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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 OAKLAND DIVISION

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

Case No. 4:14-md-2541-CW

NOTICE OF MOTION AND  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT

22 This Document Relates to:

23 ALL ACTIONS EXCEPT

24 *Jenkins v. Nat'l Collegiate Athletic Ass'n*  
25 Case No. 14-cv-0278-CW

DATE: March 21, 2017  
TIME: 2:30pm  
DEPT: Courtroom 2, 4th Floor  
JUDGE: Hon. Claudia Wilken

COMPLAINT FILED: March 5, 2014

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on March 21, 2017 at 2:30pm or as soon thereafter as the matter may be heard by the Honorable Claudia Wilken of the United States District Court of the Northern District of California, located at 1301 Clay Street, Courtroom 2 – 4th Floor, Oakland, CA 94612, Plaintiffs will and hereby do move the Court pursuant to Federal Rules of Civil Procedure 23 for an order:

1. Preliminarily approving a proposed class action settlement with National Collegiate Athletic Association, Pac-12 Conference, The Big Ten Conference, Inc., The Big 12 Conference, Inc., Southeastern Conference, Atlantic Coast Conference, American Athletic Conference, Conference USA, Mid-American Athletic Conference, Inc., Mountain West Conference, Sun Belt Conference, and Western Athletic Conference (collectively, “Defendants”); and
2. Approving the manner and form of Notice and proposed Distribution Plan to class members.

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Settlement with Defendants, the following memorandum of points and authorities, the Settlement Agreement filed herewith, the pleadings and papers on file in this action, and such other matters as the Court may consider.

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## I. INTRODUCTION

1  
2 Plaintiffs seek preliminary approval of a settlement that provides for payment of nearly all of  
3 the classes' single damages claims (attach hereto as Exhibit A). The agreement is the result of  
4 extensive litigation and arm's length negotiations between the parties. Defendants agree to pay  
5 **\$208,664,445.00**, which (after deduction of fees and expenses) will be disbursed to student-athletes  
6 who attended Division I schools that Plaintiffs' evidence shows would have awarded the full cost of  
7 attendance at those schools(COA), but-for the NCAA by law in effect until January 1, 2015 capping  
8 the maximum grant-in-aid ("GIA") at less than COA. The average recovery for a class member who  
9 played his or her sport for four years would be approximately **\$6,763**. If the proposed settlement is  
10 approved, each eligible class member will be directly notified and a check mailed to him or her, with  
11 no claim form required and no right of any reversion of funds to Defendants.

12 Plaintiffs' counsel, who have litigated numerous antitrust and other matters against the  
13 NCAA over the years, believe this is a positive result for the proposed class. As this Court well  
14 knows, antitrust matters against the NCAA involve unique arguments, have had narrow historical  
15 success, and the NCAA has been willing to devote significant resources to vigorously defending  
16 them, including on appeal. Thus, not only is the size of the monetary settlement a major benefit to  
17 the class, the likelihood of near-term payout is also significant.

18 Finally, the settlement does not release or bar in any way the claims solely for prospective  
19 injunctive relief from going forward – and Plaintiffs will continue to vigorously pursue them.

## II. LITIGATION HISTORY

20  
21 Plaintiffs filed this action on March 5, 2014, overcame Defendants' motion to dismiss, and  
22 have litigated extensively to develop facts, economic theories, and damages modeling in support of  
23 their claims. Over the last three years, Defendants have produced approximately 595,000  
24 documents. In addition, by agreement, Plaintiffs had access to (and have utilized) tens of thousands  
25 of documents produced in other litigation against the NCAA, such as *Rock v. NCAA*, No. 12-cv-  
26 01019 (S.D. Ind.); *White v. NCAA*, No. 06-0999 (C.D. Cal.), and *In re NCAA Student-Athlete Name*  
27 *& Likeness Licensing Litigation*, No. 09-01967, (N.D. Cal.). Plaintiffs have also subpoenaed over  
28 340 third parties, which included 337 schools for their athletic financial aid data, as well as media

1 outlets and industry participants. Over 50 witnesses have been deposed, including the President of  
 2 the NCAA, Defendant Conference Commissioners, and athletic directors. Economic experts have  
 3 been deposed on both sides, sometimes more than once. Plaintiffs' economists have devoted over  
 4 10,391 hours to the matter to date and have had to work extensively with economic data from  
 5 hundreds of schools and disparate sources to successfully develop an econometric model capable of  
 6 serving as a strong and reliable damages model at trial.

7 Defendants have taken over ten depositions, including named Plaintiffs and third-party  
 8 witnesses. Plaintiffs' motion for class certification, Defendants' opposition to class certification, and  
 9 Plaintiffs' reply in support of class certification had been filed when the parties reached agreement.  
 10 There were a total of 2336 pages of economic expert analyses submitted on class certification.

### 11 III. SETTLEMENT NEGOTIATION BACKGROUND

12 Professor Eric Green, a highly regarded mediator, has been involved in negotiations for more  
 13 than a year. The parties' extensive negotiations have occurred in person, among scores of attorneys  
 14 representing the parties, and through telephonic sessions as well. The negotiations have involved  
 15 numerous difficult, time consuming issues, have been at arm's length at all times, and broke down  
 16 several times before the parties finally reached agreement.

### 17 IV. SUMMARY OF KEY SETTLEMENT TERMS

#### 18 A. The Proposed Settlement Class

19 The proposed class includes the following three subclasses:

20 **Division I FBS Football Class:** All current and former NCAA  
 21 Division I Football Bowl Subdivision ("FBS") football student-athletes  
 22 who, at any time from March 5, 2010 through the date of Preliminary  
 23 Approval of this Settlement, received from an NCAA member  
 24 institution for at least one academic term (such as a semester or  
 quarter) (1) a full athletics grant-in-aid required by NCAA rules to be  
 set at a level below the cost of attendance, and/or (2) an otherwise full  
 athletics grant-in-aid.

25 **Division I Men's Basketball Class:** All current and former NCAA  
 26 Division I men's basketball student-athletes who, at any time from  
 27 March 5, 2010 through the date of Preliminary Approval of this  
 28 Settlement, received from an NCAA member institution for at least  
 one academic term (such as a semester or quarter) (1) a full athletics  
 grant-in-aid required by NCAA rules to be set at a level below the cost  
 of attendance, and/or (2) an otherwise full athletics grant-in-aid.

1                   **Division I Women’s Basketball Class:** All current and former NCAA  
2                   Division I women’s basketball student-athletes who, at any time from  
3                   March 5, 2010 through the date of Preliminary Approval of this  
4                   Settlement, received from an NCAA member institution for at least  
                    one academic term (such as a semester or quarter) (1) a full athletics  
                    grant-in-aid required by NCAA rules to be set at a level below the cost  
                    of attendance, and/or (2) an otherwise full athletics grant-in-aid.

5                   **B.       The Settlement Consideration**

6                   The total settlement amount provides for Defendants to pay \$208,664,445.00. As calculated  
7                   by Plaintiffs’ expert economist, Dr. Daniel Rascher, this amounts nearly to full recovery of the  
8                   settlement classes’ single damages claims.<sup>1</sup> At class certification, Dr. Rascher developed an  
9                   econometric model that statistically predicts which Division I schools would more likely than not  
10                  have paid the full COA at the start of the class period had the GIA cap been at full COA (or above).

11                  **C.       Release of Claims**

12                  Once the Settlement Agreement is final and effective, the named plaintiffs and settlement  
13                  class members who have not opted out will release all federal and state law claims for damages  
14                  against Defendants arising out of or relating in any way to any act or omission of the Defendants or  
15                  their member institutions that is alleged or could have been alleged in this litigation. The released  
16                  claims do not include claims solely for prospective injunctive relief. Indeed, the injunctive class  
17                  claims in this litigation are still pending and not part of the proposed Settlement Agreement.

18                  **D.       Notice of the Settlement**

19                  Plaintiffs submit a proposed notice and plan for the dissemination of notice in writing, on the  
20                  internet, and through social media, the form of which has been agreed upon by Plaintiffs and  
21                  Defendants. Following a competitive bidding process, Plaintiffs have selected Gilardi & Co. LLC,  
22                  an experienced notice and settlement administrator, to act as the notice and settlement administrator  
23                  here. As set forth in more detail below and in the declaration of the notice administrator, notice  
24                  shall be delivered directly to class members, primarily via email and USPS mailings, supplemented  
25                  with a robust publication plan through the internet and on social media.<sup>2</sup>

26  
27                  <sup>1</sup> See Declaration of Dr. Daniel Rascher, concurrently filed herewith.

28                  <sup>2</sup> See Declaration of Alan Vasquez for Gilardi & Co. LLC (“Vasquez Decl.”), ¶¶ 13-36,  
concurrently filed herewith.

1 **E. Distribution Plan**

2 Within thirty days of the Court's entry of the Preliminary Approval Order, Defendants will  
3 wire or cause to be wired 50% of the settlement funds (\$104,332.202.50) into an account established  
4 by an escrow agent. Within thirty days of the Court's entry of the order granting final approval of  
5 the settlement ("Final Approval"), Defendants will wire or cause to be wired the remaining 50% of  
6 the settlement funds in to the same account.

7 Eligible class members should receive their distribution with no claim form required. For  
8 class members who attended schools that provide, have provided, or have indicated by or before June  
9 1, 2017 an intent to start providing any portion of the gap between the GIA allowed prior to August  
10 1, 2015 and full cost of attendance to at least one class member at that school, the class member will  
11 receive a distribution proportional to the difference between the GIA they actually received and the  
12 full COA for each academic term (the "gap"). In other words, there will be a pro rata distribution for  
13 every dollar in the gap between what student-athletes received and each student-athlete's school-  
14 specific COA. The gap will be measured net of any offset for non-athletically related aid received by  
15 the student-athlete above his or her GIA, but not net of any SAF/SAOF distributions, Pell Grants, or  
16 "Exempted Government Grants" identified in NCAA Division I Bylaw 15.2.5.1. The school  
17 specific gap calculation will be the average of each school's listed "in-state" gap and listed "out-of-  
18 state" gap, unless Defendants provide data that allows for distinction between in- and out-of-state  
19 class members (in which case the gap calculation will account for in- or out-of-state cost  
20 differences).

21 If there are sufficient unclaimed funds, they will be distributed to locatable class members in  
22 the same proportionate shares as the first round of distribution if feasible. Alternatively, if there are  
23 insufficient funds to feasibly redistribute to all class members, then any funds unclaimed by a class  
24 member would be redistributed within schools in proportionate shares to other locatable class  
25 members at the same school, based on unclaimed monies for each school. If there are insufficient  
26 funds to economically redistribute in that manner, any unclaimed amounts will escheat to the state of  
27 the relevant class member's most recent known address. In any event, no class member will receive  
28 a distribution from the fund for any year that exceeds his or her calculated gap for that year. If the

1 additional distribution from unclaimed funds would cause a class member to receive a distribution in  
 2 excess of his or her calculated gap for a given year, the excess amount will escheat to the state of the  
 3 class member's most recent known address.

## 4 V. ARGUMENT

### 5 A. The Proposed Settlement Should be Preliminarily Approved

6 Federal Rule of Civil Procedure 23(e) requires judicial approval of any compromise or  
 7 settlement of class action claims. Approval of a settlement is a multi-step process, beginning with  
 8 (i) preliminary approval, which then allows (ii) notice to be given to the class and objections to be  
 9 filed, after which there is (iii) a motion for final approval and fairness hearing.<sup>3</sup> Preliminary  
 10 approval is thus not a dispositive assessment of the fairness of the proposed settlement, but rather  
 11 determines whether it falls within the "range of possible approval."<sup>4</sup> Preliminary approval  
 12 establishes an "initial presumption" of fairness<sup>5</sup> such that notice may be given to the class. The  
 13 "initial decision to approve or reject a settlement proposal is committed to the sound discretion of the  
 14 trial judge."<sup>6</sup>

15 Preliminary approval of a settlement and notice to the proposed class is appropriate if the  
 16 proposed settlement: (1) appears to be the product of serious, informed, non-collusive negotiations;  
 17 (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class  
 18 representatives or segments of the class; and (4) falls within the range of possible approval.<sup>7</sup> As is the  
 19 case here, when proposed counsel are experienced and support the settlement, which was the result  
 20

21  
 22 <sup>3</sup> *Staton v. Boeing Co.*, 327 F. 3D 938, 952 (9th Cir. 2003); see Manual for Complex Litigation  
 23 (Fourth) § 21.632, 320-21 (2004).

24 <sup>4</sup> *Id.*; see *Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301-302 (E.D. Cal. 2011).

25 <sup>5</sup> *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal  
 26 quotation marks and citation omitted). See also *Smith v. Am. Greetings Corp.*, No. 14-cv-02577,  
 2015 WL 4498571, at \*6 (N.D. Cal. July 23, 2015) (same).

27 <sup>6</sup> *Officers for Justice v. San Fran. Civ. Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

28 <sup>7</sup> *Bickley v. Schneider Nat'l Inc.*, No. 08-cv-05806, 2016 WL 4157355, at \*1 (N. D. Cal. Apr. 25,  
 2016); *Zepeda v. PayPal, Inc.*, No. C 10-2500, 2015 WL 6746913, at \*4 (N.D. Cal. Nov. 5, 2015);  
*Fraleay v. Facebook, Inc.*, No. 11-1726, 2012 WL 5838198, at \*1 n.1 (N.D. Cal. Aug. 17, 2012);  
*Tableware*, 484 F. Supp. 2d at 1079.

1 of arm’s length negotiations, and relevant discovery has been conducted, there is a “presumption that  
2 the agreement is fair.”<sup>8</sup> All factors weigh in favor of preliminary approval here.

3 **1. The Settlement is the Result of Non-Collusive, Informed, Arm’s Length**  
4 **Negotiations**

5 As the Ninth Circuit has stated, “[w]e put a good deal of stock in the product of an arms-  
6 length, non-collusive, negotiated resolution.”<sup>9</sup> The proposed Settlement Agreement here arises out  
7 of extended, informed, arm’s-length negotiations between experienced counsel for the parties. Here,  
8 the parties reached agreement after nearly three years of litigation and discovery, and investigation  
9 prior to filing. This “significant investigation, discovery and research” weighs in favor of finding the  
10 settlement was adequately informed.<sup>10</sup> Further, counsel for both sides are experienced and  
11 recognized nationally for competently handling large-scale, high-profile antitrust class action  
12 litigation. In addition to these non-collusive negotiations between sophisticated sets of counsel based  
13 on meaningful investigations and discovery, the parties were assisted by Professor Eric Green, a  
14 neutral mediator. The presence of a neutral mediator is “a factor weighing in favor of a finding of  
15 non-collusiveness.”<sup>11</sup>

16 The substance of the Settlement Agreement also underscores that it is not the result of any  
17 collusion or conflict. Where a settlement is reached prior to class certification, as is the case here,  
18 courts must be “particularly vigilant not only [to look] for explicit collusion, but also for more subtle  
19 signs” or any indication that the pursuit of the interests of the class counsel or the named plaintiffs  
20 “infected” the negotiations.<sup>12</sup> There are three factors courts look for when evaluating whether  
21 collusion exists: (1) a disproportionate distribution of the settlement fund to counsel; (2) presence of

22 <sup>8</sup> *Am. Greetings Corp.*, 2015 WL 4498571, at \*6 (also stating “[t]he proposed settlement “need  
23 not be ideal, but it must be fair and free of collusion, consistent with counsel’s fiduciary obligations  
24 to the class.”); *Nobles v. MBNA Corp.*, No. C 06-3723, 2009 WL 1854965, at \*6 (N.D. Cal. June 29,  
2009); *Linney v. Cellular Alaska P’ship*, No. C-96-3008, 1997 WL 450064, at \*5 (N.D. Cal. July 18,  
1997).

25 <sup>9</sup> *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009).

26 <sup>10</sup> *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding  
27 “significant investigation, discovery and research” supported the district court’s conclusion “that the  
28 Plaintiffs had sufficient information to make an informed decision about the Settlement”).

<sup>11</sup> *In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 948 (9th Cir. 2011).

<sup>12</sup> *Id.* at 946-48.

1 a “clear sailing” arrangement, providing for the payment of attorneys’ fees separate and apart from  
2 class funds; and (3) when the parties arrange for fees not awarded to revert to defendants rather than  
3 be added to the class fund.<sup>13</sup> None of these are present here.

4 First, the proposed settlement is a common fund settlement with no possibility of reversion.  
5 As described above, distribution to the named plaintiffs and class members is based on the  
6 Distribution Plan specified in the Settlement Agreement, and class counsels’ fees must be approved  
7 by this Court. The funds will be used to cover costs and fees and will be distributed to the class  
8 based on a proportional formula. Second, there is no “clear sailing” provision, no payment of fees  
9 separate and apart from the class funds, and no “kicker” provision that would allow unawarded fees  
10 to revert to the Defendants. Third, the proposed class notices inform class members that class  
11 counsel will make a reasonable request for attorneys’ fees from the gross settlement fund, which  
12 must be approved by the court. The Settlement Agreement is entitled to a presumption of fairness.

## 13 **2. The Settlement Does Not Suffer from Any Obvious Deficiencies**

14 The Settlement Agreement is the product of a thorough assessment and evaluation of the  
15 strengths and weaknesses of plaintiffs’ case. The parties have extensively litigated this case for three  
16 years, during which time both Plaintiffs and Defendants conducted very thorough discovery.  
17 Defendants have produced approximately 595,000 documents—not pages, but actual documents—  
18 and Plaintiffs have relied on tens of thousands of documents produced in other cases brought against  
19 the NCAA. The parties together have taken over 60 depositions (with Plaintiffs taking  
20 approximately 50), including those of the named Plaintiffs, Defendants’ 30(b)(6) witnesses, both  
21 parties’ multiple expert witnesses, and third parties. Multiple expert reports have been exchanged,  
22 including thousands of pages of expert reports on class certification, and Plaintiffs’ economists have  
23 devoted over 10,391 hours to this litigation.<sup>14</sup>

24 The Settlement Agreement also reflects risks that Plaintiffs must consider when preparing for  
25 trial. Plaintiffs believe the class has meritorious claims, but acknowledge that there are always risks  
26 generally inherent in litigation and specifically with respect to the Ninth Circuit’s ruling in *O’Bannon*

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27 <sup>13</sup> *Id.* at 947.

28 <sup>14</sup> *See, e.g.*, ECF Nos. 348, 363, 493, 509, 517.

1 *v. National Collegiate Athletic Association*, 802 F.3d 1049 (9th Cir. 2015), which this Court has  
 2 expressly indicated presents some limitation to the case at bar. Weighing the developed stage of  
 3 litigation against the risks that Plaintiffs face in this litigation, there are no obvious deficiencies  
 4 regarding the settlement. This factor also supports preliminary approval.

5 **3. The Settlement Does Not Provide Preferential Treatment for Segments of the**  
 6 **Class or the Class Representatives**

7 The third factor to consider is whether the Settlement Agreement grants preferential treatment  
 8 to class representatives or segments of the class.<sup>15</sup> The Settlement Agreement here does not, and  
 9 instead provides a reasonable and fair distribution mechanism for named plaintiffs and class  
 10 members.

11 **a. Eligible Class Members Will Recover Their Fair Share of the Settlement**

12 A plan of distribution of class settlement funds must meet the “fair, reasonable and adequate”  
 13 standard that applies to approval of class settlements.<sup>16</sup> A plan of distribution that compensates class  
 14 members based on the type and extent of their injuries is generally considered reasonable.<sup>17</sup> Here, as  
 15 outlined above, class members who attended schools that provide, have provided, or have indicated  
 16 by or before June 1, 2017 an intent to start providing any portion of the gap between the GIA  
 17 allowed prior to August 1, 2015 and full COA to at least one class member at that school, will  
 18 receive proportional distributions based on the gap between their GIA and the school-specific COA.  
 19 This nearly full single damages settlement is unquestionably fair, reasonable, and adequate.

20 **b. The Service Awards for Class Representatives Reflect the Work They**  
 21 **Undertook on Behalf of the Class**

22 “[I]ncentive awards that are intended to compensate class representatives for work  
 23 undertaken on behalf of a class ‘are fairly typical in class action cases.’”<sup>18</sup> Based on the

24 <sup>15</sup> *Zepeda*, 2015 WL 6746913, at \*4.

25 <sup>16</sup> *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2016 WL 3648478, at \*11 (N.D.  
 26 Cal. July 7, 2016) (on appeal on other grounds) (citing *In re Citric Acid Antitrust Litig.*, 145 F. Supp.  
 2d 1152, 1154 (N.D. Cal. 2001)); *In re Zynga Inc. Secs. Litig.*, 2015 WL 6471171, at \*12 (N.D. Cal.  
 27 Oct. 27, 2015) (stating same).

28 <sup>17</sup> *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-cv-01663, 2015 WL 7454183, at \*8 (N.D. Cal.  
 Nov. 23, 2015) (“Such a plan ‘fairly treats class members by awarding a pro rata share’ to the class  
 members based on the extent of their injuries.”) (Internal citation omitted.)

<sup>18</sup> *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015).

1 contributions and commitments by the class representatives, the Settlement Agreement contemplates  
 2 a \$20,000 award to each class representative. There is no bright line minimum or maximum for  
 3 service awards, and courts have awarded service awards in the amount sought here. For example, in  
 4 *Nitsch v. Dreamworks Animation SKG Inc.*, this Court granted preliminary approval of class  
 5 settlement agreements that provided \$10,000 for the class representatives.<sup>19</sup>

6 The class representatives have been actively involved in this case from its inception. The  
 7 representatives provided over 100 pages of answers to interrogatories and each representative also  
 8 provided substantive responses to document requests. Defendants deposed each representative at  
 9 length, requiring representatives to devote hours to deposition prep with counsel as well as hours for  
 10 the deposition itself, and often requiring travel. The depositions of the class representatives were  
 11 very thorough and time-consuming, and taken by the senior defense attorneys.<sup>20</sup> By being publicly  
 12 named representatives, the named plaintiffs also risk retaliation and reputational repercussions—each  
 13 were still student-athletes participating under the NCAA rules when the lawsuit began.

#### 14 **4. The Settlement Falls Within the Range of Possible Approval**

15 To grant preliminary approval, this Court must decide that the Settlement Agreement falls  
 16 within the approved range for preliminary approval.<sup>21</sup> To determine whether a settlement “falls  
 17 within the range of possible approval,” courts consider “substantive fairness and adequacy” and  
 18 “plaintiffs’ expected recovery balanced against the value of the settlement[.]”<sup>22</sup> As discussed above,  
 19 the settlement provides recovery of nearly full single damages for eligible class members’ claims,  
 20

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21 <sup>19</sup> *Nitsch v. Dreamworks Animation SKG Inc.*, No. 14-cv-04062 (N.D. Cal.), ECF Nos. 338  
 22 (motion for preliminary approval of settlement proposing \$10,000 service award), 353 (granting  
 23 motion for preliminary approval). *See also In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509,  
 24 2015 WL 5158730, at \*17 (N.D. Cal. Sept. 2, 2015) (recognizing \$20,000 service awards in partial  
 25 settlement agreements with other defendants and awarding additional service awards in the range of  
 26 \$80,000 to \$120,000); *Online DVD-Rental Antitrust Litigation*, 779 F.3d at 943 (affirming approval  
 27 of “incentive awards of \$5,000 each for nine class representatives” as “well within the usual norms  
 28 of modest compensation paid to class representatives.”).

<sup>20</sup> Leane K. Capps, shareholder at Polsinelli PC, took Nick Kindler’s and Shawne Alston’s  
 depositions. Erik Albright, partner at Smith Moore Leatherwood, took D.J. Stephens’ deposition.  
 Both Ms. Capps and Mr. Albright have been practicing law for 27 years.

<sup>21</sup> *Zepeda*, 2015 WL 6746913, at \*4; *Fraley*, 2012 WL 5838198, at \*1 n.1; *Tableware*, 484 F.  
 Supp. 2d at 1079.

<sup>22</sup> *Tableware*, 484 F.Supp.2d at 1080.

1 which is a far cry from a *de minimis* award. It is inherently equitable and adequate and thus in the  
2 approved range for preliminary approval.

3 **B. The Proposed Settlement Class Satisfies Rule 23 and Should be Certified**

4 Rule 23(a) sets forth four prerequisites for class certification: (1) that “the class is so  
5 numerous that joinder of all parties is impracticable; (2) there are questions of law or fact common to  
6 the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses  
7 of the class; and (4) the representative parties will fairly and adequately protect the interests of the  
8 class.”<sup>23</sup> Additionally the proposed settlement class seeks monetary damages so Rule 23(b)(3) must  
9 also be met. Rule 23(b)(3) requires that (1) “questions of law or fact common to class members  
10 predominate over any questions affecting only individual members,” and (2) the class action must be  
11 “superior to other available methods for fairly and efficiently adjudicating the controversy.”<sup>24</sup> But  
12 unlike in a contested class certification process, which is a precursor to trial, a proposed settlement  
13 class does not require a showing that a trial on class claims would present no manageability issues—  
14 precisely because there will be no trial that needs to be managed.<sup>25</sup>

15 This proposed settlement class meets all Rule 23(a) and (b)(3) requirements. This Court has  
16 already found that similar classes satisfy all of the elements of Rule 23(a) in granting Plaintiffs’  
17 motion for injunctive class certification.<sup>26</sup>

18 **1. Rule 23(a): Numerosity Is Met**

19 The first requirement for maintaining a class action is that its members are so numerous that  
20 joinder would be “impracticable.”<sup>27</sup> Numerosity depends on the facts and circumstances of each  
21 case and does not require any specific minimum number of class members.<sup>28</sup> Courts generally find  
22  
23

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24 <sup>23</sup> Fed. R. Civ. P. 23(a).

25 <sup>24</sup> Fed. R. Civ. P. 23(b)(3).

26 <sup>25</sup> See *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997).

27 <sup>26</sup> ECF No. 305.

28 <sup>27</sup> Fed. R. Civ. P. 23(a)(1); *Hanlon*, 150 F.3d at 1019.

<sup>28</sup> *Marilley v. Bonham*, No. C-11-02418, 2012 WL 851182, at \*3 (N.D. Cal. Mar. 13, 2012)  
(citing *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D 439, 448 (N.D. Cal. 1994)).

1 numerosity when a class includes forty members,<sup>29</sup> and geographic disparity favors a finding of  
 2 numerosity.<sup>30</sup> Class size does not have to be “exactly determined” at the certification stage; “a class  
 3 action may proceed upon estimates as to the size of the proposed class.”<sup>31</sup>

4 Here, the class consists of several thousands of members spread all across the country, in  
 5 numbers close to or exceeding half a million individuals. This Court has found the numerosity  
 6 requirement met on less.<sup>32</sup> Numerosity is established.

7 **2. Rule 23(a): The Case Involves Questions of Law or Fact Common to the Class**

8 The second Rule 23(a) requirement is the existence of common questions of law or fact.<sup>33</sup>  
 9 This requirement is to be liberally and permissively construed,<sup>34</sup> and a *single* issue has been held  
 10 sufficient to satisfy the commonality requirement.<sup>35</sup> In other words, commonality requires that class  
 11 members’ claims depend on a common contention that would be “capable of classwide resolution—  
 12 which means that determination of its truth or falsity will resolve an issue that is central to the  
 13 validity of each one of the claims in one stroke.”<sup>36</sup>

14 Here, issues of law and fact are common to the class, including: (1) the characteristics of the  
 15 markets identified in the complaint, (2) whether NCAA rules have harmed competition in those

17 <sup>29</sup> *Bonham*, 2012 WL 851182, at \* 3 (citing *Californians for Disability Rights, Inc. v. Cal. Dep’t of Transp.*, 249 F.R.D. 334, 346 (N.D. Cal. 2008)).

18 <sup>30</sup> *Evans v. Linden Research, Inc.*, No. 11-01078, 2012 WL 5877579 at \*10 (N.D. Cal. Nov. 20, 2012) (citing *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 648 (C.D. Cal. 1996)).

19 <sup>31</sup> *Hartman v. United Bank Card Inc.*, No. C 11-1753, 2012 WL 4758052, at \*10 (W.D. Wash. Oct. 4, 2012).

20 <sup>32</sup> *In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 350 (N.D. Cal. 2005) (finding numerosity met with purported class of 1,000). *See also In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013) (There is no bright-line minimum requirement for numerosity and recognizing that the class of approximately 60,000 is enough that “joinder of all members of this proposed class [would be] impracticable.”); *In re Citric Acid Antitrust Litig.*, No. 95-1092, 1996 WL 655791, at \*3 (N.D. Cal. Oct. 2, 1996) (citing *Welling v. Alexy*, 155 F.R.D. 654, 656 (N.D. Cal. 1994), which awarded certification of a class less than 300).

21 <sup>33</sup> Fed. R. Civ. P. 23(a)(2).

22 <sup>34</sup> *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). *See also Plascencia v. Lending 1st Mortg.*, 259 F.R.D. 437, 443 (N.D. Cal. 2009) (quoting *Hanlon* for same).

23 <sup>35</sup> *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 957 (9th Cir. 2013); *Slaven v. BP America, Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000); *Haley*, 169 F.R.D. at 647.

24 <sup>36</sup> *Brown v. Wal-Mart Stores, Inc.*, No. 09-cv-03339, 2012 WL 3672957, at \*4 (N.D. Cal. Aug. 24, 2012) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011)).

1 markets, and (3) whether Defendants’ procompetitive justifications are legitimate. Nearly identical  
 2 questions have been routinely found to satisfy the commonality requirement in other antitrust class  
 3 actions.<sup>37</sup> Specifically, in *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, this Court  
 4 recognized similar questions of law and fact, namely “the size of the . . . markets identified in the  
 5 complaint; whether NCAA rules have harmed competition in those markets; and whether the  
 6 NCAA’s procompetitive justifications for its conduct are legitimate.”<sup>38</sup> In *Name & Likeness*, this  
 7 Court found that “[t]hese types of questions, all of which may be resolved by class-wide proof and  
 8 argument, are typically sufficient to satisfy commonality in antitrust class actions.”<sup>39</sup> The  
 9 commonality requirement is similarly met in the case at bar, by virtue of almost the same fact and  
 10 law questions that are common to the class.

### 11 **3. Rule 23(a): Named Plaintiffs’ Claims Are Typical of the Claims of the Class**

12 The third requirement is that the “claims . . . of the representative parties are typical of the  
 13 claims . . . of the class.”<sup>40</sup> “The test of typicality ‘is whether other members have the same or similar  
 14 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and  
 15 whether other class members have been injured by the same course of conduct.’”<sup>41</sup> “Typicality  
 16 refers to the nature of the claim or defense of the class representative, and not to the specific facts  
 17 from which it arose or the relief sought.”<sup>42</sup> Like commonality, typicality is to be construed  
 18 permissively: “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are  
 19 reasonably co-extensive with those of absent class members; they need not be substantially  
 20  
 21

22 <sup>37</sup> *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, No. C 09-1967, 2013 WL  
 23 5979327, at \*4 (N.D. Cal. Nov. 8, 2013) (class certification decision in case later titled *O’Bannon v.*  
 24 *NCAA*). See also *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486  
 PJH, 2006 WL 1530166, at \*3 (N.D. Cal. June 5, 2006) (“the very nature of a conspiracy antitrust  
 action compels a finding that common questions of law and fact exist.”).

25 <sup>38</sup> *Name & Likeness*, 2013 WL 5979327, at \*4.

26 <sup>39</sup> *Id.* (citing *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 593 (N.D. Cal. 2010)).

27 <sup>40</sup> Fed. R. Civ. P. 23(a)(3).

28 <sup>41</sup> *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (quoting *Hanon v.*  
*Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

<sup>42</sup> *Id.*

1 identical.”<sup>43</sup> The “focus should be on the defendants’ conduct and plaintiff’s legal theory, not the  
 2 injury caused to the plaintiff.”<sup>44</sup> This requirement is “to assure that the interest of the named  
 3 representative align with the interests of the class.”<sup>45</sup>

4 Typicality is easily satisfied in antitrust cases like this one, where the named plaintiffs and  
 5 class members allege the same antitrust violation.<sup>46</sup> In this case, the claims of the four representative  
 6 plaintiffs are typical of the claims of the class members because they all allege the same antitrust and  
 7 conspiracy violation, and the same cognizable injuries. That is, the central question for all class  
 8 members is whether the rule capping GIA suppressed competition and artificially reduced the  
 9 amount of financial aid the class member would have received at his or her school but for the  
 10 restraint.<sup>47</sup> Furthermore, the four named class representatives span each subclass by sport— Shawne  
 11 Alston and Nicholas Kindler were football student-athletes, Afure Jemerigbe was a female basketball  
 12 student-athlete, and D.J. Stephens was a male basketball student-athlete. The named plaintiffs’  
 13 interests are typical of and closely aligned with those of the absent class members, and each subclass  
 14 is represented. The class representatives’ claims are typical of other class members’ claims.

15 **4. Rule 23(a): Plaintiffs Will Fairly and Adequately Represent the Interests of the**  
 16 **Class**

17 The final requirement of Rule 23(a) is that the representative plaintiffs will fairly and  
 18 adequately represent the interests of the class. The relevant inquiries are: “(1) do the named  
 19 plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the  
 20 named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”<sup>48</sup>

21  
 22 <sup>43</sup> *Hanlon*, 150 F.3d at 1020. See also *Sullivan v. Kelly Servs., Inc.*, 268 F.R.D. 356, 363 (N.D.  
 Cal. 2010) (stating same).

23 <sup>44</sup> *Costelo v. Chertoff*, 258 F.R.D. 600, 608 (C.D. Cal. 2009) (quoting *Simpson v. Fireman’s*  
 24 *Fund Ins. Co.*, 231 F.R.D. 391, 396 (N.D. Cal. 2005)).

25 <sup>45</sup> *Dataprods. Corp.*, 976 F.2d at 508.

26 <sup>46</sup> *White v. NCAA*, No. CV-0999, 2006 WL 8066803, at \*2 (C.D. Cal. Oct. 19, 2006) (citing *In re*  
*Rubber Chem. Antitrust Litig.*, 232 F.R.D. 346, 351 (N.D. Cal. 2005)).

27 <sup>47</sup> *Student-Athlete Name & Likeness Licensing Litig.*, 2013 WL 5979327, at \*5; *In re NCAA I-A*  
*Walk-On Football Players Litig.*, No. C04-1254, 2006 WL 1207915, at \*6 (W.D. Wash. May 3,  
 2006); *White*, 2006 WL 8066803, at \*2.

28 <sup>48</sup> *Ellis*, 657 F.3d at 985 (quoting *Hanlon*, 150 F.3d at 1020).

1           The first inquiry requires only that a class representative does not have interests that are  
2 antagonistic to or in conflict with the interests of the class.<sup>49</sup> As described above, the interests of the  
3 named plaintiffs and class members are aligned because they all are pursuing the claim that they  
4 suffered similar injury in the form of receiving GIAs of lesser amount due to the conspiracy, and all  
5 class members seek the same relief. Moreover, this Court has already rejected Defendants  
6 “substitution effect” and “economics of superstars” arguments against adequacy, concluding that  
7 both challenges were merely speculative and therefore not persuasive.<sup>50</sup> As this Court noted, “the  
8 mere potential for a conflict of interest is not sufficient to defeat class certification; the conflict must  
9 be actual, not hypothetical.”<sup>51</sup>

10           As to the second inquiry, Plaintiffs and their counsel have demonstrated that they will  
11 prosecute this action vigorously and will continue to do so. Class representatives have been actively  
12 involved in the litigation of this case, including answering significant discovery and sitting for  
13 rigorous depositions. Each class representative has reviewed the Settlement Agreement and has  
14 given their approval. Additionally, class counsel are well qualified, possess no conflicts of interest,  
15 and have already proven capable of prosecuting this action vigorously on behalf of the class.  
16 Plaintiffs’ counsel has litigated this action since its inception three years ago, and did so on behalf of  
17 both the injunctive class members and the putative damages class members. As discussed more fully  
18 below, both firms that represent the class boast extensive experience in handling complex  
19 commercial litigation, including class actions. Adequacy is met.

## 20           **5. The Requirements of Rule 23(b)(3) Are Met**

21           Plaintiffs seek to certify a settlement class under Rule 23(b)(3), which requires predominance  
22 and superiority. Both are met in this case.

23  
24  
25  
26           <sup>49</sup> *Hanlon*, 150 F.3d at 1020.

27           <sup>50</sup> ECF No. 305 at 12-14.

28           <sup>51</sup> *Id.* at 15-16 (quoting *Berrien v. New Raintree Resorts Int’l, LLC*, 276 F.R.D. 355, 359 (N.D. Cal. 2011)).

1                   **a. Common Questions of Fact or Law Predominate**

2                   Predominance under Rule 23(b)(3), “is a test readily met in certain cases alleging consumer  
3 or securities fraud or violations of the antitrust laws.”<sup>52</sup> The existence of a conspiracy violating  
4 antitrust laws is the overriding issue common to all plaintiffs, sufficient to satisfy the Rule 23(b)(3)  
5 predominance requirement.<sup>53</sup> Here, the existence of Defendants’ agreement cannot be seriously  
6 disputed, and predominates across all class members. Plaintiffs allege that Defendants conspired to  
7 suppress compensation by agreeing to and enforcing restrictive NCAA Bylaws that cap the amount  
8 of athletically-related financial aid. Defendants and their member schools are and continue to be  
9 public and open about their participation in NCAA activities.

10                   Common proof of impact similarly predominates over any individual questions in this case.  
11 To show classwide impact, plaintiffs must establish “a reasonable method for determining, on a  
12 classwide basis, the alleged antitrust activity’s impact on class members.”<sup>54</sup> The fact that some class  
13 members may have attended schools that would not have awarded COA but for the restraint does not  
14 mean common evidence and methods do not predominate.<sup>55</sup>

15                   In addition to documentary evidence from Defendants and their member schools, Plaintiffs  
16 have demonstrated common methods to demonstrate the existence (or non-existence) of impact from

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18                   <sup>52</sup> *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Kamakahi v. Am. Society for*  
19 *Reproductive Med.*, 305 F.R.D. 164, 183 (N.D. Cal. 2015) (“Courts consistently have held that the  
very nature of a conspiracy antitrust action compels a finding that common questions of law and fact  
exist.” (citing *In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 351 (N.D. Cal. 2005)).

20                   <sup>53</sup> *See, e.g., In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. at 352 (“[T]he great weight of  
21 authority suggests that the dominant issues in cases like this are whether the charged conspiracy  
existed and whether price-fixing occurred.”).

22                   <sup>54</sup> *CRT*, 308 F.R.D. at 625.

23                   <sup>55</sup> *Torres v. Mercer Canyons Inc.*, No. 15-35615, 2016 WL 4537378, at \*3 (9th Cir. Aug. 31,  
2016) (a class will “inevitably contain some individuals who have suffered no harm as a result of a  
24 defendant’s unlawful conduct” and holding that the existence of such plaintiffs does not defeat  
certification); *Messner v. Northshore Univ. Health Sys.*, 669 F.3d 802, 822-23 (7th Cir. 2012) (“at  
25 best [it is] an argument that some class members’ claims will fail on the merits if and when damages  
are decided, a fact generally irrelevant to the district court’s decision on class certification,” because  
26 “a class will often include persons who have not been injured by the defendant’s conduct; indeed  
this is almost inevitable . . . Such a possibility or indeed inevitability does not preclude class  
27 certification’[.]” (quoting *Kohen v. Pac. Inv. Mgmt. Co., LL*, 571 F.3d 672, 677 (7th Cir. 2009)). *See*  
28 *also Theme Promos., Inc. v. News Am. Mktg. FSI*, 546 F.3d 991, 1003 (9th Cir. 2008) (“Coercive  
activity that prevents choice between market alternatives, including agreements to restrain trade, is  
one form of antitrust injury.”).

1 the alleged conspiracy for each school through expert analysis.<sup>56</sup> Plaintiffs’ experts relied on the  
 2 established econometric methodology of probit regression, as well as data and documents from  
 3 Defendants and third party NCAA member institutions, to demonstrate common methods capable of  
 4 proving which class members’ GIAs were restricted. The combination of the expert analyses and  
 5 documentary evidence support a conclusion that issues common to the classes predominate in this  
 6 case.

7 Finally, as recently as September 2015, the Ninth Circuit has made clear that damages need  
 8 not predominate in a class action. In *Pulaski & Middleman, LLC v. Google, Inc.*,<sup>57</sup> the court held  
 9 that individualized damage calculations will not defeat class certification in cases brought under the  
 10 California Unfair Competition Law and False Advertising Law, affirming its decision in *Yokoyama*  
 11 *v. Midland National Life Ins. Co.*<sup>58</sup> The Ninth Circuit specifically stated that “*Yokoyama* remains the  
 12 law of this court, even after *Comcast*.”<sup>59</sup>

13 **b. The Class Action Mechanism is Superior to Any Other Method of**  
 14 **Adjudication**

15 The “superiority” element is satisfied because through class certification, the nature,  
 16 knowledge of Defendants, intent, and impact of the suppressed GIA amounts can be determined in  
 17 one proceeding. “When common questions present a significant aspect of the case and they can be  
 18 resolved for all members of the class in a single adjudication, there is clear justification for handling  
 19 the dispute on a representative rather than on an individual basis.”<sup>60</sup>

20 Superiority is met here; the alternative of tens of thousands of individual claims “would not  
 21 only unnecessarily burden the judiciary, but would prove uneconomic for potential plaintiffs[,]”  
 22 thereby demonstrating the superiority of a class action.<sup>61</sup> Moreover, an individual case would be  
 23 risky and challenging. In essence, individual student-athletes, many of whom are still competing in

24 <sup>56</sup> Declaration of Daniel A. Rascher (“Rascher Decl.”), ¶ 2.

25 <sup>57</sup> *Pulaski & Middleman, LLC v. Google, Inc.*, No. 12-16752, 2015 WL 5515617 (9th Cir.  
 Sept. 21, 2015).

26 <sup>58</sup> *Yokoyama v. Midland Nat’l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010).

27 <sup>59</sup> *Pulaski & Middleman*, 2015 WL 5515617 at \*7.

28 <sup>60</sup> *Hanlon*, 150 F.3d at 1022.

<sup>61</sup> *Id.* at 1023.

1 college athletics, would be forced to bring separate lawsuits against the very entities that regulate and  
 2 control all aspects of college athletics—including an individual plaintiff’s collegiate athletic career.  
 3 This would be a highly undesirable and risk-fraught endeavor. Moreover, the Defendant entities  
 4 need to cooperate collectively to effectuate the terms of Settlement Agreement. Such cooperation  
 5 would be nearly impossible if Defendants were engaged in thousands of individual lawsuits.

6 For these reasons, the proposed class meets the requirements of Rule 23(a) and 23(b)(3) and  
 7 the Court should grant provisional certification for purposes of effecting the proposed Settlement  
 8 Agreement.

9 **C. The Court Should Reaffirm the Appointment of Class Counsel**

10 At the outset of this case, Judge Wilken appointed Hagens Berman Sobol Shapiro LLP  
 11 (“Hagens Berman”) and Pearson, Simon & Warshaw LLP (“Pearson Simon”) as Interim Lead  
 12 Counsel for the Consolidated Class.<sup>62</sup> Since then, Judge Wilken already once reaffirmed that  
 13 appointment.<sup>63</sup> Hagens Berman and Pearson Simon request that this appointment be reaffirmed.

14 Under Rule 23, the appointment of class counsel, to “fairly and adequately represent the  
 15 interests of the class” is required.<sup>64</sup> In making this determination, the Court must consider counsels’:  
 16 (1) work in identifying or investigating potential claims; (2) experience in handling class actions or  
 17 other complex litigation, and the types of claims asserted in the case; (3) knowledge of the applicable  
 18 law; and (4) resources committed to representing the class.<sup>65</sup> Here, Plaintiffs’ counsel have spent an  
 19 extraordinary amount of time pursuing discovery from multiple Defendant entities and hundreds of  
 20 related third-party NCAA member institutions (with no assistance from Defendants). Hagens  
 21 Berman and Pearson Simon are recognized as two of the country’s foremost experienced law firms  
 22 in antitrust law and class action litigation. They have worked tirelessly on behalf of the class of  
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25 <sup>62</sup> ECF No. 82.

26 <sup>63</sup> ECF No. 82 (“The Court previously appointed Hagens Berman Sobol Shapiro LLP, Pearson,  
 27 Simon & Warshaw, and Winston Strawn as Plaintiffs’ Interim Co-Lead Class Counsel. The Court  
 reaffirms its appointment of those firms as Plaintiffs’ Interim Co-Lead Class Counsel.”).

28 <sup>64</sup> Fed. R. Civ. P. 23(g)(1)(A), (B).

<sup>65</sup> Fed. R. Civ. P. 23(g)(1)(A).

1 student-athletes and will continue their quest in resolving this case and administering the settlement.  
 2 Hagens Berman and Pearson Simon request that they be allowed to continue representing the class.

3 **D. The Proposed Class Notice and Plan for Dissemination Meets the Strictures of Rule 23**

4 Rule 23(e)(1) requires that a court approving a class action settlement must “direct notice in a  
 5 reasonable manner to all class members who would be bound by the proposal.” In addition, for a  
 6 Rule 23(b)(3) class, the Rule requires the court “direct to class members the best notice that is  
 7 practicable under the circumstances, including individual notice to all members who can be  
 8 identified through reasonable effort.”<sup>66</sup> A class action settlement notice “is satisfactory if it generally  
 9 describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to  
 10 investigate and to come forward and be heard.”<sup>67</sup>

11 The proposed plan of notice is supported by an experienced notice administrator, Gilardi &  
 12 Co. (“Gilardi”), which has worked cooperatively with counsel to develop the proposed plan of  
 13 notice. Gilardi submits a declaration in support of the proposed notice plan attesting to its adequacy  
 14 and constitutionality.<sup>68</sup> The proposed forms of notice provide all information required by Rule  
 15 23(c)(2)(B) to the settlement class, in language that is plain and easy to understand. Moreover, the  
 16 proposed long form of the notice of settlement follows, as closely as possible, the language  
 17 recommended by this District’s Procedural Guidance for Class Action Settlements<sup>69</sup> and required by  
 18 the Ninth Circuit.<sup>70</sup> With this motion, Plaintiffs additionally provide proposed forms of electronic  
 19 notice, and supplemental notice by mail.<sup>71</sup>

20 The proposed plan of notice includes several components and is likely to reach nearly all  
 21 class members. The notice plan will rely primarily upon direct notice to the settlement classes.

22 \_\_\_\_\_  
 23 <sup>66</sup> Fed. R. Civ. P. 23(c)(2)(B).

24 <sup>67</sup> *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *see also* Fed. R. Civ. P.  
 25 23(c)(2)(B) (describing specific information to be included in the notice).

26 <sup>68</sup> *See* Vasquez Decl., ¶¶ 40-41.

27 <sup>69</sup> *See* <http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (last visited January 30,  
 28 2017).

<sup>70</sup> *E.g.*, *In re Online DVD Rental Antitrust Litig.*, 779 F.3d at 946; *Lane*, 696 F.3d at 826;  
*Rodriguez*, 563 F.3d at 962.

<sup>71</sup> *See* Vasquez Decl., Exs. 2-5.

1 Gilardi is also currently serving as the Notice Provider in the case of *In Re: National Collegiate*  
 2 *Athletic Association Student-Athlete Concussion Litigation*, MDL No. 4292, Master Docket No.  
 3 1:13-cv-09116 (N.D. Ill.) (“NCAA Concussion Settlement”). Through its notice efforts in the  
 4 NCAA Concussion Settlement, Gilardi believes that it already has compiled direct contact  
 5 information for the majority of class members here.<sup>72</sup> The parties envision that the NCAA will  
 6 request that each of its member institutions at issue here grant permission to reuse this contact  
 7 information for notice purposes in this Settlement. Because the NCAA Concussion Settlement only  
 8 includes student-athletes up until July 15, 2016, it may be necessary for the member institutions in  
 9 question to provide updated class member contact data for the 2016-2017 school year. The parties  
 10 further envision that request letters and subpoenas (as necessary) will be sent to all NCAA member  
 11 institutions requesting this updated contact information (*i.e.*, names, United States Postal Service  
 12 (“USPS”) address data and email addresses) for all three classes. Member institutions may be  
 13 required to send FERPA notices to their current and former student-athletes before providing this  
 14 information. The notice period here is designed to include time for the service of letters and/or  
 15 subpoenas and FERPA notices for class member contact information.

16 After these steps have been taken, Gilardi estimates that direct notice will be sent to a last-  
 17 known physical mailing address and/or email address for approximately 90% of the proposed  
 18 Settlement class (including mailings to any class members whose emails were bounced-back).<sup>73</sup>

19 To bolster the direct notice, Gilardi will also implement a comprehensive Internet notice  
 20 campaign. Specifically, to ensure an effective online campaign, Gilardi will utilize:

- 21 i. Sponsored Links (search) advertising on the Google and Yahoo!/Bing
- 22 networks
- 23 ii. Text link and banner advertising through Google Display Network
- 24 iii. Targeted banner advertising through the Xaxis and Steel Media networks
- 25 iv. Banner advertising through Xaxis on Facebook; and
- 26 v. Twitter Promoted Tweet campaign and outreach<sup>74</sup>

27 <sup>72</sup> *Id.*, ¶ 13.

28 <sup>73</sup> *Id.*, ¶ 21.

1           Additionally, Gilardi will establish a case-dedicated settlement website, which will be a  
2 source of reliable and accurate information for the class members, the media, and the general public.  
3 In addition to being a primary source of information about the case, the case website will also serve  
4 as an important means of measuring audience engagement with the campaign. Both the direct notice  
5 and paid media will direct individuals to the case website.<sup>75</sup>

6           Finally, the notice administrator will also issue a neutral press release about the settlement of  
7 the case through the PR Newswire. Press releases are one of the most cost effective ways to  
8 supplement notice efforts and provide an opportunity for media outlets to pick up the story and post  
9 to print publications and websites.<sup>76</sup>

10 Courts have found that notice plans estimated to reach a minimum of 70 percent are constitutional  
11 and comply with Rule 23. Here, the notice administrator believes that notice will reach well over  
12 90% percent of class members.<sup>77</sup> These notice provisions meet the requirements of Rule 23 and will  
13 allow the class a full and fair opportunity to review and respond to the proposed settlement.

14 **E. Proposed Schedule for Final Approval and Dissemination of Notice**

15 Below is a proposed schedule for providing notice, filing objections, and holding a fairness  
16 hearing:

Event	Deadline
Notice campaign to begin, including internet notice, dedicated website, and press release	two weeks from preliminary approval order
NCAA to request from member institutions potential class member contact information, including permission to use any contact information already collected for those individuals who are also class members in the settlement in <i>In Re: National Collegiate Athletic Association Student-Athlete Concussion Litigation</i> , MDL No. 4292, Master docket No. 1:13-cv-09116 (N.D.IL.) (“NCAA Concussion	three weeks from preliminary approval order

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26 <sup>74</sup> *Id.*, ¶ 28.

27 <sup>75</sup> *Id.*, ¶ 24.

28 <sup>76</sup> *Id.*, ¶ 37.

<sup>77</sup> *Id.*, ¶ 41.



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*Plaintiffs' Interim Co-Lead Class Counsel*

# **EXHIBIT A**

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23 *Plaintiffs' Interim Co-Lead Class Counsel*

24 [Additional Counsel on Signature Page]

25 UNITED STATES DISTRICT COURT  
26 NORTHERN DISTRICT OF CALIFORNIA  
27 OAKLAND DIVISION

28 IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

No. 4:14-md-2541-CW  
SETTLEMENT AGREEMENT

This Document Relates to:

COMPLAINT FILED: March 5, 2014

ALL ACTIONS EXCEPT

*Jenkins v. Nat'l Collegiate Athletic Ass'n*  
Case No. 14-cv-0278-CW



1 negotiation thereof shall not be deemed or construed to be an admission or evidence of (i) any  
2 violation of any statute or law, (ii) any liability or wrongdoing by Defendants, (iii) liability on any of  
3 the claims or allegations, or (iv) the propriety of certifying a litigation class in any proceeding, and  
4 shall not be used by any Person for any purpose whatsoever in the Actions (defined herein) or any  
5 other legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce  
6 the terms of this Agreement;

7 WHEREAS, Plaintiffs and Defendants engaged the services of Professor Eric Green as a  
8 mediator to assist in their negotiations, and starting in February 2015, engaged in extensive  
9 settlement negotiations, which included multiple in-person and telephonic mediation sessions with  
10 Professor Green before agreeing to the terms of this arm's-length Agreement, which embodies all of  
11 the terms and conditions of the Settlement (defined herein) between the Settling Parties, and has been  
12 reached (subject to the approval of the Court) as provided herein and is intended to supersede any  
13 prior agreements between the Settling Parties;

14 WHEREAS, Plaintiffs and Plaintiffs' Class Counsel (defined herein) have concluded, after  
15 due investigation and after carefully considering the relevant circumstances, including, without  
16 limitation, the claims asserted in the Plaintiffs' Consolidated Amended Complaint filed in MDL  
17 Docket No. 60, the legal and factual defenses thereto and the applicable law, that it is in the best  
18 interests of the Plaintiffs and the Classes to enter into this Agreement to avoid the uncertainties of  
19 litigation and to assure that the benefits reflected herein are obtained for the Plaintiffs and the  
20 Classes, and, further, that Plaintiffs' Class Counsel consider the Settlement set forth herein to be fair,  
21 reasonable and adequate and in the best interests of the Plaintiffs and the Classes; and

22 WHEREAS, for the avoidance of all doubt, this Agreement does not settle or release any  
23 claim(s) solely for prospective injunctive relief that Plaintiffs, the Classes, or any other party in this  
24 or any other proceeding has brought or could bring in the future;

1 **AGREEMENT**

2 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the  
3 Settling Parties, by and through their attorneys of record, that, subject to the approval of the Court,  
4 the Actions and the Released Claims (defined herein) as against Defendants shall be finally and fully  
5 settled, compromised and dismissed on the merits and with prejudice upon and subject to the terms  
6 and conditions of this Agreement, as follows:

7 **A. Definitions**

8 **1.** As used in this Agreement the following terms have the meanings specified below:

- 9 (a) “Actions” means *In Re: National Collegiate Athletic Association Athletic*  
10 *Grant-In-Aid Cap Antitrust Litigation*, Case No. 4:14-MD-02541-CW, and  
11 each of the cases brought on behalf of Plaintiffs previously consolidated  
12 and/or included as part of MDL Docket No. 2541 (excluding *Jenkins v. Nat’l*  
13 *Collegiate Athletic Ass’n*, Case No. 4:14-cv-02758-CW (the “*Jenkins*  
14 *Action*”).
- 15 (b) “Affiliates” means entities controlling, controlled by or under common control  
16 with a Releasee or Releasor.
- 17 (c) “Authorized Recipient” means any Class Member who, in accordance with the  
18 terms of this Agreement, is entitled to a distribution consistent with any  
19 Distribution Plan or order of the Court.
- 20 (d) “Class” or “Classes” are defined as:

21 **Division I FBS Football Class:** All current and former NCAA Division I  
22 Football Bowl Subdivision (“FBS”) football student-athletes who, at any time  
23 from March 5, 2010 through the date of Preliminary Approval (defined herein)  
24 of this Settlement, received from an NCAA member institution for at least one  
25 academic term (such as a semester or quarter) (1) a full athletics grant-in-aid  
26 required by NCAA rules to be set at a level below the cost of attendance,  
27 and/or (2) an otherwise full athletics grant-in-aid.

25 **Division I Men’s Basketball Class:** All current and former NCAA Division I  
26 men’s basketball student-athletes who, at any time from March 5, 2010  
27 through the date of Preliminary Approval of this Settlement, received from an  
28 NCAA member institution for at least one academic term (such as a semester  
or quarter) (1) a full athletics grant-in-aid required by NCAA rules to be set at

1 a level below the cost of attendance, and/or (2) an otherwise full athletics  
2 grant-in-aid.

3 **Division I Women's Basketball Class:** All current and former NCAA  
4 Division I women's basketball student-athletes who, at any time from March  
5 5, 2010 through the date of Preliminary Approval of this Settlement, received  
6 from an NCAA member institution for at least one academic term (such as a  
7 semester or quarter) (1) a full athletics grant-in-aid required by NCAA rules to  
8 be set at a level below the cost of attendance, and/or (2) an otherwise full  
9 athletics grant-in-aid.

10 (e) "Class Counsel" means the law firms of Hagens Berman Sobol Shapiro LLP;  
11 and Pearson, Simon & Warshaw, LLP.

12 (f) "Class Member" means a Person who falls within the definition of the Classes  
13 and has not timely and validly elected to be excluded from the Classes  
14 pursuant to the procedures set forth herein.

15 (g) "Court" means the United States District Court for the Northern District of  
16 California.

17 (h) "Day" or "Days" has the meaning ascribed to it in Fed. R. Civ. P. 6, and all  
18 time periods specified in this Agreement shall be computed in a manner  
19 consistent with Fed. R. Civ. P. 6.

20 (i) "Distribution Plan" means the plan or formula of allocation of the Gross  
21 Settlement Fund whereby the Net Settlement Fund shall in the future be  
22 distributed to Authorized Recipients, to be approved by the Court in the form  
23 attached hereto as Exhibit A and made a part of this Agreement.

24 (j) "Effective Date" means the first date by which all of the events and conditions  
25 specified in paragraph 29 of this Agreement have occurred and have been met.

26 (k) "Escrow Account" means the bank account to be established at a banking  
27 institution chartered pursuant to the National Bank Act by Class Counsel and  
28 maintained by the Escrow Agent into which the Gross Settlement Fund shall  
be deposited, pursuant to the Escrow Agreement. Such Escrow Account is to  
be administered under the Court's continuing supervision and control.

- 1 (l) “Escrow Agent” means the agent designated by Class Counsel and any  
2 successor agent.
- 3 (m) “Escrow Agreement” means the agreement to be mutually agreed to by the  
4 Settling Parties concerning the Escrow Account. The Escrow Agent shall act  
5 only in accordance with the Escrow Agreement.
- 6 (n) “Exclusion/Objection Deadline” means the deadline for requesting exclusion  
7 from the Classes or objecting to the Settlement, as set forth in the notice to  
8 Class Members.
- 9 (o) “Execution Date” means the date of the last signature set forth on the signature  
10 pages below.
- 11 (p) “Final” means, with respect to any order of the Court, including, without  
12 limitation, the Judgment, that such order represents a final and binding  
13 determination of all issues within its scope and is not subject to further review  
14 on appeal or otherwise. Without limitation, an order becomes “Final” when:  
15 (a) no appeal has been filed and the prescribed time for commencing any  
16 appeal has expired; or (b) an appeal has been filed and either (i) the appeal has  
17 been dismissed and the prescribed time, if any, for commencing any further  
18 appeal has expired, or (ii) the order has been affirmed in its entirety and the  
19 prescribed time, if any, for commencing any further appeal has expired. For  
20 purposes of this Agreement, an “appeal” includes appeals as of right,  
21 discretionary appeals, interlocutory appeals, proceedings involving writs of  
22 certiorari or mandamus, and any other proceedings of like kind. Any appeal  
23 or other proceeding pertaining solely to any order issued with respect to an  
24 application for attorneys’ fees and expenses consistent with this Agreement  
25 shall not in any way delay or preclude the Judgment from becoming Final.
- 26 (q) “Gross Settlement Fund” means the Settlement Amount plus any interest that  
27 may accrue.

- 1 (r) "Judgment" means the order of judgment and dismissal of the Actions with  
2 prejudice.
- 3 (s) "Net Settlement Fund" means the Gross Settlement Fund, less the payments  
4 set forth in paragraph 18(a)-(c).
- 5 (t) "Notice and Administrative Costs" means the reasonable and authorized costs  
6 and expenses not in excess of \$4,000,000 absent written consent of all Settling  
7 Parties, to be paid out of the Gross Settlement Fund to pay for notice to the  
8 Classes and related administrative costs.
- 9 (u) "Notice and Claims Administrator" means the claims administrator(s) to be  
10 selected by Class Counsel and approved by the Court.
- 11 (v) "Opt-Out" means a Person who falls within the definition of the Classes who  
12 has timely and validly elected to be excluded from the Classes pursuant to the  
13 procedures set forth herein.
- 14 (w) "Person(s)" means an individual, corporation, limited liability corporation,  
15 professional corporation, limited liability partnership, partnership, limited  
16 partnership, association, joint stock company, estate, legal representative,  
17 trust, unincorporated association, government or any political subdivision or  
18 agency thereof, and any business or legal entity and any spouses, heirs,  
19 predecessors, successors, representatives or assignees of any of the foregoing.
- 20 (x) "Released Claims" means any and all past, present and future claims,  
21 demands, rights, actions, suits, or causes of action, for monetary damages of  
22 any kind (including but not limited to actual damages, statutory damages, and  
23 exemplary or punitive damages), whether class, individual or otherwise in  
24 nature, known or unknown, foreseen or unforeseen, suspected or unsuspected,  
25 asserted or unasserted, contingent or non-contingent, under the laws of any  
26 jurisdiction, which Releasors or any of them, whether directly,  
27 representatively, derivatively, or in any other capacity, ever had, now have or  
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1 hereafter can, shall or may have, arising out of or relating in any way to any  
2 act or omission of the Releasees (or any of them) that is alleged in Plaintiffs'  
3 Actions or could have been alleged in Plaintiffs' Actions. Notwithstanding the  
4 foregoing, no claims expressly excluded from the scope of the releases  
5 pursuant to paragraph 12 are "Released Claims."

6 (y) "Releasees" means the NCAA, each of the Conference Defendants, and each  
7 of their respective member institutions (past and present), subsidiary, parent,  
8 related, and affiliated Persons, and each of their respective former, present and  
9 future officers, directors, employees, managers, members, partners, agents,  
10 servants, shareholders (in their capacity as shareholders), attorneys and legal  
11 representatives, and the predecessors, successors, heirs, executors,  
12 administrators and assigns of each of the foregoing.

13 (z) "Releasers" means the Plaintiffs and each and every Class Member, on their  
14 own behalf and on behalf of their respective families, their former, present or  
15 future agents and legal representatives, and the predecessors, successors, heirs,  
16 executors, administrators and assigns of each of the foregoing.

17 (aa) "Settlement" means the settlement of the Released Claims set forth herein.

18 (bb) "Settlement Amount" means the total sum of \$208,664,445.00.

19 (cc) "Settling Parties" means collectively, Defendants and Plaintiffs (on behalf of  
20 themselves and the Classes).

21 (dd) "Unknown Claims" means any Released Claim that a Plaintiff and/or Class  
22 Member does not know or suspect to exist in his favor at the time of the  
23 release of the Releasees that if known by him or her, might have affected his  
24 or her settlement with and release of the Releasees, or might have affected his  
25 or her decision not to object to or opt out of this Settlement.



1           **5. Proposed Form of Notice.** As part of the Motion for Preliminary Approval, Class  
2 Counsel shall submit to the Court for approval a proposed form of, method for and schedule for  
3 dissemination of notice to the Classes (the “Notice Plan”). This Notice Plan shall recite and ask the  
4 Court to find that the proposed form of and method for dissemination of notice to the Classes  
5 constitutes valid, due and sufficient notice to the Classes, constitutes the best notice practicable under  
6 the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.  
7 Defendants shall be responsible for providing all notices required by the Class Action Fairness Act  
8 of 2005, 28 U.S.C. § 1715, to be provided to state attorneys general or to the United States of  
9 America.

10           **6. Motion for Final Approval and Entry of Final Judgment.** Not less than thirty-five  
11 (35) Days prior to the date set by the Court to consider whether this Settlement should be finally  
12 approved, Class Counsel shall submit a motion for final approval (“Final Approval”) of the  
13 Settlement by the Court. The Motion for Final Approval (including the Final Approval Order  
14 (defined herein) and supporting papers) shall be provided to Defendants for review at least 7 Days  
15 prior to the filing of the Motion for Final Approval, and Defendants will have an opportunity to  
16 comment on its contents before it is filed. Class Counsel shall seek entry of the final approval order  
17 (“Final Approval Order”) and Judgment:

- 18           (a) finding that the Court has personal jurisdiction over the Plaintiffs and all  
19 Settlement Class Members and that the Court has subject matter jurisdiction to  
20 approve this Settlement and Agreement;
- 21           (b) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely  
22 for purposes of this Settlement;
- 23           (c) fully and finally approving the Settlement contemplated by this Agreement  
24 and its terms as being fair, reasonable and adequate within the meaning of  
25 Federal Rule of Civil Procedure 23 and directing its consummation pursuant to  
26 its terms and conditions;
- 27
- 28

- 1 (d) declaring this Agreement and the Final Approval Order and Judgment to be  
2 binding on and to have *res judicata* and preclusive effect in all pending and  
3 future lawsuits or other proceedings encompassed by the Released Claims  
4 maintained by or on behalf of the Releasors, as well as their agents, heirs,  
5 executors or administrators, successors, insurers and assigns;
- 6 (e) finding that the notice given to the Class Members pursuant to the Notice Plan  
7 (i) constituted the best notice practicable under the circumstances, (ii)  
8 constituted notice that was reasonably calculated under the circumstances to  
9 apprise Class Members of the pendency of the Actions, of their right to object  
10 to or exclude themselves from the proposed Settlement as applicable and of  
11 their right to appear at the final approval hearing and of their right to seek  
12 relief, (iii) constituted reasonable, due, adequate and sufficient notice to all  
13 Persons entitled to receive notice, and (iv) complies in all respects with the  
14 requirements of Federal Rule of Civil Procedure 23, due process, and any  
15 other applicable law;
- 16 (f) finding that Class Counsel and the Plaintiffs adequately represented the Class  
17 Members for purposes of entering into and implementing this Agreement and  
18 Settlement;
- 19 (g) directing that the claims for damages be dismissed with prejudice and, except  
20 as provided for herein, without costs;
- 21 (h) discharging and releasing the Releasees from all Released Claims;
- 22 (i) permanently barring and enjoining the institution and prosecution, by  
23 Releasors, of any of the Released Claims;
- 24 (j) approving the Opt-Out List (defined herein) and determining that the Opt-Out  
25 List is a complete list of all Persons who have timely requested exclusion from  
26 the Classes, and accordingly, shall neither share in nor be bound by the Final  
27 Approval Order and Judgment;

- 1 (k) determining that the Agreement and the Settlement provided for herein and  
2 any proceedings taken pursuant thereto are not and should not in any event be  
3 offered or received as evidence of a presumption, concession,  
4 acknowledgment or an admission of liability or of any wrongdoing by  
5 Defendants or any Releasees or of the suitability of these or similar claims to  
6 class treatment in active litigation and trial; provided, however, that reference  
7 may be made to this Agreement and the Settlement provided for herein in such  
8 proceedings as may be necessary to effectuate the Agreement;
- 9 (l) reserving continuing and exclusive jurisdiction over the Settlement, including  
10 all future proceedings concerning the administration, consummation and  
11 enforcement of this Agreement;
- 12 (m) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no  
13 just reason for delay and directing entry of a final judgment as to the claims  
14 for damages;
- 15 (n) authorizing the Settling Parties, without further approval from the Court, to  
16 agree to and adopt such amendments, modifications and expansions of this  
17 Agreement as shall be consistent in all material respects with the Final  
18 Approval Order and Judgment and not limit the rights of the Settling Parties or  
19 Class Members; and
- 20 (o) containing such other and further provisions consistent with the terms of this  
21 Agreement to which the Settling Parties expressly consent in writing.

22 Class Counsel also will request that the Court approve an application for attorneys' fees and  
23 reimbursement of expenses (as described below).

24 **7. Stay Order.** Upon the date that the Court enters the Preliminary Approval Order,  
25 Plaintiffs and all Class Members shall be barred and enjoined from commencing, instituting or  
26 continuing to prosecute any action or any proceeding seeking damages of any kind (including but not  
27 limited to actual damages, statutory damages, and exemplary or punitive damages) in any court of  
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1 law, arbitration tribunal, administrative forum or other forum of any kind worldwide, based on the  
2 Released Claims. Nothing in this provision shall prohibit the Plaintiffs or Class Counsel from  
3 continuing to prosecute claims solely for injunctive relief or participate in discovery in the Actions.

4 **C. Releases**

5 **8. Released Claims.** Upon the Effective Date, pursuant to the Court's entry of the Final  
6 Approval Order and Judgment, the Released Claims against each and all of the Releasees shall be  
7 released and dismissed with prejudice and on the merits (without an award of costs to any party other  
8 than those provided in paragraphs 24 and 25 herein). The Releasors (regardless of whether any such  
9 Releasor ever seeks or obtains any recovery by any means, including, without limitation, by  
10 receiving any distribution from the Gross Settlement Fund) shall be deemed to have, and by  
11 operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged  
12 all Released Claims against the Releasees.

13 **9. No Future Actions Following Release.** The Releasors shall not, after the Effective  
14 Date, seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or  
15 complaint for damages of any kind (including but not limited to actual damages, statutory damages,  
16 and exemplary or punitive damages) against Defendants or any other Releasees (including pursuant  
17 to the Actions), based on the Released Claims, in any forum worldwide, whether on his or her own  
18 behalf or as part of any putative, purported or certified class.

19 **10. Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with  
20 respect to any such Released Claims. Releasors shall be permanently barred and enjoined from  
21 instituting, commencing or prosecuting any claims against the Releasees for damages of any kind  
22 (including but not limited to actual damages, statutory damages, and exemplary or punitive damages)  
23 based on the Released Claims. The Settling Parties contemplate and agree that this Agreement may  
24 be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from being  
25 initiated or maintained in any case sought to be prosecuted on behalf of any Releasors seeking  
26 damages of any kind (including but not limited to actual damages, statutory damages, and exemplary  
27 or punitive damages) based on the Released Claims.

1           **11. Waiver of California Civil Code § 1542 and Similar Laws.** In addition to the  
2 provisions of paragraph 10, the Releasors expressly acknowledge that they are familiar with and,  
3 upon final approval of this Settlement, will waive and release with respect to the Released Claims  
4 any and all provisions, rights, and benefits conferred either (a) by Section 1542 of the Civil Code of  
5 the State of California, which reads:

6           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
9 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
10 SETTLEMENT WITH THE DEBTOR.

11 (b) by any law of any and all equivalent, similar or comparable federal or state rules, regulations,  
12 laws or principles of law of any other jurisdiction that may be applicable herein, or (c) any law or  
13 principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of  
14 the release set forth in paragraph 10 hereof. The Releasors hereby expressly agree that by executing  
15 this Agreement, and for the consideration received hereunder, it is their intention to release, and they  
16 are releasing, all Released Claims, including Unknown Claims. The Releasors acknowledge that  
17 they may hereafter discover claims or facts other than or different from those which they know,  
18 believe, or suspect to be true with respect to the subject matter of the Released Claims, but the  
19 Releasors hereby expressly waive and fully, finally and forever settle and release any known or  
20 unknown, suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or  
21 non-contingent, and accrued or unaccrued claim, loss or damage with respect to the Released Claims,  
22 whether or not concealed or hidden, without regard to the subsequent discovery or existence of such  
23 additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and  
24 unaccrued losses or claims in this paragraph is contractual and not a mere recital.

25           **12. Claims Excluded from Release.** Notwithstanding the foregoing, the releases  
26 provided herein shall not release claims against Defendants solely for prospective injunctive relief  
27 for claims arising out of the facts and allegations of the Actions (including but not limited to the  
28 claims currently asserted in the *Jenkins* Action). This Settlement and the release of the Released  
Claims also is not intended to, and does not, settle, release or discharge the separate claims currently

1 asserted in: *Pugh v. National Collegiate Athletic Association*, Case No. 1:15-cv-01747 (S.D. Ind.);  
2 *Deppe v. National Collegiate Athletic Association*, Case No. 1:16-cv-00528 (S.D. Ind.); *Vassar v.*  
3 *National Collegiate Athletic Association, et al.*, Case No. 1:16-cv-10590 (N.D. Ill.); *In re National*  
4 *Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, Case No. 1:13-cv-  
5 09116 (N.D. Ill.); *Dawson v. National Collegiate Athletic Association et al.*, Case No. 16-cv-05487  
6 (N.D. Cal.); and *O'Bannon v. National Collegiate Athletic Association*, Case No. 16-15803 (9th  
7 Cir.). This Settlement and the release of the Released Claims also is not intended to, and does not,  
8 settle, release or discharge any individual personal injury claim including concussion-related claims  
9 against the NCAA and/or any member school or conference. This Agreement shall not impair or  
10 otherwise affect the right or ability of the plaintiffs in those actions to continue to prosecute those  
11 actions or any settlements reached therein. Additionally, the releases provided herein shall not  
12 release any claims to enforce the terms of this Agreement.

13 **13. Dismissal.** Subject to Court approval, all Releasors shall be bound by this  
14 Agreement, and all of their claims shall be dismissed with prejudice and released, even if they never  
15 received actual notice of the Actions or this Settlement.

16 **D. Settlement Fund**

17 **14. Settlement Payment.** In full, complete, and final settlement of any and all claims for  
18 damages in the Actions, Defendants shall pay by wire transfer in immediately available funds fifty  
19 percent (50%) of the Settlement Amount (\$104,332,202.50) into the Escrow Account within thirty  
20 (30) Days after the Court's entry of the Preliminary Approval Order, and the remaining fifty percent  
21 (50%) of the Settlement Amount within thirty (30) Days after the Court's entry of the Final Approval  
22 Order. In the event that the foregoing dates fall on a Saturday, Sunday, or U.S. bank holiday, the  
23 payments will be made on the next business day. The Settlement Amount is an "all in" number  
24 which includes, without limitation, all monetary benefits and distributions to the Class Members,  
25 attorneys' fees and expenses, escrow fees, taxes, tax expenses, and all other costs and expenses  
26 relating to the Settlement (including, but not limited to, administration costs and expenses, notice  
27 costs and expenses, and settlement costs and expenses). Under no circumstances will the Defendants  
28

1 be required to pay more than the Settlement Amount pursuant to this Agreement and the Settlement  
2 set forth herein. In no event shall any of the Defendants be liable for making any payments under  
3 this Settlement before the deadlines set forth in this Agreement.

4 **15. Disbursements Prior to Effective Date.** The Gross Settlement Fund will remain  
5 subject to the jurisdiction of the Court, until such time as it is fully distributed in compliance with the  
6 Agreement, Escrow Agreement and any applicable Court order. No amount may be disbursed from  
7 the Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and  
8 Administrative Costs, which may not exceed \$4,000,000 absent written consent of all Settling  
9 Parties, may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax  
10 Expenses (as defined in paragraph 16(b) below) may be paid from the Gross Settlement Fund as they  
11 become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses ordered by  
12 the Court may be disbursed during the pendency of any appeals which may be taken from the Final  
13 Approval Order and Judgment. Class Counsel will attempt in good faith to minimize the amount of  
14 Notice and Administrative Costs.

15 **16. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement  
16 Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-  
17 1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the  
18 provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg.  
19 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the  
20 procedures and requirements contained in such regulations. It shall be the responsibility of the  
21 Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature  
22 by all necessary parties, and thereafter to cause the appropriate filing to occur.

23 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended,  
24 and the regulations promulgated thereunder, the "administrator" shall be the  
25 Escrow Agent. The Escrow Agent shall satisfy the administrative  
26 requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a  
27 taxpayer identification number, (ii) satisfying any information reporting or  
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1 withholding requirements imposed on distributions from the Gross Settlement  
2 Fund, and (iii) timely and properly filing applicable federal, state and local tax  
3 returns necessary or advisable with respect to the Gross Settlement Fund  
4 (including, without limitation, the returns described in Treas. Reg. §1.468B-  
5 2(k)) and paying any taxes reported thereon. Such returns (as well as the  
6 election described in this paragraph) shall be consistent with the provisions of  
7 this paragraph and in all events shall reflect that all Taxes as defined in  
8 paragraph 16(b) below on the income earned by the Gross Settlement Fund  
9 shall be paid out of the Gross Settlement Fund as provided in paragraph 18  
10 hereof;

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

23 (c) In all events neither Defendants nor their counsel shall have any liability or  
24 responsibility for the Taxes or the Tax Expenses. With funds from the Gross  
25 Settlement Fund, the Escrow Agent shall indemnify and hold harmless  
26 Defendants and their counsel for Taxes and Tax Expenses (including, without  
27 limitation, Taxes payable by reason of any such indemnification). Further,  
28

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

13 **E. Administration and Distribution of Gross Settlement Fund**

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

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

- 23 (a) To pay all costs and expenses reasonably and actually incurred in connection  
24 with providing notice to the Classes in connection with administering and  
25 distributing the Net Settlement Fund to Authorized Recipients, and in  
26 connection with paying escrow fees and costs as detailed herein, if any;
- 27 (b) To pay the Taxes and Tax Expenses as defined herein;

1 (c) To pay any Fee and Expense Award (defined herein) that is allowed by the  
2 Court, subject to and in accordance with the Agreement; and

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

5 **19. Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and  
6 in accordance with the terms of this Agreement, the Distribution Plan and such further approval and  
7 further order(s) of the Court as may be necessary or as circumstances may require, the Escrow Agent  
8 shall distribute the Net Settlement Fund to Authorized Recipients, subject to and in accordance with  
9 the following:

10 (a) Each Authorized Recipient who can be identified through records shall receive  
11 his or her distribution either by check or electronic payment;

12 (b) If a Class Member who cannot be identified through records timely presents  
13 information adequately documenting his or her eligibility for a payment as an  
14 Authorized Recipient, distribution will be made to him or her;

15 (c) Except as otherwise ordered by the Court, each member of the Classes who  
16 cannot be identified through available records or fails to submit adequate  
17 records verifying entitlement to distribution, or otherwise allowed, shall be  
18 forever barred from receiving any distributions pursuant to this Agreement and  
19 the Settlement set forth herein;

20 (d) The Net Settlement Fund shall be distributed to Authorized Recipients  
21 substantially in accordance with the Distribution Plan. No funds from the Net  
22 Settlement Fund shall be distributed to Authorized Recipients until after the  
23 Effective Date; and

24 (e) All Class Members shall be subject to and bound by the provisions of this  
25 Agreement, the releases contained herein, and the Judgment with respect to all  
26 Released Claims, regardless of whether such Class Members seek or obtain  
27 any distribution from the Gross Settlement Fund or the Net Settlement Fund.



1 college or university that is a member of the Defendants as a result of claiming or receiving such  
2 distribution.

3 **F. Attorneys' Fees and Reimbursement of Expenses**

4 **24. Fee and Expense Application.** Class Counsel may submit an application or  
5 applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund  
6 for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with  
7 prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the  
8 same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be  
9 awarded by the Court.

10 **25. Payment of Fee and Expense Award.** Any amounts that are awarded by the Court  
11 pursuant to paragraph 24 (the "Fee and Expense Award") shall be paid from the Gross Settlement  
12 Fund consistent with the provisions of this Agreement.

13 **26. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and the  
14 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the  
15 Settlement set forth in this Agreement, and are to be considered by the Court separately from the  
16 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this  
17 Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal  
18 from any Fee and Expense Award or any other order relating thereto or reversal or modification  
19 thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the  
20 Judgment and the Settlement of the Actions as set forth herein. No order of the Court or  
21 modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award  
22 shall constitute grounds for cancellation or termination of this Agreement. To the extent that any  
23 award of attorneys' fees or expenses is modified or reversed on appeal, the balance shall be returned  
24 to the Escrow Account within thirty (30) days of such modification or reversal becoming final and  
25 not subject to further appellate review.

26 **27. No Liability for Fees and Expenses of Class Counsel.** Neither the Releasees nor  
27 their counsel shall have any responsibility for, or interest in, or liability whatsoever with respect to  
28

1 any payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may  
2 assert some claim thereto or any Fee and Expense Award that the Court may make in the Actions,  
3 other than as set forth in this Agreement. Similarly, neither the Releasees nor their counsel shall  
4 have any responsibility for, or interest in, or liability whatsoever with respect to allocation among  
5 Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense  
6 Award that the Court may make in the Actions.

7 **28. Final Approval.** In the event that this Agreement fails to receive Final Approval by  
8 the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties  
9 under any provision herein, the Settling Parties agree that neither Plaintiffs nor Class Counsel shall  
10 be permitted to introduce in evidence, at any hearing, or in support of any motion, opposition or  
11 other pleading in the Actions or in any other federal or state or foreign action alleging a violation of  
12 any law relating to the subject matter of the Actions, any information provided by Defendants or the  
13 Releasees in furtherance of the performance of this Agreement.

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

15 **29. Effective Date.** The Effective Date of this Agreement shall be conditioned on the  
16 occurrence of all of the following events:

- 17 (a) Defendants no longer have any right under paragraph 32(c) to terminate this  
18 Agreement or, if Defendants do have such right, they have given written  
19 notice to Class Counsel that they will not exercise such right;
- 20 (b) the Court has finally approved the Settlement as described herein, following  
21 notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal  
22 Rules of Civil Procedure, and has entered the Final Approval Order and  
23 Judgment; and
- 24 (c) the Released Claims are dismissed with prejudice pursuant to the Final  
25 Approval Order and Judgment; and
- 26 (d) the expiration of appeal periods and/or resolution of all appeals:
- 27
- 28

1 (1) If no appeal is taken from the Final Approval Order or  
2 Judgment, the date after the time to appeal therefrom has  
3 expired; or

4 (2) If any appeal is taken from the Final Approval Order or  
5 Judgment, the date after all appeals therefrom, including  
6 petitions for rehearing or reargument, petitions for rehearing *en*  
7 *banc*, and petitions for certiorari or any other form of review,  
8 have been finally disposed of, such that the time to appeal  
9 therefrom has expired, in a manner resulting in an affirmance  
10 without material modification of the relevant order or  
11 judgment.

12 **30. Occurrence of Effective Date.** Upon the occurrence of all of the events referenced  
13 in the above paragraph, any and all remaining interest or right of Defendants in or to the Gross  
14 Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund  
15 (less any Notice and Administrative Costs, Taxes, Tax Expenses or Fee and Expense Award paid)  
16 shall be transferred from the Escrow Agent to the Notice and Claims Administrator as successor  
17 Escrow Agent within ten (10) Days after the Effective Date.

18 **31. Failure of Effective Date to Occur.** If all of the conditions specified in paragraph  
19 29 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance  
20 with paragraph 36 unless the Settling Parties mutually agree in writing to proceed with this  
21 Agreement. The effectiveness of the Settlement is expressly conditioned on the Settlement being  
22 approved by the Court and any appellate court reviewing the Settlement without this Agreement  
23 being rejected or required to be modified by any Court ruling or any order resulting from an appeal  
24 or other review. If the Settlement is not finally approved by the Court and any appellate court  
25 reviewing the Settlement without modification as set forth in this Agreement, the Agreement shall  
26 terminate and cease to have any effect.

1           **32. Exclusions.** Any Class Member who wishes to opt out of the Classes must do so on or  
2 before the Exclusion/Objection Deadline specified in the notice to Class Members.

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

9           (b) Class Counsel shall cause copies of requests for exclusion from the Classes to  
10 be provided to Defendants’ counsel. No later than fourteen (14) Days after the  
11 Exclusion/Objection Deadline, Class Counsel shall provide to Defendants’  
12 counsel a complete and final list of Opt-Outs. With the motion for final  
13 approval of the Settlement, Class Counsel will file with the Court a complete  
14 list of Opt-Outs, including the name, city and state of the person requesting  
15 exclusion and the college or university he or she attended (the “Opt-Out  
16 List”). With respect to any Opt-Outs, Defendants reserve all of their legal  
17 rights and defenses, including, but not limited to, any defenses relating to  
18 whether the person qualifies as a Class Member and/or has standing to bring  
19 any claim.

20           (c) Defendants shall have the option to terminate this Agreement if the number of  
21 Opt-Outs equals or exceeds five percent (5%) of the total combined number of  
22 Class Members and Opt-Outs. After meeting and conferring with Class  
23 Counsel, Defendants may elect to terminate this Agreement by serving written  
24 notice on Class Counsel by email and overnight courier and by filing a copy of  
25 such notice with the Court no later than thirty (30) Days before the date for the  
26 final approval hearing of this Agreement, except that Defendants shall have a  
27 minimum of ten (10) Days in which to decide whether to terminate this  
28

1 Agreement after receiving the final Opt-Out List. In the event that Defendants  
2 exercise their option to terminate this Agreement: (i) this Agreement shall be  
3 null and void as to Defendants, and shall have no force or effect and shall be  
4 without prejudice to the rights and contentions of Releasees and Releasors in  
5 this or any other litigation; and (ii) the Gross Settlement Fund, plus interest  
6 thereon, shall be refunded promptly to Defendants, minus such payment (as  
7 set forth in this Agreement) of Notice and Administrative Costs and Taxes and  
8 Tax Expenses, consistent with the provisions of paragraph 15(a)-(b).

9 **33. Objections.** Class Members who wish to object to any aspect of the Settlement must  
10 file with the Court a written statement containing their objection prior to the Exclusion/Objection  
11 Deadline. Any award or payment of attorneys' fees made to the counsel of an objector to the  
12 Settlement shall be made only by Court order and upon a showing of the benefit conferred to the  
13 Classes. In determining any such award of attorneys' fees to an objector's counsel, the Court will  
14 consider the incremental value to the Classes caused by any such objection. Any award of attorneys'  
15 fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of  
16 perjury that no payments shall be made to the objector based on the objector's participation in the  
17 matter other than as ordered by the Court. Any such award shall be payable from the Gross  
18 Settlement Fund. Defendants shall have no responsibility for any such payments.

19 **34. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order**  
20 **or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order  
21 or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate  
22 review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated,  
23 modified or reversed, then this Agreement and the Settlement incorporated therein shall be cancelled  
24 and terminated; provided, however, the Settling Parties agree to act in good faith to secure Final  
25 Approval of this Settlement and to attempt to address in good faith concerns regarding the Settlement  
26 identified by the Court and any appellate court.

1           **35. Other Orders.** No Settling Party shall have any obligation whatsoever to proceed  
2 under any terms other than substantially in the form provided and agreed to herein; provided,  
3 however, that no order of the Court concerning any Fee and Expense Application, or any  
4 modification or reversal on appeal of such order, shall constitute grounds for cancellation or  
5 termination of this Agreement by any Settling Party. Without limiting the foregoing, Defendants  
6 shall have, in their sole and absolute discretion, the option to terminate the Settlement in its entirety  
7 in the event that the Judgment, upon becoming Final, does not provide for the dismissal with  
8 prejudice of the Actions and the Released Claims.

9           **36. Termination.** Unless otherwise ordered by the Court, in the event that the Effective  
10 Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to become  
11 effective for any reason, including, without limitation, in the event that Defendants elect to terminate  
12 this Agreement pursuant to paragraph 32(c), the Settlement as described herein is not finally  
13 approved by the Court, or the Final Approval Order or Judgment is reversed or vacated following  
14 any appeal taken therefrom, then:

15           (a) within five (5) Days after written notification of such event is sent by counsel  
16 for Defendants to the Escrow Agent, the Gross Settlement Fund—including  
17 the Settlement Amount and all interest earned on the Settlement Fund while  
18 held in escrow excluding only (i) Notice and Administrative Costs that have  
19 either been properly disbursed or are due and owing, (ii) Taxes and Tax  
20 Expenses that have been paid or that have accrued and will be payable at some  
21 later date, and (iii) attorneys' fees and costs that have been disbursed pursuant  
22 to Court order—will be refunded, reimbursed and repaid by the Escrow Agent  
23 to Defendants; if said amount or any portion thereof is not returned within  
24 such five (5) Day period, then interest shall accrue thereon at the rate of three  
25 percent (3%) per annum until the date that said amount is returned;

26           (b) within thirty (30) Days after written notification of such event is sent by  
27 counsel for Defendants to Class Counsel, all attorneys' fees and costs which  
28

1 have been disbursed to Class Counsel pursuant to Court order shall be  
2 refunded, reimbursed and repaid by Class Counsel to Defendants; if said  
3 amount or any portion thereof is not returned within such thirty (30) Day  
4 period, then interest shall accrue thereon at the rate of three percent (3%) per  
5 annum until the date that said amount is returned;

6 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the  
7 Gross Settlement Fund and pay the proceeds to Defendants, after deduction of  
8 any fees or expenses reasonably incurred in connection with such  
9 application(s) for refund, pursuant to such written request;

10 (d) the Settling Parties shall be restored to their respective positions in the Actions  
11 as of the Execution Date, with all of their respective claims and defenses  
12 preserved as they existed on that date;

13 (e) the Settling Parties shall request the Court to vacate any order certifying the  
14 Classes for purposes of the Settlement;

15 (f) the terms and provisions of this Agreement, with the exception of this  
16 paragraph, the termination provisions of paragraph 3 (“Certification of  
17 Classes”), and paragraphs 28 (“Final Approval”), 38 (“Federal Rule of  
18 Evidence 408”), 39 (“Use of Agreement as Evidence”), 41 (“Subsequent  
19 Events Impacting Administration”), and 46 (“Confidentiality of Settlement  
20 Negotiations”) (which shall continue in full force and effect), shall be null and  
21 void and shall have no further force or effect with respect to the Settling  
22 Parties, and neither the existence nor the terms of this Agreement (nor any  
23 negotiations preceding this Agreement nor any acts performed pursuant to, or  
24 in furtherance of, this Agreement) shall be used in the Actions or in any other  
25 action or proceeding for any purpose (other than to enforce the terms  
26 remaining in effect); and

1 (g) any judgment or order entered by the Court in accordance with the terms of  
2 this Agreement shall be treated as vacated, *nunc pro tunc*.

3 **H. No Admission of Liability**

4 **37. Final and Complete Resolution.** The Settling Parties intend the Settlement as  
5 described herein to be a final and complete resolution of all disputes between them with respect to  
6 the Actions and Released Claims and to compromise claims that are contested, and it shall not be  
7 deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation  
8 made in the Actions.

9 **38. Federal Rule of Evidence 408.** The Settling Parties agree that this Agreement, its  
10 terms and the negotiations surrounding this Agreement shall be governed by Federal Rule of  
11 Evidence 408 and any state-law equivalents and shall not be admissible or offered or received into  
12 evidence in any suit, action or other proceeding, except upon the written agreement of the Settling  
13 Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to  
14 give effect to, declare or enforce the rights of the Settling Parties with respect to any provision of this  
15 Agreement.

16 **39. Use of Agreement as Evidence.** Whether or not this Agreement becomes final or is  
17 terminated pursuant to its terms, the Settling Parties expressly agree that neither this Agreement nor  
18 the Settlement, nor any act performed or document executed pursuant to or in furtherance of this  
19 Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or  
20 evidence of, the validity of any Released Claims, any allegation made in the Actions, or any  
21 violation of any statute or law or of any wrongdoing or liability of Defendants, and evidence thereof  
22 shall not be discoverable or used, directly or indirectly, in any way, whether in the Actions or in any  
23 other proceeding; or (b) is or may be deemed to be or may be used as an admission of, or evidence  
24 of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding  
25 in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor  
26 any act performed or document executed pursuant to or in furtherance of this Agreement or the  
27 Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the  
28

1 Settlement; provided, however, that the Releasees may file this Agreement, the Preliminary  
2 Approval Order, the Final Approval Order and/or the Judgment in any action for any purpose,  
3 including, but not limited to, in order to support a defense or counterclaim based on principles of *res*  
4 *judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other  
5 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

6 **I. Miscellaneous Provisions**

7 **40. Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and  
8 the other terms of the Settlement as described herein were negotiated in good faith by the Settling  
9 Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal  
10 counsel.

11 **41. Subsequent Events Impacting Administration.** In the event that there are any  
12 developments in the effectuation and administration of this Agreement that are not dealt with by the  
13 terms of this Agreement, then such matters shall be dealt with as agreed upon by the Settling Parties,  
14 and failing agreement, as shall be ordered by the Court.

15 **42. Claims in Connection with Administration.** No Person shall have any claim  
16 against the Plaintiffs, Defendants, Defendants' Counsel, Notice and Claims Administrator, or the  
17 Releasees or their agents based on administration of the Settlement substantially in accordance with  
18 the terms of the Agreement or any order of the Court or any appellate court.

19 **43. Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of,  
20 the successors and assigns of the Settling Parties hereto. Without limiting the generality of the  
21 foregoing, each and every covenant and agreement herein by Plaintiffs and Class Counsel shall be  
22 binding upon all Class Members.

23 **44. Authorization to Enter Settlement Agreement.** The undersigned representatives of  
24 Defendants represent that they are fully authorized to enter into and to execute this Agreement on  
25 behalf of Defendants. Class Counsel, on behalf of Plaintiffs and the Classes, represent that they are,  
26 subject to Court approval, expressly authorized to take all action required or permitted to be taken by  
27 or on behalf of the Classes pursuant to this Agreement to effectuate its terms and to enter into and  
28

1 execute this Agreement and any modifications or amendments to the Agreement on behalf of the  
2 Classes that they deem appropriate.

3 **45. Notices.** All notices under this Agreement shall be in writing. Each such notice shall  
4 be given either by (a) hand delivery; (b) registered or certified mail, return receipt requested, postage  
5 pre-paid; or (c) FedEx or similar overnight courier; and, if directed to any Class Member, shall be  
6 addressed to Class Counsel at their addresses set forth below, and if directed to Defendants, shall be  
7 addressed to their attorneys at the addresses set forth below or such other addresses as Class Counsel  
8 or Defendants may designate, from time to time, by giving notice to all Settling Parties hereto in the  
9 manner described in this paragraph. Copies of all notices under this Agreement may, at the notifying  
10 party's option, be transmitted by email to the appropriate parties. Providing a copy by email shall  
11 only be in addition to, and not a substitute for, the formal mechanisms provided for in (a), (b), or (c)  
12 of this paragraph.

13 If directed to the Plaintiffs or any Class Member, address notice to:

14 Steve W. Berman  
15 Craig R. Spiegel (122000)  
16 Ashley A. Bede (*Pro Hac Vice*)  
17 HAGENS BERMAN SOBOL SHAPIRO LLP  
18 1918 Eighth Avenue, Suite 3300  
19 Seattle, WA 98101

20 Bruce L. Simon (96241)  
21 Aaron M. Sheanin (214472)  
22 Benjamin E. Shiftan (265767)  
23 PEARSON, SIMON & WARSHAW, LLP  
24 44 Montgomery Street, Suite 2450  
25 San Francisco, CA 94104  
26 *Plaintiffs' Interim Co-Lead Class Counsel*

27 If directed to Defendants, address notice to:

28 Jeffrey A. Mishkin  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036  
jeffrey.mishkin@skadden.com  
*Counsel for NCAA and Western Athletic Conference*

1 Scott P. Cooper  
2 Proskauer Rose LLP  
3 2049 Century Park East, Suite 3200  
4 Los Angeles, CA 90067  
5 scooper@proskauer.com  
6 ***Counsel for Pac-12 Conference***

7 Robert W. Fuller  
8 Robinson Bradshaw & Hinson, P.A.  
9 101 N. Tryon St., Suite 1900  
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11 rf Fuller@rbh.com  
12 ***Counsel for Southeastern Conference***

13 D. Erik Albright  
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15 300 North Greene Street, Suite 1400  
16 Greensboro, NC 27401  
17 erik.albright@smithmoorelaw.com  
18 ***Counsel for Atlantic Coast Conference***

19 Britt M. Miller  
20 Mayer Brown LLP  
21 71 South Wacker Drive  
22 Chicago, IL 60606  
23 bmill@ mayerbrown.com  
24 ***Counsel for The Big Ten Conference, Inc.***

25 Leane K. Capps  
26 Polsinelli PC  
27 Saint Ann Court  
28 2501 N. Harwood Street, Suite 1900  
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lcapps@polsinelli.com  
***Counsel for The Big 12 Conference, Inc. and Conference USA, Inc.***

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bblock@cov.com  
***Counsel for American Athletic Conference***

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rthunt@walterhav.com  
***Counsel for Mid-American Athletic Conference, Inc.***

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2                   Bryan Cave LLP  
3                   90 South Cascade Avenue, Suite 1300  
4                   Colorado Springs, CO 80903  
5                   brent.rychener@bryancave.com  
6                   ***Counsel for Mountain West Conference***

7                   Mark Cunningham  
8                   Jones Walker  
9                   201 St. Charles Avenue  
10                  New Orleans, LA 70170  
11                  mcunningham@joneswalker.com  
12                  ***Counsel for Sun Belt Conference***

13                 **46. Confidentiality of Settlement Negotiations.** The Settling Parties and their counsel  
14 shall keep strictly confidential and not disclose to any third party any non-public information  
15 regarding the Settling Parties' negotiation of this settlement and/or this Agreement. For the sake of  
16 clarity, information contained within this Agreement shall be considered public as well as any  
17 information requested by the Court in the approval process, or other such information necessary to  
18 implement this settlement.

19                 **47. No Conflict Intended; Headings.** Any inconsistency between this Agreement and  
20 the exhibits attached hereto shall be resolved in favor of this Agreement. The headings used in this  
21 Agreement are intended for the convenience of the reader only and shall not affect the meaning or  
22 interpretation of this Agreement.

23                 **48. No Party Deemed to Be the Drafter.** None of the Settling Parties hereto shall be  
24 deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute,  
25 case law, rule of interpretation or construction that would or might cause any provision to be  
26 construed against the drafter hereof.

27                 **49. Choice of Law.** This Agreement shall be considered to have been negotiated,  
28 executed and delivered, and to be wholly performed, in the State of California, and the rights and  
obligations of the Settling Parties to this Agreement shall be construed and enforced in accordance  
with, and governed by, the internal, substantive laws of the State of California without giving effect  
to that state's choice of law principles.

**50. Amendment; Waiver.** This Agreement shall not be modified in any respect except  
by a writing executed by Defendants and Class Counsel, and the waiver of any rights conferred

1 hereunder shall be effective only if made by written instrument of the waiving party. The waiver by  
2 any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other  
3 breach, whether prior, subsequent or contemporaneous, of this Agreement.

4 **51. Execution in Counterparts.** This Agreement may be executed in one or more  
5 counterparts. All executed counterparts and each of them shall be deemed to be one and the same  
6 instrument. Counsel for the Settling Parties to this Agreement shall exchange among themselves  
7 original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

8 **52. Integrated Agreement.** This Agreement constitutes the entire agreement between  
9 the Settling Parties with respect to the Settlement. This Agreement supersedes all prior negotiations  
10 and agreements and may not be modified or amended except by a writing signed by the Settling  
11 Parties and their respective counsel. The Settling Parties acknowledge, stipulate, and agree that no  
12 covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding  
13 concerning any part of the subject matter of this Agreement has been made or relied on except as  
14 expressly set forth in this Agreement. It is understood by the Settling Parties that, except for the  
15 matters expressly represented herein, the facts or law with respect to which this Agreement is entered  
16 into may turn out to be other than or different from the facts now known to each party or believed by  
17 such party to be true. Each party therefore expressly assumes the risk of the facts or law turning out  
18 to be so different, and agrees that this Agreement shall be in all respects effective and not subject to  
19 termination by reason of any such different facts or law.

20 **53. Attorneys' Fees and Costs.** Except as otherwise expressly provided herein, each  
21 party shall bear its own costs and attorneys' fees.

22 **54. Return or Destruction of Confidential Materials.** The Settling Parties agree to  
23 comply with paragraph 11 of the Protective Order entered in these Actions at the conclusion of these  
24 Actions. All agreements made and orders entered during the course of the Actions relating to the  
25 confidentiality of information shall survive this Agreement.

26 **55. Intended Beneficiaries.** No provision of this Agreement shall provide any rights to,  
27 or be enforceable by, any Person that is not one of the Plaintiffs, a Class Member, one of the  
28

1 Releasees, or Class Counsel except that this Agreement will be binding upon and inure to the benefit  
2 of the successors and assigns of the Settling Parties. No Plaintiff, Class Member or Class Counsel  
3 may assign or otherwise convey any right to enforce any provision of this Agreement.

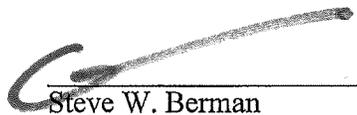
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IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have executed this Agreement as of the date first herein above written.

DATED: February 3, 2017

**Class Plaintiffs**



Steve W. Berman  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1918 Eighth Avenue, Suite 3300  
Seattle, WA 98101  
*Co-Lead Interim Class Counsel*



Bruce L. Simon  
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*Co-Lead Interim Class Counsel*

**National Collegiate Athletic Association**

Mark Emmert  
President  
National Collegiate Athletic Association  
1802 Alonzo Watford Sr.  
Indianapolis, IN 46202

**Pac-12 Conference**

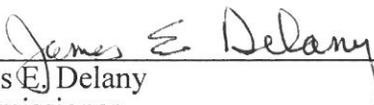
Larry Scott  
Commissioner  
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360 3rd Street, 3rd Floor  
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**The Big Ten Conference, Inc.**

  
\_\_\_\_\_  
James E. Delany  
Commissioner  
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5440 Park Place  
Rosemont, IL 60018

**The Big 12 Conference, Inc.**

\_\_\_\_\_  
Robert Bowlsby  
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**Southeastern Conference**

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Greg Sankey  
Commissioner  
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**Atlantic Coast Conference**

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**American Athletic Conference**

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Michael L. Aresco  
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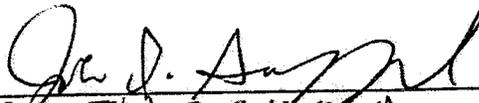
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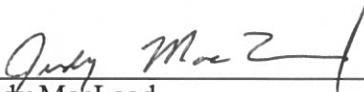


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**Conference USA**

  
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Judy MacLeod  
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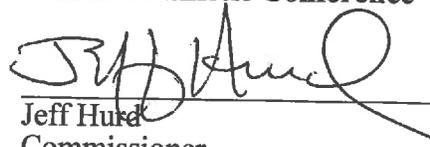
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# **EXHIBIT A**

The following Distribution Plan is designed to distribute the Net Settlement Fund. This Net Settlement Fund is referred to as the “Fund” throughout this Distribution Plan. (All defined terms used herein shall have the same meaning given to them in the Agreement.)

A. Statement of Principles

a. The following general principles summarize the provisions detailed in the more specific Detailed Application Section below (Section B), which controls the distribution of the Fund. While these general principles are consistent with the Settling Parties’ intent regarding the Settlement Agreement and Distribution Plan, they are for reference only and shall not have any effect on the interpretation of the Settlement Agreement or the Distribution Plan.

i. A Class Member will be eligible for a distribution from the Fund for each academic term during the class period in which the Class Member: (a) attended any Division I COA School (as defined below); and (b) did not receive financial aid equal to his or her full cost of attendance (“COA”), after exclusion of SAF/SAOF distributions, Pell Grants, and certain exempt grants.

ii. COA Schools are defined as those schools that provide, have provided, or have indicated by or before June 1, 2017 an intent to start providing any portion of the gap between the athletic grant-in-aid (“GIA”) allowed prior to August 1, 2015 and full COA to at least one Class Member at that school.

iii. Distributions to each eligible Class Member will be calculated either by using: (a) the actual value of the gap between the GIA he or she received and the COA calculated by his or her school; or (b) the gap between the average GIA and average COA when actual values are not reasonably available or require unreasonable efforts to process into useable form, minus (for both (a) and (b)) any non-athletic financial aid (other than SAF/SAOF distributions, Pell Grants, and certain exempt grants) the Class Member received above his or her GIA.

iv. Defendants are responsible for providing the requisite data in processed, readily useable form, *e.g.*, in Excel spreadsheets, to calculate individual differences between GIA and COA for each Class Member, as well as to identify all Class Members who received non-athletic financial aid (excluding SAF/SAOF distributions, Pell Grants, and certain exempt grants) above the Class Member’s GIA.

v. Class Members who were identified on squad lists as having an equivalency between .8 and .98, and with respect to whom Defendants are unable to provide the requisite

data regarding their receipt of non-athletic financial aid necessary to apply Dr. Rascher's algorithm as described below will be eligible to receive distributions from the Fund.

vi. Plaintiffs will make available the data used to calculate individual damages in the Rascher Reply Report (defined herein).

## B. Detailed Application

- 1) For purposes of the Agreement and this Distribution Plan, a "full athletics grant-in-aid" as that phrase is used in the definition of "Class" and "Classes" means a one-semester (approximately 0.5 equivalent on a squad list) full grant-in-aid, a one- or two-quarter (approximately 0.33 or 0.67 equivalent on a squad list) full grant-in-aid, or a full-year (identified as 0.99 to 1.0 equivalent on a squad list) grant-in-aid. For purposes of the Agreement and this Distribution Plan, an "otherwise full athletics grant-in-aid" as that phrase is used in the definition of "Class" and "Classes" includes both: (a) "a full athletics grant-in-aid" (as defined in the immediately preceding sentence) provided to a student-athlete by the NCAA member institution he or she attended after NCAA rules no longer required that a full athletics grant-in-aid be set at a level below full cost of attendance regardless of whether it included the full cost of attendance; and (b) an athletics grant-in-aid that was not a full grant-in-aid (as defined in the immediately preceding sentence) or an otherwise full athletics grant-in-aid (as defined in clause (a) of this sentence) only because it was reduced by the applicable NCAA member institution by an amount of non-athletically related aid (excluding Pell Grants and the "Exempted Government Grants" identified in NCAA Division I Bylaw 15.2.5.1) received by the student-athlete. The student-athletes whose grants-in-aid are described in the immediately preceding clause (b) will be determined using the algorithm described by Dr. Daniel Rascher in paragraph 96 of the Expert Reply Report of Daniel A. Rascher on Damages Class Certification, as corrected, dated October 14, 2016 (the "Rascher Reply Report").
- 2) Authorized Recipients under this Distribution Plan include only those Class Members who attended a school that that provides, has provided, or has indicated by or before June 1, 2017 an intent to start providing any portion of the gap between the athletic grant-in-aid ("GIA") allowed prior to August 1, 2015 and full COA to at least one Class Member at that school.
- 3) All Authorized Recipients will receive the same pro rata payout for each dollar of "Gap" (defined in paragraph 4, below) in financial aid they received relative to the

full cost of attendance in each academic year in which they received a full grant-in-aid, measured annually per school. The Gap will be measured net of offset for non-athletically related aid received by the Authorized Recipient above his or her athletically related aid (as demonstrated by data identified in subparagraphs 3(a)-(b) below) (hereinafter, “Gap Offsets”), but not net of any distributions from the SAF/SAOF or any Pell Grants or “Exempted Government Grants” identified in NCAA Division I Bylaw 15.2.5.1.

- a. Where discovery has already provided data showing the amount of non-athletically related aid, and the data have been processed as part of the class certification process (i.e., for the four example conferences referenced in the Rascher Reply Report), those data may be used to calculate Gap Offsets.
  - b. All other Gap Offsets will be limited to calculations based on data produced by Defendants or their member schools identifying the individuals subject to Gap Offsets and their respective amounts. Defendants will calculate the Gap Offsets using the formula developed by Dr. Daniel Rascher (as described in section 7 of the Rascher Reply Report).
- 4) For each academic year, the “Gap” for Authorized Recipients will be measured as the difference between each Authorized Recipient’s athletically related aid and cost of attendance as reported in the data produced by Defendants or their member schools. If such information is not available for any particular Authorized Recipient, the Gap will be measured as the straight average of that school’s listed in-state Gap and listed out-of-state Gap, per the NCAA Membership Financial Reporting System (“MFRS”) data produced, unless the Defendants or their member schools provide data that allows for a distinction between in- and out-of-state Authorized Recipients.
- a. For those schools for which Defendants distinguish between in-state Authorized Recipients and out-of-state Authorized Recipients, the Gap will be defined for in-state students based on the in-state Gap per MFRS and the Gap for out-of-state students will be defined based on the out-of-state Gap per MFRS.
  - b. For Authorized Recipients who meet the criteria for a full grant-in-aid for a given academic year based on receiving approximately 0.5 equivalent on a squad list, the annual Gap figure will be divided by 2. For Authorized

Recipients who meet the criteria for a full-grant-in-aid for a given academic year based on receiving approximately 0.33 or 0.67 equivalent on a squad list, the annual Gap figure will be divided by 3 or 1.5, respectively.

- 5) Recovery for Authorized Recipients is limited to the academic years 2009-10 through 2015-16. The Gap values for academic years 2010-11 through 2015-16 will be calculated at full value for all Authorized Recipients. For academic year 2009-10, all calculated Gap values will be reduced by 75% to account for the start of the class period which begins approximately 75% through the 2009-10 academic year. For academic year 2009-10, no Gap value shall be calculated for Division I FBS Football Class Members who received a one-semester (approximately 0.5 on a squad list) full grant-in-aid, or a one-quarter (approximately 0.33 on a squad list) full grant-in-aid, as they would not have been receiving athletic aid during the Class period.
- 6) The allocation method will result in:
  - a. Every Authorized Recipient will receive an identical percentage of his or her Gap calculated as described above as every other Authorized Recipient.
    - i. Thus, for example, if one Authorized Recipient in a given year experienced a \$2,000 Gap, then his/her recovery will be identical to the recovery for all other Authorized Recipients with a \$2,000 Gap in any given year.
    - ii. If one Authorized Recipient experienced a \$2,000 Gap in any given year and another experienced a \$4,000 Gap in any given year, the second Authorized Recipient's recovery for that year will be twice the size of the first Authorized Recipient's recovery for the year in question.
  - b. To the extent the Gap calculation is based on the average values for two Authorized Recipients on the same team, in the same year, such Authorized Recipients will receive the same recovery, unless:
    - i. One of those student-athletes received identified non-athletically related aid above his or her athletically related aid (excluding SAF/SAOF distributions, Pell Grants and the "Exempted Government Grants" identified in NCAA Division I Bylaw 15.2.5.1),

in which case that student-athlete's recovery will be reduced by the percentage of his/her Gap that was covered by his/her Gap Offset.

- ii. Defendants or their member schools provide data for a team's student-athletes' in-state vs. out-of-state status, in which case, all in-state team members in a given year will recover identical amounts, and all out-of-state team members will recover identical amounts, but the two subsets' recoveries will differ if the school's in-state and out-of-state Gap differed.
- 7) A Class Member who is shown to have received non-athletically related aid (excluding SAF/SAOF distributions, Pell Grants and the "Exempted Government Grants" identified in NCAA Division I Bylaw 15.2.5.1) that covered his/her entire Gap in a given academic year would receive no recovery for that year, and therefore, would not be an Authorized Recipient for that year.
  - 8) A portion of the Fund, not to exceed \$2,400,000.00, shall be set aside by the Escrow Agent for the period referenced in paragraph 9 as a reserve for claims by (1) Class Members who were not, but contend they should have been, identified as Authorized Recipients through this Distribution Plan, and (2) Authorized Recipients who contend they should have been entitled to a larger recovery under this Distribution Plan.
  - 9) No sooner than 90 days after the distribution of recoveries to Authorized Recipients, any remaining amounts in the Fund, including any unused reserves described in paragraph 8, will be attempted to be redistributed in the following manner.
    - a. If the unclaimed remaining amounts in the Fund are large enough to distribute across all locatable Authorized Recipients, such amounts will be distributed to locatable Authorized Recipients in the same proportionate shares as the first round of distribution.
    - b. Alternatively, if there are insufficient funds to economically redistribute in that manner, redistribution may occur within schools in proportionate shares to other locatable Authorized Recipients at the same school, based on unclaimed monies for each school. If there are insufficient funds to economically redistribute in that manner, any unclaimed amounts will escheat to the state of the relevant Class Member's most recent known address.

- c. In any event, no Authorized Recipient will receive a distribution from the Fund for any given academic year that exceeds his or her Gap for that year. If the distributions contemplated by this paragraph 9 would cause such a circumstance to occur, any excess amount will escheat to the state of the relevant Authorized Recipient's most recent known address.

# **EXHIBIT B**

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**If You Played NCAA Division I Men’s or Women’s Basketball or FBS Football between March 5, 2010 and the Date of Preliminary Approval of this Settlement, You May Be a Class Member Entitled to Compensation.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**If you are a Class Member, your legal rights are affected whether you act or do not act.**

**Please Read this Notice Carefully**

This Notice provides information about a proposed class action Settlement concerning National Collegiate Athletic Association (“NCAA”) Division I collegiate athletes who played men’s or women’s basketball, or Football Bowl Subdivision (“FBS”) football between March 5, 2010 and the date of preliminary approval of the Settlement, and who received from an NCAA member institution for at least one academic term (such as a semester or quarter) (1) a full athletics grant-in-aid required by NCAA rules to be set at a level below the cost of attendance, and/or (2) an otherwise full athletics grant-in-aid.

The lawsuit involves claims by student-athletes who have received a scholarship package, referred to as a grant-in-aid, or GIA, since March 5, 2010. The student-athletes argued for monetary damages based on the difference in athletically related aid they could have received under new NCAA rules allowing for athletically related aid up to the full “cost of attendance,” typically a few thousand dollars more per academic year. The defendants deny they did anything wrong. The Court has not ruled on the merits of these claims.

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>Participate in the Settlement and Receive Benefits</b>	<ul style="list-style-type: none"> <li>• Eligible Class Members will receive a cash distribution with no claim form required.</li> </ul>
<b>Exclude Yourself from the Settlement</b>	<ul style="list-style-type: none"> <li>• Excluding yourself means <b><u>you will receive no cash distribution.</u></b></li> <li>• You must follow the instructions for requesting exclusion found in paragraph 19 and at the case website at <b><u>www.GrantInAidSettlement.com</u></b></li> </ul>
<b>Object to the Settlement</b>	<ul style="list-style-type: none"> <li>• Write to the Court about why you do not like the Settlement.</li> <li>• You cannot object in order to ask the Court for a higher cash distribution for yourself personally, although you can object to the distribution terms (or any other terms) that generally apply to the Class.</li> <li>• More information about how to object can be found in paragraph 24 and at the case website at <a href="http://www.GrantInAidSettlement.com">www.GrantInAidSettlement.com</a>.</li> </ul>
<b>Go to a Hearing</b>	<ul style="list-style-type: none"> <li>• The Court will hold a hearing on <span style="background-color: yellow;">      </span>, 2017 at <span style="background-color: yellow;">      </span>.</li> </ul>

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"><li>• You may ask to speak to the Court about the fairness of the Settlement.</li></ul> |
|--|---|

## WHAT THIS NOTICE CONTAINS

{INSERT TOC}

### BASIC INFORMATION

#### 1. What is this Notice and why should I read it?

This Notice is to inform you of the proposed Settlement of part of an antitrust lawsuit titled *In re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, Case No. 4:14-md-02541-CW, brought on behalf of current and former NCAA Division I student-athletes and pending before Judge Claudia A. Wilken of the United States District Court for the Northern District of California. You need not live in California to receive a distribution under the Settlement.

The Court has granted preliminary approval of the Settlement and has set a final hearing to take place on \_\_\_\_\_, 2017 at \_\_\_:\_\_\_ a.m. in the \_\_\_\_\_ United States Courthouse, 1301 Clay Street, Courtroom 2 – 4th Floor, Oakland, CA 94612 to determine if the Settlement is fair, reasonable and adequate, and to consider the request by Class Counsel for Attorneys’ Fees and Expenses and Service Awards (defined herein) for the Class Representatives (defined herein).

If you are a potential Class Member, you have a right to know about the proposed Settlement and about all your options before the Court decides whether to give “final approval”. If the Court gives final approval of the Settlement, distributions will be made to known eligible Class Members, but only after any objections and appeals are resolved.

This Notice explains the litigation, your legal rights, what distribution amounts are available under the Settlement, who is eligible for them, and how to get them.

#### 2. What is the Litigation about?

Plaintiffs include current and former student-athletes that have challenged the NCAA’s former rules capping athletically related financial aid packages for student-athletes, arguing new rules allow for athletically related aid up to the full cost of attendance. Plaintiffs allege that Defendants conspired to suppress competition by agreeing to and enforcing restrictive NCAA bylaws that cap the amount of athletically related aid and other benefits to student-athletes. Defendants are and continue to be public and open about their participation in NCAA activities. The student-athletes asked the court to certify three classes of student-athletes who have received a financial aid package, referred to as a grant-in-aid, or GIA, since March 5, 2010 — a class of Division I FBS football student-athletes, a class of Division I men’s basketball student-athletes and a class of Division I women’s basketball student-athletes. The Defendants deny the Plaintiffs’ claim that Defendants violated the antitrust laws or did anything wrong. The Court has not ruled on the merits of these claims.

#### 3. What is a Class Action and who are the Parties?

In a class action lawsuit, one or more people, called “Class Representatives,” sue on behalf of people who have similar claims. All these people together are Plaintiffs to the litigation and

are referred to as the “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class (see Section 19).

The Defendants, or parties being sued in the cases, are the NCAA, the Pac-12 Conference, The Big Ten Conference, Inc., the Big 12 Conference, Inc., Southeastern Conference, Atlantic Coast Conference, American Athletic Conference, Conference USA, Mid-American Athletic Conference, Inc., Mountain West Conference, Sun Belt Conference, and Western Athletic Conference (collectively, “Defendants”). Together, the Class Representatives and the Defendants are called the “Parties.”

#### 4. Why is there a Settlement?

The Court did not decide in favor of any Plaintiff or any Defendant on the legal claims being resolved here. Instead, all sides agreed to a Settlement, which avoids the risk and cost of a trial, but still provides relief to the people affected. The Class Representatives and their attorneys think that the Settlement is in the best interests of Class Members and that it is fair, adequate, and reasonable.

#### WHO IS IN THE SETTLEMENT?

To see if you are affected by the proposed Settlement, you first have to determine if you are a Class Member.

#### 5. How do I know if I am part of the Settlement? What are the Class definitions?

If you fall under one of the Class definitions below for the Settlement, you are a Class Member in the Settlement and may be eligible for a cash distribution from the settlement fund. *See Paragraphs 11–12 for more detail about how distributions will be calculated.*

**Division I FBS Football Class:** All current and former NCAA Division I Football Bowl Subdivision (“FBS”) football student-athletes who, at any time from March 5, 2010 through the date of Preliminary Approval (defined herein) of this Settlement, received from an NCAA member institution for at least one academic term (such as a semester or quarter) (1) a full athletics grant-in-aid required by NCAA rules to be set at a level below the cost of attendance, and/or (2) an otherwise full athletics grant-in-aid.

**Division I Men’s Basketball Class:** All current and former NCAA Division I men’s basketball student-athletes who, at any time from March 5, 2010 through the date of Preliminary Approval of this Settlement, received from an NCAA member institution for at least one academic term (such as a semester or quarter) (1) a full athletics grant-in-aid required by NCAA rules to be set at a level below the cost of attendance, and/or (2) an otherwise full athletics grant-in-aid.

**Division I Women’s Basketball Class:** All current and former NCAA Division I women’s basketball student-athletes who, at any time from March 5, 2010 through the date of Preliminary Approval of this Settlement, received from an NCAA member institution for at least one academic term (such as a semester or quarter) (1) a full athletics grant-in-aid required by NCAA rules to be set at a level below the cost of attendance, and/or (2) an otherwise full athletics grant-in-aid.

Excluded from the Classes are the Defendants, and their officers, directors, legal representatives, heirs, successors, and wholly or partly-owned subsidiaries or affiliated companies, Class Counsel and their employees, and their immediate family members, and the

judicial officers, and associated court staff assigned to the cases involved in this Settlement and their immediate family members.

The date of Preliminary Approval was \_\_\_\_\_, 2017.

All of the official definitions of terms in this Notice are set out in detail in the Settlement Agreement, which is posted at [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com).

**6. What is a “Grant-in-Aid or GIA Scholarship”?**

For purposes of this Notice, athletic grant-in-aid is athletically-related financial aid provided by NCAA Division I member institutions to participating student-athletes.

**7. What is Cost of Attendance (“COA”)?**

COA is the estimate of the total cost for a student to attend a particular college or university for an academic year (fall through spring) in accordance with guidelines established by federal law. It includes, among other things, tuition and fees, books and supplies, room and board, transportation and certain kinds of personal expenses. Colleges and universities may adjust their COAs year to year to reflect changes in expenses.

Here are some COAs that colleges and universities reported for the 2016-2017 academic year. These costs are for undergraduates living on campus and enrolled in liberal arts programs.

**Private colleges and universities:**

- Cornell University (Ithaca, NY) – \$67,613
- Duke University (Durham, NC) – \$69,959
- Grinnell College (Grinnell, IA) – \$63,438
- Rice University (Houston, TX) – \$60,518
- Stanford University (Palo Alto, CA) – \$67,291
- Swarthmore College (Swarthmore, PA) – \$66,110

**Public universities (COAs for state residents):**

- University of Arizona (Tucson) – \$28,217
- University of California (Berkeley) – \$34,972
- University of Idaho (Moscow) – \$20,640
- University of North Carolina (Chapel Hill) – \$24,630
- University of Massachusetts (Amherst) – \$29,997
- University of Michigan (Ann Arbor) – \$28,776

**8. The core claim in this case.**

The central issue in the case is Plaintiffs’ allegation that the Defendants violated the antitrust laws by agreeing to and enforcing restrictive NCAA bylaws that cap the amount of athletically related financial aid and other benefits to student-athletes, including by capping athletic scholarships at a defined GIA amount that was lower than the full COA. Plaintiffs allege that absent the Defendants’ agreement to those NCAA bylaws, schools would have provided at least the full COA. The Defendants have denied the plaintiffs’ allegations that Defendants have violated the antitrust laws. In January 2015, after this lawsuit was started, the NCAA amended its bylaws to allow colleges and universities to provide up to COA in athletically related aid. Most of the schools in the conferences named in this lawsuit began providing full COA under the amended bylaws.

**9. I'm still not sure if I'm included.**

If you are still not sure whether you are included, you can get free help by contacting the Settlement Administrator using any of the methods listed in Section 29 below, or by visiting [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com).

You are not required to pay anyone to assist you in obtaining information about the Settlement.

**SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY**

**10. What does the proposed Settlement provide?**

The total Settlement amount provides for Defendants to pay \$208,664,445.00. As calculated by Plaintiffs' expert economist, this amount provides distribution to all eligible Class Members of nearly the full amount of the difference between the GIA prior to January, 2015 and the COA at each of their respective schools. Eligible Class Members will receive distributions under the Settlement with no claim form required.

**11. Distributions will be calculated based on the GIA – COA gap.**

For Class Members who attended schools that provide, have provided, or have indicated by or before June 1, 2017 an intent to start providing any portion of the gap between the athletic grant-in-aid allowed prior to August 1, 2015 and full cost of attendance to at least one Class Member at that school, each Class Member will receive a distribution that is calculated specifically to his or her school. The distribution will be calculated either by using: (a) the actual value of the gap between the athletically related aid he or she received and the COA calculated by his or her school; or (b) the gap between the average grant-in-aid and average COA when actual values are not reasonably available or require unreasonable efforts to process into useable form, minus (for both (a) and (b)) any non-athletic financial aid (other than SAF/SAOF distributions, Pell Grants, and certain exempt grants) the Class Member received above his or her GIA (the "gap"). So for example, to the extent the gap calculation is based on the average values for particular schools (for instance, University A and College B), each Class Member who attended University A would receive the same distribution amount for a given full academic year as every other Class Member who attended University A that year, and all Class Members who attended College B would receive the same amount for a given academic year as all other College B Class Members for that year (except, in both examples, for Class Members who received non-athletically related financial aid). But Class Members who attended University A would receive a higher average amount than those who attended College B if the average gap at University A was higher than at College B during that year. The school-specific gap calculation will be the average of each school's listed "in-state" gap and listed "out-of-state" gap, unless Defendants provide data that allows for a distinction between in- and out-of-state Class Members (in which case the gap calculation will account for in- or out-of-state cost differences). Distributions to Class Members who only attended school for part of an academic year will be adjusted lower accordingly.

For a Class Member who received full COA for an academic year from additional non-athletic financial aid (other than SAF/SAOF distributions, Pell Grants, and certain exempt grants), he or she will not receive any distribution because he or she already received his or her full COA. But if a Class Member had only a portion of his or her gap covered from additional non-athletic financial aid (other than SAF/SAOF distributions, Pell Grants, and certain exempt grants), he or she would receive a distribution that is proportional to his or her gap not covered by this aid (if Defendants provide data that allows for the calculation).

Finally, if there are sufficient unclaimed funds, they will be distributed to locatable Class Members in the same proportionate shares as the first round of distribution if feasible. Alternatively, if there are insufficient funds to feasibly redistribute to all Class Members, then any funds unclaimed by a Class Member would be redistributed within schools in proportionate shares to other locatable Class Members at the same school, based on unclaimed monies for each school. If there are insufficient funds to economically redistribute in that manner, any unclaimed amounts will escheat to the state of the relevant Class Member's most recent known address.

In any event, no Class Member will receive a distribution from the fund for any given year that exceeds his or her gap for that year. If the distributions of unclaimed funds would cause such a circumstance to occur, any excess amount will escheat to the state of the relevant Class Member's most recent known address.

## **12. Distribution eligibility.**

A Class Member will be eligible for distribution for each school term in the class period during which the Class Member: (a) attended any Division I COA School; and (b) did not receive full cost of attendance (excluding SAF/SAOF distributions, Pell Grants, and certain other exempt grants).

COA Schools are defined as those schools that provide, have provided, or have indicated by or before June 1, 2017 an intent to start providing any portion of the gap between the GIA allowed prior to August 1, 2015 and full cost of attendance to at least one Class Member at that school. **THE COA SCHOOLS ARE LISTED AT [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com) AND WILL BE UPDATED PERIODICALLY UP UNTIL THE LAST DAY TO OPT OUT, WHICH IS \_\_\_\_\_, 2017** (see paragraph 19 below for more information on opting out).

An eligible Class Member's distribution will be calculated either by using: (a) the actual value of the gap between the athletically related aid he or she received and the COA calculated by his or her school; or (b) the gap between the average grant-in-aid and average COA when actual values are not reasonably available or require unreasonable efforts to process into useable form, minus (for both (a) and (b)) any non-athletic financial aid (other than SAF/SAOF distributions, Pell Grants, and certain exempt grants) the Class Member received above his or her GIA.

## **13. How much will my distribution be?**

The average recovery across all Class Members has not been precisely determined at this stage and will depend on which school the Class Member attended, the average yearly GIA and COA value for each school, and the number of years the Class Member received a GIA. The range of average distribution for Class Members who played his or her sport for four years is currently estimated to be approximately \$5,000 to \$7,500.

## **14. Why is my school included or not included as a COA School?**

Plaintiffs' evidence showed that some schools (but not necessarily all) would have more likely than not provided athletically related aid above GIA during the class period if allowed to do so. As a result, and as part of the Settlement, Class Members are eligible for distribution who attended schools that provide, have provided, or have indicated by or before June 1, 2017 an intent to start providing any portion of the gap between the amount of GIA allowed prior to

August 1, 2015 and full COA to at least one Class Member at that school. For other schools, where the evidence indicated it was not more likely than not the schools would have provided athletically related aid above GIA, Class Members who attended those schools will not be eligible for distribution. The evidence included Plaintiffs' statistical model as well as whether there was evidence the school had provided athletically related aid above GIA when allowed to do so or stated a specific commitment to do so in the future.

## **HOW TO GET A DISTRIBUTION FROM THE SETTLEMENT**

### **15. How can I get a distribution?**

Each eligible Class Member will be directly notified and a check mailed to him or her, with no claim form required to be submitted and no right of any reversion of funds to Defendants.

### **16. When will I get a distribution?**

The distributions will be mailed to eligible Class Members after the Court grants "final approval" of the Settlement and after any appeals are resolved.

### **17. What am I giving up to receive a distribution from the Settlement?**

Unless you exclude yourself from the Settlement, you are staying in the Class or Classes described in the Settlement, and that means that you can't sue or be part of any other lawsuit against the Defendants about the legal claims being settled in the Settlement. It also means that all of the Court's orders will apply to you and legally bind you.

The specifics of the release of claim are set out in more detail in the Settlement Agreement, which is posted at the case website at [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com). The Settlement Agreement describes the release in specific legal terminology. Talk to Class Counsel (see the section on "The Lawyers Representing You," Section 22 below) or your own lawyer if you have questions about the release or what it means.

### **18. Will getting a distribution from the Settlement affect my NCAA eligibility?**

No. Your request for or receipt of any distribution under this Settlement **will NOT affect your eligibility to compete in NCAA athletics if you are otherwise eligible.**

## **HOW TO REQUEST EXCLUSION FROM THE SETTLEMENT**

If you don't want a distribution from the Settlement, and instead you want to keep the right to sue the Defendants on your own about the legal issues in this litigation, then you must take steps to get out of the Settlement. This is called excluding yourself—or "opting out"—of the Class.

### **19. How do I "opt out" or request exclusion from the Settlement?**

To exclude yourself from the Settlement, you must send a letter to the Settlement Administrator by first-class mail with a clear statement that you want to be excluded. Be sure to include your name, address, telephone number, and your signature.

Requests for exclusion must be submitted individually by a Class Member or his legally authorized representative, and not on behalf of a group or class of persons. If you have a personal lawyer, your lawyer may assist you with your exclusion request, but you must personally sign it unless the lawyer is also your Legally Authorized Representative.

You must mail your exclusion request, postmarked no later than       , 2017, to the following address:

NCAA GIA Settlement Administrator

c/o KCC Gilardi

P.O. Box \_\_\_\_\_

Providence, RI \_\_\_\_\_ - \_\_\_\_\_

You can't exclude yourself by phone, by e-mail, or on the website. If you ask to be excluded from the Settlement, you will not get any money from the Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the lawsuit. You may be able to sue (or continue to sue) the Defendants in the lawsuit.

**20. If I don't exclude myself, can I sue the Defendants for the same thing later?**

No. Unless you exclude yourself from the Settlement, you give up any right to sue the Defendants for the claims that are resolved by the Settlement. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. Remember, the exclusion deadline is \_\_\_\_\_, 2017.

**21. If I exclude myself, can I get a distribution from the Settlement?**

No. If you exclude yourself from the Settlement, you will not be able to get any money from the Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Settlement.

**THE LAWYERS REPRESENTING YOU**

**22. Do I have a lawyer in this case?**

Yes. The Court has appointed the law firms listed below to represent you and other Class Members in the Settlement. These lawyers are called Class Counsel. You will not be charged for services performed by Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you want to contact Class Counsel about this Settlement, they can be reached through the Settlement Administrator by calling 1-877-XXX-XXXX or sending an email to [info@GrantInAidSettlement.com](mailto:info@GrantInAidSettlement.com).

CLASS COUNSEL	
<b>HAGENS BERMAN SOBOL SHAPIRO LLP</b> Steve W. Berman (Pro Hac Vice) 1918 Eighth Avenue, Suite 3300 Seattle, WA 98101  www.GrantInAidSettlement.com	<b>PEARSON, SIMON &amp; WARSHAW, LLP</b> Bruce L. Simon (96241) 44 Montgomery Street, Suite 2450 San Francisco, CA 94104

**23. How will the lawyers be paid? Are the Class Representatives being paid?**

Class Counsel will ask the Court for an award of attorneys' fees and expenses in the Settlement (the "Fee and Expenses Award"), which will be paid from the Settlement Fund after Final Approval is granted. Class Counsel will ask the Court for the Fee and Expenses Award based on their services in this litigation, not to exceed 25% of the \$208,664,445.00

Settlement Fund. Any payment to the attorneys will be subject to Court approval, and the Court may award less than the requested amount.

Service Awards are intended to compensate Class Representatives for work undertaken on behalf of a class. Based on the contributions and commitments by Class Representatives, the Settlement Agreement contemplates a \$20,000 award to each Class Representative. Any Service Award will be subject to Court approval, and the Court may award less than the requested amount.

The Fee and Expenses Award, and Service Awards that the Court orders, plus the costs to administer the Settlement, will come out of the Settlement Fund.

When Class Counsel’s motion for fees, expenses, and service awards is filed, it will be available at [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com). The motion will be posted on the website 14 days before the deadline for requests for exclusion or objections to the Settlement and you will have an opportunity to comment on the motion.

**OBJECTING TO THE SETTLEMENT**

**24. How do I tell the Court I do not like the Settlement?**

If you’re a Class Member (or a Class Member’s Legally Authorized Representative), and you haven’t excluded yourself from the Settlement, you can object to the proposed Settlement if you don’t like it. However, you cannot object if you have requested exclusion or “opted out.” In other words, you must stay in the case as a Class Member in order to object to the Settlement.

You can object if you don’t like any part of the proposed Settlement, including the Settlement’s Distribution Plan, or the request for the attorneys’ Fee and Expenses Award, or the request for Service Awards to the Class Representatives. You can give reasons why you think the Court should not approve any or all of these items, and the Court will consider your views.

You cannot object in order to ask the Court for a higher distribution for yourself personally, although you can object to the distribution terms that apply generally to the Class. The Court can only approve or disapprove the Settlement, but cannot change how much money you are personally eligible to receive from the Settlement. This means that if the Court agrees with your objection, the case won’t be settled unless the parties agree to change the terms and the Court approves those changes.

To object, you must (a) mail your objection to the Settlement Administrator and (b) file it with the Court. To be timely, your objection must be mailed to the Settlement Administrator so that it is postmarked by \_\_\_\_ \_\_, 2017, and must be filed with the Court by no later than \_\_\_\_ \_\_, 2017 at the following addresses:

<b>Settlement Administrator</b>	NCAA GIA Settlement Administrator c/o KCC Gilardi P.O. Box _____ Providence, RI _____-_____
<b>The Court</b>	District Judge Claudia Wilken United States Courthouse

	1301 Clay Street, Courtroom 2, 4th Floor Oakland, CA 94612
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**NOTE:** You may mail your objection to the Court, but it must be received by the Court and filed by       , 2017. See [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com) for more information on how to object to the Settlement.

**25. What’s the difference between objecting and excluding yourself?**

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object to the Settlement only if you stay in the Settlement. Excluding yourself is telling the Court that you don’t want to be part of the Settlement. If you exclude yourself, you have no basis to object, because the case no longer affects you. If you object, and the Court approves the Settlement anyway, you will still be legally bound by the result.

**THE COURT’S FAIRNESS HEARING**

**26. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a “Fairness Hearing” (also known as a “Final Approval Hearing”) to decide whether to finally approve the proposed Settlement. The Fairness Hearing will be on              , 2017, at   :     .m. before Judge Claudia Wilken, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612.

At the Fairness Hearing, the Court will consider whether the proposed Settlement and all of its terms are adequate, fair, and reasonable. If there are objections, the Court will consider them. The Court may listen to people who have asked for permission to speak at the Fairness Hearing and have complied with the other requirements for objections explained in Section 24. The Court may also decide how much to award Class Counsel for fees and expenses, and whether and how much to award the Class Representatives for representing the Class.

At or after the Fairness Hearing, the Court will decide whether to finally approve the proposed Settlement. There may be appeals after that. There is no set timeline for either the Court’s final approval decision, or for any appeals that may be brought from that decision, so it is impossible to know exactly when the Settlement will become final.

The Court may change deadlines listed in this Notice without further notice to the Class. To keep up on any changes in the deadlines, please contact the Settlement Administrator or visit the case website at [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com).

**27. Do I have to go to the Fairness Hearing?**

No. Class Counsel will answer any questions asked by the Court.

If you send an objection, you don’t have to come to Court to talk about it. So long as you mailed your written objection on time and complied with the other requirements for a proper objection, the Court will consider it. You may also pay another lawyer to attend, but it’s not required.

**28. May I speak at the Fairness Hearing?**

Yes. If you submitted a proper written objection to the Settlement, you or your lawyer may, at your own expense, come to the Fairness Hearing and speak. To do so, you must follow the procedures set out in Section 24. You must also file a Notice of Intention to Appear, which must be mailed to the Settlement Administrator so that it is postmarked no later than              ,

2017, and it must be filed with the Clerk of the Court by that same date. If you intend to have a lawyer appear on your behalf, your lawyer must enter a written notice of appearance of counsel with the Clerk of the Court no later than \_\_\_\_\_, 2017. See Section 24 for the addresses of the Settlement Administrator and the Court. You cannot speak at the Fairness Hearing if you excluded yourself.

### GETTING MORE INFORMATION

#### 29. How do I get more information about the Settlement?

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement, available at [www.GrantInAidSettlement.com](http://www.GrantInAidSettlement.com).

YOU MAY OBTAIN ADDITIONAL INFORMATION BY	
<b>CALLING</b>	Call the Settlement Administrator toll-free at 1-877-XXX-XXXX to ask questions and receive copies of documents.
<b>E-MAILING</b>	Email the Settlement Administrator at <a href="mailto:info@GrantInAidSettlement.com">info@GrantInAidSettlement.com</a>
<b>WRITING</b>	Send your questions by mail to NCAA GIA Settlement Administrator c/o KCC Gilardi P.O. Box _____ Providence, RI _____ - _____
<b>VISITING THE SETTLEMENT WEBSITE</b>	Please go to <a href="http://www.GrantInAidSettlement.com">www.GrantInAidSettlement.com</a> , where you will find answers to common questions and other detailed information to help you.
<b>REVIEWING LEGAL DOCUMENTS</b>	You can review the legal documents that have been filed with the Clerk of Court in these cases at: United States District Court, Northern District of California 1301 Clay Street Oakland, CA 94612
<b>ACCESSING PACER</b>	You can access the Court dockets in these cases through the Court's Public Access to Court Electronic Records (PACER) system at <a href="https://ecf.cand.uscourts.gov">https://ecf.cand.uscourts.gov</a> .

**PLEASE DO NOT CALL THE JUDGE OR THE COURT CLERK TO ASK QUESTIONS ABOUT THE LAWSUITS, THE SETTLEMENT, OR THIS NOTICE.**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

No. 4:14-md-2541-CW

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT

This Document Relates to:

COMPLAINT FILED: March 5, 2014

ALL ACTIONS EXCEPT

*Jenkins v. Nat'l Collegiate Athletic Ass'n*  
Case No. 14-cv-0278-CW

1 Now before the Court is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class  
2 Action Settlement. The Court has considered the parties’ papers, relevant legal authority, and the  
3 record in this case, and the Court hereby GRANTS the Motion for Preliminary Approval.

4 WHEREAS, Plaintiffs, on behalf of themselves and on behalf of the proposed Settlement  
5 Classes, and Defendants, National Collegiate Athletic Association, Pac-12 Conference, The Big Ten  
6 Conference, Inc., The Big 12 Conference, Inc., Southeastern Conference, Atlantic Coast Conference,  
7 American Athletic Conference, Conference USA, Mid-American Athletic Conference, Inc.,  
8 Mountain West Conference, Sun Belt Conference, and Western Athletic Conference (collectively,  
9 “Defendants”) have agreed, subject to Court approval, to settle the above captioned litigation upon  
10 the terms set forth in the Settlement Agreement;

11 WHEREAS, this Court has reviewed and considered the Settlement Agreement entered into  
12 among the parties, as well as all exhibits thereto, the record in this case, the briefs and arguments of  
13 counsel, and supporting exhibits;

14 WHEREAS, Plaintiffs have moved, unopposed, for an order granting preliminary approval of  
15 the Settlement Agreement;

16 WHEREAS, this Court preliminarily finds, for purposes of settlement only, that the action  
17 meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure;

18 WHEREAS, all defined terms contained herein shall have the same meanings as set forth in  
19 the Settlement Agreement;

20 NOW, THEREFORE, IT IS HEREBY ORDERED:

21 1. The Court does hereby preliminarily approve the Settlement Agreement, subject to  
22 further consideration at the final Fairness Hearing described below.

23 2. A final approval hearing (the “Fairness Hearing”) shall be held before this Court on  
24 \_\_\_\_\_, 2017, at 9:00 a.m., at the United States District Court of the Northern District  
25 of California, located at 1301 Clay Street, Courtroom 2 – 4th Floor, Oakland, CA 94612, to  
26 determine whether the proposed settlement on the terms and conditions provided for in the  
27 Settlement Agreement is fair, reasonable and adequate to the Settlement Classes and should be  
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1 approved by the Court; whether final judgment should be entered; the amount of fees, costs, and  
2 expenses that should be awarded to Plaintiffs' counsel; and the amount of any service awards to be  
3 awarded to the class representatives. The Court may change the day of the Fairness Hearing without  
4 further notice to the members of the Settlement Classes.

5 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily  
6 certifies, for purposes of effectuating this settlement, a Settlement Classes as follows:

7 **Division I FBS Football Class:** All current and former NCAA Division I Football Bowl  
8 Subdivision ("FBS") football student-athletes who, at any time from March 5, 2010 through the  
9 date of Preliminary Approval of this Settlement, received from an NCAA member institution for  
10 at least one academic term (such as a semester or quarter) (1) a full athletics grant-in-aid required  
11 by NCAA rules to be set at a level below the cost of attendance, and/or (2) an otherwise full  
12 athletics grant-in-aid.

13 **Division I Men's Basketball Class:** All current and former NCAA Division I men's basketball  
14 student-athletes who, at any time from March 5, 2010 through the date of Preliminary Approval  
15 of this Settlement, received from an NCAA member institution for at least one academic term  
16 (such as a semester or quarter) (1) a full athletics grant-in-aid required by NCAA rules to be set  
17 at a level below the cost of attendance, and/or (2) an otherwise full athletics grant-in-aid.

18 **Division I Women's Basketball Class:** All current and former NCAA Division I women's  
19 basketball student-athletes who, at any time from March 5, 2010 through the date of Preliminary  
20 Approval of this Settlement, received from an NCAA member institution for at least one  
21 academic term (such as a semester or quarter) (1) a full athletics grant-in-aid required by NCAA  
22 rules to be set at a level below the cost of attendance, and/or (2) an otherwise full athletics grant-  
23 in-aid.

24 4. The Court approves, as to form and content, the notice of the proposed Settlement  
25 Agreement, attached as Exhibit B to the Settlement Agreement. The Court further finds that the  
26 proposed notice campaign and all forms of notice substantially meets the requirements of Federal  
27 Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances,  
28 and shall constitute due and sufficient notice to all persons entitled thereto.

5. The Court confirms and appoints Gilardi & Co. LLC as the settlement notice  
administrator. The settlement notice administrator shall commence all aspects of the approved notice  
campaign, including direct notice mailing, internet notice, dedicated website and press release, as  
more fully set forth in the Vasquez Declaration Regarding Implementation of Class Notice Plan, in  
accordance with the schedule set forth below.

6. The Court approves, as to form and content, the Distribution Plan, attached as Exhibit

1 A to the Settlement Agreement.

2 7. The Court designates Shawne Alston, Nicholas Kindler, Afure Jemerigbe, and D.J.  
3 Stephens as the class representatives for the Settlement Classes.

4 8. The Court designates the following as Class Counsel for the Settlement Classes:  
5 Hagens Berman Sobol Shapiro LLP; and Pearson, Simon & Warshaw, LLP.

6 9. Class Counsel shall file their motion for attorney fees, costs, and service awards, and  
7 all supporting documentation and papers, no later than \_\_\_\_\_, 2017.

8 10. Any person who desires to file an objection to the Settlement or request exclusion  
9 from the Settlement Classes shall do so by \_\_\_\_\_, 2017, in conformance with the provisions  
10 of the settlement notice as approved above.

11 11. In particular, all written objections and supporting papers, if any, must (a) clearly  
12 identify the case name and number (*In Re: National Collegiate Athletic Association Athletic Grant-*  
13 *In-Aid Cap Antitrust Litigation*, Case No. 4:14-md-2541-CW); (b) be submitted to the Court either  
14 by mailing them to the Class Action Clerk, United States District Court for the Northern District of  
15 California, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the  
16 United States District Court for the Northern District of California; and (c) be filed or postmarked on  
17 or before \_\_\_\_\_, 2017.

18 12. Any member of the Settlement Class may enter an appearance in the litigation, at his  
19 or her own expense, individually or through counsel of his or her own choice. If the member does not  
20 enter an appearance, he or she will be represented by Class Counsel.

21 13. All members of the Settlement Classes shall be bound by all determinations and  
22 judgments in the Lawsuit concerning the Settlement, whether favorable or unfavorable to the  
23 Settlement Classes.

24 14. Class Counsel shall file their motion for final approval of Settlement, and all  
25 supporting documentation and papers, no later than \_\_\_\_\_, 2017.

26 15. Class Counsel may file a written response to any objections to the Settlement  
27 Agreement, or to the application for attorneys' fees, reimbursement of expenses, and class  
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1 representative service awards, no later than 14 days before the final Fairness Hearing, or by  
 2 \_\_\_\_\_ \_\_, 2017.

3 16. At the Fairness Hearing, Class Counsel shall provide the Court with any updated  
 4 information available as of that date concerning any requests for exclusion received from the  
 5 Settlement Classes, any objections received from the Settlement Classes, or any other  
 6 communications received in response to the notice of settlement.

7 17. At or after the Fairness Hearing, the Court shall determine whether the Settlement  
 8 Agreement, the motion for attorney’s fees and expenses, and any service awards shall be finally  
 9 approved.

10 18. All reasonable expenses incurred in notifying the Settlement Classes and  
 11 administering the settlement shall be paid as set forth in the Settlement Agreement.

12 19. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the  
 13 negotiations or proceedings connected with it, shall be construed as an admission or concession by  
 14 Plaintiffs or Defendants, respectively, of the truth or falsity of any of the allegations made, or of any  
 15 liability, fault or wrongdoing of any kind.

16 20. All members of the Settlement Classes are temporarily barred and enjoined from  
 17 instituting or continuing the prosecution of any action asserting the claims released in the proposed  
 18 Settlement, until the Court enters final judgment with respect to the fairness, reasonableness, and  
 19 adequacy of the Settlement.

20 21. The Court adopts the following schedule proposed in the motion:

Event	Deadline
Hearing and order re preliminary approval	_____ __, 2017.
Notice campaign to begin, including internet notice, dedicated website, and press release	_____ __, 2017. [two weeks from preliminary approval order]

<p>1 NCAA to request from member institutions                  2 potential class member contact information,                  3 including permission to use any contact                  4 information already collected for those                  5 individuals who are also class members in the                  6 settlement in <i>In Re: National Collegiate Athletic                  Association Student-Athlete Concussion                  Litigation</i>, MDL No. 4292, Master docket No.                  1:13-cv-09116 (N.D.IL.) (“NCAA Concussion                  Settlement”)</p>	<p>_____ __, 2017.                  [three weeks from preliminary approval order]</p>
<p>7                  8 Deadline for Defendants’ production to                  Administrator of class members’ contact                  9 information to the extent received</p>	<p>_____ __, 2017.                  [seventeen weeks from preliminary approval                  order]</p>
<p>10 Direct notice mailing to begin</p>	<p>_____ __, 2017.                  [three weeks from Administrator’s receipt of                  contact information]</p>
<p>12 Last day for motion for attorneys’ fees, costs,                  13 expenses, and service awards</p>	<p>_____ __, 2017.                  [two weeks before objection deadline]</p>
<p>14 Last day to file objections to the Settlement or                  requests for exclusion from the Classes</p>	<p>_____ __, 2017.                  [eight weeks from notice mailing]</p>
<p>16 Last day for motion in support of final approval                  of Settlement</p>	<p>_____ __, 2017.                  [two weeks after objection deadline]</p>
<p>17 Final Fairness Hearing</p>	<p>_____ __, 2017. at 9:00 a.m.                  [five weeks after motion for final approval],                  unless otherwise ordered by the Court</p>

20 22. The Court reserves the right to adjourn, continue or otherwise change the date of the  
 21 Fairness Hearing without further notice to the members of the Settlement Classes, and retains  
 22 jurisdiction to consider all further applications arising out of or connected with the proposed  
 23 Settlement Agreement. The members of the Settlement Classes are advised to confirm the date of  
 24 the Fairness Hearing as set forth in the settlement notice. The Court may approve the Settlement  
 25 Agreement, with such modifications as may be agreed to by the settling parties, if appropriate,  
 26 without further notice to the Settlement Classes.

1 IT IS SO ORDERED.

2 DATED: \_\_\_\_\_

3 \_\_\_\_\_  
4 HONORABLE CLAUDIA WILKEN  
5 UNITED STATES DISTRICT JUDGE

6 Submitted by:

7 Dated: February 03, 2017

8 HAGENS BERMAN SOBOL SHAPIRO LLP

9 By           /s/ Steve W. Berman            
10 STEVE W. BERMAN

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