UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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TAYLOR SMART AND MICHAEL HACKER, Individually and on Behalf of All Those Similarly Situated, Plaintiffs, v. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, Defendant.	No. 2:22-cv-02125 WBS CSK MEMORANDUM AND ORDER RE: PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiffs Taylor Smart and Michael Hacker brought this putative class action against defendant National Collegiate Athletic Association ("NCAA"), alleging violations of section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (See Docket Nos. 1, 29.) Plaintiffs have filed an unopposed motion for preliminary approval of class action settlement. (See Docket No. 73.)

I. Background and Proposed Settlement

This is one of two related cases assigned to the undersigned judge that involve antitrust challenges to a since-repealed NCAA bylaw barring "volunteer coaches" from receiving pay (hereinafter, "Volunteer Coach Bylaw"). The undersigned recently granted a motion for class certification in the related case. See Ray v. Nat'l Collegiate Athletic Ass'n, No. 1:23-cv-00425 WBS CSK, 2025 WL 775753 (E.D. Cal. Mar. 11, 2025).

The proposed class in this action consists of "[a]ll persons who, pursuant to NCAA Division I Bylaw 11.7.6, served as a 'volunteer coach' in college baseball at an NCAA Division I school from November 29, 2018 to July 1, 2023."[1] (See Settlement Agreement (Docket No. 73-1 at 24-45) ¶ 2.29.)

The parties propose a gross settlement amount of $49,250,000, which includes the following: (a) $32,794,850 for payments to class members; (b) up to 33.33% of the gross settlement amount for plaintiffs attorneys' fees and up to $1.5 million for costs and expenses incurred; (c) $30,150 to pay the settlement administrator and $35,000 to pay the expert economist for work on settlement administration; (d) incentive awards for the two class representatives of $7,500 each; and (e) a contingency fund of $100,000. (See Settlement Agreement.)

The amount to be paid to each class member will be a proportional share of the fund based on the damages model

[1] The class certified in Ray consists of "[a]ll persons who, from March 17, 2019, to June 30, 2023, worked for an NCAA Division I sports program other than baseball in the position of 'volunteer coach,' as designated by NCAA Bylaws." 2025 WL 775753, at *11 (emphasis added).

developed by plaintiffs' expert, Dr. Daniel Rascher, which accounts for several factors including employer and number of years worked. (See Settlement Agreement ¶ 8.4.2; Exp. Rep. of Daniel Rascher (Docket No. 63-30).)

II. Discussion

Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). This Order is the first step in that process and analyzes only whether the proposed class action settlement deserves preliminary approval. See Murillo v. Pac. Gas & Elec. Co., 266 F.R.D. 468, 473 (E.D. Cal. 2010) (Shubb, J.). Preliminary approval authorizes the parties to give notice to putative class members of the settlement agreement and lays the groundwork for a future fairness hearing, at which the court will hear objections to (1) the treatment of this litigation as a class action and (2) the terms of the settlement. See id.; Diaz v. Tr. Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989). The court will reach a final determination as to whether the parties should be allowed to settle the class action on their proposed terms after that hearing.

Where the parties reach a settlement agreement prior to class certification, the court must first assess whether a class exists. Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003). "Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." Id. (quoting Amchem Prods. Inc. v.

Windsor, 521 U.S. 591, 620 (1997)). The parties cannot "agree to certify a class that clearly leaves any one requirement unfulfilled," and consequently the court cannot blindly rely on the fact that the parties have stipulated that a class exists for purposes of settlement. See Amchem, 521 U.S. at 621-22.

"Second, the district court must carefully consider 'whether a proposed settlement is fundamentally fair, adequate, and reasonable,' recognizing that '[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness . . . .'" Staton, 327 F.3d at 952 (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998)), overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011).

A. Class Certification

To be certified, the putative class must satisfy the requirements of Federal Rules of Civil Procedure 23(a) and 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th Cir. 2013).

1. Rule 23(a)

Rule 23(a) restricts class actions to cases where: "(1) the class is so numerous that joinder of all members is impracticable [numerosity]; (2) there are questions of law or fact common to the class [commonality]; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class [typicality]; and (4) the representative parties will fairly and adequately protect the interests of the class [adequacy of representation]." See Fed. R. Civ. P. 23(a).

a. Numerosity

"Although 'no specific minimum number of plaintiffs

asserted' is required to obtain class certification, 'a proposed class of at least forty members presumptively satisfies the numerosity requirement.'" Alger v. FCA US LLC, 334 F.R.D. 415, 422 (E.D. Cal. 2020) (England, J.) (quoting Nguyen v. Radient Pharmaceuticals Corp., 287 F.R.D. 563, 569 (C.D. Cal. 2012)).

The evidence before the court indicates that the putative class has approximately 1,000 members. (See Broshuis Decl. (Docket No. 73-1) ¶ 8.) The proposed class therefore satisfies the numerosity requirement.

b. Commonality

Commonality requires that the class members' claims "depend upon a common contention" that is "capable of classwide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart Stores, 564 U.S. at 350. "[A]ll questions of fact and law need not be common to satisfy the rule," and the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019. "So long as there is even a single common question, a would-be class can satisfy the commonality requirement of Rule 23(a)(2)." Wang v. Chinese Daily News, Inc., 737 F.3d 538, 544 (9th Cir. 2013) (internal citation and quotation marks omitted).

Here, "[t]he question of whether the Volunteer Coach Bylaw violated antitrust law is common to the entire class." Ray, 2025 WL 775753, at *6. "Antitrust liability alone constitutes a common question that will resolve an issue that is

central to the validity of each class member's claim in one stroke, because proof of an alleged conspiracy will focus on defendants' conduct and not on the conduct of individual class members." Id. (quoting In re High-Tech Emp. Antitrust Litig., 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013)). Because plaintiffs have identified a common question applicable to the whole class, they have satisfied the commonality requirement for purposes of preliminary approval.

c. Typicality

Typicality requires that named plaintiffs have claims "reasonably coextensive with those of absent class members," but their claims do not have to be "substantially identical." Hanlon, 150 F.3d at 1020. The test for typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

"Here, each class representative -- like each class member -- worked as a volunteer [baseball] coach at an NCAA Division I school, was subject to the NCAA's Volunteer Coach Bylaw precluding them from receiving compensation, and alleges antitrust injury under the Sherman Act." See Ray, 2025 WL 775753, at *6. "'[T]his uniformity of class members' injuries, claims, and legal theory is typically sufficient to satisfy Rule 23(a)(3).'" See id. (quoting In re NCAA Student-Athlete Name & Likeness Licensing Litig., No. 09-cv-1967 CW, 2013 WL 5979327, at *5 (N.D. Cal. Nov. 8, 2013)). Because there do not appear to be

"any unique defenses which threaten to become the focus of the litigation" that would cut against these similarities, see Hanon, 976 F.2d at 508, plaintiffs have satisfied the typicality requirement for purposes of preliminary approval.

d. Adequacy of Representation

To resolve the question of adequacy, the court must consider two factors: (1) whether the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) whether the named plaintiffs and their counsel will vigorously prosecute the action on behalf of the class. In re Hyundai & Kia Fuel Econ. Litig., 926 F.3d 539, 566 (9th Cir. 2019).

i. Conflicts of Interest

The first portion of the adequacy inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." Kim v. Allison, 87 F.4th 994, 1000 (9th Cir. 2023) (quoting Amchem, 521 U.S. at 625). Here, the class representatives "possess the same interest and suffer[ed] the same [alleged] injury as the class members," indicating that their interests are "aligned." See Amchem, 521 U.S. at 625–26.

While the provision of incentive awards raises the possibility that the named plaintiffs' interest in receiving that award will cause their interests to diverge from the class's interest in a fair settlement, the Ninth Circuit has specifically approved the award of "reasonable incentive payments." Staton, 327 F.3d at 977–78. The court, however, must "scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." Radcliffe v. Experian Info. Sys.,

Inc., 715 F.3d 1157, 1163 (9th Cir. 2013). In assessing the reasonableness of incentive payments, the court should consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions" and "the amount of time and effort the plaintiff expended in pursuing the litigation." Staton, 327 F.3d at 977 (citation omitted). The court must balance "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." Id.

Courts have found that "a $5,000 incentive award is 'presumptively reasonable' in the Ninth Circuit." See Roe v. Frito-Lay, Inc., No. 14-cv-00751, 2017 WL 1315626, at *8 (N.D. Cal. Apr. 7, 2017); see also Hopson v. Hanesbrands Inc., 08-cv-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (citing In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000)); Alberto v. GMRI, Inc., 252 F.R.D. 652, 669 (E.D. Cal. 2008) (Shubb, J.).

Although the $7,500 incentive awards provided for by the settlement exceed the presumptively reasonable amount, the incentive awards are considerably lower than the average recovery of each class member and constitute approximately one-third of one percent of the gross settlement amount. This indicates that the incentive awards represent neither "an unreasonably high proportion of the overall settlement amount" nor an amount "disproportionate relative to the recovery of other class members." See Wagner v. County of Inyo, No. 1:17-cv-00969 DAD JLT, 2018 WL 5099761, at *7 (E.D. Cal. Oct. 18, 2018). Further,

the proposed incentive awards appear appropriate given the efforts of the class representatives -- including extensive document production and sitting for depositions (see Broshuis Decl. ¶¶ 7, 9) -- and the "financial or reputational risk undertaken in bringing the action." See Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009). Accordingly, there are no conflicts of interest precluding class certification for purposes of preliminary approval.

ii. Vigorous Prosecution

The second portion of the adequacy inquiry examines the vigor with which the named plaintiffs and their counsel have pursued the class's claims. "Although there are no fixed standards by which 'vigor' can be assayed, considerations include competency of counsel and, in the context of a settlement-only class, an assessment of the rationale for not pursuing further litigation." Hanlon, 150 F.3d at 1021.

Plaintiffs are represented by the firm Korein Tillery, LLC. The information before the court indicates that plaintiffs' counsel possesses extensive experience and strong qualifications in litigating complex class actions, including antitrust cases. (See Ex. 1 to Broshuis Decl.) Plaintiffs' counsel represents that they have expended thousands of hours and considerable resources in litigating this case thus far. (See Broshuis Decl. ¶¶ 17, 19.) The court's review of the docket and plaintiffs' filings supports this conclusion. There is no indication that the named plaintiffs will fail to vigorously prosecute this case. (See id. ¶¶ 7, 9 (describing named plaintiffs' efforts to support this litigation, including producing extensive documents for

discovery and sitting for depositions.)

The court finds no reason to doubt that plaintiffs' counsel is well qualified to conduct this litigation and assess the value of the settlement. As discussed in greater detail below, counsel has provided an appropriate rationale for not pursuing further litigation. Accordingly, the court concludes that plaintiffs and their counsel satisfy Rule 23(a)'s adequacy requirement for the purpose of preliminary approval.

2. Rule 23(b)

After fulfilling the threshold requirements of Rule 23(a), the proposed class must satisfy the requirements of one of the three subdivisions of Rule 23(b). Leyva, 716 F.3d at 512. Plaintiffs seek certification under Rule 23(b)(3), which provides that a class action may be maintained only if (1) "the court finds that questions of law or fact common to class members predominate over questions affecting only individual members" and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

a. Predominance

"The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, 31 F.4th 651, 664 (9th Cir. 2022) (quoting Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453, 136 (2016)). "When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper

under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." Tyson Foods, 577 U.S. at 453 (cleaned up).

"'The question of whether an antitrust violation under Section 1 exists naturally lends itself to common proof, because that determination turns on defendants' conduct and intent along with the effect on the market, not on individual class members.'" Ray, 2025 WL 775753, at *8 (quoting In re Coll. Athlete NIL Litig., No. 20-cv-03919 CW, 2023 WL 8372787, at *8 (N.D. Cal. Nov. 3, 2023)). Although there are differences in the facts pertaining to individual class members and the amount of injury sustained, there is no indication that those variations are "sufficiently substantive to predominate over the shared claims." See Murillo, 266 F.R.D. at 476 (quoting Hanlon, 150 F.3d at 1022). Plaintiffs have proffered a common method of proof -- the statistical model developed by Dr. Rascher -- which appears "capable of showing that the [proposed class] members suffered antitrust impact on a class-wide basis." See Olean, 31 F.4th at 681; see also Ray, 2025 WL 775753, at *10. Accordingly, plaintiffs have established that common questions of law and fact predominate.

b. Superiority

The second part of the inquiry under Rule 23(b)(3) asks whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." "Generally, the factors relevant to assessing superiority include '(A) the class members' interests in individually controlling the

prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.'" Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Fed. R. Civ. P. 23(b)(3)).

The proposed class contains approximately 1,000 individuals, and the parties have not identified any competing litigation involving members of the proposed class. "It appears unlikely that the amount of damages each coach suffered is high enough to make individual litigation an efficient method of resolving their claims, especially given the complexity of antitrust litigation and the presence of several common legal and factual questions." See Ray, 2025 WL 775753, at *11. "Forcing individual [class members] to litigate their cases, particularly where common issues predominate for the proposed class," would be "an inferior method of adjudication." See Wolin, 617 F.3d at 1176. Accordingly, "class-wide adjudication of 'common issues will reduce litigation costs and promote greater efficiency,'" and the superiority requirement is satisfied. See id. (quoting Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996)).

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

If the court certifies a class under Rule 23(b)(3), it "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all

members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2) governs both the form and content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D. 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 172–77 (1974)). Although that notice must be "reasonably certain to inform the absent members of the plaintiff class," actual notice is not required. Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994) (citation omitted).

Plaintiffs' counsel has provided the court with a proposed email notice and proposed postcard notice to be sent class members. (See Docket No. 73-3 at 57-62.) The proposed notices explain the proceedings, define the scope of the class, and explain what the settlement provides and the minimum amount each class member can expect to receive in compensation. (See id.) The notices further explain the opt-out procedure, the procedure for objecting to the settlement, and the date and location of the final approval hearing. (See id.) The content of the notices therefore satisfies Rule 23(c)(2)(B). See Fed. R. Civ. P. 23(c)(2)(B); Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'") (quoting Mendoza v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1352 (9th Cir. 1980)).

The parties have selected Kroll Settlement Administration LLC to serve as the Settlement Administrator. Pursuant to the notice plan, the Settlement Administrator will provide direct mail notice to each class member at his or her

last known address, performing an additional address search process to locate other mailing addresses as necessary. (See Fenwick Decl. (Docket No. 73-3) ¶¶ 8-13.) The Settlement Administrator will also send notice via email. (See id. ¶¶ 6-7.) Further, the Settlement Administrator will establish a website and toll-free phone number, which will be referred to in the mail and email notices, to provide information about the settlement to class members. (See id. ¶¶ 14-15.) The proposed notice procedures appear "reasonably calculated, under all the circumstances," to apprise all class members of the proposed settlement. See Roes, 1-2 v. SFBSC Mgmt., LLC, 944 F.3d 1035, 1045-46 (9th Cir. 2019).

B. Preliminary Settlement Approval

After determining that the proposed class satisfies the requirements of Rule 23(a) and (b), the court must determine whether the terms of the parties' settlement appear fair, adequate, and reasonable. See Fed. R. Civ. P. 23(e)(2); Hanlon, 150 F.3d at 1026. This process requires the court to "balance a number of factors," including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." Hanlon, 150 F.3d at 1026.

Because some of these factors cannot be considered until the final fairness hearing, at the preliminary approval

stage "the court need only determine whether the proposed settlement is within the range of possible approval," Murillo, 266 F.R.D. at 479 (quoting Gautreaux v. Pierce, 690 F.2d 616, 621 n.3 (7th Cir. 1982)), and resolve any "glaring deficiencies" in the settlement agreement before authorizing notice to class members, Ontiveros, 2014 WL 3057506, at *12 (citing Murillo, 266 F.R.D. at 478). This generally requires consideration of "whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." Murillo, 266 F.R.D. at 479 (quoting West v. Circle K Stores, Inc., 04-cv-438 WBS GGH, 2006 WL 1652598, at *11-12 (E.D. Cal. June 13, 2006)).

Courts often begin by examining the process that led to the settlement's terms to ensure that those terms are "the result of vigorous, arms-length bargaining" and then turn to the substantive terms of the agreement. See, e.g., Murillo, 266 F.R.D. at 479-80; Circle K, 2006 WL 1652598, at *11-12; In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) ("[P]reliminary approval of a settlement has both a procedural and a substantive component.").

1. Negotiation of the Settlement Agreement

This action was filed in 2022. (Docket No. 1.) The court disposed of NCAA's motions to dismiss and transfer venue in 2023. (Docket No. 29.) The parties attempted mediation in summer 2024 but were unsuccessful in reaching a settlement at that time. (Broshuis Decl. ¶ 11.) Following extensive discovery, including several discovery motions (Docket Nos. 49-

50), and complex briefing on plaintiffs' motion for class certification (see Docket Nos. 63-67), the parties engaged in settlement discussions and reached a settlement in January 2025. (See Broshuis Decl. ¶¶ 6-11.) Given the extensive discovery and litigation conducted prior to settlement and counsel's representation that the settlement was the product of arms-length bargaining, the court at this stage does not question that the proposed settlement is the result of informed and non-collusive negotiations between the parties.

However, at final approval, counsel should provide additional information concerning the settlement discussions to allow the court to fully evaluate whether there are signs of collusion. Counsel should state whether the negotiations were conducted with a mediator, and if so, provide the qualifications of that mediator; state how long negotiations lasted prior to settlement; and provide any other information counsel finds relevant to the court's determination.

2. Amount Recovered and Distribution

In determining whether a settlement agreement is substantively fair to the class, the court must balance the value of expected recovery against the value of the settlement offer. See Tableware, 484 F. Supp. 2d at 1080. This inquiry may involve consideration of the uncertainty class members would face if the case were litigated to trial. See Ontiveros, 2014 WL 3057506, at *14.

"In determining whether the amount offered in settlement is fair, the Ninth Circuit has suggested that the Court compare the settlement amount to the parties' 'estimates of

the maximum amount of damages recoverable in a successful litigation.'" Litty v. Merrill Lynch & Co., No. 14-cv-0425 PA PJW, 2015 WL 4698475, at *9 (C.D. Cal. Apr. 27, 2015) (quoting In re: Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000)); see also Almanzar v. Home Depot U.S.A., Inc., No. 2:20-cv-0699 KJN, 2022 WL 2817435, at *11 (E.D. Cal. July 19, 2022) (citing Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 964 (9th Cir. 2009)) ("In determining whether the amount offered is fair and reasonable, courts compare the proposed settlement to the best possible outcome for the class.")

Plaintiffs' expert has calculated the total damages suffered by class members to be $49,790,000. (Rascher Decl. (Docket No. 73-2) ¶ 9.) The portion of the settlement allocated to class member payments -- $32,794,850 -- constitutes approximately 65.87% of the maximum valuation. This represents a strong result for the class and is comfortably within the range of percentage recoveries that California courts have found to be reasonable. See Cavazos v. Salas Concrete, Inc., No. 1:19-cv-00062 DAD EPG, 2022 WL 2918361, at *6 (E.D. Cal. July 25, 2022) (collecting cases). Based on these figures, the average payment per class member is $32,794.85. This five-figure payout also represents a strong result for the class.

Plaintiffs faced numerous risks in this complex antitrust litigation, including proving all elements of the claims, obtaining and maintaining class certification, establishing liability, and the costliness of litigation and potential appeals on these issues. In light of the risks associated with further litigation and the strength of the

settlement terms, the court finds that the value of the settlement is within the range of possible approval such that preliminary approval of the settlement is appropriate. The court further finds the method of processing class member claims to be adequate, as each class member's share of the settlement will be calculated on an individual basis by plaintiffs' expert based on factors including employer and length of employment.

Counsel are cautioned that because this settlement was reached prior to class certification, it will be subject to heightened scrutiny for purposes of final approval. See In re Apple Inc. Device Performance Litig., 50 F.4th 769, 783 (9th Cir. 2022). The recommendations of plaintiffs' counsel will not be given a presumption of reasonableness, but rather will be subject to close review. See id. The court will particularly scrutinize "any subtle signs that class counsel have allowed pursuit of their own self-interests to infect the negotiations." See id. at 782 (quoting Roes, 944 F.3d at 1043).

3. Attorney's Fees

If a negotiated class action settlement includes an award of attorney's fees, that fee award must be evaluated in the overall context of the settlement. Knisley v. Network Assocs., 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 455 (E.D. Cal. 2013) (England, J.). The court "ha[s] an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011).

The settlement agreement provides that plaintiffs'

counsel will seek fees in an amount not to exceed 33.33% of the gross settlement amount. As of the filing of the instant motion, plaintiffs' counsel has incurred $14,775,000 in fees. (See Settlement Agreement ¶ 7.6; Broshuis Decl. ¶ 18.) In deciding the attorney's fees motion, the court will have the opportunity to assess whether the requested fee award is reasonable by multiplying a reasonable hourly rate by the number of hours counsel reasonably expended. See Van Gerwen v. Gurantee Mut. Life. Co., 214 F.3d 1041, 1045 (9th Cir. 2000). As part of this lodestar calculation, the court may consider factors such as the "degree of success" or "results obtained" by plaintiffs' counsel. See Cunningham v. Cnty. of L.A., 879 F.2d 481, 488 (9th Cir. 1988). If the court, in ruling on the fees motion, finds that the amount of the settlement warrants a fee award at a rate lower than what plaintiffs' counsel requests, then it will reduce the award accordingly. The court will therefore not evaluate the fee award here in considering whether the settlement is adequate.

IT IS THEREFORE ORDERED that plaintiffs' motion for preliminary certification of a conditional settlement class and preliminary approval of the class action settlement (Docket No. 73) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED THAT:

(1) the following class be provisionally certified for the purpose of settlement:

(a) All persons who, pursuant to NCAA Division I Bylaw 11.7.6, served as a "volunteer coach" in college baseball at an NCAA Division I school from November 29, 2018 to July 1, 2023;

(2) the proposed settlement is preliminarily approved as fair, just, reasonable, and adequate to the members of the settlement class, subject to further consideration at the final fairness hearing after distribution of notice to members of the settlement class;

(3) for purposes of carrying out the terms of the settlement only:

(a) Taylor Smart and Michael Hacker are appointed as the representatives of the settlement class and are provisionally found to be adequate representatives within the meaning of Federal Rule of Civil Procedure 23;

(b) the law firm of Korein Tillery, LLC is provisionally found to be a fair and adequate representative of the settlement class and is appointed as class counsel for the purposes of representing the settlement class conditionally certified in this Order;

(4) Kroll Settlement Administration LLC is appointed as the Settlement Administrator;

(5) the form and content of the proposed Notices of Class Action Settlement (Docket No. 73-3 at 8-22) are approved, except to the extent that they must be updated to reflect the dates and deadlines specified in this Order and other information such as website addresses and phone numbers;

(6) no later than seven (7) calendar days from the date this Order is signed, counsel shall provide the Settlement Administrator with the class members' names, physical mailing addresses, telephone numbers, email addresses, and any other

information pertinent to the administration of the Settlement, if they have not done so already;

(7) no later than fourteen (14) calendar days from the date this Order is signed, the Settlement Administrator shall send a Notice of Class Action Settlement to all members of the settlement class via first class mail and email. If a Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice to the forwarding address. If no forwarding address is provided, the Settlement Administrator will attempt to locate a more current address within three (3) business days of receipt of the returned mail;

(8) no later than sixty (60) days from the date Settlement Administrator mails the Notice of Class Action Settlement, though in the case of a re-mailed notice the deadline will be extended by fifteen (15) days, any member of the settlement class who intends to object to, comment upon, or opt out of the settlement shall provide written notice of that intent pursuant to the instructions in the Notice of Class Action Settlement;

(9) A final fairness hearing shall be set to occur before this Court on **September 15, 2025** at 1:30 p.m. in Courtroom 5 of the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California, to determine whether the proposed settlement is fair, reasonable, and adequate and should be approved by this court; whether the settlement class's claims should be dismissed with prejudice and judgment entered upon final approval of the settlement; whether final class certification is appropriate; and to consider class counsel's

applications for attorney's fees, costs, and incentive awards for the class representatives. The court may continue the final fairness hearing without further notice to the members of the class;

(10) no later than thirty-five (35) days before the final fairness hearing, class counsel shall file with this court a petition for an award of attorney's fees and costs. Any objections or responses to the petition shall be filed no later than twenty-one (21) days before the final fairness hearing. Class counsel may file a reply to any objections no later than fourteen (14) days before the final fairness hearing;

(11) no later than thirty-five (35) days before the final fairness hearing, class counsel shall file and serve upon the court and defendant's counsel all papers in support of the settlement, the incentive awards for the class representatives, and any award for attorney's fees and costs;

(12) no later than thirty-five (35) days before the final fairness hearing, the Settlement Administrator shall prepare, and class counsel shall file and serve upon the court and defendant's counsel, a declaration setting forth the services rendered, proof of mailing, a list of all class members who have opted out of the settlement, and a list of all class members who have commented upon or objected to the settlement;

(13) any person who has standing to object to the terms of the proposed settlement may appear at the final fairness hearing (themselves or through counsel) and be heard to the extent allowed by the court in support of, or in opposition to, (a) the fairness, reasonableness, and adequacy of the proposed

settlement, (b) the requested award of attorney's fees, reimbursement of costs, and incentive award to the class representative, and/or (c) the propriety of class certification. To be heard in opposition at the final fairness hearing, a person must, no later than sixty (60) days from the date the Settlement Administrator mails the Notice of Class Action Settlement, (a) serve by hand or through the mails written notice of his or her intention to appear, stating the name and case number of this action and each objection and the basis therefore, together with copies of any papers and briefs, upon class counsel and counsel for defendant, and (b) file said appearance, objections, papers, and briefs with the court, together with proof of service of all such documents upon counsel for the parties.

Responses to any such objections shall be served by hand or through the mails on the objectors, or on the objector's counsel if there is any, and filed with the court no later than fourteen (14) calendar days before the final fairness hearing. Objectors may file optional replies no later than seven (7) calendar days before the final fairness hearing in the same manner described above. Any settlement class member who does not make his or her objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed settlement, the judgment entered, and the award of attorney's fees, costs, and incentive awards to the class representatives unless otherwise ordered by the court;

(14) pending final determination of whether the settlement should be ultimately approved, the court preliminarily enjoins

all class members (unless and until the class member has submitted a timely and valid request for exclusion) from filing or prosecuting any claims, suits, or administrative proceedings regarding claims to be released by the settlement.

Dated: April 30, 2025

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE