NOS. 25-3722, 25-3835, 25-4137, 25-4150, 25-4190, 25-4218

United States Court of Appeals for the Ninth Circuit

In re: College Athlete NIL Litigation

DEWAYNE CARTER; NYA HARRISON; NICHOLAS SOLOMON; GRANT HOUSE; SEDONA PRINCE,

Plaintiffs-Appellees,

– v. –

K. BRAEDEN ANDERSON,

Objector-Appellant,

– v. –

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION; PAC-12 CONFERENCE; THE BIG TEN CONFERENCE, INC.; THE BIG TWELVE CONFERENCE, INC.; SOUTHEASTERN CONFERENCE; ATLANTIC COAST CONFERENCE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
IN CASE NO. 4:20-CV-03919-CW, HON. CLAUDIA WILKEN, DISTRICT JUDGE

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Appellees' responses rest on a false baseline and a misplaced legal frame. They describe the settlement in superlatives—"historic," "extraordinary," "groundbreaking"—and emphasize its aggregate dollar figure as though magnitude alone establishes fairness. But Rule 23 does not ask whether a settlement is large; it asks whether it is adequate relative to the correct market baseline. Appellees' baseline is wrong. They portray the settlement as the moment athletes were finally "allowed" to be compensated—as though, but for this agreement, Division I athletes would receive little or nothing. And they defend the approval order by invoking two simplifying refrains: that because the court found no classic *Bluetooth* fee "red flags," the court's job is done; and that although the decade-long compensation cap is a classic price-fix, but not per se unlawful, approval follows. Both premises misstate the record and the governing law.

The relevant baseline is not the pre-*Alston* regime of NCAA-enforced amateurism. By the time this settlement was negotiated, a robust compensation market in Division I football and men's basketball had already emerged—outside this litigation and outside NCAA control. With (1) state NIL laws permitting NIL compensation set to take effect on July 1, 2021, (2) a failed federal preemption attempt in June, 2021 to nullify state NIL laws and (3) the *Alston* decision on June 21, 2021 which required courts to confront market realities, the NCAA retreated on

NIL compensation by adopting on July 1, 2021, its Interim NIL Policy permitting NIL compensation. The Interim Policy marked the first time in NCAA history that it had voluntarily suspended enforcement of amateurism-based compensation rules.

In the regulatory vacuum that followed, third-party NIL collectives quickly formed and created the first-ever observable wage market for college athletic labor. Collectives made high six- and seven-figure payments to athletes in revenue sports without diminishing consumer demand or industry revenues.[1] Courts should defer to that market reality—not to market participants asking the judiciary to ratify a "compromise" that restrains competition precisely because competition was working outside their control.

The settlement did not create that market. It rerouted it—shifting compensation that had flowed from independent third parties into a centralized, school-controlled revenue-sharing structure, while subjecting remaining third-party payments to coordinated oversight and "fair market value" enforcement. In doing so, it places functional control of athlete compensation streams back into the hands of the very market participants that suppressed them. The oft-repeated claim that this is the "first time ever" schools will pay athletes directly assumes a world in which

[1] *See* https://biz.opendorse.com/nil-3-annual-report/; ECF 613 (N.D. Cal.).

athletes otherwise would receive nothing. But the NIL collective market demonstrated otherwise.

Division I football and men's basketball generate billions annually, and the athletes who produce those revenues are disproportionately Black. As *Alston* recognized, the commercial growth of modern college sports coincided with the predominance of Black athletes in revenue-generating roles. 594 U.S. at 90. Against that backdrop, "big number" rhetoric is misleading. An aggregate dollar figure can sound "extraordinary" while masking a structural compensation restraint that falls most heavily on revenue-sport athletes—disproportionately Black—by suppressing competitive upside. Measured against the functioning post-2021 market—not against the pre-*Alston* regime—the settlement locks in forward-looking restraints first and prices backward-looking damages inside that cage. Where the labor force most affected has long operated under compensation limits while the enterprise flourished, Rule 23 demands vigilance, not deference.

Appellees respond that the settlement delivers athletes 51% of "revenue," allegedly comparable to professional leagues. But that figure rests on a contested denominator that does not capture the full economic value of athletic performance and does not incorporate the real-world compensation evidence that emerged after 2021. Nor does the professional-league analogy withstand scrutiny. Professional salary caps arise from collective bargaining between unions and employers operating

under statutory labor exemptions. Here, by contrast, a compensation ceiling is imposed through Rule 23 approval without collective bargaining safeguards and without the structural protections labor law provides. If the cap truly reflected competitive market value, market forces alone would impose it; judicial sanction would be unnecessary.

The absence of fee "red flags" does not end the inquiry. Heightened scrutiny requires engagement with structural conflict, and Rule 23 does not permit approval of a decade-long classic wage-fix simply because it is not per se unlawful. The approval order did not grapple with the settlement's architecture or its baseline. Vacatur and remand are required.

I. Standard of Review

Appellees repeatedly invoke "extremely limited" review. But Rule 23(e)(2) requires that a class settlement be "fair, reasonable, and adequate," and this Court reviews approval for abuse of discretion. *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012). A district court abuses its discretion when it applies the wrong legal standard or rests its approval on unreasonable factual findings. *Id*. "Limited review" does not apply where settlement is negotiated before class certification. *Id.* In those cases — like here — settlement approval "requires a higher standard of fairness and a more probing inquiry …To survive appellate review, the district court must show

it has explored comprehensively all factors and must give a reasoned response to all non-frivolous objections." *Id.* (internal citations omitted).

Reliance on any presumption of fairness is error. *Saucillo v. Peck*, 25 F.4th 1118, 1130–31 (9th Cir. 2022) (reaffirming *Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048–50 (9th Cir. 2019)); *In re Bluetooth*, 654 F.3d 935, 946–47 (9th Cir. 2011); *In re Apple Inc.*, 50 F.4th 769, 782–83 (9th Cir. 2022). Heightened scrutiny is not satisfied by conclusory assurances about mediation, sequencing, or counsel's experience; it requires a substantive, record-based evaluation directed to the specific risks of collusion and conflict that arise in a settlement-only posture.

Appellees' deferential framing collapses two distinct inquiries: whether compromise is ***permissible*** and whether the structure of the compromise satisfies Rule 23 and governing law. Deference does not insulate structural conflict, failure to engage non-frivolous objections, or approval of relief whose legality is seriously contested. The question on appeal is therefore not whether the district court believed the settlement was substantial or "extraordinary," but whether it performed the searching, record-based analysis that Rule 23(e) and this Court's heightened-scrutiny precedents require. Here it did not.

II. Heightened Scrutiny Was Not Applied

This case was resolved in a settlement-only posture that bundled materially divergent claims—NIL and pay-for-play, backward and forward relief, including an

expanded settlement-only class incorporated without adversarial discovery—into a single, interdependent agreement. That posture triggered "a higher level of scrutiny for evidence of collusion or other conflicts of interest." *Bluetooth*, 654 F.3d at 946–47; *Apple*, 50 F.4th at 782–83. In settlement-only cases, Rule 23 demands "undiluted, even heightened, attention." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 620 (1997).

Appellees argue that heightened scrutiny was satisfied because none of the three classic *Bluetooth* fee markers—disproportionate fees, clear-sailing, or reversion—were found. They rely on *In re California Pizza Kitchen,* 129 F.4th 667 (9th Cir. 2025), which affirmed approval despite the presence of all three markers.

California Pizza confirms that *Bluetooth* is "a procedural safeguard to ensure that district courts scrutinize class settlements for collusion that may harm class members. It does not set crusty, rigid rules that mandate a substantive result." 129 F.4th at 677.

Exactly so. But that cuts against Appellees' position. If the presence of all three markers does not compel denial, their absence does not compel approval. *Bluetooth* directs courts to probe for unfair tradeoffs. It does not permit courts to stop looking once familiar fee signals are absent.

Here, the alleged conflict is not subtle. It is structural. The settlement bundled backward- and forward-looking claims into a single bargain in which forward-

looking compensation restraints were secured first and damages negotiated within that framework. As detailed in Section III.A, Appellees do not dispute that architecture in their responses. They defend it.

Bluetooth was designed to detect hidden tradeoffs. Where the tradeoff is architectural and undisputed, the absence of fee red flags does not satisfy heightened scrutiny. Nothing in *California Pizza* suggests otherwise. That case involved a single-injury data-breach settlement and an order that meaningfully engaged the alleged collusion concerns on a developed record. It did not involve four distinct classes with divergent claim types, embedded forward-looking labor restraints, or settlement structure conditioning damages on preserving those restraints.

In re Apple reinforces the point. There, this Court faulted the district court for limiting its review to obvious deficiencies rather than probing for "subtle signs of collusion." 50 F.4th at 782–83. A court does not satisfy heightened scrutiny by confirming the absence of three particular warning lights while declining to analyze whether the settlement's structure reflects an obvious tradeoff.

The order repeatedly invoked the magnitude of the recovery and the participation of an experienced mediator. But arm's-length bargaining and mediator involvement do not substitute for record-based analysis in a settlement-only case. *Saucillo*, 25 F.4th at 1131. Nor can reliance on a single expert report substitute for grappling with objections directed at the architectural tradeoff itself. The court

praised Dr. Rascher's conclusions, 1-ER-146, but as discussed in Section V, did not engage the core methodological criticisms that underpin the adequacy challenge.

Heightened scrutiny required the district court to confront the settlement's interdependent design and the risk of subgroup tradeoffs. It did not.

III. Rule 23(e)(2)(A): Structural Conflict and Inadequate Representation

A. Structural Conflict

The approval order never meaningfully engaged the settlement's *architecture*—a structure that locks in forward-looking restraints first and prices damages inside that cage. Rule 23(e)(2)(A) requires the court to determine whether "the class representatives and class counsel have adequately represented the class." Here there are four distinct classes. In a settlement-only posture resolving materially divergent claim types, adequacy requires structural protection against the risk that one subgroup's interests will be traded to secure relief for another. *Amchem*, 521 U.S. at 626–27; *Ortiz*, 527 U.S. at 856–57.

The settlement bundled backward-looking damages and forward-looking compensation restraints into a single, interdependent agreement in which injunctive terms were secured first and damages negotiated within that fixed framework. The structure itself operated as the tradeoff: backward-looking pay-for-play value was negotiated only after forward-looking control (limitations on boosters and prohibitions on pay-for-play) was secured.

The record confirms that preservation of pay-for-play prohibitions was described as "an essential part of the deal." 4-ER-756. During injunctive negotiations—and before the *Carter* complaint was filed—the parties discussed expanding the *House* settlement to include pay-for-play claims in order to "globally address Defendants' compensation and benefit rules on a going-forward basis," with Dr. Rascher evaluating those claims in that settlement posture. *Id*. *Carter* was then incorporated into the consolidated settlement architecture during those negotiations. *See* Opening Br. 31–34.

Appellees do not dispute this settlement architecture. They do not contest that:

- pay-for-play prohibitions were described as "an essential part of the deal" — a non-negotiable;
- injunctive terms were resolved before damages;
- pay-for-play claims were folded into the settlement during injunctive negotiations; and
- Rascher's valuation occurred within that settlement-only framework.

Instead, Appellees contend that sequencing and mediation cure any concerns.

Where forward-looking restraints demanded by defendants are locked in first, and damages are then negotiated within that constrained framework, the risk that one subgroup's claims are discounted to secure forward-looking control is unavoidable. That is precisely the concern that led the Supreme Court to require heightened

attention—and often separate representation—when materially adverse interests exist within a class. *Amchem*, 521 U.S. at 626–27; *Ortiz*, 527 U.S. at 856–57.

This case presents that risk in its clearest form: backward-looking damages for one subgroup were negotiated in the shadow of securing decade-long forward-looking compensation restraints. Sequencing does not eliminate that conflict. It merely organizes it. In that posture, the absence of traditional fee "red flags" does not resolve the structural adequacy problem.

Nor does a low opt-out rate cure structural conflict. The suggestion that dissatisfied class members should have opted out misunderstands the nature of the relief. An individual opt-out does not recreate a competitive labor market or permit negotiation outside an industry-wide compensation regime.

Rule 23(e)(2)(A) required heightened scrutiny of unitary counsel's adequacy in this posture. It was not meaningfully applied.

B. Appellees' Attempts to Distinguish Precedent Fail

Appellees attempt to confine *In re Literary Works*, 654 F.3d 242 (2d Cir. 2011), and *In re Payment Card*, 827 F.3d 223 (2d Cir. 2016), to cases involving a single capped common fund or post-allocation conflicts. They emphasize that those cases involved allocation formulas that placed one group at risk of receiving nothing from a fixed pool.

That distinction is formal, not substantive.

In *Literary Works*, the Second Circuit held that a settlement cannot be approved where allocation decisions reflect divergent interests among subgroups and no structural protection is provided. 654 F.3d at 252–54. In *Payment Card*, the court explained that when counsel's ability to secure a large fee depends on resolving one group's claims in order to obtain relief for another, courts cannot assume adequate representation. 827 F.3d at 233–36.

The core principle in both cases is structural: when materially divergent interests exist within a class, courts must ensure that the negotiation structure does not permit one subgroup's claims to be traded to secure relief for another.

Appellees argue that, unlike *Literary Works*, this case does not involve a "single capped common fund." But here the alleged tradeoff occurred at an *earlier* and more consequential stage: during the setting of the settlement structure itself. Rather than allocating a fixed fund after it was created, the parties structured the settlement in a way that embedded forward-looking compensation restraints before damages were negotiated. The conflict thus operated at the front end, not merely at the allocation stage. That does not make the conflict weaker. It makes it more fundamental.

Appellees likewise attempt to distinguish *Amchem* and *Ortiz* on the ground that those cases involved future claimants or unknown injuries, whereas this case

involves injunctive relief and no formal "future damages" subclass. Again, that distinction misses the point.

The Supreme Court in *Amchem* and *Ortiz* did not focus on labels such as "future claimants." It focused on materially adverse interests within a settlement-only class and the risk that one subgroup's interests would be subordinated to another's. *Amchem*, 521 U.S. at 626–27; *Ortiz*, 527 U.S. at 856–57. The requirement of structural protection arose from that divergence, not from the existence of temporally distinct injuries.

Here, the divergence is between backward-looking damages and forward-looking compensation restraints. The settlement forecloses future Section 1 challenges to pay-for-play prohibitions while resolving past damages with unitary counsel in the same negotiation. That alignment of retrospective and prospective relief in a unitary bargain presents the same structural risk identified in *Amchem* and *Ortiz*: one subgroup's claims were constrained to secure global peace for another.

Appellees' reliance on sequencing does not cure the problem. As *Payment Card* explains, courts must examine whether the structure of the negotiation creates incentives to subordinate one group's interests. 827 F.3d at 234. Here, forward-looking restraints were secured first, and backward-looking damages were negotiated within that fixed framework by the same counsel. That made the risk of

underrepresentation structural, not speculative. Separate counsel would have provided the insulation this structure lacked.

The district court did not apply the heightened structural scrutiny that this conflict required. That failure cannot be reconciled with *Literary Works*, *Payment Card*, *Amchem*, and *Ortiz*.

IV. Rule 23(e)(2)(B): No Arm's-Length Negotiation

Rule 23(e)(2)(B) asks whether this agreement was negotiated at arm's length. Contrary to what Appellees urge, this *is* disputed. And prior adversarial history and mediator involvement are not dispositive in a settlement-only, interdependent deal. *See* Sections II and III.A. The question is transaction-specific: whether settlement-stage incentives and structural distortions affected bargaining over divergent claims and releases.

V. Rule 23(e)(2)(C): The Relief Is Inadequate

A. Forward-Looking Compensation Regime Is Materially Underpriced

Rule 23(e)(2)(C) requires the court to determine whether the relief provided is adequate considering the costs, risks, and delay of trial and appeal, the effectiveness of the proposed method of distributing relief, and attorney's fees. That assessment must be measured against the functioning post–July 1, 2021, compensation market—not against the NCAA's pre-*Alston* restraints. The question

is not whether the settlement is "big" relative to suppressed pre-NIL stipends, but whether it reflects the value of the claims surrendered under r*eal market conditions*.

The order emphasizes—and Appellees repeatedly echo—the headline figure of "new compensation." But adequacy is not a marketing exercise. A large number compared to a suppressed regulatory baseline instead of the correct competitive-market baseline does not establish market value, especially in light of forward-looking restraints.

Although Appellees characterize those forward-looking restrictions as "limited" and "modest," Section V.D shows that the regime preserves centralized authority to suppress the *only* observable wage proxy—third-party collective payments—undercutting any claim that the settlement reflects competitive value.

Defendants made clear at preliminary approval that they viewed collectives as pay-for-play proxies, demanded regulatory authority over them, and treated that authority as non-negotiable. *See* Opening Br. at 25-26. The settlement reflects that priority. Yet the order does not price the economic impact of preserving those restraints.

That failure bears directly on adequacy.

B. Litigation-Risk Discount Misreads *Alston* and Ignores Market Reality

Appellees justify the settlement by invoking "litigation risk," asserting that pay-for-play claims faced significant uncertainty in light of *Alston* and certification hurdles. That framing misreads *Alston* and the post-2021 market.

Alston did not reaffirm amateurism as a shield against antitrust scrutiny. It rejected reliance on broad, tradition-based rationales untethered to market evidence and required that compensation restraints be evaluated under ordinary rule-of-reason principles grounded in current economic realities. The limited remedy reflected the claims presented—not a merits endorsement of broader compensation limits. Notably, Appellees do not contend in this appeal that amateurism itself justifies the pool cap. Instead, they rely on narrower appeals to competitive balance and "output" of athletic opportunity. *See* Defendants' Br. at 53-55. The asserted "risk" therefore cannot rest on a theory the NCAA no longer advances.

Nothing in *Alston* held that pay-for-play prohibitions are lawful. To the contrary, the decision makes clear that wage restraints must be tested against actual market conditions. Justice Kavanaugh's concurrence underscored that agreements fixing compensation in labor markets are "flatly illegal in almost any other industry." 141 S. Ct. at 2166–69 (Kavanaugh, J., concurring). *Alston* cannot reasonably be read as insulating broader compensation restraints from serious antitrust challenge.

More importantly, the post-2021 market supplied the very realities *Alston* required courts to examine. Following the Interim Policy, third-party NIL compensation expanded rapidly, while Division I athletics experienced record revenues, expanded media deals, continued conference realignment, and rising coaching compensation. *See* 1-ER-22. Expanded compensation did not diminish consumer demand.

The settlement's "litigation risk" discount nevertheless proceeds as if pre-*Alston* deference and market conditions still governed. They do not. Risk must be evaluated against the market as it exists. Here, the NIL collective salary-substitute market quickly disproved decades of institutional predictions that fair pay for athletes would bring college sports to ruin or otherwise lead to a host of unintended negative consequences. Neither the law nor the parties' experts have been able to keep up with the dynamic market forces produced in the NIL era. A generalized appeal to manufactured uncertainty that ignores the very free market activity that antitrust laws are designed to protect does not substitute for reality and record-based valuations. In short, the "discount" rests both on a litigation risk *Alston* no longer sustains and on a baseline that ignores the functioning post-2021 market that displaced it.

Appellees also invoke certification risk. But the scope and linkage of the class were strategic choices. The expansion to include *Carter* created the very complexity

now cited as a reason to discount recovery. Rule 23(e)(2)(C) does not permit structural design to manufacture risk and then use that risk to justify a lower price.

C. Discovery Posture Did Not Support Valuation of Pay-for-Play Claims

Appellees invoke the "extent of discovery and stage of the proceedings" factors recognized in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), to argue that the settlement was informed by extensive litigation in *House* and *Alston*. But Rule 23(e)(2)(C) requires that discovery meaningfully inform the valuation of the claims released.

The record does not show adversarial discovery or expert testing sufficient to value the *Carter* pay-for-play claims in the post-2021 market. Discovery in *Alston* concerned education-related compensation restraints, and initially, pay-for-play injunctive relief claims, not unrestricted pay-for-play wages in a post-NIL environment. However, Plaintiffs abandoned their pay-for-play injunctive relief claims in the Supreme Court. Moreover, even if *Alston* discovery was relevant, it is so out-of-date that it is useless. Alston was filed in 2014 and fact and expert discovery ended as early as 2016. The case went to trial in 2018 – years before the NIL market even existed.

Nor did *House* fill that gap. *House* was specifically an NIL-only case and did not raise pay-for-play claims. Discussions about incorporating pay-for-play claims occurred during injunctive negotiations and *before* the *Carter* complaint was filed.

4-ER-756. The damages modeling for those claims was developed in that settlement posture—not after adversarial discovery directed at the market value of unrestricted compensation.

An advanced procedural posture does not substitute for testing the economic value of the claims surrendered. On this record, the valuation of *Carter* pay-for-play claims was not grounded in adversarially developed market evidence reflecting post-Interim realities.

D. The Settlement Suppresses the Only Observable Wage Proxy

Appellees characterize the forward-looking relief as modest, asserting that the settlement merely regulates a "limited set" of third-party payments. That framing misstates the economic reality. The third-party collectives that emerged after the Interim Policy became the primary observable proxy for athlete compensation in a competitive environment. Defendants themselves treated those collectives as pay-for-play substitutes and that is why they sought authority to regulate or constrain them. *See* 7-ER-1436–1454.

The settlement preserves centralized authority to prohibit, monitor, and challenge third-party payments above specified thresholds. *See* 1-ER-22. In doing so, it embeds regulatory control over the very mechanism through which market-based compensation developed.

Adequacy under Rule 23(e)(2)(C) requires valuation of the claims released. Yet Dr. Rascher's model did not include collective-market compensation data reflecting post-Interim competitive payments. The only observable wage proxy was excluded from the damages baseline. A settlement that both discounts past pay-for-play damages and preserves forward-looking authority to constrain that proxy must be evaluated in light of that economic effect. Suppressing the benchmark while excluding it from valuation is not a neutral compromise; it directly affects the price of the bargain.

The approval order does not quantify or meaningfully analyze the economic impact of preserving that authority. Instead, it treats the forward-looking regime as incremental reform untethered from the NIL collective market. But where the settlement regulates the *only* reliable market comparator, adequacy cannot be satisfied by describing relief as "expanded" relative to prior NCAA rules and modest gains in prior antitrust litigation. The question is whether it reflects competitive value.

It does not.

E. The Settlement Leaves Undefined Whether Forward-Looking Payments Constitute Pay-for-Play Compensation

Plaintiffs-Appellees and Dr. Rascher describe the settlement as permitting schools to compensate athletes directly for "athletic services and NILs," implying

that the injunctive settlement does not preserve any meaningful pay-for-play restriction. Plaintiffs' Br. at 22, 36; 5-ER-947.

The Defendants apparently do not share that view. At preliminary approval, they made clear that pay-for-play would remain prohibited. The district court recognized the tension:

> THE COURT: … you will be explicitly paying for play or allowing schools to pay-for-play. So, this no play-for-pay thing isn't going to be there anymore, is it?
>
> MR. KILARU: It is, Your Honor… for us it is an essential part of the deal.
> THE COURT: Wow.
>
> 7-ER-1441-42

The exchange underscores the central ambiguity. The settlement creates a revenue-based payment stream, and without explicitly prohibiting "athletic compensation" payments, it gives the NCAA the ability to preserve its historic prohibition on "pay-for-play."[2]

Defendants themselves describe the pool in general terms—"direct benefits and compensation," "share athletic revenues," "new forms of compensation"

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[2] While the settlement does not *expressly* ban pay-for-play payments, it apparently achieves Defendants' intended result in two ways. First, it provides that the NCAA's existing compensation limits "may remain in effect" except to the extent "required by the terms of" the settlement." 1-ER-35, Art 4, §2. Furthermore, Article 2, § 1 expressly states that payments "not contemplated" by the settlement "remain prohibited." Because the settlement does not contemplate pay-for-play compensation, the NCAA's existing rules banning such payments remain in force. 1-ER-21.

(Defendants' Br. at 2, 17, 28)—while avoiding any clear statement that schools may compensate athletes for athletic services. That omission is telling. Despite objectors' arguments that the settlement fails to permit genuine pay-for-play compensation, Defendants do not assert in their briefing that the agreement authorizes such payments. If the settlement unmistakably permitted athletic-services compensation, Defendants could have said so. They have not. Instead, the characterization remains deliberately imprecise. The settlement accomplishes this by not defining in operative terms whether pool payments constitute compensation for athletic services, NIL licensing, or some hybrid.

That ambiguity is not trivial. As Judge Wilken observed in *Alston*, NCAA compensation rules have historically lacked a coherent definition of "pay" or "amateurism." 375 F. Supp. 3d at 1074. The settlement does not resolve that incoherence; it institutionalizes it. It authorizes substantial new payments while leaving intact the NCAA's ability to characterize and police compensation as impermissible "pay-for-play."

This matters operationally. The settlement does not require schools to characterize pool payments either as compensation for athletic services or as "NIL", and NCAA/P4 institutions have powerful incentives to avoid triggering employee-status implications. As a result, implementation by D1 schools this year in athlete-school contracts has reflected efforts to characterize post-settlement payments as

"NIL licensing" arrangements, accompanied by disclaimers that athletes are not employees and are not being paid for athletic services. The forward-looking regime thus allows pay-for-play compensation in economic substance while preserving regulatory control in legal form. That duality permits defendants to maintain enforcement authority and preserve the rhetoric of pay-for-play prohibition even as substantial (albeit inadequate) funds flow. The settlement thereby embeds the very definitional incoherence that *Alston* criticized.

Recent contracting practices illustrate the point. Schools structure agreements as NIL licenses while simultaneously imposing restrictions that resemble employment constraints, and they characterize those arrangements as consistent with the *House* settlement and future NCAA bylaws.[3] Whether those contracts are ultimately upheld is not the issue here. The point is that the settlement leaves unresolved whether forward-looking payments are legally recognized as compensation for athletic services or remain subject to regulatory policing as something else.

For purposes of Rule 23(e), the question is not whether such a regime could be administered. The question is whether the district court could approve a ten-year,

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[3] *See*, *e.g.,* Complaint Ex. A (athlete agreement), *Duke Univ. v. Mensah*, No. 26CV000605-310 (N.C. Super. Ct., Durham Cnty. filed 1/20/26). *See also* https://www.sportico.com/law/analysis/2026/duke-lawsuit-darian-mensah-nil-deal-transfer-portal-1234881805/.

market-constituting injunctive settlement without resolving what the forward-looking payments legally represent and what conduct remains prohibited. The order justifies approval in part on grounds of "stability," yet the settlement leaves the core definitional issue unsettled.

That unresolved ambiguity bears directly on adequacy. Adequacy requires the court to assess the value of the rights secured—not merely the amount of money authorized. Heightened scrutiny required the court to confront that tension explicitly. It did not.

VI. The Settlement's Economic Spine — Dr. Rascher's Modeling — Cannot Sustain an Adequacy Finding

A. This Is a Record-Adequacy Problem, Not an "Economics Dispute"

Plaintiffs argue that objections to Dr. Rascher's modeling amount to a disagreement over maximizing settlement value and therefore "do not belong on appeal." That misstates the issue.

This is not a merits retrial. It is a Rule 23(e) record-sufficiency problem under heightened scrutiny. This settlement-only, interdependent architecture triggers structural-adequacy review. *See* Sections II and III.A.

Dr. Rascher's report is the sole economic foundation for both the backward-looking pay-for-play damages compromise and the forward-looking compensation regime. Where one expert's analysis supplies the economic spine of a global settlement, the district court must ensure the record permits verification of the core

assumptions underlying adequacy. Heightened scrutiny requires examination of the assumptions driving the structure of the bargain—not acceptance of ultimate conclusions.

The objection is straightforward: the report does not "show the math." It does not allow the court or absent class members to verify that major, conceded components of athlete value were properly captured and not omitted or understated. That is a transparency problem, and therefore an adequacy problem under Rule 23(e).

B. The Conceded Media-Rights Premise Is Material — and the Report Does Not Account for It

Class Counsel expressly rely on the Desser/Rascher premise developed in *House*: athletes account for approximately 50% of major college sports media-rights value, and roughly 70–80% of that athlete share reflects on-field performance (athletic services/"pay-for-play"), and 20–30% attributable to NIL. *See* Plaintiffs' Br. at 60–61. In practical terms, that means on-field performance comprises roughly 35–40% of total media-rights value/revenue.

That concession is economically significant. If roughly 35-40% of total media-rights revenue reflects athletic performance, any athletic services/pay-for-play damages model must transparently demonstrate how that embedded performance component is treated.

On BNIL, Rascher's analysis is structured and checkable. It builds on prior *House* reports, uses identifiable revenue categories, and produces traceable damages totals. That framework was subject to adversarial testing in *House,* including a Daubert motion to exclude Rascher's testimony (denied) during the damages class certification process. *See* ECF 250 (N.D. Cal.).

Rascher's athletic-services analysis is materially different. Rascher acknowledges his pay-for-play damages framework is novel and subject to limitations. Yet the modeling itself applies a 50% athlete share to an aggregated top-line revenue base (e.g., $46.395 billion) and subtracts compensation already received, including NIL-related amounts, without providing a clear, checkable explanation—with arithmetic—of how the embedded media-rights performance valuation is carried through the model once NIL is separately valued and netted out. Nor does it itemize the revenue base in a way that permits verification of how media-rights performance value flows into the final athletic-services estimate.

Class Counsel's response—that Dr. Rascher "did reallocate" performance value because he allocated 50% of revenues to athletes—begs the question. It assumes the arithmetic works. It does not demonstrate it. Under heightened scrutiny in a settlement-only posture, the district court was required to ensure that the record permitted verification that a conceded and economically significant component of athlete value was properly reflected in the pay-for-play estimate. The report does not

supply that transparency, even though the issue was flagged for the court below. 2-ER-423.

Because media-rights revenues are the largest (or among the largest) components of the underlying revenue base, even modest opacity or accounting error in how that category is treated materially affects the athletic-services damages estimate. And that estimate supplies the settlement's financial justification for releasing unlitigated pay-for-play damages claims on a classwide basis for hundreds of thousands of athletes.

Rascher's express disclaimer acknowledging the novelty and limitations of his pay-for-play damages analysis,[4] reinforces, rather than cures, the need for that clarity. Where a single expert's modeling supplies the financial foundation for resolving newly asserted claims without adversarial testing, Rule 23(e) requires more than conclusory assurances that the math works. The record must make it possible to see that it does.

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[4] "Unlike NIL compensation, I have not previously provided reports containing analyses and estimates of damages related to compensation for athletic services. I do not provide here a full damage analysis in relation to compensation for athletic services. Instead, I provide here a methodology and set of assumptions and procedures that are within the scope of economically reasonable approaches for estimating damages related to compensation for athlete services. I then apply the methodology and assumptions to calculate an estimate of potential damages." 5-ER-914 ¶3, 927 ¶35.

C. Omission of Post–Interim Policy Market Evidence

One of Anderson's core arguments is that Rascher's settlement modeling systematically understates athlete value by omitting the most probative evidence of post–Interim Policy compensation—namely, the emergence of NIL collectives functioning as salary substitutes. Opening Br. at 62-64. Neither Plaintiffs nor Defendants meaningfully addressed that omission in their appellate responses. Class Counsel calls the broadcast proxy "reasonable" but fails to explain why the actual NIL collective market data was excluded,[5] nor do they refute that omitting it artificially depressed the settlement value. Neither Appellee brief engages the central point: **the valuation does not incorporate the best available evidence of how athletes were actually compensated in the post–*Alston* marketplace.**

That omission matters under the governing legal framework. *Alston* instructs that restraints must be evaluated against "current market realities." Where a settlement purports to resolve pay-for-play claims in a market that changed dramatically after July 2021, a damages model that does not incorporate the most observable manifestation of those changes cannot be accepted without scrutiny. The issue is not whether collective payments conclusively establish a competitive wage;

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[5] *See* 7-ER-1452-54.

it is whether a model that excludes them can transparently justify a global compromise of those claims.

Even the NCAA has invoked this same principle when challenging Dr. Rascher's testimony elsewhere. In *Patterson v. NCAA*, No. 3:25-cv-00994 (M.D. Tenn. 9/2/2025), Rascher serves as plaintiffs' economic expert in a case brought by athletes against the NCAA seeking an additional year of eligibility to monetize their NIL rights. In response to plaintiffs' motion for a preliminary injunction and in their motion in limine, the NCAA argued that Rascher's economic analysis was inconsistent with post–*House* and post–NIL "market realities" under *Alston*, and criticized Rascher for not analyzing "the market as it sits today" and for relying on incomplete or outdated datasets. *Id.,* ECF Nos. 50, 60.

Objectors do not ask this Court to resolve *Patterson* or adopt the NCAA's litigation posture. The point is narrower: even Defendants acknowledge that contemporary market evidence is central under *Alston*—and that Rascher's modeling did not account for it. Moreover, the NCAA accepted Rascher's work here without concern while aggressively opposing it in *Patterson* where the similar evidentiary and analytical shortcomings are alleged.

VII. The Pool Cap Cannot Be Approved

A. Rule 23(e) Does Not Permit Approval of a Settlement That Authorizes Unlawful Restraints

Appellees contend that the settlement may be approved so long as the pool cap is not per se unlawful. That framing finds no support in Ninth Circuit or Supreme Court precedent. Rule 23(e) requires a court to ensure that a settlement comports with the statute sued upon. A federal court may not "lend its approval" to conduct that conflicts with substantive law. *Sierra Club, Inc. v. Elec. Controls Design, Inc.,* 909 F.2d 1350, 1355 (9th Cir. 1990); *Local No. 93, Int'l Asso. of Firefighters, etc. v. Cleveland*, 478 U.S. 501, 525-26 (1986)

The distinction between per se and rule-of-reason analysis concerns mode of proof, not legality. Conduct unlawful under the rule of reason is no less unlawful than conduct condemned per se. The rule of reason does not create an immunity shield for horizontal wage ceilings, not even in settlement reviews.

The question is therefore not whether the district court was required to conduct a full trial. It is whether Rule 23(e) permits approval of a decade-long, industry-wide, patent labor-price fix based solely on the absence of a per se label. The sections that follow explain why the authorities relied upon by the court and appellees do not support that result, why the pool cap is a core horizontal labor restraint, and why even limited scrutiny could not sustain its approval.

B. The Authorities Relied Upon Do Not Authorize Approval of the Pool Cap

The district court grounded its ruling in two cases: *In re Blue Cross Blue Shield Antitrust Litigation*, 85 F.4th 1070 (11th Cir. 2023), and *Robertson v. National Basketball Ass'n*, 556 F.2d 682 (2d Cir. 1977). It reasoned that "[s]o long as the conduct perpetuated under a settlement agreement does not per se violate antitrust law, the settlement may be approved," and that because objectors had not shown the pool cap to be per se unlawful, and because Defendants "argue that the cap is procompetitive," "it is not clear that the pool spending cap provisions violate the Sherman Act." 1-ER-158. The district court's "not per se/defendants argue procompetitive justifications" approach (1-ER-158) is inadequate for the reasons explained in Section VII.A.

In *Blue Cross*, the Eleventh Circuit affirmed approval of a settlement that eliminated numerous challenged restraints while retaining certain territorial limitations. 85 F.4th at 1089–90. The court emphasized that the defendant had "materially changed its system," adding procompetitive features and removing others. *Id*. The settlement there did not entrench the central alleged restraint as the defining architecture of the market going forward. It retained a discrete structural feature within a broader reconfiguration. Extending *Blue Cross* to this context converts a case about incremental structural modification into a rule permitting judicial entrenchment of horizontal wage ceilings. *Blue Cross* does not go that far.

The district court also relied on *Robertson* for the proposition that a court approving a settlement should not "try the case by deciding unsettled legal questions." 556 F.2d at 686.

But *Robertson* did not involve a court blessing a facially horizontal agreement among competitors to cap labor compensation pursuant to a fixed revenue formula. At the time *Robertson* was litigated, the NBA did not yet have a salary cap. The settlement in *Robertson* modified draft and player-movement rules in professional basketball and "radically modified" prior practices in players' favor. *Id*. Thus, the most pernicious market restraint of all that is present here—wage fixing—was not present in *Robertson*.

Additionally, the named plaintiff—Oscar Robertson—was the head of the NBA players' association at the time and, along with most other plaintiffs, supported the settlement which anticipated incorporation to a collective bargaining agreement.

Most critically, *Robertson* predated *Alston*. It did not arise in a market where the Supreme Court had already clarified that wage-fixing restraints in this context fall "on the far side of the line" and warrant careful scrutiny. 594 U.S. at 91.

Nothing in *Robertson* authorizes a court to treat the absence of a per se label as sufficient when the settlement entrenches a market-wide labor-price ceiling.

Appellees similarly invoke *White v. NFL*, 822 F. Supp. 1389 (D. Minn. 1993), to argue that compensation systems in professional sports emerged from antitrust

settlements rather than collective bargaining. That characterization omits the context that made *White* legally possible. The settlement there occurred in a unionized environment and was incorporated into a collective bargaining agreement between the NFL and the NFLPA. The compensation structure was evaluated in light of the non-statutory labor exemption. *Id*. at 1421–25.

Professional salary caps survive antitrust scrutiny because they are the product of collective bargaining between economic adversaries and are shielded by the labor exemption. The pool cap was negotiated among competing buyers in the absence of a certified union, without NLRA bargaining, and without the labor exemption. The doctrinal difference is dispositive.

C. The Pool Is a Core Horizontal Labor-Price Restraint

The flaw in the district court (and Appellees') framing is that it treats the pool cap as just another league rule. It is not. It is a horizontal ceiling on compensation in a labor market.

The Supreme Court has already drawn the relevant line. In *Alston*, the Court explained that while some horizontal coordination may be necessary to produce a joint product, wage-fixing restraints fall "on the far side of this line." 594 U.S. 69, 91 (2021). "Price-fixing labor," Justice Kavanaugh emphasized, is "price-fixing labor." Id. at 109–10 (Kavanaugh, J., concurring). The fact that certain cooperation

is required to schedule intercollegiate athletics does not immunize agreements among competitors fixing the price paid to workers.

Law v. NCAA reinforces the point. There, the Tenth Circuit treated the NCAA's cap on assistant basketball coaches' salaries as "obviously anticompetitive" and rejected broad association-level justifications for suppressing compensation. 134 F.3d 1010, 1019–21 (10th Cir. 1998). The court did not treat the salary cap as an incidental league rule. It treated it as what it was: a horizontal agreement among buyers limiting what they would pay for labor.

The pool cap has the same character. It defines "Average Shared Revenue" across conference institutions, applies a uniform percentage (22%), and establishes a common ceiling on the aggregate compensation each school may distribute. It is accompanied by anti-circumvention provisions and centralized enforcement mechanisms. It operates prospectively for a decade. That structure leaves no ambiguity about the nature of the restraint: competing buyers have agreed on a formula that limits what they may pay for athlete labor.

This is not a minor retained feature within a broader reform. It is the system governing compensation. Whatever label is applied, it is a market-wide agreement on a maximum price in a recognized labor market. Under *Alston* and *Law*, such restraints warrant careful scrutiny. They cannot be insulated from examination by invoking the rule of reason in the abstract.

D. The District Court Applied an Impermissibly Perfunctory Standard — and Ignored the "Quick Look" Option

The district court's analysis reduced to the following syllogism:

1. The pool cap is not per se unlawful.
2. It is therefore subject to the rule of reason.
3. Anticompetitive effects had not been "established."
4. Defendants "argue" the cap is procompetitive.
5. Therefore, "it is not clear" the cap violates the Sherman Act.

1-ER -158

That reasoning is inadequate for the reasons addressed in Section VII.A.

The court relied on the fact that Defendants "argue" the cap is procompetitive. 1-ER-158. But argument is not evidence. The asserted justifications rested on an expert opinion Plaintiffs moved to exclude at summary judgment. SER-266. These were precisely the kinds of claims the court could probe on the existing record at the Rule 23(e) hearing, rather than accept at face value.

The antitrust framework provides an intermediate tool for precisely this situation: quick-look review. Where horizontal agreements among competitors "obviously threaten to reduce output and raise prices," courts may assess anticompetitive effects without a full rule-of-reason trial. SER-296–297. The summary-judgment record already reflected a horizontal agreement among competitors in a previously recognized monopsonized labor market, with evidence

of compensation suppression. See SER-299–306. Quick-look review would not have required a trial; it would have required the court to test Defendants' procompetitive claims against that existing record.

The district court did not conduct that inquiry. Instead, it reasoned that because anticompetitive effects had not been "established" and Defendants had "argued" procompetitive rationales, it was "not clear" the cap violates the Sherman Act. 1-ER-158.

That approach bypassed an appropriate middle ground between a full rule-of-reason trial and blind acceptance.

E. Even Under Limited Scrutiny, the Asserted Justifications Do Not Sustain Approval

Even under the limited scrutiny appropriate at settlement — including quick-look review — the asserted justifications cannot sustain approval of a facial horizontal wage restraint.

1. "Competitive Balance" Does Not Track the Cap Structure

The pool cap is pegged to a percentage of "Average Shared Revenue" across major conference institutions. That mechanism does not equalize resources among schools. It imposes a uniform ceiling derived from an average.

For the highest-revenue programs, the cap represents a relatively small fraction of total athletic revenue. For lower-revenue programs, it represents a far larger share. The cap therefore does not compress underlying disparities in

institutional wealth. It leaves untouched the principal drivers of competitive imbalance—facilities, coaching expenditures, donor ecosystems, media exposure—while binding only labor compensation.

For example, Division I schools without football programs may devote a greater share of athletic revenue to men's basketball, while football-dominant programs allocate resources differently. A uniform percentage cap does not correct those structural differences; it simply imposes a ceiling across divergent revenue models.

Calling that structure a "competitive balance" mechanism does not make it one. The cap does not redistribute resources or equalize revenues; it imposes a uniform ceiling pegged to an average. A restraint that leaves underlying disparities intact while binding only labor compensation cannot justify itself by invoking balance in the abstract. Under quick-look review, such a structural mismatch is sufficient to reject the proffered justification without further economic parsing.

Appellees assert that the district court "concluded that Defendants had proffered valid procompetitive benefits for the Pool." Defendants' Br. at 55. But the order contains no such finding. The court stated only that Defendants "argue" the cap is procompetitive. 1-ER -158. That is not a determination of validity; it is an absence-of-proof rationale.

Finally, as the Menke objectors point out, Rascher himself has previously opined that college sports compensation caps do not prompt procompetitive "competitive balance" or "enhance output." Menke Opening Br. pp. 25-27.

2. The "Output" or Cross-Subsidy Rationale Does Not Justify a Labor-Price Cap

Appellees also contend that without a compensation ceiling, revenues would flow disproportionately to football and men's basketball athletes, reducing cross-subsidies that support other sports and thereby decreasing participation opportunities.

That rationale rests on a contested assumption: that universities can preserve participation in non-revenue sports only by suppressing compensation in revenue-generating labor markets. But preserving "output" in the form of participation opportunities is not synonymous with fixing the price of labor. The NCAA already maintains mandatory sport-sponsorship requirements designed to ensure participation across sports. The settlement itself imposes roster limits that, according to Defendants, will increase opportunities. And market developments — including the growing commercial success of several women's and Olympic sports — undermine the premise that those programs are viable only through wage suppression elsewhere.

More fundamentally, the cross-subsidy theory reflects a distributive choice about how institutions allocate athletic revenues. It assumes that compensation

earned through football and men's basketball labor should be redirected to other programs, while institutional spending discretion and administrative allocations remain largely untouched. That is a policy judgment, not an inherently competition-enhancing virtue.

The cross-subsidy theory also has civil rights implications. It amounts to a regressive diversion of money from profit athletes in Power 4 football and men's basketball—predominately Black and often from challenging economic circumstances—to nonrevenue/"Olympic" sport athletes who are predominately white, and, in the aggregate, comparatively well-off economically.[6]

Under quick-look review, a horizontal wage restraint cannot justify itself by invoking a redistribution rationale untethered to competitive effects. The district court did not find that the cap in fact preserves participation, or that increased athlete compensation would reduce opportunities. It concluded only that anticompetitive effects had not been established and that Defendants "argue" the cap promotes output. That reasoning cannot sustain judicial entrenchment of a decade-long labor-price ceiling.

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[6] Craig Garthwaite *et al.,* Who Profits from Amateurism? Rent-Sharing in Modern College Sports, NBER Working Paper No. 27734 (2020), https://www.nber.org/system/files/working_papers/w27734/w27734.pdf.

F. The Collective-Bargaining Analogy Fails

Appellees argue that collective bargaining is not a formal precondition to approving a settlement that includes potentially anticompetitive restraints. That is true as a procedural matter. But in the sports context, compensation caps survive antitrust scrutiny because they arise from collective bargaining and are shielded by the non-statutory labor exemption. That substantive context matters.

In professional leagues, salary caps are negotiated between economic adversaries, subject to NLRA protections, backed by strike leverage, and revisable through future bargaining. They are not judicially imposed ceilings among horizontal competitors in the absence of worker representation.

The settlement here is fundamentally different. It extinguishes antitrust liability for a decade while entrenching a uniform compensation cap among competing buyers of labor. The absence of collective bargaining does not merely remove a formality; it removes the labor-law counterweights that ordinarily justify such restraints.

Appellees respond that the Injunctive Relief Settlement operates as a "floor, not a ceiling," because it permits future collective bargaining for "additional, expanded or different benefits." Plaintiffs' Br., p. 85. That framing is illusory. Once antitrust claims are released and a decade-long compensation regime is judicially approved, the principal source of bargaining leverage is eliminated. Workers cannot

meaningfully negotiate around a court-endorsed industry-wide cap that binds all competing employers. A nominal contractual clause permitting future agreement does not restore the lost antitrust leverage or recreate the structural protections of the labor exemption.

In short, this settlement resembles a collective bargaining agreement in its restraints, but lacks the representational safeguards, bargaining dynamics, legal insulation, and fundamental fairness that make collectively bargained caps permissible. Calling it a "floor" does not change its function as a judicially entrenched ceiling.

VIII. Anderson Has Standing as an Aggrieved Class Member

Appellees argue that Anderson lacks standing to pursue this appeal. That contention misunderstands both Article III and the nature of the order being challenged. Anderson does not appeal as a bystander or as a class member quibbling over matters that do not affect him. He challenges approval of a unitary settlement that releases his claims and fixes the value of those claims through an integrated damages and injunctive framework. That is the paradigm of an aggrieved class member. Additionally, to the extent other appellants also independently have standing to challenge the injunctive provisions, that further confirms that the legality of the forward-looking regime is properly before this Court.

A. Article III Requires an "Aggrieved" Class Member — and Anderson Qualifies

Article III requires that an appellant be "aggrieved" by the order from which he appeals. *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994). Simply belonging to a class is not enough. *Id*. The objector must show a concrete injury traceable to the challenged ruling and redressable on appeal. *Murray v. Volkswagen of Am., Inc.*, 555 F.3d 1087, 1088–89 (9th Cir. 2009).

Here, the injury is direct. The approval order binds Anderson to a settlement that (i) releases his unlitigated pay-for-play claims, (ii) adopts a damages framework that he contends materially undervalues those claims, and (iii) embeds forward-looking compensation rules that shape the practical value of the relief.

For all four classes the settlement is interdependent: it bundles backward-looking damages and forward-looking injunctive provisions into a single agreement. The valuation of the released claims is driven by a single expert model that sets the economic baseline for resolution. If that valuation is depressed by structural choices or methodological omissions, Anderson's recovery is depressed as well.

Vacatur and remand would redress that injury by requiring renewed scrutiny of the structure and valuation that govern his released claims. That is sufficient for Article III.

B. The Fee Cases Appellees Cite Confirm Why Anderson Has Standing

The two cases appellees rely upon demonstrate what it means not to be aggrieved.

In *First Capital,* the objector had already received full economic recovery and asserted no injury traceable to the fee order she appealed. 33 F.3d at 30. In *Murray*, the objector challenged an attorney-fee award that was independent of the class recovery and expressly disclaimed any theory that the fee reflected a tradeoff that harmed the class. 555 F.3d at 1088–89. Because modification of the fee award would not benefit him, he lacked standing.

Those cases involve challenges to discrete attorney-fee determinations that did not alter the objector's recovery or extinguish his rights.

This case is the opposite.

C. The Integrated Structure and Sequencing of the Settlement Establish Concrete Injury

Appellees attempt to isolate components of the settlement to suggest that Anderson cannot show individualized harm. That approach ignores the integrated architecture of the settlement.

The settlement ties together resolution of backward-looking pay-for-play damages, valuation assumptions supplied by a single expert model, and forward-looking compensation rules and releases. But the interdependence was not merely

formal. By the parties' own account, the forward-looking injunctive framework was secured first, and expansion to include pay-for-play damages followed only within that established structure. Defendants described preservation of pay-for-play prohibitions as "an essential part of the deal." The damages component did not arise independently; it was negotiated within a framework that defendants would not alter.

That sequencing matters. If damages were negotiated only after the forward-looking regime was fixed—and if that regime preserved limits central to the economic modeling—then the valuation of Anderson's released claims was necessarily shaped by that structure. The injury is not abstract. It is the compromise of his pay-for-play claims within an architecture that, by its own terms, conditioned damages on preservation of forward-looking restraints.

D. Rule 23's Fiduciary Safeguards Reinforce Anderson's Standing

Class counsel and the district court owe fiduciary duties to each absent class member. In the absence of collective bargaining safeguards, and in a case extinguishing structural antitrust claims affecting a labor force disproportionately composed of Black revenue-sport athletes, the district court's role as the preeminent institutional safeguard was paramount. Rule 23's heightened scrutiny requirement exists precisely to protect absent class members where bargaining power is structurally constrained and no union counterweight exists.

Division I football and men's basketball generate billions annually. The athletes who produce those revenues are disproportionately Black. For decades, the enterprise expanded media contracts, licensing streams, and commercial revenues while compensation restraints remained in place. The settlement now binds that labor force to a decade-long compensation structure negotiated without NLRA protections and without the structural counterweights that ordinarily justify industry-wide wage caps.

Approval of the integrated settlement also secures a fee request approaching $750 million. The magnitude of that contingent request does not imply impropriety. But it underscores why Rule 23 assigns the court—not counsel—the ultimate fiduciary obligation to ensure that compromise does not entrench restraint. Where classwide claims are extinguished in exchange for a settlement-only compensation regime, judicial scrutiny is the principal safeguard.

Named class members expressed disagreement with aspects of the settlement. Current athletes—whose compensation streams are governed by schools subject to the settlement—face practical disincentives to challenge the structure that pays them. In that posture, the adequacy inquiry is not formal. It is structural.

Anderson alleges that the required scrutiny did not meaningfully engage the settlement's architecture, valuation assumptions, and forward-looking restraints. Where judicial review is the sole counterweight to structural incentives and

bargaining asymmetry, and that review is alleged to have been inadequately applied, the objector is aggrieved.

Vacatur and remand are therefore necessary to ensure that Rule 23's fiduciary safeguards are meaningfully applied.

CONCLUSION

For the foregoing reasons, the order granting final approval of the settlement should be vacated and the case remanded for further proceedings consistent with Rule 23(e) and governing antitrust principles.

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Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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