VENTURA COUNTY BAR ASSOCIATION Est. 1904

CITATIONS

MARCH – TWO THOUSAND TWENTY SIX

A PROFILE ON COMMISSIONER MATTHEW NEMERSON

"BALANCING THE RIGHTS OF INDIVIDUALS WITH PROTECTING OUR LOCAL CITIES."

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KRISTINE TIJAM

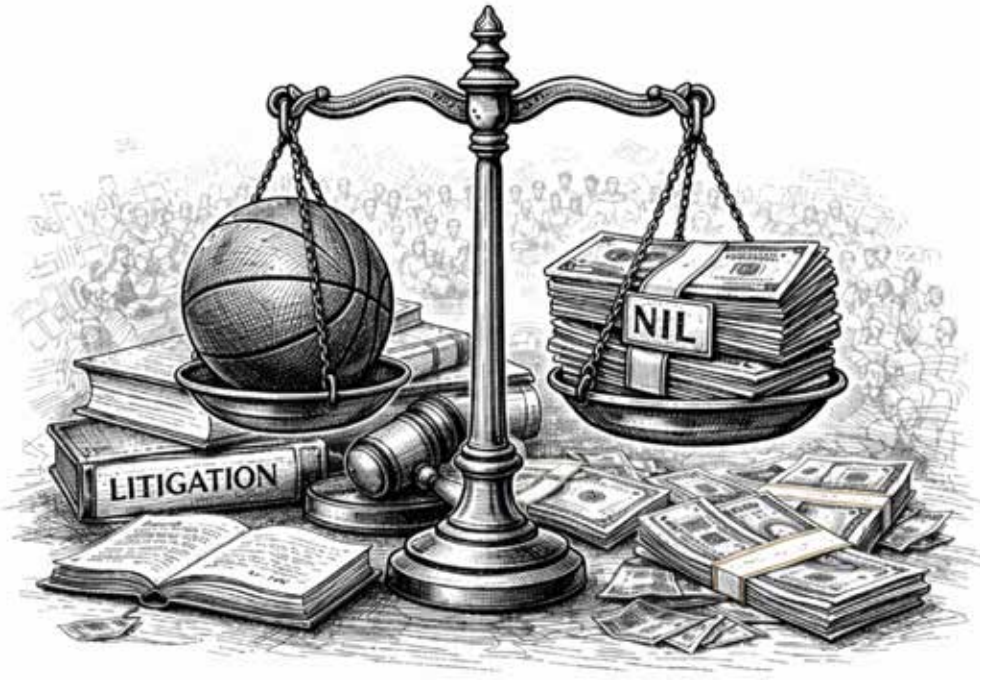
BERTA DEFREN STEELE

CHRISTAL JOY PORTER

KATHLEEN "KAT" MAHEU

MARCH MADNESS OR JUST PLAIN MADNESS?
UPDATES ON RECENT NAME IMAGE & LIKENESS LITIGATION

By Christal Joy Porter



Whether you are locked into the NCAA March Madness brackets or you would rather do spring cleaning than watch a basketball game, it is good to be aware that NCAA Division 1 athletics, a multi-billion dollar U.S. industry, is undergoing changes which have shocked fans and garnered the attention of the White House and Congressional officials.

For over a decade, antitrust litigation surrounding student athlete compensation and restrictions on profit from the use of student-athletes' name, image, and likeness (NIL) has been brewing in the courts. In response to the ongoing litigation, many states passed laws in favor of NIL payments to student athletes. California was the first state to enact such statues and thirty-one states followed with similar legislation. (*See March 2024 CITATIONS article for details on the CA NIL* statues). In 2021, the United States Supreme Court made a ruling in favor of student athletes (*NCAA v. Alston,* 594 US ___ (2021)) which was in essence the first step to the current dismantling of NCAA restrictions surrounding student athlete compensation. Before the Supreme Court's decision in *Alston*, two cases, *House v. NCAA* and *Oliver v. NCAA,* were initiated by former and current student athletes against the NCAA and Power Five Conferences. These cases alleged the NCAA's prohibition against compensation to student athletes for their NIL to be a violation of the Sherman Act. The two cases were consolidated as *In re College Athlete NIL Litigation* and included certified classes of student athletes. In May 2024, *In re College Athlete NIL Litigation* reached a settlement agreement which was approved on June 6, 2025.

In re College Athlete NIL Litigation Settlement Terms

The settlement agreement aims to resolve *House, Oliver* and two additional cases, *Hubbard v. NCAA* and *Carter v. NCAA*. The settlement agreement addresses three (3) past damages classes comprised of previous student athletes who participated in Division 1 athletics between June 15, 2016, to September 15, 2024, and one (1) future injunctive relief class. The damages classes will be entitled to compensation based on expert Dr. Daniel Rascher's economic model of lost third-party NIL compensation. The past damages classes includes over 390,000 former Division 1 athletes who will split about $2.5 billion.

The injunctive relief class agreement has three main features.

(1) Revenue Sharing – Each Power Five member institution will be allowed to share a portion of athletic revenues with athletes up to 22% of the "average shared revenue" generated by Power Five member institutions. For the 2025-2026 academic year, institutions can distribute $20.5 million (not including grant-in-aid) to student athletes. Each institution has the discretion to determine how these funds will be distributed amongst the student athletes. As we have seen in the last year, student athletes of high revenue-generating sports like football and basketball have received the majority of the revenue-sharing funds.

(2) Roster Caps - The NCAA will institute caps on the number of students allowed to compete on each team (roster caps) in place of eliminating the cap on the number of scholarships each institution is permitted to award student athletes. Although the roster cap limits the number of student-athletes on a team, getting rid of the scholarship limits provides the opportunity for all team participants to receive a scholarship.

(3) NIL Deal Enforcement - The NCAA and conferences will have the ability to implement rules designed to ensure third party NIL deals are for a "valid business purpose related to the promotion or endorsement of goods or services" and are not "pay-for-play" compensation. Athletes and institutions are required to report any third-party NIL contracts worth $600 or more to "NIL Go." NIL Go is a designated reporting entity created to determine whether third-party NIL deals "are made with the purpose of using student-athletes' NIL to advance a valid

business purpose and within a reasonable range of compensation." As of December 31, 2025, more than $127 million in NIL deals have been approved through the NIL Go platform, and NIL Go has reviewed 17,321 total deals in the six months since its inception in June 2025. 524 deals valued at $14.95 million were reviewed and not cleared during the first six months of NIL Go. That is a mere 3% of NIL deals that were rejected through NIL Go.

College Sports Commission (CSC): Also included in the terms of the settlement agreement is the creation of a "designated enforcement entity" that will oversee compliance with the terms of the settlement agreement. The College Sports Commission (CSC) was established around June 2025 to act as an independent body separate from the NCAA to implement and enforce settlement terms governing revenue sharing, third party NIL deals, and roster limits. CSC oversees NIL Go submissions.

Objections to the Approval of the Settlement Agreement

After the Federal District Court issued the approval of the settlement agreement, several parties filed appeals to the Court's ruling. Due to the appeals, the Damages classes payments have not yet been made and are pending the appeal, but the injunctive relief terms have been implemented and went into effect on July 1, 2025.

Basis for Objections. The majority of objections to the approval of the settlement agreement surround Title IX concerns and the unfair distribution of settlement funds to male athletes versus female athletes. Under the Damages classes settlement, about 400,000 previous student athletes will receive a share of $2.576 billion. The calculation used to determine this settlement amount created by expert, Dr. Rascher, practically provides the majority of the settlement funds to be issued to previous men's football and basketball student athletes. Proponent parties of the settlement agreement argue that Federal Code of Civil Procedure Rule 23's flexible standard allows for the unequal distribution of settlement funds because treating class members *equitably* does not mean treating them *equally*. Additionally, Proponents argue that Title IX limitations do not apply to the terms of the settlement because Title IX regulations refer to financial aid/athletic scholarships, and do not encompass all student-athlete benefits.

Local attorney **Panda Kroll's** partner, **Patrick A. Bradford** of Bradford Edwards LLP makes a compelling objection to the settlement agreement on behalf of his client that surrounds the premise that notice requirements and due process were not met, specifically to Black class members who "constitute a majority of the D1 money-making sports." Additionally, Bradford argues that the settlement agreement attempts to accomplish too much by radically expanding the Damages settlement class to include all Division 1 athletes, not providing heightened scrutiny the settlement class and structural conflicts require, approving exorbitant class Counsel fees, extending the injunctive relief class to last up to twenty years, and basis the settlement amount on an inadequate damages valuation.

Current Impact of Settlement Approval

There have been a lot of mixed sentiments surrounding the approval of the *In re College Athlete NIL Litigation* settlement agreement and implementation of the injunctive relief class terms. College sports teams are getting completely new rosters of players every season due to lax transfer rules and the ability student athletes now have to offer their talents to the highest bidder.

On July 24, 2025, President Trump issued an executive order "Saving College Sports" claiming the recent NIL litigation and ability for third parties to engage in compensation to student athletes has created an "out-of-control, rudderless system… Absent guardrails to stop the madness and ensure a reasonable, balanced use of resources across collegiate athletic programs that preserves their educational and developmental benefits, many college sports will soon cease to exist.

A national solution is urgently needed to prevent this situation from deteriorating beyond repair and to protect non-revenue sports, including many women's sports, that comprise the backbone of intercollegiate athletics, drive American superiority at the Olympics and other international competitions, and catalyze hundreds of thousands of student-athletes to fuel American success in myriad ways."

Although it is uncertain whether the new compensation structure for Division 1 athletes will cause deterioration beyond repair, one thing that is certain is that there is no going back to the way things "used to be" in college athletics. Even if the approval of the settlement agreement is reversed, the NCAA and its member institutions will continue to evolve limitations and structures of student-athlete compensation until a balanced solution can be found. Buckle up, it may be a bumpy ride.

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