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

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

MDL Docket No. 4:14-md-02541-CW

**DEFENDANTS' OBJECTIONS TO DI-
RECT AND REBUTTAL TESTIMONY OF
DR. DANIEL A. RASCHER**

This Document Relates to:

Trial Date: September 4, 2018
Judge: Hon. Claudia Wilken

ALL ACTIONS EXCEPT *Jenkins v. Nat'l
Collegiate Athletic Ass'n*, Case No. 14-cv-
02758-CW

Without waiving any previously asserted objections, Defendants object to the Direct and Rebuttal Testimony of Dr. Daniel A. Rascher as follows:

OBJECTIONS TO DIRECT TESTIMONY OF DR. DANIEL A. RASCHER

	Testimony	Objection(s)	Ruling
1.	Para. 3: “Importantly, a collective restraint purportedly aimed at achieving socially laudable goals does not mean it has ‘procompetitive effects.’ For a collective restraint to be truly economically procompetitive, the restraint’s competition-limiting aspects must in fact <i>cause</i> (a) <i>increases</i> in the quantity of consumption/output; (b) enhancement of quality and variety of choice; and/or must <i>prevent</i> (c) collusive transfers of wealth; or (d) market collapse.”	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
2.	Para. 3: “To begin with, the argued benefits of academic integration do not fit any economic definition of ‘procompetitive.’”	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
3.	Para. 6: “The economic principles underlying what ‘procompetitive effects’ mean	Disclosure of inadmissible facts	Sustained / Overruled

1		are summarized in the joint publications	relied upon by ex-	
2		of the U.S. antitrust enforcement agencies	pert (FRE 703;	
3		– the DOJ and the FTC – used by econo-	FRE 802)	
4		mists to assess procompetitive claims in		
5		mergers and joint ventures, specifically	Legal conclusion	Sustained / Overruled
6		the Horizontal Merger Guidelines (the	(FRE 702; <i>Na-</i>	
7		‘Merger Guidelines’) and the Antitrust	<i>tionwide Transp.</i>	
8		Guidelines for Collaborations among	<i>Fin. v. Cass Info.</i>	
9		Competitors, (the ‘Joint Venture Guide-	<i>Sys., Inc.</i> , 523	
10		lines’ or ‘JVGs’). For example, the Mer-	F.3d 1051, 1058–	
11		ger Guidelines explain (at ‘Example 24’)	60 (9th Cir.	
12		that a transfer of wealth through abuse of	2008))	
13		market power is an example of anticom-		
14		petitive harm, not a procompetitive bene-		
15		fit.”		
16	4.	Para. 7: “Most on point, though, are the	Disclosure of in-	Sustained / Overruled
17		JVGs. The JVGs distill the economic con-	admissible facts	
18		cept of welfare into an antitrust frame-	relied upon by ex-	
19		work of pro- and anticompetitive conduct,	pert (FRE 703;	
20		based on, <i>inter alia</i> , antitrust economics.	FRE 802)	
21		These guidelines provide clear statements		
22		of what is, and what is not, procompetitive	Legal conclusion	Sustained / Overruled
23		as a matter of economics. For example,	(FRE 702; <i>Na-</i>	
24		the JVGs explain that collaboration can	<i>tionwide Transp.</i>	
25		produce procompetitive effects if it will	<i>Fin. v. Cass Info.</i>	
26		‘enable firms to offer goods or services	<i>Sys., Inc.</i> , 523	
27		that are cheaper, more valuable to con-	F.3d 1051, 1058–	
28		sumers, or brought to market faster than		

1		would otherwise be possible.’ Key here is	60 (9th Cir.	
2		not just that products are more valuable,	2008))	
3		but that they are more valuable ‘than		
4		would otherwise be possible.’ The JVGs		
5		also caution against confusing claims that		
6		are ‘premised on the notion that competi-		
7		tion itself is unreasonable’ with legitimate		
8		procompetitive claims. They also explain		
9		that the label alone cannot turn ‘a device		
10		to raise price or restrict output’ into some-		
11		thing procompetitive; rather, ‘the nature of		
12		the conduct, not its designation, is deter-		
13		minative.’”		
14	5.	Para. 8: “They cite to Richard Posner to	Disclosure of in-	Sustained / Overruled
15		reinforce the understanding that ‘the only	admissible facts	
16		goal of the antitrust laws should be to pro-	relied upon by ex-	
17		motivate economic welfare.’ Posner’s quote	pert (FRE 703;	
18		on this issue is informative:	FRE 802)	
19		‘Almost everyone professionally		
20		involved in antitrust today -	Legal conclusion	Sustained / Overruled
21		whether as litigator, prosecutor,	(FRE 702; <i>Na-</i>	
22		judge, academic, or informed ob-	<i>tionwide Transp.</i>	
23		server - not only agrees that the	<i>Fin. v. Cass Info.</i>	
24		only goal of the antitrust laws	<i>Sys., Inc.</i> , 523	
25		should be to promote economic	F.3d 1051, 1058–	
26		welfare, but also agrees on the es-	60 (9th Cir.	
27		sentential tenets of economic theory	2008))	
28		that should be used to determine		

1		the consistency of specific busi-		
2		ness practices with that goal.		
3		Agrees, that is, that economic		
4		welfare should be understood in		
5		terms of the economist's concept		
6		of efficiency; that business firms		
7		should be assumed to be rational		
8		profit maximizers, so that the is-		
9		sue in evaluating the antitrust sig-		
10		nificance of a particular business		
11		practice should be whether it is a		
12		means by which a rational profit		
13		maximizer can increase its profits		
14		at the expense of efficiency....”		
15	6.	Para. 19: “Many schools provided their	Disclosure of in-	Sustained / Overruled
16		official reasons for opposing a rule that	admissible facts	
17		would have allowed schools to voluntarily	relied upon by ex-	
18		provide some portion of the ‘COA gap’	pert (FRE 703;	
19		that was prohibited at the time. These rea-	FRE 802)	
20		sons included concerns that: (a) competi-		
21		tion would cause schools to allocate more		
22		money to athletes than schools would pre-		
23		fer to allocate; (b) competition would		
24		cause schools to allocate payments differ-		
25		ently among sports than they deemed to		
26		be seemly; (c) COA payments might be		
27		spent in distasteful ways, such as for ‘tat-		
28		too money’; (d) competition would cause		

1		schools to pay MEA even if they preferred		
2		to use the money elsewhere; or (e) the		
3		market rate might increase over time. No-		
4		tably, my review of the record did not		
5		show any discussion that demand for col-		
6		legiate athletics would go down because		
7		fans would not like MEA being paid.”		
8	7.	Para. 27: “Economics does not justify as	Legal conclusion	Sustained / Overruled
9		a procompetitive effect robbing Peter to	(FRE 702; <i>Na-</i>	
10		pay Paul, no matter how deserving Paul	<i>tionwide Transp.</i>	
11		may be. Even if 100% of the collusive	<i>Fin. v. Cass Info.</i>	
12		profits were spent on educationally lauda-	<i>Sys., Inc.</i> , 523	
13		ble goals, like providing scholarships to	F.3d 1051, 1058–	
14		students for whom there is little or no con-	60 (9th Cir.	
15		sumer interest, whether they be athletes in	2008))	
16		less popular sports or even non-athletes,		
17		this would still not be procompetitive. Ra-		
18		ther, it would provide a great example of		
19		the distinction between a social good on		
20		the one hand and, on the other hand, be-		
21		havior that is not considered procompeti-		
22		tive as a matter of economics.”		
23	8.	Para. 31: “The single piece of evidence	Opinion outside	Sustained / Overruled
24		Defendants produced (a litigation-con-	area of expertise	
25		ducted survey) concerning consumer pref-	(FRE 702; <i>Avila</i>	
26		erences did not measure the restraints’ im-	<i>v. Willits Env’tl.</i>	
27		impact on consumer demand, as admitted by	<i>Remediation</i>	
28		Defendants’ expert.”	<i>Trust</i> , 633 F.3d	

1		828, 839 (9th Cir.	
2		2011);	
3			
4		Dep. 140:6-8 (“Q	
5		You’re not testi-	
6		fying in this case	
7		as a survey ex-	
8		pert, right? A	
9		Correct.”))	
10	9.	Para. 36: “This is why, when the Univer-	Disclosure of in-
11		sity of Chicago conducted a recent survey	admissible facts
12		of economists (since the filing of my last	relied upon by ex-
13		report in this matter), every single econo-	pert (FRE 703;
14		mist who had an opinion agreed that	FRE 802)
15		NCAA compensation restraints ‘provid[e]	
16		rents to member schools (which may be	
17		shared with others) at the expense of those	
18		players.”	
19	10.	Para. 48: “Just last month, the Big Ten	Disclosure of in-
20		announced it will distribute a record-	admissible facts
21		breaking [REDACTED] to each of its 14	relied upon by ex-
22		teams for the 2019 fiscal year.”	pert (FRE 703;
23			FRE 802)
24	11.	Fn. 4 (page 18): ““The crazy, crazy	Disclosure of in-
25		money in college athletics keeps getting	admissible facts
26		crazier.”	relied upon by ex-
27			pert (FRE 703;
28			FRE 802)

12.	<p>Para. 49: “Individual schools have experienced tremendous revenue increases while offering COA. For example, Auburn University, an SEC school, announced a \$15 million surplus of revenue over costs in 2015-16, driven by revenue growth of \$15 million. Another SEC school, the University of Kentucky, has used a decade-long increase in annual athletic revenues, from \$68 million in 2006 to \$132 million in 2016, to increase coaches’ salaries in all sports, so that every varsity coach now earns ‘more than the school’s average full professor’s salary.’ Arizona State, a Pac-12 school, reported an increase of over \$10 million in athletic revenue in fiscal year 2016. (As a new note, just recently, Arizona State publicly touted the fact that in 2016-17, athletic department revenue exceeded \$100 million for the first time: saying ‘We finally reached that goal everyone has been focused on.... It shows the strong performance we’ve been putting in the last few years. We’ve seen a nice trend in revenues and our net position has looked very strong.’) Both Texas and Texas A&M reported over \$210 million each in total athletic department revenues</p>	<p>Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)</p>	<p>Sustained / Overruled</p>
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	for 2016-17 and a total of fifteen schools show total revenue in excess of \$140 million.”		
13.	Para. 50: “Moreover, in 2015, after the Big Ten began offering its athletes COA, Nike reached a multi-year contract worth \$250 million in cash and apparel with Ohio State, and another \$125 million with Michigan in the following year. Similarly, UCLA and Under Armour entered into a deal worth \$280 million over 15 years, which at the time was the richest deal ever entered into between a school and its equipment and apparel partner, and Texas A&M and adidas inked a deal worth at least \$64 million over eight years.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
14.	Para. 71: “In a video posted online by the Oklahoma State Athletics YouTube account, a reporter interviews an athlete in the gift suite for the 2016 Sugar Bowl as he remarks upon the available goods: microwaves and refrigerators, headphones and electronic gadgets, luxury watches, and mountain bikes. At one point the athlete remarks, ‘40-inch TV...that’s pretty sizeable...last year we were offered 28-inch TVs, so that is definitely a step up.’”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

15.	Para. 72: “As of 2016-17, an FBS football player could receive an additional \$5,620 in goods or prepaid cash-cards, based on his, and his team’s, athletic success, untethered to any educational expense.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
16.	Para. 73: “In 2015-16, DeShaun Watson of Clemson University was entitled to receive approximately \$2,940 in Athletics Awards for his team’s success and then on top of that, he was eligible for another \$2,675 because he also won five individual awards—the Orange Bowl MVP, the Davey O’Brien Award, the Manning Award, ACC Athlete of the Year, and Clemson Athlete of the Year.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
17.	Para. 74: “The men’s basketball figures are comparable – a player could earn nearly \$4,000 from similar awards from the NCAA itself. The same holds true in women’s basketball. In 2015-16, Breanna Stewart of the University of Connecticut women’s basketball team was entitled to approximately \$2,565 in Athletics Awards for her team’s athletic success and she also won eight individual awards—the National Championship MVP, AP Player of the Year, the Wade Trophy, the Naismith Trophy, the Ann Meyers Drysdale	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

1		Award, the John R. Wooden Award, the		
2		James E. Sullivan Award, and the Honda		
3		Sport Award—entitling her to approxi-		
4		mately \$2,625 in additional Athletics		
5		Awards. All of these payments were in ex-		
6		cess of Full COA.”		
7	18.	Para. 84: “Many observers have pointed	Disclosure of in-	Sustained / Overruled
8		to the NCAA rules prohibiting any com-	admissible facts	
9		ensation to Division I basketball players	relied upon by ex-	
10		(despite the enormous revenues they gen-	pert (FRE 703;	
11		erate) as one of the causes of these pay-	FRE 802)	
12		ments. Dr. Rice described the current		
13		NCAA rules in the following manner, in	Irrelevant (FRE	Sustained / Overruled
14		the context of Arike Ogunbowale, who	402)	
15		became nationally famous because of her		
16		excellent play for Notre Dame in the	Undue de-	Sustained / Overruled
17		Women’s Final Four this past March, and	lay/wasting time	
18		for whom the NCAA granted an individu-	(FRE 403)	
19		alized exception to be paid to appear on		
20		the ‘Athlete Only’ version of Dancing		
21		with the Stars:		
22		The current NCAA rules, she		
23		said, ‘(are) just incomprehensible.		
24		And sometimes when some-		
25		thing’s incomprehensible, you		
26		have to go ahead and say, ‘This is		
27		incomprehensible,’ which means		
28		it probably isn’t right.’ ... The		

1		NCAA said it was granting the		
2		waiver because the show was un-		
3		related to her basketball abilities.		
4		Rice isn't buying it. 'I couldn't for		
5		the life of me understand the ex-		
6		planation,' she said, 'because ob-		
7		viously she's there because she hit		
8		two winning shots in two basket-		
9		ball games (in the women's Final		
10		Four), so that's the connection.'"		
11	19.	Para. 85: "The NCAA Commission chair,	Disclosure of in-	Sustained / Overruled
12		Dr. Rice, has even now publicly called for	admissible facts	
13		an end to the NCAA rules prohibiting ath-	relied upon by ex-	
14		letes from being compensated for the use	pert (FRE 703;	
15		of their names, images and likenesses.	FRE 802)	
16		While those rules are not at issue in this		
17		litigation, the position of the Commission	Irrelevant (FRE	Sustained / Overruled
18		that such rules cannot be justified is yet	402)	
19		another piece of post <i>O'Bannon</i> evidence		
20		that Defendants' claims that any compen-	Undue de-	Sustained / Overruled
21		sation above COA will destroy consumer	lay/wasting time	
22		demand cannot even be supported by a	(FRE 403)	
23		hand-picked NCAA Commission. As Dr.		
24		Rice explained following the release of		
25		her Commission's Report, the:		
26		'Commission's recommendations		
27		are intended to ... provide incen-		
28				

1		tives for universities to better support student-athletes by: ...developing a new policy on name, image and likeness. NCAA policy is inconsistent on this matter. Olympians already enjoy an exemption and there are other case-by-case exceptions. It should be possible to develop a legally compliant approach that allows student athletes from all sports to benefit.””		
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13	20.	Para. 86: “Rice added: ‘There is a legal framework that has to be determined, but name, image and likeness –athletes are going to have to be able to benefit from it, ’ she said. ‘I think everybody can see that. Exactly what that’s going to look like, I don’t think that we could design it. I don’t think that today the NCAA could design it because the legal framework still has to be developed. But when I see policies that are as confused as the NCAA’s policies on this, I think, ‘Why haven’t you gone and	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802) Irrelevant (FRE 402) Undue delay/wasting time (FRE 403)	Sustained / Overruled Sustained / Overruled Sustained / Overruled
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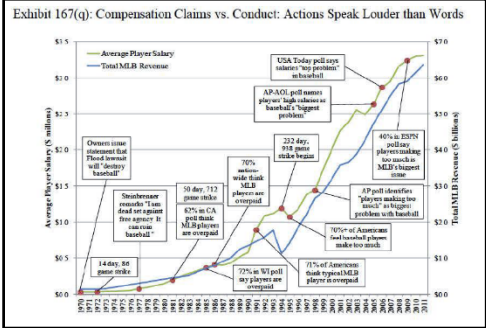
1		looked at this before?’ It’s really		
2		time to come to terms with name,		
3		image and likeness....”		
4	21.	Para. 87: “Other industry leaders have	Disclosure of in-	Sustained / Overruled
5		echoed Rice’s views, including athletic di-	admissible facts	
6		rectors from Penn State and Georgia Tech.	relied upon by ex-	
7		North Carolina State’s Athletic Director,	pert (FRE 703;	
8		Debbie Yow, explained that she has been	FRE 802)	
9		a proponent of this sort of above-COA		
10		compensation for ‘about 15 years.’ Notre	Irrelevant (FRE	Sustained / Overruled
11		Dame A.D., Jack Swarbrick, also advo-	402)	
12		cated this during a ‘Business of College		
13		Sports’ discussion.”	Undue de-	Sustained / Overruled
14			lay/wasting time	
15			(FRE 403)	
16	22.	Para. 88: “For example, Missouri	Disclosure of in-	Sustained / Overruled
17		women’s basketball player Lindsey Cun-	admissible facts	
18		ningham invested some of her COA sti-	relied upon by ex-	
19		pend money into mutual funds. Kansas	pert (FRE 703;	
20		State baseball player Jake Scudder sent	FRE 802)	
21		some of his COA money home to his par-		
22		ents. Ray Glier of the New York Times		
23		identified a wide variety of such non-edu-		
24		cational uses, including a fish tank and pet		
25		fish; a pet dog, dog food, veterinarian		
26		fees, and dog-sitting fees; Christmas pre-		
27		sents; a younger brother’s high school		
28		football team’s equipment fee; donations		

1		to the homeless; caring for one's parents;		
2		housing; savings; car repair; gas; and gro-		
3		ceries."		
4	23.	Para. 93: "The first key point is that col-	Disclosure of in-	Sustained / Overruled
5		lege sports developed and thrived for	admissible facts	
6		fifty-plus years prior to the adoption of	relied upon by ex-	
7		any nationally enforced 'amateurism'	pert (FRE 703;	
8		rules. Aside from major league baseball	FRE 802)	
9		(the 'national pastime'), during this period		
10		of time (when no national cap on compen-		
11		sation was enforced), college football was		
12		the most popular sport in America. In-		
13		deed, it was only after the 1956 adoption		
14		of the GIA cap that the NFL and NBA		
15		surpassed college football and basketball		
16		in terms of consumer demand. The period		
17		from about 1905 to 1920s has been called		
18		the 'golden age' for college football and		
19		yet during this time period, the Carnegie		
20		Institute found that 62% of the schools of-		
21		fering aid made the athlete an employee,		
22		either of a local business, of the athletic		
23		department, or of the university itself, and		
24		where 'athletic ability' was a factor in the		
25		receiving of a wage far in excess of what a		
26		typical job would pay. The Report found		
27		examples of:		
28				

1		“...sinecures that have enabled		
2		their recipients to attend college,		
3		play on teams, and contribute to		
4		family support or put aside a cap-		
5		ital sum with which to embark		
6		upon a business venture after		
7		graduation. Many a candid athlete		
8		acknowledges that his athletic		
9		ability has proved a ‘meal ticket’		
10		throughout his college course be-		
11		cause of the readiness with which		
12		jobs were provided.”		
13	24.	Para. 94: “The Carnegie report acknowl-	Disclosure of in-	Sustained / Overruled
14		edged that imposing an amateurism rule	admissible facts	
15		was ‘counter to the material interests of	relied upon by ex-	
16		some schools.”	pert (FRE 703;	
17			FRE 802)	
18	25.	Para. 95: “As Dr. Noll has explained, dur-	Disclosure of in-	Sustained / Overruled
19		ing this period of time, there was a wide	admissible facts	
20		diversity of conference rules on compen-	relied upon by ex-	
21		sation and yet schools played each other	pert (FRE 703;	
22		across different conferences. The pre-	FRE 802)	
23		1956 history of conference-rule diversity		
24		remains relevant today because there is		
25		still diversity in conference compensation		
26		rules currently, further demonstrating that		
27		a single nationwide NCAA compensation		
28		rule is not needed to maintain consumer		

1		demand. Nor, as I will discuss below,		
2		were the NCAA compensation rules in-		
3		tended to have (or result in) any procom-		
4		petitive impact on consumer demand.”		
5	26.	Para. 108: “At the time, Arkansas’s Ross	Disclosure of in-	Sustained / Overruled
6		J. Pritchard, laid out plainly that this	admissible facts	
7		measure was designed to reduce, not en-	relied upon by ex-	
8		hance, competition:	pert (FRE 703;	
9		‘[R]ambunctious urges to keep up	FRE 802)	
10		with the competition, the escalat-		
11		ing belief, if we can match bigger		
12		athletes, staffs, equalize more in-		
13		tensive programs of recruiting,		
14		provide a more extravagant set of		
15		facilities, the belief that those that		
16		play in blue shirts will fill our sta-		
17		diums or arenas and our pocket		
18		books. In all of this is a peculiar		
19		regeneration of expected difficul-		
20		ties not unlike the drunk who in-		
21		creases his drinking to forget he is		
22		a drunk.’”		
23	27.	Para. 109: “As a third example, consider	Disclosure of in-	Sustained / Overruled
24		the explicit statement of Hollis Moore of	admissible facts	
25		Bowling Green State University who ex-	relied upon by ex-	
26		plained that changes to the maximum GIA	pert (FRE 703;	
27		would have no impact on revenue: ‘We	FRE 802)	
28				

	know that the generation of new income is unlikely, if not impossible.”		
28.	Para. 111: “It is a well-established economic principle (echoed by courts and the FTC and DOJ’s joint venture guidelines) that a restraint cannot be found procompetitive when it is premised on the notion that competition itself is undesirable – even when masked by the pretextual notion that the restraint is somehow needed to increase or maintain consumer demand.”	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
29.	Para. 116: “In MLB, the agreement was known as the ‘reserve clause,’ and specifically the agreement of all baseball teams not to compete for athletes who completed their contractual terms and wanted to seek employment with another team.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
30.	Para. 117: “Despite the claim that consumers would stop paying for baseball tickets or watching on TV if free competition was permitted for baseball players and players earned substantially more compensation, baseball revenue exploded even as competition was permitted and led to rapid growth in athlete pay.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

31.	<p>Exhibit 167(q) (page 44):</p> 	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
32.	<p>Para. 118: “However, my analysis of MLB is not just focused on the move to free agency in the 1970s. In the 19th century, MLB transformed from being an amateur sport (far more amateur than the NCAA is today) to a professional one, while vested parties made the same sort of claims back in the 1860s that we hear today: if baseball lost its character as an amateur sport, consumers would find it a less desirable product. For example, the Albany Knickerbockers, a major team at the time, ‘denounced the growing custom of playing for money because it would destroy baseball’s enviable reputation as a sport and create unfriendly rivalry between clubs.’ As with every other sport, baseball did not just survive the change from ‘amateurism,’ but it thrived thereafter when its athletes were paid.”</p>	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

1	33.	Para. 119: “The history of the Olympic	Disclosure of in-	Sustained / Overruled
2		model is another analogous example. Like	admissible facts	
3		the NCAA today, prior to the second half	relied upon by ex-	
4		of the 1980s, the Olympic movement	pert (FRE 703;	
5		maintained that enforced amateurism was	FRE 802)	
6		essential to demand for the Olympics as a		
7		sports product. Historically, the Olympics		
8		were <i>more</i> committed to amateurism than		
9		were college sports. After the NCAA be-		
10		gan to enforce rules that allowed GIAs,		
11		the Olympics objected because of what it		
12		viewed as the end of amateurism since		
13		athletes were paid with scholarships that		
14		included elements of the cost of attend-		
15		ance (i.e., ‘laundry money’). In testimony		
16		before the U.S. Senate, historian Taylor		
17		Branch explained that in the 1950s, the		
18		Olympics saw the NCAA’s scholarships		
19		as being too professional:		
20		‘Fifty years ago, an early bonanza		
21		in sports revenue intensified a bit-		
22		ter feud between the NCAA and		
23		the Amateur Athletic Union		
24		(AAU), which controlled access		
25		to the Olympic Games. AAU		
26		leaders accused an ‘unpatriotic’		
27		NCAA of sabotaging U.S.		
28		chances to win medals. They		

	claimed that college athletes already were ‘paid,’ and therefore not amateurs at all, once the NCAA approved athletic scholarships in 1956.”		
34.	Para. 120: “And, of course, there is the famous statement by the Olympic leadership from 1960 that if the Olympics abandoned amateurism, and were to ‘water down the rules now, the Games will be destroyed within eight years.’”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
35.	Para. 121: “There is also copious evidence the Olympics strict enforcement of amateurism, stretching into the 1980s, with many athletes banned from Olympic competition by the IOC or the U.S. authorities for violating amateurism rules. I have provided a longer exhibit in Exhibit 167(r) following paragraph 250, but just to provide a few examples from the exhibit, consider three famous Americans, Jim Thorpe, Babe Didrikson, and Steve Prefontaine.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
36.	Para. 122: “After the 1912 Summer Olympics in Sweden, where King Gustav V had declared Jim Thorpe ‘the greatest athlete in the world,’ the IOC stripped Thorpe of his medals for having played	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

1		semiprofessional baseball several years		
2		earlier. Contrast this with the far less ‘am-		
3		ateur’ rules of the NCAA, where profes-		
4		sional baseball players are considered am-		
5		ateurs in any other sport; recently Russell		
6		Wilson played professional baseball while		
7		starring for NC State and the University of		
8		Wisconsin in football.”		
9	37.	Para. 123: “The American Athletic Union	Disclosure of in-	Sustained / Overruled
10		(AAU) of the United States kicked pio-	admissible facts	
11		neering female athlete, Babe Didrikson,	relied upon by ex-	
12		off the 1936 U.S. Summer Olympic team	pert (FRE 703;	
13		for appearing in an automobile advertise-	FRE 802)	
14		ment. After competing in the 1972 sum-		
15		mer games as an amateur, American Steve		
16		Prefontaine began accepting free gear		
17		from Nike. Consequently, the AAU		
18		moved to exclude him from the 1976		
19		games, a decision he fought publicly, be-		
20		fore tragically passing away.”		
21	38.	Para. 124: “The sentiment that amateur-	Disclosure of in-	Sustained / Overruled
22		ism was essential to consumer demand	admissible facts	
23		(and the resulting enforcement of the man-	relied upon by ex-	
24		datory amateurism rules) persisted well	pert (FRE 703;	
25		into the 1980s, right to the cusp of the	FRE 802)	
26		Olympics and its associated organizations		
27		abandoning their strict insistence on ama-		
28		teurism. In the current Olympic culture of		

1 Wheaties boxes and medal bonuses, it is
 2 difficult to imagine a time when the
 3 Olympics maintained they would be ut-
 4 terly transformed if the best athletes in the
 5 world were paid in their sport and could
 6 not enter into an economy's free exchange
 7 – even for something like product en-
 8 dorsements – all under the theory that
 9 consumer demand for the Olympics rested
 10 on amateurism. But they did make that
 11 claim; we just find it hard to believe today
 12 because they were proven wrong that
 13 there was any linkage between athlete
 14 compensation and consumer demand for
 15 the Olympics. As CNN journalist Bob
 16 Greene explained in 2012, the central de-
 17 fining feature of the Olympics was ama-
 18 teurism, until it wasn't:

19 'The one firm rule that always
 20 governed the Olympic Games
 21 was that amateur athletes were
 22 permitted to compete. Profes-
 23 sional athletes were not. That's
 24 what made the Olympics the
 25 Olympics. Until it didn't.... And
 26 the fans, far from protesting in
 27 outrage at the change, didn't care.
 28

1		In fact, they seemed to like it a		
2		lot.”		
3	39.	Para. 125: “The empirical record shows it	Disclosure of in-	Sustained / Overruled
4		was not. Despite the movement’s insist-	admissible facts	
5		ence that ‘amateurism’ was the primary	relied upon by ex-	
6		driver of consumer demand, the empirical	pert (FRE 703;	
7		evidence shows that consumers loved (and	FRE 802)	
8		still love) many things about the Olym-		
9		pics.”		
10	40.	Para. 126: “Amateurs, as the NCAA cur-	Disclosure of in-	Sustained / Overruled
11		rently defines the term, continue to com-	admissible facts	
12		pete against professionals in the Olym-	relied upon by ex-	
13		pics. For example, Class member Leticia	pert (FRE 703;	
14		Romero was awarded €29,000 when her	FRE 802)	
15		Spanish women’s basketball team won the		
16		Olympic Silver medal (missing out on		
17		gold only because they lost to the US team		
18		filled with WNBA professionals). She was		
19		an ‘amateur’ as the NCAA defines it, then		
20		received her athletic payment, and yet re-		
21		mained an NCAA ‘amateur.’ Thus, after		
22		the Olympics, Romero returned to Florida		
23		State to play her senior season in 2016-		
24		17.”		
25	41.	Para. 127: “Despite the increasing role of	Disclosure of in-	Sustained / Overruled
26		compensated athletes within the Olym-	admissible facts	
27		pics, demand for the Olympics in the		
28		United States – measured as the value		

1		placed on the television rights to broadcast	relied upon by ex-	
2		the games (despite the dilution of televi-	pert (FRE 703;	
3		sion viewership due to the explosion in	FRE 802)	
4		available content) – continues to climb		
5		ever higher. NBCUniversal paid on aver-		
6		age \$1.1 billion for each Olympic Games’		
7		television rights from 2014-2020, and has		
8		since upped that to \$1.275 billion for each		
9		Games from 2022-2036.”		
10	42.	Para. 128: “Originally watched only	Disclosure of in-	Sustained / Overruled
11		online, the popularity has grown such that	admissible facts	
12		ESPN and TBS have broadcast collegiate	relied upon by ex-	
13		and professional esports competitions, re-	pert (FRE 703;	
14		spectively. More viewers worldwide	FRE 802)	
15		watched the League of Legends 2013		
16		World Championship than Major League		
17		Baseball’s World Series. Madison Square		
18		Garden hosted a packed house to watch		
19		the 2015 North American finals for the		
20		same tournament. Several esports tourna-		
21		ments award more than \$1,000,000 in		
22		prize money.”		
23	43.	Para. 129: “Outside of the Power 5, Rob-	Disclosure of in-	Sustained / Overruled
24		ert Morris University offers even larger	admissible facts	
25		esports scholarships, and the University of	relied upon by ex-	
26		California, Irvine has offered full esports	pert (FRE 703;	
27		scholarships. Miami University (of Ohio)	FRE 802)	
28				

1		has begun offering a varsity esports pro-		
2		gram for which ‘scholarships are in the		
3		works.’ All three schools are NCAA Divi-		
4		sion I members, but conduct their esports		
5		operations without needing nationwide		
6		rules to create a thriving new sport. When		
7		asked if university boosters could woo re-		
8		cruits without NCAA-like restraints, Rob-		
9		ert Morris’ esports coordinator Kurt		
10		Melcher replied, ‘I would encourage that.		
11		That would be awesome.’ And these		
12		schools have implemented these varying		
13		payment schemes without any professed		
14		concerns about integrating players into		
15		their campuses despite the payments.”		
16	44.	Para. 130: “Here it is useful to repeat the	Legal conclusion	Sustained / Overruled
17		economic meaning of “procompetitive”:	(FRE 702; <i>Na-</i>	
18		the restraint needs to have a causal con-	<i>tionwide Transp.</i>	
19		nection to an improvement in welfare. So,	<i>Fin. v. Cass Info.</i>	
20		it needs to result in an increase in quantity	<i>Sys., Inc.</i> , 523	
21		or quality of output, variety, choice, or to	F.3d 1051, 1058–	
22		minimize anticompetitive wealth trans-	60 (9th Cir.	
23		fers.”	2008))	
24	45.	Para. 136: “Take Fresno State as an ex-	Disclosure of in-	Sustained / Overruled
25		ample, where only 4% of undergraduates	admissible facts	
26		live in dorms.”	relied upon by ex-	
27			pert (FRE 703;	
28			FRE 802)	

1	46.	Para. 138: “But that doesn’t stop schools from creating dorms where all athletes from a given team live together and then, perhaps on a different floor, an equal number of non-athletes live. There are numerous examples of how schools tout the fact that their athletic facilities, including housing, are specifically designed to prevent athletes from interacting with people outside the athletic program Some examples include:	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
2				
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12		a) Alabama’s 2013 renovations, headlined by an indoor waterfall, include a		
13		two-story theater, nutrition bar, hydro-		
14		therapy room, strength and conditioning		
15		center, training room, offices and locker		
16		rooms, and outdoor practice fields. ‘It’s		
17		all on one level and essentially gives the		
18		team no reason—except for classes—to		
19		leave the premises.’		
20		b) Tennessee’s \$45 million Anderson		
21		Training Center features ‘a gigantic		
22		weight room (22,000 square feet to be		
23		exact), a locker room full of HD tele-		
24		visions, and a dining hall’ so that ‘UT		
25		players never have to leave the facility.’		
26				
27				
28				

1	c) University of Kentucky men's basket-		
2	ball athletes live in the Wildcat Lodge. A		
3	video posted on the NBC Sports website		
4	features coach John Calipari giving a tour		
5	of the new dorm. It is conveniently located		
6	next to the practice facilities, with basket-		
7	ball championship trophies displayed in		
8	both the entry way and the dining area,		
9	computer monitors for players to check		
10	their practice schedules, and blown-up pic-		
11	tures of the basketball players as décor. ...		
12	It is the only male-only dorm on campus		
13	and its capacity is limited to 32, enough for		
14	the entire men's team and a balancing num-		
15	ber of non-athletes. It is instructive to		
16	watch coach Calipari explain how no one		
17	can even get into the dorm – which looks		
18	nothing like a normal college dorm – un-		
19	less a Kentucky employee screens them to		
20	make sure they belong in the basketball		
21	residence. (See https://bit.ly/2JATAmM)		
22	d) Auburn's South Donahue Resi-		
23	dence Hall, designed to 'build camara-		
24	derie under one roof.'		
25	e) Clemson's football player complex		
26	is exclusively for football players. A		
27			
28			

1		Clemson athletic department spokes-		
2		man bragged, 'It'll be their home on		
3		campus, when they're not in class.'		
4		f) North Carolina State is building a		
5		\$15 million dorm specifically for		
6		men's and women's basketball play-		
7		ers. The '62-bed building down the hill		
8		from Reynolds Coliseum...will be tai-		
9		lored to best serve the needs of 30		
10		players, doubling as comfortable and		
11		convenient living quarters and a nifty		
12		recruiting tool...On-site dining, in-		
13		door basketball courts, movie theaters,		
14		large in-room televisions, and 24-hour		
15		attendants posted at the door are		
16		among the amenities offered.'"		
17	47.	Para. 139: "Also consider the new foot-	Disclosure of in-	Sustained / Overruled
18		ball complex at Iowa State, which was	admissible facts	
19		touted for assisting in isolating athletes	relied upon by ex-	
20		from their classmates:	pert (FRE 703;	
21		'It consolidates everything for	FRE 802)	
22		football so that the football team,		
23		other than sleeping at night and		
24		going to class, will never have to		
25		leave the football building,' Pol-		
26		lard said. (http://siouxcityjour-		
27		nal.com/sports/college/jamie-pol-		
28				

	lard-sheds-light-on-isu-s-newath- letic-performance/arti- cle_6384d5bb-e938-571c-a725- c493d941b311.html)”		
48.	Para. 141: “A recent academic study has been released in <i>Change: The Magazine of Higher Learning</i> , showing that when schools offer their athletes indirect compensation through elaborate athletic facilities and athlete focused dorms, these ‘athletic villages’ actually ‘isolate and segregate the athlete population from the student body with significant consequences for student development, especially as athletes retire from their sport.’ The authors even conclude that a ‘segregated athlete village or gated community’ ‘further limits the amount of interaction a student-athlete can have with nonathletes, reducing the chances of developing important relationships outside of the team family.’”	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011)) Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled Sustained / Overruled
49.	Para. 143: “For example, at Bucknell University, a Division I school, 20% of students come from families in the top one percent of annual income, while 12% of students come from families in the bottom 60% of annual income.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

1	50.	Para. 144: “So, as just one example, Brandon Weeden, who led Oklahoma State, had <i>previously</i> received a \$565,000 signing bonus from the Yankees and then played baseball professionally for five years, seemingly without concerns about his integration once he enrolled at Oklahoma State and led the Cowboys to a Fiesta Bowl victory over Stanford in 2012.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
2				
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10	51.	Para. 145: “Consider also the example of Kyle Snyder, a wrestler who attended Ohio State before and after he received \$25,000 for winning a Gold Medal in the 2016 Summer Olympics.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
11				
12				
13				
14				
15	52.	Para. 147: “Former Stanford student Evan Spiegel invented the popular app ‘Snapchat’ while a student. Yet the fabric of the educational community at Stanford remained whole. Neither Mark Zuckerberg’s invention of Facebook nor Natalie Portman’s acting career were restricted while they attended Harvard (nor did they harm those institutions). Emma Watson attended Brown (and later NYU) while starring as Hermione Granger in Harry Potter movies and earning millions.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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27	53.	Para. 148: “For example, at schools like the University of Iowa and the University	Disclosure of inadmissible facts	Sustained / Overruled
28				

1		of Southern California, members of stu-	relied upon by ex-	
2		dent government earn thousands of dollars	pert (FRE 703;	
3		in salary. At Notre Dame, a range of stu-	FRE 802)	
4		dent publications pay staff members. The		
5		Stanford Daily pays undergraduates who		
6		write, edit, and sell advertising for the		
7		publication. Stanford has also awarded		
8		cash prizes to student-led start-up ven-		
9		tures.”		
10	54.	Para. 150: “However, even if one takes	Excluded pursu-	N/A (already ruled
11		the NCAA’s data at face value, they show	ant to Order Re-	upon)
12		that there is a correlation between aca-	solving Motions	
13		ademic success and <i>increased</i> athletic ben-	to Exclude “New”	
14		efits, since in the last few years, athletes	Expert Opinions	
15		have been provided with a series of in-	(Dkt. No. 968)	
16		creased benefits, most notably the addition		
17		of thousands of dollars of cash from COA,		
18		even as graduation rates have continued to		
19		rise. Defendants have presented no study,		
20		experiment, or analysis showing this cor-		
21		relation is masking a countervailing rela-		
22		tionship where, say, had athletes pay been		
23		capped tighter, their graduation rates		
24		would have risen higher still.”		
25	55.	Para. 152: “Because such alternatives ex-	Legal conclusion	Sustained / Overruled
26		ist, one cannot conclude that the current	(FRE 702; <i>Na-</i>	
27		restraints are reasonably necessary. (See,	<i>tionwide Transp.</i>	
28			<i>Fin. v. Cass Info.</i>	

1		for example, the JVGS at page 9, explaining that ‘if the participants could achieve an equivalent or comparable efficiency-enhancing integration through practical, significantly less restrictive means, then the Agencies conclude that the agreement is not reasonably necessary.’)”	<i>Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
2			Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	
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10				
11	56.	Para. 156: “As the antitrust economics/industrial organization literature explains, the impact of a restraint that binds a small-to-moderate percentage of the market can be far different (allowing for more competition) than an agreement imposed by competitors with market power acting collectively.”	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
12				
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19	57.	Para. 157: “As just one example, John Kwoka has explained that the Merger Guidelines’ focus on the market share of combining firms ‘reflect[s] economic theory and evidence’ that the greater the shares of the combining firms, the greater the concern for a ‘lessening of competition.’ This is a key consideration when federal antitrust authorities review joint	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
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1		ventures (as well as mergers); they con-	Disclosure of in-	Sustained / Overruled
2		sider what fraction of the market the	admissible facts	
3		agreement spans and what the level of	relied upon by ex-	
4		market concentration would be with, ver-	pert (FRE 703;	
5		sus without, the agreement. The JVGs ex-	FRE 802)	
6		plain:		
7		‘In assessing whether an agree-		
8		ment may cause anticompetitive		
9		harm, the Agencies typically cal-		
10		culate the market shares of the		
11		participants and of the collabora-		
12		tion. The Agencies assign a range		
13		of market shares to the collabora-		
14		tion. The high end of that range is		
15		the sum of the market shares of		
16		the collaboration and its partici-		
17		pants. The low end is the share of		
18		the collaboration in isolation. In		
19		general, the Agencies approach		
20		the calculation of market share as		
21		set forth in Section 1.4 of the Hor-		
22		izontal Merger Guidelines.’		
23		(JVG, p. 17)”		
24	58.	Para. 158: “This is a simple, standard an-	Legal conclusion	Sustained / Overruled
25		titrust outcome: intra-brand restraints	(FRE 702; <i>Na-</i>	
26		(e.g., within a conference, among that	<i>tionwide Transp.</i>	
27		conference’s members) that promote com-	<i>Fin. v. Cass Info.</i>	
28		petition among competitors (e.g., across	<i>Sys., Inc.</i> , 523	

1	conferences) rather than condoning an	F.3d 1051, 1058–	
2	agreement that ends competition across	60 (9th Cir.	
3	those competing brands/leagues. In this	2008))	
4	economic framework, the manufacturer is		
5	the conference and the teams within that		
6	conference, while horizontal competitors,		
7	collaborate to produce a season of league		
8	football or basketball, e.g., the Pac-12 and		
9	its members, such as Stanford, UCLA,		
10	USC, etc. A conference-level agreement		
11	(by a conference without market power)		
12	restrains intra-brand competition, with the		
13	goal of strengthening the conference’s		
14	ability to compete against other confer-		
15	ences. Hence, the inter-brand competition		
16	is competition across these conferences,		
17	and is intensified by the intra-brand (intra-		
18	conference) agreements.”		

59.

Exhibit 167(s) (pages 59-60):

Disclosure of in-admissible facts relied upon by expert (FRE 703; FRE 802)

Sustained / Overruled

Exhibit 167(s): Market Share of Top Recruits for FBS and DI MBB
Share of Above-Average Committed Rivals Stars
Men's Football, by Conference, High School Classes of 2008-2016

Conference	FBS	2008	2009	2010	2011	2012	2013	2014	2015	2016	Average
NCAA Football Conference											
SEC	1	24.0%	28.9%	28.3%	30.8%	28.8%	36.9%	39.1%	35.7%	32.7%	31.7%
Pac-12	1	14.8%	13.0%	17.9%	17.9%	21.0%	16.9%	15.4%	17.4%	16.4%	16.8%
ACC	1	18.9%	14.4%	12.4%	15.3%	14.9%	13.0%	16.0%	15.9%	16.2%	15.3%
Big Ten	1	13.1%	16.0%	9.0%	13.4%	14.2%	16.2%	15.3%	13.9%	16.4%	14.2%
Big 12	1	16.5%	14.2%	20.0%	12.9%	12.1%	8.5%	8.0%	11.4%	11.0%	12.7%
Big East	1	4.8%	3.2%	4.1%	4.0%	3.8%	N/A	N/A	N/A	N/A	4.4%
Division I-AA Independents											
AAC	1	N/A	N/A	N/A	N/A	N/A	1.6%	1.3%	1.3%	2.1%	1.6%
CUSA	1	1.1%	2.1%	1.9%	1.2%	1.1%	1.1%	0.0%	0.0%	0.5%	1.0%
Mountain West	1	0.5%	2.2%	2.9%	0.0%	0.0%	0.0%	0.5%	1.0%	0.0%	0.9%
MAC	1	0.5%	0.5%	0.2%	0.3%	0.0%	0.3%	0.3%	0.3%	0.0%	0.3%
WAC	1	0.0%	0.5%	0.5%	0.0%	0.0%	N/A	N/A	N/A	N/A	0.2%
Sun Belt	1	0.2%	0.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Ivy League	0	0.2%	0.0%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
MEAC	0	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%	0.0%	0.0%	0.0%	0.0%
Southern	0	0.0%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Ohio Valley	0	0.0%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CAA	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Big Sky	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Southland	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Missouri Valley Football Conference	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
SWAC	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
No DI FB	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%	0.0%
Division I-AA Independents	0	0.0%	0.0%	0.0%	0.0%	N/A	0.0%	0.0%	0.0%	0.0%	0.0%
Great West	0	0.0%	0.0%	0.0%	0.0%	N/A	N/A	N/A	N/A	N/A	0.0%
Big South	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Patriot League	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Northeast	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Pioneer Football League	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total Percent		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total Stars		1,617	1,699	1,651	1,284	1,408	1,458	1,518	1,588	1,577	1,534
Herfindahl Index		1,671	1,686	1,792	1,880	1,893	2,183	2,356	2,164	2,017	1,960
Herfindahl Index-FBS As One Firm		9,951	9,906	9,952	10,000	9,943	10,000	10,000	10,000	9,949	9,967

Notes:
 (1) Total Stars indicates the cumulative number of Rivals stars among commits in a recruiting class: a five-star commit counts as five stars, a four-star commit counts as four stars, etc.
 (2) Average indicates a simple average computed across columns.
 (3) N/A indicates that the conference did not field any teams in the indicated year.
 (4) The Herfindahl Index is computed as the sum of the squared market shares of each conference, multiplied by 10,000.
 (5) Above-average indicates only four-star or five-star commits.
 Sources:
 (1) Rivals.com
 (2) ESPN.com

Share of Above-Average Committed Rivals Stars
Men's Basketball, by Conference, High School Classes of 2008-2016

Conference	FBS	2008	2009	2010	2011	2012	2013	2014	2015	2016	Average
NCAA Basketball Conference											
SEC	1	20.1%	15.0%	21.2%	21.8%	14.6%	21.1%	15.1%	20.7%	18.3%	18.7%
ACC	1	17.5%	19.9%	18.3%	13.6%	18.4%	16.4%	21.4%	18.3%	19.4%	18.2%
Big East	1	15.7%	14.4%	17.6%	24.2%	15.8%	8.1%	13.0%	7.6%	7.3%	13.7%
Big 12	1	10.5%	19.0%	12.9%	11.0%	11.6%	13.2%	9.2%	9.8%	9.6%	11.9%
Pac-12	1	14.7%	10.4%	8.8%	8.0%	13.7%	8.5%	14.7%	17.8%	14.8%	12.4%
Big Ten	1	8.2%	9.5%	10.6%	10.8%	13.5%	13.0%	12.2%	14.3%	14.0%	11.8%
AAC	1	N/A	N/A	N/A	N/A	N/A	11.7%	3.8%	5.3%	3.3%	6.0%
CUSA	1	4.9%	3.4%	5.2%	2.8%	4.4%	0.8%	0.8%	0.7%	0.0%	2.6%
Mountain West	1	2.8%	1.7%	0.0%	0.0%	4.6%	2.4%	4.8%	3.8%	3.3%	2.6%
WAC	1	1.9%	0.8%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%	0.4%
MAC	1	0.9%	0.8%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%
Sun Belt	1	0.0%	0.0%	0.9%	0.9%	0.0%	0.0%	0.0%	0.0%	0.7%	0.3%
Athletic 10	0	1.9%	2.5%	2.7%	0.9%	3.4%	1.6%	1.7%	0.0%	2.6%	1.9%
West Coast	0	0.0%	0.8%	0.0%	1.7%	0.0%	1.6%	2.5%	0.0%	4.1%	1.2%
Missouri Valley	0	0.9%	0.8%	0.0%	0.0%	0.0%	0.0%	0.8%	0.7%	0.0%	0.4%
MAAC	0	0.0%	0.8%	0.0%	1.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%
Ivy League	0	0.0%	0.0%	0.0%	0.9%	0.0%	0.8%	0.0%	0.0%	2.0%	0.4%
SWAC	0	0.0%	0.0%	0.0%	0.9%	0.0%	0.0%	0.0%	0.7%	0.0%	0.2%
Horizon League	0	0.0%	0.0%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Southern	0	0.0%	0.0%	0.0%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Big West	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.8%	0.0%	0.0%	0.0%	0.1%
CAA	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Ohio Valley	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Athletic Sun	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Big South	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Southland	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Big Sky	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Patriot League	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Northeast	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
America East	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Southern League	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
MEAC	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Division I BB Independents	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	N/A	N/A	0.0%
Great West	0	N/A	0.0%	0.0%	0.0%	0.0%	N/A	N/A	N/A	N/A	0.0%
No DI MBB	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total Percent		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total Stars		428	473	443	463	474	506	477	551	613	492
Herfindahl Index		1,391	1,411	1,487	1,575	1,537	1,548	1,550	1,481	1,524	1,415
Herfindahl Index-DI As One Firm		10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000

Notes:
 (1) Total Stars indicates the cumulative number of Rivals stars among commits in a recruiting class: a five-star commit counts as five stars, a four-star commit counts as four stars, etc.
 (2) Average indicates a simple average computed across columns.
 (3) N/A indicates that the conference did not field any teams in the indicated year.
 (4) The Herfindahl Index is computed as the sum of the squared market shares of each conference, multiplied by 10,000.
 (5) Above-average indicates only four-star or five-star commits.
 Sources:
 (1) Rivals.com
 (2) ESPN.com

60.

Para. 162: "As a result, a framework in which agreements on maximum levels of compensation are made at the conference level – rather than a nationwide, one-size-fits-all approach – will have far lower potential for anticompetitive effects, perhaps none. This economic conclusion motivates

Legal conclusion (FRE 702; *Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1058–

Sustained / Overruled

1		the compelling economics of conference-	60 (9th Cir.	
2		by-conference rule-making with respect to	2008))	
3		compensation as a less restrictive alterna-		
4		tive to the current challenged rules.”		
5	61.	Para. 163: “Just as there is a middle	Legal conclusion	Sustained / Overruled
6		ground between individual schools each	(FRE 702; <i>Na-</i>	
7		selling individual television rights willy-	<i>tionwide Transp.</i>	
8		nilly and a single, nationwide collegiate	<i>Fin. v. Cass Info.</i>	
9		television rights cartel (which was prohib-	<i>Sys., Inc.</i> , 523	
10		ited under <i>Board of Regents</i>), there is a	F.3d 1051, 1058–	
11		middle ground between every school	60 (9th Cir.	
12		choosing its own definition of ‘amateur-	2008))	
13		ism’ and the current anticompetitive		
14		agreement that binds all schools and con-		
15		ferences to a single, nationwide inter-		
16		brand agreement. Thus, even if there is		
17		some procompetitive effect and need for		
18		some level of collective decision-making		
19		to limit compensation to Class members (a		
20		proposition that, as reviewed above, is		
21		contrary to the evidence), it nevertheless		
22		is overly restrictive to impose the existing		
23		nationwide compensation caps. A less re-		
24		strictive – and more efficient and procom-		
25		petitive – alternative exists in the form of		
26		conference-level decision making.”		

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	62.	Para. 164: “As long as no individual conference has market power, as is true today, there is a natural competitive outcome in which each individual league – the conferences – makes decisions among its members, but without colluding with other conferences. Market competition among those conferences (leagues) optimizes the balance between the pursuit of the highest quality products versus whatever assumed consumer aversion there may be to some amount of compensation above some limit. If the industry evolved to a framework based on individual conference-level decisions, this would not just be a less restrictive option, but such an alternative would provide a more procompetitive means of achieving Defendants’ stated procompetitive goals – assuming those goals have merit (which I have not found to be the case) – than a single, one-size-fits-all, nationwide, 351 school compensation cap. That is, the less restrictive alternative is actually the better path than the status quo to optimizing any procompetitive effect that the Court might find.”	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
27 28	63.	Para. 165: “The industry first moved to a duopoly, where CBS broadcast Big Ten	Disclosure of inadmissible facts	Sustained / Overruled

1		and Pac-10 games, while ABC broadcast	relied upon by ex-	
2		games played by members of the CFA	pert (FRE 703;	
3		(College Football Association), which in-	FRE 802)	
4		cluded the SEC, SWC, ACC, Big Eight,		
5		WAC, Notre Dame, and Penn State. In		
6		1987, the two networks switched between		
7		these two groups of schools. But it wasn't		
8		until Notre Dame broke from the CFA		
9		ranks in 1990 by signing a separate deal		
10		with NBC that the system began to move		
11		toward the more competitive market we		
12		know today. This break up was also		
13		helped by the FTC's lawsuit against the		
14		CFA and ABC in October 1990, charging		
15		that the CFA had 'entered into restrictive		
16		telecast agreements, much like those con-		
17		demned in Board of Regents ... through		
18		the collusion with and among its mem-		
19		bers.'"		
20	64.	Para. 166: "After this second challenge to	Disclosure of in-	Sustained / Overruled
21		inter-conference broadcast agreements,	admissible facts	
22		the system evolved into the current model	relied upon by ex-	
23		where each individual conference con-	pert (FRE 703;	
24		tracts on its own, in competition with rival	FRE 802)	
25		conferences, rather than through common		
26		collusive agreements. By 1994, the SEC		
27		had left the CFA for its own CBS contract		
28		(a relationship it has to this day), the		

1		Southwest Conference dissolved, with		
2		most of its teams joining the SEC or the		
3		Big 8 (which renamed itself the Big 12),		
4		and soon the broadcast world began to		
5		take the shape we see today, with each		
6		conference negotiating its own television		
7		contract, without coordination with its		
8		competitors. This took a decade after the		
9		initial antitrust breakup in 1984, but it has		
10		stood the test of time and evolved through		
11		competition directly along the lines I am		
12		suggesting as a viable less restrictive alter-		
13		native here: each conference negotiates its		
14		own television rights deal, in competition		
15		with, rather than in collusion with, its		
16		competitor leagues (i.e., the other confer-		
17		ences).”		
18	65.	Para. 167: “(Notably, on Saturdays, when	Legal conclusion	Sustained / Overruled
19		the bulk of FBS football is played and	(FRE 702; <i>Na-</i>	
20		broadcast, college football is insulated	<i>tionwide Transp.</i>	
21		from any potential rivalry with the NFL,	<i>Fin. v. Cass Info.</i>	
22		because the NFL is essentially prohibited	<i>Sys., Inc.</i> , 523	
23		by the Sports Broadcasting Act (15 U.S.C.	F.3d 1051, 1058–	
24		§§1291-1295) from even offering a com-	60 (9th Cir.	
25		peting football product on Fridays after	2008))	
26		6pm or any time on Saturdays from Sep-		
27		tember 1st through the end of the 2nd Sat-		
28		urday in December).”		

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	66.	Para. 180: “European Soccer (UEFA) offers a good window into what a conference-level rule system could look like in college sports. In UEFA, 34 distinct sets of rules operate (one for each country’s top league), and yet teams come together in the post-season (and in ‘friendlies’ including very popular matches played in the United States) to compete, including matches between amateur teams and those comprising extremely highly paid athletes, such as when the Italian professional national team played against San Marino’s amateur national team. This is very similar to the ebb and flow of a college season in which teams play pre-conference games (basically ‘friendlies’ which count towards some goals but are unrelated to the league championship), then they play a league season culminating in a championship, and then following the season, they play against comparable teams from other leagues, akin to the Champions and Europa League championships.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
25 26 27 28	67.	Fn. 16 (page 67): “A ‘friendly’ is a sports term imported from European soccer, focusing on a game that is not part of a spe-	Disclosure of inadmissible facts	Sustained / Overruled

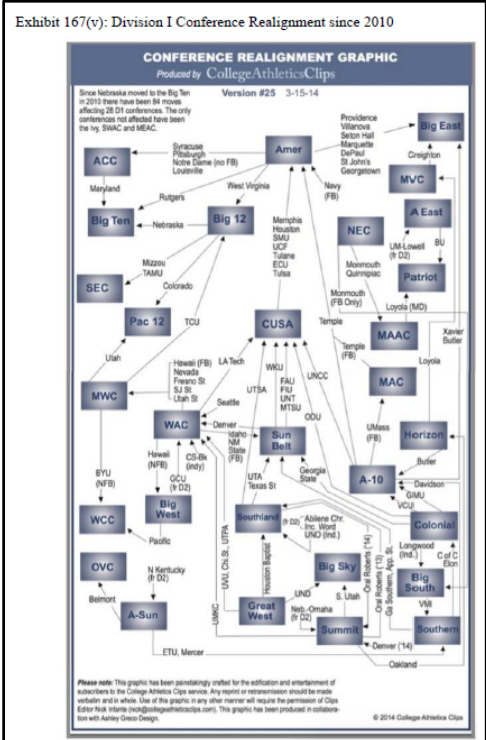
1		cific league season or championship tournament, even if it affects the overall world assessment of the team's quality. So while college sports games in the pre-conference season matter for post-season invitations to tournaments, playoffs, and bowls, these games do not generally affect the conference championship standings."	relied upon by expert (FRE 703; FRE 802)	
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9	68.	Para. 181: "Conference-level competition is not a new theory, nor something I developed specifically for this litigation. In 2000, I co-authored an analysis of the viability of a conference-based system of rule-making, which would be a much less restrictive form of competition than the national system imposed by the NCAA on all of its members, regardless of their different economic situations and preferences. The research was published by the American Bar Association in <i>Antitrust</i> , where my co-author and I explained how the same antitrust principles that made sense for an individual sports league, like the NFL or the Big Ten, did not make sense for a "super-cartel" of sports leagues, like the NCAA. With this work, I joined the ranks of numerous scholars, including Nobel Laureate Gary Becker and	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
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1		former Director of the FTC's Bureau of		
2		Economics Robert Tollison who have		
3		concluded the NCAA functions as a cartel		
4		with respect to athlete compensation. Con-		
5		ference competition has the advantage, be-		
6		sides being less restrictive for athletes, of		
7		letting consumers choose among levels of		
8		amateurism they are comfortable with. As		
9		we wrote:		
10		'Fans would be offered a wide va-		
11		riety of college sports options.		
12		The players would also be able to		
13		choose among programs and		
14		compensation schemes. There		
15		would be a diversity of offerings		
16		in the market, and these offerings		
17		could compete, on the field/court		
18		as before, and off the court in the		
19		hearts (and wallets) of the fans.		
20		The NCAA might argue that this		
21		would be chaos, but this chaos is		
22		typically defined in the antitrust		
23		literature as a competitive market-		
24		place.'"		
25	69.	Para. 182: "Participants in the current	Disclosure of in-	Sustained / Overruled
26		system have frequently expressed the	admissible facts	
27		view that pushing decision-making down		
28		below the full DI level makes sense as the		

1		economic means to balance restraints and	relied upon by ex-	
2		competition.	pert (FRE 703;	
3		a) In 2011, the Penn State President ex-	FRE 802)	
4		plained that any ‘Perceived recruiting ad-		
5		vantages gained by high resource institu-		
6		tions’ from being able to offer more valu-		
7		able GIAs could be solved by ‘Dele-		
8		gat[ing] this decision to conferences with		
9		the expectation or requirement that this be		
10		decided by each conference. Since most		
11		competition occurs within conferences,		
12		this should help keep ‘a level playing		
13		field.’”		
14	70.	“e) Interestingly, Perlman’s 21st century	Disclosure of in-	Sustained / Overruled
15		assessment was not all that different from	admissible facts	
16		that of Nebraska’s representative to the	relied upon by ex-	
17		NCAA’s 1975 special convention on cost-	pert (FRE 703;	
18		cutting that voted to end ‘laundry money.’	FRE 802)	
19		Keith Broman, explained how the system		
20		would work better if spending decisions		
21		were left to individual institutions, and		
22		that schools were instead attracted to the		
23		idea of national rules for cost-cutting rea-		
24		sons:		
25		‘We are here to institute economy		
26		in intercollegiate athletics. . . . It		
27		seems we have to reduce expend-		
28				

1		itures, but I think we should re-		
2		duce expenditures in our own		
3		ways. . . . Those rules, if adopted,		
4		it seems to me, lead to the dismis-		
5		sal of institutional control. I be-		
6		lieve the NCAA Council has used		
7		our common goal of economy as		
8		a means to gaining greater control		
9		for intercollegiate athletics.’		
10		f) University of Notre Dame President		
11		Rev. John Jenkins opined that were scope		
12		to vary: ‘Perhaps institutions will make		
13		decisions about where they want to go . . .		
14		and I welcome that I wouldn’t con-		
15		sider that a bad outcome, and I think there		
16		would be schools that would do that.’”		
17	71.	Para. 185: “For a school in the second	Disclosure of in-	Sustained / Overruled
18		category, like the University of Maine	admissible facts	
19		(which plays in the America East confer-	relied upon by ex-	
20		ence), enforcement of the scholarship cap	pert (FRE 703;	
21		is very inexpensive, because the market	FRE 802)	
22		value of a Maine athlete is not much		
23		higher than the current cap, if at all. So		
24		Maine pays its compliance officer \$38K.		
25		But at a school like Michigan, an athlete’s		
26		market value is much higher than the cur-		
27		rent cap, so there is a high need to monitor		
28		and enforce the cap to prevent the market		

	outcome from occurring. The result is schools like Michigan have larger compliance staffs and have to pay much higher salaries.”																																
72.	<p>Exhibit 167(u) (page 71):</p> <div><p>Exhibit 167(u): Compliance Officer Salaries</p><table><thead><tr><th>School</th><th>Compliance Director</th><th>2016-17 Salaries</th><th>Athletic Director</th><th>Salary Source</th></tr></thead><tbody><tr><td>Virginia</td><td>Eric Baumgartner</td><td>\$129,435</td><td>[1]</td><td>[2]</td></tr><tr><td>Oregon</td><td>Jody Skyes</td><td>\$136,247</td><td>[3]</td><td>[4]</td></tr><tr><td>Clemson</td><td>Stephanie Elbert</td><td>\$123,900</td><td>[5]</td><td>[6]</td></tr><tr><td>Michigan</td><td>Elizabeth Henrich</td><td>\$185,640</td><td>[7]</td><td>[8]</td></tr><tr><td>Maine</td><td>Daniel Montrose</td><td>\$38,231</td><td>[9]</td><td>[10]</td></tr></tbody></table><p>Sources: [1] "Staff Directory", Virginia (virginiagators.com); (ht.ly/2gR20d4); accessed June 15, 2017. [2] "Faculty Salaries Index 2016-2017", The Cavalier Daily (cavalierdaily.com); (ht.ly/2r5d4ly); accessed June 15, 2017. [3] "Staff Directory", Oregon Athletics (goorc.com); (ht.ly/2gR20d4); accessed June 15, 2017. [4] "Unclassified Personnel List", University of Oregon (uoregon.edu); (ht.ly/2r22zdl); accessed June 15, 2017. [5] "Athletic Department Staff Directory", Clemson Tigers (clermontigers.com); (ht.ly/2803qW); accessed June 15, 2017. [6] "State Salaries Query", The South Carolina Department of Administration (admin.sc.gov); (ht.ly/2i56G0); accessed June 15, 2017. [7] "University of Michigan Athletic Department", Michigan Athletics (mgo.com); (ht.ly/2i56G0); accessed June 15, 2017. [8] "Department Results for 2016-17", EM Salary (emslary.info); (ht.ly/2r73Cp2); accessed June 15, 2017. [9] "Staff Directory", Maine (goblackbears.com); (ht.ly/2r73Cp2); accessed June 15, 2017. [10] "University of Maine System Salaries of Regular Employees", April 12, 2016; University of Maine (maine.edu); (ht.ly/2gMH8F).</p></div>	School	Compliance Director	2016-17 Salaries	Athletic Director	Salary Source	Virginia	Eric Baumgartner	\$129,435	[1]	[2]	Oregon	Jody Skyes	\$136,247	[3]	[4]	Clemson	Stephanie Elbert	\$123,900	[5]	[6]	Michigan	Elizabeth Henrich	\$185,640	[7]	[8]	Maine	Daniel Montrose	\$38,231	[9]	[10]	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
School	Compliance Director	2016-17 Salaries	Athletic Director	Salary Source																													
Virginia	Eric Baumgartner	\$129,435	[1]	[2]																													
Oregon	Jody Skyes	\$136,247	[3]	[4]																													
Clemson	Stephanie Elbert	\$123,900	[5]	[6]																													
Michigan	Elizabeth Henrich	\$185,640	[7]	[8]																													
Maine	Daniel Montrose	\$38,231	[9]	[10]																													
73.	Para. 189: “To the extent this occurs, it is unlikely to be any more disruptive (or any less procompetitive) than the last decade of realignment, in which there have been 84 cross-conference moves affecting 29 (of 32) DI conferences since 2010. Even since the chart below was published, further realignment has occurred, affecting 11 more schools and a 30th conference with Hampton (formerly of the MEAC) moving to the Big South Conference.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled																														
74.	Fn. 18 (page 72): “Note, the graphic below has these numbers off by one, there are 32 not 31 D1 conferences.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled																														

75.	<p>Exhibit 167(v) (page 73):</p> 	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
76.	<p>Para. 204: “Similarly, if the goal is more athletes living in dorms, the NCAA could allow schools to provide dorm-bonuses, so that athletes who live off campus continue to get their costs reimbursed, but athletes who live on campus receive a payment on top of the housing itself.”</p>	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
77.	<p>Para. 206: “Below is just a partial list of benefits falling within an ‘education tether’ rule that, if allowed, could serve as less restrictive alternatives.</p> <p>a) Scholarships that athletes could use at any academic institution after their athletic eligibility expires.</p>	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d	Sustained / Overruled

1	b) Scholarships that athletes could use for	828, 839 (9th Cir.	
2	the cost of attendance for graduate school.	2011))	Sustained / Overruled
3	c) Scholarships that athletes could use for		
4	study abroad programs after their athletic	Disclosure of in-	
5	eligibility expires.	admissible facts	
6	d) A system akin to Nebraska's Post-Eli-	relied upon by ex-	
7	gibility Opportunities (PEO) program,	pert (FRE 703;	
8	which guarantees to qualifying recruits	FRE 802) – sub-	
9	and athletes a salary supplement to former	paragraph (d)	
10	athletes at low-paying jobs such as intern-	only	
11	ships that they may have missed out on		
12	during college. Former Nebraska Chancel-		
13	lor Harvey Perlman argued these pay-		
14	ments to supplement a graduated-athlete's		
15	income were consistent with education: 'I		
16	don't think it's inconsistent to provide		
17	them with benefits that relate to the educa-		
18	tional enterprise. You know, for example,		
19	Nebraska, for any letter - lettered student		
20	athlete, after their - after their eligibility		
21	has expired, it provides them with a sti-		
22	pend of \$7,500 to either study abroad, in-		
23	ternship, or graduate school.'		
24	e) Incentive payment for academic pro-		
25	gress combined with some minimum level		
26	of GPA.		
27	f) One-time incentive payment for gradu-		
28	ating.		

48

1		\$3 million in 2014, and prior to his recent		
2		termination, Louisville's Tom Jurich		
3		earned \$1.4 million per year. Prior to his		
4		recent retirement, former Michigan State		
5		University Athletic Director Mark Hollis		
6		made at least \$917,000, a 31% increase in		
7		salary from the figure reported in 2013.		
8		Duke University's athletic director, Kevin		
9		White makes at least \$980,750. And, be-		
10		tween 2004 and 2014, as the University of		
11		California-Los Angeles's athletic admin-		
12		istration grew from 97 to 141 employees,		
13		Athletic Director Dan Guerrero's salary		
14		grew from \$299,000 to \$920,000."		
15	80.	Para. 219: "Recently, public reports have	Disclosure of in-	Sustained / Overruled
16		shown that four of the five Power 5 con-	admissible facts	
17		ference commissioners now earn \$2.5 mil-	relied upon by ex-	
18		lion per year or more (the fifth, Greg San-	pert (FRE 703;	
19		key, the recently promoted commissioner	FRE 802)	
20		of the SEC, earns \$1.9 million per year).		
21		'Big Ten Commissioner Jim Delany has		
22		received the equivalent of a 19 percent		
23		raise, every year, for 10 consecutive		
24		years.' NCAA officers are also compen-		
25		sated in the high six- and seven-figures,		
26		with Dr. Emmert's 2016 compensation ex-		
27		ceeding \$2.4 million, Mark Lewis's ex-		
28		ceeding \$1.7 million and another 'nine		

	NCAA executives ... credited with total compensation of more than \$450,000, led by chief legal officer Donald Remy (\$996,535).””																						
81.	Para. 220: “College football bowl administrative salaries have similarly risen, with more than a few bowl administrators now making nearly a million dollars, and many making far more than a typical non-profit CEO. (As a point of reference, consider the 2016 Charity CEO Compensation Study conducted by Charity Navigator, which found that out of 4,587 charities included in the study (from FY2014 and FY2015 Form 990s), only 10 rewarded their top executive with \$1 million or more in compensation, even when including one-time payouts.”	Disclosure of in-admissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled																				
82.	Exhibit 167(a)(a) (page 85): <div> <div> Exhibit 167(a)(a): Spending on Division I Athletic Facilities, 2014-2015 <table> <tr> <th>Year</th> <th>Playing Facilities</th> <th>Training Facilities</th> <th>Total</th> </tr> <tr> <td>2016</td> <td>\$2,785,678,000</td> <td>\$338,300,000</td> <td>\$3,123,978,000</td> </tr> <tr> <td>2015</td> <td>\$2,181,269,000</td> <td>\$859,100,000</td> <td>\$3,040,369,000</td> </tr> <tr> <td>2014</td> <td>\$2,007,255,000</td> <td>\$346,300,000</td> <td>\$2,353,555,000</td> </tr> <tr> <td>Total</td> <td>\$6,974,202,000</td> <td>\$1,543,700,000</td> <td>\$8,517,902,000</td> </tr> </table> </div> <div> Notes [1] Playing Facilities includes all spending on playing facilities, including locker rooms. [2] Training Facilities includes student-athlete study centers and nutritional centers. [3] When a spending range is provided, the median is used. [4] 2014 figures are from June through December. Source [1] Business of College Sports Facilities Roundup: June 2014 - December 2016 </div> </div>	Year	Playing Facilities	Training Facilities	Total	2016	\$2,785,678,000	\$338,300,000	\$3,123,978,000	2015	\$2,181,269,000	\$859,100,000	\$3,040,369,000	2014	\$2,007,255,000	\$346,300,000	\$2,353,555,000	Total	\$6,974,202,000	\$1,543,700,000	\$8,517,902,000	Disclosure of in-admissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
Year	Playing Facilities	Training Facilities	Total																				
2016	\$2,785,678,000	\$338,300,000	\$3,123,978,000																				
2015	\$2,181,269,000	\$859,100,000	\$3,040,369,000																				
2014	\$2,007,255,000	\$346,300,000	\$2,353,555,000																				
Total	\$6,974,202,000	\$1,543,700,000	\$8,517,902,000																				
83.	Para. 222: “One example of a shift in spending without any total increase in costs happened in the year before COA was adopted, when the NCAA ended a	Disclosure of in-admissible facts	Sustained / Overruled																				

1		collusive (and cost-saving) cap on the	relied upon by ex-	
2		amount of food a school could provide an	pert (FRE 703;	
3		athlete and schools shifted expenditures to	FRE 802)	
4		pay for more, and more extravagant, food.		
5		Indeed, schools reallocated their invest-		
6		ments from other things to food to the		
7		tune of \$250,000 annually to support		
8		“fueling stations.” Within 14 months of		
9		the NCAA ending the restraint on food		
10		spending, a survey of Power Five schools		
11		found that their average athlete food		
12		spending had more than doubled, from		
13		\$534,000 to \$1,300,000 annually. In a sin-		
14		gle year, one school reported increasing		
15		its athlete food budget from \$50,000 to		
16		\$1,200,000. Another school reported it		
17		was now spending \$2,800,000 annually to		
18		feed athletes. There is no evidence that		
19		these increased expenditures came from		
20		anything other than a reallocation of total		
21		athletic department revenues and/or new		
22		revenue growth.”		
23	84.	Para. 236: “The fact that there are enor-	Disclosure of in-	Sustained / Overruled
24		mous sums of revenues that can be reallo-	admissible facts	
25		cated without any increase in total athletic	relied upon by ex-	
26		department costs has been supported by	pert (FRE 703;	
27		various industry participants. Oklahoma	FRE 802)	
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State's Athletic Director Mike Holder explained it well: 'Things get more expensive every year. It's amazing ... [Nevertheless] ... We'll manage to find the money somewhere. We always seem to.'

Holder's intuition is born out in the data as to how schools found the money to fund COA, including:

a) No Cuts Needed: Maryland and Virginia said COA would just come out of existing surpluses.

b) Increased Donations: Virginia Commonwealth University (VCU) and Radford College said COA would just come out of newly donated money.

c) Increased Legislative Funding: Utah State and Wyoming asked state legislatures to fund COA costs.

d) Cuts to Non-Sports Elements of the Athletic Department. For example, Florida State said it was going to fund COA by 'a 2 percent budget cut across the board in Seminole athletics' but not by a reduction to any football or basketball scholarships. The University of Texas said that, rather than reducing some athletes' GIA to pay for others' COA stipend, it would instead increase spending on athletes by a total of

1		\$10 million to provide COA stipends to		
2		all 500 of its GIA athletes.		
3		e) Increased Institutional Support. Mis-		
4		souri State asked the school to increase its		
5		support by ‘a total of \$112,168’ in COA		
6		stipends that ‘will come from an increase		
7		to the athletics budget, from the univer-		
8		sity’s 2015-16 budget.’ The school’s ath-		
9		letic director explained: ‘We have to do		
10		that to stay competitive.’		
11		f) Money reallocated from Coaches to		
12		Athletes. Middle Tennessee State and Col-		
13		orado State both announced it would use		
14		money it saved from lowering coaches’		
15		pay or receiving a coach’s buyout to pay		
16		COA stipends, rather than for deficit re-		
17		duction (or other priorities). Sports Econo-		
18		mist, Professor Rod Fort, explained that		
19		‘this is the expected outcome across all		
20		departments choosing FCOA. Realloca-		
21		tion away from coaches toward players.’”		
22	85.	Para. 237: “Holder’s prediction that more	Disclosure of in-	Sustained / Overruled
23		money can always be found proved true	admissible facts	
24		for Holder himself as well. Even after Ok-	relied upon by ex-	
25		lahoma State adopted COA, it recently	pert (FRE 703;	
26		found enough money to give him a sizable	FRE 802)	
27		raise as well. ‘Holder, who has served as		
28		OSU’s athletic director since 2005, will be		

1		paid \$950,000 each year of the deal,		
2		which runs from July 1 of this year to		
3		June 30, 2021. Holder made \$640,000 this		
4		past school		
5		year.”		
6	86.	Para. 240: “James Madison stated that it	Disclosure of in-	Sustained / Overruled
7		believed its fans preferred the old limit	admissible facts	
8		over COA. (They called the COA level ‘a	relied upon by ex-	
9		more professional model.’) But then as the	pert (FRE 703;	
10		experiment played out, we saw competi-	FRE 802)	
11		tion taking place in the market. James		
12		Madison’s fans complained that James		
13		Madison was lowering the quality of the		
14		basketball product they were offering. The		
15		fans told the school they wanted James		
16		Madison to raise its scholarship offer to		
17		match competition. (James Madison’s		
18		president Jonathan Alger testified: ‘...yes,		
19		there were some who wanted to make sure		
20		we could keep up with other institutions		
21		on a competitive basis and had that con-		
22		cern.’) In other words, once the rules al-		
23		lowed for a market test of what consumers		
24		actually wanted, it turned out that James		
25		Madison’s assessment of what its fan base		
26		wanted was wrong.”		

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	87.	Para. 245: “In summary, it is important to recognize that, as a matter of economics, deciding that something has a social value to a particular group of competitors is not the same as saying that a restraint that purports to help achieve the purported social value (especially to the exclusion of variety) is procompetitive or necessary in the context of antitrust economics. To find that a restraint has a procompetitive benefit, the restraint must actually cause a benefit that improves consumer demand or another aspect of competition, rather than just ensuring that output is collectively homogenized to fit the consensus taste preference of the producers. Both elements must be true: the restraint has to be causally linked to creating the benefit and there needs to be economic evidence that the restraint is necessary to maintain or enhance consumer demand.”	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
22 23 24 25 26 27 28	88.	Para. 249: “Individual conference competition would also eliminate any concern or economic costs associated with the possibility of so-called future ‘whack-a-mole’ litigation. Because the individual conferences would not have market power, they would be able to implement their own	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–	Sustained / Overruled

1		compensation rules without the prospect	60 (9th Cir.	
2		of material future antitrust risk as long as	2008))	
3		they refrain from colluding with other		
4		conferences. In the less restrictive alterna-		
5		tive of conference-level competition, con-		
6		ferences will compete to the point where		
7		the moles are all 'whacked' away by the		
8		give and take of supply and demand."		
9	89.	Exhibit 167(r) (page 104):	Disclosure of in-	Sustained / Overruled
10			admissible facts	
11			relied upon by ex-	
12			pert (FRE 703;	
13			FRE 802)	
14				
15				
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18				
19				
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22	90.	Para. 261: "My own analysis shows that	Disclosure of in-	Sustained / Overruled
23		head-coach pay in college football cap-	admissible facts	
24		tured 3.5% of a team's revenue, while in	relied upon by ex-	
25		the NFL coaching pay represented only	pert (FRE 703;	
26		1.5% of team revenues. Similarly for the	FRE 802)	
27		2008-2009 season, men's Division I bas-		
28				

Exhibit 167(r): Olympic Athletes Punished for Amateurism Violations

Source	Event	Athlete	Country	Violation	Consequence
[1]	1912 Summer Olympics	Jim Thorpe	United States	Semipro Baseball	Stripped of Medals
[2]	1932 Summer Olympics	Pavlo Nurmi	Finland	Athletic Payments	Disallowed
[3]	1936 Winter Olympics	Tony Seeki	Austria	Ski Instructor	Disallowed
[4]	1936 Summer Olympics	Babe Didrikson	United States	Car Advertisement	Disallowed
[5]	1948 Winter Olympics	AHA Men's Hockey Team	United States	Professional Athletes	Forfeited
[6]	1956 Summer Olympics	Wes Santee	United States	Athletic Payments	Disallowed
[7]	1964 Winter Olympics	Marika Kilius	West Germany	Signed Professional Contract	Stripped of Medals
[8]	1964 Winter Olympics	Hans-Jürgen Baumler	West Germany	Signed Professional Contract	Stripped of Medals
[9]	1972 Winter Olympics	Karl Schranz	Austria	Ski Gear Advertisement	Disallowed
[10]	1972 Summer Olympics	Bill Toomey	United States	Professional Athlete	Disallowed
[11]	1976 Summer Olympics	Steve Prefontaine	United States	Free Gear from Nike	Disallowed
[12]	1984 Summer Olympics	Brian Oldfield	United States	Professional Athlete	Disallowed

Sources

[1] Guttmann, Allen, *The Games Must Go On: Avery Brundage and the Olympic Movement*, Columbia University Press: New York, 1984, p. 27.

[2] Guttmann, Allen, *The Olympics: A History of the Modern Games*, University of Illinois Press: Chicago, 1992, p. 31.

[3] "Alpine Skiing at the 1936 Garmisch-Partenkirchen Winter Games: Men's Combined," *Sports Reference*, sports-reference.com (http://sports-reference.com).

[4] Morrison, Jeff, "Violating the Olympic spirit," *ESPN*, espn.com (in: http://ESPN.com).

[5] Guttmann, Allen, *The Games Must Go On: Avery Brundage and the Olympic Movement*, Columbia University Press: New York, 1984, pp. 106-107.

[6] Guttmann, Allen, *The Games Must Go On: Avery Brundage and the Olympic Movement*, Columbia University Press: New York, 1984, pp. 123-124.

[7] Stern, Alfred E., *Power, Politics, and the Olympic Games: Human Kinetics: Champaign, IL, 1999*, p. 124.

[8] Stern, Alfred E., *Power, Politics, and the Olympic Games: Human Kinetics: Champaign, IL, 1999*, p. 124.

[9] Guttmann, Allen, *The Games Must Go On: Avery Brundage and the Olympic Movement*, Columbia University Press: New York, 1984, pp. 119-120.

[10] *Turner-Schulzky, Anne*, "A bit of Olympic glory right here in Davis," *July 15, 1912, The Davis Enterprise*, davisenterprise.com (http://www.davisenterprise.com).

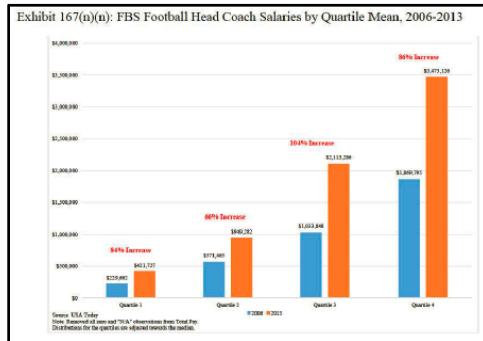
[11] "Steve Prefontaine," *New World Encyclopedia*, newworldencyclopedia.org (http://www.newworldencyclopedia.org).

[12] "Brian Oldfield, who has been battling The Athletic Congress," *June 15, 1984, UPI*, upi.com (http://www.upi.com).

	ketball coaches captured 11.1% of revenue, but in the NBA coaches received only 3.2%. Not only do college coaches receive a higher share of their teams' revenue, but their pay is growing at a much faster rate than NFL and NBA coaches. The average annual growth in coaches' pay in college football from 2007 to 2012 was 9.7% compared with 4.5% in the NFL. The annual average growth rate in coaches' pay for Division I basketball from 2005 to 2012 was 11.4% compared with 1.6% in the NBA.”																	
91.	Para. 262: “From a perspective of team payroll, the distinction is even starker. Where an NFL coach gets less than 4% of total team payroll on average, an FBS coach receives over 40%.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled															
92.	Exhibit 167(m)(m) (page 109): <div><p>Exhibit 167(m)(m): NFL and FBS Head Coach Pay vs. Team Payroll, 2014-15</p><table><thead><tr><th></th><th>Available Data</th><th>Average Coach Pay Estimates</th><th>Average Team Payroll Estimates</th><th>Total Coach Pay / Total Payroll</th></tr></thead><tbody><tr><td>NFL</td><td>32</td><td>\$5,093,750</td><td>\$128,758,593</td><td>3.81%</td></tr><tr><td>NCAA Football</td><td>102</td><td>\$1,843,829</td><td>\$2,595,856</td><td>41.53%</td></tr></tbody></table><p>Sources http://www.sportscare.com/nfl/coach/2014/; http://coacheschoset.com/NFLCoachesSalaries.htm; USA Today; Squad List 20141222.nc</p><p>Notes NFL Head Coach salaries are estimates as of June, 2015. NCAA Head Coach salaries are estimates going into the 2014 season. ‘Average Team Payroll Estimates’ for NCAA Football teams represents the average of the sum of ‘Total Countable Aid’ for 2014-15 Season.</p></div>		Available Data	Average Coach Pay Estimates	Average Team Payroll Estimates	Total Coach Pay / Total Payroll	NFL	32	\$5,093,750	\$128,758,593	3.81%	NCAA Football	102	\$1,843,829	\$2,595,856	41.53%	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
	Available Data	Average Coach Pay Estimates	Average Team Payroll Estimates	Total Coach Pay / Total Payroll														
NFL	32	\$5,093,750	\$128,758,593	3.81%														
NCAA Football	102	\$1,843,829	\$2,595,856	41.53%														

93.

Exhibit 167(n)(n) (page 110):

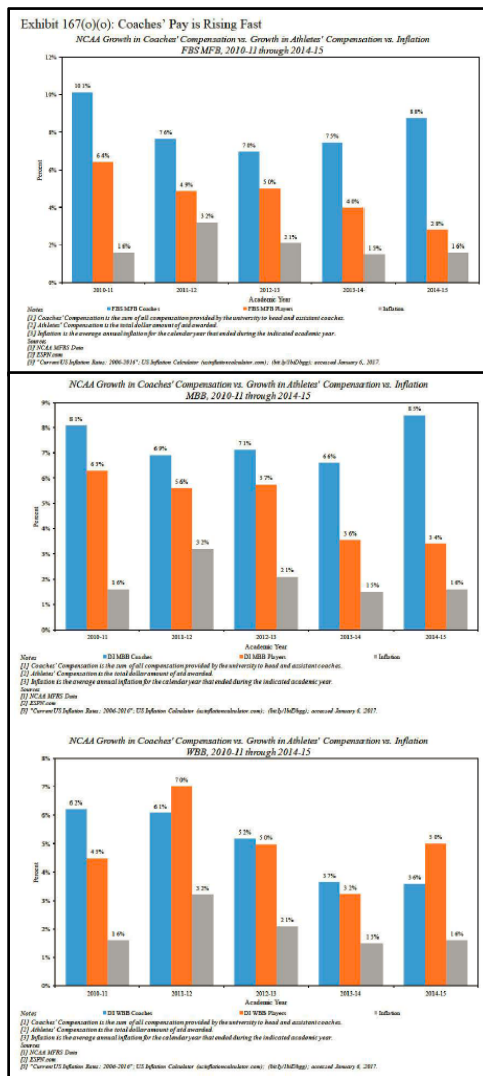


Disclosure of in-
admissible facts
relied upon by ex-
pert (FRE 703;
FRE 802)

Sustained / Overruled

94.

Exhibit 167(o)(o) (pages 110-11):



Disclosure of in-
admissible facts
relied upon by ex-
pert (FRE 703;
FRE 802)

Sustained / Overruled

95.	Para. 264: “I also provided quantitative analysis showing that coaches’ pay is disproportionate to athlete payroll relative to the sports leagues one level above, despite the economic evidence that the two versions of each sport have similar production functions.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled																														
96.	Exhibit 167(p)(p) (page 109): <div><p>Exhibit 167(p)(p): Head Coach Compensation as a Percent of Athlete Compensation (in \$m/line)</p><table><thead><tr><th></th><th>Coach</th><th>Team</th><th>Head Coach's Compensation</th><th>Athlete Compensation</th><th>Coach Comp. as % of Athlete Comp.</th></tr></thead><tbody><tr><td>NBA</td><td>Rick Carlisle</td><td>Dallas Mavericks</td><td>7.0</td><td>92.1</td><td>7.6%</td></tr><tr><td>NFL</td><td>Sean Payton</td><td>New Orleans Saints</td><td>8.5</td><td>100.9</td><td>8.4%</td></tr><tr><td>NCAA MFB</td><td>Jim Harbaugh</td><td>Michigan Wolverines</td><td>5.7</td><td>5.6</td><td>101.9%</td></tr><tr><td>NCAA MBB</td><td>Rick Pino</td><td>Louisville Cardinals</td><td>5.0</td><td>0.5</td><td>912.6%</td></tr></tbody></table><p>Notes [1] For NFL and NBA teams, head coach's compensation is the coach's estimated average annual salary, and athlete compensation is the team's total base salary. [2] For NCAA teams, head coach's compensation is compensation provided by the university, and athlete compensation is the total dollar amount of aid awarded. Sources [1] Stern, Marc: "Mavericks, Rick Carlisle reach agreement on new 5-year deal", November 5, 2015, ESPN (espn.com); (a: pw2gh6t7R). [2] Triplett, Mike: "Sean Payton agrees to 5-year extension with Saints", March 23, 2016, ESPN (espn.com); (a: pw2gh6t7R). [3] NCAA MPFS data (NCAASports.org/2014/08/21/14796406-3639225-27-1991240-11/See Backup as Common Dataset). [4] "New Orleans Saints 2017 Salary Cap", Sportrac (Sportrac.com); (bit.ly/2g7H07F), accessed June 12, 2017. [5] "Dallas Mavericks 2016 Salary Cap", Sportrac (Sportrac.com); (bit.ly/2r9H0bL), accessed June 12, 2017.</p></div>		Coach	Team	Head Coach's Compensation	Athlete Compensation	Coach Comp. as % of Athlete Comp.	NBA	Rick Carlisle	Dallas Mavericks	7.0	92.1	7.6%	NFL	Sean Payton	New Orleans Saints	8.5	100.9	8.4%	NCAA MFB	Jim Harbaugh	Michigan Wolverines	5.7	5.6	101.9%	NCAA MBB	Rick Pino	Louisville Cardinals	5.0	0.5	912.6%	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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97.	Para. 265: “Since the close of discovery in <i>O’Bannon</i> , one new phenomenon has been the rapid growth in assistant coaches’ pay, which has been explained as reflecting the assistant coaches’ contribution to recruiting. As shown in Exhibit 167(z) above, both head and assistant coaches’ pay have each grown by nearly 50% over the five-year period from 2009-10 to 2014-15.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled																														
98.	Para. 267: “the rare Brazilian wood and Xboxes at every locker and indoor waterfalls and outdoor lazy rivers”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled																														

1 2 3 4 5 6 7 8 9 10	99.	Para. 267: “I’ve shown that facilities spending is also rising faster than inflation. Since the original <i>O’Bannon</i> ruling in the summer of 2014, spending on college athletic facilities has continued unabated. Jon Solomon (then of CBS Sports, now at the Aspen Institute) reported that year that FBS schools were spending or planning to spend more than \$3.6 billion on football stadiums alone.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	100.	Para. 268: “As Exhibit 167(a)(a) above shows, in 2014 some 48 Power 5 schools spent a combined \$772 million on athletic facilities. Since <i>O’Bannon</i> , there have been more than \$8.5 billion of announced spending on college athletics facilities. Approximately 19% of that money – \$1.5 billion – was for training facilities exclusively for athlete use that fans will never step foot in. Furthermore, while the \$7 billion spent on playing facilities includes fan amenities, it also includes player amenities such as locker rooms and sideline comforts to attract the best recruits. In the course of this case I’ve pointed to several new facilities that were built with an eye to recruiting, some of which are listed above in paragraph 138.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

OBJECTIONS TO REBUTTAL TESTIMONY OF DR. DANIEL A. RASCHER

	Testimony	Objection(s)	Ruling
1.	Para. 17: “now full-time chefs are Permitted”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
2.	Fn. 20 (page 7): “I stand by my assessment that a full-time pasta chef is an “extravagant” expense on food. (Elzinga Direct ¶93).”	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Env'tl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
3.	Fn. 21 (page 7): “My reliance on historical evidence shows that every sport that has ever claimed pay restrictions were essential to demand has failed the eventual market test of that proposition.”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
4.	Fn. 21 (page 7): “the evidence in this case is clear that the NCAA certainly did not adopt its cap based on any consideration of consumer demand. Rather, compensation caps were not adopted by the NCAA to enhance demand based on the concept	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

	of ‘amateurism’ – but instead were adopted as cost-containment measures.”		
7.	Para. 40: “when even the NFL's smallest-market team, the Green Bay Packers, had 2016-17 revenues of \$441.4 million and 2017-18 revenues of \$454.9 million”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
8.	Para. 42: “even though Pitino received 900% of what his athletes received, while Carlisle earned less than 10% of his team’s payroll”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
9.	Para. 62: “in what has been called ‘the greatest upset ever.’”	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
10.	Fn. 97 (page 28): “Moreover, the merger of those two leagues was only made immune from the antitrust law because of a special statutory exemption, which I discussed in my direct testimony, the Sports Broadcasting Act (15 U.S.C. §§1291-1295).”	Legal conclusion (FRE 702; <i>Nation-wide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	Sustained / Overruled
11.	Fn. 100 (page 29): “Georgia Tech (coached by John Heisman, for whom the	Legal conclusion (FRE 702; <i>Nation-wide Transp. Fin. v.</i>	Sustained / Overruled

1	trophy is named) famously defeated Cum-	<i>Cass Info. Sys.,</i>	
2	berland College 222-0. See Freer, Mi-	<i>Inc.</i> , 523 F.3d 1051,	
3	chael; ‘100 years ago: Georgia Tech’s	1058–60 (9th Cir.	
4	222-0 Victory,’; October 7, 2016; ESPN	2008))	
5	(espn.com), at es.pn/2dKhjnK, cited in		
6	MRR ¶37.”		

9 Dated: September 4, 2018

Respectfully submitted,

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8 **FILER'S ATTESTATION**

9 I, Bart H. Williams, am the ECF user whose identification and password are being used to
10 file Defendants' Objections to Direct and Rebuttal Testimony of Dr. Daniel A. Rascher. In com-
11 pliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

12 /s/ Bart H. Williams
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