. Cal.
 23 Feb. 28, 2012). Only injunctive and restitutionary relief are authorized under the UCL, and plain-
 24 tiffs are entitled to neither. (*See* NCAA Br. at 16-17.) The injunction entered by this Court in
 25

26 ⁸ California Education Code Section 67452(b) provides that “[e]ach athletic program shall conduct
 27 a financial and life skills workshop” and mandates that, among other things, “[t]his workshop shall
 28 include, but not be limited to, information concerning financial aid, debt management, and a rec-
 ommended budget for full- and partial-scholarship student athletes living on or off campus during
 the academic year and the summer term based on the current academic year’s cost of attendance.”

1 *O'Bannon* already provides plaintiffs with all the relief that the Court deemed warranted in connec-
2 tion with the restraints alleged in this case, and specifically addresses cost of attendance, which
3 consolidated plaintiffs now claim is the aim of the injunctive relief they seek with respect to their
4 UCL claim. (CAC Br. at 16.) Plaintiffs are not entitled to a second injunction prohibiting the same
5 conduct. *See Feitelberg v. Credit Suisse First Boston, LLC*, 134 Cal. App. 4th 997, 1022 (2005);
6 *Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 465-66 (2005).

7 Consolidated plaintiffs also have no basis for restitution because they have not paid any
8 sums to defendants and have not been denied any payments to which they were contractually enti-
9 tled. Plaintiffs' argument is not supported by the cases they cite. The damages they seek are not
10 "earned wages that are due and payable pursuant to section 200 *et seq.* of the Labor Code" (*Cortez*
11 *v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000)), benefits owed pursuant to a
12 contract (*Lozano v. AT&T Wireless Servs., Inc.*, 504 F.3d 718, 733-34 (9th Cir. 2007)), "concrete,
13 quantifiable" payments for endorsement of commercial products (*Fraley v. Facebook, Inc.*, 830 F.
14 Supp. 2d 785, 812 (N.D. Cal. 2011)), or profits unlawfully obtained through false advertisements
15 (*POM Wonderful LLC v. Coca Cola Co.*, No. CV 08-06237, 2009 WL 6254619, at *2-3 (C.D. Cal.
16 Sept. 15, 2009)). Rather, plaintiffs seek damages to which they are not entitled under any provi-
17 sion of statute, contract, or any other appropriate measure of restitution, and thus do not have the
18 "vested interest in the money [they] seek to recover," required for restitution. *Korea Supply Co. v.*
19 *Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1149-50 (2003). Accordingly, consolidated plaintiffs'
20 UCL claim should be dismissed.

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CONCLUSION

The Supreme Court in *Twombly* directed lower courts that deficiencies in plaintiffs’ claims “should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court,” particularly in antitrust cases, which tend to be time-consuming and costly. 550 U.S. at 558. That directive fully applies here, where plaintiffs cannot allege a plausible theory of liability under existing precedents. Accordingly, defendants’ motion to dismiss the complaints in these coordinated actions should be GRANTED with prejudice and without leave to amend.

DATED: September 25, 2014

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FILER'S ATTESTATION

I, Jeffrey A. Mishkin, am the ECF user whose identification and password are being used to file this REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINTS. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

 /s/ Jeffrey A. Mishkin

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2014, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Jeffrey A. Mishkin