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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL LITIGATION

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

DEFENDANTS' BRIEF IN SUPPORT OF FINAL SETTLEMENT APPROVAL

Hon. Claudia Wilken
Hearing Date: April 7, 2025
Hearing Time: 10:00 AM
Location: Courtroom 2, 4th Floor

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INTRODUCTION

The fact that less than *0.1%* of the approximately 389,700 potential class members have objected confirms that the settlement is fair and reasonable. *See In re California Pizza Kitchen Data Breach Litig.*, No. 23-55288, 2025 WL 583419, at *4–5 (9th Cir. Feb. 24, 2025). And none of the objections raised provides cause for the Court to depart from its prior finding preliminarily approving the settlement as fair, reasonable, and adequate under Rule 23(e)(2). The settlement will end decades of hard-fought litigation over the validity of the NCAA's rules regarding benefits to student-athletes. The benefits that would be permissible under the settlement massively outpace the much narrower forms of relief that past student-athlete classes obtained after lengthy and costly lawsuits. Indeed, Defendants' member institutions have widely embraced the ability to provide new and different types of benefits to student-athletes (while protecting existing scholarships) if the settlement is approved. And the issues raised by the objectors provide no basis for thinking that a return to litigation would be better for anyone besides perhaps the objectors' attorneys.

Defendants continue to support approval of the proposed settlement as submitted to and preliminarily approved by the Court, and submit this brief to respond to three discrete sets of objections to the Injunctive Settlement: (1) complaints about the Pool structure, which allows schools to provide benefits to student-athletes that vastly exceed both the status quo and the results of prior litigation; (2) challenges to the implementation of roster limits under the settlement that serve to *increase* the number of student-athletes eligible to receive scholarships; and (3) objections to the decision by Plaintiffs' counsel to not allocate so-called "BNIL" damages to non-scholarship football and basketball student-athletes. All of these objections rehash arguments the Court already considered and rejected at the preliminary approval stage. And none provides a basis for derailing this unprecedented settlement and denying its benefits to hundreds of thousands of current and future student-athletes.

ARGUMENT

One overarching point bears emphasis at the outset. The question before the Court is *not* whether the settlement is the best possible outcome for every single class member or whether different attorneys claim they could have achieved a better result. Instead, the question is whether

the agreement—as a whole—is "fair, reasonable or adequate." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In evaluating that question, the Court can consider not only the substantial benefits permitted by the settlement, but also the risks the class members would face in continued litigation, the delays inherent in litigation (even if successful), and the course (and results) of prior similar litigation in this Court and others. Applying those standards, the case for final approval is clear.

I. THE SETTLEMENT'S POOL STRUCTURE IS FAIR, REASONABLE, AND WILL YIELD SIGNIFICANT BENEFITS TO THE CLASS

The settlement structure is estimated to allow Division I schools to devote up to approximately 50% of athletic revenues to student-athletes, who will then receive a similar share of revenues as professional athletes in various leagues. Pls.' Mot. for Prelim. Settlement Approval, ECF No. 450 at 21–22; Decl. of Daniel A. Rascher, ECF No. 450-4 at 37–38; Pls.' Supp. Br. in Supp. of Mot. for Prelim. Settlement Approval, ECF No. 534 at 1–2. The settlement adds to the status quo the opportunity to provide an additional 22% of a defined set of revenues that is guaranteed to increase on a yearly basis, and can increase even further at defined intervals during the 10-year settlement term. Am. Stipulation & Settlement Agreement, ECF No. 535-1 at 62. This structure will not only open the door to an unprecedented amount of *new* benefits to student-athletes, but also allow schools to continue to provide significant benefits to a *broad population* of student-athletes.

The objections to this new structure essentially take three forms: to the Pool structure as an unlawful "cap," to the absence of a mandatory "floor" for institutional spending, and to the fact that some rules will persist if the settlement goes into effect. These objections were raised before the Court granted preliminary approval. *See, e.g.*, ECF Nos. 473, 475, 485, 539. As before, they fundamentally misunderstand the inquiry before the Court and the lengthy litigation history that preceded the settlement. None provides a legitimate basis for denying final approval.

The Settlement's Pool Structure Is Reasonable And Will Yield Unprecedented Benefits And Compensation For A Broad Array Of Student-Athletes. The settlement's Pool structure is not just a valid component of a fair, reasonable, and adequate resolution of the claims covered by

the settlement, but also defensible under antitrust law. In the context of college sports, limitations on benefits are evaluated under the rule of reason. *See, e.g.*, Order Granting Mot. For Certification of Damages Classes, ECF No. 387 at 13 ("Where, as here, a claim under Section 1 arises out of the alleged anticompetitive effect of NCAA rules, the determination of whether there has been a Section 1 violation *is based on the application of the rule of reason* . . . ." (emphasis added)); *see also Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 96–97 (2021); *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1058, 1064 (9th Cir. 2015). Applying that standard, courts have time and again concluded that certain limits on student-athlete benefits are reasonable and appropriate.

In *O'Bannon*, for example, the Ninth Circuit modified the NCAA's rules limiting NIL compensation to allow student-athletes to receive full cost-of-attendance scholarships, but it did not require anything further. *See O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1079 (9th Cir. 2015). And in *Alston*, this Court held that:

> [T]he NCAA may continue to limit the grant-in-aid at not less than the cost of attendance, and to limit compensation and benefits that are unrelated to education provided on top of a grant-in-aid. The NCAA may also limit academic or graduation awards or incentives, provided in cash or cash-equivalent, as long as the limit imposed by the NCAA is not less than the athletics participation awards limit.

In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058, 1109 (N.D. Cal. 2019), *aff'd*, 958 F.3d 1239 (9th Cir. 2020), *aff'd sub nom.*, *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69 (2021).

Had litigation proceeded in this case, as in those cases, Defendants would have presented evidence and expert testimony that caps (and/or other limitations on benefits) are necessary both for competitive balance and to ensure the greatest output of student athletic opportunity. *See, e.g.*, Expert Report of Gautam Gowrisankaran, ECF No. 415-6 (expert testimony offered in this case regarding procompetitive justifications for existing restrictions on direct compensation of student-athletes). Those procompetitive justifications apply equally to the Pool structure. Courts have long recognized that compensation caps come with "pro-competitive effects," including "the maintenance of competitive balance" between teams, that can "outweigh their restrictive

consequences." *Nat'l Basketball Ass'n v. Williams*, 857 F. Supp. 1069, 1079 (S.D.N.Y. 1994) (upholding "Salary Cap" designed "to distribute 53 per cent defined gross revenue to the Players"), *aff'd*, 45 F.3d 684 (2d Cir. 1995); *see also, e.g.*, *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 204 (2010) (emphasizing "that the interest in maintaining a competitive balance among athletic teams is legitimate and important" (cleaned up)); *Alston*, 594 U.S. at 111 (Kavanaugh, J., concurring) (recognizing that "paying student athletes" might "require[] something like a salary cap . . . to preserve competitive balance").

Another key procompetitive justification—that some limits on compensation ensure greater output of student-athlete opportunities in collegiate sports—is also particularly salient. As Plaintiffs have explained:

> The merits defenses advanced by Defendants and their economic experts with respect to the NIL claims—including that NCAA institutions do not have monopsony power when it comes to compensation of student-athletes for their NIL and that any such restrictions are justified in order for institutions to produce greater output of student-athlete opportunities and collegiate sports—would arguably be stronger in the pay-for-play context, given this Court's and the Supreme Court's recognition of potential procompetitive benefits to restrictions on pay-for-performance.

Pls.' Mot. for Prelim. Settlement Approval, ECF No. 450 at 20. For these reasons, a structure that provides unprecedented benefits to student-athletes is reasonable, despite not allowing for unlimited compensation.

Indeed, the only meaningful difference between the forms of relief ordered in *O'Bannon* and *Alston*, on the one hand, and this settlement on the other, is the vast scope of benefits permitted by the settlement without the need for further years of litigation. As explained in the next section, that further supports the legitimacy of the Pool structure, rather than rendering it impermissible.

The Settlement Will Open The Door To Approximately 50% Revenue Sharing—An Outcome Equivalent To A Competitive Market. The value of existing benefits to Division I athletes and the 22% Pool, combined, is estimated to amount to approximately 50% of Division I athletic revenues. Pls.' Mot. for Prelim. Settlement Approval, ECF No. 450 at 21–22; Decl. of Daniel A. Rascher, ECF No. 450-4 at 38. That amounts to a level of revenue sharing that is on par with a number of professional sports leagues—proof that the settlement is a fair, reasonable, and

adequate outcome for the class. *See, e.g.*, *White v. Nat'l Football League*, 822 F. Supp. 1389, 1413–14 (D. Minn. 1993); *Williams*, 857 F. Supp. at 1079.

Challenges to the revenue categories included in these calculations are misguided. *See, e.g.*, ECF No. 539 at 11. The categories of revenue counted for purposes of revenue sharing are comprehensive, and include all consistent revenues (of any magnitude): ticket sales, guarantees, media rights, NCAA distributions, conference distributions, royalties, licensing, advertising, sponsorships, and football bowl revenues. Am. Stipulation & Settlement Agreement, ECF No. 535-1 at 61, 101–05. Moreover, the selection of these categories resulted from arms-length, extensive negotiations between counsel, Pls.' Mot. for Prelim. Settlement Approval, ECF No. 450 at 16, who are experienced in collective bargaining with professional sports leagues and in successfully litigating antitrust suits against the NCAA. Objectors present no compelling reason that other, variable revenue categories should be counted, or any reason to think they would have achieved a better outcome through litigation. And in any event, even if the cap were underinclusive—which it plainly is not—the settlement would still fall within a range of reasonable outcomes meriting approval. *See* Defs.' Reply in Supp. of Mot. for Prelim. Settlement Approval, ECF No. 495 at 12–13.

Equally misguided is the claim that the Pool structure is illegitimate outside the context of collective bargaining. While the outcomes of this settlement are reasonable in comparison to the products of collective bargaining in professional sports leagues, Defendants do not claim that the non-statutory labor exemption applies in this context and it need not apply for this settlement to be approved. Again, this is a rule of reason case, and as explained above, this settlement will yield *greater* benefits to a *greater* number of student-athletes than could be reasonably anticipated through litigation. It also bears noting that student-athletes will receive these benefits without having to endure the time-intensive process of joining together in a players' union and bargaining. In addition, nobody holding up collective bargaining as a solution has explained how it would work—such as who the putative bargaining units would represent (all football players? Football players in a conference? Or in a school? Or all athletes in a conference, or in a school?); how student-athletes from both private and public institutions across state lines could negotiate together

under applicable laws; or who would be negotiating on the other side. Moreover, such a structure could easily create more winners and losers depending on how these issues would be resolved, among many others. The bottom line is that the settlement should be evaluated based on real-world facts, not undertheorized conjecture. Against that backdrop, it represents a fair, reasonable, and adequate outcome for the settlement classes.

Antitrust Lawsuits Never Result In Mandatory Spending. The various objections that there should be some minimum level of benefits guaranteed to student-athletes are also without merit. The notion that member institutions should be required to devote a minimum amount of revenue to student-athlete benefits runs counter to the idea of a competitive market, in which schools would make such decisions based on budgetary concerns and other interests that might change year-over-year.

Indeed, the notion of a spending floor in this context is contrary to the purpose of the antitrust laws, which are about remedying anticompetitive conduct, not compelling entities to undertake an action that may not be in their economic interest in a market unrestrained by anticompetitive conduct.[1] It is for this reason that past cases have given schools latitude to determine what distributions to make to student-athletes. *See, e.g.*, *O'Bannon*, 802 F.3d at 1079 ("The Rule of Reason requires that the NCAA permit its schools to provide *up to* the cost of attendance to their student athletes. It does not require more." (emphasis added)); *Alston*, 594 U.S. at 107 ("*By permitting* colleges and universities to offer enhanced education-related benefits, its decision may encourage scholastic achievement and allow student-athletes a measure of compensation more consistent with the value they bring to their schools." (emphasis added)).

Further, there is no reason to believe that many institutions would pay 0% under the Pool structure. The evidence and history from *O'Bannon* and *Alston* suggest that many schools, particularly those of the Defendant conferences, are likely to provide substantial new benefits to student-athletes. *See, e.g.*, Compl. *Hubbard v. NCAA*, No. 5:23-cv-01593-BLF (N.D. Cal. April 4, 2023), ECF No. 1 ¶ 4 ("The injunction [in *Alston*] did not *require* schools to pay Academic

[1] Defendants are not aware of any instance where a spending floor was imposed as part of a judgment or settlement in an antitrust case.

Achievement Awards, but with the anticompetitive prohibition removed [up to payments of $5,980], competition for the services of Division I athletes led colleges to do so."). And the widespread embrace of the settlement structure by schools throughout Division I over the last several months confirms as much. The underlying concerns of the objectors advocating for a compensation floor are thus overblown, if not illusory.

A Settlement Need Not Change All Aspects Of The Status Quo. Last, objections that the settlement does not represent a total victory for the Plaintiff classes, or that the settlement perpetuates some of the challenged conduct, badly miss the mark. It is far from clear that litigation would result in a complete elimination of all restrictions. In any event, achieving less than 100% of what a plaintiff sets out to obtain—and leaving in place some of the conduct challenged in litigation—is the essence of nearly every negotiated settlement. It is simply not a bar to approval if the settlement is fair and reasonable. *See Bennett v. Behring Corp.*, 737 F.2d 982, 987 (11th Cir. 1984) ("[U]nless the illegality of an arrangement under consideration is a legal certainty, the mere fact that certain of its features may be perpetuated is no bar to approval." (citation omitted)); *Robertson v. Nat'l Basketball Ass'n*, 556 F.2d 682, 686 (2d Cir. 1977) (approving an antitrust settlement over the objection that "it perpetuates for ten years two 'classic group boycotts' in violation of Section 1 of the Sherman Antitrust Act" because "the alleged illegality of the settlement agreement is not a legal certainty." (citations omitted)); *In re Blue Cross Blue Shield Antitrust Litig.*, No. 2:13-CV-20000-RDP, 2022 WL 4587618, at *23 (N.D. Ala. Aug. 9, 2022), (approving settlement on the basis that "the arrangement that will exist upon implementation of the Settlement is not clearly illegal"), *aff'd sub nom.*, *In re Blue Cross Blue Shield Antitrust Litig. MDL 2406*, 85 F.4th 1070 (11th Cir. 2023). Limits have been implemented in other antitrust cases regarding NCAA rules, so implementing a significantly higher limit—beyond what has ever before been achieved in litigation—is a permissible, fair, and reasonable outcome well within the bounds of the antitrust laws and Rule 23.

II. THE SETTLEMENT'S ROSTER LIMITS ARE FAIR AND REASONABLE

The settlement provides that all limits to NCAA Division I athletic scholarships will be eliminated, in favor of roster limits. Am. Stipulation & Settlement Agreement, ECF No. 535-1 at 71 (Appx. A, Art. 4, § 1). Those initial roster limits, outlined in Appendix B to the Amended Stipulation and Settlement Agreement, will come into effect during the first academic year following final approval of the Agreement, and will apply to NCAA member institutions that choose to provide or facilitate payments or benefits to student-athletes under the settlement. In every instance, the roster limits are equal to or greater than the existing scholarship limits, which means that the implementation of the roster limits, combined with the elimination of scholarship limits, would open the door for *more* student-athletes to receive scholarships than ever before. As Plaintiffs pointed out at the preliminary approval stage: "[t]he settlement also eliminates the NCAA's prior scholarship limits and replaces them with roster limits for all sports that are higher than the previous scholarship caps. *These developments, standing alone, are massive wins for the Settlement Classes*." Pls.' Supp. Br. in Supp. of Mot. for Prelim. Settlement Approval, ECF No. 534 at 8 (emphasis added).

The objections to roster limits primarily rest on the premise that their implementation will take opportunities away from current student-athletes, or current high school students who will be attending college next year. As an initial matter, these objections were raised and considered by the Court prior to its decision to grant preliminary approval. *See, e.g.*, ECF No. 475 at 16; Revised Order Granting Pls.' Mot. for Preliminary Settlement Approval, ECF No. 544. The low volume of new objections further disqualifies it as a basis for denying approval. Out of the approximately 389,700 potential class members, *fewer than 300* have raised objections regarding roster limits. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming final approval with similarly minuscule portion of objectors).[2]

[2] Moreover, many objections were actually submitted not by student-athletes, but by parents, ECF Nos. 574, 575, 604, 606, 607, 610, 611, 620, 667, 696, 700, 701, 707; associations, ECF Nos. 547, 674, 677, 691, 699, 704; or other attorneys or individuals, ECF Nos. 603, 701, 703, 705. These individuals and entities lack the legal standing to object to the proposed settlement; their objections therefore should be given minimal, if any, consideration. *See* Order Denying Mot. for Intervention, ECF No. 446 at 7 (denying motion to intervene and refusing to consider

The objection also fails on the merits because it rests on a pair of false premises. The first is the suggestion that the imposition of roster limits will cause student-athletes to lose "guaranteed" roster spots, preventing them from participating in their chosen sport. *See, e.g.*, ECF Nos. 575, 579, 592. But non-scholarship student-athletes *have never been guaranteed roster spots*. The current NCAA rules on this matter—which have never been challenged in litigation, including by any of the attorneys now raising concerns about roster limits—allow schools to cut non-scholarship student-athletes from their rosters at any point in time. Question and Answer: Impact of the Proposed Settlement on Current Division I Student-Athletes (Dec. 13, 2024), ECF No. 581-1 at 1. The settlement thus does not eliminate "guaranteed" roster spots or anything like them, or take away any rights to which non-scholarship student-athletes are currently entitled.

By contrast, the settlement contains features that explicitly prevent any harm to scholarship athletes. Changes to NCAA Division I or conference roster limit rules will not cause current student-athletes to lose their scholarships, nor will the roster limit changes reduce the number of permissible athletic scholarships under current NCAA Division I rules in any sport. Am. Stipulation & Settlement Agreement, ECF No. 535-1 at 19 (Appx. A, Art. 4). This provision makes it unnecessary to phase in roster limits, as some have suggested.[3] Scholarships are protected, and the roster limits will not cause anyone to lose anything to which they are currently otherwise entitled.

The second false premise is that the roster limits will materially reduce opportunities for student-athletes to compete. While some schools may ultimately carry smaller overall rosters for certain sports, it is important to note that the proposed roster limits will not meaningfully reduce the number of players that *actually compete* in any given sport. As shown below, the proposed roster limits for each sport are generally (often much) higher than the number of student-athletes

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arguments opposing settlement "because HCU, as a non-class member, lacks standing to object"); *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994) (holding that only "an aggrieved class member" has standing to object to a proposed class settlement); *see also San Francisco NAACP v. San Francisco Unified School Dist.*, 59 F. Supp. 2d 1021, 1032 (N.D. Cal. 1999) (noting that "nonclass members have no standing to object to the settlement of a class action." (citation omitted)).

[3] *See, e.g.*, ECF. Nos. 573, 575.

that actually competed in that sport in the Defendant Conferences during the 2022-2023 and 2023-2024 academic years, and in all instances are higher than the existing scholarship limits. This was by design in setting the initial roster limits.

Fig. 1: Average Number Of Student-Athletes That Compete In College Sports[4]

Sport	Average No. of Participants 2022-2023	Average No. of Participants 2023-2024	Proposed Roster Limit[5]	Existing Scholarship Limit[6]
Football	85.2	80.2	105	85
Men's Basketball	14.3	14.3	15	13
Women's Basketball	12.5	12.2	15	15
Men's Baseball	33.0	34.5	34	11.7
Men's Cross Country	13.3	13.3	17	12.6[7]
Men's Fencing	25.0	27.5	24	4.5
Men's Golf	9.3	9.4	9	4.5
Men's Gymnastics	18.0	19.4	20	6.3
Men's Ice Hockey	26.7	25.3	26	18
Men's Indoor Track & Field	35.9	35.5	45	12.6
Men's Lacrosse	41.2	42.7	48	12.6
Men's Outdoor Track & Field	36.4	35.6	45	12.6
Men's Soccer	24.6	23.6	28	9.9
Men's Swimming & Diving	30.2	30.5	30	9.9
Men's Tennis	9.8	9.9	10	4.5
Men's Volleyball	17.5	15.3	18	4.5
Men's Water Polo	23.0	26.0	24	4.5

[4] This chart reflects participation in each of the listed sports across the five Defendant Conferences, measured by actual appearance in at least one contest during that sport's season and approximately weighted by number of current member schools in each conference. Some sports were not offered by every conference or by every school in a conference. Further, where participation data varied in how it was reported and/or was unavailable for certain conferences in certain sports for certain seasons, those figures were excluded for purposes of calculating weighted participation averages.

[5] Am. Stipulation & Settlement Agreement, ECF No. 535-1 at 130 (Appendix B, Art. I).

[6] NCAA, *Division I 2024-25 Manual* (2024), https://perma.cc/UL5J-2RVE.

[7] The 12.6 equivalency scholarships limit applies collectively to Men's Cross Country, Men's Outdoor Track & Field, and Men's Indoor Track & Field. *Id*. at 188 (Bylaw 15.5.3.1.1).

Men's Wrestling	25.6	26.8	30	9.9
Women's Acrobatics and Tumbling	30.0	29.0	55	14
Women's Beach Volleyball	15.0	14.8	19	6
Women's Bowling	8.0	9.0	11	5
Women's Cross Country	15.6	15.2	17	18[8]
Women's Equestrian	28.0	31.3	50	15
Women's Fencing	22.7	23.0	24	5
Women's Field Hockey	21.4	22.0	27	12
Women's Golf	7.9	7.8	9	6
Women's Gymnastics	14.6	14.8	20	12
Women's Ice Hockey	24.3	22.8	26	18
Women's Indoor Track & Field	36.8	35.8	45	18
Women's Outdoor Track & Field	38.3	37.8	45	18
Women's Lacrosse	31.0	27.9	38	12
Women's Rowing	61.2	53.2	68	20
Women's Softball	21.7	21.5	25	12
Women's Soccer	25.2	24.7	28	14
Women's Swimming & Diving	28.7	30.3	30	14
Women's Tennis	8.8	8.9	10	8
Women's Water Polo	24.3	24.0	24	8
Women's Volleyball	15.4	15.0	18	12
Women's Wrestling	N/A	25.0	30	10
Co-ed Rifle	10.0	9.5	12	3.6

[8] The 18 equivalency scholarships limit applies collectively to Women's Cross Country, Women's Outdoor Track & Field, and Women's Indoor Track & Field. *Id*. at 189 (Bylaw 15.5.3.1.2).

At base, objections to roster limits boil down to the preference of some student-athletes for the status quo. But Plaintiffs claim the status quo is anticompetitive. And "an interest by certain putative class members in maintaining the allegedly unlawful policy is not a reason to deny class certification." *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012) (citation omitted); *see also Probe v. State Tchrs.' Ret. Sys.*, 780 F.2d 776, 781 (9th Cir. 1986) (similar), *cert. denied*, 476 U.S. 1170 (1986); *Howell v. Advantage RN, LLC*, No. 17-CV-0883, 2018 WL 3437123, at *6 (S.D. Cal. July 17, 2018) (similar) (quoting *Laumann v. Nat'l Hockey League*, 105 F. Supp. 3d 384, 406 (S.D.N.Y. 2015)); *Hamidi v. Serv. Emps. Int'l Union Loc. 1000*, No. 2:14-CV-319, 2015 WL 2455600, at *6 (E.D. Cal. May 22, 2015) (similar). Accordingly, the Court should give little if any weight to the objections of student-athletes who want to continue receiving the benefits flowing from the status quo repeatedly attacked as anticompetitive. *See also* 1 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 3:64 (6th ed. 2024).

The proposed roster limits could also have been imposed absent the settlement, because they are procompetitive. They will enhance competitive balance between NCAA DI member institutions that choose to provide and/or facilitate payments or benefits to student-athletes under the settlement, as evidenced by every professional sports league. The NFL limits its roster to 53 active players,[9] the NBA to 15,[10] the MLB to 26,[11] with similar practices in the NHL[12] and MLS.[13] Adopting roster limits for participating member institutions prevents schools from stockpiling talent, providing more opportunities for more student-athletes to participate meaningfully at the

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[9] *NFL roster cuts tracker: Team-by-team player moves ahead of the 2024 season*, NFL (Aug. 19, 2024), https://www.nfl.com/news/nfl-roster-cuts-tracker-team-by-team-player-moves-ahead-of-the-2024-season.

[10] *Teams allowed to carry 15 players on active roster for 2020-21 season*, NBA (Dec.17, 2020), https://www.nba.com/news/teams-allowed-to-carry-15-players-on-active-roster-for-2020-21-season; *see also* Luke Adams, 2023/24 NBA Roster Counts, HOOPS RUMORS (July 15, 2023), https://www.hoopsrumors.com/2023/07/2023-24-nba-roster-counts.html.

[11] *26-man Roster*, MLB, https://www.mlb.com/glossary/transactions/26-man-roster (last visited Feb. 15, 2025).

[12] NHL limits its roster to 23 active players. *Hockey Operations Guidelines*, NHL, https://www.nhl.com/info/hockey-operations-guidelines (last visited Feb. 15, 2025).

[13] MLS limits its roster to 30 active players. *2025 MLS Roster Rules and Regulations*, MLS (Feb. 5, 2025), https://www.mlssoccer.com/about/roster-rules-and-regulations.

highest level of collegiate sports and ensuring that teams do not have different numbers of players to circulate on and off the field during games. Even objectors recognize that "schools with the resources" could "build the best teams" without such limits, ECF No. 475 at 16, reducing competitive balance and thereby making college sports worse for many student-athletes.

Last, it is important to put the roster limits objection into context. The roster limits are merely one aspect of a complex, interlocking settlement agreement that will undeniably benefit the class. Where, as here, a settlement is fair, reasonable, and adequate, that is the end of the inquiry. A court cannot "disapprove of the entire settlement as a result of one or two provisions," nor "strike or revise those objectionable provisions before approving the settlement." *White*, 822 F. Supp. at 1426. Thus, even if the roster limits objection raised by less than 0.1% of class members had merit (and it does not), it would not present an obstacle to final approval.

III. OBJECTIONS TO HOW THE SETTLEMENT COMPENSATES "WALK-ON" STUDENT-ATHLETES ARE MERITLESS

A handful of non-scholarship football and men's basketball student-athletes (i.e., "walk-ons") object to their ineligibility to receive the "BNIL" component of the damages settlement fund because, as non-scholarship athletes, they are members of the Additional Sports Class rather than the Football and Men's Basketball Class.[14] To be clear, these walk-on objectors[15] will receive meaningful compensation under the settlement. Rascher Decl., ECF No. 450-4 at 15, Ex. 6 (detailing available payment categories). But they claim they should receive more. In that sense, these objections are simply a rehash of "lost scholarship" objections the Court has already considered and rejected. *See* ECF No. 473 at 10–13 (arguing that the settlement provides insufficient compensation to non-scholarship athletes).

This objection is not a hurdle to approval. To the extent the walk-on objectors believe they are inadequately compensated by the settlement, including because they have NIL market value

[14] *See, e.g.*, ECF No. 593; ECF No. 601; ECF No. 612; and ECF No. 678.

[15] Some of the objectors refer to themselves as "preferred walk ons" or "PWOs." *See, e.g.*, ECF No. 612. But there is no official "preferred walk on" designation under NCAA rules. It is, at best, an unofficial description used by some players and coaches to refer to a student-athlete's recruiting status. It therefore would not be sufficiently definite to be part of a class definition in any regard.

atypical of other walk-ons, they were free to opt out and seek individual relief. But their purportedly unique circumstances do not justify derailing a settlement impacting 389,700 other class members, the overwhelming majority of whom do not share their concerns. *See Nunez v. BAE Sys. San Diego Ship Repair Inc.*, 292 F. Supp. 3d 1018, 1049 (S.D. Cal. 2017) ("A settlement that is fair, reasonable, and adequate for the Class as a whole may nevertheless leave a smaller recovery for a small subset of Class Members who had a chance of larger individual recovery. But as already noted, such individuals were free to opt-out of the Settlement.").

The objections also fail on the merits. Schools *had* the opportunity to compensate walk-on athletes with scholarships but chose not to do so in favor of awarding scholarships to other student-athletes. As a result, walk-ons have substantially weaker antitrust claims and face significantly increased litigation risk relative to full grant-in-aid ("GIA") scholarship recipients. That means the walk-on objectors are *not* similarly situated to the Football and Basketball class members, which in turn means there is no reason for the settlement to treat them the same way.

Walk-Ons Need To Be Treated Similarly To Full-Scholarship Recipients Only If They Are Similarly Situated. "All class settlements value some claims more highly than others, based on their perceived merits, and strike compromises based on probabilistic assessments." *Charron v. Wiener*, 731 F.3d 241, 253 (2d Cir. 2013). A court's job is to "ensure" that "dissimilarly situated class members are not arbitrarily treated as if they were similarly situated." 4 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 13:56 (6th ed. 2024). For that reason, settlements need not compensate all class members *equally*, so long as "higher allocations to certain parties are rationally based on legitimate considerations." *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1148 (11th Cir. 1983) (citing *Kincade v. General Tire & Rubber Co.*, 635 F.2d 501, 506 n.5 (5th Cir. 1981)).

One such consideration is the strength of a class member's claims. "It is reasonable to allocate settlement funds to class members based on the extent of their injuries and the strength of their claims on the merits." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008). A settlement is fair if it takes into account the relative strengths of different class claims. *See In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litig.*,

895 F.3d 597, 608–09 (9th Cir. 2018) (rejecting argument that class settlement was unfair to certain class members with "fairly weak" claims and who thus received less of the settlement, explaining that "[i]nstead of getting nothing," those with weaker claims received compensation "quite possibly . . . *because* they were in the same class" as those with more valuable claims).

Walk-Ons Face Significantly Increased Litigation Risk Relative To Full-Scholarship Athletes. Throughout this litigation, Defendants have vigorously contested Plaintiffs' ability to establish antitrust injury as to any student-athletes. But the problem is particularly severe for walk-ons—whose schools chose *not* to provide them with scholarships, in favor of the full GIA student-athletes on the roster. For that reason, walk-ons have a materially weaker case that NCAA rules caused them antitrust injury, relative to full GIA student-athletes. By definition, walk-ons did not receive all the permissible benefits for which they were eligible under the existing NCAA rules, so there is little reason to think that, absent the challenged rules, they would have received more. *See Associated General Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983) (affirming dismissal of antitrust action where plaintiffs could not demonstrate that they were harmed by defendant's alleged anticompetitive conduct.)

That is especially so given the history of this case. As this Court acknowledged in ruling on Defendants' motion to dismiss, the alleged antitrust "BNIL" injury for which the settlement compensates is the lost *opportunity to negotiate* for payment in exchange for use of Plaintiffs' so-called BNIL, not for their actual participation in broadcasts. *See* Order, ECF No. 152 at 17–19; *see also* Rascher Report, ECF No. 598-1 at ¶ 151–67 (opining that the parties would "enter[] into *ex ante* group-licensing deals with incoming" student-athletes, not offer payment based on actual use of NIL). The non-scholarship student-athletes had the opportunity to negotiate for a full scholarship, but they were unsuccessful in those negotiations at the schools they chose to attend.[16]

[16] It does not help objectors that some of them claim that they were offered a scholarship at one school but chose to attend a different school. Choosing a school requires analyzing multiple variables, both financial and non-financial. The non-financial benefits of attending one school as a walk-on must have exceeded the financial benefits of attending a school offering a scholarship. That choice is not an antitrust injury caused by Defendants that can or should be compensated in this settlement. Indeed, this argument instead underscores why class certification would have been much more difficult for non-scholarship athletes.

There is little reason to believe that student-athletes who did not receive compensation permitted under the challenged rules would have successfully negotiated *additional* compensation for so-called BNIL in the absence of the challenged rules.

Beyond the issue of antitrust injury, the walk-on objectors would face insuperable obstacles in certifying a damages class. The objections themselves confirm that walk-ons are a disparate group. Some objectors claim to have been incredibly successful, earning regular or even starting roles on their teams. *See, e.g.*, ECF No. 689. Others admit, as is the case for most walk-ons, that they spent little or no time on the actual playing field. *See, e.g.*, ECF No. 684. Without even the commonality of scholarships (as the full GIA student-athletes have), this variety would make it all but impossible to certify a "BNIL" class for walk-ons, much less calculate damages in any formulaic way. Indeed, efforts to certify such classes have failed every time attorneys have tried. *See In re NCAA I-A Walk-On Football Players Litig.*, No. C04–1254C, 2006 WL 1207915 at *7–8, *13 (W.D. Wash May 3, 2006) (denying motion for class certification); *see also Rock v. Nat'l Collegiate Athletic Ass'n*, No. 1:12-CV-01019, 2016 WL 1270087, at *7–9, *14 (S.D. Ind. Mar. 31, 2016) (same); *cf. Agnew v. Nat'l Collegiate Athletic Ass'n*, No. 1:11-CV-0293, 2011 WL 3878200, at *10 (S.D. Ind. Sep. 1, 2011) (granting motion to dismiss similar claim), *aff'd*, 683 F.3d 328 (7th Cir. 2012). Those repeated failures reflect that there is virtually no chance of recovering damages (much less damages of any significant amount) for the non-scholarship student-athletes' claims for additional compensation from schools, confirming the fairness and adequacy of the meaningful compensation these student-athletes are receiving under the settlement.

CONCLUSION

The Court should grant final approval of the Settlement Agreement.

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SIGNATURE CERTIFICATION

I, Rakesh N. Kilaru, am the CM/ECF user whose ID and password are being used to file the Defendants' Brief in Support of Final Settlement Approval. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

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