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**JOE TATE**  
STATE REPRESENTATIVE

April 25, 2025

Michigan Attorney General Nessel  
G. Mennen Williams Building  
525 W. Ottawa Street  
P.O. Box 30212  
Lansing, MI 48909

**Re: House v. NCAA Lawsuit**

Dear Attorney General Nessel,

I am writing to respectfully request your opinion on matters related to the *House v. NCAA* antitrust lawsuit preliminary settlement regarding college athlete name, image, and likeness (NIL) and sports participation opportunities. As a co-sponsor of our state's NIL law (PA 366'20), I am concerned that if our universities opt-in to the terms of the settlement or otherwise comply with NCAA and conference NIL restrictions permitted in the settlement, they would be in violation of our NIL law (See Attachments 1, 2, *House v. NCAA* preliminary settlement agreement, Plaintiffs' Approval Motion submitted to court on 3/3/25).

The settlement would permit the NCAA, conferences, and/or a "Designated Enforcement Entity" (organization with authority over intercollegiate athletics as mentioned in PA 366'20) to attempt to impose and enforce NIL restrictions on college athletes that would severely harm their NIL opportunities and compensation from athletic boosters and NIL collectives. However, it has been reported that at least 16 states, including Michigan, have NIL laws that do not allow their universities to comply with such restrictions. Michigan and these other states adopted NIL laws specifically to prevent the NCAA and conferences from imposing such unjust restrictions.

While the preliminary lawsuit settlement was filed last summer, plaintiffs' lawyers and the NCAA only recently acknowledged this conflict. On March 3, 2025, plaintiff's counsel stated to the court:

"The settlement only resolves antitrust claims, and there is nothing in the settlement that releases non-compliance with individual state NIL laws. The settlement requires the NCAA to amend its NIL rules to allow for previously prohibited direct benefits; it has no bearing on existing state NIL laws that might already provide for broader compensation; nor does it prohibit students or State Attorneys General from bringing claims under those laws. The settlement does not ask the Court to grant Defendants any kind of preemption from state NIL laws."

- Plaintiffs' Approval Motion in *House v. NCAA* (File p. 39-40, 3/3/25)

I fear that our universities are unaware of this conflict as some have indicated their intention to opt-in to the settlement. Our universities must be made aware of this conflict and their legal obligation to follow PA 366'20. Moreover, our universities' athletes and recruits must have clarity about their rights and freedoms under our law.



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I am also concerned that the settlement requires any university that opts-in to cut team roster spots. It estimated that there will be almost 5000 roster cuts, including women's and Olympic sports nationwide. [https://www.espn.com/college-sports/story/\\_/id/42273737/college-athletes-face-national-signing-day-amid-uncertainty-new-roster-limits](https://www.espn.com/college-sports/story/_/id/42273737/college-athletes-face-national-signing-day-amid-uncertainty-new-roster-limits)

However, Michigan universities that do not opt-in would not be required to make any roster cuts and would not be in violation of PA 366'20.

To conclude, I am asking if you concur with the following statements about Michigan's NIL law if the House v. NCAA preliminary settlement is given final approval:

1. PA 366'20 prohibits Michigan universities from upholding or complying with any rule that restricts or eliminate their athletes' freedom to earn NIL pay from athletic boosters and NIL collectives.
2. Nothing in PA 366'20 prohibits Michigan universities from entering into NIL agreements and paying NIL compensation to current Michigan college athletes; and such athlete NIL compensation is permitted under this act.
3. While PA 366'20 prohibits Michigan universities from paying NIL to prospective college athletes, it permits and protects Michigan universities' freedom to enter into NIL agreements with prospective college athletes.
4. Michigan universities would be in violation of Michigan's NIL law if they opt-in to the settlement agreement, which describes NIL restrictions and enforcement that conflicts with PA 366'20.
5. Michigan universities would be in violation of Michigan's NIL law if they comply with NCAA and conference NIL restrictions and enforcement permitted in the settlement.
6. Any Michigan university that has already opted-in must rescind this action to comply with Michigan's NIL law.
7. The NCAA, conferences, and a Designated Enforcement Entity would be in violation of PA 366'20 if they attempt to impose NIL restrictions and/or punishments described in the settlement upon Michigan universities and athletes.

Thank you for taking the time to review this and feel free to contact me if you have any questions.

Sincerely,

State Representative Joe Tate  
District 9

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18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **OAKLAND DIVISION**

21 IN RE COLLEGE ATHLETE NIL  
22 LITIGATION

Case No. 4:20-cv-03919-CW

**PLAINTIFFS' MOTION FOR FINAL  
SETTLEMENT APPROVAL AND OMNIBUS  
RESPONSE TO OBJECTIONS**

Hrg. Date: April 7, 2025  
Time: 10:00 a.m.  
Judge: Hon. Claudia Wilken  
Courtroom: TBD

**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on April 7, 2025, at 10:00 a.m. in Courtroom TBD of the Honorable Claudia Wilken of the United States District Court for the Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, CA 94612, the Class Plaintiffs (“Plaintiffs”) will and hereby do move the Court pursuant to Federal Rules of Civil Procedure 23 for an order certifying the proposed settlement classes and granting final approval to the class action settlement with the National Collegiate Athletic Association, Pac-12 Conference, The Big Ten Conference, Inc., The Big 12 Conference, Inc., Southeastern Conference, and Atlantic Coast Conference (collectively, “Defendants”) and approving Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Awards for the Class Representatives (ECF No. 583).

This motion is based on this Plaintiffs’ Notice and Motion, the accompanying memorandum of Points and Authorities in Support of Motion, declarations filed in support thereof, the complete records and files of this action, all other matters of which the Court may take judicial notice, and any other such evidence and oral argument as may be made at the hearing of this matter.

**TABLE OF CONTENTS**

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

|   | <u>Page</u> |
|---|-------------|
| I. PRELIMINARY STATEMENT .....  | 1           |
| II. THE SETTLEMENT MEETS THE REQUIREMENTS FOR FINAL APPROVAL .....  | 4           |
| A. The Settlement is Fair, Reasonable, and Adequate.....  | 4           |
| B. The Approved Notice Plan Was Successfully Implemented .....  | 5           |
| 1. The Notice Campaign Satisfied Rule 23 and Due Process .....  | 6           |
| C. The Reaction of the Settlement Class Has Been Overwhelmingly Positive.....   | 8           |
| D. The Proposed Settlement Class Satisfies Rule 23.....   | 9           |
| III. OMNIBUS RESPONSE TO OBJECTIONS.....  | 9           |
| A. The Historic Damages Settlement and Allocations to Class Members are Clearly Fair, Reasonable, and Adequate.....   | 9           |
| 1. Objections to Specific Recoveries in the Damages Settlement Are Not a Basis for Denying Final Approval .....   | 11          |
| 2. The Damages Allocations Are Fair and Based on Reasonable and Neutral Methodologies .....   | 14          |
| B. The Injunctive Relief Settlement Provides Relief That Is More Than Fair and Adequate.....  | 15          |
| 1. The Injunctive Relief Settlement Is More than Fair and Adequate: It Will Provide Class Members with Tens of Billions of Dollars in Previously Prohibited Compensation and Unlimited Scholarships ..... | 16          |
| a. The Injunctive Relief Secured by the Settlement Transforms Defendants’ Long-Defended Compensation Rules .....  | 16          |
| b. Defendants’ Ability to Continue Prohibitions on Improperly Characterized NIL Payments by Collectives and Associated Entities Is Not Grounds to Reject the Settlement .....                             | 20          |
| 2. The Revenue-Sharing “Pool” Cap Is a Settlement Compromise That Is Lawful and Fair to the Class .....   | 21          |

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

3. Collective Bargaining Was Not Required to Establish, and Will Not Be Impeded by, the Settlement’s Revenue-Sharing System .....24

4. Approval of the Settlement Does Not Create Any Antitrust Immunity for Defendants.....26

5. The Injunctive Settlement Does Not Violate State NIL Laws or Court Orders.....26

C. There are No Conflicts Precluding Settlement Approval. ....27

1. Separate Counsel is Not Required for the Injunctive Relief and Damages Classes .....29

    a. Professor Silver’s Declaration in support of the Vogel song Objectors is unpersuasive. ....34

2. Separate Counsel is Not Required For Any “Sub-Groups” Within the Damages Classes.....36

    a. Damages for athletic services claims. ....37

    b. Damages for claims based on scholarship limitations. ....41

3. The Hausfeld Objectors Raise No Legitimate Conflicts.....42

D. NCAA-Imposed Roster Limits Do Not Provide a Basis for Denying Final Approval .....43

1. NCAA Roster Limits Do Not Alter the Conclusion That the Settlement Agreement is Overwhelmingly Fair and Reasonable to the Class .....43

2. Roster Limits Do Not Pose “Conflicts” Precluding Final Approval .....47

E. There Are No Title IX Issues Raised by The Settlement.....48

F. The Release Language is Consistent with Governing Law and is Not Overly Broad.....51

G. The Settlement Notice Was Implemented with Overwhelming Success.....52

H. The Court Should Not Stay the Injunction Pending Appeal.....55

I. No One Has Objected to the Attorneys’ Fees Requested .....58

IV. CONCLUSION.....58

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

1

2

3

4 *Aarons v. BMW of N. Am., LLC,*

5 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014) ..... 41

6 *Alexander v. Nat’l Football League,*

7 1977 WL 1497 (D. Minn. Aug. 1, 1977) ..... 23

8 *Alvarez v. Sirius XM Radio,*

9 2021 WL 1234878 (C.D. Cal. Feb. 8, 2021)..... 16

10 *Amchem Prods., Inc. v. Windsor,*

11 521 U.S. 591 (1997)..... 30, 31, 32, 35

12 *Amin v Mercedes Benz USA, LLC,*

13 2020 WL 5510730 (N.D. Ga. Sept. 11, 2020) ..... 8

14 *In re Anthem, Inc. Data Breach Litig.,*

15 327 F.R.D. 299 (N.D. Cal. 2018)..... 6, 7, 53

16 *In re Apple Inc. Device Performance Litig.,*

17 50 F.4th 769 (9th Cir. 2022) ..... 6, 53

18 *In re Apple iPhone 4 Prods. Liab. Litig.,*

19 2012 WL 3283432 (N.D. Cal. Aug. 10, 2012) ..... 12

20 *Asghari v. Volkswagen Grp. of Am., Inc.,*

21 2015 WL 12732462 (C.D. Cal. May 29, 2015 ) ..... 3

22 *Bayat v. Bank of the W.,*

23 2015 WL 1744342 (N.D. Cal. Apr. 15, 2015) ..... 45

24 *In re Blue Cross Blue Shield Antitrust Litig.,*

25 85 F.4th 1070 (11th Cir. 2023), *cert denied* 144 S. Ct. 2686 (2024)..... 21, 28, 29

26 *Bridgeman v. Nat’l Basketball Ass’n,*

27 675 F. Supp. 960 (D.N.J. 1987) ..... 21, 24, 34

28 *Briseno v. ConAgra Foods, Inc.,*

844 F.3d 1121 (9th Cir. 2017) ..... 53

*Browne v. Am. Honda Motor Co., Inc.,*

2010 WL 9499072 (C.D. Cal. July 29, 2010)..... 10, 55

1 *Campbell v. Facebook, Inc.*,  
 2 951 F.3d 1106 (9th Cir. 2020) ..... 34

3 *In re Cathode Ray Tube (CRT) Antitrust Litigation*,  
 4 2016 WL 3648478 (N.D. Cal. July 7, 2016)..... 10

5 *In re Cendant Corp. Litig.*,  
 6 264 F.3d 201 (3d Cir. 2001)..... 13

7 *Charron v. Wiener*,  
 8 731 F.3d 241 (2d Cir. 2013)..... 37

9 *Chun-Hoon v. McKee Foods Corp.*,  
 10 716 F. Supp. 2d 848 (N.D. Cal. 2010) ..... 8

11 *Churchill Vill., LLC v. Gen. Elec.*,  
 12 361 F.3d 566 (9th Cir. 2004) ..... 4, 8

13 *Class Plaintiffs v. City of Seattle*,  
 14 955 F.2d 1268 (9th Cir. 1992) ..... 4

15 *CLRB Hanson Indus., LLC v. Weiss & Assocs., PC*,  
 16 465 F. App'x 617 (9th Cir. 2012) ..... 54

17 *In re Cmty. Bank of N. Va.*,  
 18 622 F.3d 275 (3d Cir. 2010)..... 42

19 *In re Cmty. Bank of N. Virginia Mortg. Lending Pracs. Litig.*,  
 20 795 F.3d 380 (3d Cir. 2015)..... 29

21 *Coal. on Homelessness v. City and Cnty. of San Francisco*,  
 22 2023 WL 2775156 (N.D. Cal. Apr. 3, 2023) ..... 56

23 *Cohen v. Brown Univ.*,  
 24 16 F.4th 935 (1st Cir. 2021)..... 28, 33, 48

25 *In re Corrugated Container Antitrust Litig.*,  
 26 643 F.2d 195 (5th Cir. 1981) ..... 29

27 *Crow Tribe of Indians v. Racicot*,  
 28 87 F.3d 1039 (9th Cir. 1996) ..... 21

*In re Deepwater Horizon*,  
 739 F.3d 790 (5th Cir. 2014) ..... 37

*Edwards v. Nat'l Milk Producers Fed'n*,  
 2017 WL 3616638 (N.D. Cal. June 26, 2017) ..... 13

1 *Edwards v Andrews*,  
 2 846 F. App’x 538 (9th Cir. 2021) ..... 13

3 *Eisen v. Porsche Cars N. Am., Inc.*,  
 4 2014 WL 439006 (C.D. Cal. Jan. 30, 2014) ..... 52

5 *Fata v. Pizza Hut of Am. Inc.*,  
 6 2016 WL 7130932 (M.D. Fla Oct. 31, 2016) ..... 30

7 *Fraley v. Batman*,  
 8 638 Fed. App’x 594 (9th Cir. 2016) ..... 21, 37, 42

9 *Fraley v. Facebook, Inc.*,  
 10 966 F.Supp.2d 939 (N.D. Cal Aug. 26, 2013) ..... 30

11 *Gonzalez v. CoreCivic of Tenn., LLC*,  
 12 2018 WL 4388425 (E.D. Cal. Sept. 13, 2018)..... 42

13 *Hanlon v. Chrysler Corp.*,  
 14 150 F.3d 1011 (9th Cir. 1998) ..... *passim*

15 *Hesse v. Sprint Corp.*,  
 16 598 F.3d 581 (9th Cir. 2010) ..... 51, 52

17 *In re High-Tech Emp. Antitrust Litig.*,  
 18 2015 WL 5159441 (N.D. Cal. Sept. 2, 2015) ..... 14

19 *In re Ins. Brokerage Antitrust Litig.*,  
 20 579 F.3d 241 (3rd Cir. 2009) ..... 28

21 *Keil v. Lopez*,  
 22 862 F.3d 685 (8th Cir. 2017) ..... 8

23 *Lane v. Facebook, Inc.*,  
 24 696 F.3d 811 (9th Cir. 2012) ..... 7

25 *In re Literary Works in Elec. Databases Copyright Litig.*,  
 26 654 F.3d 242 (2d Cir. 2011)..... 38, 39

27 *In re Lithium Ion Batteries Antitrust Litig.*,  
 28 2020 WL 7264559 (N.D. Cal. Dec. 10, 2020)..... 10

*Meiresonne v. Marriott Corp.*,  
 124 F.R.D. 619 (N.D. Ill. 1989)..... 47

*Milligan v. Toyota Motor Sales, U.S.A., Inc.*,  
 2012 WL 10277179 (N.D. Cal. Jan. 6, 2012)..... 10

1 *Moore v. Verizon Commc 'n Inc.*,  
 2 2013 WL 4610764 (N.D. Cal. Aug. 28, 2013) ..... 8

3 *In re Motor Fuel Temperature Sales Pracs. Litig.*,  
 4 2012 WL 1415508 (D. Kan. Apr. 24, 2012)..... 45

5 *In re Motor Fuel Temperature Sales Pracs. Litig.*,  
 6 872 F.3d 1094 (10th Cir. 2017) ..... 46

7 *Mowbray v. Kozlowski*,  
 8 725 F. Supp. 888 (W.D. Va. 1989) ..... 57

9 *Murray v. Grocery Delivery E-Services USA, Inc.*,  
 10 55 F.4th 340 (1st Cir. 2022)) ..... 38

11 *N.L.R.B. v. Town & Country Elec., Inc.*,  
 12 516 U.S. 85 (1995)..... 25

13 *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*,  
 14 311 F.R.D 532 (N.D. Cal. 2015)..... 47, 48

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 16 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017)..... 10

17 *In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig.*,  
 18 958 F.3d 1239 (9th Cir. 2020) ..... 20, 22

19 *In re NCAA I-A Walk-On Football Players Litig.*,  
 20 2006 WL 1207915 (W.D. Wash. May 3, 2006)..... 41

21 *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*,  
 22 2013 WL 5979327 (N.D. Cal. Nov. 8, 2013) ..... 17, 47

23 *NCAA v. Alston*,  
 24 594 U.S. 69 (2021)..... *passim*

25 *NCAA v. Smith*,  
 26 429 U.S. 459 (1999)..... 49

27 *Nguyen v. Radient Pharms. Corp.*,  
 28 2014 WL 1802293 (C.D. Cal. May 6, 2014) ..... 13

*Norcia v. Samsung Telecomms. Am., LLC*,  
 2021 WL 3053018 (N.D. Cal. July 20, 2021)..... 8

*Nwabueze v. AT&T Inc.*,  
 2013 WL 6199596 (N.D. Cal. Nov. 27, 2013) ..... 10

1 *O'Bannon v. NCAA*,  
 2 802 F.3d 1049 (9th Cir. 2015) ..... 17, 22, 23

3 *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*,  
 4 688 F.2d 615 (9th Cir. 1982) ..... 6, 16, 53, 56

5 *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*,  
 6 910 F. Supp. 2d 891 (E.D. La. 2012)..... 37, 39

7 *In re Omnivision Techs., Inc.*,  
 8 559 F. Supp. 2d 1036 (N.D. Cal. 2008) ..... 14

9 *In re Online DVD-Rental Antitrust Litig.*,  
 10 779 F.3d 934 (9th Cir. 2015) ..... 8

11 *Ortiz v. Fireboard Corp.*,  
 12 527 U.S. 815 (1999)..... 31, 33

13 *Pac. Merch. Shipping Ass'n v. Cackette*,  
 14 2007 WL 2914961 (E.D. Cal. Oct. 5, 2007) ..... 57

15 *Pallas v. Pac. Bell*,  
 16 1999 WL 1209495 (N.D. Cal. July 13, 1999)..... 9

17 *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*,  
 18 2024 WL 3236614 (E.D.N.Y. June 28, 2024) ..... 19, 32, 33

19 *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*,  
 20 827 F.3d 223 (2d Cir. 2016)..... 30, 31

21 *Perez v. Asurion Corp.*,  
 22 501 F. Supp. 2d 1360 (S.D. Fla. 2007) ..... 8

23 *Perkins v. LinkedIn Corp.*,  
 24 2016 WL 613255 (N.D. Cal. Feb. 16, 2016) ..... 6, 52

25 *Petrovic v. Amoco Oil Co.*,  
 26 200 F.3d 1140 (8th Cir. 1999) ..... 37

27 *In re Resistors Antitrust Litig.*,  
 28 2020 WL 2791922 (N.D. Cal. Mar. 24, 2020)..... 14

*Robertson v. Nat'l Basketball Ass'n*,  
 556 F.2d 682 (2d Cir. 1977)..... 21, 24

*Robertson v. Nat'l Basketball Ass'n*,  
 72 F.R.D. 64 (S.D.N.Y. 1976) ..... 26

1 *Rodriguez v. W. Pub'lg Corp.*,  
 2 563 F.3d 948 (9th Cir. 2009) ..... 7

3 *Rosado v. Ebay Inc.*,  
 4 2016 WL 3401987 (N.D. Cal. June 21, 2016) ..... 10

5 *Senne v. Kansas City Royals Baseball Corp.*,  
 6 2023 WL 2699972 (N.D. Cal. Mar. 29, 2023)..... 29

7 *Senne v. Kansas City Royals Baseball Corp.*,  
 8 2023 WL 4824938 (9th Cir. June 28, 2023) ..... 29

9 *Shaffer v. Cont'l Cas. Co.*,  
 10 362 F. App'x 627 (9th Cir. 2010) ..... 56

11 *Sharif by Salahudding v. N.Y. State Educ. Dep't*,  
 12 127 F.R.D. 84 (S.D.N.Y. 1989) ..... 48

13 *Sierra Club v. Trump*,  
 14 929 F.3d 670 (9th Cir. 2019) ..... 56, 57

15 *Silber v. Mabon*,  
 16 18 F.3d 1449 (9th Cir. 1994) ..... 6

17 *Sims v. Montgomery Cnty. Comm'n*,  
 18 890 F. Supp. 1520 (M.D. Ala. 1995) ..... 47

19 *Sims v. Montgomery Cnty. Comm'n*,  
 20 119 F.3d 9 (11th Cir. 1997) ..... 47

21 *In re Splunk Inc. Sec. Litig.*,  
 22 2024 WL 923777 (N.D. Cal. Mar. 4, 2024)..... 7, 52

23 *Staton v. Boeing Co.*,  
 24 327 F.3d 938 (9th Cir. 2003) ..... 33

25 *Stephens v. Farmers Rest. Grp.*,  
 26 329 F.R.D. 476 (D.D.C. 2019)..... 30

27 *Sullivan v. DB Invs., Inc.*,  
 28 667 F.3d 273 (3d Cir. 2011)..... 8

*Taylor v. Shutterfly, Inc.*,  
 2021 WL 5810294 (N.D. Cal. Dec. 7 2021)..... 8

*Tennessee v. NCAA*,  
 2024 WL 755528 (E.D. Tenn. Feb. 23, 2024) ..... 27

1 *Touhey v. United States*,  
 2 2011 WL 3179036 (C.D. Cal. July 25, 2011)..... 8  
 3 *In re Volkswagen Clean Diesel Mktg., Sales Pracs. and Prods. Liab. Litig.*,  
 4 895 F.3d 597 (9th Cir. 2018) .....*passim*  
 5 *White v. Nat’l Football League*,  
 6 822 F.Supp. 1389 (D. Minn. 1993).....*passim*  
 7 *Wren v. RGIS Inventory Specialists*,  
 8 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011)..... 12  
 9 *Zakikhani v. Hyundai Motor Co.*,  
 10 2023 WL 4544774 (C.D. Cal. May 5, 2023) ..... 3  
 11 *Zamora v. Lyft, Inc.*,  
 12 2018 WL 5819511 (N.D. Cal. Nov. 6, 2018) ..... 54

11 **STATUTES**

12 29 U.S.C. § 151..... 24  
 13 Sherman Act..... 20, 23, 46, 51

14 **FEDERAL RULES**

15 Fed. R. Civ. P. 23.....*passim*  
 16 Fed. R. Civ. P. 62..... 55

17 **OTHER AUTHORITIES**

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 21 *Scientific Evidence* 425, (Fed. Judicial Ctr. 3d ed. 2011)..... 49  
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 23 § 392b (5th ed. 2023 supp.) ..... 49  
 24  
 25  
 26  
 27  
 28

## GLOSSARY OF TERMS

| Term   | Long Cite  |
|--|--|
| Amended Injunctive Relief Settlement or Am. IRS      | Amended Injunctive Relief Settlement, Appendix A to Exhibit 1 to Declaration of Steve W. Berman in Support of Plaintiffs' Supplemental Brief in Support of Motion for Preliminary Settlement Approval, filed Sept. 26, 2024, ECF No. 535-1 |
| Amended Settlement Agreement or Am. SA               | Amended Stipulation and Settlement Agreement, Ex. 1 to Declaration of Steve W. Berman in Support of Plaintiffs' Supplemental Brief in Support of Motion for Preliminary Settlement Approval, filed Sept. 26, 2024, ECF No. 537             |
| Berman Final Approval Decl.                          | Declaration of Steve W. Berman in Support of Plaintiffs' Motion for Final Approval and Omnibus Response to Objections, concurrently submitted herewith   |
| Class Counsel  | Hagens Berman Sobol Shapiro LLP, Winston & Strawn LLP  |
| Desser Class Cert. Rep.                              | Expert Report of Edwin S. Desser, filed under seal Oct. 21, 2022, ECF 209-3  |
| Klonoff Opening Decl.                                | Declaration of Professor Robert H. Klonoff Addressing the Argument [Doc. 473] That Separate Counsel Must be Appointed to Represent the Injunctive Class, filed Sept. 26, 2024, ECF No. 536   |
| Klonoff Suppl. Decl.                                 | Supplemental Declaration of Professor Robert H. Klonoff Responding to Professor Charles Silver's Declaration (Doc. 622-2), filed concurrently herewith   |
| Peak Decl.   | Declaration of Carla A. Peak Re: Notice Procedures, filed concurrently herewith  |
| Preliminary Approval Motion or Prelim. Approval Mot. | Plaintiffs' Notice of Motion and Motion for Preliminary Settlement Approval, filed July 26, 2024, ECF No. 450  |
| Prelim. Approval Reply                               | Plaintiffs' Reply in Support of Motion for Preliminary Settlement Approval, filed Aug. 16, 2024, ECF No. 494   |
| Prelim. Approval Order                               | [Revised] Order Granting Plaintiffs' Motion for Preliminary Settlement Approval as Modified, entered Oct. 7, 2024, ECF No. 544   |
| Rascher Class Cert. Rep.                             | Expert Report of Daniel A. Rascher, filed under seal Oct. 21, 2022, ECF 209-2  |
| Rascher Class Cert. Reply Rep.                       | Expert Reply Report of Daniel A. Rascher, filed under seal July 21, 2023, ECF No. 290-2  |
| Rascher Prelim. Approval Decl.                       | Declaration of Daniel Rascher, filed July 26, 2024, ECF No. 450-4  |
| Rascher Prelim. Approval Reply Decl.                 | Reply Declaration of Daniel A. Rascher, filed Aug. 16, 2024, ECF No. 494-3   |
| Rascher Final Approval Decl.                         | Declaration of Daniel A. Rascher in Support of Final Approval of House Settlement, concurrently submitted herewith   |

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| <b>Term</b>              | <b>Long Cite</b>  |
|--------------------------|-------------------|
| Settlement Administrator | Verita Global LLC |

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## I. PRELIMINARY STATEMENT

On October 7, 2024, this Court preliminarily approved the *House* Settlement Agreement. *See* ECF No. 544. Pursuant to the Settlement Agreement, class members are eligible for direct payments, or distributions after filing a claim, from a \$2.576 billion non-reversionary cash fund. The fund represents a substantial portion of the Settlement Class’s damages, which far exceed the norm in antitrust settlements of this size—67.4% of estimated NIL damages and 31.6% of estimated athletic services damages. Many Settlement Class Members<sup>1</sup> do not need to make a claim to receive a payment, and the individual payments will be substantial. The Settlement Agreement also features transformative injunctive relief that, among other things, is expected to deliver an additional \$20 billion or more in value to college athletes over the next ten years. *See generally* Pls.’ Notice of Mot. and Motion for Prelim. Settlement Approval, ECF No. 450; Plaintiffs’ Reply in Support of Motion for Preliminary Settlement Approval, ECF No. 494; Plaintiffs’ Supplemental Brief in Support of Motion for Preliminary Settlement Approval, ECF No. 534 (describing relief provided in the injunctive relief settlement).

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The Court preliminarily certified the proposed Settlement Classes and found the settlement to be “fair, reasonable, and adequate pursuant to Rule 23(e)(2),” ECF No. 544 at 2-3, and the events since preliminary approval have confirmed the soundness of this ruling. Verita Global LLC (the “Settlement Administrator”) has executed the notice campaign as ordered by the Court and delivered direct notice (by email, mail, or both) on average 2.5 times to approximately 81.9% of the Settlement Class. Peak Decl. ¶¶ 6, 21.

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The response by class members to the landmark settlement has been overwhelmingly positive. More than 73,115 class members have filed valid claims. Peak Decl. ¶ 33. And Power Five Football, Men’s Basketball, and Women’s Basketball college athletes who received a full-GIA scholarship

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<sup>1</sup> Capitalized terms not otherwise defined in this submission borrow the definitions set forth in the Amended Settlement Agreement. The Amended Settlement Agreement contained a drafting error whereby there were still some references to the term “Boosters,” even though use of that term was changed in the relevant sections of the Amended Injunctive Relief Settlement to Associated Entities or Individuals, a narrower group of entities and individuals closely affiliated with the schools. Thus, the parties are concurrently submitting with this Motion, the Second Amended Stipulation and Settlement Agreement, which corrects this error and will serve as the operative settlement agreement moving forward. *See* Berman Final Approval Decl. ¶ 10 Ex. C.

1 automatically qualify for a distribution simply by updating their contact and payment information,  
 2 meaning many more athletes are participating in the settlement.<sup>2</sup> Peak Decl. ¶ 33. When these class  
 3 members updated their payment information, the website disclosed how much they would recover. By  
 4 comparison, just 343<sup>3</sup> class members (out of nearly 390,000) have opted out, while only 73 timely, valid  
 5 objections have been filed by class members. Peak Decl. ¶¶ 29, 36; Berman Final Approval Decl. ¶ 5, Ex.  
 6 A.<sup>4</sup> Even when combined, that is only 0.11% of the class.

7 It is not surprising that the response to the settlement has been overwhelmingly positive. The  
 8 \$2.576 billion damages settlement is one of the largest in antitrust history. And the more than \$20 billion  
 9 in new compensation and benefits that will be available to members of the injunctive class will be life  
 10 changing. The injunction will also ensure the continued availability of third-party NIL payments to tens  
 11 of thousands of college athletes each year, the eradication of all limitations on athletic scholarships, and  
 12 a new, neutral arbitration system for protecting college athlete rights. Achieving this historic  
 13 breakthrough for Division I college athletes required more than a decade of litigation. The settlement is  
 14 clearly in the best interests of the Settlement Classes, and it should now receive final approval by this  
 15 Court.

16 While several objections have been filed, none of them provides any basis for depriving class  
 17 members of the extraordinary benefits provided by the *House* settlement. *See* Section III, *infra* (for  
 18 response to objections). To begin with, many of the objections are based on a misunderstanding of the  
 19 settlement's terms. The settlement does nothing to impede future collective bargaining as asserted by the  
 20 Anderson Objectors (*see* ECF No. 613 at 12-15); it facilitates it if such bargaining becomes permissible.  
 21 The settlement does not grant the NCAA or the Conference Defendants antitrust immunity against future  
 22 claims by the Department of Justice or other government enforcers, and it does not release any future

23 \_\_\_\_\_  
 24 <sup>2</sup> These athletes do not need to file claims but are already actively participating in the settlement. In  
 25 addition to the more than 70,000 claims, the Settlement Administrator has received 28,816 forms from  
 eligible Power Five athletes providing payment information where their damages allocation can be  
 provided to them. Peak Decl. ¶ 33.

26 <sup>3</sup> The Settlement Administrator received 370 unique requests for exclusion, one was rescinded, 18  
 27 were postmarked late, and 8 were made by athletes who are not class members. Peak Decl. ¶ 36.

28 <sup>4</sup> For transparency's sake and to make the Court's review of the objections and the responses in this  
 briefing easier, Plaintiffs have prepared an index of objections that identifies each valid objection and  
 where in this brief Plaintiffs respond. *See* Berman Final Approval Decl. ¶ 5 & Ex. A.

1 antitrust damages claims of any class members. Other than claims relating to the distribution of the  
2 settlement, the settlement does not release, resolve, or address Title IX issues, which are not part of this  
3 antitrust case. The individual schools will have to determine the requirements of Title IX in providing  
4 benefits to college athletes in the future, but that is not an issue addressed by this antitrust settlement.  
5 There are also no conflicts between members of the Settlement Classes that require appointment of  
6 separate counsel or rejecting approval of this landmark settlement as asserted by the Vogelsong  
7 Objectors (ECF No. 622) and others. Class Counsel structured settlement negotiations to ensure that no  
8 such conflicts arose. *See* ECF No. 450 at 6; ECF No. 494 at 2–5; ECF No. 534 at 16-17 (describing the  
9 settlement negotiation procedures). Certain of the objectors complain that the damage claims for class  
10 members with athletic services claims or partial scholarship claims were settled for too little. It is  
11 common for class members to recover differing amounts based on the value of their claims. Here,  
12 despite the many months since preliminary approval, these objectors have failed to provide any plan or  
13 expert testimony as to how these classes would be certified for these damages claims or their damages  
14 calculated, proving that these objections are meritless.

15 This is not to say that the settlement resolves all concerns of every class member—no class  
16 action settlement could meet that test. By its nature, any settlement is a compromise. This is why the  
17 courts have recognized that class member objections to a settlement based on an argument that even  
18 more or different benefits might be achieved are not a basis for withholding approval.<sup>5</sup> The test is  
19 whether the settlement, viewed as a whole, is in the best interests of the class. The *House* settlement  
20 demonstrably is.

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22 <sup>5</sup> *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by Wal-*  
23 *Mart Stores, Inc. v. Dukes*, 564 338 (2011) (Settlements are the product of negotiations and compromise,  
24 and it is not relevant to ask “whether the final product could be prettier, smarter or snazzier, but whether  
25 it is fair, adequate, and free from collusion.”); *Zakikhani v. Hyundai Motor Co.*, 2023 WL 4544774, at \*6  
26 (C.D. Cal. May 5, 2023) (overruling objections and granting final approval because objections were  
27 “merely argu[ments] that the settlement terms for Class Members could have been better [which] ‘does  
28 not mean the settlement [is] not fair, reasonable or adequate’” ((quoting *Hanlon*, 150 F.3d 1011 at 1027));  
*Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462, at \*26 (C.D. Cal. May 29, 2015) (“As an  
initial matter, the mere fact that the benefits provided under the settlement agreement will not make all  
class members ‘whole,’ and/or the possibility that a ‘better’ settlement might have been reached, do not  
provide a sufficient basis upon which to conclude that the settlement agreement is unfair.”).

1 As one example, several objections have been filed complaining about roster limits, which the  
2 NCAA has adopted for the 2025-26 academic year, when the injunction under the settlement will go into  
3 effect. But these objections from a tiny percentage of the class to one discrete part of the settlement  
4 compromise, do not provide a basis for denying approval in light of the enormous benefits of the  
5 settlement as a whole to the class. In fact, only nine objectors—out of the thousands of current-athlete  
6 class members—even claimed that they had already been cut from their teams due to NCAA roster  
7 limits. Moreover, the end of all athletic scholarship limitations will create significant financial benefits  
8 to the class. In short, the move to roster limits was part of the overall settlement compromise, and any  
9 negative effects are dwarfed by the extraordinary benefits provided by the settlement to the Settlement  
10 Classes as a whole.

11 For the foregoing reasons, Plaintiffs respectfully request that the Court certify the proposed  
12 Settlement Classes, overrule the objections, and grant final approval of the settlement.

## 13 **II. THE SETTLEMENT MEETS THE REQUIREMENTS FOR FINAL APPROVAL**

### 14 **A. The Settlement is Fair, Reasonable, and Adequate**

15 The law strongly favors the settlement of class action lawsuits. *See, e.g., Churchill Vill., LLC v.*  
16 *Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276  
17 (9th Cir. 1992). Moreover, “the decision to approve or reject a settlement is committed to the sound  
18 discretion of the trial judge because [the trial judge] is ‘exposed to the litigants, and their strategies,  
19 positions and proof.’” *Hanlon*, 150 F.3d at 1026.

20 To grant final approval under Rule 23, the district court is not asked to assess whether the  
21 proposed settlement is the best possible outcome for all class members, but rather to determine whether  
22 the settlement—as a whole—is “fair, reasonable, and adequate.” *Hanlon*, 150 F.3d at 1027; *see* Fed. R.  
23 Civ. P. 23(e)(2). Plaintiffs’ Preliminary Approval Motion addressed all factors courts consider in making  
24 this determination, including the factors listed in the Northern District of California’s Procedural  
25 Guidance for Class Action Settlements. Because the relevant facts generally have not changed since  
26 preliminary approval, Plaintiffs will not burden the Court with a repetitive discussion of the settlement  
27 terms and applicable fairness criteria. For a comprehensive discussion of those issues, Plaintiffs  
28 respectfully refer the Court to their Preliminary Approval Motion. *See* ECF No. 450. In response to

1 certain objections, Plaintiffs also further explain in Sections III.A and III.B, *infra*, why the damages and  
2 injunctive relief is more than fair, reasonable, and adequate—it is outstanding.

3 **B. The Approved Notice Plan Was Successfully Implemented**

4 The Settlement Administrator implemented a multifaceted notice campaign that included an  
5 ambitious direct notice plan, a robust digital media campaign, as well as press releases and other organic  
6 media efforts to reach Settlement Class Members. Peak Decl. ¶¶ 10-26. This notice was supplemented  
7 with an additional press release and email notice to alert Settlement Class Members that there was one  
8 week left before the claim-filing deadline. *Id.* ¶¶ 22, 26.

9 To begin, the Settlement Administrator coordinated with Class Counsel and Defendants to  
10 request the last-known contact information and additional data points from 325 Division I universities  
11 for the majority of Settlement Class Members. Peak Decl. ¶ 5. This resulted in 372,838 unique class  
12 member email notices and 91,084 postcard notices mailed, totaling over 463,922 notices to class  
13 members. *Id.* ¶¶ 14, 19-20. Wherever possible, the Settlement Administrator contacted class members  
14 through both email and postcard notices. Before mailing each notice, the Settlement Administrator  
15 checked the potential class members' names and addresses against the U.S. Postal Service's National  
16 Change of Address database to identify any address changes. *Id.* ¶ 7. Before e-mailing each notice, the  
17 Settlement Administrator cleansed and validated each email to verify its existence with Internet Service  
18 Providers. *Id.* ¶ 17.<sup>6</sup> One week prior to the claim-filing deadline, the Settlement Administrator sent out  
19 an additional email notice to all Settlement Class Members reminding them of the deadline. *Id.* ¶ 22.

20 Evidence of this successful direct notice campaign is the 101,935 class members who filed a  
21 unique claim form or updated their payment information with a Claim ID and PIN (and the average  
22 daily claim submission rate of 852). *Id.* ¶¶ 28, 35. It is also evidenced by the fact that the settlement  
23 website received substantial activity, including over 4.8 million page views, over 1.3 million active  
24 session visits, and over 830,000 identifiable unique users. *Id.* ¶ 27.

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26 <sup>6</sup> Of the 91,084 postcard notices mailed, 22,359 were returned as Undeliverable Mail; after performing  
27 address searches through the credit bureau and other public source databases, 867 notices were re-mailed  
28 successfully. Peak Decl. ¶ 16. Further, the forwarding order expired on 1,071 addresses, and 513 of these  
were re-verified and re-mailed. *Id.* ¶ 15.

1 In addition to this robust direct notice campaign, the Settlement Administrator undertook an  
2 ambitious digital media campaign to purchase over 72 million impressions on numerous digital platforms  
3 used extensively by the Settlement Class Members. *See* ECF No. 405-5. This goal was exceeded and  
4 75,363,111 impressions in ads, banners, videos, promoted posts, and texts were purchased over five  
5 different digital platforms to inform class members of the settlement. Peak Decl. ¶ 23.

6 Finally, the Settlement Administrator issued a press release on October 18, 2024 to AP News, and  
7 a College Media Influencer List consisting of journalists specifically reporting on college news, which  
8 was viewed 9,859 times and picked up by over 910 news outlets nationwide. Peak Decl. ¶ 24. The  
9 Settlement Administrator additionally distributed a second press release on January 21, 2025 to alert class  
10 members of the pending deadline. *Id.* ¶ 26 (confirming this was viewed over 3,663 times and picked up  
11 by over 525 news outlets). Other major nationwide news organizations reported on the settlement,  
12 presumably reaching thousands of class members. *See In re Apple Inc. Device Performance Litig.*, 50  
13 F.4th 769, 779 (9th Cir. 2022) (recognizing class members likely received notice through “substantial  
14 coverage in the press and on social media”).

### 15 **1. The Notice Campaign Satisfied Rule 23 and Due Process**

16 To satisfy Rule 23 and due process, notice “must be the best practicable, reasonably calculated,  
17 under all the circumstances to apprise interested parties of the pendency of the action and afford them  
18 the opportunity to present their objections.” *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 329  
19 (N.D. Cal. 2018) (internal quotation marks omitted). This does not require “actual notice to each  
20 individual class member.” *Id.* (internal quotation marks omitted); *Silber v. Mabon*, 18 F.3d 1449, 1454  
21 (9th Cir. 1994); *see* Fed. R. Civ. P. 23(c)(2)(B), (e)(1)(B). Rather, the test is whether notice was  
22 reasonably calculated so as to “not systematically leave any group without notice.” *Officers for Just. v.*  
23 *Civ. Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982).

24 This Court previously recognized this notice plan as “the best notice practicable under the  
25 circumstances” that would provide “due and sufficient notice to all persons entitled thereto.” *See* Prelim.  
26 Approval Order at 5; *see also Perkins v. LinkedIn Corp.*, 2016 WL 613255, at \*7 (N.D. Cal. Feb. 16,  
27 2016) (finding class notice adequate where the approved notice was sent in accordance with the  
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1 approved notice plan, which was consistent with the requirements of Rule 23 and due process); *In re*  
2 *Splunk Inc. Sec. Litig.*, 2024 WL 923777, at \*5 (N.D. Cal. Mar. 4, 2024).

3 Direct Notice successfully reached over 81.9% of Settlement Class Members—including college  
4 athletes who competed approximately 10 years ago and athletes who competed at 325 different  
5 universities across the country. Peak Decl. ¶ 21. Alone, this may have been enough. But here it was  
6 combined with multiple other tactics to notify approximately 96.4% of impacted Settlement Class  
7 Members, who, on average, were notified 2.5 times. *Id.* ¶¶ 6, 11. Moreover, the Settlement  
8 Administrator provided consistent and reliable support to Settlement Class Members’ 36,457 inquiries  
9 by responding on average within 1.5 days. *Id.* ¶ 31. This ensured that class members were apprised of  
10 the action and afforded the opportunity to object or opt out.

11 The parties did not need to include in the notice granular information about nuanced settlement  
12 terms or individual damages estimates. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012)  
13 (“Notice provided pursuant to Rule 23(e) must generally describe[] the terms of the settlement in  
14 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard,”  
15 which “does not require detailed analysis of the statutes or causes of action forming the basis for the  
16 plaintiff class’s claims, [nor] an estimate of the potential value of those claims.”); *Rodriguez v. W.*  
17 *Pub’lg Corp.*, 563 F.3d 948, 962-63 (9th Cir. 2009) (notice need only “describe[] the aggregate amount  
18 of the settlement fund and the plan for allocation,” not “detail the content of objections, or analyze the  
19 expected value”). But, in this case, estimates of damages allocations were provided for hundreds of  
20 thousands of class members. On December 17, 2024, the settlement website provided “allocation  
21 estimates” for 392,298 Settlement Class Members whose Division I university had submitted sufficient  
22 data for them. Peak Decl. ¶ 29.

23 Providing such individual damages estimates created a substantial amount of additional work for  
24 Class Counsel, Plaintiffs’ experts, and the Settlement Administrator, but these estimates were provided  
25 to be more transparent with each member of the damages settlement classes about what they could  
26 expect through a damages distribution. Class members were notified of the settlement and understood in  
27 detail their rights and options.

1 **C. The Reaction of the Settlement Class Has Been Overwhelmingly Positive**

2 In approving class action settlements, courts often gauge the reaction of the class by reviewing the  
 3 number of objections and opt-outs in comparison to the claims rate and the overall size of the class. *See*  
 4 *Hanlon*, 150 F.3d at 1027 (“[T]he fact that the overwhelming majority of the class willingly approved the  
 5 offer and stayed in the class presents at least some objective positive commentary as to its fairness.”).  
 6 Here, the claims rate and overall participation in the settlement – 101,935 unique claim forms or payment  
 7 updates were submitted out of 389,700 estimated class members, for a participation rate of 26.2% – is  
 8 very high compared to similar large class action settlements. For example, in the *Anthem Data Breach*  
 9 *Litigation*, Judge Koh approved a settlement class action where only 1.8% of settlement class members  
 10 made claims. 327 F.R.D at 329; *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 941,  
 11 944-45 (9th Cir. 2015) (Ninth Circuit affirming final approval of settlement where less than 4% of class  
 12 members who were sent notice made claims and noting that “settlements have been approved where less  
 13 than five percent of class members file claims”).<sup>7</sup>

14 The small number of timely objections (73) and opt outs (343) by Settlement Class Members,  
 15 even when combined, is only 0.11% of the 389,700 estimated class members. That also strongly  
 16 supports approval of the settlement. *See Churchill Vill.*, 361 F.3d at 577 (affirming final approval where  
 17 approximately 0.61% of class members either opted out or objected); *Chun-Hoon v. McKee Foods*  
 18 *Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (finding that 4.86% opt-out rate “strongly  
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20 <sup>7</sup> *See also, e.g., Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (affirming final approval of settlement  
 21 with claims rate of 3%); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (en banc) (noting  
 22 evidence that claims rates in class settlements “rarely exceed seven percent, even with the most extensive  
 23 notice campaigns”); *Taylor v. Shutterfly, Inc.*, 2021 WL 5810294, at \*7 (N.D. Cal. Dec. 7 2021) (granting  
 24 final approval to settlement where 2.4% of class members—2,425 out of 98,000—submitted valid claims);  
 25 *Norcia v. Samsung Telecomms. Am., LLC*, 2021 WL 3053018, at \*3 (N.D. Cal. July 20, 2021) (granting  
 26 final approval where claims rate was 2.035% (7,468 claims received from approximately 367,00 class  
 27 members), which the court held was on par with similar cases); *Touhey v. United States*, 2011 WL  
 28 3179036, at \*7-8 (C.D. Cal. July 25, 2011) (finding a 2% (38 claims made out of 1,875 notices mailed)  
 response rate acceptable); *Moore v. Verizon Commc’n Inc.*, 2013 WL 4610764, at \*8 (N.D. Cal. Aug. 28,  
 2013) (granting final approval of class action settlement with a 3% claims rate—250,236 submitted valid  
 claims out of 8,089,893 potential class members); *Amin v Mercedes Benz USA, LLC*, 2020 WL 5510730,  
 at \*1, \*3 (N.D. Ga. Sept. 11, 2020) (granting final approval of settlement with 0.63% claims rate); *Perez*  
*v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1377 (S.D. Fla. 2007) (approving 10.3 million-member settlement  
 class when less than 119,000—approximately 1.2%—filed claims).

1 support[ed]” final settlement approval). Focusing on the number of objections (73) out of the total class  
2 yields a miniscule objection percentage rate of 0.02%, which further shows that settlement approval is  
3 appropriate. *See Pallas v. Pac. Bell*, 1999 WL 1209495, at \*8 (N.D. Cal. July 13, 1999) (finding that 48  
4 objections (0.5%) out of 10,000 class members supported final approval).

5 Overall, the small number of opt-outs and objections is exponentially outweighed by the high  
6 level of participation of Settlement Class Members. Combined, these figures show the overwhelmingly  
7 positive reaction of class members to the settlement, strongly supporting settlement approval.

#### 8 **D. The Proposed Settlement Class Satisfies Rule 23**

9 For final approval of a class action settlement, the proposed settlement class also must satisfy the  
10 Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation.  
11 Additionally, the proposed class must meet one of the Rule 23(b) requirements. *See Hanlon*, 150 F.3d at  
12 1019-1022. Plaintiffs seek certification of the proposed damages Settlement Classes pursuant to Rule  
13 23(b)(3) and certification of the proposed injunctive Settlement Class pursuant to Rule 23(b)(2). In the  
14 Preliminary Approval Motion, Plaintiffs discussed at length why the Settlement Classes should be  
15 certified. Plaintiffs do not repeat that discussion here, but rather for efficiency’s sake respond to the  
16 relevant objections in Section III *infra*, to the extent that objections challenge whether the Rule 23  
17 requirements have been met.

### 18 **III. OMNIBUS RESPONSE TO OBJECTIONS**

19 In this Section, Plaintiffs respond to the objections submitted to the settlement, organized by type  
20 of objection. As explained herein, each of these objections is without merit. The Court should overrule  
21 the objections, as it did for virtually all of these same complaints when it granted preliminary approval.

#### 22 **A. The Historic Damages Settlement and Allocations to Class Members are Clearly Fair, 23 Reasonable, and Adequate**

24 This historic damages settlement secures almost \$2.6 billion<sup>8</sup> in damages to nearly 390,000  
25 current and former Division I athletes—a monumental recovery representing 67.4% of estimated NIL  
26 damages and 31.6% of estimated athletic services damages, percentages substantially greater than the

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28 <sup>8</sup> When the \$200 million in damages in the related *Hubbard v. NCAA* settlement is added to this total,  
it exceeds \$2.7 billion.

1 average class action settlement recovery in antitrust cases such as this one.<sup>9</sup> A small number of class  
2 members have nonetheless objected to the settlement on the basis that they believe they are being  
3 undercompensated or that their individual circumstances warrant a higher damages settlement amount.<sup>10</sup>  
4 But these objections are not a ground for denying final approval. *See Nwabueze v. AT&T Inc.*, 2013 WL  
5 6199596, at \*7 (N.D. Cal. Nov. 27, 2013) (“That a more favorable result for some Class Members could  
6 potentially have been reached is not a sufficient reason to reject an otherwise fair and reasonable  
7 settlement.”); *Browne v. Am. Honda Motor Co., Inc.*, 2010 WL 9499072, at \*18 (C.D. Cal. July 29,  
8 2010) (granting final approval of settlement and recognizing that “[w]hile the proposed settlement does  
9 not perfectly compensate every member of the class, it is unlikely that any settlement . . . would achieve  
10 such a result”). Indeed, this Court has already granted preliminary approval despite identical objections.  
11 *See* Prelim. Approval Order. As the Court noted during the preliminary approval hearing, “Everybody  
12 thinks they can do better, getting more money than the other guy got.” Sept. 5, 2024 Prelim. Approval  
13 Hr’g Tr. at 41:21-23. But such complaints are not a basis for denying approval of a class action damages  
14 settlement that is fair, reasonable, and adequate for the class.

15 With respect to the few objectors complaining about their specific allocations,<sup>11</sup> it is well-  
16 established that if a class member believes a settlement does not provide her with a sufficient individual  
17 recovery, her remedy is to opt out and separately pursue her claims. *See Rosado v. Ebay Inc.*, 2016 WL  
18 3401987, at \*9 (N.D. Cal. June 21, 2016) (granting final settlement approval over objector’s contention  
19 “that he ha[d] suffered damages that [we]re significantly higher than the typical class member” because  
20 the objector “should opt out of the class and separately pursue his claims”); *Milligan v. Toyota Motor*  
21 *Sales, U.S.A., Inc.*, 2012 WL 10277179, at \*7 (N.D. Cal. Jan. 6, 2012) (granting final approval of a  
22

23 <sup>9</sup> *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at \*7 & n.19 (N.D. Cal. July  
24 7, 2016) (citing a survey of 71 settled antitrust cases that showed a weighted mean recovery of 19% of  
25 single damages); *see also, e.g., In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at \*20, 23  
26 (N.D. Cal. Dec. 10, 2020) (in antitrust case, describing a recovery of 11.7% of single damages as an  
27 “excellent” result). This Court has previously held that “[f]ar lesser results (with 20% recovery of damages  
28 or less) have justified upward departures from the 25% benchmark” award of attorneys’ fees. *See In re*  
*NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at \*3 (N.D. Cal. Dec. 6, 2017).

<sup>10</sup> *See* ECF Nos. 609, 622, 628, 637, 688, 705.

<sup>11</sup> *See* ECF Nos. 609, 637, 688.

1 settlement over objections that the settlement “provide[d] no benefit to” certain class members because  
2 “[o]bjectors who raised these concerns could have simply opted out of the settlement”). Approximately  
3 343 class members (.09% of the members of the damages classes) have exercised their rights to opt out.  
4 Sixty-seven of them have already filed their own litigation in this Court. *See* Compl., *Hill v. NCAA*, No.  
5 4:25-cv-01011, ECF No. 1 (N.D. Cal. Jan. 31, 2025). None of these individual complaints provides any  
6 basis for denying approval.

7 **1. Objections to Specific Recoveries in the Damages Settlement Are Not a Basis for**  
8 **Denying Final Approval**

9 A few objectors argue that the \$600 million in damages obtained in exchange for release of the  
10 *Carter* claims is insufficient. *See, e.g.*, ECF Nos. 622, 628, 705. Similar arguments were raised at the  
11 preliminary approval stage (*see* Prelim. Approval Reply at 16-17), but were properly rejected by the  
12 Court as a ground for denying preliminary approval. *See* Prelim. Approval Order. The Court should  
13 reach the same conclusion at the final approval stage.

14 Objectors complaining about the *Carter* damages amount ignore the significant hurdles these  
15 claims would face with respect to both class certification and liability. *See* ECF No. 450 at 18-20; ECF  
16 No. 494 at 13 (noting Defendants’ previous success in this Court and Circuit arguing that there are  
17 procompetitive justifications for limiting performance-based compensation); *see also* ECF No. 450 at  
18 20-21 (explaining the risk that no damages, or minimal damages, would be awarded for the additional  
19 compensation claims and further noting that, even if Plaintiffs could overcome the challenges posed and  
20 obtain significant damages relief post-trial and appeals, there would be a substantial delay in paying out  
21 those damages); *infra* Sect. III.C.2.a (further discussing the class certification and liability challenges of  
22 these claims). It is noteworthy that despite the many months since objecting to preliminary approval,  
23 these objectors have put forth no expert or trial or class certification proposal detailing how they would  
24 overcome these hurdles. Class Counsel has been litigating claims over the NCAA’s compensation  
25 restrictions for over a decade and has a more informed view than objectors about the value of—and  
26 hurdles to prevailing in—these claims from the extensive proceedings in both *Alston* and *House*. As the  
27 Ninth Circuit has made clear, complaints that a higher amount of damages could have been obtained  
28 through a trial may be reason for individual class members to opt out; they are not a ground for denying

1 approval of the settlement for the more than three hundred thousand class members who want to receive  
2 their damage distributions. *See Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at \*12 (N.D.  
3 Cal. Apr. 1, 2011) (finding that “class members’ challenges to the amount of their individual awards do  
4 not provide any grounds to reject the proposed settlement”); *In re Apple iPhone 4 Prods. Liab. Litig.*,  
5 2012 WL 3283432, at \*2 (N.D. Cal. Aug. 10, 2012) (rejecting objections that settlement damages were  
6 insufficient because “if any objector believed that his or her personal claim was being sacrificed for the  
7 greater good . . . they had the right to opt-out of the class” (citation omitted)).

8         There is similarly no basis for the Vogelsong Objectors’ argument that class members who are  
9 partial scholarship athletes stand to “gain very little from the settlement” because “partial-scholarship  
10 claims have real value.” Vogelsong Obj. at 12-13, ECF No. 622. An identical argument was previously  
11 raised by the (same) Colorado Objectors at the preliminary approval stage. *See* Prelim. Approval Reply  
12 at 15-17 (addressing argument raised by Colorado Objectors (ECF No. 473)). This objection, as before,  
13 simply ignores the substantial hurdles that would confront any attempt to certify a class, let alone prove  
14 damages on a class-wide basis, for athletes who only received partial scholarships, given the previous  
15 failed attempts to certify classes of athletes challenging the NCAA’s scholarship limits. *See* Prelim.  
16 Approval Reply at 16; *see also infra* Section III.C.2.b. If class members with such claims believed their  
17 recoveries under the settlement are inadequate, their remedy was to opt out—not to seek to deny final  
18 approval for everyone else. And these objectors have had many months to develop their objection and  
19 have utterly failed to provide the Court with a plan on how they would certify this class or prove class-  
20 wide damages.

21         The Anderson Objection (also referred to herein as the Hausfeld Objectors) (ECF No. 613)  
22 lodges similarly meritless arguments about Dr. Rascher’s methodology for calculating Lost NIL  
23 Opportunities damages. Contrary to the claims in the Anderson Objection (*see id.* at 24) and  
24 accompanying expert declaration (*see* Decl. of Michael Cragg ¶¶ 55-56, ECF No. 613-13), Dr. Rascher  
25 made use of a natural experiment to estimate Lost NIL Opportunities damages and apply a common  
26 class-wide formula for allocating the settlement amount to individual class members. *See* Rascher Final  
27 Approval Decl. ¶ 92; Rascher Class Cert. Rep. ¶¶ 194–95; Rascher Class Cert. Reply Rep. ¶ 111.  
28 Defendants challenged this model in a *Daubert* motion at class certification, which the Court rejected.

1 See ECF No. 386 at 23-24 (holding “Dr. Rascher’s third-party NIL methodology is not subject to  
2 exclusion” and explaining that his model “is designed to take the economic value of NIL payments in  
3 the ‘after period’ and use them as a baseline for estimating the economic value of payments in the  
4 ‘before period.’” (emphasis omitted)). While the Hausfeld Objectors’ economist, Dr. Cragg, cites a  
5 single, unverified internet source to claim the Lost NIL Opportunities damages calculated by Dr.  
6 Rascher should be larger (*see* ECF No. 613-13 ¶¶ 59-60), Dr. Rascher relied on verified data obtained  
7 through hundreds of subpoenas to Division I schools to review the actual amounts paid to specific class  
8 members in third-party NIL deals. *See* Rascher Class Cert. Rep. ¶¶ 196-97, Rascher Final Approval  
9 Decl. ¶¶ 90-93. Dr. Rascher’s reliance on *evidence* to come to a careful damages analysis versus the  
10 Hausfeld Objectors’ reliance on cherry-picked information from the internet underlines the problem with  
11 such armchair quarterbacking. Rascher Final Approval Decl. ¶¶ 90-93. Further, Dr. Rascher’s use of the  
12 individualized NIL reporting from schools with more detailed transaction-specific information allowed  
13 him to analyze and opine regarding injury to specific athletes, which was critical to showing class-wide  
14 injury. Rascher Final Approval Decl. ¶ 94. Class Counsel’s success at the class certification stage was a  
15 key factor to achieving the high percentage of damages through the settlement. And it is worth recalling  
16 that in *O’Bannon*, Hausfeld’s damage methodology was unsuccessful and the class not certified – class  
17 members in that case recovered zero damages from the proffered methodology.

18 In sum, courts routinely approve class action settlement allocations based on such a neutral and  
19 evidence-based expert damages methodology over objections arguing for damages methodologies that  
20 are speculative and unsubstantiated by record evidence. *See In re Cendant Corp. Litig.*, 264 F.3d 201,  
21 237 n.20 (3d Cir. 2001) (rejecting objection that was “not only speculative, but also undermined by the  
22 evidence in the record”); *Nguyen v. Radiant Pharms. Corp.*, 2014 WL 1802293, at \*7 (C.D. Cal. May 6,  
23 2014) (rejecting objection based on evidence that was “speculative at best” and noting that such an  
24 objection “does not render [a] settlement . . . unreasonable or unfair”); *Edwards v. Nat’l Milk Producers*  
25 *Fed’n*, 2017 WL 3616638, at \*2 (N.D. Cal. June 26, 2017) (rejecting objections that other experts  
26 estimated “higher damages . . . than [p]laintiffs’ ultimate damages expert” because “it is the parties  
27 themselves, as opposed to the court or the objectors, who are in the best position to assess whether a  
28 settlement fairly reflects their expected outcome in litigation”), *aff’d sub nom. Edwards v. Andrews*, 846

1 F. App'x 538 (9th Cir. 2021). No antitrust damages settlement—even one that is almost \$2.6 billion—is  
 2 going to satisfy every class member. But that is no basis for withholding final approval when the  
 3 settlement, viewed as a whole, is unquestionably in the best interests of the class.

4 **2. The Damages Allocations Are Fair and Based on Reasonable and Neutral**  
 5 **Methodologies**

6 A methodology for allocating damages in a class action settlement is considered reasonable and  
 7 fair when it is based on objective, relevant criteria that are consistent with expert testimony and account  
 8 for the relative value of class members' damages claims. *See, e.g., In re High-Tech Emp. Antitrust Litig.*,  
 9 2015 WL 5159441, at \*6 (N.D. Cal. Sept. 2, 2015) (rejecting objection to settlement's damages  
 10 allocation because the methodology relied on “a neutral and uniform metric . . . consistent with  
 11 [p]laintiffs' expert opinions”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal.  
 12 2008) (“It is reasonable to allocate the settlement funds to class members based on the extent of their  
 13 injuries or the strength of their claims on the merits.”); *In re Resistors Antitrust Litig.*, 2020 WL  
 14 2791922, at \*2 (N.D. Cal. Mar. 24, 2020) (finding plan to allocate “on a pro rata basis based on the  
 15 dollar value of approved purchases . . . [to be] fair, reasonable, and adequate”). That is exactly the type  
 16 of neutral and fair expert damages allocation methodology applied here. *See* ECF No. 450 at 24-25; *see*  
 17 *generally* Rascher Prelim. Approval Decl.

18 Several objectors argue that BNIL damages should be allocated to walk-on athletes or to athletes  
 19 in sports other than football and basketball.<sup>12</sup> But Dr. Rascher's neutral damages analysis and  
 20 methodology does not support such an allocation. *See* Rascher Class Cert. Reply Rep. ¶ 35, ECF No.  
 21 290-2; Rascher Prelim. Approval Decl. ¶ 25 n.11. Indeed, with respect to walk-on football and  
 22 basketball players, Dr. Rascher found that since schools have not competed to offer these athletes  
 23 compensation through athletic scholarships, it would be wholly speculative to conclude that the schools  
 24 would have compensated them with BNIL payments, had they been allowed to do so. *See* Rascher Class  
 25 Cert. Reply Rep. ¶¶ 35, 82. To the extent an individual walk-on player had a unique story (*à la* Baker  
 26 Mayfield, who was referenced in several objections) and felt he could prove that he would have

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 28 <sup>12</sup> *See* ECF Nos. 593, 601, 612, 619, 632–34, 636, 638, 639, 665-1, 653–54, 659, 664, 668, 670, 671,  
 672–73, 675, 678–79, 682, 684–85, 689, 690, 692, 693.

1 uniquely received BNIL damages, he was free to opt out and pursue his own unique claim. The claim to  
2 BNIL damages by athletes outside of football and basketball are even more speculative.<sup>13</sup> The BNIL  
3 damages are based on Dr. Rascher's and Mr. Desser's expert analyses of the very large BNIL values  
4 provided by the athletes on the P5 football and basketball teams *See Rascher Class Cert. Rep.* ¶¶ 174-78;  
5 *Desser Class Cert. Rep.* at 60-62. No objector has provided any expert testimony to support an argument  
6 that other D-I athletes in far smaller revenue sports would have received BNIL payments of their own.  
7 But even if some class members believed that they could prove such damages, their remedy was to opt  
8 out of the settlement and pursue their own claims.

9 Nor is there any basis for the objections related to the Lost Opportunities damages allocations. A  
10 few objectors who did not compete after the NCAA introduced its interim NIL policy in July 2021 argue  
11 that it is unfair they do not receive Lost NIL Opportunities damages because of the use of Dr. Rascher's  
12 before-and-after methodology. *E.g.*, ECF Nos. 635, 637, 640. Another objector argues that Dr. Rascher's  
13 formula does not account for the value an athlete could have attained if the NCAA's NIL ban had never  
14 existed. *See* ECF No. 624. But such complaints that a neutral and objective expert damages  
15 methodology does not provide every class member with the amount of damages that he or she desires is  
16 not a proper ground for objection to a class action settlement. *See* p. 14 *supra* (discussing cases).

17 **B. The Injunctive Relief Settlement Provides Relief That Is More Than Fair and Adequate**

18 After decades of litigation resulting in incremental gains against Defendants' compensation and  
19 benefits rules, the injunction class settlement throws the door open and allows an avalanche of new  
20 benefits to class members that are expected to exceed \$20 billion over the injunctive relief term. That is  
21 nothing short of transformative.

22 But every settlement is a compromise, and no settlement impacting hundreds of thousands of  
23 class members is going to be free from some objectors. In this case, a tiny percentage of objectors have  
24 opposed the injunctive settlement because: (i) some of them argue for the ability to obtain even greater  
25 compensation to class members going forward; (ii) some of them oppose having any "cap" on  
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27 <sup>13</sup> *See, e.g.*, ECF No. 638 at 5 (women's lacrosse player objecting on the basis that she "believe[s] that  
28 [she] [is] entitled to a significant NIL Broadcast payment"); ECF No. 671 (women's tennis player  
objecting on the basis that she "believe[s] that [she] [is] entitled to a significant NIL Broadcast payment").

1 compensation to class members because they believe such a cap is an antitrust violation; (iii) some of  
2 them believe it would be preferable for the class members to agree upon a future compensation system  
3 through collective bargaining with a labor union; (iv) some of them want to make sure that Defendants  
4 cannot invoke the settlement approval as a defense to future antitrust claims; and/or (v) some of them  
5 argue that the injunctive relief terms purportedly conflict with state NIL laws and other courts' orders.  
6 None of these objections provides any basis for the Court to deny final approval of an extraordinary  
7 injunctive settlement which provides tens of billions of dollars in future benefits to class members and is  
8 clearly in the best interests of the class.

9 **1. The Injunctive Relief Settlement Is More than Fair and Adequate: It Will Provide**  
10 **Class Members with Tens of Billions of Dollars in Previously Prohibited**  
11 **Compensation and Unlimited Scholarships**

12 **a. The Injunctive Relief Secured by the Settlement Transforms Defendants'**  
13 **Long-Defended Compensation Rules**

14 By any measure, the tens of billions of dollars in new benefits that will be available to the  
15 injunctive class members is one of the most lucrative antitrust settlements in history. The fact that a few  
16 class members argue that an even more generous amount of future compensation might have been  
17 achieved after a trial is irrelevant to final approval. The law is clear that class action settlements are “not  
18 to be judged against hypothetical speculative measure of what might have been achieved.” *Officers for*  
19 *Just.*, 688 F.2d at 624. Because any settlement is a compromise, the role of the Court in considering  
20 approval is to determine whether the settlement is fair and adequate to the class—not whether it might  
21 hypothetically be even better. *See Hanlon*, 150 F.3d at 1026 (settlement “is the offspring of  
22 compromise[,] the question is . . . not whether the final product could be prettier, smarter or snazzier”);  
23 *Alvarez v. Sirius XM Radio*, 2021 WL 1234878, at \*7 (C.D. Cal. Feb. 8, 2021) (overruling objection that  
24 allowed defendant to continue some challenged conduct because “a full recovery is often not possible in  
25 a settlement . . . and a partial recovery does not render a settlement unreasonable”). As noted above, this  
26 Court observed in considering (and ultimately rejecting) similar objections at the preliminary approval  
27 phase: “everybody thinks they can do better, getting more money than the other guy got.” Sept. 5, 2024  
28 Prelim. Approval Hr’g Tr. at 41:21–23; *see e.g.*, ECF No. 613 at 12–21; ECF 628 at 20-23. But this is

1 not a ground for opposing the approval of a transformative injunctive relief settlement that will  
2 positively change the lives of hundreds of thousands of class members over the next ten years.

3 To put the tremendous strides made by the injunctive relief settlement in context, just nine years  
4 ago, the Ninth Circuit vacated this Court’s injunction that would have allowed college football and  
5 basketball players to receive \$5,000 in deferred compensation for the use of their NILs. *O’Bannon v.*  
6 *NCAA*, 802 F.3d 1049, 1078 (9th Cir. 2015).<sup>14</sup> The appellate court concluded that such a remedy would  
7 constitute a “quantum leap” from what was previously permissible. *Id.* If those rejected \$5,000  
8 payments would have been a quantum leap, this settlement represents an intergalactic paradigm shift.  
9 Schools will be able to provide athletes across all Division I sports new direct benefits worth up to 22%  
10 of the power conferences’ average athletic revenues each year, an amount expected to begin at over \$20  
11 million per school in 2025-26 and grow to nearly \$33 million per school over the course of the decade  
12 Rascher Prelim. Approval Declaration ¶¶ 39-49. Those figures represent a total of \$19.4 *billion* in  
13 additional spending by the power conference schools alone over the ten-year injunctive relief period,  
14 with additional compensation and benefits expected to be provided by some of the non-power  
15 conference schools as well. ECF No. 450-4 at ¶ 85 Ex. 25.

16 As Dr. Rascher’s declarations describe, the expected payments to the Injunctive Settlement Class  
17 from the 22% revenue share compare favorably to what professional athletes have secured through  
18 collective bargaining, when also accounting for the existing scholarships, health insurance, *Alston*  
19 payments and other benefits that the schools provide to class members. *See* Rascher Prelim. Approval  
20 Declaration ¶¶ 86-87; *see also* Rascher Final Approval Decl. ¶¶ 7, 45-61.<sup>15</sup> In total, the amount of  
21 compensation and benefits to all class members is projected by Dr. Rascher to reach the approximately  
22 50% revenue share that professional athletes have achieved through collective bargaining. *See* Rascher  
23

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24 <sup>14</sup> As for damages, the court denied class certification of the *O’Bannon* damages class. *See In re NCAA*  
25 *Student-Athlete Name & Likeness Licensing Litig.*, 2013 WL 5979327, at \*8–10 (N.D. Cal. Nov. 8, 2013)  
26 (“*O’Bannon*”).

27 <sup>15</sup> A few objectors quibble that revenue categories like concessions and marketing should be counted  
28 in the 22% pool calculation, *see* ECF No. 613 at 15-21; ECF No. 622 at 17-18. First, they are minor  
criticisms of the overall negotiated resolution to undermine the overall fairness and adequacy of the  
settlement to resolve the claims. Second, the categories to be included were part of a hard-fought  
negotiation.

1 Prelim. Approval Declaration ¶¶ 86-87. While the Hausfeld Objectors argue that existing scholarships  
2 and other benefits should not be factored in (ECF No. 613 at 21), Dr. Rascher has explained why this is  
3 not economically correct. Rascher Final Approval Decl. ¶ 45 (citing Rascher Prelim. Approval Reply  
4 Decl., Sect. 4).

5 Dr. Rascher also notes that the objectors, in some cases, do not understand how the injunctive  
6 settlement works. For example, the Hausfeld Objector’s economists apparently believed that the  
7 settlement included a cap on new scholarships at \$2.5 million per school. In fact, as Dr. Rascher  
8 explains, new scholarships are effectively an *exception* to the cap on compensation, as the settlement  
9 enables schools to provide unlimited new scholarships to class members without having to count all  
10 these scholarships against the spending cap. *See* Rascher Final Approval Decl. ¶¶ 11-16 (discussing  
11 misunderstanding reflected in declarations of Dr. Cragg and Professors Fort and Noll). The elimination  
12 of the scholarship maximums in the settlement means that, if all Division I schools opted-in, there would  
13 be the opportunity for more than 115,000 additional scholarships available to class members under the  
14 injunctive settlement on an annual basis. Rascher Final Approval Decl. ¶ 74 & Ex. 5.

15 The Anderson Objectors’ argument that schools may not pay the new benefits because they are  
16 not forced to do so by the injunction (ECF No. 613 at 3) is legally irrelevant and factually  
17 unsupportable.<sup>16</sup> It is legally irrelevant because even if Plaintiffs were to secure a complete litigation  
18 victory to remove *every* compensation and benefit limitation imposed by the NCAA (a daunting  
19 prospect),<sup>17</sup> antitrust law does not permit Plaintiffs or the Court to *force* Defendants to pay anything—  
20 just like defendants in *Alston* were not *forced* to make academic incentive payments and just like  
21 defendants in *O’Bannon* were not *forced* to offer full cost-of-attendance scholarships. The remedy is an  
22  
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24 <sup>16</sup> Notably, counsel for the Hausfeld Objectors, who served as Class Counsel in the *O’Bannon*  
25 litigation, had previously touted the lack of spending mandates as a *virtue* of the *O’Bannon* cap. *See* Pls-  
26 Appellees’ Opp’n Br. in Resp. to NCAA’s Opening Appellate Br., Case Nos. 09-1967-CW & 09-CV-  
3329-CW, ECF No. 43-1, at \*23–24 (9th Cir. Jan. 21, 2015).

27 <sup>17</sup> *See White v. Nat’l Football League*, 822 F. Supp. 1389, 1418 (D. Minn. 1993) (granting final  
28 approval to settlement, noting that even if “it were conclusively established [at trial] that all of the player  
rules challenged in the present class action violate the antitrust laws, there [still] is uncertainty as to the  
scope of injunctive relief that would be afforded to the plaintiffs.”).

1 injunction *removing* and/or lessening restraints on competition, not *mandating* specific behavior to  
2 compete.

3 The argument is also factually unsupportable because, as Dr. Rascher explains, competition will  
4 necessarily compel the schools in the power conferences (and some others) to provide the new benefits  
5 or risk losing the athletes they need to generate revenues. *See* Rascher Prelim. Approval Declaration ¶  
6 84; Rascher Final Approval Declaration ¶¶ 26-28. Just like *Alston* payments and full cost-of-attendance  
7 scholarships became ubiquitous even though they were ruled to be permissible rather than compulsory,  
8 it is not surprising that many schools have already announced their intention—and many have already  
9 reached agreements with athletes—to pay additional compensation and benefits to class members  
10 beginning in the upcoming 2025-26 academic year if the Settlement is approved. Rascher Final  
11 Approval Decl. ¶¶ 15, 73; ECF No. 534 at 7.<sup>18</sup>

12 The Vogelsong Objectors' reliance on *In re: Payment Card Interchange Fee & Merch. Disc.*  
13 *Antitrust Litig.* misses the mark. *See* ECF No. 622 at 17-18 (citing 2024 WL 3236614 (E.D.N.Y. Jun. 28,  
14 2024)). There, the Eastern District of New York declined to grant preliminary approval because it found,  
15 after a highly fact-based analysis, that the injunction agreed to in the proposed settlement provided only  
16 “modest,” “significantly limited” relief, that “many [plaintiffs] will not be able to fully avail themselves  
17 of.” *Payment Card*, 2024 WL 3236614, at \*1, \*27, \*37-38. That situation bears no resemblance to the  
18 injunction here.

19 The injunction settlement here will also provide immediate relief to class members—starting  
20 with the 2025-26 academic year—before many of them graduate without being able to realize the

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21  
22 <sup>18</sup> *See also* Andy Staples, *Tennessee to add 10 percent 'talent fee' to ticket prices to raise money to*  
23 *give to players*, On3 (Sept. 17, 2024), [https://www.on3.com/news/tennessee-to-add-10-percent-talent-fee-](https://www.on3.com/news/tennessee-to-add-10-percent-talent-fee-to-ticket-prices)  
24 [to-ticket-prices](https://www.on3.com/news/tennessee-to-add-10-percent-talent-fee-to-ticket-prices) (the University of Tennessee recently announced that it will add a 10% “talent fee” to  
25 ticket prices to raise money to give to players, with the Tennessee athletic director anticipating that post-  
26 settlement his school could provide \$30 million more to athletes per year, including a “raise [to] the  
27 number of available athletic scholarships”); Seth Emerson, *Georgia, SEC schools expected to pay football*  
28 *athletes about 75 percent of revenue sharing*, *The Athletic* (Feb. 25, 2025)  
(<https://www.nytimes.com/athletic/6159981/2025/02/25/college-football-revenue-sharing-georgia-sec/>)  
(University of Georgia representatives have said that in addition to increased spending on football and  
men’s basketball, “it is now able to add more than 100 scholarships to other sports, thanks to the settlement  
terms,” with the athletic director stating that he thinks the school will be in line with its “conference  
peers”).

1 benefits of the injunction. That is yet another reason why the settlement is so beneficial to the class in  
2 comparison to waiting for years more of litigation and appeals before the first new benefit is provided to  
3 the class.

4 **b. Defendants' Ability to Continue Prohibitions on Improperly Characterized**  
5 **NIL Payments by Collectives and Associated Entities Is Not Grounds to**  
6 **Reject the Settlement**

7 Some objectors once again raise the complaint that the Settlement permits the NCAA to continue  
8 prohibitions on “faux” NIL payments by Associated Entities or Individuals (referred to colloquially as  
9 “Collectives”). *Compare, e.g.*, ECF No. 613 at 21-23; ECF No. 628 at 6, 20-21, *with* Vogelsong  
10 Objectors (ECF No. 473) at 18-21; Menke Objectors (ECF No. 475) at 17-18; Anderson Prelim.  
11 Approval Objectors (ECF No. 539) at 11-13. Plaintiffs demonstrated why these objections are ill-  
12 conceived in Plaintiffs' Supplemental Brief in Support of Preliminary Settlement Approval. *See* ECF  
13 No. 534 at 5-16. The court properly found that these objections did not stand in the way of preliminary  
14 approval. A few points about these objections are worthy of repetition.

15 *First*, the rules which the NCAA are permitted to impose regulating “faux” NIL payments by  
16 collectives and individuals associated with the schools are narrower than the prohibitions on pay-for-  
17 play payments that this Court and the Ninth Circuit have previously upheld against antitrust challenge.  
18 *See In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1264-65 (9th Cir. 2020)  
19 (affirming this Court's finding that “limits on cash compensation unrelated to education do *not*, on this  
20 record, constitute anticompetitive conduct”). *Second*, the permitted NCAA rules regarding “fair market  
21 value” limitations do not apply to any payments made by the schools directly under the revenue sharing  
22 “pool.” Nor do they apply to payments for NIL made by third parties who are not Associated Entities or  
23 Individuals of the schools. *Third*, unlike under existing NCAA rules whereby the NCAA may impose  
24 and adjudicate discipline over pay-for-play payments by collectives, the settlement creates a new neutral  
25 arbitration system through which athletes (and schools) may challenge NCAA enforcement actions. *See*  
26 Am. IRS Art. 6 § 2. To the extent a neutral arbitrator determines that an NIL payment is improper, the  
27 athlete still need not be penalized. He or she will have an opportunity to rescind the agreement or  
28 renegotiate the NIL arrangement *See* IRS. Art. 4 § 3(d); ECF No. 588-1 (Additional Settlement  
Communication Q&A #8). The fact that the Settlement does not prohibit the NCAA from continuing to

1 prohibit “faux” NIL payments by Associated Entities or Individuals, with neutral arbitral review, is a  
 2 small compromise that does not detract from the overall benefits provided to the class by the injunctive  
 3 settlement.

4 **2. The Revenue-Sharing “Pool” Cap Is a Settlement Compromise That Is Lawful and**  
 5 **Fair to the Class**

6 A few objectors re-raise the argument, made by some at the preliminary approval stage,<sup>19</sup> that the  
 7 settlement should be rejected because it includes a “pool” cap on the amount of new compensation and  
 8 benefits that may be provided by schools. Vogelsong Objection at 18; *see also* Anderson Objection at  
 9 6<sup>20</sup>; ECF No. 628 (“Menke-Weidenbach Objectors”) at 20; ECF No. 705 (“Roberts Objectors”) at 2. But  
 10 such a cap was the only way to implement a compromise settlement between the current rules—which  
 11 prohibit all such compensation—and an ultimate court victory eliminating all such rules. There is  
 12 nothing unlawful about such a compromise settlement approach, which has been adopted and approved  
 13 in other antitrust class action settlements creating a new, more generous system for compensating  
 14 athletes. *See, e.g., White v. Nat’l Football League*, 822 F. Supp. 1389 (D. Minn. 1993); *Bridgeman v.*  
 15 *Nat’l Basketball Ass’n*, 675 F. Supp. 960 (D.N.J. 1987); *Robertson v. Nat’l Basketball Ass’n*, 556 F.2d  
 16 682 (2d Cir. 1977).

17 Indeed, “[s]o long as the conduct perpetuated under a settlement agreement does not per se  
 18 violate antitrust law, the settlement may be approved.” *In re Blue Cross Blue Shield Antitrust Litig.*, 85  
 19 F.4th 1070, 1089-90 (11th Cir. 2023), *cert denied* 144 S. Ct. 2686 (2024) (granting final approval to  
 20 settlement with Hausfeld LLP as class counsel); *see also Fraley v. Batman*, 638 Fed. App’x 594, 597  
 21 (9th Cir. 2016) (A district court abuses its discretion in approving a settlement only if the agreement  
 22 sanctions “clearly illegal” conduct.” (emphasis added)). Here, the Ninth Circuit previously held that the

23 <sup>19</sup> *See* ECF No. 475 at 14–17; ECF No. 473 at 17–18, 21–24; ECF No. 539 at 7–8.

24 <sup>20</sup> The Anderson Objection is accompanied by a declaration from Baruch College Business School  
 25 Professor Mark Edelman, which details his legal opinion that the revenue sharing system contemplated  
 26 by the Settlement “constitutes an unreasonable restraint of trade in violation of Section 1 of the Sherman  
 27 Act.” ECF No. 613-6 at 2. The Court should disregard the Edelman Declaration as improper legal opinion.  
 28 *See Crow Tribe of Indians v. Racicot*, 87 F.3d 1039, 1045 (9th Cir. 1996) (“Expert testimony is not proper  
 for issues of law” because an expert’s role is limited to “interpret[ing] and analyz[ing] factual evidence.”  
 (citation omitted)); *see also* ECF No. 385 at 12 (excluding Defendants’ expert’s opinions because they  
 constituted “impermissible legal conclusions”).

1 rule of reason—not the per se rule—applies to NCAA compensation restraints. *O’Bannon*, 802 F.3d at  
2 1079 (“[W]e reaffirm that NCAA regulations are subject to antitrust scrutiny and must be tested in the  
3 crucible of the Rule of Reason.”); *Alston*, 958 F.3d at 1256 (“When considering agreements among  
4 entities involved in league sports, such as here, we must determine whether the restriction is  
5 unreasonable under the Rule of Reason.”) (cleaned up). The Supreme Court in *Alston* likewise applied a  
6 rule of reason analysis to evaluate the NCAA’s rules. 594 U.S. at 91. Even Justice Kavanaugh’s  
7 concurrence in *Alston*—which multiple objectors cite—emphasized that “[a]fter today’s decision, the  
8 NCAA’s remaining compensation rules should receive *ordinary* ‘rule of reason’ scrutiny under the  
9 antitrust laws.” *Id.* at 108. And, despite now arguing that “agreements among competitors on the price  
10 they pay for workers are ordinarily *per se* unlawful,” ECF No. 595 at 6, the DOJ advocated in its amicus  
11 brief to the Supreme Court that “the unique features of the product made [per se] Treatment  
12 inappropriate” and that “the district court [had] correctly held that the [NCAA’s] limitations on student-  
13 athlete compensation are subject to standard rule-of-reason review.”<sup>21</sup> See Brief for the United States as  
14 Amicus Curiae Supporting Respondents at 10-11; *NCAA v. Alston*, 594 U.S. 69 (2021). Accordingly,  
15 because the cap is not a *per se* antitrust violation, there is no legal bar to an antitrust class action  
16 settlement by NCAA athletes which—as a compromise—agrees to a reduction in, but not the complete  
17 elimination of, NCAA limits on schools directly compensating athletes.

18 The reason for reaching a compromise on a capped system in which Division I athletes will be  
19 able to receive approximately 50% of D-I revenues is well-grounded in the extensive litigation  
20 experience of Class Counsel in challenging the NCAA’s restraints. As this Court knows, *trial victories*  
21 in the lengthy litigation history against NCAA athlete compensation restrictions have previously resulted  
22 not in the complete elimination of those restrictions, but in new “caps.” *Alston* resulted in an injunction  
23 imposing a “cap[] on education-related benefits” that schools could provide, including the specific  
24 \$5,980 annual limit on academic achievement awards. 569 U.S. at 84. And *O’Bannon* “capp[ed]” the  
25 payments that schools could offer athletes as the cost-of-attendance (after the Ninth Circuit overturned

26  
27 <sup>21</sup> See also *Alston* Supreme Court Oral Argument Tr. at 74:25-75:14, *Alston v. NCAA*, 594 U.S. 69  
28 (Mar. 31, 2021) (“GENERAL PRELOGAR: So I think the rule of reason would properly apply to []  
hypothetical” where a new professional league decided “to cap the salaries of all of [its] players at 1955  
levels, corrected for inflation.”).

1 as a “quantum leap” the \$5,000 deferred compensation “cap: that this Court ordered after trial).  
2 *O’Bannon v. NCAA*, 802 F.3d at 1074-75; *see also id.* at 1075 (the “compensation cap” established by  
3 the *O’Bannon* trial decision “is a substantially less restrictive alternative means of accomplishing the  
4 NCAA’s legitimate procompetitive purposes”). Against the backdrop that even rule-of-reason trials  
5 result in capped benefits, it makes no sense for objectors to argue that the injunctive relief settlement,  
6 which is by nature a compromise, is unreasonable and cannot be approved if any cap on future  
7 compensation to athletes is permitted. *See* Prelim Approval Mot. at 17-18.

8 In fact, as Dr. Rascher explains, this compromise of a capped revenue-sharing system is of great  
9 benefit to the class as it “greatly expands the choices for schools to determine differing types and levels  
10 of athlete compensation through which to compete for athlete services.” Rascher Final Approval Decl. ¶  
11 20. Dr. Rascher further opines that, “[w]hile there may be economic arguments that price-fixing is  
12 presumptively anticompetitive, no such arguments support a presumptive determination that the  
13 proposed settlement, inclusive of the spending cap, has anticompetitive effects that outweigh  
14 procompetitive benefits.” *Id.* The reality is that “the proposed settlement provides for substantially more  
15 competition than the current NCAA rules” and is anticipated to raise compensation to college-athletes to  
16 “levels that can be comparable to compensation for professional athletes.” *Id.* ¶ 21.

17 Ironically and certainly disingenuously, while the Hausfeld Objectors protest that the Injunctive  
18 Relief Settlement should be rejected for including a “cap,” which they wrongly argue is “unlawful on its  
19 face” (ECF No. 613 at 6-9), they are the very same counsel who represented the plaintiffs in *O’Bannon*,  
20 where they defended a \$5,000 cap on NIL compensation as “allow[ing] the NCAA to place a reasonable  
21 cap on such compensation.” Pls-Appellees’ Opp’n Br. in Resp. to NCAA’s Opening Appellate Br., Case  
22 Nos. 09-1967-CW & 09-CV-3329-CW, ECF No. 43-1, at \*23–24 (9th Cir. Jan. 21, 2015). The reality is  
23 that when a player compensation system is the subject of a class action settlement—or even a verdict—it  
24 is not uncommon for a compromise to be adopted, in which a capped or otherwise restricted system of  
25 compensation plays an important part.

26 For example, in *Robertson v. National Basketball Association*, the court approved the new  
27 system for player compensation agreed to in a class action settlement over objections that it  
28 “perpetuate[d] for ten years two ‘classic group boycotts’ in violation of Section 1 of the Sherman

1 Antitrust Act” because “the challenged practices have not been held to be illegal per se in any previously  
2 decided case.” 556 F.2d at 686. Likewise, in *Alexander v. National Football League*, the court approved  
3 a class action settlement between football players and the NFL because it did not “authorize[] or  
4 involve[] any future conduct within the NFL that is ‘clearly illegal’ or illegal to a ‘legal certainty.’” 1977  
5 WL 1497, at \*21 (D. Minn. Aug. 1, 1977). And in *White v. National Football League*, the court  
6 approved a class action settlement—which created a salary cap—while noting that at the approval stage,  
7 “it is unnecessary for the court to determine whether every provision of the settlement, if adopted  
8 outside a settlement context and made subject to a trial on the merits, would be deemed reasonable after  
9 a full rule of reason inquiry. In fact, the court should not make such inquiry.” 822 F. Supp. 1389, 1432  
10 (D. Minn. 1993); *see also Bridgeman*, 675 F. Supp. at 962-63 (approving antitrust class action  
11 settlement with a salary cap system). Following these precedents, this Court should not hesitate to  
12 approve the injunctive settlement, which, even with a cap, is a fair compromise in the best interest of the  
13 Class.

14 Finally, it is important to note that the settlement does not foreclose all future antitrust challenges  
15 to the “pool” cap, or any other restrictions permitted by the settlement. There is no release of future  
16 antitrust damages claims by any class member. Further, each year of the injunctive settlement, incoming  
17 student-athletes who become injunctive class members will be given notice of the injunctive settlement  
18 each year and will have the opportunity to present any future objections to the Court. Amended  
19 Settlement Agreement ¶ 14. The fairness of the revenue sharing system to the injunctive class, with its  
20 pool “cap,” can thus be evaluated by the Court on a continuing basis to the extent warranted.

21 **3. Collective Bargaining Was Not Required to Establish, and Will Not Be Impeded by,**  
22 **the Settlement’s Revenue-Sharing System**

23 A few objectors assert that the revenue sharing system under the settlement cannot be  
24 implemented without collective bargaining. *See, e.g.*, ECF No. 595 at 8; ECF No. 613 at 12-13; ECF  
25 No. 622 at 2; ECF No. 705 at 2. Other objectors wrongly believe that the settlement will impede  
26 collective bargaining. *See* ECF No. 705 at 19-22; ECF No. 613 at 12-15. The Vogelsong Objectors go  
27 one step further to argue that the settlement should not be approved because it “fail[s] to provide for  
28 collective bargaining.” ECF No. 622 at 17. None of these arguments have merit.

1 To begin with, the terms of the injunctive settlement do nothing to impede the formation of a  
2 union and collective bargaining. To the contrary, they expressly provide that if collective bargaining is  
3 ever permitted, such bargaining may change the terms of the settlement agreement as the parties may  
4 “agree[] upon additional, expanded or different benefits than those permitted by this Injunctive Relief  
5 Settlement.” Am. IRS Art. 7 § 2.

6 Further, the settlement could not, as the Vogelsong Objectors argue, “provide for collective  
7 bargaining.” ECF No. 622 at 17. This is an antitrust action, not a labor law case before the NLRB. At the  
8 current time, the NCAA’s (and its schools’) position is that college athletes are prohibited from  
9 collective bargaining because they are not “employees.” *See* 29 U.S.C. § 151; *N.L.R.B. v. Town &*  
10 *Country Elec., Inc.*, 516 U.S. 85, 89 (1995). While there had been two cases pending before the NLRB  
11 to challenge that position, both of those cases were withdrawn after a new administration came into  
12 power this year. *See Nat’l Coll. Players Ass’n v. Univ. of S. Cal.*, N.L.R.B. No. 31-CA-290326 (2022);  
13 *Trs. of Dartmouth Coll.*, 01-RC-325633 (2023). There is thus no current proceeding to seek to recognize  
14 college athletes as employees before the NLRB. If the position of the Vogelsong Objectors were  
15 accepted, therefore, it would be impossible to settle this litigation as no union of college athletes is  
16 presently recognized.

17 Collective bargaining, however, was not required to achieve this historic settlement. For  
18 example, it was the antitrust class action *settlement* in *White*—not collective bargaining—that created  
19 the NFL salary cap and free agency system. There, the “NFLPA was not . . . acting as the players’  
20 collective bargaining representative.”<sup>22</sup> 822 F. Supp. at 1431. Instead, class counsel negotiated the  
21 settlement, including the salary cap. *Id.* Similarly, the settlement in *Robertson* was negotiated by “class  
22 counsel and counsel for NBA defendants” and resulted in an agreed-upon ten-year injunction,  
23 supervised by the court, which was used to introduce restricted free agency rules (and eventually a  
24  
25  
26

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27 <sup>22</sup> Indeed, the settlement agreement was signed on February 26, 1993, *before* the NFLPA was  
28 reformulated as the collective bargaining representative of the NFL players in late March 1993. *White*,  
822 F. Supp. at 1395-96.

1 salary cap and revenue sharing system) into the NBA. *Robertson v. Nat'l Basketball Ass'n*, 72 F.R.D.  
2 64, 66 (S.D.N.Y. 1976).<sup>23</sup>

#### 3 **4. Approval of the Settlement Does Not Create Any Antitrust Immunity for** 4 **Defendants**

5 On January 16, 2025—just days before the change in administration—the Department of Justice  
6 filed a Statement of Interest raising concerns about how Defendants may attempt to use the Court's  
7 approval of the Settlement in future antitrust litigation. *See* ECF No. 595 at 10. But, because Defendants  
8 have expressly acknowledged that the settlement does not provide them immunity from future antitrust  
9 actions, these concerns are simply misplaced. ECF No. 595-2. Plaintiffs strongly disagree with the  
10 DOJ's criticisms of the settlement, which are inconsistent with the positions taken in *Alston*, where the  
11 DOJ did not challenge the \$5,980 academic achievement awards cap in *Alston*. On the contrary, it filed  
12 an amicus brief strongly defending this Court's approach of leaving some compensation-related  
13 restrictions in place. *See* Brief for the United States as Amicus Curiae Supporting Respondents at 11,  
14 *NCAA v. Alston*, 594 U.S. 69 (2021) (“To maintain the product’s appeal to consumers who value  
15 amateurism, the schools must implement agreements between competitors that eliminate an element of  
16 price competition.”).

#### 17 **5. The Injunctive Settlement Does Not Violate State NIL Laws or Court Orders**

18 Desperate to overturn this settlement and insert themselves into this important antitrust issue that  
19 they have been out of since *O'Bannon*, the Hausfeld Objectors offer a potpourri of misleading assertions  
20 about the alleged illegality of the Settlement under various state and federal laws, and other court's  
21 orders. *See* ECF No. 613 at 6-11, 21–23. None has merit.

22 *First*, the Anderson Objectors wrongly claim that the Settlement violates numerous state NIL  
23 laws (ECF No. 613 at 9-11). They raised an identical objection during the preliminary approval stage.  
24 *See* ECF No. 539 at 8-11. They were wrong then and are wrong now. **The settlement only resolves**  
25 **antitrust claims, and there is nothing in the settlement that releases non-compliance with individual state**  
26 **NIL laws.** *See* ECF No. 613 at 9.

27  
28 <sup>23</sup> Although the general counsel for the National Basketball Players Association was “involved” in the  
discussions, its terms were negotiated by class counsel, not the union. *Id.*

1 The settlement requires the NCAA to amend its NIL rules to allow for previously prohibited  
2 direct benefits; it has no bearing on existing state NIL laws that might already provide for broader  
3 compensation; nor does it prohibit students or State Attorneys General from bringing claims under those  
4 laws. The settlement does not ask the Court to grant Defendants any kind of preemption from state NIL  
5 laws. Indeed, the Injunctive Relief Settlement acknowledges that only legislative action could preempt  
6 state laws, and that future legislation may actually go in the opposite direction and “provide student-  
7 athletes with benefits *in addition* to those permitted by this Injunctive Relief Settlement.” *See* Am. IRS  
8 Art. 7, § 1 (emphasis added).

9 *Second*, there is equally no merit to the Hausfeld Objectors’ wild assertion that the settlement  
10 somehow violates the First and Fourteenth Amendments to the U.S. Constitution by purportedly  
11 “deny[ing] the free speech rights of college athletes to deal with NIL Collectives.” ECF No. 613 at 22.  
12 The Hausfeld Objectors offer no explanation for how anyone’s constitutional rights to free speech might  
13 be infringed; nor are Plaintiffs aware of any. The settlement does not, in any way, deny college athletes  
14 the ability to communicate or associate with NIL Collectives or limit their free speech rights about this  
15 or any other issue in any way.

16 *Third*, the Hausfeld Objectors falsely claim that the Settlement “attempts to circumvent the  
17 decision by the court in *Tennessee v. NCAA*<sup>[24]</sup> that preliminarily enjoined implementation of an NCAA  
18 rule requiring that potential college athletes refrain from discussing NIL deals until they commit to a  
19 particular school.” ECF No. 613 at 21. The settlement does no such thing. In fact, it says nothing about  
20 pre-enrollment communication whatsoever. But in any event, that litigation has been settled, making this  
21 merely another red-herring objection that the Court should disregard.<sup>25</sup>

22 Simply put, the Defendants are not excused by the settlement from complying with any state or  
23 federal law or applicable court order. Nothing in the settlement suggests otherwise.

#### 24 **C. There are No Conflicts Precluding Settlement Approval.**

25 Certain objectors argue that there were conflicts of interest between members of the Settlement  
26 Classes that required separate counsel for different class segments. Plaintiffs responded to similar

27 <sup>24</sup> *Tennessee v. NCAA*, 2024 WL 755528 (E.D. Tenn. Feb. 23, 2024).

28 <sup>25</sup> *See* <https://www.tn.gov/attorneygeneral/news/2025/1/31/pr25-6.html>.

1 objections (by some of the same objectors) in support of their motion for preliminary approval of  
2 settlement. *See* ECF Nos. 494 at 2-11; ECF No. 534 at 16-22; *see also* ECF No. 536 (Klonoff Opening  
3 Decl.). Consistent with their earlier briefing, Plaintiffs explain herein that Class Counsel provided  
4 adequate, indeed exceptional, representation for all classes and claims, and there are no conflicts that  
5 require separate counsel for any class members.

6 In the Ninth Circuit, when assessing adequacy of representation in class action settlements, courts  
7 ask whether “the named plaintiffs and their counsel have any conflicts of interest with other class  
8 members.” *See In re Volkswagen Clean Diesel Mktg., Sales Pracs. and Prods. Liab. Litig.*, 895 F.3d 597,  
9 607 (9th Cir. 2018). Inadequate representation may be shown by “irreparable conflict[s] of interest” as  
10 indicated by “serious conflicts” in either the structure of the class or the terms of the settlement. *Id.* at 607-  
11 08 (citing *Hanlon*, 150 F.3d at 1021). As explained below, while there is diversity among class members,  
12 there are no such “irreparable conflict[s] of interest,” much less ones that require separate settlement  
13 counsel. *See id.*; *In re Blue Cross*, 85 F.4th at 1091 (overruling conflict objection and noting that separate  
14 counsel is not required unless the conflict is “substantial and fundamental to the specific issues in  
15 controversy,” in a case where the Hausfeld firm, representing one set of objectors here, was class  
16 counsel).<sup>26</sup>

17 Professor Klonoff also explained in his Opening Declaration that courts have recognized that there  
18 are costs of imposing multiple separately represented subclasses, including the potential for  
19 “Balkanization.” Klonoff Opening Decl. ¶¶ 28-30 (citing, *inter alia*, *In re Ins. Brokerage Antitrust Litig.*,  
20 579 F.3d. 241, 271 (3d Cir. 2009), which held that, “[w]hile subclasses [with separate representation] can  
21 be useful in preventing conflicts of interest, they have their drawbacks,” including the potential to “create  
22 a ‘Balkanization’ of the class action and [they] present a huge obstacle to settlement if each subclass has  
23 an incentive to hold out for more money” (citation omitted)). Indeed, a single group of lawyers, capable

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24  
25 <sup>26</sup> *See also* 1 Newberg and Rubenstein on Class Actions § 3:75 (6th ed. 2024) (“In general, class  
26 counsel may represent multiple sets of litigants—whether in the same action or in a related proceeding—  
27 so long as the litigants’ interests are not inherently opposed.”); *Cohen v. Brown Univ.*, 16 F.4th 935, 945-  
28 46 (1st Cir. 2021) (“The standard though is not ‘perfect symmetry of interest’ among the class . . . The  
perfect is sometimes the enemy of the good, and intra-class conflicts breach Rule 23(a)(4)’s adequacy-of-  
representation standard only when they are ‘fundamental to the suit and . . . go to the heart of the  
litigation.’”).

1 of settling the entire controversy, may wield increased bargaining power that benefits all class members.  
 2 *See, e.g., Volkswagen*, 895 F.3d at 607 (explaining it was likely that the value of lesser-value claims were  
 3 enhanced by being negotiated alongside the higher-value claims).<sup>27</sup> Thus, while certain potential conflicts  
 4 may require *some type of adequate structural protection*, that does not necessarily mean separately  
 5 represented subclasses, which is only one such option, and one with serious drawbacks. Klonoff Opening  
 6 Decl. ¶ 30 (citing cases).<sup>28</sup> Here, there are no fundamental conflicts of interest between segments of the  
 7 classes and, moreover, Class Counsel provided structural protections during the settlement negotiations  
 8 to guard against potential conflicts. Separate counsel is not required or desirable in these circumstances.

### 9 **1. Separate Counsel is Not Required for the Injunctive Relief and Damages Classes**

10 Two objectors—including the Vogelsong Objectors, who brought the competing *Fontenot*  
 11 action—argue that Class Counsel could not adequately represent both the (b)(2) injunctive-relief and the  
 12 (b)(3) damages classes, and that new counsel should be appointed to represent the injunctive relief class.  
 13 *See* ECF No. 622 at 15-21 (Vogelsong Obj.); ECF No.614 at 8-15 (O’Bannon Obj.). These objections  
 14 should be overruled for several reasons.

15 *First*, Professor Klonoff explains in his Declaration that numerous courts across the country—  
 16 including the Ninth Circuit—regularly approve settlements where the same attorneys negotiated injunctive  
 17 relief and damages. *See* Klonoff Opening Decl. ¶¶ 37-39 (citing cases, including the Eleventh Circuit’s  
 18 recent decision in *Blue Cross*, 85 F.4th at 1091). The Vogelsong Objectors know this: less than two years  
 19 ago, their lead counsel successfully secured approval of a class action settlement in this District where  
 20 they simultaneously negotiated a settlement for both injunctive relief and damages claims (without any  
 21 indication that counsel took the prophylactic steps Class Counsel used here). *Senne v. Kansas City Royals*  
 22 *Baseball Corp.*, 2023 WL 2699972, at \* 16 (N.D. Cal. Mar. 29, 2023), *aff’d* 2023 WL 4824938 (9th Cir.

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24 <sup>27</sup> *See In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981) (“logic dictates  
 25 that one set of negotiators, with the authority to release defendants from all claims, would be in a better  
 bargaining position than negotiators with authority to compromise only part of the action”).

26 <sup>28</sup> *See, e.g. In re Cmty. Bank of N. Virginia Mortg. Lending Pracs. Litig.*, 795 F.3d 380, 393 (3d Cir.  
 27 2015) (Even where there is a conflict, “appointing separate counsel [is not] the only acceptable means of  
 28 addressing any conflicting interests of class members, and providing structural assurance of fair and  
 adequate representation for the entire class.” (quoting *Prof. Firefighters Ass’n of Omaha, Local 385 v.*  
*Zalewski*, 678 F.3d 640, 646–47 (8th Cir. 2012)).

1 June 28, 2023). Plaintiffs pointed this out in previous briefing (ECF No. 534 at 16), but Vogel song counsel  
 2 did not offer a response in their objection.<sup>29</sup> And in the case relied on most heavily by the Vogel song and  
 3 O’Bannon Objectors, the decision in *Payment Card*, the Second Circuit held there is no *per se* rule against  
 4 the same counsel representing both damages and injunctive relief classes. *In re Payment Card Interchange*  
 5 *Fee & Merch. Disc. Antitrust Litig.*, 827 F.3d 223, 235 (2d Cir. 2016) (making clear it was *not* holding  
 6 “that (b)(3) and (b)(2) classes necessarily and always require separate representation”).

7 *Second*, Professor Klonoff explains that the sequential, separate negotiations employed here—  
 8 negotiating the injunctive relief first and only then the damages—which he refers to as the “gold standard”  
 9 to address potential conflicts, “provide[d] structural assurance of fair and adequate representation.”  
 10 Klonoff Opening Decl. ¶ 43 & n.52 (collecting authorities); *see Fata v. Pizza Hut of Am. Inc.*, 2016 WL  
 11 7130932, at \*3 (M.D. Fla Oct. 31, 2016) (“[I]n particular, the extensive, arms-length negotiations  
 12 performed separately by counsel on behalf of each Subclass, with the assistance of an experienced  
 13 mediator, at least at the conditional certification stage, provide ‘structural assurance of fair and adequate  
 14 representation.’”); *see also, e.g., Stephens v. Farmers Rest. Grp.*, 329 F.R.D. 476, 485 (D.D.C. 2019)  
 15 (holding “that the absent Rule 23 class members were adequately represented” based on the  
 16 “representations” that counsel “negotiated the settlement amounts for the [two groups] separately” and  
 17 “the apparent reasonableness of the settlement terms”). Importantly, as Professor Klonoff further explains,  
 18 Class Counsel’s structuring of the negotiations followed the well accepted practice to avoid conflicts in  
 19 negotiating class settlements and attorneys’ fees by first negotiating the class settlement and only then

20 \_\_\_\_\_  
 21 <sup>29</sup> *See also, e.g.,* Pls.’ Unopposed Mot. for Final Approval of Class Action Settlement and Mem. of  
 22 Law in Support, *Taylor v. Serv. Corp. Int’l*, No. 0:20-cv-60709 (S.D. Fla. Jan. 12, 2023); *Frale y v.*  
 23 *Facebook, Inc.*, 966 F.Supp.2d 939 (N.D. Cal Aug. 26, 2013) (other cases where Korein Tillery, counsel  
 24 for the Vogel song Objectors, simultaneously represented injunctive relief (b)(2) and damages (b)(3)  
 25 classes in settlement class actions). Hausfeld, which also objected to the settlement on conflicts and other  
 26 grounds, also has, several times, simultaneously represented (b)(3) damages and (b)(2) injunctive relief  
 27 classes in settlements. *See, e.g.,* Developer Pls.’ Renewed Mot. for Prelim. Settlement Approval, *In re*  
 28 *Google Play Developer Antitrust Litig.*, No. 20-cv-05792-JD (N.D. Cal. Oct. 12, 2022); Final Order and  
 J. Granting Approval of Subscriber Class Action Settlement and Appointing Settlement Administrator, *In*  
*re Blue Cross Blue Shield Antitrust Litig. MDL 2406*, No. 13-cv-20000-RDP (N.D. Ala. Aug. 9, 2022);  
 Pls.’ Mot. for Final Approval of Proposed Settlement, *In re Equifax, Inc. Customer Security Data Breach*  
*Litig.*, No. 1:17-md-02800-TWT (N.D. Ga. Dec. 5, 2019); Pls.’ Unopposed Mot. for Final Approval of  
 the Settlement, Certification of the Settlement Class, and Incorporated Mem. of Law, *In re The Home*  
*Depot, Inc. Customer Data Breach Litig.*, No. 1:14-md-02583 (N.D. Ga. Aug. 23, 2017).

1 negotiating fees. *See id.* ¶¶ 40-45 & nn. 51-57 (citing several cases, including in the Ninth Circuit).

2 Professor Klonoff opines that because appointing separate counsel is merely *one option* to address  
3 potential conflicts—and a costly and risky one at that—the careful, phased negotiations implemented by  
4 the Parties here more than adequately addressed any potential divergence of interest between the injunctive  
5 relief and damages classes. *See id.*; *see also* 1 McLaughlin on Class Actions § 4:45 (20th ed. 2023)  
6 (“Absent the kind of stark divergence of interests that is present in mass tort cases between present and  
7 future claimants, the district court has considerable discretion to decide whether appointment of separate  
8 counsel is required for a particular subclass.”)

9 *Third*, the cases primarily relied on by the objectors—*Amchem*, *Ortiz*, and *Payment Card* most  
10 prominently—do not call for a different conclusion. Those courts indicated that separate counsel was  
11 needed because there was clear evidence that the rights and relief for some categories of class members  
12 had been traded away to benefit others, which is not the situation here.

13 In particular, the Second Circuit’s decision in *Payment Card*, which held that the injunctive relief  
14 class there was inadequately represented and required separate counsel, is materially distinct from this  
15 case. *See* Klonoff Opening Decl. ¶¶ 46-51. There was no indication that class counsel in *Payment Card*  
16 utilized the sequential negotiation structure employed here, or indeed made any other effort to provide  
17 structural protections against (or even acknowledge) the myriad conflicts that permeated their settlement  
18 negotiations. Additionally, there was strong evidence that class counsel’s simultaneous negotiations of  
19 injunctive relief and damages settlements actually resulted in trading valuable injunctive relief for  
20 enhanced damages. *Id.* ¶ 47. The adverse results for the Injunctive Relief Class in *Payment Card* were at  
21 least threefold—the *Payment Card* settlement (i) left vast portions of the injunctive class with worthless  
22 relief which terminated after a fixed period, (ii) while still binding them to a *perpetual* release of injunctive  
23 and damages claims, (iii) against *all* Visa and MasterCard rules, including those unchallenged in the  
24 litigation. *See Payment Card*, 827 F.3d at 240. Moreover, a critical fact in *Payment Card* was that the  
25 settlement occurred without a prior contested class certification motion, “making it especially vulnerable  
26 to conflicts of interest.” *Id.* at 235-36 (“[W]e have blessed multi-class settlements that were the product  
27 of unitary representation, but those were entered into *after* class certification.” (emphasis in original)); *see*  
28

1 also Klonoff Open. Decl. ¶ 50 (explaining that the Supreme Court in *Amchem* also explained settlements  
2 obtained prior to contested class certification require heightened scrutiny).

3 None of these problems exist here. The injunctive relief that the parties negotiated is the opposite  
4 of worthless; it opens the door to *billions* of dollars in new compensation for the injunctive relief class  
5 every year. The settlement does not bind injunctive relief class members to a perpetual release of damages  
6 claims. And the settlement has a release that applies only to certain NCAA rules, and does not apply to  
7 employment law or Title IX claims.<sup>30</sup> Amended Settlement Agreement ¶ 1(vv)(2)–(3) (definition of  
8 “Unreleased Claims”). And this is all separate and apart from the billions of dollars in relief obtained for  
9 the damages classes through separate negotiations. Moreover, the settlements here followed a hotly  
10 contested class certification fight where this Court certified three damages classes and an injunctive relief  
11 class.

12 The absence of every *Payment Card* indicia of conflicts and tradeoffs between classes did not  
13 happen by accident—as Professor Klonoff explains, it was the result of the structure of the negotiations—  
14 and Class Counsel took great pains, with *Payment Card* at the front of their minds, to fully and finally  
15 negotiate the injunctive relief *before* negotiating damages to fully protect the interests of both the  
16 injunctive relief and damages classes. Klonoff Opening Decl. ¶¶ 40-45. Against that backdrop, Plaintiffs  
17 respectfully submit that the Court should conclude that Class Counsel did not trade injunctive relief  
18 benefits for damages (or vice versa). The separate negotiation structure ensured that there was no such  
19 trading between the benefits obtained and the proof is in the pudding. *Id.*

20 The Vogelsong Objectors argue the district court’s decision denying preliminary approval after  
21 remand in *Payment Card* supports their conflicts argument “under similar circumstances.” Vogelsong  
22 Obj. at 17-18 (citing *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2024 WL  
23 3236614 (E.D.N.Y. June 28, 2024)). That is blatantly wrong as no alleged conflict between a (b)(2) and  
24 (b)(3) class was at issue *because the settlement involved a b(2) injunctive relief class only. Id.* at \*6.  
25 Indeed, as Professor Klonoff points out, that the court found the settlement negotiated by separately  
26 appointed counsel to be inadequate shows the Vogelsong Objectors are wrong “in assuming that

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27  
28 <sup>30</sup> The settlement’s release does extend to claims that the settlement distribution plan violates  
Title IX.

1 appointment of their attorneys to represent the injunctive class would be a silver bullet to ensure a new,  
2 strong injunctive relief settlement.” Klonoff Opening Decl. ¶ 51. The court denied preliminary approval  
3 in *Payment Card* largely because the relief was not in the “range of reasonableness” (2024 WL 3236614,  
4 at \*24-28), which is not the situation here, as this Court held at preliminary approval and as further  
5 demonstrated *supra*, in Sect. III.A, III.B.1.

6 As for *Ortiz* and *Amchem*, those cases involved attempts to settle millions of then-present and  
7 future mass tort damages claims covering decades of asbestos exposure. *See Ortiz v. Fireboard Corp.*,  
8 527 U.S. 815, 823 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). This “elephantine mass  
9 of asbestos cases,” and the attempts to resolve them through class settlements, led the Supreme Court to  
10 proclaim that *Ortiz* and *Amchem* “suffice to show how [asbestos] litigation defies customary judicial  
11 administration and calls for national legislation.” *Ortiz*, 527 U.S. at 821. The primary (though not only)  
12 deficiency in these cases was that they attempted to settle pending damages claims and anticipated future  
13 damages claims, which the Supreme Court held could not be fairly compensated through a single, joint  
14 fund. *Id.* at 842–44. Neither case involved injunctive relief. *See generally Ortiz*, 527 U.S. 815; *Amchem*  
15 *Prods.*, 521 U.S. 591. This makes them entirely inapposite here, where no claims for damages in the future  
16 have been released.

17 The O’Bannon Objectors relatedly claim that separate counsel is required for *future* members of  
18 the injunctive relief class who they say were inadequately represented. O’Bannon Obj. at 8-9, 11; *see also*  
19 *Volgelsong* Obj. at 16; ECF No. 709 at 2 (objection also arguing class representatives are inadequate).  
20 But as explained previously (ECF No. 534 at 19-21), named plaintiffs and current and future athletes at  
21 the time of the settlement, Sedona Prince and Nya Harrison, were adequate representatives under Rule 23  
22 because they “possess the same interests and suffer the same injury” as absent class members (including  
23 future athletes)<sup>31</sup>—being subject to the same NCAA and Conference Defendant rules as future athletes

24  
25 <sup>31</sup> *See* Class Cert. Order (ECF No. 387), at 11 (quoting *Amchem Prods.*, 521 U.S. at 625-26). Ninth  
26 Circuit law is also clear that there is no requirement that there be a separate class representative for future  
27 athletes. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 948 (9th Cir. 2003) (approving injunctive relief  
28 settlement class of Boeing employees, including future employees, but rejecting the attorneys’ fee  
provisions of the settlement); *see also Cohen*, 16 F.4th at 948-951 (rejecting argument that class  
representatives for injunctive relief class were inadequate and conflicted even where at time of latest

1 that limit or prohibit permissible forms and amounts of compensation and benefits. Moreover, the  
 2 structural protections discussed above ensured that Class Counsel focused on maximizing (and have  
 3 achieved) ground-breaking injunctive relief, before even discussing damages. Additionally, the fact that  
 4 the injunctive relief extends ten years into the future is in line with approved class settlements in other  
 5 cases, particularly in cases resolving the class claims of athletes in the sports industry, where long-term  
 6 solutions are often desirable. *See* ECF No. 450 at 22-23 (collecting authority). And unlike in several of  
 7 these sports cases (*e.g.*, *White*, *Robertson*, and *Bridgeman*), future athletes will receive notice of the  
 8 settlement upon entering college and will have the opportunity to object to the continuation of the  
 9 settlement. *Id.* at 14-15. Moreover, and contrary to the claims of the objectors, if future student-athletes  
 10 wish to sue for damages, they can do so with an attorney of their choice, consistent with Paragraph 46 of  
 11 the Amended Settlement Agreement. Thus, there are no indicia of conflicts requiring separate counsel for  
 12 future injunctive relief class members and the settlement provides them with additional safeguards to  
 13 protect their interests, all the while also giving them the opportunity to receive tens of billions of dollars  
 14 from revenue sharing with schools, made possible by the injunctive relief settlement. *See Campbell v.*  
 15 *Facebook, Inc.*, 951 F.3d 1106, 1124 (9th Cir. 2020) (“the settlement’s benefits must be considered by  
 16 comparison to what the class actually gave up by settling”).

17 **a. Professor Silver’s Declaration in support of the Vogelsong Objectors is**  
 18 **unpersuasive.**

19 In response to Professor Klonoff’s Opening Declaration, the Vogelsong Objectors offer a  
 20 declaration by Professor Charles Silver. *See* ECF No. 622-2 (“Silver Decl.”). Professor Silver opines that  
 21 the conflict of interest between the injunctive relief (b)(2) class and the (b)(3) damages class here is  
 22 irreconcilable and could only be cured by informed consent, which “cannot be obtained in class actions,”  
 23 thus requiring that separate counsel be appointed. *Id.* ¶ 9. Professor Silver criticizes counsel’s use here of  
 24 sequential negotiations as a structural device to reduce or eliminate potential for conflicts, opining that  
 25 even the well-accepted practice of negotiating fees only after other relief shows only that judges have  
 26 \_\_\_\_\_  
 27 settlement none were currently participating in sports at the subject university, which is not the case here).  
 28 There is also no merit to the objection that the class representatives do not have a male basketball player.  
*See* ECF No. 705 at 27-34. The interest of male basketball players were substantially the same as those of  
 football players, for which there are class representatives: Tymir Oliver and DeWayne Carter.

1 allowed an “obvious violation of the fiduciary duty . . . .” *Id.* ¶¶ 35-46. As Professor Klonoff explains in  
2 a Supplemental Declaration concurrently submitted herewith (“Klonoff Suppl. Decl.”), by taking this  
3 position “Professor Silver urges this Court to reject a well-recognized method for reducing or eliminating  
4 conflicts, even though he cites no authority for his position, and even though his position (if accepted)  
5 would put this Court in conflict with countless other courts[.]” Klonoff Suppl. Decl. ¶ 7 (noting that cases  
6 in the Ninth Circuit have recognized the effectiveness of the sequential approach).

7 Professor Silver relies heavily on *Payment Card*, but as Professor Klonoff points out, Professor  
8 Silver ignores the critical differences between that case and these circumstances. *Id.* ¶¶ 12-23. For  
9 example, Professor Silver does not consider that while the injunctive relief was worthless to most class  
10 members in *Payment Card*, the injunctive relief here is extraordinary and historic for class members.  
11 Professor Silver references and does not dispute Professor Klonoff’s characterization of the settlement as  
12 historic, but then fails to compare the transformative benefits obtained here to the minimal settlement  
13 benefits most of the (b)(2) class received in *Payment Card*. *Id.* ¶ 15. Moreover, unlike here, there was no  
14 prior contested class certification motion in *Payment Card*, which Professor Silver in other court  
15 submissions has acknowledged—consistent with the prevailing case law—should play a major role when  
16 a court evaluates the fairness of a settlement. *Id.* ¶¶ 16-23.

17 Similarly, Professor Silver fails to discuss or distinguish the numerous cases cited by Professor  
18 Klonoff where courts found no conflict with the same attorneys representing both the damages class and  
19 the injunctive class in settlements, or to provide guidance as to when that should be permitted. *Id.* ¶¶ 5,  
20 12, 24. Ultimately, Professor Silver espouses the view that “fiduciary law has not embraced the view that  
21 prophylactic measures can cure conflicts.” Silver Decl. ¶ 18. But as Professor Klonoff explains, “virtually  
22 every class action has differences among class members; and in virtually every class settlement an objector  
23 could argue for some sort of subclassing with separate representation. [Professor Silver’s] approach would  
24 vastly complicate class settlements because objectors, eager to seek their own attorneys’ fees or side  
25 payments—or to secure appointment as additional class counsel—would inevitably (and routinely) mount  
26 myriad challenges.” Klonoff Suppl. Decl. ¶¶ 33-34 (explaining that such an approach would also be  
27 “exactly the opposite of the approach courts and authoritative treatise authors have taken”). In a  
28 publication following *Amchem*, Professor Silver agreed with these concerns and explained that “a

1 standard of zero tolerance for conflicts is impossible to defend or meet. Class counsel must be allowed to  
2 incur and resolve many conflicts. Otherwise, they cannot make the strategy calls and financial decisions  
3 that have to be made for class actions to proceed.”<sup>32</sup> That is exactly what Class Counsel did here.

4 The Vogelsong Objectors also rely, in part, on Professor Silver to argue that the settlement’s fee  
5 provisions raise conflict concerns because Class Counsel are “only” requesting a \$20 million flat upfront  
6 injunctive fee, but “20% of the NIL Settlement Fund” and “10% of the Additional Compensation Fund.”  
7 See Vogelsong Obj. at 20; Silver Decl. ¶¶ 28-30. As an initial matter, this is an inaccurate description of  
8 the fee request, which includes a portion based on the value of the injunctive relief that class members  
9 actually receive over the settlement term. Further, as explained previously, Class Counsel negotiated the  
10 attorneys’ fee provisions in the injunctive relief settlement separately and only after the substantive  
11 settlement terms were agreed to, so they would not create any conflicts. ECF No. 494 at 5 n.4; Klonoff  
12 Suppl. Decl. ¶ 10. Moreover, the Vogelsong Objectors completely omit from their briefing—though  
13 Professor Silver admits it in his footnote 6—that Class Counsel’s fees are in fact tied to the value of the  
14 injunctive relief, because they have requested to seek up to 1.25% of the total amount spent by Division I  
15 member institutions under the revenue Pool for each academic year during the injunctive relief term, which  
16 could equate to \$250 million over ten years. See ECF No. 583 at 14; Klonoff Suppl. Decl. ¶¶ 10-11.  
17 Finally, if large fee awards tied to a class’s recovery automatically created conflict concerns, this would  
18 inappropriately disincentive Class Counsel from maximizing relief.<sup>33</sup>

19 **2. Separate Counsel is Not Required For Any “Sub-Groups” Within the Damages**  
20 **Classes.**

21 <sup>32</sup> Klonoff Suppl. Decl. ¶ 35 (quoting Charles Silver & Lynn Baker, *I Cut, You Choose: The Role of*  
22 *Plaintiffs’ Counsel in Allocating Settlement Proceeds*, 84 Va. L. Rev. 1465, 1499-1500 (1998)).

23 <sup>33</sup>The Vogelsong Objectors also shamelessly and disingenuously claim that a letter from Class  
24 Representatives Sedona Prince, Grant House, and Nya Harrison “complained” that the “proposed  
25 injunctive relief is inadequate.” Vogelsong Obj. at 2, 15, 17, 20. But a plain reading of the letter shows  
26 that they believe that the “landmark settlement agreement” is a “significant step forward” that “will unlock  
27 billions of dollars for athletes past, present, and future.” ECF No. 580. While lauding the settlement  
28 agreement, they also believe that there should be a “players’ association” to provide “independent  
representation” and collective bargaining. *Id.* They do not say or imply that the injunctive settlement terms  
are inadequate. Moreover, the settlement agreement is clear that it imposes no impediment to establishing  
a players’ association or collective bargaining (Am. IRS Art. 7 § 2), and while it takes no position on these  
steps, Class Counsel applauds the continued organizing and advocacy of the class representatives, which  
affirms their adequacy as class representatives.

1 Certain objectors also argue that there were conflicts within the Damages Classes, requiring that  
2 separate counsel be required for different class segments. *See* Vogel song Obj. at 5-9, 11-15; O’Bannon  
3 Obj. at 9-15. However, courts “often” allow unitary counsel to represent classes with “different payment  
4 levels reflect[ing] the relative value of different claims. . . . Such rigid formalism [as requiring separate  
5 subclasses with separate counsel for every potential ‘conflict’ created by the different value of class  
6 claims] would produce enormous obstacles to negotiating a class settlement with no apparent benefit, is  
7 not required and could even reduce the negotiating leverage of the class.” *In re Oil Spill by Oil Rig  
8 Deepwater Horizon in Gulf of Mexico*, 910 F. Supp. 2d 891, 918 (E.D. La. 2012), *aff’d sub nom. In re  
9 Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014). The Ninth Circuit held in *Volkswagen*, for example,  
10 that no conflicts precluded adequate representation in a single settlement class comprised of different  
11 groups of vehicle owners with different claims because the settlement properly reflected the differing  
12 value of the claims. *Volkswagen*, 895 F.3d at 608-09; *see also Fraley*, 638 Fed App’x at 597-98 (rejecting  
13 objection where the same counsel represented multiple subclasses and noting “a difference in the value of  
14 claims does not necessarily mean there is a structural conflict of interest requiring separate counsel”).<sup>34</sup> In  
15 fact, it was likely that the value of lesser-value claims were *enhanced* by being in the same class as the  
16 higher-value claims. *See id.* Once again, the Court may scrutinize the settlement every which way and  
17 find tremendous value for all the various claims and class members at issue. No differences among  
18 damages class members required separate counsel here.

19 **a. Damages for athletic services claims.**

20 The Vogel song and O’Bannon Objectors argue that Class Counsel provided inadequate and  
21 conflicted representation to damages class members to settle their athletic-services compensation claims  
22

23 <sup>34</sup> Decisions from other courts are in accord. *See, e.g., Charron v. Wiener*, 731 F.3d 241, 253-54 (2d  
24 Cir. 2013) (“[a]ll class settlements value some claims more highly than others, based on their perceived  
25 merits, and strike compromises based on probabilistic assessments”; these types of compromises do not  
26 “automatically create[] subclasses that require[] separate representation”); *Petrovic v. Amoco Oil Co.*, 200  
27 F.3d 1140, 1146 (8th Cir. 1999) (“If the objectors mean to maintain that a conflict of interest requiring  
28 subdivision is created when some class members receive more than other class members in a settlement,  
we think that the argument is untenable. It seems to us that almost every settlement will involve different  
awards for various class members.”); *cf.* 4 Newberg and Rubenstein on Class Actions § 13:56 (6th ed.)  
 (“The inference that differential treatment is the sign of an unfair settlement can be rebutted by evidence  
that the class members should be treated differently because they are situated differently.”).

1 because the Settlement also resolved the NIL-based damages claims. *See* Vogel song Obj. at 6-8;  
2 O’Bannon Obj. at 9. Objectors contend that the evidence of the conflict includes that there is not a perfect  
3 overlap of the damages class members seeking these claims, the NIL Compensation Fund is larger than  
4 the Additional Compensation Fund (which resolves the athletic-services claims), and the former recovery  
5 is a larger percentage of single damages than the latter. *See id.*

6 These arguments are mistaken because, first, counsel took the structural protections against  
7 conflicts by separately negotiating the NIL damages claims and the additional compensation claims based  
8 on separate assessments of their value, resulting in separate settlement funds for each type of claim, with  
9 separate, neutral allocation formulas for each. ECF No. 494 at 4-7. That distinguishes these facts from the  
10 case relied on most prominently by objectors, the decision in *Literary Works*, where the court held that  
11 counsel provided inadequate representation to the holders of one of three types of claims because the  
12 settlement created a single, capped common settlement fund with an allocation formula to split the fund  
13 among the three groups and placed the risk that claims would exceed the capped amount *only* on the backs  
14 of the holders of one type of claim, as opposed to all three, “provid[ing] strong evidence—in the ‘C’  
15 reduction—of inadequate representation.” *See In re Literary Works in Elec. Databases Copyright Litig.*,  
16 654 F.3d 242, 250-56 (2d Cir. 2011).<sup>35</sup> Unlike here, the court had no assurance that class counsel did  
17 anything to account for divergent interests when it negotiated on behalf of the entire class. *Id* at 256. In  
18 this case, by contrast, each category of class members’ damages was settled for a separate amount  
19 reflecting the different litigation risks and damages calculations. And class members’ recovery for one  
20 category of damages is entirely independent of recovery for the other damages categories.<sup>36</sup>

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21  
22  
23 <sup>35</sup> This also distinguishes this case from *Murray v. Grocery Delivery E-Servs. USA Inc.*, another case  
24 relied on by the Vogel song Objectors, where there was a single lump settlement fund created for groups  
of class members with different types of claims. *See* 55 F.4th 340, 346 (1st Cir. 2022).

25 <sup>36</sup> The neutral allocation formula for the NIL claims, based on Dr. Rascher’s methodologies at class  
26 certification that this Court held were reliable, also shows why the O’Bannon Objectors are wrong that  
27 there is a conflict between athletes who played before and after the *Alston* decision. *See* O’Bannon Obj.  
28 at 11. No matter when an athlete played, their settlement allocation is based on a neutral allocation formula  
that estimates what the world would have looked like but-for the challenged conduct. Thus, whether an  
athlete played before or after the Interim NIL Rules, for example, does not affect how the neutral allocation  
formula is applied or favor certain athletes based on the rules that were in force when the athlete played.

1 Also unlike *Literary Works*, Plaintiffs have put forward extensive evidence that the Additional  
2 Compensation Fund provides settlement class members with an excellent recovery: a \$600 million fund  
3 representing approximately 31.6% of the value of the claims. ECF No. 450-4 ¶ 49; *see also* cases cited  
4 *supra*, in footnote 9. In their earlier objection, the Vogel song Objectors offered the declaration of Ted  
5 Tatos to dispute the strength of the recovery, but in a Reply Declaration, Dr. Daniel Rascher explained  
6 that Tatos’s conclusions are based on faulty economics and a profound misunderstanding of the data. *See*  
7 ECF No. 494 at 12-15 (discussing and citing Rascher Reply Declaration, ECF No. 493-3). Notably, while  
8 that Reply Declaration was filed in August 2024, the Vogel song Objectors offer no new expert testimony,  
9 by Mr. Tatos or anyone else, to dispute Dr. Rascher’s conclusions and rebuttal of Mr. Tatos regarding the  
10 strength of the recovery for the athletic-services compensation claims.

11 Insofar as an excellent 31.6% recovery on Additional Compensation Fund claims is lower than the  
12 settlement percentage recovery for the NIL damages claims, that difference reasonably reflects the  
13 differing value of those claims and particular obstacles to recovery. *See Deepwater Horizon*, 910 F. Supp.  
14 2d at 918, *supra*; *Volkswagen*, 895 F.3d at 608–09, *supra*; cases and other authorities cited in footnote 34.  
15 The Vogel song Objectors respond only in conclusory fashion that “[f]rom a class certification standpoint  
16 the fair pay claims should be just as strong as the *NIL Litigation* claims.” Vogel song Obj. at 10. That  
17 argument is striking in its detachment from reality. Several previous cases (including this Court’s decision  
18 in *O’Bannon*) indicate that certifying damages classes for pay-for-play claims would be very difficult.  
19 ECF Nos. 450 at 18-19; 494 at 13. And even *if* such classes could be certified, the Vogel song Objectors  
20 also ignore that *this Court* rejected pay-for-play claims not tethered to education just several year ago in  
21 *Alston*. In fact, the Court held after a 10-day trial, that the NCAA’s rules prohibiting unlimited cash  
22 compensation for athletic services were *procompetitive*. *See* ECF No. 494 at 13-14 (citing *In re NCAA*  
23 *Athlete Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1083 (N.D. Cal. 2019); ECF No. 450 at  
24 20. Then the Supreme Court unanimously affirmed the trial result. *See NCAA v. Alston*, 594 U.S. 69  
25 (2021).

26 Furthermore, challenges to Defendants’ NIL restrictions were strengthened when Defendants  
27 relaxed their NIL restraints with no perceivable harm to college athletics, exposing their prior restraints  
28 as unjustified. But Defendants have not changed their prohibition on pay-for-play compensation, which

1 this Court has twice upheld as lawful. Given these challenges to pay-for-pay claims, it is likely that, as the  
2 court concluded in *Volkswagen*, 895 F.3d at 607-08, the value of such athletic services claims was  
3 enhanced by being part of the settlement here that also include the NIL damages claims.

4 The Vogel song Objectors' lack of any meaningful response on any of these points is telling. They  
5 have had months since they began objecting to proffer evidence and experts as to how they would certify  
6 this class and proffer nothing. Instead, they pivot to fancifully claim that they are the first-and-only  
7 plaintiffs expressing a real interest in litigating antitrust claims for athletes' services, and that Class  
8 Counsel rushed to settle these claims and did not have the information available to properly value them.  
9 That is another demonstrable falsehood. As just recounted, Class Counsel first brought those claims in  
10 this District in 2014 in the *Alston* litigation, saw them through trial, through the Ninth Circuit, and through  
11 Supreme Court review. Class Counsel intended to bring claims for additional compensation for athletic  
12 services, similar to those raised in *Alston*, after the class certification decision in *House* and informed  
13 Defendants of this intention during settlement negotiations. ECF No. 494-1, Joint Decl. of Steve W.  
14 Berman and Jeffrey L. Kessler in Further Support of Pls.' Mot. for Prelim. Settlement Approval, ¶ 9.  
15 Discovery obtained in *Alston*, as well as in *House*, addressed issues relevant to the athletic services claims  
16 and informed Class Counsel's assessment of valuation and risk of those claims during settlement  
17 negotiations. *Id.* at ¶ 10.

18 Although *Alston* was a tremendous victory, there is no denying that the outcome was much more  
19 modest than what Class Counsel sought in that case and what the *Fontenot* plaintiffs seek in their copycat  
20 lawsuit. The Vogel song Objectors ignoring—rather than confronting—these realities undermines their  
21 objections. *Alston*—litigated for over seven years by Class Counsel before this Court—was the first case  
22 to challenge Defendants' restraints on compensation for athletic-services compensation and faced  
23 daunting obstacles at every turn. The Vogel song Objectors, by contrast, did not bring any claim on behalf  
24 of college athletes until nine years later—in the *Fontenot* action filed in December 2023—after this Court  
25 certified the classes in *House*. Moreover, the discovery obtained in *Alston*, as well as in *House*, addressed  
26 issues relevant to the athletic services claims and informed Class Counsel's assessment of valuation and  
27 risk of those claims during settlement negotiations.

1                   **b. Damages for claims based on scholarship limitations.**

2           The Vogelsong Objectors, repeating their objections from preliminary approval, contend that the  
3 proposed settlement “provides no compensation and exemplifies inadequate treatment representation” for  
4 the scholarship claims asserted by Vogelsong counsel in *Cornelio* on behalf of partial-scholarship  
5 recipients. Vogelsong Obj. at 11-15. The objections fail on the facts and law.

6           *First*, while Vogelsong counsel slapped together the *Cornelio* complaint in the week following  
7 Plaintiffs’ motion for preliminary approval, they provide no explanation of how they will get a partial  
8 scholarship class claim certified, *e.g.*, how they will model class-wide antitrust impact and damages from  
9 the NCAA scholarship limits alone, when there is a long history of failure to do so in previous cases. *See*  
10 ECF No. 494 at 15-17 (citing cases). They have had months from preliminary approval to make some  
11 showing how these claims could be certified but have offered the Court no plan, no case law, and no expert  
12 opinion to back up their claims. Given this litigation history, it was reasonable for counsel to conclude  
13 that past damages for NCAA scholarship restrictions alone have *de minimis* value. And as explained, it is  
14 common and reasonable for settlements to value different claims differently based on their probabilistic  
15 value. Notably, despite Plaintiffs’ lengthy prior discussion of the immense difficulties of certifying  
16 scholarship claims, the Vogelsong Objectors fail to address this at all in their current objections—  
17 demonstrating that they have no response. They offer no class certification plan, no experts and no impact  
18 and damage methodologies and fail to distinguish the denial of certification in the *Walk On* case. *See In*  
19 *re NCAA I-A Walk-On Football Players Litig.*, 2006 WL 1207915, at \*9-13 (W.D. Wash. May 3, 2006)  
20 (denying class certification).

21           *Second*, it is false that such damages claims were released without any compensation. As explained  
22 previously, Dr. Rascher’s analysis already accounts for athletes receiving the full 50% revenue share  
23 absent the restraints on compensation for athletic services (including the NCAA scholarship limits), *i.e.*,  
24 there are no more damages to claim without pursuing *more* than the 50% share for the athletes. *See* ECF  
25 No. 494 at 16. Class Counsel, accounting for the substantial litigation risks, settled for 31.6% of the  
26 estimated potential damages. This outcome is far more than reasonable. *See Aarons v. BMW of N. Am.,*  
27 *LLC*, 2014 WL 4090564, at \*13 (C.D. Cal. Apr. 29, 2014) (finally approving settlement and rejecting  
28

1 objection “that the settlement does not compensate” certain car owners who “would likely find it difficult  
2 to prove their damages”).

3 While the Vogel song Objectors claim at page 14 that named objector Alex Vogel song “is not  
4 receiving any pay for athletic services,” that is false. As a matter of fact, Mr. Vogel song made a claim and  
5 is set to receive a settlement allocation for compensation for athletic services, as well as for lost NIL  
6 opportunities (and a *Hubbard* payment). Peak Decl. ¶ 38. The objectors also claim that the announcement  
7 of one school to raise the number of scholarships for baseball indicates that damages for such claims for  
8 a class of all sports at all Power Five Schools “are many hundreds of millions of dollars if not more.”  
9 Vogel song Obj. at 13. But they provide no evidence that this “extrapolation” is based on reasonable  
10 economics,<sup>37</sup> and they have never addressed the class certification obstacles that Plaintiffs have pointed  
11 out plague such claims. All that said, if class members believed that they have larger partial scholarship  
12 claims to pursue on an individual basis, they could have opted out. *See Fraley*, 638 Fed App’x at 597-98  
13 (rejecting objection where the same counsel represented multiple subclasses and noting that members of  
14 the lowest-recovering subclass with concerns were “free to opt out”).<sup>38</sup> And if these claims were truly  
15 worth hundreds of millions, it’s inconceivable that the plaintiffs’ bar would not have brought them years  
16 ago.

### 17 3. The Hausfeld Objectors Raise No Legitimate Conflicts

18 The Hausfeld Objectors contend that the Injunctive Relief Settlement Agreement is “embedded”  
19 with “numerous ‘indicia of conflict.’” ECF No. 613 at 2-6. Most of the supposed “indicia” are merely  
20 claims that the relief obtained is inadequate, which is shown in Section III.B.1, *supra* to not be a proper

21 \_\_\_\_\_  
22 <sup>37</sup> See Rascher Final Approval Decl. ¶¶ 95-99.

23 <sup>38</sup> The *Community Bank* and *Gonzalez* cases cited by the Vogel song Objectors are also not remotely  
24 on point. The Third Circuit in *Community Bank* rejected a proposed settlement and remanded for further  
25 proceedings because the district court failed to conduct a proper analysis of alleged inter-class conflicts  
26 and purported inadequacies of counsel’s representation. *In re Cmty. Bank of N. Va.*, 622 F.3d 275, 304-08  
27 (3d Cir. 2010). The Circuit Court “stress[ed] that [it] does not hold that class counsel are necessarily  
28 inadequate representatives for the class (or any subclass that is created).” *Id.* at 308. And *Gonzalez*  
declined to approve an “indelible stain” settlement agreement. *Gonzalez v. CoreCivic of Tenn., LLC*,  
2018 WL 4388425, at \*5 (E.D. Cal. Sept. 13, 2018). There, class counsel agreed to release certain claims  
without securing any relief, and when the district court pointed out that discrepancy, the parties amended  
the settlement agreement to cosmetically allocate \$100,000 of the “already agreed-to total settlement  
amount” to those claims. *Id.*

1 ground for objecting to a class action settlement approval.<sup>39</sup> These Objectors also wrongly claim that there  
 2 is a purported conflict because Class Counsel has allegedly agreed to “support the position that the Court’s  
 3 approval of the proposed settlement provides an automatic antitrust defense and to support an effort to  
 4 secure Congressional antitrust immunity if that argument fails . . . .” ECF No. 613 at 4-5. Wrong again.

5 Class Counsel has not agreed that this settlement provides Defendants with a broad, automatic  
 6 antitrust defense from any future antitrust claims. What the settlement *actually* says is that Class Counsel  
 7 will support federal or state legislation implementing the settlement, and they will cooperate in support of  
 8 legislation codifying that “conduct undertaken by Defendants in compliance with or to implement the  
 9 terms of this Injunctive Relief Settlement” does not violate the antitrust laws. *See* Am. IRS Art. 7 § 1. In  
 10 other words, Class Counsel has agreed to take the unremarkable legislative position that the settlement  
 11 terms and acts taken to comply with or implement the settlement should not be antitrust violations. Put  
 12 yet another way, because Class Counsel is of the firm conviction that the Settlement is in the best interests  
 13 of the classes, Class Counsel agreed to cooperate with Defendants to help ensure the settlement is  
 14 effectuated. That does not indicate any conflict with the Class. Rather, it demonstrates Class Counsel’s  
 15 alignment with the interests of the Class.

16 **D. NCAA-Imposed Roster Limits Do Not Provide a Basis for Denying Final Approval**

17 **1. NCAA Roster Limits Do Not Alter the Conclusion That the Settlement Agreement is**  
 18 **Overwhelmingly Fair and Reasonable to the Class**

19 Out of hundreds of thousands of class members,<sup>40</sup> 269 have objected to the fact that the  
 20 Injunctive Settlement does not prohibit the NCAA from imposing the roster limits specified in Appendix

21 B. They argue that these roster limits adversely impact non-scholarship athletes by reducing the number  
 22 of available positions on various teams. Such a myopic focus on available roster spots for walk-on (non-

23 <sup>39</sup> Notably, in the *Blue Cross* case where the court rejected several conflict arguments, including that  
 24 class counsel could not simultaneously represent a damages and injunctive relief class, Hausfeld LLP  
 25 served as class counsel and argued, among other things, that “the existence of minor conflicts alone will  
 26 not defeat a party’s claim to class certification: the conflict be a *fundamental* one going to the specific  
 27 issues in controversy.” Subscriber Pls.’ Reply Mem. of Law in Support of Prelim. Approval at 7-9, *In re*  
 28 *Blue Cross Blue Shield Antitrust Litig.*, No. 2:13-cv-20000-RDP (N.D. Ala. Nov. 23, 2020) (quoting  
*Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003)).

<sup>40</sup> This excludes the submitted Change.org petition (ECF No. 691), many of the signatories to which  
 were non-class members with no standing to object, and other of the total 370 objectors to the roster limits  
 that are non-class members.

1 scholarship) athletes, however, is not a basis for disapproving the settlement. Rather, Rule 23 mandates  
2 a holistic assessment, *see Hanlon*, 150 F.3d at 1026, and that assessment demonstrates that the  
3 settlement provides life-changing benefits—including eliminating NCAA caps on available  
4 scholarships—that far outweigh the roster-spot harms asserted by these few objectors.

5 The potential reduction in walk-on roster positions is outweighed by the \$20 billion worth of  
6 direct compensation and benefits that the settlement will yield for class members over the next ten years.  
7 And the Settlement Agreement is explicit that roster limits may not be lower than the number of  
8 scholarships previously permitted by the NCAA and otherwise may not cause any athlete to lose his or  
9 her scholarship. *See Amended Settlement Agreement Art. 4 § 1.*<sup>41</sup> The upshot is that the Settlement  
10 Agreement will create *more* scholarships for Division I athletes—which Dr. Rascher estimates could  
11 lead to the opportunity for more than 115,000 additional scholarships available to class members  
12 annually, with more than 24,000 possible new scholarships at Power Five institutions that are most  
13 likely to spend more under the settlement. Rascher Final Approval Declaration ¶ 74 Ex. 5. That number  
14 dwarfs the small number of athletes who have objected because they may lose a walk-on spot on a team.

15 To be sure, losing a roster spot is no small matter for those impacted. But just like the least  
16 competitive walk-on athletes may lose a roster spot under the settlement, the more competitive walk-on  
17 athletes may now enjoy an athletic scholarship that was previously unavailable to them. On balance, that  
18 is an extremely reasonable compromise. *See White v. Nat'l Football League*, 822 F. Supp. 1389, 1405-  
19 06 (D. Minn. 1993) *aff'd*, 41 F.3d 402 (8th Cir. 1994) (“If [] the court concludes that the Settlement  
20 Agreement as a whole is fair, reasonable and adequate to the class, its inquiry is ended and it should  
21 approve the entire settlement. ... Thus, even if it were sympathetic to objections directed at one or more  
22 provisions of the Settlement Agreement, the court may not pick and choose which provisions to approve  
23 and which to disapprove.”).

24  
25  
26  
27 <sup>41</sup> Three current-athlete objectors indicated that their scholarships have been impacted by the roster  
28 limits. Class counsel has reached out to all three to inform them of this protection in the settlement  
agreement and help them address any issue.

1 Further, for 26 out of 46 sports, the NCAA-imposed roster limits still allow for more roster  
 2 positions than the current average squad size for the respective sports.<sup>42</sup> Rascher Final Approval Decl. ¶¶  
 3 71-72. In other words, for nearly 2/3 of NCAA sports, the roster spots being eliminated were on average  
 4 not occupied by any athlete anyway. Only nine objectors have indicated they have actually been cut  
 5 from their teams.<sup>43</sup> And 58% (156 out of 269) of the current-athlete class members who objected to the  
 6 elimination of roster spots play a sport where the NCAA's new roster limit is larger than the current  
 7 average team size, so their fears may very well be unfounded.

8 Moreover, outside of the Power Four conferences who are defendants in this case, there will be  
 9 no new NCAA roster limits unless member institutions choose to opt-in to the revenue sharing model  
 10 outlined by the settlement. Thus, to the extent that schools and conferences elect not to share revenues  
 11 with athletes under the settlement, as the Ivy League and William & Mary have already announced, then  
 12 athletes at such schools will not be impacted by any NCAA roster limits at all.<sup>44</sup> In fact, 24 class  
 13 member objectors, all represented by Molo Lamken, are athletes at schools in the Ivy League and  
 14 William & Mary, who will not be impacted at all by the roster limits that they are complaining about.

15 Viewed in context, the limited adverse impact of the NCAA and conferences remaining able to  
 16 establish roster limits does not come close to outweighing the overall beneficial impact to the class from  
 17 the settlement. *See, e.g. Bayat v. Bank of the W.*, 2015 WL 1744342, at \*6 (N.D. Cal. Apr. 15, 2015)  
 18 (granting final approval even though a large number of class members were “*worse off* as a result of th[e]  
 19 injunctive relief] settlement”); *In re Motor Fuel Temperature Sales Pracs. Litig.*, 2012 WL 1415508 (D.

21 \_\_\_\_\_  
 22 <sup>42</sup> For an additional eight sports, the roster limit is less than 1 slot lower than the current average team  
 size. Rascher Final Approval Decl. ¶ 71 Ex 2.

23 <sup>43</sup> Of those, 5 are SEC men's swimmers (and 27 of the total 269 class member objectors are SEC  
 24 men's swimmers). The NCAA has set a roster limit of 29 for men's swimming and diving, which is higher  
 25 than the current average participation in Division I. The SEC, however, enacted a lower roster limit of 22.  
*See Sophie Kaufman, Sources: SEC Will Set Men's Swim & Dive Roster Limits at 22 Athletes in Wake of*  
 26 *House v. NCAA*, SWIMSWAM (Oct. 18, 2024). Thus, lost SEC swimming and diving roster spots are not  
 because of the NCAA roster limits set forth in the Appendix B to the Settlement Agreement.

27 <sup>44</sup> *See* Noah Henderson, *Ivy League Declines NIL Revenue Sharing Amidst House Settlement Changes*,  
 28 *SPORTS ILLUSTRATED* (Jan. 23, 2025); *William & Mary to Opt-In to House Settlement in 2026*, available  
 at [https://tribeathletics.com/news/2025/2/28/tribe-athletics-william-mary-to-opt-in-to-house-settlement-](https://tribeathletics.com/news/2025/2/28/tribe-athletics-william-mary-to-opt-in-to-house-settlement-in-2026.aspx)  
[in-2026.aspx](https://tribeathletics.com/news/2025/2/28/tribe-athletics-william-mary-to-opt-in-to-house-settlement-in-2026.aspx)

1 Kan. Apr. 24, 2012), *aff'd*, 872 F.3d 1094 (10th Cir. 2017) (granting final approval over objection “that  
2 the proposed injunctive relief will hurt class members”).

3 The decision in *White v. National Football League*, the antitrust class action that introduced free  
4 agency for NFL players, is directly on point. There, a number of objectors to the class settlement argued  
5 that some class members would be worse off under the free agency created by the injunctive relief due  
6 to increased competition from other class members. 822 F. Supp. 1389, 1405-06 (D. Minn. 1993) *aff'd*,  
7 41 F.3d 402 (8th Cir. 1994). Similarly, defendants in *White* opposed injunctive-class certification by  
8 arguing that introducing free agency would benefit some class members while hurting others because a  
9 starting position gained through free agency by one class member would mean a starting position lost by  
10 another class member. *See* Defs.’ Opp’n to Pls.’ Mot. for Injunctive Class Certification at 10, *White v.*  
11 *Nat’l Football League*, No. 4-92-CIV-906 (D. Minn. Nov. 3, 1992).<sup>45</sup> The *White* court rejected these  
12 arguments because, as here, on balance the settlement served to increase competition for player services  
13 while providing tremendous benefits to the class that outweighed any claimed detrimental impact:

14 Taken as a whole, the revised player employment rules set forth in the Settlement  
15 Agreement constitute a new and unique approach to player employment in the NFL.  
16 Class counsel and the NFLPA believe that the entire Agreement will benefit the  
overwhelming majority of the players in the NFL, and raise salaries throughout the  
league.

17 *White*, 822 F. Supp. at 1426; *see also id.* at 1405 (also noting that “on numerous occasions, courts have  
18 certified settlement classes consisting of all players in a particular sports league.” (citing cases)).

19 It also bears emphasis that roster limits are something the NCAA could have always done. *See*  
20 Settlement Agreement Art. 4 § 1 (“The NCAA *may* adopt Division I roster limits . . .” (emphasis  
21 added)). And, as for conference-imposed roster limits, the Settlement Agreement is completely silent.  
22 That is important because a number of the objectors are not complaining about the NCAA roster limits  
23 permitted (but not required) by Appendix B; they are complaining about lower roster limits announced  
24 *by conferences*. *See, e.g.*, ECF No. 628-5 at 225 (“I only realized the roster limits would seriously  
25 impact me when the SEC announced a further cut to the NCAA roster limits with a 22-man roster.”); *id.*  
26 at 2 (similar). But that is not an objection to anything in the Settlement Agreement. Moreover, the

27  
28 <sup>45</sup> *See Alston*, No. 4:14-md-02541-cw (N.D. Cal. June 26, 2015), ECF No. 230-5.

1 Conference Defendants already limit the number of athletes that can “dress” for and travel to  
 2 competitions, and virtually all of those limits are lower than or equal to the NCAA’s roster limits.<sup>46</sup> Yet  
 3 these limitations likewise have nothing to do with the Settlement Agreement.

4 Finally, as with other aspects of the settlement, there is no release of antitrust treble damages  
 5 claims related to the future implementation of roster limits, and non-class members (e.g. any student  
 6 who is not able to play Division I sports) are not subject to the settlement release.

## 7 **2. Roster Limits Do Not Pose “Conflicts” Precluding Final Approval**

8 Certain objectors complain that the roster limits have additionally “exposed serious intra-class  
 9 conflicts.” ECF No. 628 at 17; ECF No. 641 at 1; ECF No. 627 at 2. This Court has considered—and  
 10 rejected—similar arguments in certifying the litigated classes in this very case (*see* ECF No. 387), in  
 11 *Alston* (311 F.R.D. 532, 546 (N.D. Cal. 2015)), and in *O’Bannon* (2013 WL 5979327, at \*6).

12 Defendants repeatedly argued that substitution effects for scholarships or positions on the team created  
 13 class conflicts fatal to certification. Each time, the Court rejected those arguments. As this Court  
 14 recognized, if promoting competition for class members’ services—the *objective* in any antitrust case  
 15 concerning a labor market—posed an insurmountable conflict, it would doom litigation and settlement  
 16 class certification in all such cases. *See In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 311  
 17 F.R.D. at 546 (“If the fact that illegal restraints operate to the economic advantage of certain class  
 18 members were enough to defeat certification, the efficacy of classwide antitrust suits—and the  
 19 deterrence function they serve—would wither:”). This is anathema to the Sherman Act.

20 It is therefore unremarkable that numerous courts have found that class conflicts are not created  
 21 by fostering competition among class members. *See, e.g., Sims v. Montgomery Cnty. Comm’n*, 890 F.  
 22 Supp. 1520, 1529 (M.D. Ala. 1995), *aff’d sub nom. Sims v. Montgomery Cty. Comm’n*, 119 F.3d 9 (11th  
 23 Cir. 1997) (approving settlement setting procedures for promotions where there “is no delineation  
 24 among class members as to the applicability of any provision contained in the proposed decree ... [and]  
 25 “the settlement provides for structural changes with each class member’s interest in the adequacy of the  
 26 change being substantially the same” (internal quotations omitted)); *Meiresonne v. Marriott Corp.*, 124

27  
 28 <sup>46</sup> *See* 2022-23 ACC Manual §§ 3.1.6, 3.8.2.2; 2022-23 Big 12 Conference Handbook § 10.4; 2021-  
 22 Big 10 Conference Handbook §§ 16.8.2, 16.8.3; 2024-25 SEC Commissioner’s Regulations at 22–23.

1 F.R.D. 619, 625 (N.D. Ill. 1989) (rejecting argument that “because class members compete against *each*  
2 *other* for the same promotions, none can adequately represent the class . . . In the universe Marriott  
3 would create, discrimination law would be simpler because class-discriminatory promotion would be  
4 cost-free.” (internal citations omitted, emphases in original)); *Sharif by Salahuddin v. N.Y. State Educ.*  
5 *Dep’t*, 127 F.R.D. 84, 88 (S.D.N.Y. 1989) (rejecting argument that because of a limited number of  
6 scholarships, “any change in the scholarship criteria would benefit some females at the expense of others  
7 who would win a scholarship but for the change”).

8 In *Cohen*, the First Circuit upheld the grant of final approval of a revised settlement agreement  
9 between a class of female college athletes and the university over objections that there was an  
10 irreconcilable intraclass conflict between athletes of different teams. 16 F.4th at 949-51. Objectors  
11 argued that class members whose teams had been cut had conflicting interests from class members  
12 whose teams had not been cut because the latter preferred the status quo. *Id.* The First Circuit affirmed,  
13 holding that there was no conflict because there was “a significant interest common to all student-  
14 athletes” even though “this interest may have been less important” to some students than others. *Id.* at  
15 950.

16 As in *Cohen*, all class members here—antitrust plaintiffs—share a common interest in obtaining a  
17 more competitive market through the availability of increased compensation, benefits and scholarships.  
18 *Cf. In re NCAA GIA*, 311 F.R.D. 532, 542 (“class members might prefer to leave an unlawful restraint in  
19 place because they otherwise would have to compete against one another, [but] such preference for non-  
20 competition does not justify denying injunctive relief class certification”). The fact that enhanced market  
21 competition may not benefit every class member is not a defect in the Settlement Agreement, it is an  
22 existential reality of successfully resolving antitrust claims.

### 23 **E. There Are No Title IX Issues Raised by The Settlement**

24 A subset of objectors argue that the settlement undercompensates female athletes and therefore  
25 violates Title IX. *See* ECF Nos. 613, 618, 628, 631, 638, 647, 665, 670, 671, 674. This argument is  
26 misplaced.

27 As an initial matter, the question of whether Title IX applies to the types of payments contemplated  
28 under the injunctive relief settlement remains unresolved. The objectors argue that Title IX applies to NIL

1 revenue sharing payments from institutions, relying on a Fact Sheet that was issued by the Department of  
2 Education’s Office for Civil Rights (OCR) on January 16, 2025, which stated: “When a school provides  
3 athletic financial assistance in forms other than scholarships or grants, including compensation for the use  
4 of a student-athlete’s NIL, such assistance also must be made proportionately available to male and female  
5 athletes.”<sup>47</sup> But that guidance was officially rescinded in a February 12, 2025 press release, which stated:  
6 “The claim that Title IX forces schools and colleges to distribute student-athlete revenues proportionately  
7 based on gender equity considerations is sweeping and would require clear legal authority to support it.  
8 That does not exist.”<sup>48</sup> Some of the objectors further suggest that Title IX liability should extend to  
9 payments from the conferences or the NCAA itself, but the only case to address this issue—*NCAA v.*  
10 *Smith*, 429 U.S. 459 (1999)—held that Title IX does not apply to the NCAA or conferences. While the  
11 objectors argue that a court could hypothetically find the NCAA or conferences subject to Title IX based  
12 on a new and different theory than the one analyzed in *Smith*, no court has yet to do so.

13         Regardless of how these questions may ultimately be resolved, the applicability of Title IX is an  
14 issue of legal statutory interpretation that the Court need not resolve to grant final approval of this  
15 settlement. To begin with, there is only a very narrow release of Title IX claims “arising from distribution  
16 of the gross settlement agreement.” Amended Settlement Agreement ¶ 1(vv)(3). Certain objectors  
17 nonetheless take issue with this release, but as explained at preliminary approval, the settlement is a  
18 resolution of antitrust claims that must, as a matter of law, be based on market realities “but for” the  
19 challenged compensation rules. *See* P. Areeda & H. Hovenkamp, *Antitrust Law: An Analysis of Antitrust*  
20 *Principles and Their Application* § 392b (5th ed. 2023 supp.); *see also* Allen, M.A., et al., “Reference  
21 Guide on Estimation of Economic Damages” in *Reference Manual on Scientific Evidence* 425, 432 (Fed.  
22 Judicial Ctr. 3d ed. 2011) (“Because the but-for scenario differs from what actually happened only with  
23 respect to the harmful act, damages measured in this way isolate the loss of value caused by the harmful  
24 act and exclude any change in the plaintiff’s value arising from other sources.”). Plaintiffs did not assert

25 \_\_\_\_\_  
26 <sup>47</sup> U.S. Department of Education Office for Civil Rights, *Fact Sheet: Ensuring Equal Opportunity*  
27 *Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities*,  
28 January 16, 2025.

<sup>48</sup> *U.S. Department of Education Rescinds Biden 11th Hour Guidance on NIL Compensation*, Press  
Release, February 12, 2025.

1 Title IX claims in this litigation and the settlement does not and cannot address them. Accordingly, Title  
2 IX does not govern how past damages should be allocated. Thus, it is not surprising that these objectors  
3 cite no case law—because there is none—that Title IX applies to damages awards.

4 The settlement appropriately provides relief for antitrust violations that harmed settlement class  
5 members' ability to earn NIL compensation in the constrained market, which, for better or for worse, has  
6 historically been driven by revenues from Division I football and men's basketball, as well a Division I  
7 women's basketball to a lesser extent. The settlement allocations followed Dr. Rascher's damages  
8 methodology from class certification, which this Court found reliable. And the undisputed reason that Dr.  
9 Rascher's damages methodology estimates more damages for male athletes in football and basketball is  
10 because in the actual world, the NCAA and its conferences and schools received far more revenues,  
11 including broadcast revenues, from football and men's basketball than other sports (including women's  
12 basketball) during the class period. The settlement, which followed Dr. Rascher's damages methodology,  
13 allocates funds according to Defendants' real-world conduct. In other words, the settlement, pursuant to  
14 Dr. Rascher's methodology, allocates settlement funds how they would have been allocated in the but-for  
15 world. Moreover, if Title IX did apply to require more equal spending, schools could have provided greater  
16 payments to female athletes in other sports in addition to the damages payments allocated under the  
17 settlement, but there is no reason to believe that Title IX precludes a damages award estimate that mirrors  
18 the disparity in broadcast revenues and school spending in the actual world, given the economic principle  
19 that the but-for world must be based on reasonable assumptions of what occurs in the actual world absent  
20 the challenged restraints.

21 Although this is not the proper setting in which to resolve these questions, if there is ultimately a  
22 determination that Title IX does apply to NIL revenue sharing and/or other future payments or benefits  
23 paid out under the injunctive relief settlement, schools will need to comply with Title IX. In that event,  
24 there is nothing in the settlement that prevents schools from allocating additional funds to women athletes  
25 if doing so is necessary in order to maintain Title IX compliance, and there is nothing in the settlement  
26 that would immunize them from the obligation to do so.

1 **F. The Release Language is Consistent with Governing Law and is Not Overly Broad**

2 Some objectors take issue with the release of claims under the settlement, contending that it is too  
3 broad. *See* ECF Nos. 622, 625, 628, 630. The Court should reject these objections because they are based  
4 on misinterpretations or mischaracterizations of the Amended Settlement Agreement, as well as  
5 misapplication of controlling law.

6 The release in the settlement is properly limited to claims that were raised or could have been  
7 raised in this case and is only as broad as the relief secured. Although it extends beyond the specific claims  
8 in the current operative Complaint, that will no longer be the case if the Third Amended Complaint filed  
9 with the settlement is accepted and becomes the operative complaint. Further, the damages settlement  
10 release is only broader than the current operative Complaint so to encompass potential claims “(1) on  
11 account of, arising out of, or resulting from any and all previously existing NCAA and conference rules  
12 regarding monies and benefits that may be provided to student-athletes by the NCAA, Division I  
13 conferences and/or Division I Member Institutions, or (2) relating in any way to any NCAA or conference  
14 limitations on the numbers of scholarships allowed or permitted in any sport.” Amended Settlement  
15 Agreement ¶ 1(oo). This release is tailored to the conduct at issue in these actions and is thus consistent  
16 with release provisions approved by courts in the Ninth Circuit. *See Hesse v. Sprint Corp.*, 598 F.3d 581,  
17 590 (9th Cir. 2010) (release may extend to “claims not alleged in the underlying complaint where those  
18 claims depended on the same set of facts as the claims that gave rise to the settlement”). The injunctive  
19 claim release similarly reflects the contours of the Injunctive Relief Settlement and encompasses the  
20 injunctive relief requested in the operative complaint. *Compare* Second Am Compl. at 103–104 (Request  
21 for Relief), with Amended Settlement Agreement ¶ 1(pp). The scope of the Release does not render the  
22 settlement unfair or unreasonable; instead, it represents the nature of a bargained-for solution.

23 The named plaintiffs in *Brantmeier v. NCAA*, No. 1:24-CV-00238-CCE-JEP (M.D.N.C.), object  
24 to the scope of the release based on the erroneous belief that it releases the claims in that case. *See* ECF  
25 No. 625 (“Brantmeier” or “Brantmeier Objection”). It does not. Nor is it, as the Brantmeier Objectors  
26 claim, a request for an unprecedented declaratory judgment determining that *all* of the regulations in the  
27 443 pages of the Bylaws are lawful under the Sherman Act and all other laws, except for those challenged  
28 in the present litigation.” ECF No. 625 at 9 (emphasis in original).

1 Certain other objectors argue that the release is overly broad because it includes non-parties to the  
2 lawsuit. For example, one objector contends that the settlement improperly releases claims against the  
3 College Football Playoff, *see* ECF No. 630, while another objects to the release of NCAA member  
4 institutions who were not named as defendants in the litigation. *See* ECF No. 628. But courts routinely  
5 approve releases covering affiliated persons and entities of the parties to the lawsuit. *See Eisen v. Porsche*  
6 *Cars N. Am., Inc.*, 2014 WL 439006, at \*9 (C.D. Cal. Jan. 30, 2014) (noting “[r]eleases of non-parties in  
7 class action settlements are readily approved and enforced” because “[n]o defendant would agree to a  
8 release that permitted plaintiffs to continue to initiate litigation against individuals or entities related to  
9 the defendant”). The CFP and NCAA member schools are closely affiliated with the Defendants in this  
10 litigation and their inclusion as released parties for factually related claims is appropriate.

11 Finally, relying on the court’s holding in *Hesse*, the Vogel song Objectors contend that the  
12 settlement improperly releases partial scholarship claims that they asserted were not litigated in this case.  
13 *See* ECF No. 622. Other aspects of the Vogel song Objection are addressed in greater detail in Section  
14 III.C above and are not repeated here. But as it specifically relates to the release, their arguments also fail.  
15 Unlike in *Hesse* which addressed releases of claims that were not alleged in the operative complaint, the  
16 partial scholarship claims at issue were covered in the operative complaint that Plaintiffs filed with their  
17 Motion for Preliminary Approval. *See* ECF No. 533-1 ¶¶ 125-26.

### 18 **G. The Settlement Notice Was Implemented with Overwhelming Success**

19 This Court previously recognized that the proposed notice plan satisfied Federal Rule of Civil  
20 Procedure 23 and due process.<sup>49</sup> The handful of criticisms by Objectors regarding the notice and claims  
21 process do not undermine the overwhelming success of the notice plan that was delivered as ordered by  
22 the Court to 96.4% of Settlement Class Members. Peak Decl. ¶ 41.

23 *First*, a few Objectors raise the concern that not every class member received notice. *See, e.g.,*  
24 O’Bannon Obj. (ECF No. 614) at 3-4; Dancy Obj. (ECF No. 629) at 1; Arizona State Obj. (ECF No. 676)  
25 at 6. A court approving a class action settlement must “direct notice in a reasonable manner to all class

26 <sup>49</sup> *See* Prelim. Approval Order at 5; *and see Perkins*, 2016 WL 613255, at \*7 (finding class notice  
27 adequate where the approved notice was sent in accordance with the approved notice plan, which was  
28 consistent with the requirements of Rule 23 and due process); *In re Splunk*, 2024 WL 923777, at \*5  
(finding sufficient notice when the notice procedures “adhered to the previously approved notice plan”).

1 members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). “Rule 23 and due process  
 2 require only a ‘reasonable effort’ to notify individual class members.”<sup>50</sup> To satisfy this standard, the parties  
 3 need not publicize the Settlement via an Objector’s chosen means. Nor does it require “actual notice to  
 4 each individual class member” in order to be sufficient.<sup>51</sup>

5 Here, notice was widely distributed by email, postcard, social media, press releases, organic media  
 6 efforts, and news outlets, all of which focused on targeting the entire population of Settlement Class  
 7 Members. *See* Peak Decl. ¶¶ 10-36. There are multiple examples of this widespread effort—over 325  
 8 Division I schools provided data for 392,298 athletes to receive direct notice and allocation estimates,  
 9 over 1,435 news outlets reported on the press releases nationwide resulting in over 12,000 views, and over  
 10 75 million impressions were purchased across 5 different social media channels that targeted adults 18-34  
 11 years of age who participate in an NCAA sport, watch an NCAA sport on television or online, and either  
 12 currently attend college or have graduated from college. *Id.* at ¶ 23. In contrast to the O’Bannon Objectors’  
 13 contention that African American athletes did not receive adequate notice, the widespread notice plan  
 14 ensured that no group was systematically left without notice, thus satisfying Rule 23’s requirements, as  
 15 evidenced by the high percentage of the class that received notice and the high number of claim  
 16 submissions by Settlement Class Members.<sup>52</sup>

17 The O’Bannon Objectors, and one amici, additionally raise the concern that the notice provided to  
 18 future incoming college athletes is insufficient. *See* ECF No. 614 at 20; ECF No. 603 at 9. Both assert  
 19 practical difficulties (such as a limited time frame and inexperience with lawyers) for new athletes to  
 20 object within sixty days to the injunctive relief. *Id.* Sixty days is widely regarded—including explicitly by  
 21 guidance in this district—as more than sufficient time to notify an individual of their rights. *See* Northern  
 22  
 23

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24 <sup>50</sup> *See In re Apple Inc. Device Performance Litig.*, 50 F.4th at 780; *see* Fed. R. Civ. P. 23(c)(2)(B) (For  
 25 a proposed Rule 23(b)(3) Settlement Class, the court should “direct to class members the best notice that  
 26 is practicable under the circumstances, including individual notice to all members who can be identified  
 27 through reasonable effort.”).

28 <sup>51</sup> *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128 (9th Cir. 2017); *Anthem*, 327 F.R.D. at 329  
 (internal quotation marks omitted).

<sup>52</sup> *Officers for Just*, 688 F.2d at 624 (holding notice was reasonable if “not systematically leav[ing]  
 any group without notice.”)

1 District of California Procedural Guidance for Class Action Settlements, at ¶ 9 (“The parties should ensure  
2 that class members have at least thirty-five days to opt out or object to the settlement . . .”).

3 *Second*, a few Objectors identify varying issues with the claim submission process and the  
4 settlement website. O’Bannon Obj. (ECF No. 614) at 7-9; Dunne Obj. (ECF No. 624) at 1; Arizona State  
5 Obj. (ECF No. 676) at 8, 10. These appear to be at most isolated instances. *See* Peak Decl. ¶ 28 (confirming  
6 no system wide website issues and over 70,000 filers using an EC ID or Claim ID and PIN). The high  
7 claims rate, combined with the 4.8 million views and over 838,271 identifiable unique users of the  
8 approved settlement website, provide objective evidence of an accessible and successful claims process.  
9 *Id.* ¶ 27. To the extent class members experienced issues, the Settlement Administrator consistently and  
10 reliably provided assistance when requested. *Id.* ¶¶ 30-31. Further, Class Counsel provided additional  
11 support—confirmed by Objectors O’Bannon, Jr. and Anderson, who communicated directly with Class  
12 Counsel—and resolved Class Member concerns and will continue to do so. *See* O’Bannon Obj. (ECF No.  
13 614) at 5-6; Bradford Decl. (ECF No. 614-1) ¶ 11. If Class Members encounter difficulties going forward,  
14 Class Counsel and the Settlement Administrator are ready and willing to assist. The Arizona State  
15 Objectors make unverified claims—without supporting declarations or identification of class members—  
16 that requests for support went unanswered. *See generally* Arizona State Obj. (ECF No. 676). Class  
17 Counsel and the Settlement Administrator have spent thousands of hours assisting class members  
18 throughout the claims period, and after reviewing relevant records did not find any evidence of Arizona  
19 State athletes’ requests going unanswered. *See* Peak Decl. ¶ 31; Berman Final Approval Decl. ¶ 3.

20 *Finally*, certain Objectors raise concerns about their individual estimated allocation provided on  
21 the settlement website. Dunne Obj. (ECF No. 624) at 1-2; Wells Obj. (ECF No. 656) at 2-3; Baker Obj.  
22 (ECF No. 680) at 2-4; Arizona State Obj. (ECF No. 676) at 11-14; Townsend Obj. (ECF No. 688) at 1-2.  
23 The parties were *not* required to provide estimated damages allocations in order to provide sufficient  
24 notice, but they nevertheless have done so in an effort to promote transparency.<sup>53</sup> And while multiple  
25

26 <sup>53</sup> *See CLR B Hanson Indus., LLC v. Weiss & Assocs., PC*, 465 F. App’x 617, 619 (9th Cir. 2012) (“Our  
27 cases require that settlement notice describe[] the aggregate amount of the settlement fund and the plan  
28 for allocation, but do not require that such notice allow class members to estimate their individual  
recovery.”); *Zamora v. Lyft, Inc.*, 2018 WL 5819511, at \*1 (N.D. Cal. Nov. 6, 2018) (“[T]here is no

1 athletes may disagree with their particular allocation, these objections are not evidence that the settlement  
2 is unfair.<sup>54</sup> Most importantly, all allocation estimates were provided in line with that class-wide allocation  
3 plan proposed to the Court and subsequently approved. ECF No. 544. Furthermore, all forms of notice  
4 directed recipients to the settlement website, where any interested party could access an array of pertinent  
5 information, including the distribution plan and how allocations were determined, all relevant case filings,  
6 FAQs that were updated to reflect Class Member outreach, and steps for how to object or opt out.

7 Put simply, the notice and claims process was designed to, and did, provide an extraordinary level  
8 of transparency to allow Settlement Class Members to fully assess their rights. Tellingly, an overwhelming  
9 number of claims were filed without any issue, and on average each Settlement Class Member was noticed  
10 2.5 times. Peak Decl. ¶ 6. But recognizing the technical difficulties a narrow subset of Settlement Class  
11 Members faced, Plaintiffs respectfully ask that the Court accept claims filed up to any order on Final  
12 Approval of the settlement. Peak Decl. ¶ 32 (identifying over 5,000 late claims as of February 27).

#### 13 **H. The Court Should Not Stay the Injunction Pending Appeal**

14 The Court should deny any request to stay the injunction pending appeal. The circumstances do  
15 not justify a stay and doing so would irreparably harm tens of thousands of athletes who would be deprived  
16 of the substantial benefits and compensation permitted under the injunction without any recourse. Indeed,  
17 for those class members whose last year competing in Division I is the 2025-26 academic year, a stay  
18 during an appeal could deprive them of the chance of ever benefitting from the injunctive settlement and  
19 its life changing benefits.

20 There is no automatic stay of an injunction pending appeal. Fed. R. Civ. P. 62. Thus, a party  
21 seeking such relief bears a heavy burden to show that the circumstances justify a stay. § 2904 Injunction  
22 Pending Appeal, 11 Fed. Prac. & Proc. Civ. § 2904 (3d ed.). Courts in the Ninth Circuit consider four  
23 factors to determine whether to stay an injunction pending appeal: (1) whether the applicant has made a

24 \_\_\_\_\_  
25 requirement that a notice inform class members of the precise dollar amount they will receive from a  
26 settlement.”).

27 <sup>54</sup> *Browne v. Am. Honda Motor Co., Inc.*, 2010 WL 9499072, at \*18 (C.D. Cal. July 29, 2010) (granting  
28 final approval of settlement and recognizing that “[w]hile the proposed settlement does not perfectly  
compensate every member of the class, it is unlikely that any settlement of the claims of a class of more  
than 740,000 members would achieve such a result”).

1 strong showing that they are likely to succeed on the merits; (2) whether the applicant will be irreparably  
2 injured absent a stay; (3) whether issuance of the stay will substantially injure other parties interested in  
3 the proceeding; and (4) where the public interest lies. *Sierra Club v. Trump*, 929 F.3d 670, 687 (9th Cir.  
4 2019). “The first two factors are the most critical, and [the court] only reach[es] the last two once an  
5 applicant satisfies the first two factors.” *Id.* (citation and internal quotation marks omitted). Still, a stay is  
6 “not a matter of right, even if irreparable injury might otherwise result” from the injunction remaining in  
7 place pending an appeal. *Id.* Because a stay is “an intrusion into the ordinary processes of administration  
8 and judicial review,” courts should not issue stays “reflexively.” *Id.* at 697-98.

9 Here, the Amended Settlement Agreement provides that “[t]he Injunctive Relief Settlement shall  
10 be effective as of the date of entry of the Final Approval Order, regardless of any appeal that may be taken  
11 . . . .” Amended Settlement Agreement ¶ 18. Just a single objector has requested that the Court modify  
12 paragraph 18 and order a stay of the Injunction pending an appeal. ECF No. 602 at 4-5. In support, the  
13 objector argues that some athletes will be irreparably harmed absent the stay because rosters will be  
14 reduced for the 2025-2026 season even if the settlement is later reversed. *Id.* at 4.

15 Each of the four factors outlined by the Ninth Circuit weighs against issuing a stay. To start, there  
16 has been no showing—let alone the “strong showing” required—that approval of the settlement by the  
17 Court would be likely to be overturned on appeal. In assessing such an appeal, the Ninth Circuit would  
18 review the Court’s approval of the settlement for a “clear abuse of discretion.” *Shaffer v. Cont’l Cas. Co.*,  
19 362 F. App’x 627, 629 (9th Cir. 2010); *Officers of Just.*, 688 F.2d at 625-26 (explaining that the appellate  
20 court is “not to substitute [its] notions of fairness for those of the district judge and the parties to the  
21 agreement” (citation omitted)). And the Ninth Circuit will not overturn final approval based on an  
22 argument that one specific part of the settlement—such as that relating to roster limits—might not be  
23 desirable to a small percentage of the class, while the settlement, as whole, is demonstrably fair and  
24 reasonable and in the best interests of the class. *See Hanlon*, 150 F.3d at 1026 (“It is the settlement taken  
25 as a whole, rather than the individual component parts, that must be examined for overall fairness.”).

26 Further, no showing can be made that a stay would prevent any of the claimed harm to class  
27 members impacted by roster limits. There is thus no assurance that the NCAA or conferences will cease  
28 to impose roster limits, even if the injunctive settlement relief is stayed. *See Coal. on Homelessness v.*

1 *City and Cnty. of San Francisco*, 2023 WL 2775156, at \*5 (N.D. Cal. Apr. 3, 2023) (denying request to  
2 stay injunction pending appeal because moving party failed to “identify . . . concrete harms that are  
3 probable if the stay is not granted” (citation and internal quotation marks omitted)).

4 Most significantly, issuing a stay will substantially and irreparably injure tens of thousands of class  
5 members who would be deprived of the opportunity to receive the substantial benefits and payments the  
6 injunction permits—including compensation and scholarships that could be life-changing for these  
7 athletes. A stay pending appeal would likely extend well into—or perhaps beyond—the upcoming  
8 academic year. This means that those class members who have only one more year to compete in Division  
9 I would be deprived of the opportunity to ever receive the substantial benefits provided by the settlement.  
10 For some class members, this would mean the loss of scholarships, which might prevent them from  
11 completing their education at all. This factor alone—an infliction of irreparable harm on the vast majority  
12 of the injunctive class—leads to the conclusion that the requested stay should be rejected.

13 Where, as here, the harm to the non-moving party—here, most of the class members—is  
14 “concrete,” the court should deny a stay request. *Pac. Merch. Shipping Ass’n v. Cackette*, 2007 WL  
15 2914961, at \*3 (E.D. Cal. Oct. 5, 2007); *Mowbray v. Kozlowski*, 725 F. Supp. 888, 891 (W.D. Va. 1989)  
16 (denying stay of permanent injunction and noting that, “harm to class members, if the stay is granted, will  
17 be irreparable” where “class members w[ould] be left without any recourse whatsoever” if the court were  
18 to stay in the injunction); *see also Consol. Salmonid Cases*, 713 F. Supp. 2d 1116, 1180 (E.D. Cal. 2010)  
19 (denying stay “because any stay would effectively deprive Plaintiffs of any benefit of the preliminary  
20 injunction”).

21 Finally, the public interest also weighs heavily against a stay. The settlement provides for ground-  
22 breaking injunctive relief, including direct financial benefits that will total more than \$1.6 billion dollars  
23 in the 2025-2026 school year alone. Prelim. Approval Motion at 8 (citing ECF No. 450-4 (Rascher Rpt.)  
24 ¶¶ 84–85). Such financial benefits to class members are long overdue in Division 1 college sports, and  
25 these life-changing benefits for tens of thousands of Division I athletes should not be delayed. *Sierra Club*  
26 929 F.3d at 687 (denying motion to stay injunction pending appeal where the public interest weighed  
27 “forcefully” against entry of stay of injunction).

**I. No One Has Objected to the Attorneys’ Fees Requested**

On December 17, 2024, Plaintiffs filed their Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Awards for Class Representatives (“Fee Motion”). See ECF No. 583. There have been no objections asking the Court to deny the Fee Motion.<sup>55</sup> As this Court knows, in most class action settlements, particularly large ones, there are numerous objections to the fees requested by class counsel and there are certain serial objectors that routinely object to fee requests. Plaintiffs submit that the fact that there are no such objections here further indicates the strength of the settlement obtained.

**IV. CONCLUSION**

For all the foregoing reasons, Plaintiffs respectfully request that their Motion for Final Settlement Approval be granted and that the objections to the settlement be overruled.

Dated: March 3, 2025

Respectfully submitted,

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<sup>55</sup> Certain objectors tangentially address the fees requested by claiming that the structure of the fees for the injunctive relief indicates a conflict. Plaintiffs address those arguments in Section III.C.1, *supra*.

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*Class Counsel for Plaintiffs*

*Class Counsel for Plaintiffs*

**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.

By: /s/ Steve W. Berman  
STEVE W. BERMAN

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# **EXHIBIT 2**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

In re: College Athlete NIL Litigation

No. 4:20-CV-03919 (N.D. Cal)

**AMENDED STIPULATION AND SETTLEMENT AGREEMENT**

1 This Stipulation and Settlement Agreement, inclusive of all exhibits and appendices  
2 (hereinafter, “Agreement,” “Settlement Agreement” or “SSA”), is made and entered into as of  
3 ~~July~~September 26, 2024, by and between Plaintiffs, both individually and on behalf of the  
4 Classes in the above-captioned class action, and Defendants National Collegiate Athletic  
5 Association (“NCAA”), Atlantic Coast Conference (“ACC”), The Big Ten Conference, Inc.  
6 (“Big Ten”), The Big 12 Conference, Inc. (“Big 12”), Pac-12 Conference (“Pac-12”) and  
7 Southeastern Conference (“SEC”) (collectively, the “Defendants”). This Settlement Agreement  
8 is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released  
9 Claims, upon and subject to the terms and conditions hereof.

10 **RECITALS**

11 WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of  
12 the Classes against Defendants;

13 WHEREAS, Plaintiffs have alleged, among other things, that Defendants have engaged  
14 in anticompetitive conduct in violation of the U.S. antitrust laws in connection with certain  
15 NCAA and conference rules and practices regarding (a) compensation and benefits which may  
16 be provided to student-athletes during the relevant class periods and (b) NCAA roster and  
17 scholarship limits;

18 WHEREAS, the Defendants have denied and continue to deny each and all of the claims  
19 and allegations of wrongdoing made by the Plaintiffs in the Action; all charges of wrongdoing  
20 or liability against them arising out of or relating to any of the conduct, statements, acts or  
21 omissions alleged, or that could have been alleged, in the Action; the allegations that the  
22 Plaintiffs or any member of the Classes were harmed by any conduct by the Defendants alleged  
23 in the Action or otherwise; and deny any liability whatsoever;

24 WHEREAS, Plaintiffs and Defendants agree that neither this SSA nor any statement  
25 made in the negotiation thereof shall be deemed or construed to be an admission or evidence of  
26 any violation of any statute or law or of any liability or wrongdoing by the Defendants or of the  
27 truth of any of the claims or allegations alleged in the Action;



1 the approval of the Court, on the following terms and conditions:  
2

3 **A. Definitions**

4 1. As used in this SSA and its exhibits and appendices, the following terms have the  
5 meanings specified below:

- 6 (a) “Academic Year” means July 1 of any given calendar year during the  
7 Term through and including June 30 of the following calendar year.  
8 (b) “Action” means the litigation captioned *In re: College Athlete NIL*  
9 *Litigation*, Case No. 4:20-CV-03919 (N.D. Cal).  
10 (c) “Additional Compensation Claims Settlement Amount” means the total  
11 sum of six hundred million US dollars (\$600,000,000.00).  
12 (d) “Additional Counsel” means Jeffrey Kodroff of Spector, Roseman &  
13 Kodroff, P.C.  
14 (e) “Authorized Recipient” means any member of any or all of the Damages  
15 Settlement Classes who, in accordance with the terms of this Agreement,  
16 is entitled to a distribution consistent with any Distribution Plan or order  
17 of the Court.  
18 (f) “Booster” means “representative of athletics interests,” as defined in  
19 NCAA Bylaws 8.4.2, 13.02.16, and 13.02.16.1.  
20 (g) “Classes” means collectively the Damages Settlement Classes and the  
21 Injunctive Relief Settlement Class. All of the Classes exclude the officers,  
22 directors, and employees of Defendants. All of the Classes also exclude  
23 all judicial officers presiding over the Action and their immediate family  
24 members and staff.  
25 (h) “Class Counsel” means the law firms of Winston & Strawn LLP and  
26 Hagens Berman Sobol Shapiro LLP, with lead Class Counsel Jeffrey  
27 Kessler and Steve Berman.  
28 (i) “Class Member” means a Person who falls within the definition of one or

1 more of the Classes.

2 (j) “Complaint” means the amended complaint filed in the Action on July 26,  
3 2024.

4 (k) “Conference Defendant” means individually each of the ACC, the Big  
5 Ten, the Big 12, the Pac-12, and the SEC; collectively the foregoing are  
6 referred to as “Conference Defendants.”

7 (l) “Court” means the United States District Court for the Northern District  
8 of California.

9 (m) “Damages Fee and Expense Award” means any order entered by the Court  
10 awarding Class Counsel and/or Additional Counsel any amount of fees  
11 and/or costs in connection with the settlement of the monetary damages  
12 claims of the Damages Settlement Classes as detailed in Paragraph 28.

13 (n) “Damages Settlement Classes” means the classes asserted in the Action  
14 pursuant to Fed. R. Civ. P. 23(b)(3) as modified below:

15 1. *Football and Men’s Basketball Class:* All student-athletes who  
16 have received or will receive full GIA scholarships and compete  
17 on, competed on, or will compete on a Division I men’s basketball  
18 team or an FBS football team, at a college or university that is a  
19 member of one of the Power Five Conferences (including Notre  
20 Dame), and who have been or will be declared initially eligible for  
21 competition in Division I at any time from June 15, 2016 through  
22 September 15, 2024.

23 2. *Women’s Basketball Class:* All student-athletes who have  
24 received or will receive full GIA scholarships and compete on,  
25 competed on, or will compete on a Division I women’s basketball  
26 team at a college or university that is a member of one the Power  
27 Five Conferences (including Notre Dame), and who have been or  
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1 will be declared initially eligible for competition in Division I at  
2 any time from June 15, 2016 through September 15, 2024.

3 3. *Additional Sports Class*: Excluding members of the Football and  
4 Men’s Basketball Class and members of the Women’s Basketball  
5 Class, all student-athletes who compete on, competed on, or will  
6 compete on a Division I athletic team and who have been or will  
7 be declared initially eligible for competition in Division I at any  
8 time from June 15, 2016 through September 15, 2024.

9 (o) “Defendants” means, collectively, the NCAA, the ACC, the Big Ten, the  
10 Big 12, the Pac-12, and the SEC.

11 (p) “Distribution Plan” means the plan or formula of allocation of the Gross  
12 Settlement Fund for future distribution to Authorized Recipients.

13 (q) “Effective Date” means the first date by which all of the events and  
14 conditions specified in Paragraph 32 of this Agreement have occurred and  
15 have been met.

16 (r) “Escrow Account” means the bank account to be established at a banking  
17 institution chartered pursuant to the National Bank Act by Class Counsel  
18 and the NCAA and maintained by the Escrow Agent into which the Gross  
19 Settlement Fund and any Injunctive Relief Fee and Expense Awards  
20 payable before the Effective Date shall be deposited, pursuant to the terms  
21 of this Settlement Agreement and the Escrow Agreement. Such Escrow  
22 Account is to be administered under the Court’s continuing supervision  
23 and control.

24 (s) “Escrow Agent” means the escrow agent (and any successor agent) jointly  
25 designated by Class Counsel and the NCAA to administer the Escrow  
26 Account in accordance with the Escrow Agreement.

27 (t) “Escrow Agreement” means the agreement to be mutually agreed to by  
28

1 the Parties concerning the Escrow Account.

2 (u) “Execution Date” means the date of the last signature set forth on the  
3 signature pages below.

4 (v) “Final Approval” means the date the Court has entered the Final Approval  
5 Order as described in Paragraph 15 below.

6 (w) “Gross Settlement Fund” means the NIL Claims Settlement Amount and  
7 the Additional Compensation Claims Settlement Amount plus any interest  
8 that may accrue.

9 (x) “Injunctive Relief Fee and Expense Awards” means any order entered by  
10 the Court awarding Class Counsel any amount of fees and/or costs in  
11 connection with the settlement of the injunctive relief claims of the  
12 Injunctive Relief Settlement Class as detailed in Paragraph 27.

13 (y) “Injunctive Notice Costs” means the reasonable and authorized costs and  
14 expenses, not to exceed one million US dollars (\$1,000,000.00), to be paid  
15 by Plaintiffs or deducted from the Gross Settlement Fund for the cost of  
16 notice to the Injunctive Relief Settlement Class.

17 (z) “Injunctive Relief Settlement Class” means the class asserted in the Action  
18 pursuant to Fed. R. Civ. P. 23(b)(2): All student-athletes who compete  
19 on, competed on, or will compete on a Division I athletic team at any time  
20 between June 15, 2020 through the end of the Injunctive Relief Settlement  
21 Term.

22 (aa) “Injunctive Relief Settlement” means the Injunctive Relief Settlement  
23 attached as Appendix A to this Settlement Agreement and fully  
24 incorporated herein.

25 (bb) “Injunctive Relief Settlement Term” or “Term” means ten (10) Academic  
26 Years from the date of Final Approval of this Agreement.

27 (cc) “Judgment” means the order of judgment and dismissal, with prejudice,  
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1 of the Action.

2 (dd) “Member Institution” means any college, school, or university that is a  
3 member, in any sport, of NCAA Division I and/or a Conference  
4 Defendant, together with any entity owned, controlled, funded, or  
5 operated by said college, school, or university (or any division or  
6 department thereof).

7 (ee) “NIL Claims Settlement Amount” means the total sum of one billion, nine  
8 hundred seventy-six million US dollars (\$1,976,000,000.00).

9 (ff) “Notice and Administrative Costs” means the reasonable and authorized  
10 costs and expenses, not to exceed one million US dollars (\$1,000,000.00)  
11 absent written consent of all Parties, to be paid out of the Gross Settlement  
12 Fund to pay for the cost of notice to the Damages Settlement Classes and  
13 related administrative costs.

14 (gg) “Notice and Claims Administrator” means the claims administrator(s) to  
15 be selected by Class Counsel and approved by the Court.

16 (hh) “Opt-Out” means a Person who falls within the definition of the Classes  
17 who has timely and validly elected to be excluded from one of the  
18 Damages Settlement Classes pursuant to the procedures set forth in this  
19 Settlement Agreement.

20 (ii) “Parties” means, collectively, Defendants and the Plaintiffs (on behalf of  
21 themselves and the Classes).

22 (jj) “Person(s)” means an individual, corporation, limited liability  
23 corporation, professional corporation, limited liability partnership,  
24 partnership, limited partnership, association, joint stock company, estate,  
25 legal representative, trust, unincorporated association, government or any  
26 political subdivision or agency thereof, and any business or legal entity  
27 and any spouses, heirs, predecessors, successors, representatives, or  
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1 assignees of any of the foregoing.

2 (kk) “Plaintiffs” means the named plaintiffs in the Action, as well as any  
3 individuals who may be added into the Action as additional named class  
4 representatives during the Term, with the intent that, to the extent  
5 reasonably possible, there is during the Term at least one current student-  
6 athlete that is a Plaintiff.

7 (ll) “Preliminary Approval” means the date on which the Court enters the  
8 Preliminary Approval Order.

9 (mm) “Preliminary Approval Order” means the Order entered by Court, as  
10 described in Paragraph 12, preliminarily approving the settlement set forth  
11 in this Agreement.

12 (nn) “Released Claims” means the Released Damages Class Claims and the  
13 Released Injunctive Class Claims.

14 (oo) “Released Damages Class Claims” means, for each of the Plaintiffs and  
15 each and every member of each of the Damages Settlement Classes who  
16 does not opt out, all manner of claims, demands, actions, suits, causes of  
17 action, whether class, individual, or otherwise in nature, damages  
18 whenever incurred, liabilities of any nature whatsoever, including without  
19 limitation costs, penalties, and attorneys’ fees, known or unknown,  
20 suspected or unsuspected, asserted or unasserted, in law or equity, that the  
21 Releasers, or any one of them, whether directly, representatively,  
22 derivatively, or in any other capacity, ever had, now have, or hereafter can,  
23 shall, or may have, that were raised or could have been raised in the Action  
24 prior to Final Approval (1) on account of, arising out of, or resulting from  
25 any and all previously existing NCAA and conference rules regarding  
26 monies and benefits that may be provided to student-athletes by the  
27 NCAA, Division I conferences and/or Division I Member Institutions, or  
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1 (2) relating in any way to any NCAA or conference limitations on the  
2 numbers of scholarships allowed or permitted in any sport, including but  
3 not limited to, claims arising under federal or state antitrust, unfair  
4 competition, unfair practices, price discrimination, unitary pricing, trade  
5 practice, or civil conspiracy law, including without limitation the Sherman  
6 Antitrust Act, 15 U.S.C. § 1 *et seq.* For the avoidance of doubt, the  
7 Released Damages Class Claims do not include the Unreleased Claims.

8 (pp) “Released Injunctive Class Claims” means all declaratory and injunctive  
9 relief claims, demands, actions, suits, causes of action, whether class,  
10 individual, or otherwise in nature, liabilities of any nature whatsoever,  
11 known or unknown, suspected or unsuspected, asserted or unasserted, in  
12 law or equity, that the Releasers, or any one of them, whether directly,  
13 representatively, derivatively, or in any other capacity, ever had, now  
14 have, or hereafter can, shall, or may have, that were raised or could have  
15 been raised in the Action prior to Final Approval or during the Injunctive  
16 Relief Settlement Term on account of, arising out of, or resulting from the  
17 continuation of existing (at the time of filing for preliminary approval of  
18 the Injunctive Relief Settlement) NCAA and conference rules, as well as  
19 new or revised NCAA and conference rules agreed to as part of the  
20 Injunctive Relief Settlement, regarding (1) monies and benefits that may  
21 be provided to student-athletes by the NCAA, Division I conferences,  
22 and/or Division I Member Institutions under NCAA or conference rules;  
23 (2) NCAA roster and scholarship limits as agreed to in the Injunctive  
24 Relief Settlement; or (3) the subjects addressed by the Related Injunctive  
25 Relief NCAA & Conference Rules (collectively, the “Injunctive Rules”),  
26 including, but not limited to, claims arising under federal or state antitrust,  
27 unfair competition, unfair practices, price discrimination, unitary pricing,  
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1 trade practice, or civil conspiracy law, including without limitation the  
2 Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.* For the avoidance of doubt,  
3 the Released Injunctive Class Claims does not include the Unreleased  
4 Claims.

5 (qq) “Related Injunctive Relief NCAA & Conference Rules” means:

6 1. NCAA and conference rules prohibiting Boosters (individually or  
7 collectively) of a Member Institution from entering into NIL licenses with  
8 or for the benefit of current or prospective student-athletes at a given  
9 Member Institution unless the license/payment is for a valid business  
10 purpose related to the promotion or endorsement of goods or services  
11 provided to the general public for profit, with compensation at rates and  
12 terms commensurate with compensation paid to similarly-situated  
13 individuals with comparable NIL value who are not current or prospective  
14 student-athletes at the Member Institution; provided, however, that the  
15 NCAA or conferences will provide for neutral arbitration, as described in  
16 Article 6, Section 2 of the Injunctive Relief Settlement, for any Member  
17 Institution or student-athlete to contest any discipline sought to be  
18 imposed on them for receiving payments in violation of these rules;

19 2. NCAA and conference rules governing the number of  
20 seasons/length of time student-athletes are eligible to receive benefits,  
21 including scholarships and payments pursuant to the Injunctive Relief  
22 Settlement, including without limitation any rule capping the number of  
23 years a student-athlete may receive payments at four years, and providing  
24 that all four of those years must be played within a consecutive five-year  
25 period (in the event of a national force majeure event that leads to the  
26 cancellation of games, or the absence of fans, the rules may provide for an  
27 additional year to be added onto the five-year period);  
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3. NCAA and conference rules requiring that student-athletes continue to make progress toward a degree while enrolled in any Member Institution in order to receive benefits pursuant to the Injunctive Relief Settlement;

4. All existing (at the time of filing for preliminary approval of the Injunctive Relief Settlement) NCAA rules regarding the compensation and benefits that may or may not be provided by Division I conferences or Member Institutions to student-athletes, modified as necessary to conform to the terms of the Injunctive Relief Settlement and this Agreement;

5. NCAA and conference rules, subject to Class Counsel’s review and approval that shall not be unreasonably withheld, permitting student-athletes the ability to seek guidance from the Designated Enforcement Entity prior to entering into a proposed NIL contract or agreement as to whether said contract may constitute a violation of the NCAA rules affirmed, revised, or created pursuant to the Injunctive Relief Settlement;

6. NCAA and conference rules, subject to Class Counsel’s review and approval that shall not be unreasonably withheld, permitting a student-athlete to retain or regain eligibility by both (a) rescinding or modifying any agreement determined to be non-compliant with the NCAA rules affirmed, revised, or created pursuant to the Injunctive Relief Settlement and (b) returning, as necessary, any compensation or consideration received pursuant to a non-compliant agreement, in order to expunge any violation of the NCAA rules affirmed, revised, or created pursuant to the Injunctive Relief Settlement;

1                   7.       NCAA and conference rules addressing circumvention subject to  
2                   the procedures set forth in the Injunctive Relief Settlement Article 6,  
3                   Section 3.

4                   (rr)       “Releasees” means jointly and severally, individually and collectively, the  
5                   NCAA, all Division I conferences, including all Conference Defendants,  
6                   all Division I Member Institutions, the College Football Playoff, and all  
7                   of their respective present and former direct and indirect parents,  
8                   subsidiaries, affiliates, officers, directors, trustees, employees, agents,  
9                   attorneys, servants, representatives, members, managers, and partners and  
10                  the predecessors, heirs, executors, administrators, successors, and assigns  
11                  of any of the foregoing persons or entities.

12                  (ss)       “Releasers” means, jointly and severally, individually and collectively,  
13                  the Plaintiffs and each and every Class Member on their own behalf and  
14                  on behalf of their respective past and present managers, agents, legal  
15                  representatives, trustees, parents, affiliates, heirs, executors,  
16                  administrators, predecessors, successors, and assigns and the past and  
17                  present legal representatives, trustees, parents, heirs, executors,  
18                  administrators, predecessors, successors, and assigns of each of the  
19                  foregoing.

20                  (tt)       “Roster Limits” means the roster limits attached as Appendix B to this  
21                  Settlement Agreement.

22                  (uu)       “Unknown Claims” means any Released Claim that a Plaintiff and/or  
23                  Class Member does not know or suspect to exist in his, her, or their favor  
24                  at the time of the release of the Releasees that if known by him, her, or  
25                  them, might have affected his, her, or their settlement with and release of  
26                  the Releasees, or might have affected his, her or their decision not to object  
27                  to or opt out of this settlement. Such Unknown Claims include claims that  
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1 are the subject of California Civil Code §1542 and equivalent, similar or  
2 comparable laws or principles of law. California Civil Code §1542  
3 provides:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
5 THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
6 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
7 THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
8 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
OR RELEASED PARTY.

9 (vv) “Unreleased Claims” means:

10 1. The claims currently raised in the Complaint in *Choh v. Brown*  
11 *et al.*, No. 3:23-cv-00305-AWT (D. Conn.) (“Choh”), against  
12 the Ivy League and Ivy League member institutions (“Choh  
13 Defendants”), challenging an alleged agreement among the  
14 *Choh* Defendants not to award athletic scholarships or otherwise  
15 provide any compensation or education-related reimbursements  
16 for athletic services as permitted under then-applicable NCAA  
17 rules. The previously filed *Choh* claims arise out of unique  
18 aspects of rules applicable within the Ivy League alone.  
19 Released Damages Class Claims and Released Injunctive Class  
20 Claims otherwise fully apply to student-athletes who are in the  
21 Damages Settlement Classes or the Injunctive Relief Settlement  
22 Class, including but not limited to Ivy League student-athletes,  
23 and likewise otherwise fully apply to Releasees, which include  
24 but are not limited to the Ivy League, Ivy League member  
25 institutions, and Defendants;

26 2. The claims currently stated in the Complaint in *Johnson et al. v.*  
27 *National Collegiate Athletic Association et al.*, No. 2:19-cv-  
28 05230-JP (E.D. Pa.), claims under the Fair Labor Standards Act,

29 U.S.C. § 201 et seq., or any other federal labor law, or claims under any analogous state labor laws; and

3. Claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., other than any claims arising out of or relating to the distribution of the Gross Settlement Fund.

**B. Injunctive Relief Settlement Terms**

2. The terms set forth in Appendix A hereto relating to the Injunctive Relief Settlement are incorporated as if fully set forth in this Settlement Agreement and shall be complied with by Plaintiffs, all members of the Injunctive Relief Settlement Class, Class Counsel, Defendants, and Member Institutions that choose to provide or facilitate payments or benefits to student-athletes as permitted by the Injunctive Relief Settlement including but not limited to incremental scholarships permitted by Article 3, Section 3(b) of the Injunctive Relief Settlement.

**C. Damages Settlement Classes Settlement Funds**

3. **Settlement Payments.** In full, complete, and final settlement of any and all claims for NIL-related damages in the Action, Defendants shall pay the NIL Claims Settlement Amount in equal, annual installments over the course of ten (10) years with the first installment due on May 15, 2025, or within forty-five (45) days of entry of the Final Approval Order, whichever is later; all such payments shall be deposited into the Escrow Account. In full, complete, and final settlement of any and all additional claims for damages in the Action, Defendants shall pay the Additional Compensation Claims Settlement Amount in equal, annual installments over the course of ten (10) years with the first installment due on May 15, 2025, or within forty-five (45) days of entry of the Final Approval Order, whichever is later; all such payments shall be deposited into the Escrow Account. Payments subsequent to the first installment will be made on July 15 of each calendar year beginning in the first year after the first installment is made and all such subsequent payments shall be deposited into the Escrow Account. In the event that the foregoing dates fall on a Saturday, Sunday, or a U.S. bank

1 holiday, the payment will be made on the next business day. The NIL Claims Settlement  
2 Amount and Additional Compensation Claims Settlement Amount together represent an all-in  
3 cash settlement amount for the damages claims in the Action, which includes all monetary  
4 benefits and distributions to the members of the Damages Settlement Classes, attorneys' fees  
5 and expenses except as specified in this Settlement Agreement, escrow fees, taxes, tax expenses,  
6 and all other costs and expenses relating to the settlement (including, but not limited to,  
7 administration costs and expenses, notice costs and expenses, and settlement costs and  
8 expenses).

9       4.     **Disbursements Prior to Effective Date.** The Gross Settlement Fund will remain  
10 subject to the jurisdiction of the Court until such time as it is fully distributed in compliance  
11 with the Settlement Agreement, Escrow Agreement, and any applicable Court order. No  
12 amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date,  
13 except that: (a) Notice and Administrative Costs and Injunctive Notice Costs may be paid from  
14 the Gross Settlement Fund as they become due; and (b) Taxes and Tax Expenses (as defined in  
15 Paragraph 5 below) may be paid as they become due. Class Counsel will attempt in good faith  
16 to minimize the amount of Notice and Administrative Costs and Injunctive Notice Costs.

17       5.     **Taxes.** The Escrow Account is intended by the Parties to be treated as being at  
18 all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1, and to that  
19 end the Parties hereto shall cooperate with each other and shall not take a position in any filing  
20 or before any tax authority that is inconsistent with such treatment. The Escrow Agent shall  
21 timely make such elections as necessary or advisable to carry out the provisions of this  
22 paragraph, including the "relation-back election" (as defined in Treas. Reg. §1.468B-1(j)) back  
23 to the earliest permitted date. Such elections shall be made in compliance with the procedures  
24 and requirements contained in such regulations. It shall be the responsibility of the Escrow  
25 Agent to prepare and deliver timely and properly the necessary documentation for signature by  
26 all necessary parties, and thereafter to cause the appropriate filing to occur.

27       (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and  
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1 the regulations promulgated thereunder, the “administrator” shall be the Escrow  
2 Agent. The Escrow Agent shall satisfy the administrative requirements imposed  
3 by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number,  
4 (ii) satisfying any information reporting or withholding requirements imposed on  
5 distributions from the Gross Settlement Fund, and (iii) timely and properly filing  
6 applicable federal, state and local tax returns necessary or advisable with respect  
7 to the Gross Settlement Fund (including, without limitation, the returns described  
8 in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such returns  
9 (as well as the election described in this paragraph) shall be consistent with the  
10 provisions of this paragraph and in all events shall reflect that all Taxes as defined  
11 in Paragraph 5(b) below on the income earned by the Gross Settlement Fund shall  
12 be paid out of the Gross Settlement Fund as provided in Paragraph 6 hereof.

13 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes  
14 (including any estimated taxes, interest or penalties) arising with respect to the  
15 income earned by the Gross Settlement Fund, including, without limitation, any  
16 taxes or tax detriments that may be imposed upon Defendants or their counsel  
17 with respect to any income earned by the Gross Settlement Fund for any period  
18 during which the Gross Settlement Fund does not qualify as a “qualified  
19 settlement fund” for federal or state income tax purposes (collectively, “Taxes”);  
20 and (ii) all expenses and costs incurred in connection with the operation and  
21 implementation of this paragraph, including, without limitation, expenses of tax  
22 attorneys and/or accountants and mailing and distribution costs and expenses  
23 relating to filing (or failing to file) the returns described in this paragraph  
24 (collectively, “Tax Expenses”).

25 (c) In all events neither Defendants nor their counsel shall have any liability or  
26 responsibility for the Taxes or the Tax Expenses. With funds from the Gross  
27 Settlement Fund, the Escrow Agent shall indemnify and hold harmless  
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1 Defendants and their counsel for Taxes and Tax Expenses (including, without  
2 limitation, Taxes payable by reason of any such indemnification). Further, Taxes  
3 and Tax Expenses shall be treated as, and considered to be, a cost of  
4 administration of the Gross Settlement Fund and shall timely be paid by the  
5 Escrow Agent out of the Gross Settlement Fund without prior order from the  
6 Court, and the Escrow Agent shall be obligated (notwithstanding anything herein  
7 to the contrary) to withhold from distribution to Authorized Recipients any funds  
8 necessary to pay such amounts, including the establishment of adequate reserves  
9 for any Taxes and Tax Expenses (as well as any amounts that may be required to  
10 be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Defendants nor their  
11 counsel are responsible therefor, nor shall they have any liability therefor. The  
12 Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys  
13 and their accountants to the extent reasonably necessary to carry out the  
14 provisions of this paragraph.

15 6. **Distribution of Gross Settlement Fund.** Upon further order of the Court, the  
16 Notice and Claims Administrator, subject to the supervision and direction of the Court and/or  
17 Class Counsel as may be necessary or as circumstances may require, shall administer and  
18 oversee distribution of the Gross Settlement Fund to Authorized Recipients pursuant to the  
19 Distribution Plan, which must be approved by the Court. Subject to the terms of this Agreement,  
20 the Distribution Plan and any order(s) of the Court, the Gross Settlement Fund shall be applied  
21 as follows:

- 22 (a) To pay all costs and expenses reasonably and actually incurred in connection with  
23 providing notice to the Classes in connection with administration and distribution  
24 to Authorized Recipients, and in connection with paying escrow fees and costs as  
25 detailed herein, if any;
- 26 (b) To pay the Taxes and Tax Expenses as defined herein;
- 27 (c) To pay any Damages Fee and Expense Award that is allowed by the Court, subject  
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1 to and in accordance with the Settlement Agreement; and

2 (d) To distribute the balance to Authorized Recipients as allowed by the Agreement,  
3 the Distribution Plan or order of the Court.

4 7. **No Liability for Distribution of Settlement Funds.** Releasees will make  
5 reasonable efforts to facilitate Class Counsel’s receipt of records necessary to identify Class  
6 Members. Neither the Releasees nor their counsel, however, shall have any responsibility for,  
7 or liability whatsoever with respect to, the distribution of the Gross Settlement Fund, the  
8 Distribution Plan, the determination, administration or calculation of claims, the Settlement  
9 Fund’s qualification as a “qualified settlement fund”, the payment or withholding of Taxes or  
10 Tax Expenses, or any losses incurred in connection with any such matters. In addition to the  
11 releases set forth in Paragraphs 19 and 23 herein, the Releasors hereby fully, finally and forever  
12 release, relinquish, and discharge the Releasees and their counsel from any and all such liability.  
13 No Person shall have any claim against Class Counsel or the Notice and Claims Administrator  
14 based on the distributions made substantially in accordance with this Settlement Agreement, the  
15 Distribution Plan, or further orders of the Court.

16 8. **All Claims Satisfied by Gross Settlement Fund.** Each Class Member shall look  
17 solely to the Gross Settlement Fund for settlement and satisfaction, as provided herein, of all  
18 claims released herein. Except as provided by order of the Court pursuant to this Settlement  
19 Agreement, no Class Member shall have any interest in the Gross Settlement Fund or any  
20 portion thereof.

21 9. **Balance Remaining in Gross Settlement Fund.** If there is any balance  
22 remaining in the Gross Settlement Fund (whether by reason of tax refunds, uncashed checks or  
23 otherwise), subject to Court approval, Class Counsel may distribute such balance in an equitable  
24 and economic fashion to Authorized Recipients. In no event shall any portion of the Gross  
25 Settlement Fund revert to Defendants.

26 **D. Preliminary Approval Order, Notice Order, Final Approval Hearing &**  
27 **Appeals**  
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1           10.   **Reasonable Best Efforts to Effectuate This Settlement.** The Parties: (a)  
2 acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to  
3 the extent reasonably necessary to effectuate and implement the terms and conditions of this  
4 Agreement and to exercise their best efforts to accomplish the terms and conditions of this  
5 Agreement. In addition, Class Counsel agree to recommend approval of this settlement by the  
6 Court without qualification or condition not set forth herein.

7           11.   **Conditional Certification of Classes.** The Parties agree and hereby stipulate to  
8 the certification of the Classes set forth in Paragraphs 1(n) and 1(z) of this Agreement pursuant  
9 to Fed. R. Civ. P. 23. The Parties' stipulation to the certification of the Classes is for purposes  
10 of the settlement set forth in this Agreement only. Defendants' agreement to the certification  
11 of the Classes solely for the purpose of this Agreement does not, and shall not, constitute, in  
12 this or any other proceeding, an admission by any Defendant of any kind or any determination  
13 that certification of any class for trial or other litigation purposes in the Action or any other  
14 separate action is, or would be, appropriate. Defendants reserve all rights to challenge  
15 certification of any class or subclass in any other action on all available grounds as if no class  
16 had been certified in this Action for purposes of the settlement.

17           12.   **Motion for Preliminary Approval.** Class Counsel shall submit to the Court a  
18 motion for preliminary approval of the settlement and final judgment contemplated by this  
19 Settlement Agreement and for a stay of all proceedings in the Action against Defendants until  
20 the Court renders a final decision regarding the approval of the settlement and, if it approves  
21 the settlement, enters the Judgment. The motion shall include: (a) the proposed forms of notice  
22 of the settlement to members of the Classes as detailed in Paragraph 14, and (b) the proposed  
23 form of order preliminarily approving this settlement. Class Counsel shall provide Defendants'  
24 counsel with a draft of the motion for preliminary approval at least two (2) business days prior  
25 to filing.

26           13.   **Proposed Form of Notice.** Along with the motion for preliminary approval,  
27 Class Counsel shall submit to the Court for approval a proposed form of, method for and  
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1 schedule for dissemination of notice to the Injunctive Relief Settlement Class and the Damages  
2 Settlement Classes. To the extent practicable and to the extent consistent with this paragraph,  
3 Class Counsel may seek to coordinate this notice program with the settlement of claims in  
4 *Hubbard, et al v. NCAA, et al.*, Case No. 4:2023-cv-01593 (N.D. Cal.) (“*Hubbard*”). The  
5 motion for preliminary approval shall recite and ask the Court to find that the proposed form of  
6 and method for dissemination of notice to the Classes constitutes valid, due, and sufficient  
7 notice to the Classes, constitutes the best notice practicable under the circumstances, and  
8 complies fully with the requirements of Federal Rule of Civil Procedure 23 and the Northern  
9 District of California’s Procedural Guidance for Class Action Settlements. Defendants shall be  
10 responsible for providing any notice that may be required by the Class Action Fairness Act of  
11 2005.

12       14. **Additional Notice.** During the Injunctive Relief Settlement Term, Defendants,  
13 conferences, and/or their Member Institutions shall take reasonable steps to provide a notice of  
14 the Injunctive Relief Settlement (in a form approved by Class Counsel and the Court) to all  
15 Division I student-athletes at or before the time they first enroll at a Division I Member  
16 Institution (“incoming student-athletes”) or later join, for the first time, a Division I Member  
17 Institution athletic team. All such incoming student-athletes shall have the right to file written  
18 objections to a continuation of the Injunctive Relief Settlement with the Court within sixty (60)  
19 days of receiving such notice.

20       15. **Motion for Final Approval and Entry of Judgment.** Class Counsel shall  
21 submit a motion for final approval of this Settlement Agreement by the Court, after notice to  
22 the members of the Classes, and shall seek entry of the final approval order (“Final Approval  
23 Order”) and Judgment as set forth herein:

- 24           (a) Certifying the Classes, pursuant to Federal Rule of Civil Procedure 23,  
25 solely for purposes of this settlement;
- 26           (b) fully and finally approving the settlement contemplated by this Agreement  
27 and its terms as being fair, reasonable, and adequate within the meaning  
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1 of Federal Rule of Civil Procedure 23 and directing its consummation  
2 pursuant to its terms and conditions;

- 3 (c) entering the injunction contemplated by Appendix A;
- 4 (d) finding that the notice given to the Class Members constituted the best  
5 notice practicable under the circumstances and complies in all respects  
6 with the requirements of Federal Rule of Civil Procedure 23 and due  
7 process;
- 8 (e) directing that the Action be dismissed with prejudice as to all Released  
9 Claims as to the Releasees, after final approval is granted and any appeals  
10 are exhausted, and, except as provided for herein, without costs;
- 11 (f) discharging and releasing the Releasees from all Released Claims;
- 12 (g) permanently barring and enjoining the institution and prosecution, by  
13 Plaintiffs and Class Members, of any other action against the Releasees in  
14 any court asserting any Released Claims;
- 15 (h) reserving continuing and exclusive jurisdiction over this settlement,  
16 including all future proceedings concerning the administration,  
17 consummation and enforcement of this Agreement;
- 18 (i) determining pursuant to Federal Rule of Civil Procedure 54(b) that there  
19 is no just reason for delay and directing entry of a final judgment as to the  
20 Defendants; and
- 21 (j) containing such other and further provisions consistent with the terms of  
22 this Agreement to which the parties expressly consent in writing.

23 Class Counsel shall provide Defendants' counsel with a draft of the motion for final approval  
24 at least five (5) business days prior to filing.

25 **16. Stay Following Motion for Preliminary Approval.** After the Settlement  
26 Agreement is presented to the Court for preliminary approval, the Parties shall cease all  
27 litigation activities in pursuing the Released Claims and any defenses related thereto other than  
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1 those actions and activities necessary to effectuate the terms of this Settlement Agreement. For  
2 the avoidance of doubt, in the event that the Court enters the Preliminary Approval Order but  
3 does not concurrently stay all proceedings in *Fontenot v. NCAA, et al.*, Case No. 1:2023-CV-  
4 03076 (D. Colo.) (as part of the Preliminary Approval Order or otherwise), this paragraph shall  
5 not operate to prohibit the Parties, or any one of them, from seeking an order from this Court,  
6 or the court presiding over the *Fontenot* matter, staying, dismissing, or otherwise resolving that  
7 case. The stay of litigation activities contemplated by this paragraph shall remain in effect  
8 unless and until the Court denies preliminary approval or final approval of this Settlement  
9 Agreement. Upon the date that the Court enters an order preliminarily approving this Settlement  
10 Agreement, Plaintiffs and Class Members shall be barred and enjoined from commencing,  
11 instituting, or continuing to prosecute any action or any proceeding in any court of law or equity,  
12 arbitration tribunal, administrative forum, or other forum of any kind worldwide based on the  
13 Released Claims.

14       17. **Time to Appeal.** The time to appeal from an approval of this Settlement  
15 Agreement shall commence upon the Court's entry of the Judgment, regardless of whether or  
16 not an application for attorneys' fees and expenses has been submitted to the Court or resolved.

17       18. **Impact of Appeal.** The Injunctive Relief Settlement shall be effective as of the  
18 date of entry of the Final Approval Order, regardless of any appeal that may be taken of any or  
19 all of the Settlement Agreement, Final Approval Order, or Judgment in this Action or the  
20 settlement in *Hubbard*. In the event of an appeal of any or all of the Settlement Agreement,  
21 Final Approval Order, or Judgment in this Action or *Hubbard* the Injunctive Relief Fee and  
22 Expense Awards described in Paragraph 27 will be paid into the Escrow Account pursuant to  
23 that paragraph, and the settlement payments described in Paragraph 3 will be paid into the  
24 Escrow Account on the schedule set forth that paragraph. **No payments shall be made to Class  
25 Members, Class Counsel, or Additional Counsel until all appeals of this Action and the *Hubbard*  
26 action have been exhausted and the judgment entered in each becomes final and non-appealable.**

1           **E.     Release of Injunctive Claims**

2           19.     **Released Injunctive Class Claims.** Upon and after the Effective Date, through  
3 the Injunctive Relief Settlement Term, the Releasors who are members of the Injunctive Relief  
4 Settlement Class (regardless of whether any such Releasor ever seeks or obtains any recovery  
5 by any means) shall be deemed to have, and by operation of the Judgment shall have fully,  
6 finally and forever released, relinquished and discharged all Released Injunctive Class Claims  
7 against the Releasees.

8           20.     **No Future Actions Following Release.** The Releasors who are members of the  
9 Injunctive Relief Settlement Class shall not, after the Effective Date, seek (directly or indirectly)  
10 to commence, institute, maintain, or prosecute any suit, action, or complaint or collect from or  
11 proceed against the Defendants or any other Releasee (including pursuant to the Action) based  
12 on the Released Injunctive Class Claims in any forum worldwide, whether on his, her, or their  
13 own behalf or as part of any putative, purported, or certified class.

14           21.     **Covenant Not to Sue.** The Releasors who are members of the Injunctive Relief  
15 Settlement Class covenant and agree that they, and each of them, will forever refrain from  
16 instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action,  
17 or collecting from, seeking to recover from, or proceeding against the Releasees in connection  
18 with any of the Released Injunctive Class Claims. Plaintiffs and their counsel acknowledge that  
19 Defendants consider it to be a material term of this Settlement Agreement that all Injunctive  
20 Relief Settlement Class Members will be bound by the provisions of this release; *provided,*  
21 *however,* that should there be a breach of this covenant not to sue by any member of the  
22 Injunctive Relief Settlement Class, Plaintiffs and Class Counsel will cooperate with Defendants'  
23 efforts to seek the dismissal of any such claim or action. The Parties contemplate and agree that  
24 this Agreement may be pleaded as a bar to a lawsuit, and an injunction may be sought by the  
25 Parties, or any one of them, preventing any action from being initiated or maintained in any case  
26 sought to be prosecuted on behalf of any Releasors who are members of the Injunctive Relief  
27 Settlement Class with respect to the Released Injunctive Class Claims.

1           22.   **Waiver of California Civil Code §1542 and Similar Laws.** The Releasors who  
2 are members of the Injunctive Relief Settlement Class acknowledge that, by executing this  
3 Agreement, and for the consideration received hereunder, it is their intention to release, and  
4 they are releasing, all Released Injunctive Class Claims, even Unknown Claims. In furtherance  
5 of this intention, the Releasors who are members of the Injunctive Relief Settlement Class  
6 expressly waive and relinquish, to the fullest extent permitted by law, any rights or benefits  
7 conferred by the provisions of California Civil Code §1542, as set forth in Paragraph 1(pp), or  
8 equivalent, similar, or comparable law of any state or territory of the United States, or principle  
9 of common law or any law or principle of law of any jurisdiction that would limit or restrict the  
10 effect or scope of the provisions of the releases set forth in this Settlement Agreement. The  
11 Releasors who are members of the Injunctive Relief Settlement Class acknowledge and hereby  
12 expressly waive and release with respect to the Released Injunctive Class Claims any and all  
13 provisions, rights, and benefits conferred by California Civil Code §1542 or by any equivalent,  
14 similar or comparable law or principle of law in any jurisdiction. The Releasors who are  
15 members of the Injunctive Relief Settlement Class may hereafter discover facts other than or  
16 different from those which they know or believe to be true with respect to the subject matter of  
17 the Released Injunctive Class Claims, but these Releasors hereby expressly waive and fully,  
18 finally and forever settle and release any known or unknown, suspected or unsuspected,  
19 foreseen or unforeseen, asserted or un-asserted, contingent or non-contingent, and accrued or  
20 unaccrued claim, loss, or damage with respect to the Released Injunctive Class Claims, whether  
21 or not concealed or hidden, without regard to the subsequent discovery or existence of such  
22 additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen,  
23 and unaccrued losses or claims in this paragraph is contractual and not a mere recital.

24           **F.    Release of Damages Claims**

25           23.   **Released Damages Claims.** Upon the Effective Date, the Releasors who are  
26 members of the Damages Settlement Classes (regardless of whether any such Releasor ever  
27 seeks or obtains any recovery by any means) shall be deemed to have, and by operation of the  
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1 Judgment shall have fully, finally and forever released, relinquished and discharged all Released  
2 Damages Class Claims against the Releasees.

3       24. **No Future Actions Following Release.** The Releasors who are members of the  
4 Damages Settlement Classes shall not, after the Effective Date, seek (directly or indirectly) to  
5 commence, institute, maintain, or prosecute any suit, action or complaint or collect from or  
6 proceed against the Defendants or any other Releasee (including pursuant to the Action) based  
7 on the Released Damages Class Claims in any forum worldwide, whether on his, her, or their  
8 own behalf or as part of any putative, purported, or certified class.

9       25. **Covenant Not to Sue.** The Releasors who are members of the Damages  
10 Settlement Classes covenant and agree that they, and each of them, will forever refrain from  
11 instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action,  
12 or collecting from, seeking to recover from, or proceeding against the Releasees in connection  
13 with any of the Released Damages Class Claims. Plaintiffs and their counsel acknowledge that  
14 Defendants consider it to be a material term of this Settlement Agreement that all Class  
15 Members who are members of the Damages Settlement Classes will be bound by the provisions  
16 of this release; *provided, however*, that should there be a breach of this covenant not to sue by  
17 any member of the Damages Settlement Class, Plaintiffs and Class Counsel will cooperate with  
18 Defendants' efforts to seek the dismissal of any such claim or action. The Parties contemplate  
19 and agree that this Agreement may be pleaded as a bar to a lawsuit, and an injunction may be  
20 sought by the Parties, or any one of them, preventing any action from being initiated or  
21 maintained in any case sought to be prosecuted on behalf of any Releasors who are members of  
22 the Damages Settlement Classes with respect to the Released Damages Class Claims. Claimants  
23 on the Gross Settlement Fund shall execute a release of the Releasees as a condition precedent  
24 to receipt of any part of the Gross Settlement Fund, but the failure of any claimant to execute  
25 such a release shall not in any way affect the validity of the release provided in this paragraph,  
26 and they shall nonetheless be bound by the terms of such release.

27       26. **Waiver of California Civil Code §1542 and Similar Laws.** The Releasors who  
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1 are members of the Damages Settlement Classes acknowledge that, by executing this  
2 Agreement, and for the consideration received hereunder, it is their intention to release, and  
3 they are releasing, all Released Damages Class Claims, even Unknown Claims. In furtherance  
4 of this intention, the Releasors who are members of the Damages Settlement Classes expressly  
5 waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by  
6 the provisions of California Civil Code §1542, as set forth in Paragraph 1(oo), or equivalent,  
7 similar, or comparable law of any state or territory of the United States, or principle of common  
8 law or any law or principle of law of any jurisdiction that would limit or restrict the effect or  
9 scope of the provisions of the releases set forth in this Settlement Agreement. The Releasors  
10 hereby expressly waive and release with respect to the Released Damages Class Claims any and  
11 all provisions, rights and benefits conferred by California Civil Code §1542 or by any  
12 equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors  
13 who are members of the Damages Settlement Classes may hereafter discover facts other than  
14 or different from those which they know or believe to be true with respect to the subject matter  
15 of the Released Damages Class Claims, but these Releasors hereby expressly waive and fully,  
16 finally and forever settle and release any known or unknown, suspected or unsuspected,  
17 foreseen or unforeseen, asserted or un-asserted, contingent or non-contingent, and accrued or  
18 unaccrued claim, loss, or damage with respect to the Released Damages Class Claims, whether  
19 or not concealed or hidden, without regard to the subsequent discovery or existence of such  
20 additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen,  
21 and unaccrued losses or claims in this paragraph is contractual and not a mere recital.

22 **F. Attorneys' Fees & Expenses**

23 **27. Injunctive Relief Fee and Expense Awards.**

24 (a) Class Counsel shall have the right to apply to the Court for, and Defendants shall  
25 not oppose, an upfront injunctive fee and cost award of \$20 million, which, if approved, shall  
26 be paid for by Defendants within forty-five (45) days of entry of the Court's Order pursuant to  
27 Paragraph 27(d) below.  
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1 (b) For so long as this Agreement remains in effect without material modification,  
2 Class Counsel may apply to the Court, or a special master appointed by the Court, for an award  
3 of a percentage of the total amount spent by Division I Member Institutions under the Pool (as  
4 defined in Appendix A hereto) for each Academic Year. That percentage shall start at 0.75%  
5 and increase by 0.25% no more than three (3) times when the Pool is reset pursuant to Article  
6 3 Section 1(f)-(h) of Appendix A, irrespective of how many times the Pool is reset during the  
7 Injunctive Relief Settlement Term. Defendants reserve the right to oppose any such application  
8 but agree not to unreasonably oppose any such application for so long as the Injunctive Relief  
9 Settlement remains in effect without material modification. Any such amount that is approved  
10 by the Court or special master will be paid to Class Counsel by Defendants and counted against  
11 the Pool as follows: Defendants shall pay to Class Counsel the amount approved by the Court  
12 in accordance with this Paragraph within forty-five (45) days of entry of the Court's Order  
13 awarding any such amounts, subject to Paragraph 27(d) below. That amount will then be  
14 deducted from the Pool for the following Academic Year. All fees paid under this provision  
15 shall be equally divided between Class Counsel *i.e.*, Hagens Berman and Winston & Strawn.

16 (c) Class Counsel also may file a fee and cost application with the Court, or a special  
17 master appointed by the Court, each Academic Year of the Injunctive Relief Settlement Term  
18 to compensate Class Counsel based on their reasonable hourly fees and costs for their ongoing  
19 work in monitoring and enforcing compliance with this Agreement. Defendants reserve the  
20 right to oppose any such application but agree not to unreasonably oppose any such application  
21 for so long as the Injunctive Relief Settlement remains in effect without material modification.  
22 All such fees and costs will be paid by the Defendants and not be deducted from the Pool.  
23 Defendants shall pay to Class Counsel the amount approved by the Court in accordance with  
24 this Paragraph within forty-five (45) days of entry of the Court's Order awarding any such  
25 amounts, subject to Paragraph 27(d) below. Any such application and award shall be  
26 independent of and considered separately from any of the applications or awards described in  
27 sections (a) or (b) of this Paragraph.  
28

1 (d) Prior to the Effective Date, any Injunctive Fee and Expense Awards payable under  
2 Paragraphs 27(a) and 27(b) shall be deposited into the Escrow Account, and paid to Class  
3 Counsel, plus any interest that may accrue, within ten (10) days of the Effective Date.

4 (e) No Injunctive Fee and Expense Awards shall be paid to Class Counsel prior to the  
5 Effective Date. In no event shall Defendants or any other of the Releasees be liable to pay any  
6 fees, expenses, costs, or interest in connection with the Injunctive Relief Settlement, except to  
7 the extent they are approved by the Court.

8 (f) All of the above fee and expense applications and awards shall be independent of  
9 and considered separately from any fee or costs award that Class Counsel may seek with respect  
10 to the settlements of the damages claims in this Action or in any other action.

11 **28. Damages Fee and Expense Awards.** Class Counsel may submit an application  
12 or applications for distributions from the Gross Settlement Fund for: (a) an award of attorneys'  
13 fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Action;  
14 plus (c) any interest on such attorneys' fees and expenses (until paid), as appropriate, and as  
15 may be awarded by the Court. Defendants reserve the right to object to any fee application.

16 **29.** No Damages Fee and Expense Awards shall be paid prior to the Effective Date.  
17 In no event shall Defendants or any other of the Releasees be liable to pay any fees, expenses,  
18 costs, or interest in connection with the settlement of the monetary damages claims of the  
19 Damages Settlement Classes, except to the extent they are approved by the Court and paid out  
20 of the Gross Settlement Fund.

21 **30. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and  
22 the allowance or disallowance by the Court of, the fee and expense applications described in  
23 Paragraphs 27-29 ("Fee and Expense Applications") are not part of the settlement set forth in  
24 this Agreement and are to be considered by the Court separately from the Court's consideration  
25 of the fairness, reasonableness, and adequacy of the settlement set forth in this Agreement. Any  
26 order or proceedings relating to the Fee and Expense Applications, or any appeal from any Fee  
27 and Expense Award or any other order relating thereto or reversal or modification thereof, shall  
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1 not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment  
2 and the settlement of the Action as set forth herein. No order of the Court or modification or  
3 reversal on appeal of any order of the Court concerning any Fee and Expense Award or  
4 Distribution Plan shall constitute grounds for cancellation or termination of this Agreement.

5 31. **Other Fees and Expenses.** Except as otherwise provided in this Settlement  
6 Agreement, each party shall bear its own costs and attorneys' fees.

7 G. **Conditions of Settlement, Effect of Disapproval, Cancellation or**  
8 **Termination**

9 32. **Effective Date.** The Effective Date of this Agreement shall be conditioned on the  
10 occurrence of all of the following events:

- 11 (a) Defendants no longer have any right to terminate this Agreement or if they do  
12 have such right, they have given written notice to Class Counsel that they will not  
13 exercise such right;
- 14 (b) the Court has finally approved the settlement as described herein, following notice  
15 to the Classes and a hearing, as prescribed by Rule 23 of the Federal Rules of  
16 Civil Procedure, and has entered the Judgment; and
- 17 (c) the Judgment has become "Final" meaning, that such order represents a final and  
18 binding determination of all issues within its scope and is not subject to further  
19 review on appeal or otherwise. Without limitation, the Judgment becomes "Final"  
20 when: (a) no appeal has been filed and the prescribed time for commencing any  
21 appeal has expired; or (b) an appeal has been filed and either (i) the appeal has  
22 been dismissed and the prescribed time, if any, for commencing any further appeal  
23 has expired, or (ii) the Judgment has been affirmed in its entirety and the  
24 prescribed time, if any, for commencing any further appeal has expired. For  
25 purposes of this Agreement, an "appeal" includes appeals as of right,  
26 discretionary appeals, interlocutory appeals, proceedings involving writs of  
27 certiorari or mandamus, and any other proceedings of like kind. Any appeal or  
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1 other proceeding pertaining solely to any order issued with respect to an  
2 application for attorneys' fees and expenses consistent with this Agreement, shall  
3 not in any way delay or preclude the Judgment from becoming Final. It is agreed  
4 that in determining the times for appeal, further appeal, or review, the provisions  
5 of Fed. R. Civ. P. 60 and of the All Writs Act, 28 U.S.C. § 1651, shall not be taken  
6 into account.

7 If all of these conditions are not met, then this Agreement shall be terminated, subject to and in  
8 accordance with Paragraphs 33-38.

9 **33. Conditions Precedent to the Effective Date/Termination.** The Effective Date  
10 also shall be conditioned on the Parties reaching a full settlement agreement resolving the  
11 damages claims in *Hubbard* and that agreement being fully and finally approved by the Court  
12 and judgment in favor of Defendants in that matter becoming Final. Further, in the event the  
13 opt-out percentage thresholds in Paragraph 37(c) and/or those in the *Hubbard* settlement  
14 agreement are exceeded, Defendants may, in their sole discretion, elect to terminate this  
15 Agreement as well, provided that Defendants exercise such a termination right within forty-five  
16 (45) days of receiving a final report from Class Counsel as to the number of Opt-Outs for the  
17 Damages Settlement Classes in this Action and in *Hubbard*.

18 **34. Effect of Disapproval.** If the Court refuses, preliminarily or otherwise, to  
19 approve the settlement or this Settlement Agreement or any part hereof, or if such approval is  
20 modified or set aside on appeal, or if the Court does not enter the Judgment provided for in  
21 Paragraph 15 hereof, or if the Court enters the Judgment and appellate review is sought and, on  
22 such review, such Judgment is not affirmed in its entirety, Defendants and Class Counsel shall,  
23 at their sole discretion, each have the option to rescind, cancel, and terminate this Settlement  
24 Agreement (excepting Paragraphs 35, 39-41, 45, and 61 hereof). Similarly, if the Court refuses  
25 to preliminarily approve Defendants' settlements or settlement agreements (or any part thereof)  
26 in *Hubbard*, or if the Court does not enter the Judgment in *Hubbard*, or if the Court enters the  
27 Judgment and appellate review is sought and, on such review, such Judgment is not affirmed in  
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1 its entirety, Defendants shall, at their sole discretion, have the option to rescind, cancel, and  
2 terminate this Settlement Agreement (excepting Paragraphs 35, 39-41, 45, and 61 hereof).

3       **35. Effect of Termination.** In any event that this Agreement is terminated, this  
4 Agreement in its entirety shall be void and shall have no force or effect and shall be without  
5 prejudice to the rights and contentions of Releasees and Releasors in this or any other litigation.  
6 Any amounts expended for Notice and Administrative Costs and Injunctive Notice Costs are  
7 not recoverable if this settlement does not become final or is terminated.

8       **36. Objections.** Class Members who wish to object to any aspect of the settlement  
9 contained in this Settlement Agreement must file with the Court a written statement containing  
10 a description of the basis for their objection by the end of the period to object to the settlement  
11 that will be set by the Court.

12       **37. Exclusions.** Any Class Member who wishes to opt out of the Damages Settlement  
13 Classes must do so on or before the exclusion/objection deadline specified in the notice to Class  
14 Members (the “Exclusion/Objection Deadline”).

15       (a) In order to become an Opt-Out, a Class Member must complete and send to the  
16 Notice and Claims Administrator a request for exclusion that is post-marked no  
17 later than the Exclusion/Objection Deadline. The request for exclusion must  
18 include any information specified in the notices to the Classes. Opt-Outs may opt  
19 out of the Class only on an individual basis; so-called “mass” or “class” opt-outs  
20 shall not be allowed and shall be of no force or effect.

21       (b) Class Counsel shall cause copies of requests for exclusion from the Classes to be  
22 provided to Defendants’ counsel. No later than fourteen (14) days after the  
23 Exclusion/Objection Deadline, Class Counsel shall provide to Defendants’  
24 counsel a complete and final list of Opt-Outs. With the motion for final approval  
25 of the settlement, Class Counsel will file with the Court a complete list of Opt-  
26 Outs, including the name, city, and state of the person requesting exclusion and  
27 the college or university he or she attended (the “Opt-Out List”). With respect to  
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1 any Opt-Outs, Defendants reserve all of their legal rights and defenses, including,  
2 but not limited to, any defenses relating to whether the person qualifies as a Class  
3 Member and/or has standing to bring any claim.

4 (c) Defendants shall have the option to terminate this Agreement if the number of  
5 Opt-Outs equals or exceeds [REDACTED] of the total combined number  
6 of Class Members and Opt-Outs. After meeting and conferring with Class  
7 Counsel, Defendants may elect to terminate this Agreement by serving written  
8 notice on Class Counsel by email and overnight courier and by filing a copy of  
9 such notice with the Court no later than thirty (30) days before the date for the  
10 final approval hearing of this Agreement, except that Defendants shall have a  
11 minimum of ten (10) days in which to decide whether to terminate this Agreement  
12 after receiving the final Opt-Out List.

13 38. **Termination Consequences.** Unless otherwise ordered by the Court, in the event  
14 that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or  
15 otherwise fail to become effective for any reason, including, without limitation, in the event that  
16 Defendants elect to terminate this Agreement pursuant to Paragraphs 33-34:

17 (a) the Parties shall be restored to their respective positions in the Action as of the  
18 Execution Date, with all of their respective claims and defenses preserved as they  
19 existed on that date;

20 (b) the Escrow Agent shall, within ten (10) business days of termination of the  
21 Settlement Agreement, refund all amounts in the Escrow Account, less any  
22 expenditures authorized pursuant to Paragraphs 4-5 of this Settlement Agreement  
23 that were incurred prior to termination, to Defendants and the Escrow Account  
24 shall be closed;

25 (c) the terms and provisions of this Agreement, with the exception of Paragraphs 35  
26 39-41, 45, and 61 (which shall continue in full force and effect), shall be null and  
27 void and shall have no further force or effect with respect to the Parties, and  
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1 neither the existence nor the terms of this Agreement (nor any negotiations  
2 preceding this Agreement nor any acts performed pursuant to, or in furtherance  
3 of, this Agreement) shall be used in the Action or in any other action or proceeding  
4 for any purpose (other than to enforce the terms remaining in effect);

5 (d) any judgment or order entered by the Court in accordance with the terms of this  
6 Agreement shall be treated as vacated, *nunc pro tunc*; and

7 (e) the Court shall set a new schedule for the Action.

8 **H. No Admission of Liability**

9 **39. Final and Complete Resolution.** The Parties intend the settlement as described  
10 in this Settlement Agreement to be a final and complete resolution of all disputes between them  
11 with respect to the Action and Released Claims and to compromise claims that are contested,  
12 and it shall not be deemed an admission by any Party as to the merits of any claim or defense  
13 or any allegation made in the Action. Without limiting the foregoing, for the avoidance of  
14 doubt, Defendants deny any liability in connection with Plaintiffs' claims in the Action and this  
15 Agreement may not be construed to be an admission of liability or wrongdoing by Defendants  
16 in this Action or any other action or proceeding.

17 **40. Federal Rule of Evidence 408.** The Parties agree that this Agreement, its terms  
18 and the negotiations surrounding this Agreement and any earlier agreements between the Parties  
19 shall be governed by Federal Rule of Evidence 408 and shall not be admissible or offered or  
20 received into evidence in any suit, action, or other proceeding, except upon the written  
21 agreement of the Parties hereto, pursuant to an order of a court of competent jurisdiction, or as  
22 shall be necessary to give effect to, declare, or enforce the rights of the Parties with respect to  
23 any provision of this Agreement.

24 **41. Use of Agreement as Evidence.** Neither this Agreement, nor negotiations related  
25 thereto, nor any act performed or document executed pursuant to or in furtherance of this  
26 Agreement: (a) is or may be deemed to be or may be used as an admission of, or evidence of,  
27 the validity of any Released Claims, any allegation made in the Action, or any wrongdoing or  
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1 liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of,  
2 or evidence of, any liability, fault, or omission of the Releasees in any civil, criminal, or  
3 administrative proceeding in any court, administrative agency, or other tribunal. Neither this  
4 Agreement, nor negotiations related thereto, nor any act performed or document executed  
5 pursuant to or in furtherance of this Agreement, shall be admissible in any proceeding for any  
6 purpose, except as to enforce the terms of this Agreement, and except that the Releasees may  
7 file this Agreement and/or the Judgment in any action for any purpose, including, but not limited  
8 to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral  
9 estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim  
10 preclusion or issue preclusion or similar defense or counterclaim, and/or to seek the transfer to  
11 this Court of, or enjoin, any action purporting to assert any Released Claims. The limitations  
12 described in this paragraph apply whether or not the Court enters the Preliminary Approval  
13 Order, the Final Approval Order, or the Judgment.

14 I. **Miscellaneous Provisions**

15 42. **Modifications.** Absent materially changed circumstances (for example, without  
16 limitation, Paragraph 37(c)), Plaintiffs (including any new named plaintiffs) and Defendants  
17 agree not to seek to modify the settlement structure for the duration of the Injunctive Relief  
18 Settlement Term.

19 43. **Voluntary Settlement.** The Parties agree that the terms of the settlement as  
20 described in this Agreement were negotiated in good faith by the Parties under the supervision  
21 of an experienced mediator and reflect a settlement that was reached voluntarily after  
22 consultation with competent legal counsel.

23 44. **Consent to Jurisdiction.** Defendants, Plaintiffs, and each Class Member hereby  
24 irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any  
25 suit, action, proceeding, or dispute arising out of or relating to this Agreement or the  
26 applicability of this Agreement. Solely for purposes of such suit, action, or proceeding, to the  
27 fullest extent that they may effectively do so under applicable law, Defendants, Plaintiffs, and  
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1 the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or  
2 otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that  
3 the Court is in any way an improper venue or an inconvenient forum. Without limiting the  
4 generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of  
5 Paragraphs 19-26 hereof, including but not limited to any suit, action, or proceeding in which  
6 the provisions of Paragraphs 19-26 hereof are asserted as a defense in whole or in part to any  
7 claim or cause of action or otherwise raised as an objection, constitutes a suit, action or  
8 proceeding arising out of or relating to this Agreement. In the event that the provisions of  
9 Paragraphs 19-26 hereof are asserted by any Releasee as a defense in whole or in part to any  
10 claim or cause of action or otherwise raised as an objection in any suit, action, or proceeding, it  
11 is hereby agreed that such Releasee shall be entitled to a stay of that suit, action, or proceeding  
12 until the Court has entered a judgment no longer subject to any appeal or review determining  
13 any issues relating to the defense or objection based on the provisions of Paragraphs 19-26.  
14 Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any  
15 suit, action, proceeding, or dispute arising out of or relating to this Agreement or the  
16 applicability of this Agreement.

17       **45. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes  
18 between or among Defendants and Plaintiffs or any Class Members concerning matters  
19 contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be  
20 submitted to the Court. The Court shall retain jurisdiction to resolve all disputes that may arise  
21 concerning compliance with, the validity of, interpretation, or enforcement of the terms and  
22 conditions of the settlement, including through appointment of a special master whose decisions  
23 shall be appealable to the Court. All such claims asserted on behalf of student-athletes shall be  
24 prosecuted exclusively by Class Counsel except as expressly provided herein.

25       **46. Future Division I Student-Athlete Proceedings.** Any and all claims by any  
26 Division I student-athlete seeking to challenge the structure or otherwise modify the Injunctive  
27 Relief Settlement, or alleging antitrust or other violations of law based on Defendant's  
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1 implementation of the Injunctive Relief Settlement, must, to the fullest extent legally  
2 permissible, be asserted exclusively in the Action. All Division I student-athletes during the  
3 Injunctive Relief Settlement Term will receive notice of this settlement and their rights under it  
4 in a form approved by Class Counsel and the Court. If and to the extent any new claim against  
5 Defendants for complying with the terms of the Injunctive Relief Settlement is asserted by a  
6 Division I student-athlete in any venue other than the U.S. District Court for the Northern  
7 District of California seeking to invalidate or recover damages based upon Defendant's  
8 implementation of the Injunctive Relief Settlement, the Parties shall join in appropriate filings  
9 to have the new claim enjoined (or, should an injunction be unavailable, stayed and transferred  
10 to the Northern District of California) for consolidation with the Action for all purposes.

11       47. **Other Litigations.** The Parties shall work cooperatively to ensure that the claims  
12 raised in any other lawsuits that have been or may be brought challenging NCAA compensation  
13 or benefit rules addressed by this Settlement Agreement are enjoined (or, should an injunction  
14 be unavailable, stayed) pending final approval of this Settlement Agreement.

15       48. **Class Counsel Enforcement.** Class Counsel shall have the authority to  
16 exclusively monitor and enforce the Injunctive Relief Settlement throughout the Term as  
17 provided therein.

18       49. **Binding Effect.** This Agreement shall be binding upon and shall inure to the  
19 benefit of the Parties hereto and their heirs, executors, administrators, representatives, agents,  
20 successors, and assigns and any corporation into or with which any corporate party hereto may  
21 merge or consolidate. Without limiting the generality of the foregoing, each and every covenant  
22 and agreement herein by Plaintiffs and Class Counsel shall be binding upon all Class Members.

23       50. **Intended Beneficiaries.** No provision of this Settlement Agreement shall  
24 provide any rights to, or be enforceable by, any person or entity that is not a Plaintiff, Class  
25 Member, a Releasee, or Class Counsel. No Plaintiff, Class Member, Defendant, or Class  
26 Counsel may assign or otherwise convey any right to enforce any provision of this Settlement  
27 Agreement.  
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1           51.    **Authorization to Enter Agreement.** Each of the undersigned representatives of  
2 Defendants represents that he or she is fully authorized to enter into and to execute this  
3 Agreement on behalf of each respective Defendant. Class Counsel, on behalf of Plaintiffs and  
4 the Classes, represent that they are, subject to Court approval, expressly authorized to take all  
5 action required or permitted to be taken by or on behalf of the Classes pursuant to this  
6 Agreement to effectuate its terms and to enter into and execute this Agreement and any  
7 modifications or amendments to the Agreement on behalf of Plaintiffs and the Classes that they  
8 deem appropriate.

9           52.    **No Conflict Intended.** Any inconsistency between this Settlement Agreement  
10 and the Appendices attached hereto shall be resolved in favor of this Settlement Agreement.  
11 The headings used in this Agreement are intended for the convenience of the reader only and  
12 shall not affect the meaning or interpretation of this Agreement.

13           53.    **Mutual Drafting.** None of the parties hereto shall be deemed to be the drafter of  
14 this Agreement or any provision hereof for the purpose of any statute, case law, rule of  
15 interpretation or construction that would or might cause any provision to be construed against  
16 the drafter hereof.

17           54.    **Governing Law.** This Agreement shall be considered to have been negotiated,  
18 executed and delivered, and to be wholly performed, under federal common law, and the rights  
19 and obligations of the parties to this Agreement shall be construed and enforced in accordance  
20 with, and governed by, federal common law.

21           55.    **Amendment; Waiver.** This Agreement shall not be modified in any respect  
22 except by a writing executed by all of the Defendants and Class Counsel and approved by the  
23 Court, and the waiver of any rights conferred hereunder shall be effective only if made by  
24 written instrument of the waiving party. The waiver by any party of any breach of this  
25 Agreement shall not be deemed or construed as a waiver of any other breach, whether prior,  
26 subsequent, or contemporaneous, of this Agreement.

27           56.    **Integrated Agreement.** This Settlement Agreement (and its appendices)  
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1 contains an entire, complete, and integrated statement of each and every term and provision  
2 agreed to by the Parties hereto, and is not subject to any condition not provided for herein. This  
3 Settlement Agreement supersedes any and all prior and contemporaneous undertakings of  
4 Plaintiffs and Defendants in connection herewith. The Class Members, Class Counsel, and  
5 Defendants, or any of them, may hereafter discover facts other than or different from those that  
6 he, she, they, or it knows or believes to be true with respect to the subject matter of this  
7 settlement, but the subsequent discovery or existence of such different or additional facts shall  
8 have no bearing on the validity of this Settlement Agreement once executed and shall not serve  
9 as a basis for any Party to challenge or otherwise seek to rescind, terminate, or cancel the  
10 settlement.

11       **57. Execution in Counterparts.** This Agreement may be executed in one or more  
12 counterparts. All executed counterparts and each of them shall be deemed to be one and the  
13 same instrument. Counsel for the Parties to this Agreement shall exchange among themselves  
14 signed counterparts and a complete set of executed counterparts shall be filed with the Court.

15       **58. Appendices.** All of the appendices hereto are an integral part of this Agreement  
16 and of the agreement of the Parties thereto.

17       **59. Public Disclosure.** Except for disclosure required by law, the Parties will consult  
18 with each other with a view towards coordinating the timing of any public disclosure concerning  
19 the fact that this Settlement Agreement has been reached or the terms of this Agreement.

20       **60. Notices.** All notices under this Agreement shall be in writing. Each such notice  
21 shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return  
22 receipt requested, postage pre-paid; (d) FedEx or similar overnight courier; or (e) facsimile and  
23 first class mail, postage pre-paid and, if directed to any Class Member, shall be addressed to  
24 Class Counsel at their addresses set forth below, and if directed to Defendants, shall be  
25 addressed to their attorneys at the addresses set forth below or such other addresses as Class  
26 Counsel or Defendants may designate, from time to time, by giving notice to all parties hereto  
27 in the manner described in this paragraph.  
28

1 If to Class Counsel, address notice to:

2 Steve W. Berman  
3 HAGENS BERMAN SOBOL SHAPIRO LLP  
4 1301 Second Avenue, Suite 2000  
5 Seattle, WA, 98101  
6 steve@hbslaw.com

7 Jeffrey L. Kessler  
8 David Greenspan  
9 WINSTON & STRAWN LLP  
10 200 Park Avenue  
11 New York, NY 10166-4193  
12 jkessler@winston.com  
13 dgreenspan@winston.com

14 If to Defendants, address notice to:

15 **National Collegiate Athletic Association**  
16 Scott Bearby  
17 Senior Vice President of Legal Affairs and General Counsel  
18 1802 Alonzo Watford St. Drive  
19 Indianapolis, IN 46202  
20 sbearby@ncaa.org

21 With a copy to:

22 Rakesh N. Kilaru  
23 WILKINSON STEKLOFF LLP  
24 2001 M Street NW, 10th Floor  
25 Washington, DC 20036  
26 rkilaru@wilkinsonstekloff.com

27 **Atlantic Coast Conference**  
28 c/o Pearlynn G. Houck  
29 General Counsel  
30 620 South Tryon Street, Suite 1200  
31 Charlotte, NC 28202  
32 phouck@theacc.org

33 With a copy to:

34 Christopher S. Yates  
35 LATHAM & WATKINS LLP  
36 505 Montgomery Street, Suite 2000  
37 San Francisco, CA 94111  
38 chris.yates@lw.com

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**The Big Ten Conference, Inc.**  
c/o Anil Gollahalli  
Chief Legal Officer & General Counsel  
5440 Park Place  
Rosemont, IL 60018  
agollahalli@bigten.org

With a copy to:

Britt M. Miller  
MAYER BROWN LLP  
71 South Wacker Drive  
Chicago, IL 60606  
bmiller@mayerbrown.com

**The Big 12 Conference, Inc.**  
c/o Jessica Presnall  
Chief Legal & Business Affairs Officer  
400 East John Carpenter Freeway  
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jpresnall@big12sports.com

With a copy to:

Angela Zambrano and Natali Wyson  
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**Pac-12 Conference**  
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With a copy to:

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1                   **Southeastern Conference**

2                   c/o William H. King, III  
3                   Associate Commissioner/Legal Affairs & Compliance  
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5                   Birmingham, AL 35203  
6                   wking@sec.org

7                   With a copy to:

8                   Robert W. Fuller, III  
9                   ROBINSON BRADSHAW & HINSON, P.A.  
10                  101 N. Tryon Street, Suite 1900  
11                  Charlotte, NC 28246  
12                  rfuller@robinsonbradshaw.com

13                  – and –

14                  Katie A. Reilly  
15                  WHEELER TRIGG O’DONNELL LLP  
16                  370 Seventeenth Street, Suite 4500  
17                  Denver, CO 80202  
18                  reilly@wtotrial.com

19                  or to such other persons or addresses as the Parties hereto may designate in writing.

20                  61.    **Confidential Materials.** The Parties agree to comply with Paragraphs 19-20 of  
21                  Exhibit A to the Protective Order entered in the Action (*see* ECF No. 136) at the conclusion of  
22                  the Action.  
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IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the Execution Date.

1 PLAINTIFFS' CLASS COUNSEL, on behalf of  
2 Plaintiffs individually and on behalf of the Classes

3 DATED: ~~July~~September 26, 2024  
4 LLP

HAGENS BERMAN SOBOL SHAPIRO

5 By: \_\_\_\_\_  
6 Steve W. Berman

7 Steve W. Berman (*pro hac vice*)  
8 HAGENS BERMAN SOBOL SHAPIRO LLP  
9 1301 Second Avenue, Suite 2000  
10 steve@hbsslaw.com

11 DATED: ~~July~~September 26, 2024

WINSTON & STRAWN LLP

12 By: \_\_\_\_\_  
13 Jeffrey L. Kessler

14 Jeffrey L. Kessler (*pro hac vice*)  
15 David Greenspan (*pro hac vice*)  
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San Francisco, CA 94111  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
jparsigian@winston.com

DEFENDANT NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION

DATED: ~~July~~September 26, 2024

By: \_\_\_\_\_  
Rakesh N. Kilaru (*pro hac vice*)

Rakesh Kilaru  
Cali Arat  
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rkilaru@wilkinsonstekloff.com  
carat@wilkinsonstekloff.com

DEFENDANT ATLANTIC COAST  
CONFERENCE

DATED: ~~July~~September 26, 2024

By: \_\_\_\_\_  
Christopher S. Yates (SBN 161273)  
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1 DEFENDANT THE BIG TEN CONFERENCE,  
2 INC.

3 DATED: ~~July~~September 26, 2024

4 By: \_\_\_\_\_  
5 Britt M. Miller (*pro hac vice*)  
6 MAYER BROWN LLP  
7 71 South Wacker Drive  
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1 DEFENDANT THE BIG 12 CONFERENCE,  
2 INC.

3 DATED: ~~July~~September 26, 2024

4  
5 By: \_\_\_\_\_  
Natali Wyson

6 Angela Zambrano (*pro hac vice*)  
7 Natali Wyson (*pro hac vice*)  
8 SIDLEY AUSTIN LLP  
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9 Suite 2000  
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10 angela.zambrano@sidley.com  
nwyson@sidley.com

DEFENDANT PAC-12 CONFERENCE

1  
2 DATED: ~~July~~September 26, 2024  
3

4 By: \_\_\_\_\_  
5 Whitty Somvichian (SBN 194463)  
6 COOLEY LLP  
7 3 Embarcadero Center, 20th Floor  
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DEFENDANT SOUTHEASTERN  
CONFERENCE

DATED: ~~July~~September 26, 2024

By: \_\_\_\_\_  
Robert W. Fuller, III

Robert W. Fuller III (*pro hac vice*)  
ROBINSON BRADSHAW & HINSON, P.A.  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

In re: College Athlete NIL Litigation

No. 4:20-CV-03919 (N.D. Cal)

**AMENDED INJUNCTIVE RELIEF  
SETTLEMENT**

**APPENDIX A**

## ARTICLE 1

### DEFINITIONS

**Section 1.** As used in this Injunctive Relief Settlement, the following terms shall have the following meanings unless expressly stated otherwise:

(a) “Academic Year” means July 1 of any given calendar year during the Term through and including June 30 of the following calendar year.

(b) “Action” means *In re: College Athlete NIL Litigation*, Case No. 4:20-CV-03919 (N.D. Cal).

~~(c) “Booster” means “representative of athletics interests,” as defined in NCAA Bylaws 8.4.2, 13.02.16, and 13.02.16.1. “Associated Entity or Individual” means:~~

~~a. An entity that is or was known (or should have been known) to the athletics department staff of a Member Institution, to exist, in significant part, for the purpose of (i) promoting or supporting a particular Member Institution’s intercollegiate athletics program or student-athletes; and/or (2) creating or identifying NIL opportunities solely for a particular Member Institution’s student-athletes;~~

~~b. An individual who is or was a member, employee, director, officer, owner, or agent of an entity described in Section 1(c)(a) above;~~

~~c. An individual who directly or indirectly (including contributions by an affiliated entity or family member) has contributed more than \$50,000 over their lifetime to a particular Member Institution or to an entity described in Section 1(c)(a) above;~~

~~d. An individual or entity that (1) has been directed or requested by a Member Institution’s athletics department staff to assist in the recruitment or retention of prospective or current student-athletes, or (2) otherwise has assisted in the~~

recruitment or retention of prospective or current student-athletes; or  
a.e. Any entity owned, controlled, or operated by, or otherwise affiliated with, the  
individuals or entities described in Section 1(c)(a)-(d) above other than a  
publicly traded corporation.

(e)(d) “Class Counsel” means the law firms of Winston & Strawn LLP and Hagens Berman Sobol Shapiro LLP, with Steve Berman and Jeffrey Kessler as co-lead Class Counsel, or such other counsel as may be appointed by the Court during the Term of the Injunctive Relief Settlement.

(d)(e) “Conference Defendant” means individually each of the Atlantic Coast Conference (the “ACC”), The Big Ten Conference, Inc. (the “Big Ten”), The Big 12 Conference, Inc. (the “Big 12”), the Pac-12 Conference (the “Pac-12”), and the Southeastern Conference (the “SEC”); collectively the foregoing are referred to as “Conference Defendants”.

(e)(f) “Court” means the United States District Court for the Northern District of California.

(f)(g) “Defendants” means, collectively, the NCAA, the ACC, the Big Ten, the Big 12, the Pac-12, and the SEC.

(g)(h) “Designated Enforcement Entity” means the NCAA and/or such other entit(ies) as may be designated by the Conference Defendants that is responsible for rule-enforcement activities set forth in and permitted by this Injunctive Relief Settlement and the SSA, including but not limited to investigating alleged violations and serving as the party seeking enforcement in any arbitration that occurs pursuant to Article 6, Section 2.

(h)(i) “Designated Reporting Entity” means the entit(ies) designated by Defendants to receive the information described in Article 2, Sections 4 and 5.

(i)(j) “Final Approval” means when the Court issues an order finally approving the Stipulation and Settlement Agreement and has entered judgment in accordance with its terms but does not include any appeals periods or appeals of that judgment.

~~(j)~~(k) “Injunctive Relief Settlement” means this Appendix A to the SSA.

~~(k)~~(l) “Member Institution” means any college, school, or university that is a member in any sport of NCAA Division I and/or a Conference Defendant, together with any entity owned, controlled, funded, or operated by said college, school, or university (or any division or department thereof).

~~(l)~~(m) “NIL” or “name, image and likeness” means a person’s name, nickname(s), picture, portrait, likeness, signature, voice, caricature, identifying biographical information, or other identifiable features.

~~(m)~~(n) “Non-Defendant Conferences” means all NCAA Division I conferences that are not named as Conference Defendants.

~~(n)~~(o) “Non-Defendant Conference Member Institutions” means all NCAA Division I Member Institutions that are not members of any Conference Defendant.

~~(o)~~(p) “Pool” means the benefits pool as described in Article 3.

~~(p)~~(q) “Membership Financial Reporting System Reports” or “MFRS” means the annual financial data reported by NCAA members pursuant to NCAA Constitution, Article 2(D)(1)(c), in the form currently reported or as otherwise expressly permitted by this Injunctive Relief Settlement.

~~(q)~~(r) “NCAA” means the National Collegiate Athletic Association.

~~(r)~~(s) “Shared Revenue” has the meaning as described in Article 3.

~~(s)~~(t) “Stipulation and Settlement Agreement” or “SSA” means the Stipulation and Settlement Agreement to which this Injunctive Relief Settlement is attached as Appendix A, entered into as of ~~July~~September 26, 2024, by and between Plaintiffs, both individually and on behalf of the Classes, and Defendants, in *In re: College Athlete NIL Litigation*, Case No. 4:2020-CV-03919 (N.D. Cal).

~~(t)~~(u) “Term” means ten (10) Academic Years after the date of Final Approval of the SSA by the Court.

**Section 2. Further Definitions.** In addition to the foregoing, any capitalized terms otherwise defined in the SSA shall have the same meaning as described therein.

## ARTICLE 2

### PAYMENTS TO STUDENT ATHLETES & REPORTING

**Section 1. Payment Rules.** Defendants shall change all NCAA Division I and Conference Defendant rules to permit payments to student-athletes contemplated by the terms of this Injunctive Relief Settlement. For avoidance of doubt, payments that are not contemplated by this Injunctive Relief Settlement (*e.g.*, any payment to a student-athlete that, when aggregated with other payments above those permitted by NCAA Division I rules as of the date of the motion for preliminary approval, would result in a Member Institution exceeding the Pool defined below) remain prohibited.

**Section 2. Member Institution Payments for NIL, Institutional Brand Promotion, or Other Rights.** Each Member Institution, and each student-athlete, will have the right to enter into an exclusive or non-exclusive license and/or endorsement agreement for that student-athlete's NIL, institutional brand promotion, or other rights as permitted by this Injunctive Relief Settlement, provided, however, that no such licenses or agreements shall authorize payments for the right to use a student-athlete's NIL for a broadcast of collegiate athletic games or competitive athletic events. In addition the Member Institution or a designee/subcontractor of the Member Institution (*e.g.*, a local rights holder) may act as the marketing agent for the student-athlete with respect to third-party NIL contracts; provided, however, that a parent, guardian, lawyer, or other competent representative may assist the student-athlete in discussions regarding entering into an exclusive or non-exclusive license or endorsement agreement, unless the student-athlete waives in writing the assistance of a parent, guardian, lawyer, or other competent representative.

Neither Defendants nor their Member Institutions may enter into any NIL agreement including but not limited to any licensing, institutional brand promotion, or endorsement agreement with a prospective or enrolled student-athlete for a term that extends beyond his or her eligibility to participate in NCAA sports; provided, however, that if a Defendant or a Member Institution has

licensed the rights to use the NIL of a student-athlete to promote the Defendant or the Member Institution's academic or athletic program in content created while the student-athlete is enrolled, such licensee shall not be required to discontinue use of such content, if and as permitted by the agreement with the student-athlete, after that student-athlete's eligibility has expired. For avoidance of doubt, such licensee shall not be permitted by the prior sentence, after the student-athlete's eligibility has expired, to sell goods and services incorporating the NIL of the student-athlete, or to continue (or continue to authorize) use of the NIL of such student-athlete to promote the goods or services of a third party.

**Section 3. Third Party NIL Payments.** The NCAA shall not have any Division I rules prohibiting student-athletes from receiving payments from third parties for NIL, other than as set forth in this Injunctive Relief Settlement. For the avoidance of doubt, entities or organizations that are owned, controlled, or operated by Member Institutions and/or conferences are not third parties. Subcontractors of a Member Institution will not be considered third parties in instances and to the extent they are acting as an agent, facilitator, and/or administrator for a Member Institution whereby they are making payments to student-athletes that originate from/are paid by a Member Institution.

**Section 4. Mandatory Student-Athlete Reporting.** All Division I student-athletes will be required to report to (a) the Member Institution in which they are enrolled and/or (b) the Designated Reporting Entity any and all third-party NIL contracts or payments with a total value of six hundred dollars (\$600.00) or more on a schedule to be determined by Defendants. If a student-athlete enters into multiple NIL agreements or receives multiple NIL payments from the same or substantially the same third parties including, by way of example, any affiliates or parties with common ownership, such activities must be disclosed if the aggregate value is at or above six hundred dollars (\$600.00).

**Section 5. Mandatory Member Institution Reporting.** Each Conference Defendant Member Institution will be required to report each NIL contract or payment reported to the Conference Defendant Member Institution pursuant to Section 4 of this Article to the Designated Reporting Entity on a schedule to be determined by Defendants, with Class Counsel also to receive a copy of such reports. In addition, each Conference Defendant Member Institution also will be required to report to the Designated Reporting Entity pursuant to Section 4 of this Article, on a schedule to be determined by Defendants:

i. any exclusive or non-exclusive license and/or endorsement agreement between a Conference Defendant Member Institution and a student-athlete for a student-athlete's NIL, institutional brand promotion, or other rights including those in which a designee/subcontractor of the Conference Defendant Member Institution (*e.g.*, a local rights holder) acts as an agent, facilitator, administrator, or in any other capacity for a Conference Defendant Member Institution whereby they are making payments to one or more student-athletes that originate from, are funded by, or are otherwise made on behalf of a Conference Defendant Member Institution; and,

ii. any other payments or personal benefits (as detailed in Article 3, Section 3, Subsection (d)) that are provided to a student-athlete or the family of a student-athlete by a Conference Defendant Member Institution.

**Section 6. Non-Defendant Conference Member Institutions.** All Non-Defendant Conference Member Institutions that choose to provide or facilitate payments or benefits to student-athletes as permitted by this Injunctive Relief Settlement including but not limited to incremental scholarships permitted by Article 3, Section 3(b), shall be bound to the same extent as Conference Defendant Member Institutions by all obligations, benefit limitations, and roster limits set forth in this Injunctive Relief Settlement and as set by the NCAA in Appendix B to the SSA.

**ARTICLE 3**  
**BENEFITS POOL**

**Section 1. Benefits Pool.** Current NCAA Division I and Conference Defendant rules will be modified consistent with this Article to permit the following payments and benefits to Division I student-athletes.

(a) Each Member Institution will be permitted, but not required, to distribute, each Academic Year, additional payments and/or benefits to student-athletes over and above annual existing scholarships and all other benefits currently permitted by NCAA rules as of the date of the filing of the motion for final approval up to a certain amount (the “Pool”).

(b) The Pool will begin in the first Academic Year after Final Approval of the SSA.

(c) “Shared Revenue” for purposes of the Pool means, for each Member Institution, revenue categories 1, 7, 11, 12, 13, 13A, 15, and 19 from the MFRS as currently detailed in Appendix A of the NCAA 2024 Agreed-Upon Procedures (attached as Attachment 1), regardless of whether a Member Institution owns or has legal title to those revenues. For purposes of this Injunctive Relief Settlement, Category 1 (“Ticket Sales”) shall include actual monetary revenues received by or for the benefit of Member Institutions for suite licenses exclusive of (a) any associated philanthropy (Category 8) and (b) the use of suites for any purposes not related to student athletic events (*e.g.*, concerts). If any changes are made to the required reporting of revenues in the NCAA Agreed Upon Procedures or the Membership Financial Reporting System, the Parties shall work in good faith to ensure accurate reporting of the revenue categories that are calculated to determine Shared Revenues and the Pool.

(d) “Average Shared Revenue” for purposes of the Pool shall be calculated as follows. The Shared Revenue for all Conference Defendant Member Institutions, including Notre Dame, from the most recent Membership Financial Reporting System Reports available shall be added together. That total number will then be divided by the total number of Conference Defendant

Member Institutions plus Notre Dame. The resulting number will be the “Average Shared Revenue.”

(e) In the first year in which the Pool is implemented, the Pool shall be twenty-two percent (22%) of the Average Shared Revenue. The Pool will remain at 22% of Average Shared Revenue throughout the Term.

(f) Except as set forth in subsection (h) below, the Average Shared Revenue will be recalculated as set forth in subparagraph (d) above every three (3) years. In the second and third years of each three-year period, the Average Shared Revenue shall increase by 4% over the previous year’s amount, subject only to the two exceptions set forth in subsection (h), below.

(g) Accordingly, over the Term, and subject to only the two exceptions set forth in subsection (h), below, the Pool shall be calculated as follows:

|        |  |
|--------|--|
| Year 1 | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |
| Year 2 | Year 1 amount x 1.04   |
| Year 3 | Year 2 amount x 1.04   |
| Year 4 | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |
| Year 5 | Year 4 amount x 1.04   |
| Year 6 | Year 5 amount x 1.04   |
| Year 7 | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |
| Year 8 | Year 7 amount x 1.04   |

|         |  |
|---------|--|
| Year 9  | Year 8 amount x 1.04   |
| Year 10 | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |

(h) The two, and only two, exceptions to the procedures set forth in subsections (a)-(g) are as follows.

- i. If, during the Term, any new broadcast agreement captured in the Media Rights MFRS Category (#11) has a specific contractual provision setting a year-over-year rights fee escalator greater than 4% that is not contingent on future events at the time of resetting the Pool, in the second and/or third years of each three-year period the average escalator across all of the broadcast agreements captured in Media Rights shall be used for that revenue category in the corresponding contract year(s) in lieu of the four percent (4%) growth rate for that revenue category, provided that, in no circumstances, shall the escalator for the Media Rights revenue category be less than four percent (4%) per year, consistent with Article 3, Section 1(f).
- ii. Class Counsel shall have two (2) opportunities within the term of the Injunctive Relief Settlement to accelerate the re-calculation of the Pool based on the most recent Membership Financial Reporting System Reports available. If Class Counsel wishes to exercise their option, they must provide notice within thirty (30) days of receipt of the Membership Financial Reporting System Reports. A new three-year period shall commence in the first Academic Year after notice of exercise of the option, with the Pool amount increasing by four percent (4%) in the second and third years of such period. By way of example, if Class Counsel elected to exercise these options in Years 3 and 8 of the Settlement, the Pool would be calculated as follows over the Term:

|                   |  |
|-------------------|--|
| Year 1            | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |
| Year 2            | Year 1 amount x 1.04   |
| Year 3<br>(RESET) | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |
| Year 4            | Year 3 amount x 1.04   |
| Year 5            | Year 4 amount x 1.04   |
| Year 6            | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |
| Year 7            | Year 6 amount x 1.04   |
| Year 8<br>(RESET) | 22% of Average Shared Revenue based on the most recent Membership Financial Reporting System Reports available |
| Year 9            | Year 8 amount x 1.04   |
| Year 10           | Year 9 amount x 1.04   |

(i) In the event that there is a nationwide force majeure event, such as the outbreak of a virus, which requires the cancellation of games or the playing of games without fans in attendance, the Parties shall negotiate in good faith as to whether a force majeure change in the Pool calculation is warranted.

**Section 2. Institutional Decision-Making and Conference-Level Rules.** Each of the Member Institutions, subject to any independently set conference-level rules or guidelines (*i.e.*, conference-level rules or guidelines imposed by a conference without agreement with the NCAA or any other conferences), shall unilaterally decide/determine whether and how much of any

benefits newly permitted by this Injunctive Relief Settlement to provide to any individual Division I student-athlete (up to the Pool amount).

**Section 3. Counting Benefits Against the Pool.** Any newly permitted amounts or benefits provided to individual student-athletes by Member Institutions (directly, through an exclusive or non-exclusive license between the student-athlete and the Member Institution (*see* Article 2, Section 2), or otherwise)—shall count against the Pool except for proceeds from third-party NIL sublicenses and arrangements as specified in subsection 3(c) of this Article. The following provisions will govern the amounts of other new benefits that will count against the Pool for the Member Institution providing such other benefits:

(a) ***Alston Awards.*** *Alston* academic and graduation incentive awards up to the annual amount payable pursuant to the permanent injunction entered on March 8, 2019 in the matter captioned *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, Case No. 14-MD-2541 (N.D. Cal.) (“*Alston* case”) (currently \$5,980 and as may be adjusted in the future) (“*Alston* Awards”) will count against the Pool; the amount of such *Alston* Awards that will count against the Pool will be capped at two million five hundred thousand dollars (\$2,500,000.00, the “*Alston* Cap”) per Member Institution per year in recognition of institutions that pay such awards to a larger number of student-athletes. In the event that the overall value of the Pool has increased over the value of the Pool at the time of the immediately prior Pool recalculation occurring after a three-year period (or earlier, on no more than two occasions, under Article 3, Section 1(h)(ii)), the *Alston* Cap shall be increased for the following three-year period by a proportional amount. There shall be no NCAA Division I limitation on how many students at a school may be awarded an *Alston* Award. For the avoidance of doubt, nothing in this paragraph requires a Member Institution to pay *Alston* Awards, but if the Member Institution chooses to do so, this paragraph will govern how such awards are counted with regard to the Pool.

(b) ***New Athletic Scholarships.*** As a result of the elimination of scholarship limits (*see* Article 4, Section 1), Member Institutions will have the option of making incremental athletic scholarships available to student-athletes above the number currently permitted by NCAA Division I rules for a particular sport, subject to the roster limits addressed in Article 4, Section 1. The full cost-of-attendance dollar value of any new or incremental athletic scholarships—that were not previously permitted by NCAA Division I rules—up to two million five hundred thousand dollars (\$2,500,000.00) (“the Athletic Scholarship Cap”) will count against the Pool (again, in recognition of schools that award a greater number of athletic scholarships). For example, if a school is currently offering 9 scholarships in baseball, versus the 11.7 permitted, and post-Final Approval opts to award 15 scholarships in baseball, the number of new scholarships would be 3.3. Each Member Institution shall certify to the Designated Enforcement Entity whether and to what extent it has provided such new or incremental athletic scholarships. In the event that the overall value of the Pool has increased over the value of the Pool at the time of the immediately prior recalculation occurring after a three-year period (or earlier, on no more than two occasions, under Article 3, Section 1(h)(ii)), the Athletic Scholarship Cap shall be increased for the following three-year period by a proportional amount. Other than the roster limits discussed in Article 4, Section 1, there shall be no NCAA Division I limitation on how many new athletic scholarships may be awarded by a school.

(c) ***Proceeds of Third-Party Arrangements.*** If a Member Institution contracts with any individual student-athlete, directly or through a designee/subcontractor of the Member Institution (*e.g.*, a local rights holder), to act as marketing agent for that student-athlete (as opposed to contracting with the student-athlete directly), third-party payments procured for the student-athlete shall not be counted against the Pool. If the Member Institution elects to sub-license to a

third party any rights it has secured through a direct contract with any individual student-athlete, the proceeds of third-party NIL licenses or sublicenses procured for the student-athlete by the Member Institution or its designee/subcontractor for the student-athlete will not be counted against the Pool, nor will any other third-party payments made directly to a student-athlete be counted against the Pool.

(d) ***Other Personal Benefits.*** All payments to student-athletes (for NIL, institutional brand promotion, or otherwise) and personal benefits (*e.g.*, vehicles, travel expenses not permitted as of the date of Preliminary Approval by NCAA Division I, and the like) that are provided to a student-athlete or the family of a student-athlete by a Member Institution over and above the payments and personal benefits permitted by the NCAA rules as of the day of Preliminary Approval, shall be counted against the Pool. However, existing payments or benefits provided through SAF or otherwise to student-athletes or other payments currently permitted by NCAA Division I rules, including compensation or benefits related to education identified in Paragraph 2 of the *Alston* permanent injunction, dated March 8, 2019, shall not count against the Pool except for *Alston* Awards up to the *Alston* Cap.

(e) ***NCAA Payments/Benefits.*** The value of any benefits or payments provided by the NCAA itself directly to or for the benefit of student-athletes shall not count against the Pool.

**Section 4. Existing Benefits/Payments.** Nothing in this Injunctive Relief Settlement will limit, nor shall it be read to limit, the amount of existing benefits or payments currently permitted by NCAA Division I rules to be provided to student-athletes by any Member Institution (except as provided above with respect to payments and benefits counting against the Pool) and Defendants agree that during the Term (including any extension thereof) but subject to the terms of Article 4, Section 3, the NCAA will not create any rules imposing new restrictions on such existing benefits.

This provision does not, however, limit any Member Institution's or any individual conference's ability, subject to Article 4 to independently elect to eliminate or reduce (a) any and all payments or benefits currently provided to student-athletes at that Member Institution or that conference's Member Institutions or (b) any payments or benefits that may be provided in the future. For avoidance of doubt, if a Non-Defendant Conference or a Non-Defendant Conference Member Institution agrees to provide to student-athletes additional benefits permitted by NCAA Division I rules prior to their modification as part of the Injunctive Relief Settlement (such as commencing *Alston* payments for the first time), that will not trigger any reporting requirements pursuant to Article 3, Section 5.

**Section 5. Pool Payments/Benefits Reporting.** Within sixty (60) days after the close of each Academic Year during the Term, Member Institutions shall provide information to the Conference Defendants, or in the case of Member Institutions in Non-Defendant Conferences, to the NCAA, sufficient to determine the total and types of payments/benefits the Member Institutions have provided to student-athletes, including but not limited to new and incremental scholarships and payments counting toward the *Alston* Cap, that have been counted against the Pool in accordance with this Injunctive Relief Settlement. Conference Defendants and the NCAA shall thereafter file a report with the Court and provide same to Class Counsel disclosing that information.

**Section 6. Revenue Reporting & Audit Rights.**

(a) Annual MFRS data shall be provided to Class Counsel (or such other individuals/entity as Class Counsel may designate, in writing, during the Term) no later than May 15 of each year of the Injunctive Settlement unless good cause exists for delay. Class Counsel shall have the right to reasonably audit such data in accordance with this Article 3, Section 6. The

costs of any audit under this Article 6 shall be initially borne by Class Counsel, subject to Class Counsel seeking reimbursement in accordance with the fee/cost provisions set forth in Paragraphs 27-30 of the SSA. The Parties agree that Defendants shall bear no liability for the accuracy or completeness of information reported by the Member Institutions for inclusion in the MFRS data.

(b) Class Counsel shall have the right as part of their audit rights in the preceding subsection to receive an accounting from an agreed-upon accounting firm of all revenue categorized by the Member Institutions as Category 18 (“Other Operating Revenue”) so as to determine whether, in Class Counsel’s opinion, any such reported revenue is more properly reportable as one of the agreed-upon revenue categories and should therefore be included in the Shared Revenue for purposes of the Pool. Any dispute arising over the proper treatment of such revenues with respect to the Pool shall be resolved by the Court or a special master appointed by the Court.

(c) Class Counsel shall also have the right to receive an accounting from an agreed-upon accounting firm regarding whether any new broadcast agreement captured in MFRS Category (#11) (Media Rights) has a specific contractual provision setting a year-over-year rights fee escalator greater than 4% that is not contingent on future events such that the Pool growth rate calculation for that revenue category is impacted, as described in Article 3, Section 1(h).

(d) The accounting firm shall also report on any changes in the definition of the revenue categories of the MFRS Reports so as to allow Class Counsel the opportunity to confirm that there has been no reclassification of the revenues currently included in the Pool calculation to excluded revenue categories. If such reclassification occurs, the revenues shall be reallocated back to their original categories (or otherwise included in the Pool calculation), with any dispute to be resolved by the Court or a special master appointed by the Court.

(e) Any disputes between Class Counsel and the Defendants as to the proper categorizations, reclassification, or reallocation of any revenue included in the Pool shall be submitted to the Court, or a special master appointed by the Court, for resolution, pursuant to Article 6, Section 1.

## ARTICLE 4

### NCAA AND CONFERENCE RULES

**Section 1. Elimination of NCAA Division I Scholarship Limits.** All NCAA Division I athletic scholarship limits will be eliminated. The NCAA may adopt Division I roster limits which are subject to revision by the Defendants as permitted by this Injunctive Relief Settlement. Appendix B to the SSA sets forth the roster limits which the NCAA has currently chosen to adopt that apply to Member Institutions that choose to provide or facilitate payments or benefits to student-athletes as permitted by this Injunctive Relief Settlement, including but not limited to incremental scholarships permitted by Article 3, Section 3(b). All athletic scholarships will be equivalency awards. Defendants agree that any changes to NCAA Division I or conference rules on roster limits shall not result in the loss of an athletic scholarship for any then-current student-athlete receiving an athletic scholarship. Nor shall any change in roster limits result in a reduction in the current number of athletic scholarships permissible under current NCAA Division I rules in any sport. Member Institutions each maintain the right to unilaterally reduce the number of sports, the roster size, and/or the number of athletic scholarships available to student-athletes of any sport. Conferences each maintain the right to unilaterally reduce the number of sports Member Institutions within their respective conferences are required to offer, the number of sports sponsored by the conference, and/or the roster limits within their conference, subject to the limitations noted above that reductions in roster limits will not result in the loss of athletic scholarships for then-current student-athletes and that any change in roster limits shall not result in a reduction in the current number of athletic scholarships permissible under current NCAA Division I rules in any sport.

**Section 2. Existing NCAA Compensation Rules.** Except to the extent that modification or elimination is required by the terms of this Injunctive Relief Settlement, the NCAA's and conferences' existing rules limiting the amount of compensation and benefits to Division I student-

athletes may remain in effect. The Parties shall request that the Court approve all existing NCAA rules regarding compensation and benefits that may or may not be provided by Division I conferences or schools to student-athletes, revised as necessary to conform to the terms of this Injunctive Relief Settlement.

**Section 3. New NCAA and Conference Rules.** The NCAA and the Conference Defendants may ~~adopt the following additional rules before or in conjunction with Final Approval of this Injunctive Relief Settlement:~~

~~NCAA continue, and conference pass new rules prohibiting Boosters further clarifying and implementing, their existing prohibitions related to NIL transactions involving Associated Entities or Individuals. Such clarifying rule changes may include specifying that the NCAA and/or the Conference Defendants prohibit NIL payments by Associated Entities or Individuals (individually or collectively) of a Member Institution from entering into NIL licenses with or for the benefit of current or prospective student-athletes at a given Member Institution unless the license/payment is for a valid business purpose related to the promotion or endorsement of goods or services provided to the general public for profit, with compensation at rates and terms commensurate with compensation paid to similarly situated individuals with comparable NIL value who are not current or prospective student-athletes at the Member Institution.~~

~~The NCAA and the Conference Defendants may likewise adopt or affirm the following additional rules before or in conjunction with Final Approval of this Injunctive Relief Settlement:~~

(a) NCAA and conference rules governing the number of seasons/length of time student-athletes are eligible to receive benefits, including scholarships and payments, pursuant to this Injunctive Relief Settlement, including any rule capping the number of years a student-athlete may receive payments at four years, and providing that all four of those years must be played within a consecutive five-year period (with the exception that in the event of a national force

majeure event that leads to the cancellation of games, or the absence of fans, the rules may provide for an additional year to be added onto the five-year period);

(b) NCAA and conference rules requiring that student-athletes continue to make progress toward a degree while enrolled in any Member Institution in order to receive benefits pursuant to this Injunctive Relief Settlement;

(c) NCAA and conference rules, subject to Class Counsel's review and approval that shall not be unreasonably withheld, permitting student-athletes the ability to seek guidance from the Designated Enforcement Entity prior to entering into a proposed NIL contract or agreement as to whether said contract may constitute a violation of the NCAA rules affirmed, revised, or created pursuant to this Injunctive Relief Settlement;

(d) NCAA and conference rules, subject to Class Counsel's review and approval that shall not be unreasonably withheld, permitting a student-athlete to retain or regain eligibility by both (a) rescinding or modifying any agreement determined to be non-compliant with the NCAA rules affirmed, revised, or created pursuant to this Injunctive Relief Settlement and (b) returning, as necessary, any compensation or consideration received pursuant to a non-compliant agreement, in order to expunge any violation of the NCAA rules affirmed, revised, or created pursuant to this Injunctive Relief Settlement. The purpose and intent of such rule is to ensure that student-athletes have the ability to terminate and/or modify a proposed/executed NIL contract or agreement rather than risk their eligibility; and

(e) NCAA and conference rules addressing circumvention subject to the procedures set forth in Article 6, Section 3.

## ARTICLE 5

### PROHIBITED AGREEMENTS

**Section 1. Prohibited Collusive Agreements.** Conference Defendants or their Member Institutions (except as provided below with respect to conference rules) shall be prohibited from entering into agreements with each other, or with the NCAA, to limit or restrict the amount of benefits that they individually choose to provide to student-athletes at levels below those permitted by the terms of this Injunctive Relief Settlement, **other than in the event that a change in law or circumstances permits collective bargaining to take place.** In the event that a change in law or circumstances permits collective bargaining to take place, this Article 5, Section 1 shall not apply to prohibit any bona fide collective bargaining activities of the NCAA, Conference Defendants, and Member Institutions but shall otherwise remain in full force and effect. Subject to Article 10, Section 5, a violation of this provision shall be remedied by an award of appropriate damages and equitable relief solely against the involved Member Institutions, conferences, or NCAA, as determined by the Court or a special master appointed by the Court. **Notwithstanding the foregoing, individual conferences (acting through their Member Institutions) shall be permitted to adopt and enforce rules applicable to their Member Institutions regarding benefits provided or not provided to student-athletes.** Class Counsel may bring an action to enforce the terms of this provision to seek damages and equitable relief on behalf of any number of Injunctive Class members. For the avoidance of doubt, nothing in the SSA or this Injunctive Relief Settlement, or NCAA or conference rules permitted or approved by the Injunctive Relief Settlement, shall be deemed to be a collusive agreement in violation of this provision.

**ARTICLE 6**  
**ENFORCEMENT**

**Section 1. Enforcement of Injunctive Relief Settlement.**

(a) Any disputes involving any or all of the Defendants on one side and any Injunctive Class Members on the other side concerning the interpretation or enforcement of this Injunctive Relief Settlement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. For the avoidance of doubt, any disputes regarding enforcement of NCAA or conference rules against student-athletes or Member Institutions that are subject to this Injunctive Relief Settlement, including but not limited to questions of eligibility, shall be governed by Section 2 of this Article.

(b) The Court shall retain jurisdiction to resolve all disputes that may arise concerning compliance with, the validity of, interpretation or enforcement of the terms and conditions of this Injunctive Relief Settlement, including through appointment of a special master whose decisions shall be appealable to the Court unless the Parties agree in a particular dispute that the special master's ruling shall be final without further appeal. Absent any such agreement as to a particular dispute, the Parties reserve all appeal rights with respect to special master or Court determinations concerning the interpretation or enforcement of this Injunctive Relief Settlement.

(c) All claims set forth in subsection (b), immediately above, asserted on behalf of student-athletes shall be prosecuted exclusively by Class Counsel except as provided herein, and Class Counsel has the authority to exclusively monitor and enforce this Injunctive Relief Settlement on behalf of Injunctive Class Members throughout the Term as provided herein.

**Section 2. Enforcement Authority and Arbitration Process for Enforcement of NCAA/Conference Rules Implementing This Injunctive Relief Settlement**

(a) Any one or more of the NCAA, Conference Defendants, and Non-Defendant Conferences shall be permitted to (i) adopt rules and procedures consistent with and to enforce this

Injunctive Relief Settlement, (ii) require submission of information and documentation from student-athletes and Member Institutions to the NCAA or conferences or designated third parties, and (iii) enforce (including through the Designated Enforcement Entity) NCAA and conference rules implementing the terms of this Injunctive Settlement including rules to be promulgated pursuant to Article 4, by, among other penalties, declaring student-athletes ineligible for competition and/or by reducing distributions to Member Institutions that violate the terms and limitations set forth in this Injunctive Relief Settlement and/or the new or modified NCAA and conference rules.

(b) Prior to the entry of Final Approval, Class Counsel and Defendants shall meet and confer to select neutral arbitrators, whose decisions shall, to the fullest extent permitted by applicable law, be final and binding on the parties to the arbitration, to arbitrate any and all disputes regarding any discipline imposed pursuant to subsection (a) immediately above or any rule(s) promulgated pursuant to Article 4, Section 3. If an arbitrator is terminated by agreement of Class Counsel and Defendants or by the Court, she or he will continue to hear any disputes already pending before the arbitrator but may not hear any new disputes. Class Counsel and Defendants shall promptly agree upon a replacement arbitrator, whenever required. If Class Counsel and Defendants cannot agree on a replacement arbitrator within ten (10) days, they will choose the arbitrator under the alternate striking method from a list of ten (10) non-conflicted arbitrators to be provided by JAMS from its panel of neutral arbitrators in its Sports Law Practice Group.

(c) Arbitrators appointed pursuant to the preceding subsection shall serve a term of three (3) years, unless terminated earlier by agreement of Class Counsel and Defendants (or by the Court) through a written notification. A Member Institution that contests the imposition of discipline on itself or its student-athlete(s), including by directly or indirectly paying the attorneys' fees and costs of such student-athletes(s), pursuant to subsection (a) shall pay the arbitrator's reasonable fees and expenses for proceedings relating to the penalties being challenged. Student-

athletes contesting any discipline shall not be charged any arbitration fees or expenses regardless of whether a Member Institution contests the imposition of discipline.

(d) All arbitrations under this Section 2 shall be completed on an expedited basis, but in no more than forty-five (45) days after commencement of proceedings unless the arbitrator finds good cause for having a longer schedule. During the pendency of an arbitration, any enforcement of any discipline imposed in connection with the violation that is subject to the arbitration shall be stayed; provided, however, that the arbitrator shall have the ability to lift any such stay for good cause shown. The decision of the arbitrator shall be final and binding to the fullest extent permitted by applicable law. The arbitrator may, in an appropriate case, order the production of documents that are determined to be necessary for a fair adjudication of the dispute. Witnesses may be called at the arbitration and the parties may be represented by counsel of their choice at their own expense. The arbitrator shall promptly issue a written award embodying his or her decision. Defendants may agree with Class Counsel upon procedural rules governing the arbitration process, provided that all arbitration rules must be consistent with this Section 2 and must apply uniformly to all student-athletes and all Member Institutions that choose to provide or facilitate payments or benefits to student-athletes as permitted by this Injunctive Relief Settlement, including but not limited to incremental scholarships permitted by Article 3, Section 3(b).

(e) If student-athletes seek to challenge any discipline imposed on them in connection with the terms of this Injunctive Relief Settlement, they shall be required to engage in the arbitration process set forth in this Section 2. If Member Institutions seek to challenge any discipline imposed on them or their student-athletes in connection with the terms of this Injunctive Relief Settlement, they shall be required to engage in the arbitration process set forth in this Section 2, to the extent such an arbitration requirement is consistent with the state law of the institution involved in the dispute.

(f) Student-athletes will have the right to be represented by counsel of their choosing in any such arbitration regarding the Injunctive Class Member's individual interests. Class Counsel shall promptly receive copies of all decisions by the arbitrator.

**Section 3. NCAA or Conference Rules Relating to Circumvention.** The Defendants may adopt rules that prohibit any transaction, payment, or agreement designed to defeat or circumvent, and with the effect of defeating or circumventing, the intention of the Parties as reflected in the terms of this Injunctive Relief Settlement. Class Counsel shall receive notice of any such new rules to prevent circumvention and shall have thirty (30) days to file an objection to such rules with the Court or a special master appointed by the Court. In the event of such an objection, the proposed circumvention rule(s) shall be stayed for four (4) months pending judicial resolution. Upon receiving an objection from Class Counsel, Defendants shall reasonably cooperate with requests for documents in the possession of Defendants sufficient to show the reasons for adopting the rule, the deliberations on the rule, and any committee reports or minutes of meetings relating to the rule, and shall produce those documents to Class Counsel as soon as reasonably possible, but in no event later than two (2) weeks from the date of the objection. For the avoidance of doubt, the procedure set forth in this Article 6, Section 3, shall apply only to circumvention rules. If a circumvention rule is adopted and then enforced against any Member Institution or student-athlete, such discipline may be appealed by the student-athlete or Member Institution pursuant to the arbitration procedure set forth in Article 6, Section 2. Class Counsel may file an amicus brief and present argument in such a proceeding upon a determination by the arbitrator, or if Class Counsel believes, that the interests of the Injunctive Class may be adversely impacted by the outcome of the proceeding or that the circumvention arguments being presented are inconsistent with the terms of the Injunctive Relief Settlement; provided, however, that Class Counsel may seek reimbursement of fees and costs, in accordance with Paragraph 27 of the SSA, relating to its participation in no more than two (2) such arbitrations in an Academic Year.

## ARTICLE 7

### LEGISLATION & ALTERNATIVE STRUCTURES

**Section 1. Legislation.** Class Counsel will use reasonable efforts to support the portions of any proposed federal or state legislation implementing/codifying this Injunctive Relief Settlement, including reasonably cooperating to support antitrust immunity for conduct undertaken by Defendants in compliance with or to implement the terms of this Injunctive Relief Settlement during the Term or any court-approved extension thereof, and preemption of any state law existing before or as of the date of Final Approval in conflict with this Injunctive Relief Settlement. Class Counsel will not oppose, advocate against, lobby in any way against, or otherwise attempt or seek to undermine legislation implementing/codifying this Injunctive Relief Settlement. Class Counsel further agree, during the Term, to take no position and thus be neutral on any proposed, pending, or future local (*e.g.*, city/county), state, or federal legislation provisions which would provide student-athletes with benefits in addition to those permitted by this Injunctive Relief Settlement. Class Counsel will also take no position, and thus be neutral, in all instances and in all forums and venues, on the issue of whether student-athletes should be considered/deemed “employees” or whether collective bargaining should be permitted for compensation of student-athletes. However, if such collective bargaining for student-athletes is permitted in the future, Class Counsel shall not be precluded from representing any organization engaged in such collective bargaining, including in support of such bargaining activities.

**Section 2. Alternative Structures.** Nothing in this Injunctive Relief Settlement shall limit or interfere with the ability of student-athletes and Defendants or Defendants’ Member Institutions and Non-Defendant Conferences or Non-Defendant Conference Member Institutions to explore and implement alternative structures for providing benefits to student-athletes, including but not limited to collective bargaining in the event that a change in law or circumstances permits such collective bargaining to take place. In such a circumstance, the benefits permitted under this Injunctive Relief Settlement may be made part of any collectively bargained compensation

package or alternative structure, subject to the negotiations of the relevant parties and all applicable laws, and this Injunctive Relief Settlement shall not preclude the parties to such bargaining from agreeing upon additional, expanded or different benefits than those permitted by this Injunctive Relief Settlement. Relatedly, if some or all student-athletes are characterized as and/or definitively determined to have employee status under state or federal law and any Defendant or Releasee is required to pay any monies/provide any benefits to student-athletes, or student-athletes otherwise receive benefits as a result, beyond the monies and benefits provided in this Injunctive Relief Settlement, the Defendants shall have the option, but not the obligation, to seek to terminate or modify the injunction contemplated by this Injunctive Relief Settlement or the terms of this Injunctive Relief Settlement (with all releases of Released Claims remaining valid and no claims accruing during the period of the effectiveness of the injunction), but with Class Counsel reserving their rights to oppose any such termination or modification of the injunction contemplated by this Injunctive Relief Settlement or the terms of this Injunctive Relief Settlement.

## ARTICLE 8

### NAME, IMAGE & LIKENESS

#### Section 1. Broadcast & Promotional NIL

(a) Plaintiffs and the Injunctive Classes do not and will not contest during the Term the rights asserted by the Defendants and their Member Institutions, and entities to which rights to broadcast and otherwise distribute audio and video of collegiate games and other competitive collegiate athletic events are licensed by the Defendants and their Member Institutions, to (i) telecast, broadcast, or otherwise distribute or transmit, on a live, delayed, and/or archived basis, in any and all media now known or hereafter developed, any and all college games and competitive events, including clips and highlights thereof, (ii) produce, license, offer for sale, sell, market, or otherwise distribute or transmit on a live, delayed, and/or archived basis, broadcasts and other electronic or digital distributions of any such collegiate athletic games or competitive athletic events, and clips and highlights thereof, in any and all media now known or hereafter developed, including, but not limited to electronic or digital media, and (iii) use, employ, or otherwise transmit or publish student-athletes' NIL for the purpose of promoting the telecasts, broadcasts, and other electronic or digital distributions of games and competitive events, including distribution of clips and highlights thereof, as referenced in this paragraph.

(b) Nothing herein shall be construed to confer, during or after the Term, any right or authority to use a student-athlete's name, image or likeness in a manner that constitutes an endorsement by that student-athlete of a third-party brand, product, or service ("Endorsement") other than in connection with promotion of games or events that have title sponsors (by way of example only, events such as the "Allstate Sugar Bowl" or the "Las Vegas Bowl presented by GEICO"), including games or events that are organized by or affiliated with a conference with a title sponsor. Nothing herein shall be construed to grant any publicity rights for use in licensed consumer products, whether traditional or digital (*e.g.*, video games, trading cards, apparel). For

purposes of clarity, and without limitation, it shall not be an Endorsement to use, or authorize others to use, including without limitation, in third-party advertising and promotional materials, footage and photographs of a student-athlete's participation in college athletic games or competitive athletic events (including clips and highlights thereof) as long as the clips and highlights do not prominently feature an individual student-athlete in connection with a third party product or service, other than in connection with promotion of games or events that have title sponsors or are organized by or affiliated with a conference with a title sponsor as described in this section.

**Section 2. Broadcast NIL Reservation.** The Parties reserve all rights as to the existence, or non-existence, of broadcast name-image-and-likeness (“BNIL”) rights (including the use of a person’s NIL in or in connection with a broadcast, telecast or other media distribution or transmission, including, without limitation, all forms of television, radio, telephone, internet, and any other communications media, forms of reproduction and other technologies, whether presently existing or not, anywhere in the world, whether live or on any form of delay, including, without limitation, network, local, cable, direct broadcast satellite, and any form of pay television, and all other means of distribution and exploitation, whether presently existing or not and whether now known or hereafter developed). To the extent that any court of competent jurisdiction determines and/or to the extent that any relevant legislative body passes a law providing that student-athletes have such rights, then the Defendants and their Member Institutions, and entities to which rights to broadcast and otherwise distribute college athletic games and competitive athletic event are licensed by the Defendants and their Member Institutions, shall be deemed to have been granted a license to exercise all rights enumerated in Article 8, Section 1, subject to the limitations set forth in that section, for the duration of the Term.

## ARTICLE 9

### TERM

**Section 1. Term.** The term of this Injunctive Relief Settlement shall be ten (10) Academic Years after the date of Final Approval of the SSA by the Court.

**Section 2. Potential Extension.** The Parties will negotiate in good faith, prior to the conclusion of the Term, as to whether to jointly seek an extension of the Term upon its expiration on terms to be agreed upon and approved by the Court, after notice and an opportunity to object by the members of the Injunctive Relief Settlement Class.

**Section 3. Mutual Reservation of Rights.** Upon the expiration or termination of this Injunctive Settlement, the Parties shall be free to make any available argument that any conduct occurring after the expiration or termination of this Injunctive Settlement is or is not then a violation of the antitrust laws or any other laws.

## ARTICLE 10

### MISCELLANEOUS

**Section 1. Conflicts.** The provisions of this Injunctive Relief Settlement supersede any conflicting provisions in any rule or policy, or any other document, adopted by Defendants or any of their Member Institutions, affecting the matters addressed herein.

**Section 2. Implementation.** The Parties will use their best efforts to faithfully carry out the terms and conditions of this Injunctive Relief Settlement.

**Section 3. Time Periods.** The specification of any time period in this Injunctive Relief Settlement shall include any non-business days within such period, except that any deadline falling on a Saturday, Sunday, or Federal Holiday shall be deemed to fall on the following business day.

**Section 4. Delivery of Documents.** The Parties, shall, upon the request of any Party hereto, execute and deliver such further documents and instruments to take such further steps as are reasonably necessary and appropriate to implement and effectuate the purposes of this Injunctive Relief Settlement.

**Section 5. Eleventh Amendment and Sovereign Immunity.** Plaintiffs acknowledge that Defendants do not have the authority to waive or compromise any immunity or protection of any Member Institution pursuant to the Eleventh Amendment to the United States Constitution or any other applicable provisions of the law of the state in which the Member Institution is located. Notwithstanding the above, Plaintiffs and Class Counsel reserve their rights as to whether sovereign immunity has any application to this Injunctive Relief Settlement.

**Section 6. Compliance with Protective Order.** All filings submitted to the Court or a special master appointed by the Court relating to or in connection with this Injunctive Relief Settlement shall comply with the protective order entered in the Action (ECF 136), which shall remain in full force and effect for the duration of the Term.

2024 Agreed-Upon Procedures



INTRODUCTION ..... 3

BACKGROUND INFORMATION ..... 4

1. NCAA LEGISLATION ..... 4

    a. Division I..... 4

    b. Division II..... 5

    c. Division III ..... 5

2. INTERPRETATIONS ..... 5

    a. Objectives of Agreed-Upon Procedures..... 5

    b. Organization of Intercollegiate Athletics Programs ..... 7

    c. The Independent Accountant..... 8

AGREED-UPON PROCEDURES ..... 10

1. Athletics Department Statement of Revenues and Expenses ..... 11

2. Minimum Compliance Agreed-Upon Procedures ..... 11

3. Minimum Agreed-Upon Procedures..... 12

    a. Institutional Representations ..... 13

    b. Report on Agreed-Upon Procedures ..... 13

        i. Application of Agreed-Upon Procedures..... 13

        ii. Presentation of the Statement of Revenues and Expenses ..... 13

        iii. Notes and Disclosures ..... 13

MINIMUM AGREED-UPON PROCEDURES FOR AFFILIATED AND OUTSIDE ORGANIZATIONS ..... 15

    a. Supplemental Procedures for Affiliated and Outside Organizations ..... 15

APPENDIX A | Revenue Categories ..... 17

APPENDIX B | Expense Categories..... 22

APPENDIX C | Other Reporting Items ..... 27

APPENDIX D | Minimum NCAA Agreed-Upon Procedures for Revenue, Expenses and Other Reporting Items..... 28

APPENDIX E | Independent Accountant’s Report on Agreed-Upon Procedures..... 41

APPENDIX F | Common Questions and Answers ..... 43

APPENDIX G | NCAA Online Financial Reporting Links ..... 45

## INTRODUCTION

NCAA constitution, Article 2(D)(1)(c) states that all members of the NCAA must submit annually its financial data as determined by the division detailing operating revenues, expenses and capital relating to the intercollegiate athletics program.

### Division I:

As mandated under the provisions of NCAA Bylaw 20.2.4.17, NCAA Division I member institutions are required to submit financial data detailing operating revenues, expenses, and capital related to its intercollegiate athletics program to the NCAA on an annual basis. This financial data is subject to agreed-upon procedures performed by a qualified independent accountant and must be presented to the president or chancellor prior to submission to the NCAA via the Membership Financial Reporting System, Bylaw 20.2.4.17.1.

### Division II:

As mandated under Bylaw 7.3.1.5.22.1, at least once every three years, NCAA Division II member institutions are required to perform an expenses and revenues review related to its intercollegiate athletics programs which is subject to the agreed-upon procedures. The expenses and revenues review shall be performed by a qualified independent accountant and must be presented to the president or chancellor.

In addition, per the NCAA Constitution Article 2(D)(1)(c), institutions are required to submit financial data annually to the NCAA via the Membership Financial Reporting System. The data collected will be stored within the Institutional Performance Program (IPP) for comparison and reporting purposes.

### Division III:

Division III members are provided with two methods in which to meet the constitutional requirement of Article 2(D)(1)(c).

1. Division III institutions can submit financial data annually to the NCAA via the Membership Financial Reporting System for Institutional Performance Program (IPP) purposes. Per the regular financial audit requirements, revenue and expenditures associated with outside groups or individuals shall be included in this audit.
2. Division III institutions can submit the EADA Certificate of Completion to the NCAA via the Membership Financial Reporting System.

The NCAA may use the data collected through the Membership Financial Reporting System to support its research efforts. The NCAA will maintain its policy of not releasing information submitted by individual institutions; only the aggregate results by NCAA division will be made available to membership.

## **BACKGROUND INFORMATION**

### **1. NCAA LEGISLATION**

The NCAA agreed-upon procedure reporting legislation for each of the three membership divisions are contained in each division's manual:

#### **a. Division I**

Bylaw 20.2.4.17. "An active member institution shall submit financial data detailing operating revenues, expenses and capital related to its intercollegiate athletics program to the NCAA on an annual basis in accordance with the financial reporting policies and procedures. The required data shall include, but is not limited to, the following:

- (a) All expenses and revenues for or on behalf of an institution's intercollegiate athletics program, including those by any affiliated or outside organization, agency or group of individuals;
- (b) Salary and benefits data for all athletics positions. The data shall include base salary, bonuses, endorsements, media fees, camp or clinic income, deferred income and other income contractually guaranteed by the institution;
- (c) Capital expenditures (to be reported in aggregate for athletics facilities), including capitalized additions and deletions to facilities during the reporting period, total estimated book value of athletically related plant and equipment net of depreciation, total annual debt service on athletics and university facilities and total debt outstanding on athletics and university facilities;
- (d) Value of endowments at fiscal year-end that are dedicated to the sole support of athletics;
- (e) Value of all pledges at fiscal year-end that support athletics; and
- (f) The athletics department fiscal year-end fund balance."

Bylaw 20.2.4.17.1. "The report shall be subject to annual agreed-on verification procedures approved by the membership (in addition to any regular financial reporting policies and procedures of the institution) and conducted by a qualified independent accountant who is not a staff member of the institution and who is selected by the institution's chancellor or president or by an institutional administrator from outside the athletics department designated by the chancellor or president. The independent accountant shall verify the accuracy and completeness of the data prior to submission to the institution's chancellor or president and the NCAA. The institution's chancellor or president shall certify the financial report prior to submission to the NCAA. "

**b. Division II**

Bylaw 7.3.1.5.22.1. “At least once every three years, all expenses and revenues for or on behalf of a Division II member institution's intercollegiate athletics programs, including those by any affiliated or outside organization, agency or group of individuals (two or more), shall be subject to agreed-on procedures approved by the Division II membership (in addition to any regular financial reporting policies and procedures of the institution) conducted for the institution by a qualified independent accountant who is not a staff member of the institution and who is selected either by the institution's president or chancellor or by an institutional administrator from outside the athletics department designated by the president or chancellor. If, within the last three years, the institution has conducted an overall institutional audit that includes a financial audit of all athletics department funds using the agreed upon procedures, then the institution is not required to perform a separate financial audit of all athletics department expenditures. An institution is not required to use the agreed upon procedures in years outside the once in every three-year cycle.”

Bylaw 7.3.1.5.22.1.1. “The report created pursuant to the approved procedures shall be completed and presented to the president or chancellor on or before January 15 after the end of the institution's fiscal year.”

Effective August 1, 2025. Bylaw 7.3.1.5.23 “Financial Data Requirement, an active member institution that fails to submit its financial data per NCAA Article 2-D-1-c by the applicable deadline, in a format approved and administered by the Membership Committee, shall forfeit Division II Institutional Equal Distribution Funds for the following academic year.”

Effective August 1, 2025. Bylaw 7.3.1.5.23.1 “The Membership Committee may waive the requirement of Bylaw 7.3.1.5.23 if it deems that unusual circumstances warrant such action. The decision of the Membership Committee shall be considered final.”

**c. Division III**

Bylaw 20.14.5.3. “All expenditures and revenue for or on behalf of a Division III member institution's intercollegiate athletics programs shall be subject to the institution's regular financial audit. In particular, additional revenue and expenditures associated with outside groups or individuals shall be included in this audit.”

**2. INTERPRETATIONS**

**a. Objectives of Agreed-Upon Procedures**

The institution’s agreed-upon procedures report shall be presented to the president or chancellor by the independent accountant. The report’s primary purpose is to ensure that the president or chancellor is made aware of all financial activity (both internal and external) for athletics purposes and to assist the institution in exercising control over financial activity made by or on behalf of the intercollegiate

athletics program. The report should not be filed with the NCAA national office. However, should information supplied as a result of this initiative raise questions or prompt concerns about the proper application of NCAA legislation, an institution's president or chancellor may wish to contact the NCAA administrative services staff for assistance.

The report's secondary purpose is to ensure the accuracy of the data the institution is submitting for sports sponsorship, Pell grants and grants-in-aid, which determines the calculation of several Division I NCAA Revenue Distributions.

The agreed-upon procedures scope of work shall include the reporting of revenue and expenses required in NCAA financial reporting information. The definitions used in the agreed-upon procedures provide a consistent means of reporting intercollegiate athletics finances and will provide the presidents or chancellors and other campus decision makers of our member institutions with empirical data to assist them in making their formal decisions.

Data available for the agreed-upon procedures may vary among institutions as a result of differences in athletics programs' organizational structure, financial resources and accounting and budgetary methods. Information that may prove particularly useful (depending on circumstances noted above) to institutions in evaluating the level of institutional control includes:

- (1) A comparison of actual revenues and expenses related to the intercollegiate athletics program as defined on pages 17-26 (from both internal and external sources) to amounts budgeted;
- (2) The nature of institutional internal controls that affect operations of the intercollegiate athletics program, and
- (3) The relationship of expenses for or on behalf of intercollegiate athletics by affiliated and outside organizations (e.g., booster groups, alumni organizations, independent or affiliated foundations, supporting organizations) to institutional expenses for similar purposes and the nature of internal controls in place to monitor the financial activities of such affiliated and outside organizations.
  1. Affiliated Organization: An organization that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an organization (in this case the institution and/or intercollegiate athletics).
  2. Supporting Organization: An organization that provides supporting activities, such as management and general activities, fundraising activities or membership development activities, to a not-for-profit organization (in this case a not-for-profit institution

and/or intercollegiate athletics).

The financial information, the existence and appropriateness of the institution's internal controls are the responsibility of the institution. Independent accountants, through the application of agreed-upon procedures, should not provide an opinion or assurance on the reliability of financial information generated by the institution, the existence and functioning of appropriate internal controls. The agreed-upon procedures report presents the findings of the agreed-upon procedures performed by the independent accountant. An understanding of this distinction in role and responsibility is crucial to the president or chancellor's effective use of the information provided as part of the agreed-upon procedures performed.

The NCAA has developed the agreed-upon procedures set forth in this document with the assistance of the National Association of College and University Business Officers (NACUBO) and Association of College and University Auditors (ACUA). These procedures seek to provide flexibility in complying with the provision of Bylaw 20.2.4.17. At a minimum, the institution's president or chancellor should seek information considered consistent with the legislation's purpose and the requirements of professional auditing literature, recognizing reasonable cost and benefit considerations.

An institution's president or chancellor also may request additional information from the institution's athletics department, affiliates and outside groups, as well as the performance of additional agreed-upon procedures in agreement with the independent accountants. Each institution's president or chancellor should consider carefully what approach best serves the institution's needs in evaluating institutional control. The president or chancellor may include a formal assessment of internal controls over intercollegiate athletics programs financial processes.

The independent accountants will not review or include in their reports information concerning the institution's compliance with NCAA legislation. Responsibility for assuring compliance with NCAA legislation is the ultimate responsibility of the institution's president or chancellor, and the information provided as part of the agreed-upon procedures report is intended to assist president or chancellors in their efforts to assure institutional compliance.

While the detection of improper application of NCAA legislation is not the primary function of these procedures, the independent accountants should be alert nonetheless for situations or transactions that may indicate the existence of such conditions. If, during the course of executing the procedures, the independent accountant becomes aware of acts that may indicate a violation of NCAA legislation, the independent accountant shall immediately report the violation to the institution's president or chancellor.

**b. Organization of Intercollegiate Athletics Programs**

Intercollegiate athletics programs vary significantly in scope and complexity

among institutions. Financial reporting procedures and controls also vary. For example, some institutions clearly have segregated intercollegiate athletics from other institutional athletics programs and physical education while at other institutions, these activities are integrated with the institution's administrative structure and accounting records.

Likewise, the extent to which institutions receive cash or in-kind contributions from affiliated and outside organizations and the method by which such contributions from affiliated and outside organizations are included in the institution's athletics department's financial statements vary considerably. Institutional accounting practices also differ in areas such as indirect facilities and administrative support, grants-in-aid costs and student-activity fees. Institutions and their independent accountants should be aware of these differences among programs and recognize that NCAA legislation does not mandate particular organizational structure or specific budgetary approaches.

For purposes of these procedures, as applicable, the independent accountant (or, in Division III, the institution's accountant) shall include certain financial information of the following organizations, agencies and groups within the agreed-upon procedures:

- (1) Booster organizations established by or on behalf of an intercollegiate athletics program. For the purposes of this legislation, a booster group may be defined as any organization that has as its principal, or one of their principal purposes, the generating of moneys, goods or services for or on behalf of an intercollegiate athletics program, or the promotion of said program through other means;
- (2) Independent or affiliated foundations or other organizations that have as a principal, or one of their principal purposes, the generating or maintaining of grants-in-aid or scholarship funds, gifts, endowments, or other moneys, goods or services to be used primarily by the intercollegiate athletics program, and
- (3) Alumni organizations that have as a principal, or one of their principal purposes, the generating of moneys, goods or services for or on behalf of an intercollegiate athletics program and that contribute moneys, goods or services directly to an intercollegiate athletics program, booster group, or independent or affiliated foundation as previously noted.

**c. The Independent Accountant**

In Divisions I and II, the agreed-upon procedures report is required to be conducted by an independent accountant who is not an institutional staff member. This requirement is not intended to question the ability or integrity of institutional accountants or auditors, but rather to emphasize that this is a separate procedure for specific NCAA compliance purposes and to further protect the institution from

inferences that the agreed-upon procedures were not objective. In Division III, an independent accountant is not required.

For the purposes of this legislation in Divisions I and II, an individual employed by the state (or by a state university system) to perform audits for that state's colleges and universities (or for the colleges and universities within a state university system) is considered to be an independent accountant, provided the individual is not a regular employee of the institution. The procedures undertaken by state auditors in the performance of their duties should meet the minimum standards set forth in these agreed-upon procedures applicable to the revenues and expenses of all independent booster or support organizations. If state auditors are unable to perform those procedures, the president or chancellor is required to engage an independent accountant to satisfy these procedures. The approach required by the independent accountant to satisfy these procedures will depend on the scope of the state auditors work and the ability and willingness of the independent accountant to rely on the work performed by the state auditors.

Work performed by internal auditors at Division I and II institutions, even though their responsibility includes an annual financial audit for the entire institution (including intercollegiate athletics and institution-controlled affiliated or outside organizations), would not meet the requirements of this legislation. Internal auditors may prepare schedules and accumulate data or provide other information for the practitioner's use in performing the agreed-upon procedures. Accordingly, independent accountants may use work performed by internal auditors. However, it would be inappropriate for the independent accountant to agree to merely read the internal auditors' report solely to describe or repeat the findings, take responsibility for all or a portion of any procedures performed by the internal auditors by reporting those findings as the practitioner's own, or report in any manner that implies shared responsibility for the procedures with the internal auditors.

## AGREED-UPON PROCEDURES

Depending on the institution's existing level of agreed-upon procedures and the organizational structure of the institution's intercollegiate athletics programs and related affiliated or outside organizations, there are several approaches that the independent accountant may use to comply with the agreed-upon procedure requirements for Division I and II institutions. [Note: In Division III, the completion of the institution's regular financial audit shall satisfy the requirements of Bylaw 20.14.5.3, provided that all expenditures and revenue for or on behalf of a Division III member institution's intercollegiate athletics programs shall be subject to the institution's regular financial audit. In particular, additional revenue and expenditures associated with outside groups or individuals shall be included in this audit.]

Work performed by an independent auditor as part of a Division I or II institution-wide financial audit would comply with the terms of this legislation if the work performed by the independent auditor relative to the institution's department of intercollegiate athletics conforms to the requirements set forth in the section entitled "Minimum Agreed-Upon Procedures." In using this approach, the independent auditor shall also conduct certain minimum agreed-upon procedures related to the revenues and expenses of affiliated and outside organizations that are not under the accounting control of the institution. See the "Minimum Agreed-Upon Procedures for Affiliated and Outside Organizations" section for details. Affiliated and outside organizations (e.g., booster clubs, affiliated foundations and alumni groups) are considered to be under the accounting control of the institution when all activities of the organization (including revenues and expenses) are recorded on the books and records of the institution and are subject to the internal control structure. Alternatively, where an institution-wide agreed-upon procedure has been performed, the president or chancellor may elect to comply with these agreed-upon procedures by engaging the independent auditor to perform separate agreed-upon procedures as discussed in the next paragraph.

In the event that an institution-wide independent audit has not been conducted, or the athletics department functions as a separate legal or accounting entity (e.g., a separately incorporated athletics foundation), a Division I or II institution would comply with the terms of this legislation by engaging an independent accountant to perform these agreed-upon procedures on the statement. To the extent that activities of affiliated and outside organizations are under the accounting control of the institution, those revenues and expenses shall be included in the statement that the independent accountant applies these agreed-upon procedures against. Otherwise, activities of affiliated and outside organizations shall be subject to minimum agreed-upon procedures as set forth in the section entitled "Minimum Agreed-Upon Procedures for Affiliated and Outside Organizations."

**This section describes the minimum level of procedures considered to be necessary to achieve the objectives of this legislation.**

**1. Athletics Department Statement of Revenues and Expenses**

To provide adequate information for the independent accountant to execute these agreed-upon procedures, the institution must prepare the statement. The statement reports the revenues and expenses of the intercollegiate athletics programs as recorded on the general ledger of the institution. Please note that expenses on behalf of an institution's athletics programs by affiliated and outside organizations not under the accounting control of the institution shall be included in the statement and subject to the agreed-upon procedures set forth in the section entitled "Minimum Agreed-Upon Procedures for Affiliated and Outside Organizations."

Factors that influence the classification of revenues, expenses and major programs in the statement include:

- a. The internal account structure of the reporting institution's intercollegiate athletics program;
- b. The institution's usual treatment of indirect facilities and administrative support related to athletics, and
- c. The degree to which institutional funds or state appropriations are earmarked or budgeted by the institution for athletics and generally considered to be a part of the department's operating revenue. More detailed discussion of revenue and expenditure classifications is set forth separately in Appendices A thru C.

The institution shall prepare the statement using the basic accounting and revenue recognition principles set forth in the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide entitled "Not-for-Profit Organizations" (the "NFP Audit Guide") and in the NACUBO publication entitled "College and University Business Administration." Please note that the statement presents an excess (deficiency) of revenues over (under) expenses but does not present any fund or net asset balances. In addition, changes in loan, endowment or plant funds related to intercollegiate athletics shall not be included in the statement. Significant additions to restricted funds related to intercollegiate athletics, as well as significant changes to endowment and plant funds, shall be disclosed separately in the notes to the statement.

After the institution has prepared the statement, the independent accountant shall meet with the institution's president or chancellor (or his or her designees) to identify areas of significant interest and specific agreed-upon procedures related to both internal controls and other specified areas.

**2. Minimum Compliance Agreed-Upon Procedures**

The institution, through discussions with the independent accountant, shall identify aspects of the institution's internal control structure unique to the intercollegiate athletics department. Consideration should be given to departmental organization, control consciousness of staff, use of internal auditors in the department, competency of personnel, adequate safeguarding and control of records and assets, controls over

interaction with the information technology department, and other relevant matters.

The president or chancellor may include a formal assessment of internal controls over intercollegiate athletics programs financial processes. The independent accountant may test the internal control procedures unique to intercollegiate athletics and internal control procedures for the athletics department. In those situations where the institution's independent accountant performed tests of controls in connection with the audit of the institution's financial statements, the independent accountant may expand the scope of these tests of controls to specifically include transactions from the intercollegiate athletics department.

Regardless of the situation, the independent accountant shall test specific elements of the control environment and accounting systems that are (1) are unique to intercollegiate athletics and (2) have not been addressed in connection with the audit of the institution's financial statements (e.g., the system of accounting for revenues from ticket sales).

Finally, the independent accountant shall perform agreed-upon procedures related to the institution's procedures for gathering information on the nature and extent of affiliated and outside organization activity for or on behalf of the institution's intercollegiate athletics program. The institution must provide the independent accountant with the institution's procedures for gathering information on the nature and extent of affiliated and outside organization activity for on behalf of the institution's intercollegiate athletics program. The independent accountants will then test those procedures. After completing these procedures, independent accountants shall report their findings to the president or chancellor in a format similar to that outlined in Appendix E.

### **3. Minimum Agreed-Upon Procedures**

To identify unusual items, the NCAA has developed minimum agreed-upon procedures for independent accountants to use regarding the accuracy of revenues and expenses of intercollegiate athletics programs. For a complete listing of the minimum agreed-upon procedures, see the sections entitled "Minimum Agreed-Upon Procedures Program for Revenues" and the "Minimum Agreed-Upon Procedures Program for Expenses" in Appendix D to be performed by the independent accountant to comply with this legislation.

The minimum agreed-upon procedures are intended to indicate the nature of the procedures to be performed on the institution's financial systems and records. The institution and their independent accountants should conform to such procedures as appropriate for the institution's systems and records, as well as to professional practice and reporting standards.

Upon approval of the institution, the minimum agreed-upon procedures performed may be tailored by the independent accountant based upon the specific areas of significance to the institution. The institution should keep the objective of the minimum agreed-upon procedures in mind when determining the sufficiency of the procedures to be performed.

The institution's president or chancellor may engage the independent accountant to perform supplemental agreed-upon procedures. The independent accountant shall document the scope of the supplemental agreed-upon procedures requested by the president or chancellor in an engagement letter signed in advance by the institution's president or chancellor. The institution, together with the independent accountant, shall determine the extent of the supplemental agreed-upon procedures to be performed.

**a. Institutional Representations**

In an engagement to apply agreed-upon procedures to certain financial and other information of the institution, the independent accountant shall obtain written representations from the institution's management. These representations may be tailored to cover specific assertions and matters unique to the intercollegiate athletics department (e.g., completeness of the schedule of intercollegiate athletics activities, institutional compliance with NCAA legislation and a listing of all known affiliated and outside organizations reported to the independent accountant).

**b. Report on Agreed-Upon Procedures**

**i. Application of Agreed-Upon Procedures**

The independent accountants' report on agreed-upon procedures applied to the institution should be in the form of procedures and findings. Among other things, the report should have a title that includes the word "independent" and identify the specified parties, the subject matter, and the procedures performed (and findings). See Appendix E for a listing of the required elements for a report on agreed-upon procedures. Examples of reports concerning agreed-upon procedures applied to institution's statement and affiliated and outside organizations' records are included as Appendix E.

**ii. Presentation of the Statement of Revenues and Expenses**

The basis of presentation of the statement will vary among institutions. As a result, the institution's statement may be presented in conformity with accounting principles generally accepted in the United States of America (GAAP) or with a comprehensive basis of accounting other than GAAP.

**iii. Notes and Disclosures**

- (a) Each individual contribution of moneys, goods or services received directly by an intercollegiate athletics program from any affiliated or outside supporting organization, agency or individuals (e.g., contributions by corporate sponsors) that constitutes 10 percent or more of all contributions received for intercollegiate athletics during the reporting period shall be disclosed in the notes to the statement of athletics department revenues and expenses (the "statement") and included in the agreed-upon procedures report. Disclosure of the source of funds, goods and services, as well as the value associated

these items, shall also be made within the notes to the statement. In addition, as part of the minimum agreed-upon procedures, the independent accountant shall obtain and review documentation for each such contribution.

- (b) A description of the institution's policies and procedures for acquiring, approving, depreciating, and disposing of intercollegiate athletics-related assets, shall be included in the notes to the statement.
- (c) The independent accountant shall also obtain repayment schedules for all outstanding intercollegiate athletics debt maintained by the institution during the reporting period. At a minimum, the independent accountant shall recalculate annual maturities (consisting of principal and interest) provided in the schedules obtained. The independent accountant shall then agree the total annual maturities to documentation and the institution's general ledger, as applicable. The repayment schedule(s) shall be included in the notes to the statement.

## **MINIMUM AGREED-UPON PROCEDURES FOR AFFILIATED AND OUTSIDE ORGANIZATIONS**

Following are minimum agreed-upon procedures that independent accountants and institutions shall use in applying agreed-upon procedures related to expenses for or on behalf of intercollegiate athletics programs by affiliated and outside organizations not under the institution's accounting control. The results of these procedures may be reported and included within the agreed-upon procedures report on the institution. See Appendix E.

1. The institution shall identify all intercollegiate athletics-related affiliated and outside organizations and obtain those organizations' statements for the reporting period. Once the institution has made these statements available, the independent accountant shall agree the amounts reported in the statement to the organization's general ledger or, alternatively, confirm revenues and expenses directly with a responsible official of the organization. In addition, the institution shall prepare a summary of revenues and expenses for or on behalf of intercollegiate athletics programs affiliated and outside organizations to be included with the agreed-upon procedures report.
2. The independent accountant shall obtain and review the audited financial statements of the organization and any additional reports regarding internal control matters if the organization is audited independent of the agreed-upon procedures required by NCAA legislation. The institution's independent accountant shall also inquire of institutional and organizational management as to corrective action taken in response to comments concerning internal control structure (if any).

The institution may tailor these procedures based upon the areas of significance to the institution. The institution should keep the objective of the agreed-upon procedures in mind when determining the sufficiency of the procedures to be performed.

### **a. Supplemental Procedures for Affiliated and Outside Organizations**

- (1) Compare and agree a sample of operating revenue categories reported in the organization's statement during the reporting period to supporting schedules provided by the organization;
- (2) Compare and agree a sample of operating revenue receipts obtained from the above operating revenue schedule to adequate supporting documentation;
- (3) Compare and agree each operating expense category reported in the organization's statement during the reporting period to supporting schedules provided by the organization;
- (4) Compare and agree a sample of operating expenses obtained from the above operating expense supporting schedules to adequate supporting documentation;

- (5) Directly confirm cash balances recorded at the end of the reporting period by the organization and review the related year-end bank reconciliation(s);
- (6) Obtain and inspect minutes of the organizations' governing bodies during the reporting period;
- (7) Select a sample of financial transactions discussed in the minutes and compare and agree each selection to the organizations' accounting records, as applicable, and
- (8) Obtain documentation of the internal controls in place surrounding revenues and expenses related to the organization.

## APPENDIX A | 2024 Revenue Categories

Sources of revenue for the athletics program will vary among institutions; however, typical sources of intercollegiate athletics revenues, each followed by a comprehensive definition, are outlined below:

| ID | Category                                 | Definition   |
|----|--|--|
| 1  | Ticket Sales                             | <p>Input revenue received for sales of admissions to athletic events. This may include:</p> <ul style="list-style-type: none"> <li>• Public and faculty sales.</li> <li>• Student sales.</li> <li>• Shipping and Handling fees.</li> <li>• Registration fees.</li> </ul> <p>Please report amounts paid in excess of ticket's face value to obtain preferential seating or priority in Category 8 (Contributions).</p>  |
| 2  | Direct State or Other Government Support | <p>Input state, municipal, federal and other appropriations made in support of athletics.</p> <p>This amount includes funding specifically earmarked for the athletics department by government agencies for which the institution cannot reallocate.</p> <p>This amount also includes state funded employee benefits. Corresponding expenses should be reported in Categories 22 and 24.</p> <p>Any state or other government support appropriated to the university, for which the university determines the dollar allocation to the athletics department shall be reported in Category 4.</p>  |
| 3  | Student Fees                             | <p>Input student fees assessed and restricted for support of intercollegiate athletics.</p>  |
| 4  | Direct Institutional Support             | <p>Input direct funds provided by the institution to athletics for the operations of intercollegiate athletics including:</p> <ul style="list-style-type: none"> <li>• Unrestricted funds allocated to the athletics department by the university (e.g. state funds, tuition, tuition discounts/waivers, transfers).</li> <li>• Federal work study support for student workers employed by athletics.</li> <li>• Endowment unrestricted income, spending policy distributions and other investment income distributed to athletics in the reporting year to support athletic operations. Athletics restricted endowment income for athletics should be reported in Category 17.</li> </ul> |

| ID | Category   | Definition   |
|----|--|--|
| 5  | Less – Transfers to Institution  | If the institution allocated funds to athletics as represented in Categories 3 and 4, while the athletics department provided a transfer of funds back to the institution in the reporting year, then report the transfer amount as a negative in this category. The transfer amount may not exceed the total of Categories 3 and 4. Transfers back to the institution in excess of Categories 3 and 4 should be reported in Category 50.  |
| 6  | Indirect Institutional Support   | <p>Input value of costs covered, and services provided by the institution to athletics but not charged to athletics including:</p> <ul style="list-style-type: none"> <li>• Administrative services provided by the university to athletics, but not charged such as HR, Accounting, and IT.</li> <li>• Facilities maintenance.</li> <li>• Security.</li> <li>• Risk Management.</li> <li>• Utilities.</li> </ul> <p>Do not include depreciation.</p> <p>Note: This category should equal Category 36. If the institution is paying for debt service, leases, or rental fees for athletic facilities, but not charging to athletics, include those amounts in Category 6A.</p>   |
| 6A | Indirect Institutional Support – Athletic Facilities Debt Service, Lease and Rental Fees | <p>Input debt service payments (principal and interest, including internal loan programs), leases and rental fees for athletics facilities for the reporting year provided by the institution to athletics, but not charged to athletics.</p> <p>Do not report depreciation.</p> <p>Note: If the institution is paying for all athletic facilities debt service, lease and rental fees and not charging to athletics, this category will equal Category 34. If athletics or other entities are also paying these expenses or the institution is charging directly to athletics, this category will <u>not</u> equal Category 34.</p>   |
| 7  | Guarantees   | Input revenue received from participation in away games. This includes payments received due to game cancellations.  |
| 8  | Contributions  | <p>Input contributions <u>provided and used by athletics</u> in the reporting year including:</p> <ul style="list-style-type: none"> <li>• Amounts received from individuals, corporations, associations, foundations, clubs, or other organizations used for the operations of the athletics program.</li> <li>• Funds contributed by outside contributors for the payment of debt service, lease payments or rental fee expenses for athletic facilities in the reporting year.</li> <li>• Amounts received above face value for tickets used within the reporting year.</li> </ul> <p>Contributions shall include cash and marketable securities.</p> <p>Do not report:</p> <ul style="list-style-type: none"> <li>• Pledges until funds are provided to athletics for use.</li> <li>• Contributions to be used in future reporting years.</li> </ul> |

| ID | Category   | Definition  |
|----|--|---|
| 9  | In-Kind  | <p>Input market value of in-kind contributions in the reporting year including:</p> <ul style="list-style-type: none"> <li>• Dealer-provided automobiles.</li> <li>• Equipment.</li> <li>• Services.</li> <li>• Nutritional product.</li> </ul> <p>All in-kind contributions that are made as a result of a licensing or sponsorship agreement should be reported in Category 15.</p> <p>Please offset in-kind values in the appropriate expense category.</p>  |
| 10 | Compensation and Benefits provided by a third party        | <p>Input all benefits provided by a third party and contractually guaranteed by the institution, but not included on the institution's W-2. These may include:</p> <ul style="list-style-type: none"> <li>• Car stipend.</li> <li>• Country club membership.</li> <li>• Allowances for clothing, housing, and entertainment.</li> <li>• Speaking fees.</li> <li>• Camps compensation.</li> <li>• Media income.</li> <li>• Shoe and apparel income.</li> </ul> <p>The total of this category should equal expense Categories 23 and 25 combined.</p> |
| 11 | Media Rights   | <p>Input all revenue received for radio, television, internet, digital and e-commerce rights, including the portion of conference distributions related to media rights, if applicable.</p> <p>Consult with your conference offices if you do not have the media rights distribution amount available.</p>  |
| 12 | NCAA Distributions   | <p>Input revenues received from the NCAA which could include revenue distributions, grants, NCAA championships travel reimbursements and payments received from the NCAA for hosting a championship.</p> <p>In some cases, NCAA distributions may be provided by the conference office. Consult with the conference office for the amount received to include in this category.</p>   |
| 13 | Conference Distributions (Non Media and Non-Football Bowl) | <p>Input all revenues received by conference distribution, excluding portions of distribution relating to media rights, reported in Category 11, or NCAA distributions, reported in Category 12.</p> <p>Note: Conference distributions of revenue generated by a post-season football bowl to conference members are to be recorded in Category 13A. Distributions for reimbursement of post-season football bowl expenses are to be recorded in Category 19.</p>   |

| ID  | Category  | Definition  |
|-----|---|---|
| 13A | Conference Distributions of Football Bowl Generated Revenue | <p>Input conference distributions of revenue generated by a post-season football bowl to conference members.</p> <p>Note: Distributions for reimbursement of post-season football bowl expenses should be included in Category 19. Portions of the distribution related to media rights are reported in Category 11, NCAA distributions are reported in Category 12 and all other conference distributions are reported in Category 13.</p>   |
| 14  | Program, Novelty, Parking and Concession Sales              | <p>Input revenues from:</p> <ul style="list-style-type: none"> <li>• Game Programs.</li> <li>• Novelties.</li> <li>• Food and Concessions.</li> <li>• Parking.</li> </ul> <p>Advertising should be included in Category 15.</p>   |
| 15  | Royalties, Licensing, Advertisement and Sponsorships        | <p>Input revenues from:</p> <ul style="list-style-type: none"> <li>• Sponsorships.</li> <li>• Licensing Agreements.</li> <li>• Advertisement.</li> <li>• Royalties.</li> <li>• In-kind products and services as part of sponsorship agreement.</li> </ul> <p>An allocation may be necessary to distinguish revenues generated by athletics versus the university if payments are combined.</p>  |
| 16  | Sports Camp Revenues  | Input amounts received by the athletics department for sports camps and clinics.  |
| 17  | Athletics Restricted Endowment and Investments Income       | <p>Please report spending policy distributions from athletics restricted endowments and investment income used for athletics operations in the reporting year.</p> <p>This category only includes restricted investment and endowment income used for the operations of intercollegiate athletics; institutional allocations of income from unrestricted endowments qualify as “Direct Institutional Support” and should be reported in Category 4.</p> <p>Note: Please make sure amounts reported are only up to the amount of expenses covered by the endowment for the reporting year.</p> |
| 18  | Other Operating Revenue                                     | <p>Input any operating revenues received by athletics in the report year which cannot be classified into one of the stated categories.</p> <p>If the figure is greater than 10% of total revenues, please report the top three activities included in this category in the comments section.</p>  |

| ID | Category                 | Definition  |
|----|--------------------------|---|
| 19 | Football Bowl Revenues   | Input all amounts received related to participation in a post-season football bowl game, including: <ul style="list-style-type: none"><li data-bbox="448 306 824 342">• Expense reimbursements.</li><li data-bbox="448 344 656 380">• Ticket sales.</li></ul> |
|    | Total Operating Revenues | Total of Categories 1 through 19.   |

## APPENDIX B | 2024 Expense Categories

Expenses for the athletics program will vary among institutions; however, typical sources of intercollegiate athletics expenses, each followed by a comprehensive definition, are outlined below:

| ID | Category             | Definition   |
|----|----------------------|--|
| 20 | Athletic Student Aid | <p>Input the total dollar amount of athletic student aid for the reporting year including:</p> <ul style="list-style-type: none"> <li>• Summer school.</li> <li>• Tuition discounts and waivers (unless it is a discount or waiver available to the general student body).</li> <li>• Aid given to student-athletes who are inactive (medical reasons) or no longer eligible (exhausted eligibility).</li> <li>• Other expenses related to attendance (e.g., stipend).</li> </ul> <p>Note: Division I Grants-in-aid equivalencies are calculated by using the revenue distribution equivalencies by sport and in aggregate. (Athletic grant amount divided by the full grant amount).</p> <p>Other expenses related to attendance (also known as cost of attendance) should not be included in the grants-in-aid revenue distribution equivalencies. Only tuition, fees, living expenses, and course related books are countable for grants-in-aid revenue distribution per Bylaw 20.02.10.</p> <p>Athletics aid awarded to non-athletes (student- managers, graduate assistants, trainers) should be reported as Expenses Not Related to Specific Teams. It is permissible to report only dollars in the Expenses Not Related to Specific Teams row as long as you have reported non-zero entries for Equivalencies, Number of Students, and Dollars (all 3 required for at least one sport).</p> <p>Note: Pell grants are provided by the government, not the institution or athletics department, and therefore should be excluded from reporting in this category.</p> <p>Note: This information can be managed within the NCAA’s Compliance Assistant (CA) software. The equivalencies entered into CA will automatically populate to the athletic student aid section within the NCAA Financial Reporting System when the CA import feature is selected.</p> |
| 21 | Guarantees           | <p>Input amounts paid to visiting participating institutions, including per diems and/or travel and meal expenses. This includes payments made due to game cancellations.</p>  |

| ID | Category   | Definition  |
|----|--|---|
| 22 | Coaching Salaries, Benefits and Bonuses paid by the University and Related Entities                          | <p>Input compensation, bonuses and benefits paid to all coaches reportable on the university or related entities W-2 and 1099 forms, as well as non-taxable benefits (1098T), inclusive of:</p> <ul style="list-style-type: none"> <li>• Gross wages and bonuses.</li> <li>• Taxable and non-taxable benefits include: allowances, speaking fees, retirement, stipends, memberships, media income, tuition reimbursement/exemptions (for self or a dependent) and earned deferred compensation, including those funded by the state.</li> </ul> <p>Place any severance payments in Category 26.</p> <p>Note: Bonuses related to participation in a post-season football bowl game should be included in Category 41A.</p>   |
| 23 | Coaching Salaries, Benefits and Bonuses paid by a Third Party  | <p>Input compensation, bonuses and benefits paid to all coaches by a third party and contractually guaranteed by the institution, but not included on the institutions W-2, as well as any non-taxable benefits, including:</p> <ul style="list-style-type: none"> <li>• Car stipend.</li> <li>• Country club membership.</li> <li>• Allowances for clothing, housing, and entertainment.</li> <li>• Speaking fees.</li> <li>• Camps compensation.</li> <li>• Media income.</li> <li>• Shoe and apparel income.</li> </ul> <p>Expense Category 23 and 25 should equal Category 10.</p> <p>Note: Bonuses related to participation in a post-season football bowl game should be included in Category 41A.</p>  |
| 24 | Support Staff/ Administrative Compensation, Benefits and Bonuses paid by the University and Related Entities | <p>Input compensation, bonuses and benefits paid to all administrative and support staff reportable on the university or related entities (e.g., foundations or booster clubs) W-2 and 1099 forms, as well as any non-taxable benefits, inclusive of:</p> <ul style="list-style-type: none"> <li>• Gross wages and bonuses.</li> <li>• Benefits including allowances, speaking fees, retirement, stipends, memberships, media income, tuition reimbursement/exemptions and earned deferred compensation, including those funded by the state.</li> </ul> <p>Staff members responsible for the gender-specific athletics department, but not a specific sport (e.g., athletic director, assistant athletic director, compliance coordinator), will have their compensation figures reported as Expenses Not Related to Specific Teams fields. Athletics department staff members who assist both men's and women's teams (e.g., sports information director, academic advisor) will be reported as Not Allocated by Gender column.</p> |

| ID | Category  | Definition  |
|----|---|---|
| 25 | Support Staff/<br>Administrative<br>Compensation,<br>Benefits and<br>Bonuses paid by<br>Third Party | <p>Input compensation, bonuses and benefits paid to administrative and support staff by a third party and contractually guaranteed by the institution, but not included on the institutions W-2, as well as non-taxable benefits, including:</p> <ul style="list-style-type: none"> <li>• Car stipend.</li> <li>• Country club membership.</li> <li>• Allowances for clothing, housing, and entertainment.</li> <li>• Speaking fees.</li> <li>• Camps compensation.</li> <li>• Media income.</li> <li>• Shoe and apparel income.</li> </ul> <p>Expense Category 23 and 25 should equal Category 10.</p> |
| 26 | Severance<br>Payments   | Input severance payments and applicable benefits recognized for past coaching and administrative personnel.   |
| 27 | Recruiting  | Input transportation, lodging and meals for prospective student-athletes and institutional personnel on official and unofficial visits, telephone call charges, postage, and such. Include value of use of institution's own vehicles or airplanes as well as in-kind value of loaned or contributed transportation.  |
| 28 | Team Travel   | <p>Input air travel, ground travel, lodging, meals, and incidentals (including housing costs incurred during school break period) for competition related to preseason, regular season and non-football bowl postseason. Amounts incurred for food and lodging for housing the team before a home game also should be included. Use of the institution's own vehicles or airplanes as well as in-kind value of donor-provided transportation.</p> <p>Note: Expenses related to post-season football bowls should be included in Category 41.</p>  |
| 29 | Sports Equipment,<br>Uniforms and<br>Supplies   | <p>Input items that are provided to the teams only. Equipment amounts are those expended from current or operating funds. Include value of in-kind equipment provided.</p> <p>Note: Expenses related to post-season football bowls should be included in Category 41.</p>   |
| 30 | Game Expenses   | <p>Input game-day expenses other than travel which are necessary for intercollegiate athletics competition, including officials, security, event staff, ambulance, etc. Input any payments back to the NCAA for hosting a championship or conference for hosting a tournament.</p> <p>Note: Expenses related to post-season football bowls should be included in Category 41.</p>   |

| ID | Category   | Definition   |
|----|--|--|
| 31 | Fund Raising, Marketing and Promotion                    | Input costs associated with fund raising, marketing and promotion for media guides, brochures, recruiting publications, etc.   |
| 32 | Sports Camp Expenses                                     | <p>Input all expenses paid by the athletics department, including non-athletics personnel salaries and benefits, from hosting sports camps and clinics.</p> <p>Note: Athletics personnel salaries and benefits should be reported in Categories 22 through 25.</p>   |
| 33 | Spirit Groups  | <p>Include support for spirit groups including bands, cheerleaders, mascots, dancers, etc.</p> <p>Note: Expenses related to post-season football bowls should be included in Category 41.</p>  |
| 34 | Athletic Facilities Debt Service, Leases and Rental Fees | <p>Input debt service payments (principal and interest, including internal loan programs), leases and rental fees for athletics facilities for the reporting year regardless of entity paying (athletics, institution or other).</p> <p>Do not report depreciation.</p> <p>Note: If the institution is paying for all debt service, leases, or rental fees for athletic facilities but not charging to athletics, this category should equal Category 6A. If athletics or other entities are paying these expenses or the institution is charging directly to athletics, this category will not equal Category 6A.</p> |
| 35 | Direct Overhead and Administrative Expenses              | <p>Input overhead and administrative expenses paid by or charged directly to athletics including:</p> <ul style="list-style-type: none"> <li>• Administrative/Overhead fees charged by the institution to athletics.</li> <li>• Facilities maintenance.</li> <li>• Security.</li> <li>• Risk Management.</li> <li>• Utilities.</li> <li>• Equipment Repair.</li> <li>• Telephone.</li> <li>• Other Administrative Expenses.</li> </ul>   |
| 36 | Indirect Institutional Support                           | <p>Input overhead and administrative expenses <u>not</u> paid by or charged directly to athletics including:</p> <ul style="list-style-type: none"> <li>• Administrative/Overhead fees not charged by the institution to athletics.</li> <li>• Facilities maintenance.</li> <li>• Security.</li> <li>• Risk Management.</li> <li>• Utilities.</li> <li>• Equipment Repair.</li> <li>• Telephone.</li> <li>• Other Administrative Expenses.</li> </ul> <p>Do not report depreciation.</p> <p>Note: This category should equal Category 6.</p>   |

| ID  | Category  | Definition  |
|-----|---|---|
| 37  | Medical Expenses and Insurance                          | Input medical expenses and medical insurance premiums for student-athletes.   |
| 38  | Memberships and Dues                                    | Input membership, conference, and association dues.   |
| 39  | Student-Athlete Meals (non-travel)                      | Include meal allowance and food/snacks provided to student-athletes.<br>Note: Meals provided during team travel should be reported in Category 28.  |
| 40  | Other Operating Expenses                                | Input any operating expenses paid by athletics in the report year which cannot be classified into one of the stated categories, including: <ul style="list-style-type: none"> <li>• Non-team travel (conferences, etc.).</li> <li>• Team banquets and awards.</li> </ul> If the figure is greater than 10% of total expenses, please report the top three activities included in this category in the comments section. |
| 41  | Football Bowl Expenses                                  | Input all expenditures related to participation in a post-season football bowl game, including: <ul style="list-style-type: none"> <li>• Team travel, lodging and meal expenses.</li> <li>• Bonuses related to football bowl participation.</li> <li>• Spirit groups.</li> <li>• Uniforms.</li> </ul> Note: All post-season football bowl related coaching compensation/bonuses should be reported in Category 41A.     |
| 41A | Football Bowl Expenses – Coaching Compensation/ Bonuses | Input all coaching bonuses related to participation in a post-season football bowl game.<br>Note: All other post-season football bowl related expenses should be reported in Category 41.   |
|     | Total Operating Expenses                                | Total of Categories 20 through 41A.   |

## APPENDIX C | Other Reporting Items

Please input the following other reporting items below, **if applicable**:

| ID | Category                                     | Definition  |
|----|--|---|
| 50 | Excess Transfers to Institution              | Input the amount of athletic-related funds for the reporting year that are contributed back to your institution that were not applicable to be counted or are in excess of those funds allowable to be counted in Category 5.   |
| 51 | Conference Realignment Expenses              | Input one-time amounts paid by athletics and by the institution above normal operating expenses for conference realignment (e.g., exit fees, consulting fees, legal fees, signage, advertising, public relations). Ensure all regular operating expenses such as team travel are reported in the normal expense categories above. Any new revenues should be reported in Category 13. The amount submitted in this category should not be included in operating expense reporting Categories 20 through 41 above. |
| 52 | Total Athletics Related Debt                 | Input value of athletics debt at the end of the reporting year.<br><br>Note: This is the total value of athletics debt. Category 34 above represents payments made against debt held during the current reporting period.   |
| 53 | Total Institutional Debt                     | Input total value of institutional debt at the end of the reporting year. Ensure athletics related debt is included in the total figure, regardless of the athletics department structure.  |
| 54 | Value of Athletics Dedicated Endowments      | Input total fair market value of athletics dedicated endowments at the end of the reporting year.   |
| 55 | Value of Institutional Endowments            | Input total fair market value of institutional endowments at the end of the reporting year.   |
| 56 | Total Athletics Related Capital Expenditures | Input additions only for cost of athletics related capital expenditures for the reporting year.   |

## **APPENDIX D | Minimum NCAA Agreed-Upon Procedures for Revenue, Expenses and Other Reporting Items**

### **MINIMUM AGREED-UPON PROCEDURES PROGRAM FOR REVENUES**

Following is a complete listing of the minimum agreed-upon procedures for revenues, by category, to be performed to the statement by the independent accountant.

Before the commencement of fieldwork, the independent accountant should ensure that the amounts reported on the statement agree to the institution's general ledger. For all revenue categories perform the minimum agreed-upon procedures set forth below.

- Compare and agree each operating revenue category reported in the statement during the reporting period to supporting schedules provided by the institution. If a specific reporting category is less than 4.0% of the total revenues, no procedures are required for that specific category.
- Compare and agree a sample of operating revenue receipts obtained from the above operating revenue supporting schedules to adequate supporting documentation.
- Compare each major revenue account over 10% of the total revenues to prior period amounts and budget estimates. Obtain and document an explanation of any variations greater than 10%. Report the analysis as a supplement to the final Agreed-Upon procedures report.

#### **1. Ticket Sales**

- a. Compare tickets sold during the reporting period, complimentary tickets provided during the reporting period and unsold tickets to the related revenue reported by the Institution in the statement and the related attendance figures and recalculate totals.

#### **2. Direct State or Other Governmental Support**

- a. Compare direct state or other governmental support recorded by the institution during the reporting period with state appropriations, institutional authorizations and/or other corroborative supporting documentation and recalculate totals.

#### **3. Student Fees**

- a. Compare and agree student fees reported by the institution in the statement for the reporting period to student enrollments during the same reporting period and recalculate totals.
- b. Obtain documentation of institution's methodology for allocating student fees to intercollegiate athletics programs.
- c. If the athletics department is reporting that an allocation of student fees should be

countable as generated revenue, recalculate the totals of their methodology for supporting that they are able to count each sport. Tie the calculation to supporting documents such as seat manifests, ticket sales reports and student fee totals.

#### **4. Direct Institutional Support**

- a. Compare the direct institutional support recorded by the institution during the reporting period with the institutional supporting budget transfers documentation and other corroborative supporting documentation and recalculate totals.

#### **5. Less – Transfers to Institution**

- a. Compare the transfers back to institution with permanent transfers back to institution from the athletics department and recalculate totals.

#### **6. Indirect Institutional Support (6 and 6A)**

- a. Compare the indirect institutional support recorded by the institution during the reporting period with expense payments, cost allocation detail and other corroborative supporting documentation and recalculate totals.

#### **7. Guarantees**

- a. Select a sample of settlement reports for away games during the reporting period and agree each selection to the institution's general ledger and/or the statement and recalculate totals.
- b. Select a sample of contractual agreements pertaining to revenues derived from guaranteed contests during the reporting period and compare and agree each selection to the institution's general ledger and/or the statement and recalculate totals.

#### **8. Contributions**

- a. Any contributions of moneys, goods or services received directly by an intercollegiate athletics program from any affiliated or outside organization, agency or group of individuals (two or more) not included above (e.g., contributions by corporate sponsors) that constitutes 10 percent or more in aggregate for the reporting year of all contributions received for intercollegiate athletics during the reporting periods shall obtain and review supporting documentation for each contribution and recalculate totals.

#### **9. In-Kind**

- a. Compare the in-kind recorded by the institution during the reporting period with a schedule of in-kind donations and recalculate totals.

**10. Compensation and Benefits Provided by a Third-Party**

- a. Obtain the summary of revenues from affiliated and outside organizations (the "Summary") as of the end of the reporting period from the institution and select a sample of funds from the Summary and compare and agree each selection to supporting documentation, the institution's general ledger and/or the Summary and recalculate totals.

**11. Media Rights**

- a. Obtain and inspect agreements to understand the institution's total media (broadcast, television, radio) rights received by the institution or through their conference offices as reported in the statement.
- b. Compare and agree the media rights revenues to a summary statement of all media rights identified, if applicable, and the institution's general ledger and recalculate totals. Ledger totals may be different for total conference distributions if media rights are not broken out separately.

**12. NCAA Distributions**

- a. Compare the amounts recorded in the revenue and expense categories reporting to general ledger detail for NCAA distributions and other corroborative supporting documents and recalculate totals.

**13. Conference Distributions and Conference Distributions of Football Bowl Generated Revenue (13 and 13A)**

- a. Obtain and inspect agreements related to the institution's conference distributions and participation in revenues from tournaments during the reporting period for relevant terms and conditions.
- b. Compare and agree the related revenues to the institution's general ledger, and/or the statement and recalculate totals.

**14. Program Sales, Concessions, Novelty Sales, and Parking**

- a. Compare the amount recorded in the revenue reporting category to a general ledger detail of program sales, concessions, novelty sales and parking as well as any other corroborative supporting documents and recalculate totals.

**15. Royalties, Licensing, Advertisements and Sponsorships**

- a. Obtain and inspect agreements related to the institution's participation in revenues from royalties, licensing, advertisements, and sponsorships during the reporting period for relevant terms and conditions.

- b. Compare and agree the related revenues to the institution's general ledger, and/or the statement and recalculate totals.

**16. Sports Camp Revenues**

- a. Inspect sports camp contract(s) between the institution and person(s) conducting institutional sports-camps or clinics during the reporting period to obtain documentation of the institution's methodology for recording revenues from sports-camps.
- b. Obtain schedules of camp participants and select a sample of individual camp participant cash receipts from the schedule of sports- camp participants and agree each selection to the institution's general ledger, and/or the statement and recalculate totals.

**17. Athletics Restricted Endowment and Investment Income**

- a. Obtain and inspect endowment agreements, if any, for relevant terms and conditions.
- b. Compare and agree the classification and use of endowment and investment income reported in the statement during the reporting period to the uses of income defined within the related endowment agreement and recalculate totals.

**18. Other Operating Revenue**

- a. Perform minimum agreed-upon procedures referenced for all revenue categories and recalculate totals.

**19. Football Bowl Revenues**

- a. Obtain and inspect agreements related to the institution's revenues from post-season football bowl participation during the reporting period to gain an understanding of the relevant terms and conditions.
- b. Compare and agree the related revenues to the institution's general ledger, and/or the statement and recalculate totals.

## MINIMUM AGREED-UPON PROCEDURES PROGRAM FOR EXPENSES

Following is a complete listing of the minimum agreed-upon procedures for expenses, by category, to be performed to the statement by the independent accountant. Before the commencement of fieldwork, the independent accountant should ensure that the amounts reported on the statement agree to the institution's general ledger.

- Compare and agree each expense category reported in the statement during the reporting period to supporting schedules provided by the institution. If a specific reporting category is less than 4.0% of the total expenses, no procedures are required for that specific category.
- Compare and agree a sample of expenses obtained from the above operating expense supporting schedules to adequate supporting documentation.
- Compare each major expense account over 10% of the total expenses to prior period amounts and budget estimates. Obtain and document an explanation of any variations greater than 10%. Report the analysis as a supplement to the final Agreed-Upon procedures report.

### 20. Athletic Student Aid

- a. Using the criteria below select a sample of student-athletes receiving athletic aid during the reporting period. Data should be captured by the institution through the creation of a squad/eligibility list for each sport sponsored.
  - If using the NCAA's Compliance Assistant (CA) application, select 10% of the total student-athletes with a maximum sample size of 40.
  - If using a compliance application other than the NCAA's CA application, select 20% of total student-athletes with a maximum sample size of 60).

*Note: The Division I revenue distribution equivalencies (athletic grant amount divided by the full grant amount) should only include tuition, fees, living expenses and required course-related books, per Bylaw 20.02.10. Cost of Attendance or Other Expenses Related to Attendance are **not** countable for revenue distribution purposes.*

*Note: The Calculation of Revenue Distribution Equivalencies Report (CRDE) within Compliance Assistant should provide equivalencies that do not contain Cost of Attendance or Other Expenses Related to Attendance.*

- b. Obtain individual student-athlete account detail for each selection. Reconcile the total athletic aid reported by the institution to the student-athlete's account detail reported in CA or the institution report that reconciles to the NCAA Membership Financial Reporting System.
- c. **Division I Institutions Only:** Perform a check of each student selected to ensure their information was reported accurately in either the NCAA's CA software or entered

directly into the NCAA Membership Financial Reporting System using the following criteria:

- Grants-in-aid is calculated by using the revenue distribution equivalencies, athletic grant amount divided by the full grant amount.
- Other expenses related to attendance (also known as cost of attendance) should **not** be included in grants-in-aid revenue distribution equivalencies. Only tuition, fees, living expenses, and course-related books are countable for grants-in-aid revenue distribution per Bylaw 20.02.10.  
Note: For compliance purposes equivalencies may include other expenses related to attendance per Bylaw 15.02.2. However, other expenses related to attendance are **not** allowed to be included for revenue distribution equivalencies. If using the NCAA CA application, the Calculation of Revenue Distribution Equivalencies Report (CRDE) should provide equivalencies that do not include other expenses related to attendance.
- Full grant amount should be entered as a full year of tuition, not a semester or quarter.
- Student-athletes are to be counted once, regardless of multiple sport participation, and should **not** receive a revenue distribution equivalency greater than 1.00.
- Athletics grants are valid for revenue distribution purposes only in sports in which the NCAA conducts championships competition, emerging sports for women and football bowl subdivision football.
- Grants-in-aid are valid for revenue distribution purposes in NCAA sports that do not meet the minimum contests and participants' requirements of Bylaw 20.10.6.3.
- Institutions providing grants to student-athletes listed on the CRDE as "Exhausted Eligibility (fifth year)" or "Medical" receive credit in the grants-in-aid component.
- The athletics aid equivalency cannot exceed maximum equivalency limits. However, the total revenue distribution equivalency can exceed maximum equivalency limits due to exhausted eligibility and medical equivalencies, Bylaw 15.5.3.1.  
Note: The NCAA Membership Financial Reporting System's Revenue Distribution data entry webpage will automatically reduce the Total Revenue Distribution Equivalencies Awarded column to adhere to Bylaw 15.5.3.1.
- If a sport is discontinued and athletic aid is still being awarded/honored by the institution, the athletic aid is countable for revenue distribution purposes.  
Note: The discontinued sport will need to be added to the NCAA

Membership Financial Reporting System's Revenue Distribution data entry Webpage.

- All equivalency calculations should be rounded to two decimal places.
  - If a selected student received a Pell Grant, ensure the value of the grant is not included in the calculation of equivalencies or the total dollar amount of student athletic aid expense for the institution.
  - If a selected student received a Pell Grant, ensure the student's grant was included in the total number and total dollar value of Pell Grants reported for Revenue Distribution purposes in the NCAA Membership Financial Reporting System.
- d. Recalculate totals for each sport and overall.

## **21. Guarantees**

- a. Obtain and inspect visiting institution's away-game settlement reports received by the institution during the reporting period and agree related expenses to the institution's general ledger and/or the statement and recalculate totals.
- b. Obtain and inspect contractual agreements pertaining to expenses recorded by the institution from guaranteed contests during the reporting period. Compare and agree related amounts expensed by the institution during the reporting period to the institution's general ledger and/or the statement and recalculate totals.

## **22. Coaching Salaries, Benefits, and Bonuses Paid by the University and Related Entities**

- a. Obtain and inspect a listing of coaches employed by the institution and related entities during the reporting period. Select a sample of coaches' contracts that must include football, and men's and women's basketball from the listing.
- b. Compare and agree the financial terms and conditions of each selection to the related coaching salaries, benefits, and bonuses recorded by the institution and related entities in the statement during the reporting period.
- c. Obtain and inspect payroll summary registers for the reporting year for each selection. Compare and agree payroll summary registers from the reporting period to the related coaching salaries, benefits and bonuses paid by the institution and related entities expense recorded by the institution in the statement during the reporting period.
- d. Compare and agree the totals recorded to any employment contracts executed for the sample selected and recalculate totals.

**23. Coaching Salaries, Benefits, and Bonuses Paid by a Third-Party**

- a. Obtain and inspect a listing of coaches employed by third parties during the reporting period. Select a sample of coaches' contracts that must include football, and men's and women's basketball from the listing.
- b. Compare and agree the financial terms and conditions of each selection to the related coaching other compensation and benefits paid by a third party and recorded by the institution in the statement during the reporting period.
- c. Obtain and inspect reporting period payroll summary registers for each selection. Compare and agree related payroll summary register to the coaching other compensation and benefits paid by a third-party recorded by the institution in the statement during the reporting period and recalculate totals.

**24. Support Staff/Administrative Compensation, Benefits, and Bonuses Paid by the University and Related Entities**

- a. Select a sample of support staff/administrative personnel employed by the institution and related entities during the reporting period.
- b. Obtain and inspect reporting period summary payroll register for each selection. Compare and agree related summary payroll register to the related support staff administrative salaries, benefits and bonuses paid by the institution and related entities expense recorded by the institution in the statement during the reporting period and recalculate totals.

**25. Support Staff/Administrative Compensation, Benefits, and Bonuses Paid by a Third-Party**

- c. Select a sample of support staff/administrative personnel employed by the third parties during the reporting period.
- d. Obtain and inspect reporting period payroll summary registers for each selection. Compare and agree related payroll summary registers to the related support staff administrative other compensation and benefits expense recorded by the institution in the statement during the reporting period and recalculate totals.

**26. Severance Payments**

- a. Select a sample of employees receiving severance payments by the institution during the reporting period and agree each severance payment to the related termination letter or employment contract and recalculate totals.

**27. Recruiting**

- a. Obtain documentation of the Institution's recruiting expense policies.
- b. Compare and agree to existing institutional- and NCAA-related policies.
- c. Obtain general ledger detail and compare to the total expenses reported and recalculate totals.

**28. Team Travel**

- a. Obtain documentation of the Institution's team travel policies.
- b. Compare and agree to existing institutional- and NCAA-related policies.
- c. Obtain general ledger detail and compare to the total expenses reported and recalculate totals.

**29. Sports Equipment, Uniforms, and Supplies**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**30. Game Expenses**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**31. Fund Raising, Marketing and Promotion**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**32. Sports Camp Expenses**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**33. Spirit Groups**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording

and recalculate totals.

**34. Athletic Facilities Debt Service, Leases and Rental Fees**

- a. Obtain a listing of debt service schedules, lease payments and rental fees for athletics facilities for the reporting year. Compare a sample of facility payments including the top two highest facility payments to additional supporting documentation (e.g., debt financing agreements, leases, rental agreements).
- b. Compare amounts recorded to amounts listed in the general ledger detail and recalculate totals.

**35. Direct Overhead and Administrative Expenses**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**36. Indirect Institutional Support**

- a. Tested with revenue section- Indirect Institutional Support.

**37. Medical Expenses and Insurance**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**38. Memberships and Dues**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**39. Student-Athlete Meals (non-travel)**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**40. Other Operating Expenses**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

#### **41. Football Bowl Expenses (41 and 41A)**

- a. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

#### **ADDITIONAL MINIMUM AGREED-UPON PROCEDURES**

In order for the NCAA to place reliance on the **Division I** financial reporting to calculate the Division I NCAA revenue distributions, which is a financial benefit to the institution, the following procedure are **required**:

##### **1. Grants-in-Aid:**

- a. Compare and agree the sports sponsored reported in the NCAA Membership Financial Reporting System to the Calculation of Revenue Distribution Equivalencies Report (CRDE) from Compliance Assistant (CA) or other report that supports the equivalency calculations from the institution. The NCAA Membership Financial Reporting System populates the sports from the NCAA Sports Sponsorship and Demographics Form as they are reported by the institution between April and June. If there is a discrepancy in the sports sponsored between the NCAA Membership Financial Reporting System and the CRDE or other report that supports the equivalency calculations, inquire about the discrepancy, and report the justification in the AUP report.
- b. Compare current year Grants-in-Aid revenue distribution equivalencies to prior year reported equivalencies per the Membership Financial Report submission. Inquire and document an explanation for any variance great than +/- 4%. The submitted data is reviewed by NCAA staff. Providing a detailed variance explanation will assist with the review process.

##### **2. Sports Sponsorship:**

- a. Obtain the institution's Sports Sponsorship and Demographics Form submitted to NCAA Research for the reporting year. Validate that the countable NCAA sports reported by the institution met the minimum requirements, set forth in Bylaw 20.10.6.3, related to the number of contests and the number of participants. If the institution requested and/or received a waiver related to minimum contests or minimum participants for a sport, that sport would **not** qualify as a sponsored sport for the purposes of revenue distribution. Also, only sports in which the NCAA conducts championships competition, emerging sports for women and bowl subdivision football are eligible. Once the countable sports have been validated, ensure that the institution has properly reported these sports as countable for revenue distribution purposes within the NCAA Membership Financial Reporting System. Any discrepancies **MUST** be resolved within the NCAA Membership Financial Reporting System prior to the report being submitted to the NCAA.
- b. Compare current year number of Sports Sponsored to prior year reported total per

the Membership Financial Report submission. Inquire and document an explanation for any variance. The submitted data is reviewed by NCAA staff. Providing a detailed variance explanation will assist with the review process.

### **3. Pell Grants:**

- a.** Agree the total number of Division I student-athletes who, during the academic year, received a Pell Grant award (e.g. Pell Grant recipients on Full Athletic Aid, Pell Grant recipients on Partial Athletic Aid and Pell Grant recipients with no Athletic Aid) and the total dollar amount of these Pell Grants reported in the NCAA Membership Financial Reporting System to a report generated out of the institutions financial aid records of all student-athlete Pell Grants.
  - Note 1: Only Pell Grants for sports in which the NCAA conducts championships competition, emerging sports for women and bowl subdivision football are countable.
  - Note 2: Student-athletes should only be counted once even if the athlete participates in multiple sports.
  - Note 3: Individual student-aid file testing in step 31 above should tie any selected student athletes who received Pell Grants back to the report of all student athlete Pell Grants to test the completeness and accuracy of the report.
- b.** Compare current year Pell Grants total to prior year reported total per the Membership Financial Report submission. Inquire and document an explanation for any variance greater than +/- 20 grants. The submitted data is reviewed by NCAA staff. Providing a detailed variance explanation will assist with the review process.

## **MINIMUM AGREED-UPON PROCEDURES PROGRAM FOR OTHER REPORTING ITEMS**

Following is a complete listing of the minimum agreed-upon procedures for other reporting items, by category, to be performed to the statement by the independent accountant. Before the commencement of fieldwork, the independent accountant should ensure that the amounts reported on the statement agree to the institution's general ledger.

### **50. Excess Transfers to Institution**

- a.** Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

### **51. Conference Realignment Expenses**

- a.** Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

**52. Total Athletics Related Debt**

- a. Obtain repayment schedules for all outstanding intercollegiate athletics debt during the reporting period. Recalculate annual maturities (consisting of principal and interest) provided in the schedules obtained.
- b. Agree the total annual maturities and total outstanding athletic related debt to supporting documentation and the institution's general ledger, as applicable.

**53. Total Institutional Debt**

- a. Agree the total outstanding institutional debt to supporting documentation and the institution's audited financial statements, if available, or the institution's general ledger.

**54. Value of Athletics Dedicated Endowments**

- a. Obtain a schedule of all athletics dedicated endowments maintained by athletics, the institution, and affiliated organizations. Agree the fair market value in the schedule(s) to supporting documentation, the general ledger(s) and audited financial statements, if available.

**55. Value of Institutional Endowments**

- a. Agree the total fair market value of institutional endowments to supporting documentation, the institution's general ledger and/or audited financial statements, if available.

**56. Total Athletics Related Capital Expenditures**

- a. Obtain a schedule of athletics related capital expenditures made by athletics, the institution, and affiliated organizations during the reporting period, additions only.
- b. Obtain general ledger detail and compare to the total expenses reported. Select a sample of transactions to validate existence of transaction and accuracy of recording and recalculate totals.

## **APPENDIX E | Independent Accountant’s Report on Agreed-Upon Procedures**

The independent accountant’s report on agreed-upon procedures should be in the form of procedures and findings. The report should contain the following elements:

1. A title that includes the word “independent”;
2. Identification of the specified parties;
3. Identification of the subject matter (or the written assertion related thereto), including the period and point in time addressed and a reference to the character of the engagement;
4. Identification of the responsible party;
5. A statement that the subject matter is the responsibility of the responsible party;
6. A statement that the procedures performed was those agreed to by the specified parties identified in the report;
7. For compliance-attestation engagements, a statement that the procedures, which were agreed to by the specified parties identified in the report, were performed to assist the specified parties in evaluating the entity’s compliance with specified requirements or the effectiveness of its internal control over compliance;
8. A statement that the agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants;
9. A statement that the sufficiency of the procedures is solely the responsibility of the specified parties and a disclaimer of responsibility for the sufficiency of those procedures;
10. A list of the procedures performed (or reference thereto) and related findings;
11. Where applicable, a description of any agreed-upon materiality limits;
12. A statement that the practitioner was not engaged to and did not conduct an examination of the subject matter, the objective of which would be the expression of an opinion, a disclaimer of opinion on the subject matter, and a statement that if the practitioner had performed additional procedures, other matters might have come to the practitioner’s attention that would have been reported;
13. A statement of restrictions on the use of the report because it is intended to be used solely by the specified parties;
14. Where applicable, reservations or restrictions concerning procedures or findings;

15. Where applicable, a description of the nature of the assistance provided by a specialist;
16. The manual or printed signature of the practitioner's firm and
17. The date of the report.

## APPENDIX F | Common Questions and Answers

Q: Can an internal auditor of one member institution conduct the required independent audit for another member institution in the same state system?

A: Yes, provided the individual is an independent certified auditor and is not a staff member of that institution.

Q: Can a member institution seek an extension of the deadline for completion of the annual agreed-upon procedures?

A: No. NCAA legislation does not contain a provision under which the deadline may be extended or waived.

Q: Are agreed-upon procedures performed by the internal audit division of a state system of higher education considered independent?

A: Yes, since individuals who perform the work are employees of the state system reporting to the system's director of internal audits, provided the internal audit division performs the minimum agreed-upon procedures in a manner consistent with NCAA agreed-upon procedures for each institution.

Q: How does a Division II institution satisfy the agreed-upon procedures requirement if the institution sponsors a sport(s) at the Division I level?

A: The NCAA Interpretations Committee determined during its June 30, 1993, conference call that a Division II member institution that sponsors a Division I sport(s) shall not be subject to agreed-upon procedures (Based on Division II legislative action August 2004) for the Division I sport(s). This interpretation supersedes the previous legislative staff interpretation of January 15, 1992.

Q: Does an independent group or organization that does not constitute a booster organization by name only (e.g., alumni association, foundation) need to have its athletically related financial activities included in the institution's financial audit (i.e., tested by the auditor and reported to the institutional auditor)?

A: Any agency or group of individuals (two or more) that has as its principal purpose the generation of moneys, goods, or services for or on behalf of an intercollegiate athletics program should be included in the annual agreed-upon procedures.

Q: Once affiliated and outside organizations (e.g., independent groups, affiliated foundations), such as those that do not fall under the purview of direct institutional oversight, are identified, how is their financial data to be included in the agreed-upon procedures?

A: Either the organization's statements of revenues and expenses should be procured or, if audited independently of the institution, agreed-upon procedures and any reports to management related to the internal control structure need to be obtained and reviewed. Also, a schedule of expenses by the affiliated and/or outside organization for or on behalf of the institution's athletics program should be obtained and reconciled with the revenues recorded in the athletics program's accounting records.

Q: What are the criteria used in compiling the total dollars generated for or on behalf of an athletics program?

A: An institution must disclose in a footnote to the statement of athletics department revenues and expenses contributions from any outside source (not included as an agency, organization or group as indicated in the NCAA agreed-upon procedures in the section entitled "organization of intercollegiate athletics programs") that constitutes more than 10 percent of all contributions received (e.g., contributions by corporate sponsors). The source from which such funds are received also shall be disclosed in a footnote to the statement of revenues and expenses.

Q: For an institution with a fiscal year-end which would preclude a timely report, how can an exception be granted to report on the most recent fiscal year that is completed?

A: The institution should contact the NCAA Administrative Services group for guidance.

For a complete list of Common Questions and Answers, please reference the [FAQ document](#) located on the [NCAA Membership Financial Reporting System](#) webpage within ncaa.org.

## **APPENDIX G | NCAA Online Financial Reporting Links**

Helpful links and resources located on the [Membership Financial Reporting System](#) website:

- Logon to the NCAA Financial Reporting System (FRS).
- FY2024 Agreed-Upon Procedures.
- FRS Help Video.
- NCAA AUP and FRS FAQs.
- FY2024 FRS Supplemental Tool.
- List of key dates for FY2024 reporting.
- List of key resources and contacts.
- Single Source Sign-On (NCAA My Apps) Quick Start Guide and Users Guide.

**If you need assistance in accessing the NCAA Membership Financial Reporting System, please contact your on-campus Single Source Sign-on (NCAA My Apps) administrator.**

**APPENDIX B – ROSTER LIMITS**

## ARTICLE I

**Section 1. Initial Roster Limits.** The NCAA has currently determined that during the first Academic Year following Final Approval, the NCAA Division I roster limits for Member Institutions that choose to provide or facilitate payments or benefits to student-athletes as permitted by the Injunctive Relief Settlement including but not limited to incremental scholarships permitted by Article 3, Section 3(b) shall be as follows:

| SPORT                             | ROSTER LIMIT |
|-----------------------------------|--------------|
| Acrobatics and Tumbling (women's) | 55           |
| Baseball                          | 34           |
| Basketball (men's)                | 15           |
| Basketball (women's)              | 15           |
| Beach Volleyball (women's)        | 19           |
| Bowling (women's)                 | 11           |
| Cross Country (men's)             | 17           |
| Cross Country (women's)           | 17           |
| Equestrian (women's)              | 50           |
| Fencing (men's)                   | 24           |
| Fencing (women's)                 | 24           |
| Field Hockey (women's)            | 27           |
| Football                          | 105          |
| Golf (men's)                      | 9            |
| Golf (women's)                    | 9            |
| Gymnastics (men's)                | 20           |

| SPORT                             | ROSTER LIMIT |
|-----------------------------------|--------------|
| Gymnastics (women's)              | 20           |
| Ice Hockey (men's)                | 26           |
| Ice Hockey (women's)              | 26           |
| Indoor Track and Field (men's)    | 45           |
| Indoor Track and Field (women's)  | 45           |
| Lacrosse (men's)                  | 48           |
| Lacrosse (women's)                | 38           |
| Outdoor Track and Field (men's)   | 45           |
| Outdoor Track and Field (women's) | 45           |
| Rifle                             | 12           |
| Rowing (women's)                  | 68           |
| Rugby (women's)                   | 36           |
| Skiing (men's)                    | 16           |
| Skiing (women's)                  | 16           |
| Soccer (men's)                    | 28           |
| Soccer (women's)                  | 28           |
| Softball                          | 25           |
| Stunt                             | 65           |
| Swimming & Diving (men's)         | 30           |
| Swimming & Diving (women's)       | 30           |
| Tennis (men's)                    | 10           |
| Tennis (women's)                  | 10           |

| SPORT                | ROSTER LIMIT |
|----------------------|--------------|
| Triathlon (women's)  | 14           |
| Volleyball (men's)   | 18           |
| Volleyball (women's) | 18           |
| Water Polo (men's)   | 24           |
| Water Polo (women's) | 24           |
| Wrestling (men's)    | 30           |
| Wrestling (women's)  | 30           |

**Section 2. Subsequently Added Sports.** During the Term of the Injunctive Relief Settlement, Defendants may agree upon roster limits for any sports not identified in Section 1 of this Article that become officially sponsored NCAA Division I sports.

**Section 3. Changes to Roster Limits.** During the Term of the Injunctive Relief Settlement, Defendants may increase or decrease the roster limits in each or any of the sports identified in Section 1 or subsequently added by Section 2 of this Article, provided that any such changes must comply with the Injunctive Relief Settlement and the SSA. In accordance with Article 4, Section 1 of the Injunctive Relief Settlement, individual Member Institutions each maintain the right to unilaterally reduce the number of sports, the roster size, and/or the number of athletic scholarships available to student-athletes of any sport. Individual Conferences each maintain the right to unilaterally reduce the number of sports Member Institutions within their respective conferences are required to offer, the number of sports sponsored by the conference, and/or the roster limits within their conference, subject to the limitations that reductions in roster limits will not result in the loss of athletic scholarships for then-current student-athletes and that

any change in roster limits shall not result in a reduction in the number of athletic scholarships permissible under the current NCAA Division I rules in any sport.

**Section 4. Effect on Non-NCAA-sponsored Sports.** Nothing in this Appendix B should be read to limit, in any way, the right of individual Member Institutions (subject to conference rules) or individual conferences from unilaterally increasing or decreasing the roster sizes of sports not identified in Section 1 or added during the Term in accordance with Section 2.

## ARTICLE 2

### MISCELLANEOUS

**Section 1. Defined Terms.** All capitalized terms in this Appendix B shall have the same definition as set forth in the Stipulation and Settlement Agreement and/or Injunctive Relief Settlement, as appropriate, if not otherwise defined herein.

**Section 2. Conflicts.** The provisions of this Appendix supersede any conflicting provisions in any rule or policy, or any other document, adopted by Defendants or any of their Member Institutions, affecting the matters addressed herein. Any conflict between this Appendix B and the SSA and/or the Injunctive Relief Settlement (“IRS”) shall be resolved in favor of the SSA and/or IRS, as applicable.