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 8 of All Those Similarly Situated

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10 **UNITED STATES DISTRICT COURT**
 11 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

12 TAYLOR SMART AND MICHAEL HACKER,
 Individually and on Behalf of
 13 All Those Similarly Situated,

14 Plaintiffs,

15 vs.

16 NATIONAL COLLEGIATE ATHLETIC
 ASSOCIATION, an unincorporated
 17 association;

18 Defendant.

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CASE NO. 2:22-cv-02125-WBS-CSK

CLASS ACTION

**PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF
 SETTLEMENT AND MEMORANDUM IN
 SUPPORT**

Date: April 28, 2025
 Time: 1:30 p.m.
 Courtroom: 5, 14th Floor
 Judge: The Honorable William B.
 Shubb

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Introduction

After over two years of hard-fought litigation, the parties have reached a proposed settlement agreement that provides essentially complete relief to around 1,000 assistant college baseball coaches. The \$49.25 million proposed fund amounts to well over 90% of Plaintiffs' and class members' alleged damages. That is a uniquely strong result by antitrust standards, and Plaintiffs ask that the Court grant preliminary approval of the proposed settlement so the process of getting money to these coaches can soon begin.

"[A]t the preliminary approval stage, the court need only determine whether the proposed settlement is within the range of possible approval, and resolve any glaring deficiencies in the settlement agreement before authorizing notice to class members." *Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, No. 2:21-cv-1639, 2023 WL 4747691, at *6 (E.D. Cal. July 25, 2023) (Shubb, J.). The settlement easily meets this standard. On average, class members will receive close to \$36,000 per year that they coached in the volunteer role. The actual payouts will be school specific using the salary data provided by schools, and many class members who coached multiple years at larger schools will receive six figures. Simply put, the settlement results in an outstanding and impressive recovery for the class.

This is especially true in light of the very real risks Plaintiffs faced in continuing this litigation. Plaintiffs would have been required to overcome all three of the remaining major litigation hurdles: class certification, summary judgment, and

1 trial. The NCAA contested class certification and filed a *Daubert*
2 motion seeking to exclude Plaintiffs' sole liability and damages
3 expert. And the NCAA pursued a procompetitive justification
4 affirmative defense with three separate theories. Plaintiffs
5 remain confident that they would have succeeded at class
6 certification and at summary judgment and trial, but if the NCAA
7 succeeded at any one of those three stages, the class would have
8 recovered *nothing*. Instead, these hardworking coaches are set to
9 receive nearly the entire amount of compensation allegedly owed.

10 The Court should also have little difficulty certifying the
11 Settlement Class. Even before settlement, when litigating
12 Plaintiffs' now-moot motion for class certification, most of the
13 Rule 23(a)-(b) factors went uncontested. The few concerns raised
14 by Defendant in opposition to class certification do not apply in
15 the settlement context because there will be no trial if the
16 settlement is approved. *In re Hyundai and Kia Fuel Economy*
17 *Litig.*, 926 F.3d 539, 558 (9th Cir. 2019) (en banc). In any
18 event, the Court recently certified a class in the related case
19 that involved volunteer coaches in other sports, *Ray v. NCAA*,
20 Case No. 1:23-cv-00425-WBS, (E.D. Cal. Mar. 11, 2025), ECF No.
21 128, and it should likewise certify the proposed Settlement Class
22 here. All class members were subjected to the same
23 anticompetitive NCAA rule, and this settlement seeks to
24 compensate them for the alleged harm that they suffered as a
25 result of that rule. The Court should also appoint the named
26 Plaintiffs as class representatives and their counsel as class
27 counsel.

28

1 The proposed manner of notice – via U.S. mail and e-mail to
2 class members – will be effective under the circumstances. The
3 form of the notices, attached as exhibits to the Proposed Order
4 (“Proposed Notice”), is easy to understand and provides class
5 members all they need to make an informed decision regarding
6 participation in the settlement. It includes a summary of the
7 litigation, the terms of the settlement, an explanation of the
8 right to object or opt out, and sources to obtain more
9 information regarding the litigation and the settlement. The
10 Court has approved similar notices. All of Rule 23’s requirements
11 are met.

12 The settlement of this case will provide relief to hundreds
13 of baseball coaches. The Court should preliminarily approve it so
14 that the next steps towards providing that relief can be taken.

15 **Factual and Procedural Background**

16 Defendant NCAA has around 300 members with Division I
17 baseball teams.¹ From 1992 to July 2023, the NCAA’s bylaws allowed
18 member schools to hire four baseball coaches. Three of them (the
19 head coach and two assistants) could be paid whatever
20 compensation the free market would give them. But the fourth
21 coach could not be paid pursuant to an NCAA rule. See NCAA Bylaws
22 11.7.6; 11.01.6.

23 The NCAA dubbed the coach the “volunteer” coach. The NCAA’s
24 bylaw forbid “compensation or remuneration from the institution’s
25 athletics department or any organization funded in whole or in
26 part by the athletics department or that is involved primarily in

27 _____
28 ¹ See NCAA Answer (ECF No. 40) at ¶¶ 2, 34.

1 the promotion of the institution's athletics program (e.g.,
2 booster club, athletics foundation association)."² Schools could
3 not provide housing, and the coach could not receive more than
4 two complimentary tickets to home baseball games, nor any tickets
5 to other sports events hosted by the school, like basketball or
6 football.³ Schools could not provide standard benefits, such as
7 health insurance or workers' compensation.⁴

8 Plaintiffs Taylor Smart and Michael Hacker are two former
9 baseball coaches who served in that role.⁵ They brought their case
10 in November 2022 on behalf of a class, alleging that the
11 volunteer coach rule violated the Sherman Act.⁶ A few months after
12 this lawsuit was filed, the NCAA repealed the volunteer coach
13 rule with an effective date of July 1, 2023.⁷

14 The NCAA moved to dismiss the Complaint in February 2023.⁸
15 Several months later, the Court granted that motion in part and
16 denied it in part, with Plaintiffs' federal Sherman Act § 1
17 claims surviving.⁹ Defendant then filed its Answer, raising seven
18 affirmative defenses.¹⁰ The defense most heavily litigated was the
19 NCAA's position that procompetitive justifications exist for the
20

21 ² (ECF No. 63 at 6 nn.11-12.)

22 ³ (ECF No. 63 at 6 n.13.)

23 ⁴ (ECF No. 63 at 6 n.15.)

24 ⁵ (ECF No. 63 at 6 nn.21, 28.)

25 ⁶ (ECF No. 1.)

26 ⁷ (ECF No. 63 at 6 n.63.)

27 ⁸ (ECF No. 7.)

28 ⁹ (ECF No. 29.)

¹⁰ (ECF No. 40.)

1 volunteer coach rule.¹¹ NCAA also moved for reconsideration,¹²
2 which the Court denied in September 2023.¹³

3 The parties engaged in extensive discovery. Plaintiffs and
4 their counsel collected and produced print and electronic
5 documents, including e-mails and text messages from the named
6 Plaintiffs. Broshuis Decl. at ¶ 7. Mr. Smart produced 752
7 documents totaling 1,382 pages. *Id.* Mr. Hacker produced 129
8 documents totaling 351 pages. *Id.* The NCAA produced 11,750
9 documents containing 278,132 pages, which Plaintiffs also
10 reviewed. *Id.*

11 Plaintiffs issued over 300 subpoenas to the NCAA's member
12 Division I schools to collect data related to the compensation
13 being paid to their baseball coaches. See Broshuis Decl. at ¶ 8.
14 Plaintiffs so far have received complete responses from over 200
15 schools, including over 8,000 documents that Plaintiffs and their
16 expert reviewed. *Id.*

17 The parties have deposed many key fact witnesses. The NCAA
18 deposed both Mr. Smart and Mr. Hacker. *Id.* at ¶ 9. Plaintiffs'
19 counsel also attended the six depositions of the named plaintiffs
20 in the related *Ray v. NCAA* case, No. 1:23-cv-00425 WBS (E.D.
21 Cal.) (hereafter "*Ray*") challenging the same volunteer coach rule
22 in sports other than baseball. *Id.* Plaintiffs deposed two NCAA
23 employees and two third-party witnesses. *Id.*

24

25

26 ¹¹ (ECF No. 40 at 23 (Seventh Affirmative Defense).)

27 ¹² (ECF No. 34.)

28 ¹³ (ECF No. 43.)

1 The parties also deposed the expert witnesses. Plaintiffs
2 submitted an expert declaration from Dr. Daniel Rascher in
3 support of their motion for class certification.¹⁴ Dr. Rascher is
4 the top sports economist in the country and is widely respected
5 for his work in college athletics. Using the information obtained
6 from the subpoenas to member schools, Dr. Rascher concluded that
7 "all members of the proposed class suffered injuries."¹⁵ The NCAA
8 deposed Dr. Rascher and filed a motion to exclude him under
9 *Daubert*,¹⁶ attaching a report from its sole rebuttal expert, Dr.
10 Jee-Yeon Lehmann.¹⁷ Plaintiffs deposed Dr. Lehmann on January 23,
11 2025. See Broshuis Decl. at ¶ 10.

12 The parties previously attempted mediation with a mediator,
13 but were unsuccessful. See Broshuis Decl. at ¶ 11. The parties
14 resumed settlement discussions after further discovery. *Id.*
15 Before reaching an agreement, the parties had the benefit of
16 extensive expert analyses derived from the subpoenaed school
17 data, and the parties had engaged in class certification
18 briefing. That data informed the parties' renewed settlement
19 discussions. After daily, arms-length negotiations, the parties
20 settled this case on January 31, 2025 – the same day that
21 Plaintiffs' reply brief in support of their motion for class
22 certification and their *Daubert* opposition brief were due. *Id.*
23 The Court then stayed the deadlines for these papers pending its
24

25 ¹⁴ (ECF No. 64-2.)

26 ¹⁵ (*Id.* § 3.4.)

27 ¹⁶ (ECF No. 67.)

28 ¹⁷ (ECF No. 67-5.)

1 ruling on this motion and ordered this motion to be filed no
2 later than March 24, 2025.¹⁸

3 **Summary of the Proposed Settlement**

4 **The Class to be Settled.** The proposed settlement
5 contemplates the Court certifying the following Rule 23(b) (3)
6 class for settlement purposes only:

7 All persons who, pursuant to NCAA Division I Bylaw
8 11.7.6, served as a "volunteer coach" in college baseball
9 at an NCAA Division I school from November 29, 2018 to
July 1, 2023.¹⁹

10 **The Settlement Fund and Plan of Allocation.** The NCAA has
11 agreed to pay \$49.25 million into a common settlement fund from
12 which class members will be paid after deduction for court-
13 approved attorneys' fees, costs, expenses, and incentive awards.
14 If approved, and assuming the maximum off-the-top deductions, the
15 \$49.25 million settlement fund will be allocated as follows: (a)
16 an amount allocated for payments to class members of \$32,794,850;
17 (b) \$14,775,000 for Plaintiffs counsel's fees and up to \$1.5
18 million for costs and expenses incurred; (c) an estimated amount
19 of \$30,150 to pay the settlement administrator and \$35,000 to pay
20 the economist for work on settlement administration; (d)
21 incentive awards for the two class representatives of \$7,500
22 each; and (e) a contingency fund of \$100,000.

23 The amount of each class member's settlement payment will
24 vary according to the number of years worked and the school for
25 which he worked. Plaintiffs have asked their expert, Dr. Rascher,

26 ¹⁸ (ECF No. 71 at 2.)

27 ¹⁹ See Settlement Agreement § 2.29. The Settlement Agreement is
28 found at Exhibit 2 to the Broshuis Declaration.

1 to calculate individual settlement recovery amounts for each
2 class member using a methodology substantially similar to the one
3 he used to calculate damages in his declaration filed in support
4 of Plaintiffs' motion for class certification.²⁰ Vastly
5 simplified, Dr. Rascher first estimated base salaries using
6 "actual base salaries for the third assistant coach position in
7 2023," making sure to "deflate the base salary amount based on"
8 how much the compensation changed for the other two paid
9 assistants over time.²¹ If a school did not produce sufficient
10 data, Dr. Rascher uses data from peer schools; to do this, he
11 places schools within peer deciles.²² That ensures that the
12 estimate of damages is school-specific.

13 To account for one additional employment benefit that the
14 third assistant coaches likely would have received, Dr. Rascher
15 estimates the value of health benefits that were not provided but
16 that likely would have been provided.²³ As with the base salary
17 computation, he deflates the value of these benefits to ensure
18 that he is measuring the value that would have been provided
19 during the relevant year.²⁴ See also Rascher Prelim. Approval
20 Decl. at ¶¶ 4-12 (explaining allocation formula).

21 Other than providing taxpayer identification numbers (and
22 updating addresses), no claim form will be needed to receive the
23 money owed. The default is to send checks to a class member's

24 ²⁰ (ECF No. 64-2.)

25 ²¹ (*Id.* ¶ 181; see also *id.* ¶ 184.)

26 ²² (*Id.* ¶ 183.)

27 ²³ (*Id.* ¶ 186.)

28 ²⁴ (*Id.*)

1 last known address. Because of the amount being sent, FedEx will
2 be used to send the checks. Class members will have the
3 opportunity to update their addresses, or to select a secure
4 electronic payment option. See Fenwick Decl., Ex. C (Proposed
5 Longform Notice) at 1 and ¶ 11. It is the parties' desire to pay
6 every class member what they are owed under the settlement. In
7 the event certain class members cannot be paid (if, for example,
8 they do not cash their checks), their allocated share will be
9 paid *pro rata* to class members who did cash their checks in a
10 second distribution. See *id.* ¶ 11. If that process at some point
11 becomes impracticable, the residue will go to a related charity
12 under the doctrine of *cy pres*. The parties have selected the
13 American Baseball Coaches Association ("ABCA") as the *cy pres*
14 recipient. Settlement Agreement at ¶ 2.8. ABCA has over 15,000
15 members in all 50 states and 41 countries focusing on amateur
16 baseball coaching at the college, high school, youth, and travel
17 levels. Broshuis Decl. at ¶ 15. ABCA's purposes are, *inter alia*,
18 "to assist in the educational development of amateur baseball
19 coaches" and to "promote excellence in the coaching of baseball."
20 *Id.* Not a penny of the \$49.25 million fund will revert to the
21 NCAA.

22 ***The Proposed Form and Manner of Notice.*** Plaintiffs seek
23 notice to be provided to the class in the forms proposed. See
24 Exs. A-C to Proposed Order. Plaintiffs propose that the
25 Settlement Administrator send notice via email, and a postcard
26 summary notice via first-class U.S. mail, and the long-form
27 notice will also be posted on the settlement website. See Fenwick
28

1 Decl. at ¶¶ 6-14. The Settlement Administrator will use
2 forwarding addresses and other standard best practices to try to
3 ascertain the class member's current address. *Id.* at ¶¶ 10-14.

4 The notice forms are written in plain and understandable
5 language. They describe the litigation, the terms of the
6 settlement, and each class member's options under the proposed
7 settlement. See Exs. A-C to Proposed Order. They clearly explain
8 the opt-out rights and repercussions: anyone who timely submits
9 an opt-out form will not be bound by the judgment, will not be
10 entitled to settlement benefits, and will be deemed to have never
11 participated in this litigation. *Id.* The forms also clearly
12 explain class members' right to object to the proposed
13 settlement, their option to participate in the case through
14 counsel of their choosing at their own expense, and the dates for
15 objecting or opting out. *Id.* They will advise class members of
16 the date the Court sets for the final approval hearing and that
17 the date is subject to change without further notice to the class
18 such that class members should check the Court's docket and/or
19 the settlement website for updates. *Id.* They advise class members
20 who make a timely objection that they are welcome to attend to
21 make their voice heard. *Id.*

22 The notice forms also provide contact information for class
23 counsel should class members have questions. They provide a link
24 to a case website created by the Settlement Administrator where
25 class members can easily access the long-form notice and other
26 important documents in the case. *Id.* The notice forms also
27 provide instructions as to how class members can access the case
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1 docket directly, either in person or via PACER. *Id.* Via the
2 website, class members will be able to update their addresses as
3 well, or enter information allowing an electronic payment. See
4 Fenwick Decl. at ¶ 14.

5 **The Releases.** In exchange for the benefits provided under
6 the settlement, participating Rule 23(b)(3) class members agree
7 to release the NCAA from:

8 any and all claims of the Plaintiffs and Class Members
9 who do not opt out of the Settlement that were asserted
10 or could have been asserted against Released Parties for
11 the Class Period arising out of the facts alleged in the
12 Litigation, known or unknown, including for avoidance of
13 doubt, any claim for unpaid wages, benefits, or bonuses,
14 or any claim for damages for lost opportunities,
15 interference with contract, or restraint of trade.
16 Plaintiff Released Claims include, without limitation,
17 any claims for compensation, benefits, penalties or any
18 other recovery on the theory that Plaintiffs or Class
19 Members who do not opt out of the Settlement were
20 employees of, or contractors for, any Released Parties,
21 and thus include, without limitations, claims under state
22 and federal minimum wage laws, the federal Fair Labor
23 Standards Act, state and local wage and hour statutes and
24 laws, including without limitation any claims under the
25 California Labor Code and California Labor Code section
26 2698 et seq. specifically as well as California Business
27 & Professions Code section 17200 and equivalent statutes
28 from other states that could have been asserted based on
the facts alleged in the Litigation.

Settlement Agreement ¶ 2.24.

The NCAA also agrees to release participating Rule 23(b)(3)
class members from: "all claims and counterclaims that Defendant
asserted or could have asserted against Plaintiffs arising out of
the facts alleged in the Litigation, known or unknown."

Settlement Agreement ¶ 2.11.

The releases are limited to claims relating to the volunteer
coach rule and the claims that "could have been asserted" based
on the facts of the operative complaint.

1 **Attorneys' Fees, Costs, and Incentive Awards.** The Settlement
2 Agreement allows Plaintiffs' counsel to petition for up to one-
3 third of the maximum settlement amount as attorneys' fees. But,
4 as discussed further below, Plaintiffs' counsel intends to
5 petition for fees of 30%, along with actual costs and expenses.
6 See Broshuis Decl. at ¶ 18. Plaintiffs' counsel plans to petition
7 for reimbursement of up to \$1.5 million in costs and expenses
8 incurred - counsel has currently expended approximately \$1.32
9 million on costs. *Id.* at ¶ 19.

10 Plaintiffs will petition for incentive awards of \$7,500 for
11 the two class representatives. *Id.* at ¶ 19. If approved, the
12 incentive awards will be in addition to any distribution that
13 they are otherwise entitled to under the settlement to reflect
14 the time and effort that each put into representing the class, as
15 well as the professional and reputational risk incurred by
16 bringing this litigation.

17 **Settlement Administration Fees and Proposed Administrator.**
18 Plaintiffs recommend the Court appoint the professional class
19 action administration firm Kroll Settlement Administration as the
20 "Settlement Administrator" to assist Plaintiffs' counsel in
21 effectuating the notice program and handling claims
22 administration. Plaintiffs' counsel engaged in a robust vetting
23 process before selecting Kroll. Plaintiffs' counsel requested
24 bids from Kroll and two other experienced class action
25 administration firms. See Broshuis Decl. at ¶ 16. Counsel
26 carefully assessed the bids received from all firms. In deciding
27 which firm to endorse, counsel considered not only each firm's
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1 estimated cost, but also its staffing, years of experience, and
2 expertise in administering class actions of this size and nature.
3 Kroll has estimated administration costs of \$30,150, which in
4 counsel's experience is reasonable and in line with
5 administration costs in other class actions of this size and
6 nature. *Id.*²⁵ Kroll intends to work with Dr. Daniel Rascher to
7 determine the payment amounts; Dr. Rascher estimates that his
8 firm's costs will amount to \$35,000. Rascher at ¶ 13. Plaintiffs
9 intend to request that \$65,150 be set aside to pay these combined
10 administrative costs.

11 **Legal Standard**

12 The Ninth Circuit has "a strong judicial policy that favors
13 settlements, particularly where complex class action litigation
14 is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101
15 (9th Cir. 2008); *see also Rodriguez v. W. Publ'g Corp.*, 563 F.3d
16 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the
17 product of an arms-length, non-collusive negotiated resolution.")
18 (citation omitted). The settlement of class actions requires
19 court approval. *See* Fed. R. Civ. P. 23(e) ("[t]he claims, issues
20 or defenses of a certified class may be settled only with the
21 court's approval.").

22 "Approval under 23e involves a two-step process in which the
23 Court first determines whether a proposed class action settlement
24 deserves preliminary approval and then, after notice is given to

25 ²⁵ The settlement administration estimate includes assumptions
26 regarding the number of hours the Settlement Administrator is
27 required to expend on tasks, *inter alia*, responding to class
28 member inquiries and tax reporting. The actual hours and in turn
the true cost of settlement administration may vary.

1 class members, whether final approval is warranted.” *Kabasele v.*
2 *Ulta Salon, Cosmetics & Fragrance, Inc.*, No. 2:21-cv-1639, 2024
3 WL 477221, at *1 (E.D. Cal. Feb. 7, 2024) (Shubb, J.) (quoting
4 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
5 525 (C.D. Cal. 2004)). “Preliminary approval authorizes the
6 parties to give notice to putative class members of the
7 settlement agreement and lays the groundwork for a future
8 fairness hearing, at which the court will hear objections to (1)
9 the treatment of this litigation as a class action and (2) the
10 terms of the settlement.” *Kabasele v. Ulta Salon, Cosmetics &*
11 *Fragrance, Inc.*, No. 2:21-cv-1639, 2023 WL 4747691, at *2 (E.D.
12 Cal. July 25, 2023) (Shubb, J.); *Evans v. Zions Bancorporation,*
13 *N.A.*, No. 2:17-cv-01123, 2022 WL 3030249, at *1 (E.D. Cal. Aug.
14 1, 2022) (Shubb, J.).

15 “Where the parties reach a settlement agreement prior to
16 class certification, the court must first assess whether a class
17 exists.” *Kabasele*, 2023 WL 4747691, at *2 (citing *Staton v.*
18 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)); *Griffin v.*
19 *Consol. Commc’s*, No. 2:21-cv-0885, 2022 WL 16836711, at *1 (E.D.
20 Cal. Nov. 9, 2022) (Shubb, J.) (same). Second, this Court “must
21 carefully consider whether a proposed settlement is fundamentally
22 fair, adequate, and reasonable, recognizing that it is the
23 settlement taken as a whole, rather than the individual component
24 parts, that must be examined for overall fairness.” *Kabasele*,
25 2023 WL 4747691, at *2 (citing *Staton*, 327 F.3d at 952); *Griffin*,
26 2022 WL 16836711, at *2 (same).

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Argument

I. A Certifiable Settlement Class Exists Under FRCP 23.

Plaintiffs seek to certify a Settlement Class to effectuate the benefits of the Settlement. During the recent briefing on class certification that occurred pre-settlement, only predominance under Rule 23(b)(3) was disputed. And recently the Court certified a litigation class in the related case of *Ray*, Case No. 1:23-cv-00425-WBS, ECF No. 128. For purposes of this Motion, all factors are satisfied, and the Court should certify the proposed Settlement Class.

A. The Class is Sufficiently Definite and Ascertainable.

"All that is required for class definition is that it set forth common characteristics sufficient to allow a member of that group to identify himself or herself as having a potential right to recover based on the description." *Aldapa v. Fowler Packing Co., Inc.*, 323 F.R.D. 316, 343 (E.D. Cal. 2018) (Drozd, J.) (quotation omitted). Here, the Settlement Class definition is definite and ascertainable. See *supra* at 7 (providing Settlement Class definition). Class members will know if they worked as the "volunteer coach" during the relevant time period, and Plaintiffs have already constructed a class list based on subpoenaed and publicly available data.

B. Numerosity is satisfied.

While there are no "absolute limitations for determining numerosity," *Schwarm v. Craighead*, 233 F.R.D. 655, 660 (E.D. Cal. 2006) (Shubb, J.), "a proposed class of at least forty members presumptively satisfies the numerosity requirement." *Kabasele v.*

1 *Salon*, No. 2:21-cv-1639, 2023 WL 4747691, at *3 (E.D. Cal. July
2 25, 2023) (Shubb, J.). The class list shows around 1,000 class
3 members. Broshuis Decl. ¶ 8. This far exceeds the presumptive
4 threshold. Numerosity is therefore satisfied.

5 **C. Commonality is Met.**

6 “[C]ourts have consistently held that the very nature of a
7 conspiracy antitrust action compels a finding that common
8 questions of law and fact exist.” *In re High-Tech Emp. Antitrust*
9 *Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013). This is
10 because “[a]ntitrust liability alone constitutes a common
11 question that ‘will resolve an issue that is central to the
12 validity’ of each class member’s claim ‘in one stroke.’” *Id.*
13 (quoting *Dukes*, 564 U.S. at 350). That is particularly true when,
14 like here, the case involves standardized conduct by a defendant
15 toward members of the proposed class. *Schwarm*, 233 F.R.D. at 661
16 (commonality met when defendants had “engaged in standardized
17 practices”) (Shubb, J.); *see also Baird v. Cal. Faculty Ass’n*,
18 No. CIV S-00-0999, 2000 WL 1028782, at *3 (E.D. Cal. July 13,
19 2000) (Shubb, J.) (certifying class where constitutionality of a
20 law was a common issue); *Cummings v. Connell*, No. CIV S-99-2176,
21 1999 WL 1256772, at *3 (E.D. Cal. Dec. 20, 1999) (Shubb, J.)
22 (certifying class where standardized practices complained of).

23 In the recent NIL antitrust case involving NCAA athletes,
24 the court found commonality met because several key questions
25 emerged directly from the legality of the bylaw at issue. *In re*
26 *College Athlete NIL Litig.*, No. 20-cv-03919, 2023 WL 8372787, at
27 *5 (N.D. Cal. Nov. 3, 2023). The questions included (1) “whether
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1 the challenged rules constitute a horizontal agreement ... that
2 caused significant anticompetitive effects ...,“ (2) whether any
3 legitimate procompetitive justifications existed, and (3) whether
4 a less restrictive alternative could have been used to achieve
5 any legitimate procompetitive justification. *Id.*

6 Those same common questions are present here for the
7 proposed Settlement Class because adjudicating the legality of
8 the NCAA’s volunteer coach rule would be the same for all class
9 members. The rule applied the same way for all schools in the
10 same manner.²⁶ All Division I member schools had to comply with
11 the rule, and all of these coaches were subjected to it.
12 Commonality is met. *See Ray*, Case No. 1:23-cv-00425-WBS, ECF No.
13 128 at 13 (finding commonality met).

14 **D. Typicality is satisfied.**

15 Typicality is “permissive and requires nothing more than
16 that a class plaintiff’s claims be reasonably coextensive with
17 those of absent class members.” *Gonzalez v. United States*
18 *Immigration and Customs Enforcement*, 975 F.3d 788, 809 (9th Cir.
19 2020); *see also Swarm*, 233 F.R.D. at 661 (Shubb, J.) (the
20 claims need not be “substantially identical”). Factors that
21 inform the analysis include whether other class members have a
22 similar injury, whether the lawsuit is based on conduct not
23 unique to the named plaintiffs, and whether other class members
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25 ²⁶ *See* NCAA Answer (ECF No. 40) at ¶¶ 44-46 (admitting this); NCAA
26 Mem. in Support of Motion to Dismiss (ECF No. 7) at 14. Even
27 conceded issues can help satisfy commonality and predominance. *In*
28 *re Nassau Cty. Strip Search Cases*, 461 F.3d 219, 227-29 (2d Cir.
2006) (reversing district court that held otherwise).

1 have been injured by the same conduct. *Gonzalez*, 975 F.3d at 809;
2 *Schwarm*, 233 F.R.D. at 661. “[I]n antitrust cases, typicality
3 usually will be established by plaintiffs and all class members
4 alleging the same antitrust violations by defendants.” *Sidibe v.*
5 *Sutter Health*, 333 F.R.D. 463, 486 (N.D. Cal. 2019).

6 That is exactly the case here. The conduct that the named
7 Plaintiffs challenge is not unique to any class member, and the
8 alleged injuries arise from the same course of conduct.²⁷ Like all
9 class members, each named Plaintiff worked as a volunteer
10 assistant baseball coach for a Division I school under the same
11 volunteer coach rule. Everyone in the class has the same general
12 grievance: the NCAA’s bylaws fixed their compensation at zero,
13 removed competition for their services, and prevented them from
14 getting paid their market value.

15 This Court and many others have found that typicality is
16 satisfied when named plaintiffs and class members were all
17 subject to a uniform policy. See *Ray*, Case No. 1:23-cv-00425-WBS,
18 ECF No. 128 at 14; *In re College Athlete NIL Litig.*, 2023 WL
19 8372787, at *6 (typicality satisfied where NCAA restrictions on
20 athletes’ names, images, and likenesses challenged because bylaws
21 applied to named plaintiffs and class members); *Kabasele*, 2023 WL
22 4747691, at *4 (Shubb, J.) (typicality satisfied when same policy
23 applied); *Griffin v. Consol. Commc’ns*, No. 2:21-cv-0885, 2022 WL

24 _____
25 ²⁷ See *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir.
26 2017) (“The requirement of typicality is not primarily concerned
27 with whether each person in a proposed class suffers the same
type of damages; rather, it is sufficient for typicality if the
plaintiff endured a course of conduct directed against the
class.”).

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1 16836711, at *3 (E.D. Cal. Nov. 9, 2022) (Shubb, J.) (same). The
2 Court should do so again here.

3 **E. Adequacy is satisfied.**

4 The test for adequacy asks: (1) do the named plaintiffs and
5 their counsel have any conflicts of interest with other class
6 members; and (2) will the named plaintiffs and their counsel
7 vigorously prosecute the action on the class's behalf? *In re*
8 *Mersho*, 6 F.4th 891, 899-900 (9th Cir. 2021); *In re Hyundai and*
9 *Kia Fuel Economy Litig.*, 926 F.3d 539, 566 (9th Cir. 2019) (en
10 banc); *Schwarm*, 233 F.R.D. at 662 (Shubb, J.).

11 **1. Named Plaintiffs Are Adequate Class Representatives.**

12 Mr. Smart and Mr. Hacker are adequate class representatives.
13 Their interests are aligned with that of the class because they
14 have been harmed in the same manner as all class members. Both
15 have prosecuted this action vigorously: each has responded to
16 interrogatories, searched for and produced responsive documents,
17 assisted counsel with the facts, and been deposed. *See In re*
18 *College Athlete NIL Litig.*, 2023 WL 8372787, at *6 (finding same
19 things supported adequacy). Both also approved the settlement
20 offer that Plaintiffs' counsel thereafter accepted on the class's
21 behalf. Broshuis Decl. at ¶ 11. In addition, Mr. Hacker attended
22 the hearing on Defendant's motion to dismiss. *Id.* at ¶ 5.

23 The fact that Mr. Smart and Mr. Hacker seek an incentive
24 award of \$7,500 each does not impact their adequacy. "[T]he Ninth
25 Circuit has specifically approved the award of 'reasonable
26 incentive payments,' and other courts in this Circuit have found
27 \$5,000 to be 'presumptively reasonable.'" *Kabasele*, 2023 WL

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1 4747691, at *4 (citing *Staton*, 327 F.3d at 977-78; *Alberto v.*
2 *GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008) (Shubb, J.); and
3 others); *Evans*, 2022 WL 3030249, at *4 (same); *Kimbo v. MXD*
4 *Group, Inc.*, No. 2:19-cv-00166, 2021 WL 492493, at *11 (E.D. Cal.
5 Feb. 10, 2021) (Shubb, J.) (granting final approval of \$5,000
6 incentive payment). This Court and others have awarded higher
7 incentive payments, which are common in antitrust cases such as
8 this one. *Mejia v. Walgreen Co.*, No. 2:19-cv-00218, 2021 WL
9 1122390, at *10 (E.D. Cal. Mar. 24, 2021) (Shubb, J.) (granting
10 final approval to \$7,500 incentive payment); accord *Carlin v.*
11 *DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1019 (E.D. Cal. 2019)
12 (Ishii, J.) (granting \$45,000 incentive awards each to four
13 current named plaintiffs); *Meijer, Inc. v. Abbott Labs.*, No. C
14 07-5985, 2011 WL 13392313, at *3 (N.D. Cal. Aug. 11, 2011)
15 (\$60,000 incentive award to each named plaintiff in \$52 million
16 settlement in § 2 Sherman Act case).

17 In short, Mr. Smart's and Mr. Hacker's interests are aligned
18 with the class and they have put in the work to usher in a great
19 result for the class.

20 **2. Named Plaintiffs' Counsel Is Adequate.**

21 Named Plaintiffs' counsel also satisfies the adequacy
22 requirement. The National Law Journal has named Korein Tillery
23 one of the top plaintiffs' firms in the country seven times.²⁸
24 Korein Tillery has been appointed class counsel in more than
25 fifty class actions and has successfully led some of the

26 _____
27 ²⁸ See Broshuis Decl. at ¶ 3, (citing Broshuis Ex. 2 at 1 (Korein
28 Tillery résumé)).

1 country's largest cases.²⁹ In a case led by the undersigned
2 counsel, Korein Tillery obtained a landmark \$185 million
3 settlement on behalf of thousands of minor league baseball
4 players that included important injunctive relief, and that is
5 believed to be one of the five largest wage-and-hour settlements
6 ever. *Senne v. The Office of the Comm'r of Baseball*, No. 14-CV-
7 00608-JCS (N.D. Cal.). Additionally, Korein Tillery (including
8 Mr. Berezney, who was the firm's responsible attorney) and its
9 co-counsel developed and litigated an antitrust class action
10 involving the fixing of the foreign-exchange market, obtaining
11 \$2.3 billion in court-approved settlements. *In re Foreign*
12 *Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-07789-LGS
13 (S.D.N.Y.). Both Mr. Broshuis and Mr. Berezney currently serve as
14 co-lead class counsel on behalf of Missouri municipalities in two
15 cases.³⁰

16 In short, Plaintiffs' counsel is highly qualified, has
17 vigorously prosecuted this case since its filing (including
18 defeating a motion to dismiss and zealously pursuing discovery
19 from the NCAA and hundreds of third parties), and will continue
20 to do so. To date, Korein Tillery has devoted over 7,400 hours to
21 this case, with Mr. Broshuis contributing over 1,700 hours and
22 Mr. Berezney contributing over 1,500 hours. See Broshuis Decl. at
23 ¶ 17.³¹ This suffices to establish adequacy. See *Kabasele*, 2023 WL

24 ²⁹ *Id.*

25 ³⁰ *Id.*

26 ³¹ Nearly 2,000 hours of additional time has been spent
27 collecting documents from 300+ NCAA Division I schools via
28 subpoena after the Court denied Plaintiffs' motion to compel NCAA
to produce relevant records. See ECF No. 55 at 11)

1 4747691, at *5 (Shubb, J.) (finding vigorous prosecution element
2 satisfied where counsel was experienced employment and class
3 action litigators and where counsel conducted thorough factual
4 investigation and legal research); *Griffin*, 2022 WL 16836711, at
5 *4 (Shubb, J.) (same); *Evans*, 2022 WL 3030249, at *4 (Shubb, J.)
6 (finding vigorous prosecution element satisfied where counsel
7 dedicated thousands of hours to the case and engaged in extensive
8 discovery).

9 **F. Common Issues Predominate under Rule 23(b) (3) .**

10 "Because Rule 23(a) (3) already considers commonality, the
11 focus of the Rule 23(b) (3) predominance inquiry is on the balance
12 between individual and common issues." *Evans*, 2022 WL 3030249, at
13 *5. The predominance inquiry "asks whether the common,
14 aggregation-enabling, issues in the case are more prevalent or
15 important than the non-common, aggregation-defeating, individual
16 issues." *Lytle v. Nutramax Lab'ys, Inc.*, 114 F.4th 1011, 1023
17 (9th Cir. 2024) (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577
18 U.S. 442, 453 (2016)). Because this case has settled,
19 predominance and manageability concerns are lessened because
20 there is no threat of individualized issues overwhelming a trial.
21 *In re Hyundai*, 926 F.3d at 558 ("A class that is certifiable for
22 settlement may not be certifiable for litigation if the
23 settlement obviates the need to litigate individualized issues
24 that would make a trial unmanageable.").

25 The mere presence of some important individualized issues,
26 such as damages and affirmative defenses, does not necessarily
27 defeat predominance and prevent a class from being certified.

28

1 *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31
2 F.4th 651, 668 (9th Cir. 2022); *Vaquero v. Ashley Furniture*
3 *Indus., Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016); *Leyva v.*
4 *Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013).³² “[M]ore
5 important questions apt to drive the resolution of the litigation
6 are given more weight in the predominance analysis over
7 individualized questions which are of considerably less
8 significance to the claims of the class.” *In re Hyundai*, 926 F.3d
9 at 557. Thus, even one common question may be of sufficient
10 importance to predominate. *Id.*

11 All important issues here are common for the Settlement
12 Class, including every element of liability,³³ so predominance is
13 satisfied. See *Ray*, Case No. 1:23-cv-00425-WBS, ECF No. 128, at
14 24-25 (finding predominance met). “Predominance is a test readily
15 met in certain cases alleging . . . violations of the antitrust
16 laws.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).
17 “The question of whether an antitrust violation under Section 1
18 exists naturally lends itself to common proof, because that
19 determination turns on defendants’ conduct and intent along with
20 the effect on the market, not on individual class members.” *In re*
21 *College Athlete NIL Litig.*, 2023 WL 8372787, at *8 (internal
22 citations omitted). Or, as said in another antitrust case in this

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24 ³² Rule 23 even permits certification of a class that potentially
25 includes more than a de minimis number of uninjured class
members. *Olean*, 31 F.4th at 669.

26 ³³ The elements of a section 1 claim are “(1) a contract,
27 combination or conspiracy; (2) that unreasonably restrained trade
28 ...; and (3) that restraint affected interstate commerce.” (ECF No.
29 at 14.)

1 District, "with the major issues in this case stemming from an
2 alleged overarching conspiracy to [] fix the prices of [labor], a
3 narrowly defined class, and little suggestion there will be
4 individual issues apart from the calculation of individualized
5 damages, the class action will promote efficiency by allowing a
6 number of claims to be litigated simultaneously." *Four in One*
7 *Co., Inc. v. S.K. Foods, L.P.*, No. 2:08-cv-3017, 2014 WL 28808,
8 at *6 (E.D. Cal. Jan. 2, 2014) (Mueller, J.).

9 **Liability element one: Existence of Conspiracy.** "[P]roof of
10 the *conspiracy* is a common question that is thought to
11 predominate over the other issues of the case." *In re Scrap Metal*
12 *Antitrust Litig.*, 527 F.3d 517, 535 (6th Cir. 2008) (citations
13 omitted). "[A]s many courts have noted, the claim of a conspiracy
14 to fix prices inherently lends itself to a finding of . . .
15 predominance." *In re Capacitors Antitrust Litig. (No. III)*, No.
16 17-md-02801, 2018 WL 5980139, at *5 (N.D. Cal. Nov. 14, 2018); 6
17 NEWBERG ON CLASS ACTIONS, § 18.25 (4th ed. 2002) ("[C]ommon liability
18 issues such as conspiracy or monopolization have, almost
19 invariably, been held to predominate over individual issues.");
20 7AA Charles Alan Wright, Arthur Miller & Mary Kay Kane, FEDERAL
21 PRACTICE AND PROCEDURE, § 1781 (3d ed. 2005) ("[W]hether a conspiracy
22 exists is a common question that is thought to predominate over
23 the other issues in the case.").

24 **Liability element two: In interstate commerce.** The NCAA has
25 already admitted that the conspiracy was national in character,
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1 and that it operates in interstate commerce.³⁴ This too is a
2 common issue that is already satisfied for all class members.

3 ***Liability element three: Unreasonable restraint of trade.***

4 The final liability element, unreasonable restraint of trade,
5 also presents a common issue for the proposed Settlement Class.
6 As the Court recognized previously, "the large salaries received"
7 by the other baseball coaches that *could* be paid and "the overall
8 increase in coach salaries" over time "creates a strong
9 inference" that a bylaw that fixed salaries at zero was
10 anticompetitive. (ECF No. 29 at 18.) Evidence such as that is
11 common, and has already been collected. And Plaintiffs' expert,
12 Dr. Daniel Rascher, opines that, as a matter of settled
13 economics, that type of wage fix is anticompetitive across the
14 board.³⁵ The wage fix removed the coaching position from a
15 competitive market, meaning that all schools, no matter how much
16 they had budgeted for the sport of baseball, paid the same for
17 the position: \$0.

18 Adjudicating Defendant's alleged procompetitive
19 justifications would also present a common issue. The purported
20 procompetitive justifications would rise or fall for all class
21 members in one fell swoop. *See In re High-Tech Emp. Antitrust*
22 *Litig.*, 985 F. Supp. 2d at 1204-05 ("The evidence therefore
23 indicates that Defendants sought to enter into anti-solicitation
24 agreements in an effort to stifle increased competition for labor

25 _____
26 ³⁴ NCAA Answer, ECF No. 40 at ¶ 13 (admitting that the NCAA
27 conducts its business in interstate commerce); ECF No. 29 at 14-
15 (finding interstate commerce element met).

28 ³⁵ (ECF No. 64-2, Rascher Am. Decl. ¶¶ 48-66.)

1 and rising wages," meaning that plaintiffs can prove "antitrust
2 violations on a classwide basis"); *Castro v. Sanofi Pasteur Inc.*,
3 134 F. Supp. 3d 820, 844-45 (D.N.J. 2015) (proposed
4 "procompetitive justifications" are "common issues"); *In re*
5 *College Athlete NIL Litig.*, 2023 WL 8372787, at *5 (whether
6 NCAA's procompetitive justifications for challenged NCAA rules
7 are valid is a common question); *cf. Law v. Nat'l Collegiate*
8 *Athletic Ass'n*, 134 F.3d 1010, 1020-24 (10th Cir. 1998)
9 (rejecting arguments that restricting coaches' salaries helped
10 retain entry-level salaries and preserved competition).

11 In the related case of *Ray*, the Court recently found
12 predominance satisfied. Case No. 1:23-cv-00425-WBS, ECF No. 128,
13 at 24-25. With all key issues of liability being common, the
14 Court should find the same for purposes of this Settlement Class.
15 See *Smilow v. Sw. Bell Mobile Sys., Inc.*, 323 F.3d 32, 40 (1st
16 Cir. 2003) ("[w]here ... common questions predominate regarding
17 liability, then courts generally find the predominance
18 requirement to be satisfied even if individual damages issues
19 remain."); see also *Whiteway v. FedEx Kinko's Off. & Print*
20 *Servs., Inc.*, No. C 05-2320, 2006 WL 2642528, at *10 (N.D. Cal.
21 Sept. 14, 2006) (quoting same); *Kimbo v. MXD Group, Inc.*, No.
22 2:19-cv-00166, 2020 WL 4547324, at *5 (E.D. Cal. Aug. 6, 2020)
23 (Shubb, J.) (predominance satisfied where "the claims brought by
24 the proposed Settlement Class all arise from defendants' same
25 conduct").

26

27

28

G. A Class Action Is Superior.

1
2 The second part of a Rule 23(b)(3) class action is
3 superiority: whether class treatment "is superior to other
4 available methods for fairly and efficiently adjudicating the
5 controversy." The relevant superiority factors to consider are
6 (1) "the class members' interests in individually controlling the
7 prosecution or defense of separate actions"; (2) "the extent and
8 nature of any litigation concerning the controversy already begun
9 by or against class members"; (3) "the desirability or
10 undesirability of concentrating the litigation of the claims in
11 the particular forum;" and (4) "the likely difficulties in
12 managing a class action." Fed. R. Civ. P. 23(b)(3).

13 All four factors weigh in favor of certification.
14 Application of factors one and three favors litigating the claims
15 in a single forum. Nothing suggests individual class members have
16 any interest in controlling the prosecution of separate actions.
17 No other similar cases involving baseball coaches been filed as
18 far as Plaintiffs are aware (the *Ray* case expressly excludes
19 baseball coaches). *Griffin*, 2022 WL 16836711, at *5 (Shubb, J.)
20 (citing lack of concurrent litigation as supporting superiority);
21 *Evans*, 2022 WL 3030249, at *5 (Shubb, J.) (same). Moreover, those
22 class members who wish to direct their own litigation can easily
23 opt-out and do so.

24 The first factor also supports class treatment when there
25 are class members for whom it would be "uneconomical to litigate
26 individually." *Loc. Joint Exec. Bd. of Culinary/Bartender Tr.*
27 *Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir.
28 2001). While most class members are likely entitled to an amount

1 in the five figures (and some in the six figures), the Court
2 should keep in mind the complexity of this litigation. Expert
3 witness fees alone in a case like this are higher than any single
4 class members' damages.

5 The second factor – the extent and nature of similar
6 litigation – also favors class certification. The only other
7 similar case (*Ray*) is likewise before this Court and involves
8 sports other than baseball. Plaintiffs here and in *Ray* have
9 attempted to coordinate discovery where appropriate for
10 efficiency. This fact supports factor three because this Court is
11 already currently managing a related a class action involving the
12 same NCAA rule. See *Morelock Enters., Inc. v. Weyerhaeuser Co.*,
13 No. CV 04-583, 2004 WL 2997526, at *5 (D. Or. Dec. 16, 2004) (“It
14 also is desirable to concentrate this litigation in the District
15 of Oregon, where several related cases have been adjudicated.”).

16 The fourth and final factor, manageability, also supports
17 class certification. By antitrust class action standards, this is
18 a relatively small one, involving around 1,000 coaches, all of
19 whom coached in a single sport under the same bylaw. This yields
20 a cohesive and manageable class. And, again, manageability
21 concerns are reduced when class certification is sought in a
22 settled case. *In re Hyundai*, 926 F.3d at 558.

23 The class action device is also the superior method for
24 resolving this dispute because each class member would likely
25 point to the same evidence in individual trials. Considerations
26 of efficiency and economy highly weigh in favor of resolving this
27 dispute once for all class members.

28

1 In sum, the Court should hold that a certifiable class for
2 purposes of settlement exists.

3 **H. Rule 23(c) (2) Notice Requirements.**

4 "Rule 23(c) (2) governs both the form and content of a
5 proposed notice." *Kabasele*, 2023 WL 4747691, at *6. With regard
6 to the form of notice, "[n]otice is satisfactory if it generally
7 describes the terms of the settlement in sufficient detail to
8 alert those with adverse viewpoints to investigate and to come
9 forward and be heard." *Churchill Vill. v. Gen. Elec.*, 361 F.3d
10 566, 575 (9th Cir. 2004).

11 The proposed notice forms do just that. See Proposed Order,
12 Exhibits A-C. They explain the proceedings, define the scope of
13 the class, inform class members of the binding effect of the
14 class action, and explain what the settlement provides and how
15 much each class member can expect to receive in compensation. The
16 forms further explain the opt-out procedure, the procedure for
17 objecting to the settlement, and the date and locations of the
18 final approval hearing. This Court has approved of class notices
19 containing these things. *Kabasele*, 2023 WL 4747691, at *6;
20 *Griffin*, 2022 WL 16836711, at *5 *Evans*, 2022 WL 3030249, at *6;
21 *Kimbo*, 2020 WL 4547324, at *6. In short, the forms provide class
22 members with everything they need to make an informed decision.

23 With regard to the method of notice, Rule 23 requires "the
24 best notice that is practicable under the circumstances,
25 including individual notice to all members who can be identified
26 through reasonable effort." Fed. R. Civ. P. 23(c) (2) (B). Notice
27 must be "reasonably certain to inform the absent members of the
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1 plaintiff class," but actual notice is not required. *Kabasele*,
2 2023 WL 4747691, at *6 (quoting *Silber v. Mabon*, 18 F.3d 1449,
3 1454 (9th Cir. 1994)); *Griffin*, 2022 WL 16836711, at *5 (same).

4 Plaintiffs have selected Kroll Settlement Administration to
5 serve as the Settlement Administrator. Pursuant to the notice
6 plan, the Settlement Administrator will direct a longform notice
7 to all class members with a last-known email address. Fenwick
8 Decl. ¶¶ 6-7. Given that the class is comprised largely of
9 younger men born and raised in the age of computer technology,
10 electronic communications are well-suited for the case. See Fed.
11 R. Civ. P. 23(c)(2)(B) (expressly contemplating notice via
12 "electronic means"). The administrator will also send a first-
13 class U.S. mail postcard notice to each class member at his or
14 her last known address based on the records obtained via document
15 subpoenas, from performing additional searches, and from
16 following best practices to identify updated addresses. *Id.* ¶¶ 8-
17 13. The administrator will also create a settlement website that
18 will contain the full longform notice, and a toll-free number for
19 class members to ask questions and learn about the settlement.
20 *Id.* ¶¶ 14-15. These different methods of notice will assuredly
21 reach as many class members as is "practicable under the
22 circumstances." This Court has approved of a similar notice plan,
23 *Kimbo*, 2020 WL 4547324, at *6, and should do so again here.

24 **II. Rule 23(e) Fairness: All *Churchill* Factors Support**
25 **Preliminary Approval.**

26 After finding that the Rule 23(a) and (b) factors are met,
27 the Court next determines whether the settlement is fair,
28

1 adequate, and reasonable. *Kabasele*, 2023 WL 4747691, at *7;
2 *Griffin*, 2022 WL 16836711, at *6. The Ninth Circuit's "Churchill"
3 factors guide the fairness analysis:

4 (1) The strength of the plaintiff's case; (2) the risk,
5 expense, complexity, and likely duration of further
6 litigation; (3) the risk of maintaining class action
7 status throughout the trial; (4) the amount offered in
8 settlement; (5) the extent of discovery completed and
9 the stage of the proceedings; (6) the experience and
10 views of counsel; (7) the presence of a governmental
11 participant; and (8) the reaction of the class members
12 of the proposed settlement.

13 *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021) (citing
14 *Churchill*, 361 F.3d 566).

15 "Because some of these factors cannot be considered until
16 the final fairness hearing, at the preliminary approval stage,
17 the court need only determine whether the proposed settlement is
18 within the range of possible approval, and resolve any glaring
19 deficiencies in the settlement agreement before authorizing
20 notice to class members." *Kabasele*, 2023 WL 4747691, at *6
21 (citations omitted); accord *Evans*, 2022 WL 3030249, at *6. "This
22 generally requires consideration of whether the proposed
23 settlement discloses grounds to doubt its fairness or other
24 obvious deficiencies, such as unduly preferential treatment of
25 class representatives or segments of the class, or excessive
26 compensation of attorneys." *Kabasele*, 2023 WL 4747691, at *6.
27 Courts typically start by examining the process that led to the
28 settlement to ensure that they are the result of arms-length
bargaining and then turn to the settlement agreement's
substantive terms. *Id.*; *Griffin*, 2022 WL 16836711, at *6.

1 **A. Negotiation of the Settlement Agreement.**

2 The settlement was reached as a result of arms-length
3 negotiations occurring over several months. See Broshuis Decl. at
4 ¶ 11; *Griffin*, 2022 WL 16836711, at *7 (Shubb, J.) (accepting
5 counsel's representation of settlement reached by arms-length
6 negotiation following 10 months of investigation and informal
7 discovery). The parties mediated the case with a mediator last
8 summer, but were unsuccessful. The parties then proceeded with
9 thorough formal discovery. See Broshuis Decl. ¶¶ 7-10. After the
10 parties exchanged class certification briefs, and before
11 Plaintiffs' reply in support of its motion for class
12 certification was due, settlement talks resumed. Counsel for each
13 party negotiated intensely until an agreement in principle was
14 reached on January 31, 2025. See Broshuis Decl. at ¶ 11.

15 **B. The strength of Plaintiffs' case and the risks, expense,
16 and complexity of continued litigation.**

17 "Another relevant factor is the risk of continued litigation
18 balanced against the certainty and immediacy of recovery from the
19 Settlement." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
20 482, 489 (E.D. Cal. 2010) (Wanger, J.). "It has been held proper
21 to take the bird in hand instead of a prospective flock in the
22 bush." *Id.* In determining risk, numerous courts have recognized
23 that "antitrust class actions are notoriously complex,
24 protracted, and bitterly fought." *Park v. Carlyle/Galaxy San*
25 *Pedro, L.P.*, No. CV 09-00793, 2009 WL 10669742, at *6 (C.D. Cal.
26 Oct. 8, 2009); *In re Endosurgical Prods. Direct Purchaser*
27 *Antitrust Litig.*, No. SACV 05-8809, 2008 WL 11504857, at *7 (C.D.
28 Cal. Dec. 31, 2008) (quotations omitted).

1 This case is no different. Because Plaintiffs' motion for
2 class certification was contested, certification was far from
3 certain. Whatever ruling this Court made would almost certainly
4 be appealed by the losing party, which would have caused
5 additional expense and delay. *Evans*, 2022 WL 3030249, at *7
6 (Shubb, J.) (citing similar factors in risk analysis); *Kimbo*,
7 2021 WL 492493, at *5 (Shubb, J.) (same).

8 The first two *Churchill* factors "weigh in favor of approving
9 settlement when the defendant has plausible defenses that could
10 have ultimately left class members with a reduced or non-existent
11 recovery." See *Sandoval Ortega v. Aho Enters., Inc.*, No. 19-cv-
12 00404, 2021 WL 5584761, at *6 (N.D. Cal. Nov. 30, 2021) (citing
13 *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993,
14 999 (N.D. Cal. 2015)).

15 Here, the NCAA alleged that three procompetitive
16 justifications for the volunteer coach rule existed: preserving
17 competition between members, increasing coaching resources
18 available to student athletes, and expanding coaching
19 opportunities for prospective coaches. (ECF No. 63-10 at p. 20.)
20 While Plaintiffs do not believe that any of these justifications
21 would have prevailed on summary judgment or at trial for the
22 reasons briefed in their motion for class certification, the
23 entire class would have recovered nothing had the NCAA
24 nevertheless prevailed on any one of these three theories.

25 The NCAA's *Daubert* motion seeking to exclude Plaintiffs'
26 expert, Dr. Rascher, created additional litigation risk. The NCAA
27 attacked his damages model at the class certification stage and
28

1 presumably would have raised the same arguments at summary
2 judgment and trial. Plaintiffs again do not believe that the
3 NCAA's attacks would have persuaded either the Court or a jury.
4 But Plaintiffs acknowledge there was at least some risk that the
5 NCAA would prevail in some or all of their attacks on the damages
6 model at any of the three major remaining stages of this case. If
7 that had happened, the Court or the jury could have found that
8 Plaintiffs had not proven any damages at all, or could have
9 reduced the damages to a much lower amount than the current
10 settlement figure. *Martinelli v. Johnson & Johnson*, No. 2:15-cv-
11 01733, 2022 WL 4123874, at *4 (E.D. Cal. Sept. 9, 2022) ("[B]oth
12 sides have retained expert witnesses, which, should this case go
13 to trial, makes it virtually impossible to predict with any
14 certainty which testimony would be credited, and ultimately,
15 which expert version would be accepted by the jury.") (England,
16 Jr., J.).³⁶ "Indeed, the history of antitrust litigation is
17 replete with cases in which antitrust plaintiffs succeeded at
18 trial on liability, but recovered no damages, or only negligible
19 damages, at trial, or on appeal." *In re NASDAQ Market-Makers*
20 *Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) (citing
21 examples). In short, Plaintiffs are confident that they would

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24 ³⁶ See also *In re Warner Commc's Sec. Litig.*, 618 F. Supp. 735,
25 744-45 (S.D.N.Y. 1985) ("Undoubtedly, expert testimony would be
26 needed to fix not only the amount, but the existence of actual
27 damages. In this 'battle of experts,' it is virtually impossible
28 to predict with any certainty which testimony would be credited,
and ultimately, which damages would be found to have been caused
by actionable, rather than the myriad nonactionable factors . . .
.") (citation omitted), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

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1 have succeeded, but success at trial, let alone on class
2 certification and summary judgment, was not assured.

3 **C. Relief provided by the settlement.**

4 When assessing the relief provided by the settlement, there
5 is no "particular formula" to be used. *Rodriguez*, 563 F.3d at
6 965. Instead, the "court's determination is nothing more than an
7 amalgam of delicate balancing, gross approximations and rough
8 justice." *Id.* "In determining whether a settlement agreement is
9 substantively fair to the class, the court must balance the value
10 of expected recovery against the value of the settlement offer.
11 This inquiry may involve consideration of the uncertainty class
12 members would face if the case were litigated to trial."
13 *Kabasele*, 2023 WL 4747691, at *8 (citations omitted); *Griffin*,
14 2022 WL 16836711, at *7 (same). The Court also compares the
15 settlement amount to the maximum amount of damages recoverable in
16 a successful litigation. *Kabasele*, 2023 WL 4747691, at *8. Some
17 courts have considered the amount recovered as the "most
18 important consideration[] of any class settlement." *Carlin*, 380
19 F. Supp. 3d at 1011.

20 By any measure, the settlement fund provides exceptional
21 relief for an antitrust case and makes the class members nearly
22 whole. The NCAA has agreed to establish a settlement fund of
23 \$49.25 million. Dr. Rascher previously calculated potential
24 damages of \$53.8 million; his model remains largely the same for
25 purposes of settlement, but when alleged violations after the
26 July 2023 rule change are excluded (which posed some additional
27 steps to prove), he estimates that the Settlement Class's overall
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1 actual damages would amount to approximately \$49.79 million.
2 Rascher Decl. ¶¶ 9-10. That includes any additional coaches who
3 were not in the original class definition proposed at class
4 certification, who had low potential damages because they coached
5 at schools with the lowest baseball budgets (which also generally
6 had the lowest coaching salaries). The \$49.25 million settlement
7 fund amounts to 91.5% of his original damages number, or
8 approximately 99% of his revised number. *Id.* It amounts to an
9 average of about \$36,000 *per year* per class member. *Id.* ¶ 12. And
10 since coaches often served in this role for multiple years, many
11 coaches will receive six-figure payments. *See id.* ¶ 12 (providing
12 estimates for Plaintiffs, who coached for two years).

13 That recovery is far better than the typical settlement.
14 "Courts regularly approve class settlements where class members
15 recover less than one quarter of the maximum potential recovery
16 amount." *Carlin*, 380 F. Supp. 3d at 1011. This Court has approved
17 lesser settlements:

- 18 • *Kabasele*, 2023 WL 4747691, at *8 (granting preliminary
19 approval to settlement that was around 27.22% of
20 potential damages);
- 21 • *Evans*, 2022 WL 3030249, at *7 (granting preliminary
22 approval to settlement that was more than 25% of the
23 class's best-case recovery);
- 24 • *Mejia v. Walgreen Co.*, No. 2:19-cv-00218, 2020 WL
25 6887749, at *10 (E.D. Cal. Nov. 24, 2020) (Shubb, J.)
26 (granting preliminary approval to settlement that was
27 around 22% of potential damages).

28

1 Moreover, antitrust cases in particular often settle for far
2 less:

- 3 • *Rodriguez*, 563 F.3d at 964-65 (affirming approval: 30%
4 of single estimated damages);
- 5 • *Four in One Co., Inc. v. S.K. Foods, L.P.*, No. 2:08-cv-
6 3017, 2014 WL 4078232, at *9 (E.D. Cal. Aug. 18, 2014)
7 (Mueller, J.) (final approval: 2.4% of damages);
- 8 • *In re Google Play Developer Antitrust Litig.*, No. 20-
9 cv-05792, 2024 WL 150585, at *2 (N.D. Cal. Jan. 11,
10 2024) (final approval: 36-38% of single damages);
- 11 • *In re Glumetza Antitrust Litig.*, No. C 19-05822, 2022
12 WL 327707, at *3-*4 (N.D. Cal. Feb. 3, 2022) (final
13 approval: 0.43-0.77% of single damages from Assertio;
14 16.7-30% from Lupin; and 33-60% from Bausch);
- 15 • *Edwards v. Nat'l Milk Producers Federation*, No. 11-cv-
16 04766, 2017 WL 3623734, at *7 (N.D. Cal. June 26, 2017)
17 (final approval: 28.7% of damages);
- 18 • *In re Cathode Ray Tube (Crt) Antitrust Litig.*, MDL No.
19 1917, 2015 WL 9266493, at *5-*6 (N.D. Cal. Dec. 17,
20 2015) (final approval: 0.4875% of damages);
- 21 • *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-
22 02509, 2015 WL 5159441, at *4 (N.D. Cal. Sept. 2, 2015)
23 (final approval: 14% of single damages estimate);
- 24 • *In re Tableware Antitrust Litig.*, No. C-04-3514, 2007
25 WL 4219394, at *3 (N.D. Cal. Nov. 28, 2007) (final
26 approval: 4.2% of single damages);

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- 1 • *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704, 2019
2 WL 6842332, at *4 (S.D.N.Y. Dec. 16, 2019) (10.9% to
3 21.3% of total possible recovery was reasonable);
- 4 • Connor & Lande, *Not Treble Damages: Cartel Recoveries*
5 *are Mostly Less than Single Damages*, 100 IOWA L. REV.
6 1997, 1998 (2015) (analyzing settlements in 71 private
7 cartel cases decided in 1990-2014 and finding median
8 average settlement was 37% of single damages).³⁷

9 This is not a meager coupon settlement that class members
10 will promptly forget; it provides impressive monetary relief that
11 will substantially help hundreds of hardworking people. The
12 \$49.25 million settlement fund is non-reversionary. All money
13 will be distributed to class members after payment of attorneys'
14 fees and costs. After the first distribution, if any money
15 remains in the fund because some class members cannot be located
16 or some checks remain uncashed, the remainder will be distributed
17 *pro rata* to class members who cashed their initial checks. If at
18 some point that process becomes economically infeasible, the

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21 ³⁷ Courts in non-antitrust cases approve settlements for even
22 less amounts. See *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
23 454, 459 (9th Cir. 2000) (finding settlement providing plaintiffs
24 16.6% of their potential recovery to be "fair and adequate"); *In*
25 *re Toys R Us-Del., Inc.-Fair & Accurate Credit Transactions Act*
26 *(FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) (final
27 approval: 3% of possible recovery (\$391 million value on exposure
28 up to \$13.05 billion)); *In re LDK Solar Sec. Litig.*, No. C 07-
5182, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (final
approval: 5% of damages); *McIntosh v. Katapult Holdings, Inc.*,
No. 21-cv-07251, 2024 WL 5118192, at *10 (S.D.N.Y. Dec. 13, 2024)
(collecting securities class action cases approving settlements
of 3.8% to 7% of total damages).

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1 remainder will be donated to a related charity – the American
2 Baseball Coaches Association – under the doctrine of *cy pres*.

3 Each class member’s individual recovery will be calculated
4 via the same formula using data regarding the number of years
5 worked, the schools at which they worked, and average salaries
6 for other paid assistant coaches at that school and other similar
7 schools within their conference based on program expenditures.
8 See Rascher Decl. at ¶¶4-5, 8. All class members are treated
9 equitably under Dr. Rascher’s model, and no class members will
10 unfairly benefit at the expense of others.

11 In short, there is no way to characterize this result as
12 anything less than outstanding. This *Churchill* factor strongly
13 weighs in favor of approval.

14 **D. Stage of proceedings and amount of discovery.**

15 The extent of discovery is also sometimes relevant in that a
16 court is more likely to approve of a settlement if most of the
17 discovery is completed because it suggests the parties reached a
18 compromise based on a full understanding of the legal and factual
19 issues. *DIRECTV*, 221 F.R.D. at 527 (quoting 5 Moore’s Federal
20 Practice, § 23.85[2][e] (Matthew Bender 3d ed.)).

21 Here, substantial discovery took place over the course of
22 many months that was sufficient for the parties to make an
23 informed decision. Both Mr. Smart and Mr. Hacker produced
24 documents. See Broshuis Decl. at ¶ 7. The NCAA produced over
25 278,132 pages of documents, which Plaintiffs reviewed. *Id.*
26 Plaintiffs also served and received responses to interrogatories
27 and requests for admissions. *Id.* at ¶ 6. Plaintiffs issued over
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1 300 subpoenas to member schools for information on baseball
2 coaches compensation and had received complete responses from
3 over 200, including over 8,000 documents that Plaintiffs also
4 reviewed. *Id.* at ¶ 8. Plaintiffs received enough information for
5 Dr. Rascher to run a regression model that proved both antitrust
6 injury and damages classwide. See ECF No. 64-2.

7 The parties already deposed most of the key fact witnesses.
8 The NCAA deposed both Mr. Smart and Mr. Hacker. See Broshuis
9 Decl. at ¶ 9. Plaintiffs deposed two of the NCAA employees most
10 knowledgeable about the volunteer coach rule and the efforts by
11 the NCAA to repeal it after Plaintiffs filed this lawsuit – Jenn
12 Fraser and Lynda Tealer. *Id.* Plaintiffs also deposed Matt Boyer –
13 the SEC employee most directly responsible for an earlier failed
14 effort in 2018 to repeal the volunteer coach rule. Plaintiffs
15 then deposed Jeremiah Carter – a member of the NCAA Modernization
16 of Rule Subcommittee tasked with recommending the repeal of
17 unnecessary bylaws, including the volunteer coach rule. *Id.*

18 The parties were similarly able to adequately gauge the
19 strength of each side's expert. Plaintiffs' sole expert, Dr.
20 Rascher, submitted a detailed declaration (ECF Nos. 63-60, 64-2)
21 and was deposed. Plaintiffs then received a detailed report from
22 the NCAA's sole rebuttal expert, Dr. Jee-Yeon Lehmann (ECF No.
23 67-5), and deposed her, Broshuis Decl. at ¶ 10.

24 Given the extensive discovery completed, this factor
25 strongly favors approval.

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1 **E. Experience and views of counsel.**

2 “Great weight’ is accorded to the recommendation of counsel,
3 who are most closely acquainted with the facts of the underlying
4 litigation.” *DIRECTV*, 221 F.R.D. at 528. Indeed, “[p]arties
5 represented by competent counsel are better positioned than
6 courts to produce a settlement that fairly reflects each party’s
7 expected outcome in litigation.” *Rodriguez*, 563 F.3d at 967.

8 All parties here were represented by sophisticated counsel
9 with significant experience in class actions – and significant
10 experience in the industry at hand. The class was represented by
11 counsel with decades of experience in complex litigation
12 generally and class actions in particular. See Broshuis Decl. at
13 ¶ 3. Indeed, Plaintiffs’ counsel regularly works on some of the
14 most complex cases in the country. One of the lead members of the
15 team even had prior experience as a Division I baseball player
16 that had a coach in the volunteer role, so he knows first-hand
17 what is at stake and has an intimate understanding of the
18 business. *Id.* at Ex. 1 at 3. (Broshuis bio).

19 Plaintiffs’ counsel carefully evaluated all aspects of the
20 agreement and, without hesitation, believes that this settlement
21 is a terrific result for class members. Broshuis Decl. at ¶ 23.
22 Plaintiffs’ counsel are of the firm opinion that they have
23 obtained the best possible outcome for the class. *Id.* It will not
24 only secure meaningful compensation for class members, but will
25 make them nearly whole for the damages they suffered. This
26 *Churchill* factor therefore weighs in favor of approval.

1 **F. Government participation and reaction of class members**
2 **are inapplicable.**

3 The final two *Churchill* factors are neutral at this time.
4 There is no government participant in this case. And the reaction
5 of class members is best assessed at the final approval hearing
6 where the Court can consider any objections. *Sandoval Ortega*,
7 2021 WL 5584761, at *8.

8 **G. Attorneys' Fees.**

9 “If a negotiated class action settlement includes an award
10 of attorney’s fees, that fee award must be evaluated in the
11 overall context of the settlement.” *Kabasele*, 2023 WL 4747691, at
12 *9 (citing *Knisely v. Network Assocs.*, 312 F.3d 1123, 1126 (9th
13 Cir. 2002)). At preliminary approval, the Court considers whether
14 the attorneys’ fee amount is within the range of reasonableness.
15 *Id.* (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654
16 F.3d 935, 941 (9th Cir. 2011)).

17 Plaintiffs’ counsel plans to file their fee petition by 30
18 days before the deadline to object or opt-out, which will provide
19 further details about the resources and costs expended by counsel
20 and the reasonableness of the fee sought. As in *Kabasele*, the
21 Settlement Agreement here provides that Plaintiffs’ counsel may
22 seek a fee award not to exceed 33% of the gross settlement
23 amount, and the Settlement Agreement is effective even if the
24 Court does not award that amount. *Id.*; see also Settlement
25 Agreement at § 7.8.4. Although the Settlement Agreement permits
26 Plaintiffs’ counsel to seek up to 33% of the common fund as fees,
27 counsel intends to petition for 30% of the common fund, along
28 with reimbursement of their incurred costs and expenses up to

1 \$1.5 million. While 25% is the benchmark for fees in the Ninth
2 Circuit where a settlement produces a common fund, *In re*
3 *Bluetooth*, 654 F.3d at 943, a higher rate may be awarded when
4 merited, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th
5 Cir. 2002). This Court has often exceeded 25%. *See Kabasele*, 2024
6 WL 477221, at *7 (Shubb, J.) (final approval order awarding
7 33.33% fee); *Griffin v. Consol. Commc's*, No. 2:21-cv-0885, 2023
8 WL 3853643, at *7 (E.D. Cal. June 6, 2023) (Shubb, J.) (final
9 approval order awarding 35% fee); *Evans v. Zions Bancorporation,*
10 *N.A.*, No. 2:17-cv-01123, 2022 WL 16815301, at *1 (E.D. Cal. Nov.
11 8, 2022) (Shubb, J.) (final approval order awarding 30% fee).

12 Here, awarding Plaintiffs' counsel 30% of the common fund
13 would be well within the Court's discretion given the particulars
14 of this case. As noted earlier, the settlement amount that
15 Plaintiffs' counsel successfully negotiated *pre-class*
16 certification is outstanding. It is exceptional to achieve nearly
17 100% of potential damages in an antitrust settlement at any stage
18 of a case, and particularly noteworthy to achieve that before
19 class certification takes place. The result speaks not merely to
20 the overall strength of Plaintiffs' overall case theory but to
21 their counsel's skills in developing a compelling evidentiary
22 record and negotiating an impressive settlement.

23 In assessing value to the class, the Court should also keep
24 in mind that the volunteer coach rule at issue was repealed only
25 *after* Plaintiffs and their counsel filed this lawsuit in 2022 in
26 which both monetary and injunctive relief was sought. Before
27 that, the rule harmed hundreds of volunteer coaches each year
28

1 since it was enacted in 1992. And while a proposal had been made
2 to eliminate the rule shortly before Plaintiffs filed this case,
3 all prior efforts to repeal the rule, including in 2018, had
4 failed. After Plaintiffs filed this case, the repeal effort
5 finally succeeded, which brought forth meaningful and lasting
6 industry change.

7 A 30% award of the common fund is also reasonable in light
8 of the significant risks Plaintiffs' counsel took on. As noted
9 earlier, Plaintiffs faced a risk that they would not prevail on
10 their contested motion for class certification, and that the NCAA
11 would later prevail on its procompetitive justification
12 affirmative defense. These risks are particularly acute for
13 Korein Tillery, LLC, which practices mostly on contingency fee
14 cases, Broshuis Decl. at ¶ 3, worked on a contingent basis in
15 this case, *id.* at ¶ 20, self-funded this case, *id.*, and was
16 opposed by one of the largest, well-funded athletic associations
17 in the world. This Court has previously noted that "[t]he nature
18 of contingency work inherently carries risks that counsel will
19 sometimes recover very little to nothing at all, even for cases
20 that may be meritorious. Where counsel do succeed in vindicating
21 statutory and employment rights on behalf of a class of
22 employees, they depend on recovering a reasonable percentage-of-
23 the-fund fee award to enable them to take on similar risks in
24 future cases." *Mejia*, 2021 WL 1122390, at *8 (citing *Kimbo*, 2021
25 WL 492493, at *7). Plaintiffs' counsel has worked for several
26 years in this case without pay and should be fairly compensated
27 for their significant risks.

28

1 Again, Plaintiffs' counsel will file the motion for
2 attorneys' fees at a later date, but for now, the import is that
3 the fee request is well within the bounds of what has been
4 traditionally approved. This factor likewise supports preliminary
5 approval. Thus, all relevant factors strongly point towards the
6 Court granting this Motion.

7 **III. The Court Should Set a Schedule for Final Approval.**

8 Plaintiffs request that the Court set a schedule for final
9 approval of the settlement and proposes the following:

- 10 • Deadline for administrator to disseminate notice to
11 class members: 14 days from the date of an order
12 granting preliminary approval;
- 13 • Deadline for class members to opt out or object: 60
14 days after dissemination of notice;
- 15 • Deadline for motion for attorneys' fees and costs and
16 for incentive awards: 30 days before notice period
17 ends;
- 18 • Deadline for motion for final approval: 15 days after
19 notice period ends;
- 20 • Hearing on motions for final approval and for
21 attorneys' fees and costs: 35 days after motion for
22 final approval filed.

23 **CONCLUSION**

24 "At the preliminary approval stage, the court is simply
25 determining whether it is 'likely' the substantive standards for
26 settlement approval will be met at the final approval stage." 4
27

28

1 NEWBERG ON CLASS ACTIONS § 13.15 (5th ed.). The pertinent factors show
2 that standard is easily met here.

3 Plaintiffs request that the Court: (a) grant preliminary
4 approval of the proposed class action settlement; (b) certify the
5 proposed (b) (3) Settlement Class; (c) appoint Plaintiffs Taylor
6 Smart and Michael Hacker as class representatives; (d) appoint
7 Korein Tillery, LLC, Garrett R. Broshuis, and Steven M. Berezney
8 as Class Counsel; (e) authorize the distribution of notice to the
9 class; and (f) set the above-proposed deadlines.

10

11 DATED: March 24, 2025

Respectfully submitted,

12

/s/ Garrett R. Broshuis

13

KOREIN TILLERY, LLC

14

Stephen M. Tillery (*pro hac vice*)

15

Steven M. Berezney

16

Garrett R. Broshuis

17

Attorneys for Plaintiffs

18

CERTIFICATE OF SERVICE

19

I hereby certify that on March 24, 2025, I electronically
20 filed the foregoing with the Clerk of the Court using the CM/ECF
21 system, which will send notification of such filing to all
22 attorneys of record registered for electronic filing.

23

/s/ Garrett R. Broshuis

24

Garrett R. Broshuis

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