THE DRAKE GROUP
Advancing Positive Legislative Change In College Athletics

The Drake Group Report: An Analysis of Objections to the Proposed Settlement of *College Athlete NIL Litigation* (aka *House/Carter v. NCAA* and *Power Five conferences)*[1] March, 2025

EXECUTIVE SUMMARY

The Drake Group (TDG) undertook an examination of the documents submitted as objections and comments to the proposed settlement *College Athlete NIL Litigation* (aka *House/Carter v. NCAA* and *Power Five conferences).* At issue in this litigation is whether athletes at these institutions, if not for NCAA rules, would have been compensated for their names, images, and likenesses (NILs), the revenue they generated (House), and provided with salaries for their playing services (Carter). The proposed Settlement has two major parts: past damages and future injunctive relief. First, if approved, the settlement provides, among other things, that the NCAA will pay $2.8 billion in past damages to certain athletes. More specifically, over ninety percent of the amount (less the $484 million amount requested by the plaintiffs' attorneys) will go to football and male basketball players at Power Five institutions. Second, the settlement would allow more than $20 billion in so-called "revenue-share" payments from the schools to athletes over the next ten years. Many of the schools and their conferences now have stated that they will distribute these payments based on the past damages NIL algorithms (75% men's football, 15% men's basketball, 5% women's basketball and 5% additional sports). While we have outlined many of the objections to this settlement in this report, we particularly would like to highlight two of the most damning.

The decision of the Settlement Court to approve the class-action settlement must be based on a determination that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2) Objections[2] addressed whether (1) Class Counsel adequately represented the classes, (2) Class Representatives competently represented interests of the class, (3) the notification to class

[1] Preferred Citation: Lopiano, Donna, Ramsey, Kassandra, Statham-Taylor, Amelia and Zimbalist, Andrew. (2025) "The Drake Group Report: An Analysis of Objections to the Proposed Settlement of House v. NCAA, Hubbard v. NCAA and Carter v. NCAA", March 24, 2025. Retrieve from: https://www.thedrakegroup.org/

[2] A database created for this report with links to all objection documents examined may be accessed at https://www.thedrakegroup.org/

members was adequate, (4) restrictions on the class to use the courts to challenge the settlement in the future were fair and reasonable, (5) fair opportunities existed for athletes to voice objections, (6) past damages were properly calculated, (7) calculation of athlete settlement amounts were fairly calculated, (8) the relief provided to the classes was adequate, and (9) the settlement complied with antitrust or other laws. Objections also addressed the overall question of whether the settlement would fundamentally change the nature of the college athletic industry in a manner that could be considered fair and reasonable given tax exemption laws or other practices that govern the operation of higher education programs and activities.

Readers are reminded that the antitrust cases have not been decided on their merits and a settlement does not indicate that the defendants are or would be found guilty. The only court decision made on the case to date has been to approve a class certification motion that assessed whether the classes of plaintiffs were appropriate to the scope of the complaint. If the Settlement is not approved, the cases would proceed to court to be tried on their merits.

We point to four elements of the settlement that appear to be so flawed, that any one could be justification for rejecting the settlement. First, the past damages were not properly calculated. The damages model posited could not exist, indicating a misunderstanding of what constitutes an antitrust damage. Zimbalist,[3] a nationally recognized sports economist, explains that antitrust damage occurs when an illegal restraint of trade precludes a benefit accruing to a plaintiff that otherwise would have accrued absent the illegal restraint. The alleged, market-determined damages accorded in the Settlement would not have occurred absent the NCAA rules on pay for play. Specifically, the unequal treatment and benefits between the sexes valued at $600 million for past damages would have been a violation of federal Title IX law that would not have existed. Similarly, the settlement's valuation of NIL rights ($1.815 billion) would not have existed even among the most successful professional football and basketball leagues used as comparators where they were and are diminutive. In short, the Settlement constructs a false past damages pool.

Second, the future injunctive relief portion of the settlement also appears to contain a second significant flaw due to its price fixing elements in violation of Sherman Antitrust Act, absent Congress granting an antitrust exemption and legislative preemption of state laws. The Settlement limits annual athlete compensation to $20.5 million per institution per year with a gradual escalation provision. The settlement also limits the number of athletes who may receive compensation to the size of their limited rosters which appears to be a plain horizontal agreement by the schools not to compete for talent with defendants offering questionable pro-competitive arguments to justify those constraints.

[3] Declaration of Andrew Zimbalist Regarding the Settlement in House et. al. v. NCAA et. al., January 30, 2025, contained in Exhibit A to Docket #618, submitted by Hutchinson Black & Cook.

Third, the settlement prohibits athletes who participate in the settlement from pursuing Title IX litigation challenging the past damages portion of the settlement on Title IX grounds. After plaintiffs' counsel represented to the Court that the antitrust case does not involve Title IX, any Title IX concerns will be decided in the future by the courts, and the Settlement would not prohibit such litigation, inexplicably, the settlement denies such litigation opportunity to any athlete who participates in the settlement. This provision is gravely concerning given the fact that a 2024 U.S. General Accounting Office audit of Department of Education Office for Civil Rights enforcement activities revealed that 93 percent of all college athletics programs were not in meeting the participation equity provisions of Title IX. Female members of the class are the most probable prospective litigants.

Last, the significance of the settlement cannot be understated; it is a "bridge too far." Approval of the settlement would fundamentally change the underlying nature of college athletics by creating a never before market-based industry with cash incentives primarily benefitting 11,000 Power 5 conference male athletes based on their performance and NIL value in the revenue-producing sports of football and basketball and a small number male football and basketball players from among the 28,000 other students participating in those Division I sports. The proposed revenue-sharing and NIL cash supporting these male football and basketball players will be taken from the NCAA's united fund revenue coffers supporting all sports, thereby undermining the financial support of the 159,000 Division I male and female athletes participating in sports other than men's football and basketball. This new cash transactional industry expects to operate in violation of Title IX and utilize tax and other benefits from being housed within a non-profit higher education institution, including institutional subsidies derived from non-athletics activities.

The proposed Settlement is a bridge too far built upon unstable foundations—a false past damages pool and a 10-year injunctive relief plan in violation of antitrust and state laws. It would prohibit predominantly female athletes from pursuing litigation to achieve equitable benefits under Title IX and would convert the existing education-based intercollegiate sport industry into a pay-for-play system favoring male athletes participating in revenue sports. We encourage the Settlement Court to carefully consider these and other concerns raised by objectors in making its decision about whether the settlement should be approved.

TABLE OF CONTENTS

		Page
EXECUTIVE SUMMARY		1
PURPOSE OF THE REPORT		5
SETTLEMENT OVERVIEW		5
METHODOLOGY FOR EXAMINING THE OBJECTIONS		10
THE OBJECTIONS		12
I.	Whether Class Counsel adequately represented the interests of the classes	12
II.	Whether Class Representatives competently represented interests of the class	24
III.	Whether the notification to class members was adequate	25
IV.	Whether restrictions on the class to use the courts to challenge the settlement in the future are fair, reasonable, and adequate.	27
V.	Whether fair opportunities existed for athletes to voice objections.	33
VI.	Whether past damages were properly calculated.	37
VII.	Whether calculation of athlete settlement amounts were fairly calculated and class members were treated equitably relative to each other.	43
VIII.	Whether the relief provided to the classes was adequate.	52
IX.	Whether the settlement complies with antitrust or other laws.	53
X.	Whether the settlement would fundamentally change the nature of the college athletics industry in a manner that is fair and reasonable.	61
ANALYSIS OF OBJECTIONS THAT ARE MOST LIKELY TO BE REASONS WHY THE SETTLEMENT MAY NOT BE APPROVED		62

PURPOSE OF THE REPORT

The purpose of the report is to give members of Congress, higher education and college athletics stakeholders, and the general public, greater insight into the nature of Settlement objections, how they relate to the questions that will be considered by the Court in making its decision to approve or reject the Settlement, and how the various provisions of the Settlement might impact college sport.

SETTLEMENT OVERVIEW

Three antitrust cases are the subject of the proposed settlement agreement (there are other antitrust cases pending against the NCAA's rules that impose limits on pay and on other types of playing requirements (e.g., transfer rules). At issue in this litigation is whether athletes at these institutions, if not for NCAA rules, would have been compensated for their names, images, and likenesses (NILs) and the revenue they generated.

How the Lawsuits Differ

First, and furthest along in litigation which had a trial date of January 2025 (now stayed pending the settlement process), is *In re College Athlete NIL Litigation,* No. 4:20-cv-03919-CW (N.D. Cal. June 15, 2020) (referred to herein as "*House*"). *House* challenges the rules that prohibit athletes from receiving from their schools, conferences or third parties, anything of value in exchange for the commercial use of their NILs, particularly from revenue produced via broadcast rights (but not limited to that source of revenue).

After the filing of the *House* case, the same attorneys filed the *Carter* case which broadened their attack and challenged every rule that prohibits any compensation from any entity (including schools, conferences and the NCAA) to athletes. (Case no. 4:23-cv-06325-DMR (N. D. CA., Dec. 7, 2023). At its core, *Carter* challenges the pay for play rules.

The third case is *Hubbard/McCarrell (*known as "*Hubbard"*). (Case No.4:23-cv-01593, N.D. CA, April 4, 2023). It seeks damages on behalf of all Division 1 athletes who would have received the *Alston*-permitted $5,980 in cash if *Alston* had been decided earlier.

The Definition of Classes of Athletes Who Will Benefit

The complaints in the three lawsuits allege slightly different classes (men v. women; football and basketball v. all sports, Power Five v Division 1, etc.) and have different time periods. And, within the *House* and *Carter*, the classes differ depending on past damages versus future injunctive relief. Classes have only been certified in the *House* case (*Carter* and *Hubbard* have not gotten that far in the litigation).

The proposed class in *Hubbard* (seeking only past damages for the Alston award money totaling up to $5980 per athlete) is of all Division 1 athletes who competed between April 1, 2019, and the date of certification in that case. This settlement is not being considered at the April 7, 2015 hearing to approve *House* and *Carter*.

The proposed classes in *Carter* are for injunctive relief: all Division 1 athletes who competed between Dec. 7 and the date of judgment in the case; and for past damages: Power Five conference plus Notre Dame football players and basketball players who competed prior to March 21, 2017. *Carter,* again, seeks for the free market to control compensation.

Illustrative of the differences are the following descriptions of the classes from the *House* litigation:

- **Future Injunctive Relief Class**: All college athletes who compete on, competed on, or will compete on a Division I athletic team at any time between June 15, 2020 and the date of judgment in this matter. This class seeks a change in the NCAA rules prohibiting NIL compensation from any entity.
- **Past Damages Classes**

    - **Football and Men's Basketball Class**: All current and former college athletes who have received full Grant-in-Aid (GIA) scholarships and compete on, or competed on, a Division I men's basketball team or an FBS football team, at a college or university that is a member of one of the Power Five Conferences (including Notre Dame), at any time between June 15, 2016 and the date of the class certification order in this matter. This class is alleged to have been deprived of compensation they would have received for the use of their NILs in broadcasts of FBS football or Division1 basketball games, and video games.

    - **Women's Basketball Class:** All current and former college athletes who have received full GIA scholarships and compete on, or competed on, a Division I women's basketball team, at a college or university that is a member of one of the Power Five Conferences (including Notre Dame), at any time between June 15, 2016 and the date of the class certification order in this matter. This class is alleged to have been deprived of compensation they would have received for the use of their NILs in broadcasts of Division 1 basketball games.

    - **Additional Sports Class**: Excluding members of the Football and Men's Basketball Class and members of the Women's Basketball Class, all current or former college athletes who competed on a Division I athletic team prior to July 1, 2021 and who received compensation while a Division I college athlete for use of their name, image, or likeness between July 1, 2021 and the date of the class certification order in this matter and who

competed in the same Division I sport prior to July 1, 2021. This class is alleged to have been deprived of compensation from third-party NILs that they would have received before the interim NCAA policy went into place permitting such compensation.

How Past Damages Would Be Distributed

The proposed Settlement has two major parts: past damages and future injunctive relief. If approved, the settlement provides, among other things, that the NCAA will make past damages payments to athletes at these schools valued at $2.8 billion. According to plaintiffs' attorneys, 90 percent of the damages amount (less the amount awarded to plaintiffs' attorneys[4]) will go to male football and basketball players at Power Five institutions. The following table illustrates the probable payout according to the plaintiffs' economic expert:

Table 1

Distribution of Settlement by Sex (per Rascher expert reports)

MEN = ($2,296 Billion-87%)		**WOMEN = $147 million (5.3%)**		**UNDESIGNATED = $219 million (7.9%)**			
Source of Past Damages Calculation	**Settlement Amount Preliminarily Approved**	**Percent of Total Settlement Amount**	**Amount to Power Five Men's Football and Basketball**	**Amount to Power Five Women's BB**	**Additional sports class Non-Power 5 Men**	**Additional sports class-Non-Power 5 Women**	**Undesignated Sex: Additional sports class Non-Power 5* and All D-I AAA****
Video games[1]	$71.5 million	2.6%	$26.96 million	$44.59 million			
Broadcast revenues[1]	$1.8 billion	65.2%	$1.75 billion	$67.74 million			
Lost NIL opportunities[1]	$89.5 billion	3.2%	$53.02 million	$3.36 million	$15.02 million	$1.23 million	
Athlete Services[2]	$600 million	21.7%	$540 million	$30 million	$11.2 million	$ 0.2 million	$ 18.6 million*
NIL Total	**2.561 billion**	**92.70%**	**$2.370 billion**	**$145.7 million**	**$26.22 million**	**$ 1.25 million**	**$ 18.6 million**
NIL Percent		**Percent**	**92.50%**	**5.70%**	**1.02%**	**0.0005%**	**0.007%**
Alston Academic Awards[3]	**$200 million**	**7.2%**					**$ 200 million****
Settlement Total	**2.761 billion**						

[1] July 26, 2024 Rascher Report, see p.16 of 68 NIL: estimated damages and settlement amounts

[2] July 26, 2024 Rascher Report, pp. 21-22 of 68) re: 5% to the Additional Sports settlement damage class and 95% distributed in a ratio of 75/15/5% to athletes across the three sports (football, men's basketball, and women's basketball) see pp. 36 of 68 for non-Power 5 estimated damages for additional compensation for athlete services

[3] September 26, 2024 -Declaration of Steve W. Berman in Support of Plaintiffs' Supplemental Brief in Support of Motion for Preliminary Settlement Approval, pp 300-320- *Hubbard v. NCAA* Alston Academic Awards (AAA) will be distributed by conference to all D-I conferences (Power 5 and non-Power 5) based on receipt of and eligibility for AAA awards (sex or sport related)

[4] The plaintiffs' attorneys have requested for $484 million for their respective fees and expenses and the following service awards for each Class Representative:—Grant House (Arizona State University swimmer), Tymir Oliver (University of Illinois football player) and Sedona Prince (University of Oregon/Texas Christian University women's basketball player to receive $125,000 each; DeWayne Carter (Duke University football player) and Nya Harrison (Stanford University soccer player) to receive $10,000 each and Nicholas Solomon (University of North Carolina lacrosse player) to receive $5,000.

Estimated Numbers of Claimants and Distribution of Past Damages by Class

The following table contains the estimated number of claimants in each of the previously described classes and the estimated average value and/or range of claim amounts awarded by classes.

Table 2

Settlement Recovery Information by Class and Type of Claimed Damages

Class	Type of Claimed Damages	Estimated Number of Unique Athletes (approximate)	$ Value of Claims (rough estimates)
Football and Men's Basketball	BNIL (no claim required)	19,000	Average approx. $91,000. Range from $15,000 to $280,000.
Football and Men's Basketball	Videogame (no claim required)	18,000	Range from approx. $300 to $4,000 per athlete.
Football and Men's Basketball	Lost Opportunities[11]	3,000	Average approx. $17,000. Range from less than $1 to approx. $800,000.
Football and Men's Basketball	Additional Compensation (no claim required)	14,000	Average approx. $40,000.
Women's Basketball	BNIL (no claim required)	3,000	Average approx. $23,000. Range from $3,000 to $52,000.
Women's Basketball	Lost Opportunities[12]	400	Average approx. $8,500. Range from less than $1 to $300,000.
Women's Basketball	Additional Compensation (no claim required)	2,000	Average approx. $14,000.
Additional Sports	For FB/MBB players, Videogame (claim required)	26,000	Range from approx. $300 to $4,000.
Additional Sports	Additional Compensation (claim required)	390,000	Average approx. $80 (see breakout by subcategories in chart below).
Additional Sports	Lost Opportunities[13]	6,000	Average approx. $5,300. Range from less than $1 to $1,859,000.

The following table further disaggregates the Additional Sports class claimants by sport and indicates the estimated average value of claims by these subgroups:

Table 3.
Further Detail Rgarding Pay-for-Play Settlement Recovery Information for Members of Additional Sports Class

Class	Damage	Subcategory	Estimated Number of Unique Athletes (approximate)	$ value of claims (rough average)
Additional Sports	Additional Compensation (claim required)	Power Five Baseball	3,500	Average approx. $400
Additional Sports	Additional Compensation (claim required)	Top Non-Power Five Football (AAC and Mountain West conferences plus BYU)	4,000	Average approx. $1,400
Additional Sports	Additional Compensation (claim required)	Big East Men's Basketball	300	Average approx. $6,700
Additional Sports	Additional Compensation (claim required)	Top Non-Power Five Men's Basketball (AAC, Atlantic 10, and Mountain West conferences plus Gonzaga)	1,000	Average approx. $2,400
Additional Sports	Additional Compensation (claim required)	Top Non-Power Five Women's Basketball (AAC and Big East conferences plus Gonzaga)	700	Average approx. $300
Additional Sports	Additional Compensation (claim required)	All Others	380,000	Average approx. $50

How Future Injunctive Relief Would Be Distributed

The going forward future injunctive relief portion of the settlement allows the Power Five conferences and other Division I institutions that choose to voluntarily participate in the settlement to provide direct payments to athletes no longer restricted to educational expense or

academic achievement and estimated to be more than $20 billion over the next ten years. Institutions choosing to voluntarily participate in the future, with individual schools permitted to give up to $20.5 million per year and an overall capped pool amount based on 22% of the average Power Five conferences' athletics generated media, ticket, and sponsorship revenues. The capped pool amount would be recalculated every three years with a 4 percent annual increase in the second and third year of each period, ending at $32.9 million per school at the 2034-35 last year of the ten-year agreement. NCAA scholarship limits would be discarded and replaced with team roster caps with no restrictions on awards to individual athletes, thus establishing a pay-to-play and roster cap system like professional sports.

Timetable for Approval of the Settlement

The proposed Settlement received preliminary approval on October 7, 2024. The claims period for athletes to participate in the settlement started on October 18, 2024, and closed on January 31, 2025. Individuals wishing to opt out of the Settlement Class or object to it had to do so by January 31, 2025. Plaintiffs filed a motion for final approval on March 3 together with responses to objections. On that same date, Defendants filed a brief in support of final settlement approval. Members of Interested parties were given until January 31, 2025, to submit objections. On April 7, 2025, the Settlement Court will hold a hearing on the objections at which 14 objectors have been invited to speak. Judge Wilken's instructions to invited speakers were: "The Court cannot order changes to the agreement. Objectors should address whether they wish the Court to reject the settlement and set the case for trial." [5] The Court's decision will be based on review of the proposed Settlement and all written submissions. If approved, the settlement terms are expected to be implemented in time for the 2025-2026 academic year, potentially allowing schools to start directly paying players.

METHODOLOGY FOR EXAMINING THE OBJECTIONS

The Drake Group (TDG) undertook an examination of the documents submitted as objections to the proposed Settlement agreement. The Court is required to judge whether the terms of the settlement are "fair, adequate and reasonable."

A database was constructed listing all objections submitted and recorded on the official court docket. A link to each document enables the reader to examine in full the actual submission. The following basic descriptors were also entered to assist the reader in identifying each document:

[5] Order Regarding Hearing on Motion for Final Approval of Proposed Settlement. College Athlete NIL Litigation. No. 20-cv-03919 CW, p. 2.

1. name of individual, law firm, organization, or agency submitting the objection
2. summary
3. issues
4. athlete's damages class
5. whether the objector was an athlete, parent, government agency, law firm, organization, faculty members or business/agency
6. date received by the court,
7. submitted on behalf of what number of athletes
8. whether a legal cause of action was mentioned

A full PDF copy of this report, the full database, a list of links by docket document and a list of links by name of submitter may be downloaded at https://www.thedrakegroup.org/.

Although the deadline for submission of objections was January 31, 2025, documents accepted by the court after this date have been included as of date of publication.

Over 370 athlete members of the Classes have submitted comments, objections, or declarations individually or through legal counsel in addition to submissions by over 20 interested parties: parents, faculty, organizations, and government agencies. We have endeavored to structure this examination of objections in such a way as to allow the reader to 'look over the shoulder' of Judge Wilken as she prepares her opinion on whether the Settlement should be approved.

Suggested solutions to remedy identified concern in the Settlement are not included given the binary choice of the Court to accept or reject the Settlement:

> "*The Court cannot order changes to the agreement. Objectors should address whether they wish the Court to reject the settlement and set the case for trial*."

Not all objections make clear whether the objector believes the settlement should be rejected in its entirety based on presented concerns. When multiple objections contain the same objection, we have selected the most comprehensive expression of the objection issue rather than repeating concern. Accordingly, one letter raising issues in multiple categories may be cited in multiple categories. We also note that we use docket page numbers displayed at the top each page of the submission rather than author's page numbers at the bottom of the pages. For convenience, when quotes from submissions are used, the docket number identifying the submission will be a link to the full document.

What follows is a representative compilation of the submissions to the Court detailing objections to the Settlement in the words of the objectors or their legal representatives. Any

introductory sentence preceding submission quotes are intended to identify the objector and provide context rather than make a judgmental analysis.

The objections have been categorized by the questions the Court is required to consider in making its approval determination:

- Have Class Counsel adequately represented the classes?
- Have Class Representatives competently represented interests of the class?
- Was notification to class members adequate?
- Were restrictions on the Class to use the courts to challenge the settlement in the future fair and reasonable?
- Do concerns exist regarding fair opportunities for athletes to voice objections?
- Were past damages properly calculated?
- Was the calculation of athlete settlement amounts fairly calculated?
- Was the relief provided to the Classes adequate?
- Do the terms of the settlement comply with antitrust or other laws?
- Have the parties conducted arms-length negotiations to determine the terms of the settlement?
- Would the settlement fundamentally change the nature of the college athletic industry in a manner that could be considered unreasonable?

THE OBJECTIONS

I. Whether Class Counsel adequately represented the interests of the classes.

A. Class Representatives letter to Judge Wilken (Docket #580). Three of the six Class Representatives[6]: Grant House (Additional Sports class-swimming-Ariz. State), Sedona Prince (Women's Basketball class-TCU) and Nya Harrison (Additional Sports Class-soccer-Stanford) raised concern that the going forward injunctive relief portion of the settlement does not contain provisions for independent, formal representation of athletes:

> *"As plaintiffs and class representatives, we recognize it is unusual to communicate directly with the Court. We believe our class lawyers have done a magnificent job for college athletes in effectuating the proposed settlement, but we also recognize that they are limited in their ability to effectuate the changes we intended to make in college athletics. We are writing to*

[6] The other three Class Representatives are: Tymir Oliver (Football and Men's Basketball Class-Illinois-football), DeWayne Carter (Football and Men's Basketball Class-Duke-football), and Nicholas Solomon (Additional Sports class-lacrosse-UNC).

Your Honor directly because you have played a critical role over the past decade in establishing and protecting the rights of college athletes in a variety of ways.

…College athletes must have independent representation to standardize NIL compensation contracts they will be entering into with their universities, to establish equitable minimum payments, to provide true health protections, and to create an ecosystem where athletes can thrive, as the current system is saturated with misaligned incentives that jeopardize the holistic development of the athletes that drive it.

…Without independent, formal representation separate from schools or their affiliates, athletes will inevitably remain in a vulnerable position, perpetuating the cycle of inequity and paving the way for continued litigation." (pp.1-2)

B. Athlete Additional Class member letter to Judge Wilken (Docket #624-1). Additional Class member Olivia Dunne (LSU, gymnastics) raised the issue of lack of transparency in legal fees:

"Legal fees do not seem to be fully explained. If I were to sign a retainer agreement with a law firm individually, I would have a retainer agreement/letter of engagement made available for review pursuant to stat bar regulations." (p. 1)

C. Ten female athlete members of the Additional Sports Class (Docket #628). The law firm of Mololamken LLP, counsel, representing ten female athletes raised questions regarding the adequacy of plaintiffs' counsel's representation of female members of the class:

*"When negotiating the settlement, Class Counsel were required to adequately represent the interests of women by advocating that Title IX applies to past NIL damages caused by the defendants' anticompetitive conduct. Their excuses to the contrary are unconvincing, as is the contention that the Court found that Title IX was irrelevant to this antitrust action at class certification. See Dkt. 494 at 12 n. 10. Not so. The narrow question at class certification was whether class-wide damages could be determined by common proof. NIL I, 2023 WL 8372787, at *12-16. The Court properly left substantive questions about the persuasiveness of plaintiffs' damages model to the jury. Id. at *17. At final approval of a class action settlement, the standard for interrogating the settlement's substantive "fair[ness], reasonable[ness], and adequa[cy]" is different and more exacting. Fed R. Civ. P. 23(e)(2).*

*Further, Rascher's key assumption at class certification – that conferences would have paid students directly – is ridiculous. At the time, Rascher avoided Title IX by assuming that conferences would have bypassed schools and distributed revenues directly to student-athletes. NIL I, No. 2023 WL 8372787, at *14.15 That's not been done. Indeed, when the parties hashed out how revenue-sharing would work in the Amended Settlement, they put schools in charge. Injunctive Relief Settlement, art. 3, §2. The assumption that past revenue-*

sharing would have been administered in a different way to sidestep Title IX is ridiculous – a mere fiction to try to circumvent an obvious problem with the settlement." (p. 21)

"…Class Counsel failed to represent women by giving up early on Title IX. At the preliminary approval hearing, Class Counsel lamented that Title IX does not apply to the NCAA and conferences, but did not even attempt to distinguish Smith or analyze how the distribution of settlement proceeds implicates Title IX. See Hr'g Tr. 31:8-17. Defendants raised Title IX in opposing class certification, see Dkt. 249 at 15, 28, but have since gone silent now that a broad release is in sight. The parties' shared interest in avoiding the issue now smacks of collusion.

… The Amended Settlement releases Title IX claims "arising out of or relating to the distribution of the Gross Settlement Fund," Am. Settlement §A.1(vv), against the parties and "all Division I Member Institutions," id. §A.1(rr) (emphasis added). If the parties believe defendants are not subject to Title IX, the release has no value to them. The purpose is to immunize schools, which are unquestionably subject to Title IX and also are covered by the release. The parties fail to explain what women athletes – who lacked their own representation as a sub-class – are receiving in return for giving up their claims against all "Member Institutions" for Title IX violations. The revised release confirms that Title IX applies and women were not adequately represented. This is exactly the type of "preferential treatment" – here, for men at the expense of women – that Rule 23 prohibits. Uschold v. NSMG Shared Servs., LLC, 333 F.R.D. 157, 169 (N.D. Cal. 2019)." (p. 22-23)

"…The Court must scrutinize the Amended Settlement "to uncover conflicts of interest between named parties and the class they seek to represent." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625 (1997). The thoughtless implementation of roster limits creates pervasive intraclass conflicts. Each of the named representatives is a nationally recognized elite athlete who would have never been cut under any roster limit. See TCAC ¶¶ 15-86. They broke records and competed internationally, id. ¶¶ 18-20, 22, 24; received awards for superlative performance, id. ¶¶ 56-58; competed in an NCAA National Championship, id. ¶ 70; and represented Team USA, id. ¶¶ 30-32. Their interests as elite athletes are not aligned with the average student-athlete.

[S]ome proposed agreements are so unfair in their terms to one subset of class members that they cannot but be the product of inadequate representation of that subset." In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig., 895 F.3d 597, 608 (9th Cir. 2018). The Amended Settlement is one such agreement because the proposed roster limits pit class members against each other. For one class member to "win" by staying on their team or landing on a new one, another class member must lose. A class member forced off her team, moreover, cannot receive the benefit of increased scholarship caps. Creating a zero-sum competition to access the so-called benefits of the Amended Settlement is the furthest thing

from supplying "adequate" relief to the class. Fed. R. Civ. P. 23(e)(2)(B); id. 23(e)(2)(D) (proposed settlement must "treat[] class members equitably relative to each other")." (p.26)

D. Athlete Injunctive Relief Class member letter to Judge Wilken (Docket #602). The law firm of Lathrop GPM, counsel for Laura Reathaford (Temple Univ.-gymnastics), submitted comments that raised concerns as to whether Class Counsel inadequately represented the divergent interests of the classes:

"[T]he class representatives' counsel is conflicted in that they did not adequately represent the divergent interests of the members of the two settlement classes in this case. While the monetary relief settlement class purports to pay out millions of dollars over ten years, the injunctive relief class imposes 'roster limits' that will require some DI schools to 'renege' on their prior commitments to college athletes. This will harm thousands of student athletes who have committed to DI sports teams and will be cut from those teams due to these unilateral 'roster limits' contained in this settlement." (p. 2)

"…Here, class members of the 9(b)(2) class were and are inadequately represented in violation of both Rule 23(a)(4) and the Due Process Clause. Not only are class members inadequately represented, but it also appears that class counsel has knowingly disregarded their rights in exchange for a large monetary payout. The fact that thousands of student athletes will be cut from their teams as a result of the Injunctive Relief Settlement creates an irreparable conflict." (p. 3)

E. Athlete Additional Class member letter to Judge Wilken (Docket #638). Additional Class member Charlotte North (Boston College/Duke, lacrosse) expressed concern that Class Counsel is conflicted:

"*I have retained an independent attorney because I believe there is a conflict of interest with the Class Counsel (Winston & Strawn LLP and Hagens Berman Sobol Shapiro LLP) who has negotiated a House Settlement that disproportionately favors men and failed to take Title IX into consideration."* (p. 11)

F. Representing 10 female members of the Additional Sports Class (Docket #628). The law firm of Mololamken LLP, counsel for the objectors, raised questions regarding the adequacy of Class Counsel's representation of female members of the class:

"4. The Title IX release reveals inadequate representation. The Amended Settlement will extinguish Title IX claims relating to the allocation of settlement funds, raising the question of just what women athletes are getting in exchange.

…The parties fail to explain what women athletes – who lacked their own representation as a sub-class – are receiving in return for giving up their claims against all 'Member Institutions' for Title IX violations. The revised release confirms that Title IX applies and women were not

adequately represented. This is exactly the 'preferential treatment' – here, for men at the expense of women – that Rule 23 prohibits." (p. 23)

G. 153 Athlete Additional Sport Class members' letters or declarations to Judge Wilken (Docket #579). Quotes were selected from the submission of lead objector, Additional Class member John Weidenbach (Univ. of Michigan, football), reflecting the points made by letters or formal declarations of 152 other similarly situated PWO (preferred walk-on athletes)[7] who raised the issue of whether the interests of this significant portion of this class have been adequately served by Class Counsel:

"I am aware that many student-athletes will benefit financially from the proposed settlement in this case, but I wish to express that there are thousands of others, like me, who don't expect anything from it. Those student-athletes, mostly walk-ons, earned a spot on their team, show up to practice every day, and embody every aspect of what it means to be a student-athlete without any care as to compensation. Yet, thousands of them will be cut—unnecessarily—the moment the settlement is approved due to the roster limits that are set to go into effect. In my view, there is no reason why this must be. The NCAA and Plaintiffs can easily agree to a grandfathering provision that would allow student-athletes currently on teams to finish their careers where they started. It would have no impact on the damages or revenue-sharing provisions driving the settlement. Everyone can be happy, from the 5-star recruit making millions of dollars to the golfer who simply wants to continue playing the sport she loves at her dream school.

I am not exaggerating that thousands of student-athletes will be cut if the settlement is approved. In football, for example, the roster limit will be 105, but many football teams carry more than 105 players. The University of Michigan currently has 137 players. At least 32 of us will be asked to leave the program, likely more since it was announced that we have at least 25 incoming recruits. This problem is not unique to Michigan. Based on my approximate counts, Alabama currently has 130 players. Texas A&M has 143. Oklahoma State has 139. Ohio State has 123. Iowa has 129. The list goes on and on. In an article aptly titled "New NCAA Roster Limits: The Death of the Walk-On Athlete," Sports Illustrated showed stats that, on average, every football team will need to cut 24 players if the settlement is approved." (p. 1)

"… Football is not the only sport where hundreds of student-athletes will be cut overnight. The Sports Illustrated article mentioned above indicates that, on average, every baseball team will need to cut 6 players, every men's soccer team will need to cut 4 players, every women's

[7] Term utilized to describe a non-scholarship athlete who may or may not have been recruited but who has been assured that they would make the team roster even though a scholarship is not initially offered. Such athletes may reject scholarship offers made by other institutions in order to attend the academic institution of their choice or the institution with an outstanding team in their sport. These athletes may receive scholarships at a later date.

soccer team will need to cut 3 players, every men's volleyball team will need to cut 4 players, every men's wrestling team will need to cut 5 players, etc…

… something more is at stake here for many people—the ability to play the sport you love and finishing what you started. That is being unnecessarily taken away from thousands of student-athletes who never once sought compensation for their NIL, who never once thought of suing the NCAA, who never once complained about waking up for 6am for practice and not playing a snap all season, and who would put their lives on the line (literally) for a teammate or their coaches." (pp. 2-3)

H. Former D-I African-American athletes of the past Damages Class (Docket #614). The law firm of Bradford Edwards LLP, representing Charles O'Bannon, Jr., and K. Braeden Anderson, former D1 players eligible to receive NIL payments, raises questions regarding the absence of separate counsel for past damages and future injunctive subclasses with different claims:

"The "injunctive relief" contemplated by the Settlements is a de facto prophylactic resolution of future claims and provides much greater "relief" to the Defendants than to Class Members. "Injunctive relief" to a player who is no longer playing (i.e. those who competed between 2020 and 2024) is meaningless to that player. The prospective nature of a 10-year injunction, which is subject to even further extension, is intended to foreclose similar claims by future student-athletes who remain unrepresented. As new individuals mature into class members by attending an eligible institution or joining an eligible team, the Settlements afford them only 60 days' notice to object. There is no possibility of opting out. The vast majority of this IRSC (student- athletes beginning their careers after September 2024 and through the entire 10-year term) did not even receive the benefit of a damages payout in exchange for the extensive release of not-yet-existing claims foreclosed by the "injunctive relief." Now the Defendants have expressed their intent, in written communication to the DOJ, to use the broad 10-year injunctive relief as a defense to all future antitrust claims by student-athletes. Thus, the IRSC members are, sub silentio, forced to relinquish (or at the very least severely diminish the viability of) their claims, in exchange for nothing — an "agreement" argued, negotiated and mediated without the benefit of counsel to represent their specific interests. This Court should reject the injunctive portion of the Settlements on this ground alone." (pp. 11-12)

"*…The lumping together of student-athletes who have long ended their careers with those who are just beginning their careers in both the damages relief and injunctive relief subclasses is flawed because these groups of student-athletes have vastly different interests that are in tension with each other. For example, significant tension exists between holders of "pay for play" compensation claims — those who belong to the original class of plaintiffs in Carter and Fontenot, who have been swept into these Settlements and must opt out to preserve those claims — and holders of NIL claims. Under the Settlements, NIL claims are valued much higher, and a pool of $1.976 billion is set aside to pay out those claims. By contrast, a fund of $600 million is reserved for "additional compensation," including various other claims such*

as "pay for play" compensation claims.

The adequacy inquiry under Rule 23(a)(4) serves to uncover such conflicts of interest. To satisfy adequacy, the named plaintiffs must "possess the same interest[s] and suffer the same injur[ies] as the class members." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625-25 (1997) ("Amchem). "Adequacy is twofold: the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members." In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 827 F.3d 223 (2d Cir. 2016) ("Payment Card") (internal citations omitted). As evidenced by the case law that follows, settlements that are approved simultaneously with class certification are "especially vulnerable to conflicts of interest," and are scrutinized "more closely." Id. at 235-36, referencing Amchem, Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999) ("Ortiz"), and In re Literary Works in Elex. Databases Copyright Litig., 654 F.3d 242 (2d Cir. 2011) ("Literary Works"). Here, the classes conditionally certified by stipulation as settlement classes cannot survive that scrutiny." (pp. 12-13)

"…Much like the concerns raised by the Supreme Court in Amchem, the presence of student-athletes whose careers have long ended alongside student-athletes whose careers are only beginning in the same subclasses (both in the damages subclasses and the injunctive subclass and across these classes) reveals antagonistic interests. Student-athletes whose NCAA participation has concluded stand to gain only from "generous immediate payments," whereas student-athletes whose careers are just beginning stand to gain far more from fewer restrictions on student-athlete compensation going forward, or at least a higher cap on such payments. Most members of the damages class are indifferent to the rules going forward.

Another important fault line is present in the identified subclasses, much like the concerns raised by the Supreme Court in Ortiz. Student-athletes whose careers predated the Supreme Court's decision in Alston — who had no incentive or opportunity to pursue or respond to then-forbidden NIL deals — stand to gain from a "generous immediate payment," but current (and even some former) student-athletes in a post-Alston world, whose NIL claims are categorically more valuable and sometimes documented by actual offers, stand to gain more from higher NIL payments going forward, unrestricted by the restraints imposed by the injunctive portion of the Settlements. Amchem and Ortiz instruct that the absence of "structural assurance of fair and adequate representation" in this case, for individuals with diverse interests, is fatal to the Settlements." (p. 14)

"…The Settlements provide for enormous compensation to Class counsel, including $20 million as an upfront injunctive fee, an increasing annual percentage of the roughly $23 million of the total amount spent under the Pool per year, above and beyond the hefty counsel fee expected for the damages portion. Total attorneys' fees in this case may be $725 million. See ECF 583, Plaintiffs' Motion for Attorney Fees (Fee request includes 20% of the NIL Settlement Fund ($395.2 million), 10% of the Additional Compensation Fund ($60 million), an upfront injunctive relief award of $20 million and an additional percentage of the Pool distribution amounting to $250 million or so over the 10-year Term). As the Supreme Court recognized in Ortiz, and

*the Second Circuit echoed in Payment Card, "when 'the potential for gigantic fees' is within counsel's grasp for representation of one group of plaintiffs, but only if counsel resolves another group of plaintiff's claims, a court cannot assume class counsel adequately represented the latter groups interests." Id. at 234, citing Ortiz, 527 U.S. at 853. Even without impugning class counsel's motives, the Second Circuit determined that "class counsel was charged with an inequitable task. Id." (*p.16-17)

"*…Indeed, at the hearing for preliminary approval, the NCAA suggested it will not agree to approval of damages relief without simultaneous approval of injunctive relief, leaving prohibitions of pay-for-play intact. Transcript of Sept. 5, 2024 Hearing, ECF 525 at 70 ("for us [the ban on pay-for-play] is an essential part of the deal,") and at 78-79 (a prohibition on boosters, reflecting a broad prohibition on pay-for-play "is an essential part of the deal. And without it, I'm not sure there will be a settlement to submit"); see also id. at 97-98. These admissions underscore that "the only unified interests served by herding these competing [damages and injunction] claims into one... are the interests served by settlement: (i) the interest of class counsel in fees, and (ii) the interest of defendants in a bundled group of all possible claimants who can be precluded ..." Payment Card, supra, 927 F.3d at 236.*

…There is simply no substitute for independent counsel when due process rights of disparately situated plaintiffs are at stake. The court in Payment Card concluded that, as in Literary Works," [t]he benefits of litigation peace do not outweigh class members' due process right to adequate representation." Id. at 240." (pp. 17-18)

I. Interested Parties Letter to Judge Wilken (Docket #705). Former NBA Players Association Executive Director Michele Roberts and two other attorneys working in the area of athletes rights, Richard Ford and Casey Floyd, submitted comments as interested parties who raise issues of Class Counsel adequately representing the interests of plaintiffs:

"Article 7, Section 1 extracts promises from Class Counsel, ostensibly for the purpose of "implementing/codifying" the settlement in Congress. Class Counsel must:

1. not oppose or unde1mine any legislation "implementing/codifying" the Injunctive Relief Settlement

2. take no position and thus be "neutral" on any legislation that would provide athletes additional benefits

3. lobby with the NCAA for antitrust immunity (see p. 9, FN27)

4. lobby with the NCAA for preemption of state laws (see p. 10, FN28)

*5. take no position and thus be "neutral" on whether athletes should be considered/deemed "employees" (or whether collective bargaining should be permitted for compensation of athletes)*FN29.

These are extraordinary promises and Court approval of Article 7 would have far-reaching implications.

First, it would transform Class Counsel from advocates for their clients into lobbyists for the NCAA, creating a conflict of interest.

Second, the Court would tacitly endorse Defendants' narrative that federal legislation "codifying" the settlement is not only reasonable but desirable.

Third, Class Counsels' endorsement of Defendants' congressional asks presumes that hundreds of thousands of athletes have consented to legislation that impairs their rights. Athletes have no idea what is happening in Congress or that Class Counsel has promised to lobby against their interests. Approval of Article 7 may suggest that this Court is satisfied that athletes understand and agree with its consequences.

Fourth, this Court could be perceived as wading into a partisan political debate in a separate branch of government, placing its thumb on the scale in favor of sweeping federal legislation that would permanently limit athletes' rights." (pp. 8-9)

"…Class Counsels' promise to become Defendants' lobby agents will likely carry great weight in Congress. This Court' tacit approval of it may carry even greater weight." (p. 19)

"…B. Article 7, Section 2 (Alternative Structures)FN80 Section 2 suggests that athletes may utilize "alternative structures" that could provide additional benefits to athletes, including "collective bargaining."

…Section 2 does not explicitly distinguish between true collective bargaining with employee rights under the NLRA or some model that envisions bargaining rights without employee status.(see p. 20, FN83) The use of the term "alternative structures" could suggest the latter even though Section 2 speaks in terms of "collective bargaining."

…Article 7…including this: "Class Counsel will also take no position, and thus be neutral, in all instances and in all forms and venues on the issue of whether student-athletes should be considered 'employees' or whether collective bargaining should be permitted for compensation of student-athletes."

…In courts and Congress, Defendants use "student-athlete" to mean the legal opposite of employee. To Defendants, it is a legal immunity shield from any labor laws that require employee status." (pp. 19-20)

J. Organizations' letter to Judge Wilken (Docket #674). The Women's Sports Foundation and the National Women's Law Center submitted comments as interested parties concerned with Class Counsel's adequacy representing women athletes:

"Forfeiting the right to submit Title IX claims in exchange for an estimated 5% of past due damages is not only an exorbitant price to pay, but it also highlights the absence of representation for the interests and rights of women athletes." (p. 2)

K. Eight Past, Present, or Future Division I Athletes (Docket #613). Hausfeld LLP, on behalf of Liam, Anderson, Jordan Bohannon, Kaira Brown, Talanoa Ili, Ezekiel Larry, Dyson McCutcheon, and R.J. Sermons submitted comments objecting to possible Class Counsel conflict of interest:

> *"There are numerous "indicia of conflict" embedded in the IRCS. Given that it was the NCAA that proposed this deal, it came with extensive restrictions and requirements, as also explained in detail below. The amounts of revenue to be shared were capped at 22% ($21 million) and had no floor; thus, colleges were under no legal obligation to pay that or any lesser amount. In fact, colleges could choose to offer zero dollars in shared revenues. The revenue to be shared was subject to an inordinate number of spurious setoffs that reduced its value considerably. The monetary streams identified for sharing in the ICRS excluded many lucrative sources that the NCAA routinely characterizes as "revenue." The sharing mechanism was closely overseen by the NCAA and disputes concerning the amounts given to college athletes are subject to mandatory arbitration where IRCS members are compelled to use the services of only Berman's and/or Kessler's firms for the ten years following the effective date of the IRCS. The revenue sharing came with cuts in existing college athlete rosters that are already wreaking havoc, and artificial limits on new scholarships that will injure non-revenue creating sport programs at numerous colleges. And most importantly, if a Court-approved final settlement cannot fully shield the NCAA from antitrust liability, it plans to seek such relief from the United States Congress--with Class Counsel's active support. The IRCS also contemplates the NCAA getting preemption of the many state laws that conflicted with its proposed revenue sharing structure.*
>
> *The agreement by Class Counsel to support the position that the Court's approval of the proposed Settlements provides an automatic antitrust defense and to support an effort to secure Congressional antitrust immunity if that argument falls reflects an irreconcilable conflict due to the disparate interests of the members of the proposed Classes. The result is a conflict between Class Counsel and those Classes. See also ECF Nos. 602, 605. The actions of Class Counsel themselves reflect this conflict. In his declaration in support of attorneys' fees, Berman stated in ECF No. 583-2 at 11 (footnote admitted):*
>
> > *[t]hroughout this litigation, Defendants engaged in an aggressive, years-long campaign to lobby for legislation that would exempt them from the antitrust laws and allow them to continue their unfair restrictions on college athletes, collectively spending nearly $10 million dollars on lobbying between 2021 and 2024. Class Counsel expended significant effort and resources, to protect the classes' interests against Defendants' attempts to kill this lawsuit.... [ECF No. 583-2 at 11 (footnotes omitted).]*

As an example, in a July 3, 2020 letter to Congress (Appendix B), Berman opposed the request for antitrust immunity by the NCAA on the grounds that it would impair the legal rights of college athletes and undermine the purpose of those laws.

Yet under the IRCS:

> *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.*

ECF No. 535-1, Appendix A at 27 (emphases added). This about face significantly implies divided loyalties that do not serve the interests of the Classes.

College athletes and/or their parents, such as John Weidenbach, Dawn Jevnick, Noah Henderson, Kevin Cunneen Jr., Camden Dempsey, Emma Reathaford and anonymous persons have expressed great concerns about how the IRCS is causing reductions in existing rosters and affecting adversely existing sports scholarships even before this Court has finally approved it. ECF Nos. 574-75, 579, 589, 592, 597, 602, 604-05. Indeed, Grant House ("House"), one of the named plaintiffs, is on record as saying that he did not agree to any such roster limitations that could cost his sport hundreds of lost positions, Class Counsel rarely communicate with him, and he was "shocked" at their $700 million fee request (Appendix W). An objection submitted by the Recruiting Class of 2025 noted that "you [the Court] may be unaware of the impact the NCAA case is having on the recruiting class of 2025. The newly proposed roster limits are taking a disproportionate number of recruiting/roster spots away from the class of 2025--in comparison to both prior and future recruiting years." ECF No. 573.1 No. 573. (see p.10, FN1)

The adverse effects of the proposed Settlements were also discussed in an open letter to the Court from three of the named plaintiffs (House, Sedona Price, and Nya Harrison):

> *Currently, the NCAA, conferences, schools, and their respective collectives are using the proposed settlement to define financial frameworks, consider restrictive contracts for*

athletes, adjust rules that infringe on athletes' rights, and lobby Congress for an antitrust exemption....Without independent, formal representation separate from schools or their affiliates, athletes will inevitably remain in a vulnerable position, perpetuating the cycle of inequity and paving the way for continued litigation.

ECF No. 580 at 2 (emphases added). This is an admission by these Plaintiffs that the IRCS is being used by the NCAA, its conferences, and schools to exploit and injure the members of the IRCS Class. Kessler is on record as being aware of the contents of this letter.FN2" (pp. 8-11)

L. Athlete Class member letter to Judge Wilken (Docket #622). Korein Tillery, LLC and Olson Grimsley Kawanabe Hinchcliff & Murray LLC, on behalf of Alex Vogelsong submitted comments objecting to Class Counsel conflict of interest:

"Class members were not adequately represented in the negotiation process, leading to inadequate compensation and inequitable treatment. The parties transformed a case originally focused on payment for the use of names, images, and likenesses (NILs) into a vehicle for releasing nearly every antitrust claim a college athlete might have. That includes the claims for two cases being litigated in the District of Colorado: the Fontenot case demanding a fair share of revenue generated by college sports ("fair pay"), and the Cornelio case brought on behalf of athletes receiving partial scholarships.

Before those cases were filed, movants had never shown any interest in litigating the Fontenot and Cornelio claims. Now their proposed settlement undervalues them. For instance, movants value the Fontenot TV-revenue fair pay claims at a little over $1.8 billion. They do so by inappropriately adopting economic assumptions favorable to the NCAA, essentially assuming a jury would side with the NCAA on what goes into the revenue pool and what credits should be deducted. By contrast, the Fontenot Plaintiffs obtained an independent, preliminary estimate from a respected economist, who valued the claims at over $24 billion. Movants plan to allocate only $600 million of the settlement fund to the Fontenot claims, meaning movants are proposing to settle the claims for just pennies on the dollar—before trebling. That alone should invalidate the proposed settlement.

The settlement's treatment of the Cornelio partial-scholarship claims—allocating no money for claims that have demonstrable value—is even more troubling. The putative class there asserts that members would have received more scholarship money—larger partial-scholarships or full scholarships—had Defendants not imposed an artificial cap on the number of scholarships member schools could give. The NCAA belatedly lifted the caps there at issue, and schools have already announced more scholarships in response. For example, Clemson University announced 35.3 more baseball and softball scholarships, amounting to $6.6 million in additional scholarship money not available when the cap was in place. Releasing the Cornelio claims for nothing is fundamentally unfair, violating due process and Supreme Court

precedent, especially since partial-scholarship athletes otherwise stand to gain the least from the proposed settlement. See, e.g., In re Literary Works in Elec. Databases Copyright Litig., 654 F.3d 242, 250 (2d Cir. 2011) (following Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 627 (1997) and rejecting a proposed settlement under similar circumstances because class members with different claims should be subclassed with separate representation).” (pp. 5-6)

II. Whether Class Representatives competently represented interests of the class.

A. Athlete Additional Class member letter to Judge Wilken (Docket #624-1). Additional Class member Olivia Dunne (LSU, gymnastics) pointed out the fact that Class Representatives were not part of settlement discussions:

“The settlement was reached without athletes being represented in the discussion continuing the long tradition of shutting athletes out of having a voice in a legal issue where they hold a financial interest.” (p. 1)

B. Representing 165 members of the Additional Sports Class (Docket #628). The law firm of Mololamken LLP, counsel for the objectors, raised questions regarding the possibility of intra-class conflict with Class Representatives.

“The Court must scrutinize the Amended Settlement “to uncover conflicts of interest between named parties and the class they seek to represent.” Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625 (1997). The thoughtless implementation of roster limits creates pervasive intraclass conflicts. Each of the named representatives is a nationally recognized elite athlete who would have never been cut under any roster limit. See TCAC ¶¶ 15-86. They broke records and competed internationally, id. ¶¶ 18-20, 22, 24; received awards for superlative performance, id. ¶¶ 56-58; competed in an NCAA National Championship, id. ¶ 70; and represented Team USA, id. ¶¶ 30-32. Their interests as elite athletes are not aligned with the average student-athlete.

[S]ome proposed agreements are so unfair in their terms to one subset of class members that they cannot but be the product of inadequate representation of that subset.” In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig., 895 F.3d 597, 608 (9th Cir. 2018). The Amended Settlement is one such agreement because the proposed roster limits pit class members against each other. For one class member to “win” by staying on their team or landing on a new one, another class member must lose. A class member forced off her team, moreover, cannot receive the benefit of increased scholarship caps. Creating a zero-sum competition to access the so-called benefits of the Amended Settlement is the furthest thing from supplying “adequate” relief to the class. Fed. R. Civ. P. 23(e)(2)(B); id. 23(e)(2)(D) (proposed settlement must “treat[] class members equitably relative to each other”).

The disaster created by roster limits demonstrates the class representatives' (all stars) "fundamental conflict" with – and inadequate representation of – this subset of the class. In re Literary Works in Elec. Databases Copyright Litig., 654 F.3d 242, 256 (2d Cir. 2011).(p.19,n18) Roster limits are new. Defendants apparently demanded them in the settlement negotiations.(p.19,n19)" (p.26)

C. Interested Parties Letter to Judge Wilken (Docket #705). Former NBA Players Association Executive Director Michele Roberts and two other attorneys working in the area of athletes rights, Richard Ford and Casey Floyd, submitted comments as interested parties who question the exclusion of Power 5 men's basketball athletes from class representation:

"Rule 23(a)(4) requires that class representatives "fairly and adequately protect the interests of the class." That standard has not been met in the settlement cases because no Division I men's basketball player is a class representative.

Across the three suits, there are eight class representatives representing six Division I sports: men's swimming and diving, women's basketball, women's soccer, women's track and field, men's lacrosse, and football (3)." (p. 27)

"… Division I men's basketball plays a unique and critical role in the business of college sports because the Division I Men's Basketball Tournament-which the NCAA owns-funds the entire NCAA administrative state. The NCAA doesn't receive a penny of big-time football money." (p. 28)

… In the settlement, Division I men's basketball labor would pay for over half-a-billion dollars of expenses. This includes all expert fees, travel/lodging/meals, settlement administration fees, and millions in miscellaneous expenses.FN120" (pp. 30)

"… 2. *Men s Basketball Labor and March Madness Revenue Funds 100% of the NIL Damages in the Settlement Which is Inconsistent with the Plaintiffs' Theories of Liability and Damage Models in House"* (p. 31)

"… Because of their exclusion from class representation, men's basketball players have been denied the similar opportunity influence and critique a process that purports to reshape an industry in which they play a critical and unique role." (p.34)

III. Whether the notification to class members was adequate.

Class Counsel's motion for final Settlement approval provided statistics indicating that there are 390,000 class members, 73,115 have submitted valid claims, 343 have opted out and

73 objections were received by the January 31, 2025 deadline.[8] We note that only the Additional Sports class had the additional burden of filing a formal claim form.

A. Injunctive Relief class member letter to Judge Wilken (Docket #698). Lucy Schmeil (Univ. of Texas-Austin, tennis) expressed concern about the notification process:

> "*The reason I did not meet the January 31, 2025 deadline to submit this declaration is because I was only notified yesterday, February 3, 2025, that I would be losing my roster spot on the tennis team. I was unaware of the NCAA settlement until yesterday and unaware that it would lead to roster limitations. Further, I was not aware until today that I could object to the settlement. I never received anything written or verbal from the University of Texas or from the NCAA, and it was only yesterday that my coach told me about the settlement and the impact on roster size."* (p. 1)

B. Former D-I African-American (self identified) athletes of the past Damages Class (Docket #614). The law firm of Bradford Edwards LLP, representing Charles O'Bannon, Jr., and K. Braeden Anderson, former D1 players eligible to receive NIL payments, who raised questions regarding adequate notification to African American athletes:

> *"The undersigned respectfully submit these objections with an understanding that Class Counsel have worked in good faith to craft a proposed settlement that is legally permissible and will provide new benefits to the plaintiff athletes. However, certain aspects of the Settlements are objectionable and must be presented to the Court for consideration before finalized. We are concerned about the effect of the Settlements on all athletes, but particularly African American student-athletes whose labor has been essential to the financial success of the college football and basketball industry over the past several decades."* (p. 4)

> *"Notice to Black class members was inadequate due to the great number of such people in the class, and the lack of any Black-specific media notification. Mr. Anderson was unaware of the proposed Settlements until informed by counsel from Bradford Edwards LLP on January 16, 2025, in connection with an initiative by Bradford Edwards LLP to bring the proposed Settlements to the attention of the Black community via Black media outlets. … Upon inquiry, Mr. Anderson learned that many of his former D1 classmates also had no knowledge of the pending Settlements. Anderson Decl. ¶ 9. An effort to reach out to inform the Black community was not included in the approved notification procedures…"* (p. 6)

[8] Plaintiffs' Motion for Final Settlement Approval and Omnibus Response to Objections. Case No. 4:20-cv-03919-CW. March 3, 2025. pp.14-15. Note: of the 73 objections submitted, 370 athletes were represented.

"…The claim submission process suffered a defect not cured until January 17, 2025, days before the claims period expired.[9] … Who knows how many claimants attempted to register and gave up?" (pp. 7-8)

C. Athletes' Agency letter to Judge Wilken (Docket #676). Activate Sports Management submitted comments on behalf of 25 athlete clients to express notification concerns:

"I began contacting the student-athletes I represent by text message on October 27th, 2024 to notify them of their eligibility as part of the DCS. I contacted 52 student-athletes (past and current clients) to provide a brief explanation of your preliminary approval of the settlement, and to introduce them to www.collegeathletecompensation.com

Of the 52 athletes contacted, 41 were unaware of the existence of the lawsuit, or unaware they were eligible for damages from the DCS portion of your preliminary approval. Three of the Objectors listed in this letter replied, "what is this?". Once I explained further, I was contacted by 21 additional student-athletes at the suggestion of my clients / their teammates. This included prominent student-athletes in "revenue sports" who were completely unaware a potential settlement existed." (p. 4)

IV. Whether restrictions on the class to use the courts to challenge the settlement in the future are fair, reasonable, and adequate.

A. Athlete Additional Class member letter to Judge Wilken (Docket #638). Additional Class member Charlotte North (Boston College/Duke, lacrosse) commented on a specific release provision that impacts all female class members:

"The House Settlement contains a specific provision releasing a Class Member's Title IX rights with respect to the Gross Settlement Fund. "Unreleased Claims" is defined in the Amended Stipulation and Settlement Agreement (not defined in the Class Action Notice) as the following:

> *"The Settlement Agreement does not release... 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."*

The referenced terms associated in the Title IX Release are further defined in the Amended Stipulation and Settlement Agreement (not in the Class Action Notice) as the following:

> *Gross Settlement Fund is defined as ''the NIL Claims Settlement Amount and Additional Compensation Claims Settlement Amount plus any interest that may accrue."*

[9] Athletes without an NCAA Eligibility Center ID number, a prerequisite for submission, who left that box blank or entered a "0," "N/A," or "Not Applicable" were unable to submit a claim. It wasn't until January 17, that information was provided to enter the word "unknown"

NIL Claims Settlement Amount = $1,976 Billion

Additional Compensation Claims Settlement Amount = $600 Million

Simply stated - this is confusing language on an important point which adversely impacts all past, current and future female Class Members. All DI student-athletes who are or will be Class Members need to understand: (1) What is Title IX (nowhere is the federal law explained or defined), and (2) What Title IX claims is a Class Member releasing.

For a Class Member to properly understand his or her Title IX claims under the Gross Settlement Fund, there needs to be full transparency with respect to the Estimated Allocation amounts. While the Rascher report provides a framework for the calculations, based on my comparison with other lacrosse players, the amounts vary significantly and are difficult to understand. A helpful reference point would have been to provide the Estimated Allocation amounts for the named Plaintiffs in the House Settlement, but according to Class Counsel these amounts are "confidential."

Both the House Settlement Damages (NIL Claims $1,976 billion + Additional Compensation Claims $600 million = $2,776 billion) and future Injunctive Relief of Shared Revenues from a "Benefits Pool" created by a university who participates ($20 million per year) violate Title IX as a form of "financial assistance," which must be "proportional to athletic participation rates, or "benefits" that must be "equivalent" to those provided for a men's athletic program.

…The Title IX Release in the House Settlement is unreasonable for women because neither of the Plaintiff's experts (Edwin Dresser, Daniel Rascher) factored Title IX into their financial analysis to calculate the Settlement amounts or opinions to justify them. The failure to include Title IX in the calculations of the Estimated Allocation amounts explains why there is such a significant disparity between the amounts for men versus women. As stated by both experts at deposition:

Q: Have you tried to account for Title IX in any of your damages models in this case?

A: No.

Source: Rascher Dep. Tr. at 64:12-19.

Q: Have you given any consideration to the Title [IX] in your preparation of this report?

A: That's not within the scope of what I was assigned to work on.

Q: So, the answer is: 'No' you have not given any consideration to it, because you weren't asked to do that?

A: No, I have not.

Source: Desser Dep. Tr. at 64:12-19.

The Plaintiff's experts justify their calculations based on the proportion of revenues generated by a sport. Revenue generation by a sport, however, has never been a basis to exempt compliance with Title IX. The House Settlement calculations contradict the legislative history

of Title IX. Since the inception of Title IX legislation, advocates for men's sports tried to exclude revenue generating sports from Tile IX coverage. Opponents proposed multiple amendments to exclude athletics and limit the reach of the federal law. However, Congress repeatedly rejected these efforts and refused to carve out revenue-generating sports from Title IX coverage. See Appendix C.

Congress enacted Title IX to prevent the use of federal funds to support discriminatory practices in education. The House Settlement payments are funded by the NCAA, Power Five Conferences and NCAA DI member institutions (universities/colleges). It is well established that universities are a "recipient of federal financial assistance" and, therefore, are subject to Title IX. While the NCAA and Athletic Conferences are not a "direct" recipient of federal financial assistance, there is a strong argument that athletic conferences are an ‘'indirect" recipient of federal funds and, therefore, should be subject to Title IX.

Justice Ginsburg in the landmark U.S. Supreme Court case NCAA v. Smith (1999), found that the NCAA's receipt of membership dues from educational institutions did not constitute "receipt" of federal aid. Based on this narrow ruling, the NCAA was not subject to Title IX. As a result of this ‘'recipient loophole," the NCAA has been operating "above the law" for decades, resulting in significant gender disparities detailed in the Kaplan Report and directly impacting the House Settlement calculations. However, Justice Ginsburg left open an alternative legal theory to bring the NCAA and athletic conferences under the scope of Title IX. The mere receipt of membership dues, without something "more," was insufficient to trigger Title IX coverage in Smith. However, the NCAA's "controlling authority" over federally funded educational institutions athletic programs is the something "more" that brings the NCAA under the scope of Title IX as an "indirect recipient." See Appendix C.

The class action lawsuit, In re: College Athlete NIL Litigation, exemplifies how the NCAA's Eligibility Rules had controlling authority over student-athlete's participation in college sports, limited the use of their NIL, and limited the availability of athletic scholarships. The NCAA, Power Five Conferences and DI NCAA member institutions were "pervasively entwined" and conspired together to enact and enforce the NCAA's anticompetitive Eligibility Rules. To the extent the NCAA and Power Five Conferences try to circumvent coverage of Title IX under the "recipient loophole," I request that the Court carefully consider Justice Ginsburg's alternative "controlling authority" theory.

Antitrust (Sherman Act) is a fundamentally different issue than antidiscrimination (Title IX), so it incomprehensible why a female student-athlete would be required to release her Title IX rights to participate in an antitrust settlement. In the landmark U.S. Supreme Court Case, NCAA v. Alston (2021), Justice Kavanaugh in his concurring opinion specifically raised this issue, "How would any compensation regime comply with Title IX?" Title IX was enacted to prevent the unequal treatment of female student-athletes which is precisely what the House Settlement would do if approved. Therefore, I object to the House Settlement and believe it is a violation of Title IX.

I object to releasing my Title IX claims "arising out of or relating to the distribution of the Gross Settlement Fund." There is a significant disparity between House Settlement Amounts based

on the sex of an athlete, with male athletes receiving a disproportionately higher amount than women. Therefore, I object to the House Settlement and request that the Court consider this matter very carefully given the significant consequences of approving the Title IX Release for all female Class Members." (pp. 9-11)

B. Department of Justice Statement of Interest (Docket #595). The United States Department of Justice commented on the proper application of antitrust law to labor markets, specifically the preclusive effects of the injunctive relief's salary cap provisions:

"The NCAA, however, has taken the position that it may use the Proposed Settlement in the future as a defense to antitrust liability in a case brought by a future plaintiff seeking to achieve more fulsome protection for the free and fair market opportunities of student athletes than the Proposed Settlement affords. See Congdon Decl. Ex. 1. The risk that defendants will attempt to use a private, negotiated settlement as a shield in future litigation underscores the importance of determining carefully whether it is fair and adequate. At a minimum, if the Court approves the Proposed Settlement, it should make clear that doing so is not a ruling on the legality of the Salary Cap Rule such that the approval could be used as a defense in future litigation. See, e.g., White, 822 F. Supp. at 1426 n.55 (noting that in approving the settlement the court was making "no ruling on the issue" of whether the rules enshrined in the settlement were legal under the antitrust laws and recognizing that a court might find they were not in a "in future litigation concerning the legality of [those rules]."(p. 10)

C. Former D-I African-American athletes of the past Damages Class (Docket #614). The law firm of Bradford Edwards LLP, representing Charles O'Bannon, Jr., and K. Braeden Anderson, former D1 players eligible to receive NIL payments, raises questions regarding the preclusive effect of the injunction's NIL provisions:

"…If the DOJ felt it necessary to seek clarification of the potential preclusive effect of the injunction provisions of the proposed Settlements, especially given the extensive filings in the case, how are members of the class supposed to understand what rights they may be forfeiting?" (p. 10)

"…But the injunction provisions are intended by the NCAA to shield them from potential liability for claims wholly unrelated to the NCAA's NIL liability well in excess of $2.8 billion. And Plaintiffs' counsel admits as much in their August 16, 2024 Joint Declaration: "We were aware... that it was likely not possible to reach an injunctive relief settlement that resolved the NIL-compensation claims only and that an injunction relief settlement would need to make structural changes to college athletics that would address all of the NCAA's compensation rules." ECF 494-1, ¶ 9 (emphasis added). Plainly put, for those who accept NIL payments under the Settlements, the payments represent compensation for their athletic services, including pay-for-play claims, as Carter v. NCAA is being folded into the proposed Settlements. However, going forward, the injunctive relief permits payments of $21 million annually to students, but only under the title of NIL payments, while pay-for-play prohibitions remain. While the DOJ and other objectors have rightly noted that the proposed injunction's cap simply swaps one illegal price fix for another, there is another illegal price fix involved. This is because NIL payments alone will always be less than NIL payments and payments for direct athletic services." (pp. 10-11)

"While counsel for the parties represented to the court that future class members would still be able to bring a lawsuit for class action damages, with an attorney of their choice, in any venue (ECF 525 at

47:6-48:18), in practice, the Settlements bar future class members from antitrust enforcement actions and do limit choice of counsel and venue. Section E, entitled "Release of Injunctive Claims" (¶¶ 19-26), acts as a release of all "Injunctive Class Claims" and includes a covenant not to sue. This entire section should be omitted from the Settlements, as future athletes should not be bound by a decade-old release of claims negotiated without representation. Even when student athletes dispute matters relating to Settlements and their enforcement, the Settlements force them to use Class Counsel, ECF 535-1 at ¶ 45. "Any and all" future student athlete challenges, including "antitrust or other violations of law" based on Defendants' structure or implementation of the new compensation structure "must, to the fullest extent legally permissible, be asserted exclusively in the Action," in this court. Id. ¶ 46. Furthermore, if any such "new claim" is brought against Defendants in any venue other than this court "seeking to invalidate or recover damages" based on the Defendant's implementation of the new compensation structure, Class counsel will join Defendants in efforts to have the new claim enjoined. Id. Clearly, the representations made during the hearing for preliminary approval are not borne out in the proposed Settlement.

These provisions together have the practical effect of depriving future student-athletes of any meaningful way to assert or enforce their rights." (pp. 20-21)

D. Tennis Prize Money Objectors class (Docket #625). The law firm of Milberg, Colman Bryson Phillips Grossman PLLC, counsel for Class members Reese Brantmeier and Maya Joint objectd to exceptionally broad releases that may negatively affect their case (*Brantmeier v. NCAA*):

"This Court has previously ruled that a class action settlement can release only claims that are "based on the identical factual predicate as that underlying the claims in the settled class action." House, 545 F. Supp.3d at 819 (quoting Hesse v. Sprint Corp., 598 F.3d 581, 590-91 (9th Cir. 2010)); see also In re Western States Natural Gas Litig. 725 Fed. Appx. 560, 563 (9th Cir. 2018) (claims "that . . . depend on proof of different facts to establish a different injury" not released by prior class action); In re Walgreen Co. Wage and Hour Litig., 747 Fed. Appx, 619, 619 (9th Cir. 2019) ("Though the release is broadly written, it is enforceable only as to subsequent claims based on the identical factual predicate as that underlying the claims in the settled class action"). This Court found that Tymir Oliver's claims in House were not released by the Alston settlement because, inter alia, "[t]hey are based on (1) challenges to some rules that were not challenged in Alston and (2) a legal theory that was not raised in Alston, which requires different facts from those litigated in Alston. . . " House, 545 F. Supp.3d at 819. This is also true for the claims in the Brantmeier action. First, Brantmeier challenges NCAA Bylaw 12.1.2.4.2, Ex. A ¶ 52, which is applicable only to tennis and is nowhere mentioned in the Third Amended Complaint. Second, the legal theory in Brantmeier requires the critical fact that plaintiffs and Class members in that case had been awarded prize money in non-NCAA tournaments, id. ¶ 151, a fact irrelevant to, and not pleaded in, the House Third Amended Complaint.

Indeed, the claims in Brantmeier have a far different factual predicate – that is, require proof of different facts -- than the claims in this action. Brantmeier and Joint must establish that

they have played in non-NCAA tennis tournaments, were awarded tennis prize money that exceeded the amount that NCAA rules permitted them to retain, and consequently either forfeited a portion of the prize money, or forfeited their NCAA eligibility. No such evidence is part of the factual predicate of House, where the "Plaintiffs request an injunction permanently restraining Defendants from enforcing all of their unlawful and anticompetitive rules that restrict the compensation available to class members from conferences and schools,. . ." and seek damages for "compensation that these class members would have received from schools or conferences absent Defendants' unlawful restraints on pay-for-play compensation and the compensation that these class members would have received for their NILs from third parties in individual NIL agreements . . . ." Third Amended Complaint ¶¶ 8, 11 (emphases added). Forfeited prize money is not money that student-athletes would have received from schools or conferences, or from NIL contracts. In fact, there are no allegations at all regarding acceptance or forfeiture of tennis prize money in the House Third Amended Complaint. Nor did any of the Class Representatives allege that they played either professional or collegiate tennis.

Another clear difference between the factual predicates for the cases is that the Injunctive Relief Class in House is limited to "All student-athletes who compete on, or competed on, a Division I athletic team at any time between June 15, 2020 through the date of any injunctive relief ordered by the Court," Id. ¶ 312, while the proposed Class in Brantmeier includes individuals who competed in non-NCAA tennis tournaments that award prize money, but who have not competed within the NCAA, and may not compete within the NCAA before the ending date of injunctive relief ordered in this case. Ex. A ¶ 151(a).

A district court's approval of a settlement that releases claims based on a non-identical factual predicate than those pleaded is an abuse of discretion and reversible error. Belew v. Brink's Inc., 721 Fed. Appx. 734, 735 (9th Cir. 2018) ("There was an abuse of discretion in approving the Joint Stipulation that included an overbroad release of claims."). Even though it may be unenforceable, the scope of the release in the settlement will mislead Class Members into believing that they have settled their Tennis Prize Money claims.

Another clear difference between the factual predicates for the cases is that the Injunctive Relief Class in House is limited to "All student-athletes who compete on, or competed on, a Division I athletic team at any time between June 15, 2020 through the date of any injunctive relief ordered by the Court," Id. ¶ 312, while the proposed Class in Brantmeier includes individuals who competed in non-NCAA tennis tournaments that award prize money, but who have not competed within the NCAA, and may not compete within the NCAA before the ending date of injunctive relief ordered in this case. Ex. A ¶ 151(a).

A district court's approval of a settlement that releases claims based on a non-identical factual predicate than those pleaded is an abuse of discretion and reversible error. Belew v. Brink's Inc., 721 Fed. Appx. 734, 735 (9th Cir. 2018) ("There was an abuse of discretion in approving the Joint Stipulation that included an overbroad release of claims."). Even though it may be

unenforceable, the scope of the release in the settlement will mislead Class Members into believing that they have settled their Tennis Prize Money claims." (p. 6-7)

E. McGlamry-Cornwell Objectors (Docket #630). The law firms of Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. and Weiss, Handler & Cornwell object to release of parties not contributing to the settlement, requesting the Court to deny the settlement:

"The Settlements (D.E. # 450-3) are set forth in D.E. # 450-3. Ironically, that document as provided on the settlement website is not searchable. However, upon review, at page 13, section (rr) reads, "'Releasees' means jointly and severally, individually, and collectively, the NCAA, all Division I conferences, including all Conference Defendants, all Division I Member Institutions, the College Football Playoff, and all of their respective present and former direct and indirect parents, subsidiaries, affiliates, officers, directors, trustees, employees, agents, attorneys, servants, representatives, members, managers, and partners and the predecessors, heirs, executors, administrators, successors, and assigns of any of the foregoing persons or entities." (p. 2)

"Arguably, there are other terms, conditions, provisions, and language in the Settlement documents (D.E. # 450-3), that attempt to exclude the CFP from contributing to the relief offered by the Settlements. And, if the CFP is not contributing in any way, it is improper and illegal to provide them a release as part of the Settlements. However, the parties to the Settlements are too sophisticated for this to be an oversight or typo.

Any release in the Settlements must be unambiguous, with the Releasees stated explicitly. See, Lumpkin v. Envirodyne Indus., Inc., 933 F.2d 449, 13 Employee Benefits Cas. (BNA) 2185, 119 Lab. Cas. (CCH) P 10844 (7th Cir. 1991). Cf. Broussard v. Meineke Discount Muffler Shops, Inc., 958 F. Supp. 1087, 1098 (W.D. N.C. 1997), rev'd on other grounds, 155 F.3d 331, 41 Fed. R. Serv. 3d 1151 (4th Cir. 1998) (rejected by, Waste Management Holdings, Inc. v. Mowbray, 208 F.3d 288, 46 Fed. R. Serv. 3d 1019 (1st Cir. 2000).

Furthermore, to the extent there is ambiguity (which herein ambiguity is being kind), such ambiguity requires the Court to construe it in the favor of absent class members. The doctrine of contra proferentem further requires this Court to construe the contracts' terms against the settling parties and in favor of absent class members. Stetson v. Grissom, 821 F.3d 1157, 1164 (9th Cir. 2016) (construing class documents in favor of objector because they "were drafted by Class Counsel"). Consequently, to the extent other language in the agreements might be read to extend beyond the definition of Released Claims, these potentially "inconsistent provisions" must "be construed most favorably" to non-drafting parties. Bellamy v. Pac. Mut. Life Ins. Co., 651 S.W.2d 490, 496 (Mo. 1983).

The members of the DCS and the IRCS cannot possibly make a reasoned decision whether to agree to or object to the Settlements without full disclosure, complete transparency, and clear and unambiguous settlement agreement terms and conditions. Is the CFP contributing part of

its billions of dollars in the Settlements, or is the CFP being shielded in the Settlements by ambiguous, equivocal, sophistical, or deceptive language? The members of the DCS and the IRCS have an absolute right to clear and unambiguous answers to these questions, and otherwise their due process rights have been clearly violated." (pp. 4-5)

V. Whether fair opportunities existed for athletes to voice objections.

A. Representing 155 members of the Injunctive Relief Class (Docket #628). The law firm of Mololamken LLP, counsel for the objectors, addresses possible harm created by the injunctive relief portion of the settlement that imposes roster limits, removes salary caps, and created fears chilling the submission of objections:

"This Court observed that "taking . . . things away from people is usually not too popular." Hr'g Tr. at 71:17-18. That is exactly what roster limits are doing. Schools are breaking their promises to young athletes who arranged their entire futures in reliance on those promises. The unjust consequences of this cruel game of musical chairs are material and heartbreaking.

The "reaction of the class," moreover, is overwhelmingly negative. Rodriguez v. West Publ'g Corp., 563 F.3d 948, 963 (9th Cir. 2009). The 155 objections filed in support of this Objection, as well as many others submitted directly to the Court, come only from student-athletes who both knew about the Amended Settlement and had the courage to object under their own names. See Exs. C, E. Objectors' counsel consulted with many more who asked to remain anonymous for fear of retaliation or online harassment. Ex. B ("Wiegand Decl.") ¶ 7. Their fear is understandable; power dynamics inherent in college athletics train young people not to be seen as "troublemakers." Id. ¶5.17 Many parents and students also expressed reluctance to write down their objections because of the mental and emotional stress of being cut, or risking being cut. Id.¶ 8. The true extent of objections to the Amended Settlement's roster limits may never be known." (p. 25)

B. Amicus Brief to Judge Wilken (Docket #603). Attorney, Leonard Simon, submitted comments as an interested party concerned with the objection provisions of the Settlement:

"The right of class members to opt out or object to settlements cannot save the day for this settlement, as it does not solve any of the problems presented above. First, since we are talking about injunctive relief, opt outs are not permitted. Fed. R. Civ. P. 23(c)(2)(B)(v).

Second, the right of future class members to object as they enter college carries with it several disincentives and practical difficulties. High school seniors will have difficulty finding counsel, will be seriously challenged in obtaining class certification, and may not wish to create friction with their college coaches. They will be months away from starting school under capped compensation, and at best, they could try to get a better deal as a sophomore or transfer schools later. All of this would be quite unattractive to any high school senior. Objecting is simply an awkward and ineffective remedy for these legal infirmities." (p. 9)

C. Athletes' Agency letter to Judge Wilken (Docket #676). Activate Sports Management submitted comments on behalf of 25 athlete clients to express concerns about athletes' opportunities to object:

> *"As expressed above in the example of the www.collegeathletecompensation.com FAQ section, under the question titled "How do I get more information" the only further information provided to the student-athlete is a link to the original website they just left, plus contact information for two attorneys they have never met, and information to contact the court. These are not easy to access means of providing education and support. 18-25 year old's in 2025 are not accustomed to having this level of difficulty in accessing information. They have been raised with chat-bots, live chat options, and the ability to communicate with whomever they want at the touch of a button. To belief "contact a lawyer you've never met" is either a viable option for them, or a scalable solution for the amount of student-athletes eligible for the DCS, is not rational.*
>
> *To further demonstrate that the support system is not viable, you don't need to look any further than the Objectors who tried the suggested remedies. Over the course of 3 months, multiple calls were placed by the Objectors to the attorneys listed on the FAQ page of www.collegeathletecompensation.com All of those calls went unanswered and unreturned. Additional calls were made by Objectors and other student-athletes to two different attorneys for the plaintiff that were provided by Arizona State University, which also went unanswered and unreturned.*
>
> *Absent Marissa Schuld, the Objectors in this letter are all in the middle of an academic year and an athletic season. To not provide upfront educational resources AND to not have a viable solution to ask questions or fix issues, puts the student-athlete in an impossible situation to decide on their involvement with the settlement.*
>
> *In addition to not having an easy to access and native to use platform for the student-athletes to receive education, there is no reasonable recourse to fix issues needed to access the limited information and education that is provided. Over the course of the previous three months, most of the Objectors have had technical issues or issues related to education that result in a technology failure. By way of example, many of the Objectors who have transferred to Arizona State University after playing Division 1 hockey elsewhere, were unable to locate or never received notifications from one or more of their previous institutions. In addition, many were unable to locate their NCAA enrollment number or PIN to access the limited information the website provides.*
>
> *…When the Objectors are having basic issues logging into a system, finding support, having someone accessible to help them troubleshoot, and experiencing basic technical failures like the repeated crash of the website or repeated failed log-in attempts, they cannot possibly ask the questions they need answered in order to opt-in or believe that the settlement should be approved."* (p. 7-8)

"As mentioned in III - Arguments - E, Multiple Objectors have noticed their compensation number either change or decrease randomly at times while checking their amount due in damages on www.collegeathletecompensation.com

In one example, an Objector originally was shown an anticipated DCS number of $1500. One month later upon checking again, the number was $500. No explanation was provided, no new information had been uploaded by the Objector, and phone calls placed to the plaintiff attorneys seeking clarification went unanswered and unreturned.

In another example, an Objector was originally shown an amount of $12,000 which then increased significantly when they were able to get in contact with their previous school and that information was added. Absent that institution communicating with the Objector (which is often not the case) she would not have been receiving her full value.

Lastly, another Objector was originally shown an amount of $1200, which then went to $1500, and then to $1100. Again, no explanation was provided, no new information had been uploaded by the Objector, and phone calls placed to the plaintiff attorneys (the recommended remedy for questions or problems) went unanswered and unreturned.

With DCS compensation being the core decision making component for this group of Objectors, and their inability to confidently understand what that number will be and if it will stay that way after they decide to opt-in or opt out, they are not armed with all of the information they need to make that decision." (pp. 10-11)

D. Anonymous Division I Athlete Member of the Class (Docket #709). Identified only as a member of the class due to fear of retribution:

"We are writing this anonymously because we fear the possibility of retribution against the co-author of this letter, who is a Division 1 student athlete and a member of the class. We hope you understand and appreciate how difficult the situation is for current student athletes who wish to object to the settlement proposed, in part, by the NCAA, which represents the schools for which they compete. Whether it was intentional or not, the threat of roster cuts accompanying this settlement has silenced the voices of a large portion of the class that believes its interests conflict with the interests of the Class Representatives." (p. 1)

E. A Concerned Student Athlete (Docket #605). Identified only as a member of the class due to fear of retribution:

"I'm writing this letter anonymously because I'm terrified of being singled out. I am a D1 college junior and like so many other student-athletes, I feel like I'm barely hanging on right now. The situation surrounding Grant House vs. the NCAA roster limits has thrown our lives into chaos, and I need to speak up—even if I have to do it without revealing who I am. The amount of people who are against this but are scared to speak up is huge. There is a

Change.org petition which has collected nearly 1,500 signatures of people who are all opposed to the roster limits and every athlete I speak to is against it. Grant House himself said that he is opposed to roster limits and was never consulted!" (p. 1)

F. Post January 31, 2025 Letter of 155 Objectors to Judge Wilken (Docket #741). Mololamken submitted comments on behalf of 155 Class member as follow-up to previous submission to express retaliation and process concerns:

"As of the January 31, 2025 objection deadline, 18 Objectors had been cut from their teams. See Weidenbach Objectors at 8-9, 12-13; Objectors Decls. at 3, 59, 131, 141, 174, 216, 248, 270, 277, 310, 349, 367, 444, 458, 478, 510. Five more were informed that they will be cut if the Settlement is approved. See Objectors Decls. at 191, 431, 505, 526. At least 12 more have been cut since January 31. See Ex. B. Two more were informed they will be cut next year. See Ex. C. Thirty-five additional class members in the Injunctive Relief Settlement Class who missed the objection deadline because they were afraid of retaliation or unaware of this litigation, the Settlement, the roster limits, their right to object, or the objection procedure, also object. See Exs. D, E. All are current or incoming Division I student-athletes. Most were cut by their respective schools in anticipation of final approval of the Settlement, and all oppose the roster limits." (pp. 10-11)

VI. Whether past damages were properly calculated.

A. Department of Justice Statement of Interest (Docket #595). The United States Department of Justice commented on the proper application of antitrust law to labor markets, specifically the relevance of the existence of salary caps in professional sports leagues being relevant and whether a labor exemption to antitrust laws apply:

"In justifying the payment cap in the Proposed Settlement, the parties suggest that, by their own calculations, the revenue sharing with players results in players receiving a "similar percentage of revenues as professional athletes in the NFL, NBA, and other professional leagues." ECF No. 534 at 7. Setting aside whether the parties' factual assertion is correct, it overlooks an important difference for antitrust purposes: while professional athletes can rely on their unions to bargain on their behalf, college athletes have no such union representation. The agreements in those professional sports leagues are legally distinct from the salary cap at issue here because they are the result of collective bargaining by labor unions. Both sides concede that the Proposed Settlement is not a collective bargaining agreement or a resolution of a "labor dispute" under the federal labor laws. See, e.g., ECF No. 450 at 22 (describing the settlement as "an extraordinary recovery given plaintiffs didn't have the leverage of a collective bargaining agreement"). Moreover, while the Proposed Settlement represents a negotiation between players (via Plaintiffs' counsel for the Declaratory and Injunctive Relief Class) on the one hand and the NCAA and its member institutions on the other, there are several important differences between a collective bargaining agreement and the Proposed Settlement that make a substantive comparison inapposite.

First, salary caps in collective bargaining agreements are generally immune from antitrust scrutiny under the non-statutory labor exemption. See Brown v. Pro Football, Inc., 518 U.S. 231, 235–37, 250 (1996). Accordingly, to the extent professional sports leagues have salary caps, it is not because those provisions necessarily are procompetitive under the antitrust laws, but because they are exempt from antitrust scrutiny to begin with. Id.; see also Wood v. Nat'l Basketball Ass'n, 809 F.2d 954, 959-63 (2d Cir. 1987); Nat'l Basketball Ass'n v. Williams, 45 F.3d 684, 688 (2d Cir. 1995).FN1

Second, collective bargaining agreements are the result of a process whereby workers have different substantive and procedural rights than those available to plaintiffs under Rule 23…The Proposed Settlement was negotiated without college athletes benefiting from these substantive and procedural rights. See, e.g., ECF No. 450 at 22 (acknowledging "plaintiffs didn't have the leverage of a collective bargaining agreement"). If Defendants want to set compensation rules for present and future athletes, the proper way to do so would be a collective bargaining agreement." (pp. 8-9)

B. Representing 10 female members of the Additional Sports Class (Docket #618).

The law firm of Hutchinson Black and Cook LLC, counsel for objectors suggests a possible fatal flaw in the construction of the past damages model:

"This Settlement suffers from a mistaken assumption that school or conferences would have paid athletes of the same institution widely varying amounts of money in proportion to their individual sport's market value contribution to the school's media rights revenue. Daniel Rascher, with reliance on information from Plaintiffs' media expert Ed Desser, determined the allocation of the Gross Settlement Fund. Notably, both Mr. Desser and Mr. Rascher acknowledge that they were not asked to consider the application of Title IX in their opinions. See Defs.' Joint Opp'n to Pls.' Motion for Class Certification, ECF. No 249 at 15-16 ("Neither Deer nor Rascher considered Title IX."); Videotaped Dep. Of Edwin Desser, ECF No. 251-6 at 64:9-16 (Title IX consideration are not "within what [he] was assigned to work on"); Dep. Of Daniel Rascher, ECF No. 251-7 at 111:19-21. (Rascher has not "tried to account for Title IX in any of [his] damages models in this case."). Had the Settlement applied Title IX, the damages to the athlete would have necessarily been compliant with federal anti-discrimination law and made in proportion by gender.

Put simply, Rascher's analysis based on market value is fundamentally flawed because the damages he valued are athletic benefits and/or financial aid under Title IX and thus not subject to a market value analysis. For an antitrust settlement paying out pat "but-for" damage owed to students from their institution or conference, all other laws, including Title IX, must apply when calculating those claimed losses. Prior to reaching a settlement, the Conference and NCAA wholeheartedly agreed. "The gaping disparity yielded by Plaintiffs' BNIL injury and damage formula violates Title IX—and does so in a way that cannot be solved." Defs.' Joint Opp'n to Pls.' Motion for Class Certification, EDF. No 249 at 16." (pp. 9-10)

"Moreover, despite what Mr. Rascher's damages allocation suggests, there is no exception to Title IX for revenue-producing sports. …No existing case law or statute holds otherwise.

Here, the Settlement proposes that schools or conference would have shared $1.815 billion from its media rights deals and distributed at least 90% of the money to male athletes and at least 5% of the remainder to female athletes without any consideration as to whether such a historical but-for payment would have been permissible under Title IX. Instead, the Settlement reflects an analysis that relies on the market value of the relative sport. But federal funding recipients are not private corporations, and behaviors that may be appropriate in a professional sports league are not permissible for federal funding recipients subject to federal civil rights laws. Whether described as benefits or financial aid, payment to athletes by or on behalf of schools must be proportional to the number of athletes by gender at the institution in order to accurately calculate the damages athletes would have earned but for the Defendants' unlawful conduct." (p.13)

*"…As an initial matter, Mr. Rascher's conclusion that in a but-for world, conferences would have, for the first time ever, provided financial aid and educational benefits directly to the athletes at the member institutions exceeds the scope of the but-for analysis. See ICTSI Oregon, Inc. 2022 WL 16924139, at *8 (citing Justine S. Hastings & Michael A. Williams, What is a "But-for" World?, 31 ANTITRUST 102, 102 (Fall 2016) ("[T]he but-for world differs from what actually happened only* ***with respect to the harmful act****, that I, the but-for- world hold all other factors except one—the alleged conduct—the same in order to measure what [profits] would have been but for the alleged conduct.")) (emphasis added). It requires consideration of actual real-world conditions during the entire damages period, with the only fantastical element being that the unlawful conduct did not occur." ID …The parties cannot create a fantasy but-for world that changes additional real-world conditions.*

Conferences have stated in this litigation that they do not provide and have never provided benefits or financial aid to athletes."ECF 249 at 13. Joint Opposition to Plaintiff's Motion for Class Certification. ("[T]here is nothing to support such a payment model. Schools, not conferences, compete with each other in recruiting, and schools, not conferences, decide what amount of scholarship aid to give to individual students.") Id. Schools have always been the provider of educational and financial benefits to their athletes. Thus, this Settlement asks the Court to remove not only the unlawful restraint, but then to manufacture a "fantastical" damages model in which conferences, not schools, would provide aid and benefits for athletes. Such a proposal plainly violates permissible methodology for calculating "but-for" damages and disregards the fundamental and historical process for how schools provide benefits to students. Indeed, even the current operative Complaint filed after the Notice of Settlement blurs the line between conference and school BNIL money alleging that the class members: "On behalf of the previously certified Football and Men's Basketball Class, as amended herein. Plaintiffs seek the compensation that these class members would have received from ***their schools or conferences*** *absent Defendants' unlawful restraints on pay-for-play compensation,*

a share of game telecast revenue and compensation that these class members would have received from their school or conferences for their Broadcast NILs ("BNIL"). Third Amended Complaint, ECF No. 533-1¶ 9 (emphasis added). The assumption that conferences would have paid athletes for BNIL directly seems to serve little purpose other than to address a Title IX challenge to this settlement." (p.15-16)

"A second conceptual flaw in Dr. Rascher' analysis is that the settlement fund in his largest category of BNIL bears little resemblance to reality or to the underlying professional model that he uses to establish his estimate. Briefly, in pro sports the massive television contracts garnered by the big four league are based upon team performance and team brant. To the extent that pro athlete publicity or NIL rights are involved, they are diminutive and basically occur in the form of video clips to promote forthcoming telecasts. …Thus, Dr. Rascher's estimate is based on a false analogy. The plaintiffs have invented a term and acronym, BNIL, that that little basis in economic reality. (Exhibit A, p. 4)

C. Interested Parties Letter to Judge Wilken (Docket #705). Former NBA Players Association Executive Director Michele Roberts and two other attorneys working in the area of athletes rights, Richard Ford and Casey Floyd, submitted comments as interested parties, that questioned the calculation of past damages:

"Carter is a critical piece of the settlement but has received the least scrutiny.

Carter made pay-for-play claims and sought damages in addition to injunctive relief. The Carter damages class was comprised of Power 5 football, men's basketball, and women's basketball athletes only." (p. 22)

"In theory, Carter could have yielded the highest damage value among the three settlement cases. However, based on expert testimony, it has been assigned a settlement value that is only 21 % of total damages.FN90 (p. 23)

In the settlement, the pay-for-play damages class expanded from approximately 16,000 in Carter (Power 5 football and men's/women's basketball only), to approximately 390,000 (all Division I athletes).FN91 (p. 23)

Thus, Carters initial focus on fair pay for the athletes whose labors underwrite the entire college sports industry was conflated with and diluted by the massive expansion of the pay-for-play class.

Importantly, there has been no substantive litigation in Carter: The NCAA and Power 5 have not even filed a response to Class Counsels' complaint. (see p. 23, FN92) (pp. 22-23)

…"The parties should not be permitted to use Carter to (1) compromise pay-for-play damage claims without litigating or developing evidence on them, (2) expand the pay-for-play class from 16,000 athletes in the lawsuit (Power 5 profit athletes in football, men's basketball, and women's basketball) to 390,000 athletes in the settlement (all of Division I) to argue that the pay-for-play payments are a windfall to athletes because they would never achieve class certification on the settlement classes, and (3) attempt to eliminate the only other pending suit that is positioned to actually litigate and develop evidence on the true value of athletes' services." (p. 27)

D. Athlete Additional Class member letter to Judge Wilken (Docket #638). Additional Class member Charlotte North (Boston College/Duke, lacrosse) commented on three sex equity concerns with the Settlement's past damages model (emphasis added by author):

"As the preeminent women's lacrosse player during the class period, I believe my Estimated Settlement Allocation is considerably lower than the actual value of my NIL, Athletic Services and Academic Achievements as a student-athlete at Duke and BC. Additionally, I believe the low valuation of my Estimated Allocation reflects longstanding gender equity issues in intercollegiate athletics and is a violation of Title IX." (p. 3)

*"As illustrated by the charts below, the House Settlement significantly benefits men who would receive **94% ($2,425 billion)** compared to women who would only receive 4% ($102 million) of the total House Settlement Damages **($2,576 billion)**.*

($ in millions)	Broadcast		Video		Lost NIL		Total NIL	
Men	$1,748	*96%*	$72	*100%*	$65	*73%*	**$1,885**	***95%***
Women	68	*4*	---	---	5	*5*	**72**	***4%***
Other	---	---	---	---	19	*22*	19	*1%*
Total	**$1,816**	*100%*	**$72**	*100%*	**$90**	*100%*	**$1,976**	*100%*

($ in millions)	Athletic Services		NIL + Athletic Services =	Total *House*	
Men	**$540**	***90%***		**$2,425**	***94%***
Women	**30**	*5*		**102**	***4%***
Other	30	*5*		49	*2%*
Total	**$600**	*100%*		**$2,576**	*100%*

Source: *House v. NCAA*, Declaration of Daniel A. Rascher (July 26, 2024).

The reason for the significant disparities between the amounts allocated to men and women in the House Settlement was explained by the Class Counsel (Steve Berman and Jeffrey Kessler) in the Factual Allegations of the Third Consolidated Amended Complaint dated Sept. 26, 2024.

"Female Athletes Have Been Especially Adversely Impacted by NIL Restrictions and Will Profit in the New NIL Era"

*"**The NIL rules adversely impacted female athletes more than their male counterparts** because (1) they have fewer professional opportunities and they must use their time in school to monetize, and (2) because **the NCAA promotes female sports less than it does male sports** and thus many female athletes are not as well known..."*

"There was an unanswered demand for the use of NIL of female athletes before interim NIL rules..."

*"A study conducted by the website AthleticDirectorU and the marketing firm Navigate Research found that 13 of the 25 college athletes with the greatest annual endorsement potential between **$46,000** and **$630,000** were female athletes."*

Source: House v. NCAA, Third Cons. Am. Class Action Complaint, p. 74.

The NCAA's failure to promote women's sports equitably is also supported by an independent gender equity review of all NCAA Championships in 2021. The law firm Kaplan Hecker & Fink ("Kaplan") found significant disparities between men's and women's intercollegiate sports. The source of the disparities is the NCAA structure, which is designed to maximize revenues from the most lucrative source of funding for the NCAA and its members - Division 1 Men's Basketball. According to Kaplan,

"The NCAA's broadcast agreements, corporate sponsorship contracts, distribution of revenue, organizational structure, and culture all prioritize Division I Men's Basketball over everything else in ways that create, normalize, and perpetuate gender inequities." Source: Kaplan Hecker & Fink LLP, NCAA External Gender Equity Review (2021).

Despite these gender inequities, Rascher used revenue-generating men's sports as a basis to calculate the House Settlement Damages awarded to each Settlement Class. As a result of this sex-based analysis, the House Settlement has a disparate impact on all female Class Members." (pp. 3-4)

*My Estimated Allocation for Athletic Services is valued at **$286.92**. This amount is significantly lower than the average payments for other Classes: (1) **Football and Men's Basketball ($40,000)**, and (2) **Women's Basketball ($14,000)**. Based on my estimated hours of NCAA permitted athletic services (20 hours per week), I played ~2,500 hours of lacrosse over my five-year career at BC and Duke, which equates to approximately $0.11 per hour. This does not include the hundreds of hours I trained beyond the official practice field, the rehabilitation I undertook to maintain my body, and the promotional engagements I participated in to help promote lacrosse.*

*The proposed House Settlement of **$600 million** for **Athletic Services** disproportionally favors male student-athletes, as illustrated by the chart below providing **Football & Men's Basketball $540 million** representing **90%** of the Settlement amounts.*

House Settlement – Athletic Services – Additional Compensation		
Damages Class	**Amount**	*%*
Football & Men's Basketball - P5	**$540 Million**	*90%*
Women's Basketball – P5	30	*5*
Additional Sports	30	*5*
Estimated Total	**$600 Million**	

*According to NCAA rules, all DI student-athletes are limited to a **maximum of 20 hours per week** of countable athletically related activities ("CARAs") during the playing season. During the off season, student-athletes are allowed significantly lower CARAs, typically 8 hours per week. Therefore, if DI student-athletes are participating in athletics an equal number of hours per week (20 regular season, 8 off-season), then all DI athletes should be compensated equally for their Athletic Services under the House Settlement.*

*Instead of using current NCAA rules which limit athletic participation for all DI athletes to calculate Athletic Services, the House Settlement relies on an economic report prepared by Rascher. Estimated settlement amounts for Athletic Services are calculated using a **"yardstick"** approach by obtaining a ''but-for-price'' from a "'comparable market." This comparable market analysis uses a distribution of salaries in professional leagues to derive an estimate salary for college athletes.*

*The comparable market analysis is fundamentally flawed because it is **sex-based**, using collective bargaining agreements from the professional male leagues: NFL, NBA and NHL, as a yardstick, and then estimating athlete compensation to be 50% of a professional league revenue. Professional sports operate to make a profit which is fundamentally different than the NCAA, athletic conferences and universities who operate not-for-profit business models. The resulting analysis is further sex-based because it allocates damages based on the estimated share of the value each sport contributes to regular season broadcast deals. This sex-based allocation is the same proportion Rascher used to calculate NIL damages and explains why there is a disparate impact on female student-athletes. Therefore, I object to the House Settlement and believe the Athletic Services calculations are a violation of Title IX.*

I believe that I should receive an Athletic Services payment based on the number of hours that I participated in athletically related activities per week, not based on the Classification of Women's Lacrosse as an Additional Sport and a yardstick that relies on historical gender inequities. Therefore, pursuant to NCAA Rules limiting all DI student-athletes' athletic activities, I believe that my Athletic Services payment should be equal to the amounts awarded to Football and Men's Basketball. Additionally, I believe that Women's Basketball and all other women's sports should receive equal Athletic Services payments based on their participation in NCAA DI sports." (p.7-8)

E. Representing 10 female members of the Additional Sports Class (Docket #628).

The law firm of Mololamken LLP, counsel for the objectors raised questions, regarding the past damages model:

"The Amended Settlement allocates more than 90% of funds to football and men's basketball players and leaves less than 10% for all women. See Rascher Decl. ¶ 48. This staggering imbalance discounts the NCAA's decades-long failure to promote women's sports, which, in conjunction with its price-fixing conspiracy, devalued women's NILs. It also violates Title IX. Far from adequate compensation to women, the Amended Settlement compounds the inequity Title IX was enacted to remedy.

A. The Amended Settlement Undercompensates Women Class Members

Women's sports have exploded in popularity – and profits – since the NCAA suspended enforcement of its anti-NIL compensation rules in 2021. Women college athletes have attracted unprecedented acclaim. (p.11, n10) The NIL Store, an online storefront for college athlete merchandise, reported that, when considering sales by sport, women's merchandise accounted for six of the top ten sellers in 2024.(p.11, n11) NIL valuations of the top three female earners in 2024 each topped a million dollars, and women accounted for more than half – specifically 52 – of the top 100 NIL deals reported in 2023.(p.11, n12)

The Amended Settlement ignores this reality. Instead, it allocates past NIL compensation based on historic revenues, to astoundingly biased results. Many football and men's basketball players will receive more than $100,000. The average female sprinter will receive $125 (if she receives anything at all). Class Counsel excuses that disparity as "based on market realities," Dkt.494 at 12 n.10, but that is untrue. It is based on market ***distortions****.*

By failing to invest in women's sports, the NCAA depressed the value of women's NILs relative to their male counterparts. The parties know this. The complaint alleges that female athletes were uniquely harmed by defendants' anticompetitive conduct due to the NCAA's failure to promote women's sports, see TCAC ¶¶ 244-248, and a 2021 report commissioned by the NCAA itself concluded that every facet of its culture, organization, and practices "create[d], normalize[d], and perpetuate[d] gender inequities." Kaplan Hecker & Fink LLP, NCAA External Gender Equity Review Phase I: Basketball Championships 2 (Aug. 2, 2021), (https://bit.ly/3Cx3whB ("Kaplan Hecker Phase I Report").

"March Madness" tells the story in large, bold print. Prior to 2022, the NCAA refused to extend the lucrative "March Madness" brand, reserved for the men's basketball, to the women's tournament. Kaplan Hecker Phase I Report 8-9, 37-40. Just two years later, the 2024 women's March Madness final drew 18.7 million viewers, outstripping the men's final for the first time.(p.12,n13) Had the NCAA fairly promoted women's sports, those ratings would have come much earlier. Instead, the NCAA boosted men's publicity – and NILs – while artificially depressing women's.

Women's damages are extraordinary and very real. The 2021 report found, among other things, that the NCAA "significantly undervalu[ed] . . . women's basketball as an asset" by failing to capture hundreds of millions in broadcasting revenues in its ESPN contract. Id. at 9, 37-40.(p.12,n14) In 2024, the NCAA and ESPN negotiated a new 8-year, $940 million contract that valued "women's basketball at $65 million per year, about 10 times more" than the contract it replaced. Chantel Jennings & Nicole Auerbach, What Does the NCAA's New Media

Rights Agreement Mean for Women's College Basketball?, N.Y. Times: The Athletic (Jan. 4, 2024), https://bit.ly/3PVQLjZ (emphasis added). Women athletes would have received millions more in NIL compensation but for the defendants' conduct. The Amended Settlement rewards the NCAA's discrimination by underpricing women's NIL damages and relieving the NCAA of the cost of paying for their injuries.

… Class Counsel insists that Title IX is irrelevant to this case. See Dkt. 494 at 12 n.10; Hr'g Tr. 36:17-37:25. It is not. A settlement that violates federal law through its discriminatory treatment of women cannot be "fair, reasonable, and adequate." (pp. 17-19)

F. Amicus Brief to Judge Wilken (Docket #603). Attorney, Leonard Simon, submitted comments as an interested party concerned with the calculation of past damages:

"Because unionized professional sports leagues have collective bargaining agreements ("CBAs") which often include caps on salaries, settling parties try to equate their $20 million cap with caps in those CBAs, going so far as to try to equate the college athletes' likely income with those of the professional athletes. This analogy is flawed at its core, since unionized pro athletes with CBAs are governed by a comprehensive system negotiated by their union leaders, whom they elect, and who protect their interests through the negotiation and administration of the CBA, battle for the best possible deal, file grievances and the like if CBA terms are not followed, and seek salary floors rather than caps, sometimes compromising and getting both. A union leader would be fired if he or she negotiated a deal similar to the injunctive settlement.

College and professional athletes are far different, well beyond having compensation floors more often than caps. The pros do not need to compete with athletes in other sports for a common pot of income. Moreover, the pro athletes are typically living under a CBA that a majority voted for, and they typically elect their leaders, who negotiate the CBA. Finally, pro athletes are employees with all the rights that state and federal laws give them, while college "athletes are not. Not a single one of those things is present in college athletics." (p. 7)

All of these cases approve compensation rules agreed to by a labor union—or by class action counsel and a labor union—and are thus protected by the labor exemption to the antitrust laws. And all of these cases involve comprehensive CBAs, which provide far more than a salary cap, creating many rights for the athletes. A naked salary cap in college sports has no similarity to what occurred in any of these four cases." (p. 8)

VII. Whether calculation of athlete settlement amounts were fairly calculated and class members were treated equitably relative to each other.

A. Athlete Additional Class member letter to Judge Wilken (Docket #624-1). Additional Class member Olivia Dunne (LSU, gymnastics) commented on the lack of transparency regarding how settlement amounts were calculated and comments on the process of finding an athlete's allocation or submitting a claim to adjust an allocation:

"There is a lack of transparency to how the calculations are being made for the estimate of lost NIL opportunities and if the same formula is being applied to all athletes across every sport. If I were to hire a law firm to represent me individually in this matter I would want to know how the valuation of damages was calculated specifically to me. This seems not to be the case. Especially in a case where the school provided no NIL data, athletes could not upload their own data to adjust and correct their estimate without filing a claim and waiving their right to opt out of the damage class. This left the athlete to have to make a decision without accurate information." (p. 1)

"The formula for lost NIL opportunities fails to take into account the value the athlete would have been able to achieve had the rule against earning income never been in place to begin with. Athletes had to navigate the new landscape with businesses who were unfamiliar with NIL business. Of the course of 3 years since the rules have changed, we have seen the market shift and deal values evolve as this business model matures and there a track record for success in NIL partnerships between athletes and businesses." (p. 2)

"When searching for estimated allocation the link under lot NIL "(to see the value of the NIL deals reported to us and used to calculate this payment, click HERE)" link did not work until very recently. Last checked on or about 1/29/25 and it didn't work. At the time of this writing (1/31/25) it now works. This is patently unfair and has a chilling effect as to the decision-making process of whether to opt in or not." (p. 1)

"Submissions of itemized NIL deals need to be sealed. Third party companies that partner with athletes are not parties to this suit. Forcing athletes to disclose deal information would violate non-disclosure, confidentiality and trade secret covenants." (p.2)

B. Athlete Additional Class member letter to Judge Wilken (Docket #638). Additional Class member Charlotte North (Boston College/Duke, lacrosse) commented on multiple issues: failure of her institution to provide full information necessary to determine her allocation, classification of her sport rather than the actual commercial use of her NIL to determine eligibility for Broadcast NIL payments, the settlement's classification of sports in a manner that disproportionately offers benefit or opportunity to members of one sex, use of inaccurate estimates of the value of NIL dals

"According to the website www.collegeathletecompensation.com, my Estimated Allocation as a member of the Additional Sports Class (Women's Lacrosse) at BC and Duke are detailed below. Note, despite contacting Duke University, I have been unable to obtain my Estimated Allocation information for my freshman and sophomore years at Duke, so it is missing below.

Type of Damage	Charlotte North – Est. Allocation		
Name, Image & Likeness (NIL)	**Boston College**	**Duke**	
Broadcast NIL	Not Eligible	Not Eligible	**Object**
Videogame NIL	Not Eligible	Not Eligible	---
Lost NIL Opportunities	$2,019.45	Missing	**Object**
Athletic Services	$286.92	Missing	**Object**
***Hubbard* Academic / (*Alston* Award)**	$3,140.17	Missing	**Object**
Total Estimated Settlement Payment	**$5,446.54**	**Missing**	

(p. 2)

C. Athlete Football/Men's Basketball Class member letter to Judge Wilken (Docket #637). Benjamin Burr-Kirven (Univ. of Washington, football) commented on past damages payouts:

"I was recruited to UW (then a member of the Pac-12 conference and now a member of the Big Ten conference), to play linebacker on the football team and received a full scholarship. I played for UW's football team starting In the fall of 2015 and ending on New Year's Day 2019. During my sophomore year we won the Pac-12 Conference championship, and were ranked 4th In the country - earning UW a spot at the College Football Semifinal game In Atlanta. I became the starting middle linebacker my junior year, and in my senior year, we won the Conference championship again, and played in the Rose Bowl on New Year's Day 2019.

During my senior year, I received numerous conference and national accolades." (p. 1)

"My understanding of one of the purposes of the class action lawsuit against the NCAA was to fairly compensate college athletes for their lost earnings via 3rd party NIL, video game, and broadcast media rights. I understood from the plaintiff lawyers that former NCAA athletes, such as myself, would be compensated based on their performance/contribution, the sport they played and its contribution, and that a player's accolades and success would be significant factors in determining payouts. I've come to learn this Is not true.

The payouts for the damages class are inconsistent, illogical and unfair.

On December 17, 2024, when I visited the Settlement Website to see my payout estimate as a result of the proposed settlement, I was beyond shocked. From what little information I have since been able to find out, the payout scheme is illogical, inconsistent, and undecipherable. Comparing myself to players whose relevant football playing years mirror mine, my payout of

$57,000 is

- *Identical to a defensive teammate at UW, who was a walk-on and rarely played in games.*
- *Less than another teammate on offense, who received $98,000 and was compensated for Hubbard and Athletic Services, despite the fact we played in the same number of games for UW over the same seasons.*
- *Less than a player on offense at Washington State University who was awarded $103,000 - who had no personal conference or national accolades and his team did not perform as well as UW in the conference or nationally, (no Rose Bowl, no College Football semi-final)*
- *Less than a fellow defensive teammate, who received $105,800. He was not a starter for UW, and received no conference or team accolades. His video game payment is 70% higher than mine, his broadcast NIL payment is 62% higher than mine, and he is receiving both Hubbard and Athletic Services payments, despite the fact he played in fewer games than I did, during the same seasons at UW.*

The data requested by plaintiffs' attorneys from the University of Washington to determine player payouts did not include information on a player's performance - the key factor that logically would and should drive NIL payments for the damages class. I cannot decipher why performance would not be considered, with the result that I am paid so much less than players on my own team during the same time period.

<u>The damages class payment scheme treats past athletes unfairly.</u>

As an NCAA athlete in the era immediately preceding the NIL era, the unfairness to me and those like me, is stark, compared to those players who were lucky enough to receive NIL payments while they were in school. I engaged in all the same activities, and played just as hard as NIL era athletes. Yet, they are receiving NIL payments and I am not.

One example includes a UW special teams player who graduated in 2022 and was awarded $259,000, including $138,000 for lost 3rd party NIL. It is illogical that a special teams player is being paid nearly 5x the amount of an All-American linebacker, Conference player of the year, and the nation's leading tackler.

The logic is circular. You can only get compensated for lost NIL if you got NIL. Players in my cohort, who were under the thumb of the NCAA rules during their entire tenure, are not able to get compensation for lost 3rd party NIL. My limited research in this area points to Rule 23 of Federal Civil Procedure where "parties seeking approval demonstrate that the proposal treats class members equally relative to each other." If the intent of this settlement Is a fair way to right past wrongs by the NCAA-the damages class settlement fails to do that." (pp. 2-3)

D. Amicus Brief to Judge Wilken (Docket #603). Attorney, Leonard Simon, submitted comments on revenue sharing as an interested party:

> *"The settlement cannot fairly be called "revenue sharing." If a friend asks me to provide him with two hours of help per month on his work, and says he might share his salary with me, no one would call that revenue sharing. And if he added that he would cap the amount he would give me at 25% of his salary, we still would not call it revenue sharing since he might give me nothing. That is what we have here—schools may pay their athletes nothing, a little, or as much as $20 million per year per school. They can share if they like, and as much or as little as they like, to whichever athletes they choose, up to the artificial cap.*
>
> *There is certainly no promise of revenue sharing for all class members, or indeed for the vast majority of them, since the money may be spent on football and basketball, or only on star players in those sports, which are crucial to the schools' athletic budgets and prestige."* (pp. 6-7)

E. Athlete Additional Sports class member letter to Judge Wilken (Docket #601). David Kaemervisz (Stanford, football) commented on the fairness of the Football/Men's Basketball Class criteria:

> *"As a full member of the Stanford football team, I propose that players in my position should be added to the definition of the "Settlement Football and Men's Basketball Class." My NIL was used on broadcast television and other media. My NIL was used in the video game "College Football 24" produced by EA Sports featuring Stanford players. During my time at Stanford, I was not getting a free education like GIA players, but my NIL was used along with GIA players to promote the football team during broadcasts in the 27 games in which I played. I believe it is only fair and reasonable that players like myself be eligible for broadcast NIL payments and not be treated differently than GIA players, particularly when some of them may have played less on the field than I did.*
>
> *It is not fair that athletic scholarship status alone determines that one player's NIL on the field is worth significant broadcast compensation, whereas the teammate alongside him in the same game is worth nothing. I request that the definition of the "Settlement Football and Men's Basketball Class" include all Power 5 athletes who actively participated and contributed to their teams. An easily verifiable measure, such as participation on a roster during Fall Camp or games played/snap count, would fairly include all athletes who contributed to the broadcast revenue."* (pp. 1-2)

F. Athlete Additional Sports class member letter to Judge Wilken (Docket #612). Larry Wright III (Univ. of Minnesota, football) offered an injury perspective in his comments on the unfairness of the Football/Men's Basketball Class criteria:

"The Settlement Damages Class definition fails to account for the contributions of all team members who participated in revenue-generating activities for the NCAA. The exclusion of PWOs, specifically on Football and Men's Basketball, and Women's Basketball teams, unjustly narrows the scope of the class eligible for BNIL recovery in a manner that violates Rule 23 of the Federal Rule of Civil Procedure.

Moreover, given the court's ruling that injury-in-fact is satisfied by demonstrating the deprivation of the opportunity to receive compensation, PWOs therefore must be included in the damages class as they satisfy the injury-in-fact. They were subjected to the same anticompetitive restraint and clearly share the same injury as their full GIA scholarship peers." (pp. 1-2)

G. Athlete Injunctive Relief Class member letter to Judge Wilken (Docket #255). Jacob D. Ference (Chesterfield NJ high school football player) offered the perspective of a high school player immediately affected by institutions who have assumed approval of the Settlement:

"…I am currently rated as a Five Star High School Football player and the 14th Nationally Ranked Punter in the High School Graduating Class of 2025 by Jamie Kohl of the esteemed Kohl's Kicking Organization. I am considered the best available High School Punter in the Class of 2025 (because I do not have any offers to play NCAA college football). I am also rated a Five Star Punter and the 4th Nationally Ranked Punter by Brandon Kornblue of Korblue Kicking. I have been playing football since second grade. I have been training for years to become a college football player with my brother, NFL player Austin Seibert, in addition to Coach Jamie Kohl and Coach Brandon Kornblue. My STRONG OBJECTION to the proposed "Hubbard" Settlement is specifically targeted at the proposed 105 roster cap limitation for DI college football teams.

Recently, I lost my only opportunity to play college football, a Preferred Walk On roster spot for the Fall of 2025 college football season because of the proposed House Settlement roster limit of 105 players. During the Fall of 2024 I was offered a Preferred Walk- On and roster spot as a Punter for the upcoming Fall of 2025 College Football season by Head Football Coach Thomas Hammock of Northern Illinois University {NIU). NIU is a DI football program located in DeKalb, Illinois and member of Mid-America Football Conference. In late December 2024, NIU contacted me and rescinded their PWO offer because they believe they will have to reduce their 2025 roster from 120 to the ·105 roster cap limit being imposed by the House Settlement. Therefore, they told me I no longer will have a roster spot and won't be able to add me as PWO.

I have ZERO offers to play college football. I have sent my film, resume and background information to over 130 DI College Football Programs. The feedback I have received from

countless head coaches and special team's coaches is that because the proposed Hubbard Settlement is capping the rosters at 105 players for next season, teams will only be keeping 1 or 2 players at my position. The current typical roster size is 120 players and teams carry 3-4 punters which allows them to develop young players like myself. So in effect, 15+ preferred walk on positions are being eliminated from each DI Football roster due to the House Settlement roster cap. This is an extremely unfair penalty for this class of 2025 players." (p. 1)

H. Athletes' Agency letter to Judge Wilken (Docket #676). Activate Sports Management submitted comments on behalf of 25 athlete clients to express concerns about their compensation vis a vis other similarly situated athletes:

"The Objectors are no different than any other student-athlete, in that they live with, workout with, hangout with, eat with, study with...each other. In this world of name, image, and likeness, and particularly with the lack of education and support as it relates to the settlement decision they each need to make, this naturally means they talk to each other about what they see and what they hear.

In addition to this, as mentioned above with variety of people I represent including the Objectors listed here[10], we feel as though we have a very good understanding of the DCS compensation numbers student-athletes of all types are being shown. Simply put, they don't make sense…" (p. 12)

"Having said that, where it becomes even more confusing for the Objectors, is when they learn what they are being told the DCS compensation will be, versus those who common sense would tell you have less NIL & BNIL value.

For example, many of the Objectors have a number ranging from $500-$1500 as Division 1 hockey players. Arizona State University hockey plays a very high level of hockey, with an average attendance of around 4,500 per game the last several years, or about 115,000 per season (third behind Football and Men's Basketball). There are many season ticket holders, several luxury suites, and NIL merchandise and jerseys are available for sale. In addition, all of their games are broadcast on the radio, and most games are available on the local Fox affiliate in Phoenix.

It is important to point out here that the argument is NOT that Water Polo student-athletes are being overvalued or do not deserve their rightful compensation – the analogy cited is to point out that there seems to be something off or missing in the way the DCS compensation being calculated, versus the NIL damages the hockey players sustained during the term… "Compensation numbers on the website often fluctuate. At any given time, an Objector could

[10] Client base of 52, all of whom were communicated with, including the 25 listed objectors.

log in (hopefully) and find their number has been changed with no explanation, and no support system in place to seek one…" (p. 13)

"Those same numbers differ between Objectors of the same "profile". Again, with no way for them to understand why that is, it's challenging for them to know if they are being fairly compensated under the terms of the settlement. Likewise, they're DCS compensation estimates seem to be inconsistent with how their NIL value is calculated. While equally as deserving, when breaking up the "pie" by class, a common person would not find a Water Polo student-athlete to have higher NIL value than a hockey player." (pp. 15)

VIII. Whether the relief provided to the classes was adequate.

A. Representing 10 female members of the Additional Sports Class and 155 members of the Injunctive Relief Class (Docket #628). The law firm of Mololamken LLP, counsel for the objectors, raised questions regarding the adequacy of any settlement that sets the price of labor below minimum wage:

"The Carter claims were settled unfairly and without adequate information or advocacy. The Amended Settlement sets the price of labor ***below minimum wage****. See Minimum Wage, U.S. Dep't of Lab., https://bit.ly/4fvCJRs (last accessed Jan. 31, 2025). Objectors do not know the value of these compensation claims because they have never been subject to discovery. Indeed, the NCAA never even answered the Carter complaint. While the Amended Settlement provides some bare compensation for their "athletic services," Am. Settlement §A(1)(vv), class members will never know how good a deal they might have gotten because the Carter claims were never litigated. That alone renders the Amended Settlement's "Additional Athletic Services" provisions inadequate and unfair. See In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011) (a "high[ ] level of scrutiny" should be applied to settlements "[p]rior to formal class certification"). Whatever the proper value of these claims, it is something more than the minimum wage students would receive if they worked in the cafeteria or university library, instead of on the soccer field. See NCAA Convention, GOALS Study: Understanding the Student-Athlete Experience 19, https://bit.ly/3WE7BXm (Division I student-athletes spent a median of 30 to 40 hours per week on in-season athletic activities in 2019)."* (p. 31)

B. Eight Past, Present, or Future Division I Athletes (Docket #613). Hausfeld LLP, on behalf of Liam, Anderson, Jordan Bohannon, Kaira Brown, Talanoa Ili, Ezekiel Larry, Dyson McCutcheon, and R.J. Sermons (collectively, "Objectors"), submitted comments questioning NIL past damages estimates:

"Cragg examined the declaration of Rascher in support of estimated damages and found it to be fatally erroneous based on what happened in the real world. Cragg estimates projected

unadjusted NIL payments plateaued at Opendorse's current projections for the 2025-26 season, which is a conservative assumption. He found that for the period from 2016 through 2024, college athletes could have earned $12.9 billion, compared to the $3.2 billion they did earn. That difference amounts to $9.7 billion, 231% more than Rascher estimated. Even if this figure was deflated by 67.4%, it would nonetheless yield $6.5 billion in additional damages, not the $2.6 billion estimated by Class Counsel and their expert. Id. These differentials are not accounted for in the proposed DCS." (p. 30)

C. Amicus Brief to Judge Wilken (Docket #603). Attorney, Leonard Simon, submitted comments as an interested party concerned with whether injunctive relief can be reasonably assumed with approval of the Settlement:

"At the hearing for preliminary approval, the NCAA suggested that it will not agree to approval of the damage relief without simultaneous approval of the injunctive relief. The Court may accept that view—in which case the entire settlement must be rejected—but the NCAA's view seems inconsistent with the settlement it agreed to.

Under the terms of the settlement, if there were full approval of the settlement this spring, the billions of dollars of damages would flow, but the next class of high school athletes entering college in September 2025 would get notice and an opportunity to object. Although objection will be difficult, if one brave athlete did object successfully to the cap, the injunctive portion of the settlement would be overturned, and the NCAA would be living with payment of the $2.6 billion without its desired prospective relief.

So, what the NCAA considers unthinkable, non-negotiable, and completely unacceptable could happen next year or any time in the next ten years. The Court should consider whether it can happen now." (p.10)

IX. Whether the settlement complies with antitrust or other laws.

A. Department of Justice Statement of Interest (Docket #595). The United States Department of Justice commented on the proper application of antitrust law to labor markets, specifically the preclusive effects of the injunctive relief's NIL salary cap provisions:

"The Proposed Settlement replaces an agreement among competitors to cap compensation for use of college athletes' NIL at $0 with an agreement among competitors to cap compensation at 22% of average revenue. While the Proposed Settlement allows for some relief, it still functions as an artificial price cap on what free market competition may otherwise yield." (p. 6)

"…As the Supreme Court explained just four years ago, "[t]he NCAA accepts that its members collectively enjoy monopsony power in the market for student-athlete services, such that its

restraints can (and in fact do) harm competition." Alston, 594 U.S. at 90 (emphasis in original). This is because "student-athletes have nowhere else to sell their labor." Id. Scrutiny is warranted where, as here, an adjudicated monopsonist seeks the Court's imprimatur to impose a salary cap that may suppress competition in unforeseen ways. ECF No. 533-1 at 36 (alleging the "monopsony power of the NCAA" in the labor markets at issue).

Accordingly, under the Proposed Settlement, there is not the same "free and vigorous competition" driving "more . . . compensation" for college athletes that would exist if the challenged rules were simply enjoined. The total compensation for players remains fixed by agreement. The Proposed Settlement thus leaves in place an agreement among competitors that causes the precise type of harm "to the free market" that the antitrust laws prohibit. Alston, 594 U.S. at 110 (Kavanaugh, J., concurring). Notably, the Proposed Settlement has potentially far- reaching consequences for the college athletes of the future. The Injunctive Relief Settlement Class purports to include future college athletes who will compete through the end of the Injunctive Relief Settlement Term, which runs for ten years following the date of final approval.

Collectively, these issues raise important questions about whether the settlement is fair, reasonable, and adequate under Rule 23(e). See, e.g., Authors Guild v. Google, Inc., 770 F. Supp. 2d 666, 682-83, 686 (S.D.N.Y. 2011) (rejecting proposed class action settlement in part because of concerns that the settlement would violate the antitrust laws regardless of whether the underlying conduct was per se illegal)." (p.7-8)

B. Eight Past, Present, or Future Division I Athletes (Docket #613). Hausfeld LLP, on behalf of Liam, Anderson, Jordan Bohannon, Kaira Brown, Talanoa Ili, Ezekiel Larry, Dyson McCutcheon, and R.J. Sermons (collectively, "Objectors"), submitted comments regarding antitrust immunity, the violation of state laws, and the violation of the NCAA Constitution:

Antitrust Immunity.

"In order for the IRCS to pass muster, it requires a grant of antitrust immunity from the United States Congress, as discussed in Article 7, Section 1 of its provisions (ECF No. 535-1, Appendix A at 27). Without such immunity, it would be deemed unlawful on its face. The DOJ agrees. ECF No. 595 at 6-8. Thus, to the extent that the NCAA will argue that any final approval of the IRCS operates as an antitrust defense without more, it is simply wrong. See id. at 10. As Marc Edelman ("Edelman"), a Professor of Law, Baruch College, Zicklin School of Business and Director of Sports Ethics, Robert Zicklin Center for Corporate Integrity, put it in discussing the IRCS, "[p]arties to a settlement cannot engineer their own exemption from antitrust law." (see p. 12, FN4)" (p. 12)

"Antitrust immunity for the NCAA on the basis of the proposed Settlements will have significant adverse effects on current and future college athletes. For example, without the

benefit of collective bargaining and with a grant of immunity, the Division I colleges would be permitted to collude on athlete compensation and neglect issues concerning such athletes' health and safety (its original mission), and academic concerns with impunity. The antitrust laws are the bulwark that has so far prevented the NCAA, its conferences, and its colleges from trampling over the rights of college athletes; the IRCS will irrevocably change that." (p. 14)

Violation of Applicable State Laws

"It is well-settled that a federal settlement cannot trump contrary state laws. (see p. 14, FN8) Here, the terms of the IRCS are directly contrary to numerous state laws that expressly prohibit the limitations on NIL and NIL Collectives this Settlement seeks to impose. See Appendix J (summarizing these state laws). Significantly, however, a federal settlement is not part the United States Constitution, nor is it a law of the United States to which the Constitution's Supremacy Clause applies.

The NCAA's proffered solution is to ask for preemption of any existing state laws in conflict with the IRCS. Unless that happens, the IRCS is unlawful on this ground as well. Yet courts, including those in the Ninth Circuit, have repeatedly found that efforts to do so are improper and invalidate the terms of the settlement agreement as unenforceable and/or void against public policy. (see p. 15, FN9) They have long recognized the principle of comity as it applies to federal settlements and their applicability to state law….

… This principle is significant here because several states have laws that strictly prohibit the NCAA, athletic conferences, and member schools from interfering in any respect (including caps) with a college athlete earning NIL compensation and/or the existence of NIL Collectives. See Appendix J. Indeed, five states (California, Georgia, Ohio, Illinois and Virginia) have laws or executive orders that allow universities to pay players without limits. Id. (pp. 14 -15)

Violation of NCAA Constitution

"*Thus, the proposed Settlements--which applies to all colleges in Division I, but was only negotiated and agreed to by the NCAA and the Power 5 conferences--appear to have been executed in violation of the NCAA's own Constitution and in derogation of the agreements between the NCAA and its own members. Their enforceability is therefore highly dubious."* (p. 16)

C. Representing 10 female members of the Additional Sports Class and 155 members of the Injunctive Relief Class (Docket #628). The law firm of Mololamken LLP, counsel for the objectors, contends that roster limits, spending caps on the amount that schools can pay athletes directly, and NCAA control of third-party NIL payments under the injunctive relief conditions of the settlement raise significant antitrust issues:

Roster Caps

"Under the Amended Settlement, the number of scholarships that a school can award student-athletes is capped by the size of their limited rosters. That is a plain horizontal agreement by the schools not to compete for talent. The parties have failed to meet their burden to offer any procompetitive justification that might save the clear anticompetitive effect of the roster limits.

No procompetitive reason exists to justify the roster limits under federal antitrust law. They do not "maintain[] a competitive balance among amateur athletic teams" comparable to roster caps in professional leagues. NCAA v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 117 (1984). As with spending caps, the fact that the professional leagues agree through collective bargaining to limit their rosters does not justify the Amended Settlement's imposition of the same model on college sports in the absence of collective bargaining. See Dkt. 595 at 8-9 (United States Department of Justice's position that salary caps in professional sports are incomparable to the Amended Settlement's proposed caps).

The only reason anticompetitive roster limits are legal in professional athletic leagues is the nonstatutory labor exemption. See Brown v. Pro Football, Inc., 518 U.S. 231 (1996). Professional athletes, unlike college athletes, are represented by unions that negotiate collective bargaining agreements, which sometimes include roster limits, on their behalf. Id. Brown and its progeny did not hold that roster limits are per se procompetitive. In fact, the application of the nonstatutory labor exemption in Brown implies the opposite. If roster limits had a procompetitive rationale, a labor exemption from antitrust laws would not be necessary." (p. 30)

Spending Caps

"Horizontal price-fixing arrangements are "per se unlawful" under Section 1 of the Sherman Act. Texaco Inc. v. Dagher, 547 U.S. 1, 5 (2006); 15 U.S.C. §1. By permitting the NCAA to continue controlling how much student-athletes can be paid and by whom, the Amended Settlement binds the class in a horizontal price-fixing arrangement. See Injunctive Relief Settlement, art. 3, §1(a); Dkt. 595 at 6 ("While the Proposed Settlement allows for some relief, it still functions as an artificial price cap on what free market competition may otherwise yield.").

The Amended Settlement caps the amount that schools can pay athletes directly. And it prevents what were previously called "collectives" or "boosters," now ill-defined "Associated Entit[ies]," from paying athletes without the NCAA's review and sign-off. Injunctive Relief Settlement, art. 4, §3. The NCAA decides the cap on student-athlete pay until 2036. Rascher Decl. ¶ 85. The cap only increases by 4% most years, even though NCAA Division I schools reported a 31% increase in revenue between 2021 and 2022. Injunctive Relief Settlement, art. 3, § 1(g); Division I Athletics Finances 10-Year Trends from 2013-22, NCAA Research (Dec. 2023), https://bit.ly/3WWI8cY. As a result, the NCAA will go on "profit[ing] in a different way than the student-athletes whose activities they oversee." NCAA v. Alston, 594 U.S. 69, 80

(2021); see also In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058, 1070 (N.D. Cal. 2019) (student-athletes should be paid "commensurate with the value that they create"). And the Amended Settlement ignores this Court's admonishment that "fix[ing]" student-athlete compensation, regardless of "the amount at which these prices are fixed," is "anticompetitive." Grant-in-Aid, 375 F. Supp.3d at 1095.

The spending cap alone warrants the rejection of the Amended Settlement. The spending cap works only if the NCAA bars certain third-party NIL payments. Thus, the Amended Settlement allows the NCAA to "continue" to "pass new rules . . . prohibit[ing]" NIL transactions with "Associated Entities and Individuals" unless, in the NCAA's discretionary judgment, the deal is for "a valid business purpose" and at fair market value. Injunctive Relief Settlement, art. 4, § 3." (pp.27-28)

Control of Third Party NIL Payments

"At the preliminary approval hearing, the Court expressed serious reservations about the effectively permitting the NCAA to ban third-party NIL payments. Hr'g Tr. at 64:1-21. The parties' revisions still grant the NCAA that power. The Amended Settlement does not "merely" clarify that the NCAA may enforce "rules which already prohibit so-called 'faux' NIL payments." Dkt. 534 at 2. It entrenches yet another antitrust violation: allowing the NCAA to substitute its judgment for the free market. See Dkt. 595 at 6-8.

The parties frame the Amended Settlement's restriction on third-party NIL payments as necessary to prevent schools from exceeding the revenue-sharing cap, like measures "in professional leagues." Dkt. 534 at 8. But players in professional leagues collectively bargain for their salary caps. And they get much more. Both the NBA and NFL allocate roughly 50% of their revenue to athletes.20 The proposed spending cap for student-athletes is less than half that.

The Amended Settlement would make the NCAA the "judge and jury" of whether a third-party NIL payment is permissible. Dkt. 534 at 11. The NCAA first gets to decide whether an NIL deal with an Associated Entity is permissible. Id. at 9-10. If it disallows the deal, the student-athlete may "reform and resubmit" the deal to the NCAA or to a neutral arbitrator. Id. at 10. The parties insist that such arbitrations will "occur quickly." Id. But they've offered no basis for that and have supplied no details. And while "no penalties can be imposed" on student-athletes while the arbitration is "pending," id., the Amended Settlement is conspicuously silent about penalties imposed after arbitration.

The adjudicatory processes envisioned by the Amended Settlement restrain the free market from determining the "fair market price" the NCAA claims it can be trusted to police. The Amended Settlement leaves the NCAA firmly and illegally in control of the market for student-athletes' NILs, and the parties' complex dispute-resolution process does not change that.

As the Court noted when denying preliminary approval, the class currently enjoys unrestricted access to third-party NIL deals. See Hr'g Tr. 80:12-25. By appointing the NCAA as the gatekeeper of those deals, the Amended Settlement prevents student-athletes from profiting

off their NILs "in accordance with their own judgment." Arizona v. Maricopa Cnty. Med. Soc'y, 457 U.S. 332, 346 (1982).

Even if every school paid the "maximum amount" of direct revenue-sharing "allowed under the Settlement Agreement," Dkt. 534 at 7, the spending cap and de facto third-party NIL ban "deprive[s]" student-athletes of compensation they could receive "in the absence of the restraints," Grant-in-Aid, 375 F. Supp. 3d at 1068. The result is an unlawful price-fixing scheme." (pp. 28-29)

D. Athlete Injunctive Relief Class member letter to Judge Wilken (Docket #602 and (**Docket #738**)**.** The law firm of Lathrop GPM, counsel for the objector, Laura Reathaford (Temple Univ.-gymnastics), submitted comments claiming the court does not have the authority to grant relief in the form of imposition of roster limits:

"The operative Third Amended Complaint seeks an injunction: [R]estraining the NCAA and Conference Defendants from enforcing their unlawful and anticompetitive agreements to restrict the (a) compensation available to Division I student-athletes from the schools, conferences or third parties for their services or NILs; and (b) athletic scholarships available to Division I student-athletes.

It is well established that there must be a relationship between the injury claimed in the request for injunctive relief and the conduct asserted in the underlying complaint. This requires a sufficient nexus between the claims raised in a request for injunctive relief and the claims set forth in the underlying complaint itself. The relationship between the injunction and the underlying complaint is sufficiently strong where the injunction would grant "relief of the same character as that which may be granted finally." Pacific Radiation Oncology, LLC, et al. v. The Queen's Medical Center, et al., 810 F.3d 631 (9th Cir. 2015), citing De Beers Consol. Mines, 325 U.S. 212, 220 (1945). Absent that relationship or nexus, the district court lacks authority to grant the relief requested.

Here, there is absolutely no nexus between the demand to "restrain[] Defendants from enforcing their unlawful and anticompetitive agreements" and the settlement's imposition of roster limits that will cause schools to renege on their agreements with class members. Nor have the parties explained how these roster limits result in restricting the Defendants from further acting unlawfully. Nor can they because, as described above, the settlement will actually result in schools breaching their prior agreements with athletes. The Injunctive Relief Settlement must not be approved for this additional reason." (#602, p.3)

"The settling Parties acknowledge that there are conflicts amongst class members. However, they assert that the settlement should nonetheless be approved because, according to the Plaintiffs at pp. 35-36 of their motion, a "standard of zero conflicts is impossible to defend or meet." Plaintiffs' contention is legally unsupported.

It is black letter law that under Rule 23(b)(2), a settlement only complies with the Due Process Clause where the "class seeks an indivisible injunction benefitting all its members at once." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 361 (2011). This principle is particularly acute in mandatory injunctive relief classes because class members cannot opt out. Ortiz v. Fibreboard Corp., 527 U.S. 815, 846 (1999) (quoting Hansberry v. Lee, 311 U.S. 32, 40 (1940)). The case law also makes clear that injunctive relief is inappropriate where "there are likely winners and losers from the requested equitable relief…Here, the Injunctive Relief Settlement does not benefit all class members at once. Instead, it unequivocally creates a requirement for some schools to cut players from their rosters if the schools choose provide revenue to other players. See NCAA's brief at p. 8. Accordingly, anyone not cut from their teams will benefit from the settlement and anyone who is cut will clearly lose." (#738, p.7)

E. Amicus Brief to Judge Wilken (Docket #603). Attorney, Leonard Simon, submitted comments as an interested party commenting on the injunction remedy as an unlawful price fix and other issues:

"The strength of the damage settlement and weakness of the injunctive settlement suggests that the NCAA, having been forced to pay billions for its misconduct in the past, seeks in exchange permission from the Court to violate the antitrust laws and place an artificial cap on athlete compensation for the next ten years. This is improper and contrary to public interest as well as the interests of future college athletes. Settlements of class actions should not be approved if they allow, encourage, or even bless, a violation of law. Grunin v. Int'l House of Pancakes, 513 F.2d 114, 123 (8th Cir. 1975). Whether the imprimatur of this Court on this price fix creates antitrust immunity, or a legal defense to antitrust claims, or even a strong talking point in defending such conduct, approval of the injunctive settlement is harmful to the rights of college athletes. The Court should not countenance such a term as a tradeoff for damages for a different class." (p. 4-5)

"The injunction remedy is a price fix and harms athletes who will play at many Division I schools in the future. For example, if the injunctive relief were approved, a football powerhouse like Alabama might spend $15 million on football, $3.5 million on men's basketball, $1 million on women's basketball, and $500,000 on all their athletes in eleven other varsity sports. Alabama will then be prohibited by the injunction from spending a penny more on compensation to any athlete, whether football, basketball, or exceptional athletes in minor sports, who might similarly be snubbed by dozens of schools choosing who are capped out by other priorities, although they would pay these athletes well but for the cap. Competition for those athletes will be limited by the cap." (p. 5)

F. Eight Past, Present, or Future Division I Athletes (Docket #613). Hausfeld LLP, on behalf of Liam, Anderson, Jordan Bohannon, Kaira Brown, Talanoa Ili, Ezekiel Larry, Dyson McCutcheon, and R.J. Sermons (collectively, "Objectors"), submitted comments related to the legality of the Settlement:

"In order for the proposed Settlements to receive final approval, at least three conditions must be satisfied, none of which are met here. First, the proposed Settlements themselves must not be illegal. See A.D. Bedell Wholesale Co., Inc. v. Philip Morris, Inc., 263 F.3d 239, 249-250 (3d Cir. 2001), cert. denied, 534 U.S. 1081 (2002) (footnotes omitted) (holding that plaintiffs properly pled an antitrust violation by alleging defendants agreed to form an output cartel through the Multistate Tobacco Settlement Agreement). The proposed Settlements violate multiple federal and state laws. The United States Department of Justice ("DOJ") agrees with Objectors that the revenue sharing structure in the IRCS violates federal antitrust law. ECF No. 595 at 6-8. The DOJ's brief has an appendix (ECF No. 595-2) that reveals the NCAA's overarching plan: convince this Court to give final approval to the proposed Settlements and then rely on that ruling as a "defense to liability" in future antitrust challenges to it, while having a decade (the period covered by the IRCS) to convince the United States Congress to give it antitrust immunity. The Court is respectfully requested not to allow such a misuse of Fed. R. Civ. P. 23. See Carson v. American Brands, Inc., 450 U.S. 79, 88 n. 14 (1981) (in approving proposed settlements, courts "do not decide the merits of the case or resolve unsettled legal questions." See ECF No. 595 at 10.

*Second, the terms of the proposed Settlements should not be so vague, uncertain, or one-sided as to be unenforceable. E.g., Travis Unified Sch. Dist. v. Bell, Civ. No. 2:17-0808 WBS AC, 2017 WL 3208715, at *5 (E.D. Cal. July 28, 2017) (citing California law). Here, terms like "revenue", "benefits", or "third parties" are critical to the proposed Settlements, but are not well defined or inexplicably exclude items that the NCAA has commonly treated as being encompassed within those terms and will be a source of continuing dispute. Thus, the finality and certainty one would expect the proposed Settlements to achieve is absent under both federal and state laws.*

Third, the proposed Settlements must be "fair, adequate, and reasonable" pursuant to Federal Rule of Civil Procedure 23(e). See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Here, the DCS fails to compensate college athletes adequately for use of their names, images and likenesses ("NIL"), compared with what college athletes have been paid for such use since July of 2021, when the NCAA's formal policy changed. The IRCS imposes an unfair cap (but, significantly, no floor) on revenue sharing by colleges, detrimentally excludes revenue sources that should have been included, requires that NIL payments and other items be unfairly offset against the revenue each college athlete will get, deprives current college athletes of critical existing scholarships, and operates restrictively against NIL collectives. (pp. 6-7)

X. Whether the settlement would fundamentally change the nature of the college athletics industry in a manner that is fair and reasonable

A. Representing 155 members of the Injunctive Relief Class (Docket #628). The law firm of Mololamken LLP, counsel for the objectors, identifies three transformational changes that

have never existed in college sport that will have a direct or indirect impact[11] on the 197,000 Division I athletes (emphasis added):

> *"…The injunctive relief settlement proposes three transformational changes to college sports: direct revenue-sharing, potential NCAA vetoes of NIL compensation, and roster limits.*
>
> ***Direct Revenue-Sharing.*** *For the next ten years, the injunctive relief settlement permits schools to pay students for their athletic services (over and above the scholarships and other benefits currently permitted by the NCAA) up to an annual per-school cap. Am. Settlement App'x A ("Injunctive Relief Settlement"). That cap is set at 22% of the average of the schools' shared revenue, which Rascher estimates at $23.1 to $32.9 million annually. Id., art. 3, § 1(d)-(e); Rascher Decl. Ex. 25.3 Within that cap, schools may allocate compensation as they choose. Injunctive Relief Settlement, art. 3, §2.* (pp. 12-13)
>
> *"The Amended Settlement would make the NCAA the "judge and jury" of whether a third-party NIL payment is permissible. Dkt. 534 at 11. The NCAA first gets to decide whether an NIL deal with an Associated Entity is permissible. Id. at 9-10. If it disallows the deal, the student-athlete may "reform and resubmit" the deal to the NCAA or to a neutral arbitrator. Id. at 10. The parties insist that such arbitrations will "occur quickly." Id. But they've offered no basis for that and have supplied no details. And while "no penalties can be imposed" on student-athletes while the arbitration is "pending," id., the Amended Settlement is conspicuously silent about penalties imposed after arbitration.*
>
> *The adjudicatory processes envisioned by the Amended Settlement restrain the free market from determining the "fair market price" the NCAA claims it can be trusted to police. The Amended Settlement leaves the NCAA firmly and illegally in control of the market for student-athletes' NILs, and the parties' complex dispute-resolution process does not change that.*
>
> *As the Court noted when denying preliminary approval, the class currently enjoys unrestricted access to third-party NIL deals. See Hr'g Tr. 80:12-25. By appointing the NCAA as the gatekeeper of those deals, the Amended Settlement prevents student-athletes from profiting off their NILs "in accordance with their own judgment." Arizona v. Maricopa Cnty. Med. Soc'y, 457 U.S. 332, 346 (1982)."* (p. 29)
>
> *"The Amended Settlement proposes replacing NCAA scholarship caps with roster limits that are considerably lower than existing headcounts, eliminating thousands of athletic positions overnight. Anticipating final approval, schools have begun making abrupt roster cuts, pressuring student-athletes to try their luck in flooded transfer portals, and rescinding*

[11] Every Division I institution would be paying a portion of the $2.8 billion in past damages through a reduction of annual NCAA Division I revenue shares derived primarily from the NCAA national championship, NCAA operating budget cuts, and reserves causing estimated 8-15% budget reductions in non-FBS institutions that will most likely result the elimination of teams and/or reductions in scholarships and other operating expenses. Even the most economically successful athletics programs will experience significant reductions in non-revenue sports as significant funds shift to the direct payment of basketball and football players.

recruiting offers to high schoolers. Thousands of class members are left stranded, their identities as athletes stripped by a settlement that should have delivered them relief. The chaos unleashed by roster limits has already destroyed young lives and exposed serious intra-class conflict. Class Counsel's failure to even address the fallout underscores the need to appoint independent counsel for student-athlete class members subject to roster limits. (p.24)

ANALYSIS OF OBJECTIONS THAT ARE MOST LIKELY TO BE REASONS WHY THE SETTLEMENT MAY NOT BE APPROVED[12]

We strongly object to approval of the Settlement as being fair, reasonable, and adequate because it is built on the following fatally flawed foundations, any one of which would provide justification for rejection of the Settlement:

- an impermissibly constructed damages model that could not exist in the "but for" world of the NCAA rules being challenged;
- the inclusion of provisions that fix prices in violation of the Sherman Antitrust Act absent an existing Congressional exemption;
- the inclusion of provisions that violate existing state laws absent a Congressional preemption;
- the prohibition applicable to any athlete participating in the settlement from challenging the past damages portion of the settlement based on Title IX; and
- the belief that court approval of a settlement that would allow new foundational practices, e.g., direct pay from higher education institutions to athletes based on performance or participation in revenue producing sports, the imposition of roster limits that would limit the access of thousands of students to college sport, etc.) that would transform the operation of intercollegiate athletics within a tax-exempt institution into a cash transaction market-based industry like the NFL or the NBA.

Why Title IX is Relevant to the Settlement While the Merits of a Title IX Claim Are Not

We are particularly concerned that both the Plaintiffs and the Defendants have tried to convince the Court that Title IX is irrelevant as a consideration in an antitrust lawsuit. We believe that the merits of a Title IX claim are not at issue in this case. However, as we explain in the subsequent section, Title IX must be considered as a **relevant real-world factor** when the Court determines whether the past damages pool has been accurately constructed. Further, because Title IX is not at issue regarding the merits of this case, no athlete participating in this settlement should be precluded from challenging the distribution of either past damages or future injunctive

[12] This analysis reflects the opinions of the authors of this report.

relief in the future by litigating a Title IX claim. The Settlement disingenuously includes such a past damages litigation prohibition. Despite a number of the objections submitted to the Court expressing these Title IX issues, neither the Plaintiffs nor the Defendants in their final briefs responded to these objections or concerns over the fact that plaintiffs' economic experts were specifically instructed by Plaintiffs' attorneys not to consider Title IX.

The Settlement's Past Damages Economic Model is Impermissibly Constructed—It Could Not Exist in the Required "But For" World of the NCAA Rules Being Challenged

No Title IX claims were asserted in this litigation but Title IX must be considered in the construction of the damages model because of its relevance as a real-world factor. An antitrust damage occurs when an illegal restraint of trade precludes a benefit accruing to a plaintiff that otherwise would have accrued absent the illegal restraint. But all other aspects of the real-world must remain intact, including Title IX. The Settlement's economic experts were told to ignore Title IX from their damages world. Plaintiffs admit this real-world or actual-world obligation in their final brief, but with no mention of the Title IX real world, only the real world of collegiate athletics revenues.[13] The alleged, market-determined damages accorded in the Settlement would not have occurred absent the NCAA rules prohibiting pay for play.

Specifically, of the $2.8 billion in past damages, $2.425 billion in broadcast revenues (BNIL) and Athletic Services Compensation (ASC) but not video game NIL or Lost NIL Opportunities (see Table 1 Rascher distribution on p.7) would have been subject to the Title IX real-world equal treatment and benefits and proportional financial aid standards. "Had the damages allocation accounted for Title IX in its "but-for" world, female athletes would take home 47% of the BNIL and ASC—approximately $1.14 billion more than they will under the proposed Settlement."[14] Any payments to college athletes in the BNIL and ASC categories would have been governed by the gender ratio on a school-by-school basis which in Division I would have required approximately 47%.[15] The Rascher distribution of roughly 90 percent to men and 10 percent to women could not have occurred.

Zimbalist points to a second significant flaw in Rascher's calculations:

> *"A second conceptual flaw in Dr. Rascher's analysis is that the settlement fund in his largest category of BNIL bears little resemblance to reality or to the underlying professional model that he uses to establish his estimates. Briefly, in pro sports the massive television contracts*

[13] Docket #717. Plaintiffs' Motion for Final Settlement Approval and Omnibus Response to Objections. See p. 63.
[14] Docket #736. Title IX Objectors' Response in Opposition to Motion for Final Settlement Approval, Case 4:20-cv-03919-CW. See. p. 4
[15] National Collegiate Athletic Association. Demographics Database, Division I male and female participants from 2016-17 to 2023-24. All eight years were respectively 53% male and 47% female. Retrieve from: https://www.ncaa.org/sports/2018/12/13/ncaa-demographics-database.aspx

garnered by the big four leagues are based upon team performance and team brand. To the extent that pro athlete publicity or NIL rights are involved, they are diminutive and basically occur in the form of video clips to promote forthcoming telecasts. The television network signs long-term deals with the leagues and teams, not even knowing the composition of their rosters for many of the covered years. The same pattern of multi-year contracting applies to the sale of telecasting rights by NCAA conferences to the networks, again with little knowledge of the underlying team rosters. The value of these contracts is based on the school's performance, its following, its spirit, its brand, the school's investment in coaches and facilities, the population of sports bettors, and so on. The value of the athletes' name, image and likeness shrinks in comparison to these basic factors. The vast majority of fans do not watch the games to see the face of the quarterback or his name on the back of his jersey. They tune in to watch the competition and root for their team.FN2

Thus, the Dr. Rascher's estimate is based on a false analogy. The plaintiffs have invented a term and acronym, BNIL, that has little basis in economic reality."[16]

Zimbalist points out at FN2 that plaintiffs' expert Desser "acknowledged that 'there have been no prior instances in which BNIL has been negotiated or valued separately from other components of broadcast agreements' either at the collegiate or professional level."[17]

In short, the Settlement constructs a false past damages pool that fatally taints the past damages distribution. This factor alone is grounds for rejecting the settlement.

The Settlement Includes Provisions that Fix prices in Violation of the Sherman Antitrust Act

The future injunctive relief portion of the settlement contains significant flaws due to its price fixing elements in violation of Sherman Antitrust Act, absent Congress granting an antitrust exemption. First, the Settlement limits annual athlete compensation to $20.5 million per institution per year with a gradual escalation provision. Second, the settlement also limits the number of athletes who may receive compensation due to the imposition of roster limits by team. The use of roster limits is a plain horizontal agreement by the schools not to compete for talent.

Defendants offer questionable pro-competitive arguments to justify those constraints such as contending that the roster limits will provide more opportunities for students to be on scholarship based on the rationale that roster limits are higher than the previous scholarship caps. Hypothetically more athletes could receive scholarships, but that is not what will happen.

[16] Declaration of Andrew Zimbalist Regarding the Settlement in House et. al. v. NCAA et. al., January 30, 2025, contained in Exhibit A to Docket #618, submitted by Hutchinson Black & Cook, at p. 4

[17] Order Granting Motion for Certification of Damages Classes, November 3, 2023, at 11

When individual athlete restraints are removed as the Settlement requires, the result will be larger amounts of money going to the most talented athletes in the revenue sports of football and basketball and less money overall and individually expended on athletes in non-revenue sports. In short, non-revenue sports will be shortchanged no matter how large their rosters. All the Settlement does is allow football and basketball respectively to emulate an NBA or NFL team without the athlete protection guardrails of a collectively bargained CBA agreement that advances the best economic and other interests of athletes. These price fixing and anticompetitive roster limits are grounds for rejecting the settlement.

Provisions of the Settlement Violate Existing State Laws Absent a Congressional Legislative Preemption

Thirty-two states have passed NIL laws and multiple states have pending bills that modify their existing NIL legislation.[18] Without Congress passing a bill to allow NCAA rules to preempt these state laws, a court approved Settlement does not supersede these laws. Settlement cannot be built on a violation of state laws. Athletes who attend school in states with NIL laws will be required to comply with those laws in addition to any NCAA, institution, and conference policies and complying with state law might violate an NCAA restriction. Athletes who attend schools in states with no NIL legislation must only comply with NCAA, conference, and institution policies. Not insignificantly, If the state laws better protect athlete economic freedoms, schools in those states will have significant athlete recruiting and retention advantages. It makes no sense – is unreasonable -- to have athletics governance provisions that cannot be enforced by the athletics governance entity.

The Settlement Improperly Prevents Athletes Participating in the Settlement from Challenging the Past Damages Portion of the Settlement Based on Title IX Claims

The settlement prohibits athletes who participate in the settlement from pursuing Title IX litigation challenging the past damages portion of the settlement on Title IX grounds. Plaintiffs' counsel represented to the Court that the antitrust cases at issue do not involve Title IX, any Title IX concerns will be decided in the future by the courts, and the Settlement would not prohibit Title IX litigation. Inexplicably, the Settlement denies any athlete who participates in the settlement from bringing a Title IX claim related to the past damages fund. Further, this prohibition is even more disturbing given the fact that the briefs submitted in connection with the amended settlement stated there was no such release. We believe that most female athletes participating in the settlement are still not aware that they have released their Title IX rights to

[18] Saul Ewing. NIL Legislation Tracker. https://www.saul.com/nil-legislation-tracker

past damages. Worse yet, any athlete member of the Classes who did not affirmatively "opt out" will be held to the Title IX litigation prohibition.

Last, it Is nothing short of insulting for the plaintiffs' attorneys to refer to this Settlement restriction as "only a very narrow release" when it Is anything but narrow to the women who could be deprived of millions of dollars by foregoing such litigation. This provision is gravely concerning given the fact that a 2024 U.S. General Accounting Office audit of Department of Education Office for Civil Rights enforcement activities revealed that 93 percent of all college athletics programs were not in meeting the participation equity provisions of Title IX. Female members of the class are the most probable prospective litigants and unfairly and unreasonably are being targeted for removal of their individual rights to sue. This factor alone is grounds for rejecting the settlement.

The Settlement is "A Bridge Too Far"

Last, the significance of the Settlement being a "bridge too far" cannot be understated. Approval of the settlement would fundamentally change the underlying nature of college athletics by creating a never before market-based industry with unlimited individual cash incentives primarily benefitting 11,000 Power Five male athletes based on their performances in the revenue-producing sports of football and basketball and a small number of male football and basketball players from among the 28,000 other students participating in those Division I sports. The proposed revenue-sharing and NIL cash supporting these male football and basketball players will be taken from their respective institutions' united fund revenue coffers[19] supporting all sports, thereby undermining the financial support of the 159,000 Division I male and female athletes participating in sports other than men's football and basketball. Stunningly, this new cash transactional industry expects to operate in violation of Title IX with many institutions already having announced that they intend to use the Settlement past damages BNIL/ASC algorithm (75 percent to football, 15 percent to men's basketball, 5 percent to women's basketball) or a derivative favoring men's football and basketball, for their distribution of future financial assistance.[20] And, they will not give up their existing tax relief, donor tax deductions, and tax free bond benefits emanating from the tax exempt status of their college or university

[19] In practice, revenues from all sports and sources are pooled and fund operating budgets of all sports and non-sport administrative and support program (sports information, athletic training, facility costs, etc.) expenses. All of these program benefits must be equally provided to male and female athletes under federal law.

[20] Institutions that have already publicly announced their intent to use the proposed Settlement past damages algorithm (75% football/15% men's basketball/5% women's basketball/5% other) or similar distribution formulas favoring revenue-producing sports to distribute injunctive relief revenues: University of Michigan, University of Georgia, Michigan State University, American Athletic Conference members, Louisiana Tech, University of Minnesota, James Madison University, Texas Tech University,

mothership. Neither do they intend to give up institutional subsidies derived from non-athlete tuition and activity fees.

We must keep the big picture in focus as we consider the impact of the various elements of the Settlement. Intercollegiate athletics constitutes an ecosystem. It is not a private standalone commercial enterprise. As an ecosystem, it supports the development of U.S. Olympic athletes (the United States is the only country where the federal government provides no subsidies to its Olympic movement), promotes the growth of gender equity through Title IX, and assists in the maturation, training, and publicity value for future NFL, NBA and MLB stars, as well as WNBA and NWSL prospects. Yet, at its core, intercollegiate athletics as an activity strengthens our broader educational system and prepares its participants for their ensuing decades in the competitive labor market and in life. In addition to providing relief from the largely sedentary and cerebral life of a university student, college sports advance the well-rounded physical, emotional, and intellectual development of its participants.

Over 98 percent of football and male basketball players in the NCAA never play a single game in the NFL or NBA. The few who do make to the top professional level in their sport will be among the top 1 percent of income earners in the country. The vast majority who do not make it to this level will depend upon their college education to guide them in their occupational and life journey.

Because it involves a class action case affecting thousands of athletes, the Settlement must be approved by the court. In particular, the mandated standard is that the court must find that the terms of the Settlement are "fair, adequate and reasonable" to the affected class members. Because the settlement would allow multiple practices that have never before occurred in intercollegiate athletics (e.g., direct pay from higher education institutions to athletes based on performance or participation in revenue producing sports, the imposition of roster limits, etc.), we believe the reader and the Court should carefully attend to one consideration advocated by the U.S. Department of Justice in the Google Settlement[21] in the last decade; whether the Settlement terms constitute "a bridge too far." The latter characterization denotes a situation where the Settlement fundamentally changes the underlying nature of the affected system in a way that should not be a prerogative of a court addressing a complaint by any subset of the system to achieve an end that may be at odds with the fundamental purpose or operation of the system.

[21] McCann, Michael. NCAA's Billion Dollar Settlement Faces Google Book Deal Hurdles. *Sportico* (June 4, 2024) Retrieve from: https://www.sportico.com/law/analysis/2024/ncaa-antitrust-settlement-approval-rejection-1234782699/

Will the Settlement create a never before industry by converting an educationally-based system into a cash/market-based system? Hallmarks of the educationally-based system include financial assistance tied to educational expense, academic awards, academic eligibility, normal progress toward the degree rules and minimum sports sponsorship requirements within multisport programs that promote gender equity, *inter alia*. Because of the educational value derived from intercollegiate athletics, the system benefits from extensive public support, including state government subsidies, federal aid programs such as Pell Grants, institutional subsidies derived from non-athlete student tuition and activity fees, favorable UBIT treatment, exemption from workmen's compensation, unemployment insurance and social security contributions, tax-exempt bond issuance privileges, and tax deductions for donors to athletic programs.

The current multisport system allows the various sports programs within a university to share available financial, structural, and human resources. All sport and other revenues generated by athletics and institutional subsidies from non-athlete tuition and required fees created a 'united fund' to support the entire sport program in a gender equitable manner. No sport 'owns' the revenues it generates to use as it wishes. This multisport system was legislatively affirmed after the U.S. Congress rejected multiple Amendments to Title IX in 1974 and 1975 to exclude revenue-producing sports from the application of antidiscrimination law or allow favored treatment of athletes from one sex based on their participation in a revenue-producing sport.[22] Does the Settlement fundamentally destroy this system putting schools at odds with their Title IX obligation? Should access to extracurricular activities be limited to players paid to play or is access by walk-on or non-scholarship athletes fundamental to the operation of extracurricular activities? Would approval of the Settlement based on plaintiffs' alleged antitrust violations result in the Court approving Settlement terms that would in and of themselves also be antitrust violations or be in conflict with other existing laws? All of these questions are addressed by the Settlement objections.

Last, should the Court, through the low bar approval of a Settlement in the interests of 68 institutions be responsible for creating never before college professional football and basketball leagues using the tax advantages and subsidies of their non-profit 501(c)(3) institutions?

[22] The Drake Group. (2024) Preliminary Assessment: Title IX and Other Implication of the Proposed Settlement of House v. NCAA, Hubbard v. NCAA and Carter v. NCAA on Intercollegiate Athletics Program – Congressional Briefing Paper and Recommendations. See pages 79-87. Retrieve from: https://www.thedrakegroup.org/wp-content/uploads/2024/07/FINAL-2024-Congressional-Briefing-Paper-Proposed-Settlement-1.pdf

Conclusion

We believe for the reasons indicated above that the proposed Settlement is ”a bridge too far” built upon unstable foundations—a false past damages pool, a 10-year injunctive relief plan in violation of federal antitrust and numerous state laws, and a prohibition of bringing a Title IX case affecting predominantly female athletes. An overriding consideration should be whether any settlement court should have the power to upend the educational sport industry without antitrust claims being decided on their merits? We encourage the Settlement Court to carefully consider these and other concerns raised by objectors in making its decision about whether the Settlement should be approved.