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Page]

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

18 IN RE NATIONAL COLLEGIATE
19 ATHLETIC ASSOCIATION ATHLETIC
20 GRANT-IN-AID CAP ANTITRUST
21 LITIGATION

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

**DEFENDANTS' OBJECTIONS TO
DIRECT AND REBUTTAL TESTIMONY
OF DR. ROGER G. NOLL**

22 This Document Relates to:

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

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

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1 Without waiving any previously asserted objections, Defendants object to the Direct and
 2 Rebuttal Testimony of Dr. Roger G. Noll as follows:

3 **OBJECTIONS TO DIRECT TESTIMONY OF DR. ROGER G. NOLL**

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5	Testimony	Objection(s)	Ruling
6 7 8 9 10 11 12 13 14 15 16 17	1. Para. 9: Second, the goals implied by defendants' alleged procompetitive benefits can be achieved at least as effectively in other, less restrictive ways. One less restrictive alternative is to allow each conference to set its own rules regarding the compensation of athletes. Another less restrictive alternative is for the NCAA to prohibit only additional compensation above COA that is unrelated to educational expenses or participation in academic activities and to promulgate new NCAA rules that allow additional compensation for academic achievement and other costs of college that are not part of COA.	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
18 19 20 21 22 23 24 25	2. Para. 19: The alternatives to the present system do not require converting college conferences to minor professional leagues. All of the relevant alternatives do not prohibit the NCAA from making and enforcing rules and policies requiring that college athletes be students who satisfy reasonable standards for academic good standing.	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
26 27 28	3. Para. 20: One less restrictive alternative is for each conference independently to make and enforce its own rules regarding the compensation of athletes.	Excluded pursuant to Order Resolving Mo-	N/A (already ruled upon)

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	<p>This system was in place until 1957, and under this system, college football and men’s basketball became widely popular and commercially successful.</p>	<p>tions to Exclude “New” Expert Opinions (Dkt. No. 968)</p>	
<p>4.</p>	<p>Para. 21: Another less restrictive alternative is for the NCAA to limit its restrictions on compensation above COA to cash payments that are unrelated to educational expenses or participation in academic activities and to adopt rules that alter the incentives facing athletes to promote the goals that are implied by the defendants’ alleged procompetitive benefits. For example, the NCAA could adopt the rule that all scholarship athletes in FBS football and Division I basketball on the same team must receive the same compensation above COA related to educational expenses and that no additional cash compensation be based on individual athletic performance differences (other than existing participation benefits that the NCAA has already concluded do not damage their amateurism or integration objectives). The NCAA also could allow schools to provide additional benefits that are related to participation in academic activities, including cash payments and other rewards based on academic progress. This less restrictive set of restrictions would</p>	<p>Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)</p>	<p>N/A (already ruled upon)</p>

1		enhance competition for college athletes while di-		
2		rectly promoting in a more effective way their aca-		
3		demetic success.		
4	5.	Para. 27: In reality, defendants' assertion that the	Opinion out-	Sustained /
5		NCAA has pursued essentially the same policies to	side area of ex-	Overruled
6		restrict the compensation and benefits of student-	pertise (FRE	
7		athletes for over one hundred years is incorrect. In-	702; <i>Avila v.</i>	
8		deed, the term "student-athlete" is not 100 years	<i>Willits Envtl.</i>	
9		old, but was invented in the 1950s as part of a legal	<i>Remediation</i>	
10		strategy to prevent federal and state governments	<i>Trust</i> , 633 F.3d	
11		from treating college athletes as employees and	828, 839 (9th	
12		scholarships as wages. ¹⁰ Moreover, the NCAA did	Cir. 2011)	
13		not succeed in imposing enforceable rules restrict-		
14		ing the compensation and benefits of college ath-		
15		letes until 1957.		
16	6.	Fn. 10: Robert A. McCormick and Amy Christian	Disclosure of	Sustained /
17		McCormick, "The Myth of the Student-Athlete:	inadmissible	Overruled
18		The College Athlete as Employee," Washington	facts relied	
19		Law Review Vol. 81, No. 1 (February 2006), pp.	upon by expert	
20		71-158. ("The history of the NCAA's extraordinary	(FRE 703; FRE	
21		and continuing effort to mask the true nature of the	802)	
22		university-athlete relationship bears exquisite wit-		
23		ness to its purpose in inventing the term 'student-		
24		athlete'" [p. 83].)		
25	7.	Para. 28: The NCAA has always advocated that	Opinion out-	Sustained /
26		college athletes ought to be amateurs, but the defi-	side area of ex-	Overruled
27		nition of an amateur put forth by the NCAA has	pertise (FRE	
28		varied enormously over its history. During its first	702; <i>Avila v.</i>	

1		half-century, the NCAA defined amateurism as the	<i>Willits Envtl.</i>	
2		absence of any financial aid based on athletic par-	<i>Remediation</i>	
3		ticipation or performance. The NCAA abandoned	<i>Trust</i> , 633 F.3d	
4		this definition of amateurism because many schools	828, 839 (9th	
5		and conferences had successfully commercialized	Cir. 2011)	
6		intercollegiate athletics despite having persistently		
7		refused to accept the NCAA's then-asserted strict		
8		version of amateurism, and, as a result, the NCAA		
9		lacked the power to enforce compliance with its		
10		policy regarding compensation of athletes.		
11	8.	Para. 29: In 1957 the NCAA dramatically changed	Opinion out-	Sustained /
12		its definition of amateurism and, in the process, ob-	side area of ex-	Overruled
13		tained authority to enforce new rules based upon	pertise (FRE	
14		this definition. The NCAA's definition of an ama-	702; <i>Avila v.</i>	
15		teur switched from being about whether athletes	<i>Willits Envtl.</i>	
16		were paid anything at all to being about how much	<i>Remediation</i>	
17		they can be paid. Thus, according to the NCAA's	<i>Trust</i> , 633 F.3d	
18		definition of amateurism that persisted from 1906	828, 839 (9th	
19		until 1956, all scholarship athletes since 1957 have	Cir. 2011)	
20		been professionals.		
21	9.	Para. 30: The historical development of the	Opinion out-	Sustained /
22		NCAA's amateurism rules and policies is as fol-	side area of ex-	Overruled
23		lows. The Intercollegiate Athletic Association of	pertise (FRE	
24		the United States (IAA), which became the NCAA	702; <i>Avila v.</i>	
25		in 1910, was created in 1906 to deal with violence	<i>Willits Envtl.</i>	
26		in intercollegiate sports by adopting "rules relating	<i>Remediation</i>	
27		to roughness, holding, and foul play." ¹¹ Early on,	<i>Trust</i> , 633 F.3d	
28		the IAA advocated a rigid definition of amateurism		

1		in college sports. The IAA’s version of amateurism	828, 839 (9th	
2		precluded recruiting (“proselytizing”) athletes and	Cir. 2011)	
3		awarding scholarships that were based on athletic	Disclosure of	
4		ability. ¹² These policies had received tacit support	inadmissible	
5		from many colleges since the 1880s but were not	facts relied	
6		followed by most colleges that pursued athletics at	upon by expert	
7		the highest level. ¹³ Although the IAA’s eligibility	(FRE 703; FRE	
8		standards included adherence to its rigid definition	802)	
9		of amateurism		
10	10.	Fn. 11: George H. Hanford, “Controversies in Col- lege Sports,” Annals of the American Academy of Political and Social Science, 445 (1979), pp. 66-79 at p. 68.	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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16	11.	Fn. 12: Virginia A. Fitt, “The NCAA’s Lost Cause and the Legal Ease of Redefining Amateurism,” Duke Law Journal 59(3) (December 2009), pp. 555-93 at pp. 560-61. This article extensively cites Kay Hawes, “Debate on Amateurism Has Evolved over Time: Association Prepares for Another Round of Talks on the Issue at 2000 Convention,” NCAA News, January 3, 2000, but the NCAA’s web address that Fitt cites no longer works and I am unable locate the Hawes article.	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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1	12.	Fn. 13: Howard J. Savage, et al., American College Athletics, Bulletin No. 23, Carnegie Foundation for the Advancement of Teaching, 1929, Chapter II.	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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7	13.	Para. 31: Although the IAA adopted the amateurism standard that college athletes should not receive any compensation for participating in sports, its members did not adhere to the IAA's standard. As a result, from the origin of the IAA until after World War II, conferences adopted their own rules about the amount of financial assistance that could be given to a student for participating on a college athletic team, and colleges that did not belong to a conference, or that were members of a conference that lacked financial aid rules, made up their own policies about the compensation of their athletes. This system of decentralized rule making by conferences and individual colleges, persisted until 1956.	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
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22	14.	Para. 32: In the 1920s, the Carnegie Foundation sponsored a study of intercollegiate athletics, and their third report examined the extent to which the NCAA's principles of amateurism were followed by its members. ¹⁵ This report found that intercollegiate sports, especially football, had become com-	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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1		mercialized and that participation in commercial-	Opinion out-	Sustained /
2		ized sports had become a vocation, not an extracur-	side area of ex-	Overruled
3		ricular activity. ¹⁶ Specifically, the report found	pertise (FRE	
4		that recruiting and paying athletes was common-	702; <i>Avila v.</i>	
5		place, ¹⁷ with payments often coming from individu-	<i>Willits Envtl.</i>	
6		als and groups working independently from, and	<i>Remediation</i>	
7		sometimes without the knowledge of, the college. ¹⁸	<i>Trust</i> , 633 F.3d	
8			828, 839 (9th	
9			Cir. 2011)	
10	15.	Fn. 16: “The college athlete, often a boy from a	Disclosure of	Sustained /
11		modest home, ... begins to live on a scale never be-	inadmissible	Overruled
12		fore imagined. A special table is provided. Sport	facts relied	
13		clothes and expensive trips are furnished him out of	upon by expert	
14		the athletic chest. He jumps at one bound to a plane	(FRE 703; FRE	
15		of living of which he never before knew, all at the	802)	
16		expense of some fund of which he knows little.”		
17		<i>Ibid.</i> , p. xiv.		
18	16.	Fn. 17: <i>Ibid.</i> , Chapter X. Of the 112 institutions that	Disclosure of	Sustained /
19		were studied, 81 reported providing some form of	inadmissible	Overruled
20		subsidy to athletes (p. 241). “The recruiting of	facts relied	
21		American college athletes... has reached the pro-	upon by expert	
22		portions of nationwide commerce... The element	(FRE 703; FRE	
23		that demoralizes is the subsidy, the monetary or	802)	
24		material advantage that is used to attract the school-		
25		boy athlete. It is seldom lacking in the general pro-		
26		cess of gathering ‘a winning team’” (p. 240).		
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1	17.	Fn. 18: Ibid., p. xv. For example, at 39 of the 112 institutions that were studied for the Carnegie report, alumni groups actively participated in paying athletes (p. 241).	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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7	18.	Para. 33: Nevertheless, in the 1920s college sports, especially football, were extremely popular and commercially successful, even though violations of the NCAA's rigid definition of amateurism were rampant. For example, in 1924 more than 100,000 fans attended the game between California and Stanford; Army, Harvard and Pennsylvania each played three games in which attendance exceeded 50,000; Michigan averaged over 32,000 fans over its eight-game schedule; and for the first time total attendance for college football exceeded 10 million. ¹⁹ By comparison, total college football attendance did not exceed 20 million until 1960. ²⁰	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
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23	19.	Fn. 19: "Many Records Set in Football Season," New York Times, December 7, 1924, at: https://www.nytimes.com/1924/12/07/archives/many-records-set-in-football-season-game-reached-new-heights-of.html .	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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20.	Fn. 20: NCAA Football Attendance Records, NCAA (2010), at: http://fs.ncaa.org/Docs/stats/football_records/DI/2010/Attendance.pdf .	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
21.	Para. 34: Notwithstanding the widespread acceptance among its members of compensation of athletes that was conditional on athletic participation, ²¹ the NCAA continued to advocate its strict definition of amateurism – no payments of any kind based on athletic participation – for nearly 50 years. In 1939, the NCAA issued its “Declaration of Sound Principles and Practices for Intercollegiate Athletics.” One principle was that aid had to be given through the same process as scholarships for other students, without special set-asides of aid for athletes, which is essentially the same policy that is still followed by the Ivy League. Another principle was that aid could not be based on athletic participation and could not be withdrawn for failure to participate. Still another principle was that athletic department funds could not be used for any form of aid other than employment that involved full and honest effort. Athletes could be employees, but only if they were paid the going wage for jobs that they actually performed. But adherence to these principles was voluntary – eligibility to participate	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Env'tl. 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

1		in NCAA sports did not require that schools and		
2		athletes actually behave according to these princi-		
3		ples.		
4	22.	Fn. 21: In 1980, the NCAA collected historical in-	Disclosure of	Sustained /
5		formation about financial aid policies between 1930	inadmissible	Overruled
6		and 1950. (“Evolution of College Athletic Financial	facts relied	
7		Aid Regulations: Conference Rules 1930-1950,”	upon by expert	
8		NCAA, 1980, Bates No. NCAAGIA00045494-	(FRE 703; FRE	
9		508.) This report found that most conferences pro-	802)	
10		vided athletic scholarships during this period, alt-		
11		hough the details varied enormously both among		
12		conferences and within the same conference over		
13		time.		
14	23.	Para. 35: The NCAA formally attempted to en-	Opinion out-	Sustained /
15		force its strict definition of amateurism on its mem-	side area of ex-	Overruled
16		bers with its adoption of the “Sanity Code” in	pertise (FRE	
17		1948. ²² The Sanity Code required that grants to	702; <i>Avila v.</i>	
18		cover tuition and fees had to be based on financial	<i>Willits Envtl.</i>	
19		need, calculated in the same way as other need-	<i>Remediation</i>	
20		based scholarships. Additional aid to cover room	<i>Trust</i> , 633 F.3d	
21		and board had to be provided through employment	828, 839 (9th	
22		on campus, and aid based on scholarship and other	Cir. 2011)	
23		non-athletic factors was unlimited as long as it was		
24		available to other students. The Sanity Code in-	Disclosure of	Sustained /
25		cluded the 1939 “Declaration of Principles,” but al-	inadmissible	Overruled
26		lowed athletes to receive medical care, training ta-	facts relied	
27		ble, and other meals on sanctioned trips in addition	upon by expert	
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1		to need-based grants. In response to widespread vi-	(FRE 703; FRE	
2		olations of these rules, the NCAA dropped the San-	802)	
3		ity Code three years later, returning “control and re-		
4		sponsibility for conduct of athletes on the institu-		
5		tions or their conferences.” ²³		
6	24.	Fn. 22: “Colleges Adopt the ‘Sanity Code’ to Gov-	Disclosure of	Sustained /
7		ern Sports,” New York Times, January 11, 1948, at	inadmissible	Overruled
8		https://www.nytimes.com/1948/01/11/archives/col-	facts relied	
9		leges-adopt-the-sanity-code-to-govern-sports-ncaa-	upon by expert	
10		bans.html .	(FRE 703; FRE	
11			802)	
12	25.	Fn. 23: “N.C.A.A. Drops Sanity Code Control of	Disclosure of	Sustained /
13		Financial Aid to Athletes,” New York Times, Janu-	inadmissible	Overruled
14		ary 13, 1951, at https://www.ny-	facts relied	
15		times.com/1951/01/13/archives/ncaa-drops-sanity-	upon by expert	
16		code-control-of-financial-aid-to-athletes.html .	(FRE 703; FRE	
17			802)	
18	26.	Para. 36: The significance of this history of the	Opinion out-	Sustained /
19		NCAA is that the NCAA did not enforce re-	side area of ex-	Overruled
20		strictions on the compensation of college athletes	pertise (FRE	
21		for the first fifty years of its existence. Yet during	702; <i>Avila v.</i>	
22		this period, college football and basketball as orga-	<i>Willits Envtl.</i>	
23		nized by the same colleges that now are members	<i>Remediation</i>	
24		of Division I became immensely popular.	<i>Trust</i> , 633 F.3d	
25			828, 839 (9th	
26			Cir. 2011)	
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	27.	Para. 37: After abandoning the Sanity Code, the NCAA began to adopt rules to restrict, rather than to eliminate, compensation of college athletes. In 1952, the NCAA adopted a rule that prohibited financial aid to athletes from anyone other than the college or the persons for whom the athlete is a legal dependent. ²⁴ This rule cut off aid from third parties, a major source of pay for college athletes that was documented in the Carnegie Report. In 1956, the NCAA again banned all financial aid that was based on participation or performance in a sport. That is, in 1956, the NCAA labeled an athlete as a professional if the athlete received a scholarship of any amount that hinged on participation in athletics (which is the type of scholarship that college athletes receive today ²⁵).	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
17 18 19 20 21 22 23 24 25	28.	Fn. 24: In 1953 the NCAA exempted from this rule outside financial aid that was not based on athletic ability, thereby permitting college athletes to receive academic scholarships that were awarded by entities other than a college.	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
26 27 28	29.	Fn. 25: Although Wake Forest president Nathan Hatch testified that an athletic scholarship should be thought of as a “gift,” he also testified that a	Opinion outside area of expertise (FRE	Sustained / Overruled

1		scholarship athlete who chose to give up sports to	702; <i>Avila v.</i>	
2		focus exclusively on academics would lose the	<i>Willits Envtl.</i>	
3		scholarship. Deposition of Nathan O. Hatch, May	<i>Remediation</i>	
4		11, 2017, pp. 37-39.	<i>Trust</i> , 633 F.3d	
5			828, 839 (9th	
6			Cir. 2011)	
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8			Disclosure of	Sustained /
9			inadmissible	Overruled
10			facts relied	
11			upon by expert	
12			(FRE 703; FRE	
13			802)	
14	30.	Para. 38: The next year the NCAA gave up the bat-	Opinion out-	Sustained /
15		tle to ban compensation that is conditioned on ath-	side area of ex-	Overruled
16		letic participation and, in so doing, promulgated an	pertise (FRE	
17		entirely new definition of amateurism. In 1957, the	702; <i>Avila v.</i>	
18		NCAA adopted rules that limited athletic financial	<i>Willits Envtl.</i>	
19		aid (including employment) to commonly accepted	<i>Remediation</i>	
20		educational expenditures, or approximately what is	<i>Trust</i> , 633 F.3d	
21		now called COA. ²⁶ This cap was defined as the sum	828, 839 (9th	
22		of tuition, fees, books, other educational supplies,	Cir. 2011)	
23		room and board, and \$15 per month for incidental		
24		expenses (often called “laundry money”). Thus, af-	Disclosure of	Sustained /
25		ter a half-century of futilely advocating a pristine	inadmissible	Overruled
26		version of amateurism, the NCAA changed its defi-	facts relied	
27			upon by expert	
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1		inition to allow college athletes to receive compensation that is conditioned on their participation in intercollegiate athletics.	(FRE 703; FRE 802)	
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4	31.	Fn. 26: The main difference between current COA and in the 1957 cap was that in the former miscellaneous expenditures are calculated separately for every school and athlete, while in the latter this item was the same for all schools and athletes.	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
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14	32.	Para. 39: Since 1957, while vigorously enforcing its amateurism rules, the NCAA has adopted numerous changes in the amount and nature of compensation and benefits that student athletes can receive. In so doing, the NCAA has created a situation in which amateurism is defined as providing compensation that does not exceed whatever the NCAA at the moment asserts that the limit ought to be, but these ever-changing definitions do not adhere to any consistent principle over time.	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
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24	33.	Para. 40: In the 1960s, the NCAA changed its definition of amateurism in several ways. (1) The NCAA set limits on earnings from employment of athletes by the university. The previous rule had been that a college athlete could be	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl.</i>	Sustained / Overruled
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<p>paid for genuine work at standard pay rates without further restrictions.</p> <p>(2) For the first time, the NCAA prohibited athletes from using their “fame or reputation” to earn income. Previously athletes could receive pay for appearances at non-athletic activities. Although earnings from appearances were not consistent with the NCAA’s original definition of amateurism, prohibition of these activities was not enforced by the NCAA until the 1960s.</p> <p>(3) Reimbursement of travel costs was limited to “actual and necessary” expenditures. Schools no longer were allowed to give athletes a stipend for travel expenses.</p> <p>(4) Limits were placed on the number of complimentary tickets to games that athletes could be given.</p> <p>(5) For the first time, the NCAA explicitly permitted colleges to provide some additional benefits that were not related to COA, such as health insurance.</p>	<p><i>Remediation Trust</i>, 633 F.3d 828, 839 (9th Cir. 2011)</p>	
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1	34.	Para 41: In 1976, the NCAA once again made a financially significant change to its definition of amateurism by modifying the definition of “commonly accepted educational expenditures” to exclude course-related supplies, travel to and from college, and other incidental expenses, including laundry. This change created the difference between the so-called grant-in-aid (“GIA”) cap (the limit on the value of a scholarship from 1976 until 2015) and COA (roughly the limit in force from 1957 until 1976).	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
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12	35.	Para. 42: Since 1976, the NCAA frequently has changed where the line is drawn between permissible and impermissible compensation of college athletes. One type of change has been variation in the extent to which college athletes can receive compensation for educationally related expenses. For example, NCAA President Mark Emmert testified that a 2011 proposal to pay athletes a stipend for living expenses above the GIA cap (i.e., a miscellaneous expense allowance, or “MEA”) was adopted but then quickly repealed because the NCAA claimed to fear that pay above the GIA cap would constitute “pay-for-play” and reduce the popularity of college sports. ²⁷	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
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26	36.	Para. 43: In early 2014 the most successful conferences in FBS (the “Power Five” ²⁸) plus independ-	Opinion outside area of expertise (FRE	Sustained / Overruled
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1		ent Notre Dame proposed that they be given the au-	702; <i>Avila v.</i>	
2		thority to make their own rules on many issues, in-	<i>Willits Envtl.</i>	
3		cluding to raise the cap on an athletic scholarship to	<i>Remediation</i>	
4		COA. This proposal was approved by the NCAA	<i>Trust</i> , 633 F.3d	
5		Board of Directors in August of 2014. ²⁹ The Power	828, 839 (9th	
6		Five plus Notre Dame then approved adoption of	Cir. 2011)	
7		multi-year COA athletic scholarships in January of		
8		2015, which other Division I schools and confer-		
9		ences could elect to adopt as well. ³⁰ Thus, in 2015		
10		the NCAA's cap on the value of an athletic scholar-		
11		ship returned to roughly the cap that was imposed		
12		between 1957 and 1976.		
13	37.	Fn. 28: Atlantic Coast (ACC), Big Ten, Big 12,	Opinion out-	Sustained /
14		Pac-12, and Southeastern Conference (SEC). Since	side area of ex-	Overruled
15		the end of World War II, the only school to win the	pertise (FRE	
16		NCAA national championship in football that was	702; <i>Avila v.</i>	
17		not a member of one of these conferences or Notre	<i>Willits Envtl.</i>	
18		Dame was BYU in 1984. At the time of the	<i>Remediation</i>	
19		O'Bannon litigation, the Big East also was regarded	<i>Trust</i> , 633 F.3d	
20		as a power conference in football, although its foot-	828, 839 (9th	
21		ball playing members left the conference a year	Cir. 2011)	
22		later.		
23	38.	Fn. 29: Brian Bennet, "NCAA Board Votes to Al-	Disclosure of	Sustained /
24		low Autonomy," ESPN at http://www.espn.com/	inadmissible	Overruled
25		college-sports/story/_/id/11321551/ncaa-board-	facts relied	
26		votes-allow-autonomy-five-power-conferences.	upon by expert	
27			(FRE 703; FRE	
28			802)	

1	39.	Fn. 30: Michelle Brutlag Hosick, “Autonomy Schools Adopt Cost of Attendance Scholarships,” NCAA Press Release, January 18, 2015, at http://www.ncaa.org/about/resources/media-center/autonomy-schools-adopt-cost-attendance-scholarships .	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
2	40.	Para. 44: The second type of change in allowed compensation pertains to benefits that are not part of a standard athletic scholarship. The NCAA’s definition of amateurism has changed numerous times in the past two decades through new rules to allow additional payments from the NCAA’s Student Assistance Fund (SAF), additional compensation that is “incidental to participation,” and additional stipends from the federal government (Pell Grants), as discussed in the next section. These additional sources of payments and benefits are extremely important. Because compensation from these sources is in addition to a COA scholarship, the COA limit is not a bright line cap on total compensation and benefits to class members. As discussed elsewhere, additional compensation above COA has not adversely affected the popularity of FBS football or Division I basketball or the integration of class members into campus life.	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
3	41.	Para. 45: The NCAA’s original but unenforced definition of amateurism, in place from 1906 to 1956, was that an amateur is a person who engages	Opinion outside area of expertise (FRE	Sustained / Overruled

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	<p>in athletics purely for the experience of participating with no prospect of financial gain and no financial aid that was conditioned on athletic participation. Because the NCAA did not enforce this principle, the actual rules governing financial aid were developed and enforced by conferences or individual colleges. Under the rules actually in place, many college athletes could and did receive payments (including from employment, appearances, and third parties) that not only violated the strict principle of amateurism that the NCAA enunciated at the time, but that was not capped by COA. Thus, not only were scholarship athletes not amateurs by the NCAA’s older, stricter standard before 1957, many were not amateurs even by the current standard in that their compensation was not capped by COA.</p>	<p>702; <i>Avila v. Willits Envtl. Remediation Trust</i>, 633 F.3d 828, 839 (9th Cir. 2011)</p>	
<p>42.</p>	<p>Para. 46: The NCAA abandoned its more rigid definition of amateurism in 1957 and also acquired the authority to enforce its new definition as an eligibility requirement for college athletes. Since 1957, the NCAA has defined amateurism as being paid no more than is allowed under an ever-changing and ever- more-complex set of regulations regarding permissible payments and other benefits. That is, the NCAA has adopted the Humpty Dumpty standard from <i>Through the Looking Glass</i>: “‘When I use a word,’ Humpty Dumpty said, in rather scornful</p>	<p>Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i>, 633 F.3d 828, 839 (9th Cir. 2011)</p>	<p>Sustained / Overruled</p>

1		tone, ‘it means what I choose it to mean – neither	Disclosure of	Sustained /
2		more nor less.’” The most recent example is the	inadmissible	Overruled
3		move to COA, which the NCAA rejected in 2011	facts relied	
4		(in the form of MEA) as “pay-for-play” profession-	upon by expert	
5		alism but then adopted soon thereafter (in 2015) as	(FRE 703; FRE	
6		consistent with the NCAA’s newest definition of	802)	
7		amateurism.		
8	43.	Para. 47: Former NCAA Executive Director Wal-	Disclosure of	Sustained /
9		ter Byers acknowledged the Humpty Dumpty	inadmissible	Overruled
10		standard when he observed that the NCAA’s elu-	facts relied	
11		sive concept of amateurism is a “modern-day mis-	upon by expert	
12		nomer for economic tyranny” and “a transparent	(FRE 703; FRE	
13		excuse for monopoly operations.” ³¹ College ath-	802)	
14		letes who receive athletic scholarships have never		
15		been amateurs according to the NCAA’s original		
16		definition of the term and today can be and fre-		
17		quently are compensated by more than any plausi-		
18		ble definition of the cost of attending college. Since		
19		1957 the NCAA’s compensation rules have not		
20		been tethered to any coherent or consistent defini-		
21		tion of amateurism.		
22	44.	Fn. 31: Walter Byers with Charles Hammer, Un-	Disclosure of	Sustained /
23		sportsmanlike Conduct, University of Michigan	inadmissible	Overruled
24		Press, 1995, at pp. 347, 388.	facts relied	
25			upon by expert	
26			(FRE 703; FRE	
27			802)	
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1 2 3 4 5 6 7 8 9 10	45.	Para. 48: Since 2015 NCAA rules have capped the value of an athletic scholarship at cost of attendance. All schools in the Power Five conferences plus Notre Dame moved to COA scholarships in 2015. Members of all of the other FBS conferences are allowed to adopt the COA cap as well, and most but not all have chosen to do so.	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	46.	Para. 49: Defendants explain the COA cap as follows. “COA is a defined amount that each college and university calculates, based on federal regulation, to reflect what it costs an individual student to attend that particular school.” ³³ According to defendants, the stipends that are part of a COA scholarship “are calculated by reference to a federal statute that measures the expenses associated with college attendance.” ³⁴ Defendants acknowledge that COA varies among colleges, but state that for each school “the COA amount that a student-athlete may receive must be calculated in the same manner as for all other students at his or her school.” ³⁵ Professor Elzinga asserts that COA is educational costs: “School and conference officials are concerned that scholarship amounts should cover educational ex-	Opinion outside area of expertise (FRE 702; <i>Avila v. Willits Envtl. Remediation Trust</i> , 633 F.3d 828, 839 (9th Cir. 2011))	Sustained / Overruled

1		penses, but not provide financial aid to college athletes that is not directly related to the cost of attending school.” ³⁶		
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4	47.	Para. 50: The NCAA’s former Executive Vice President stated that “as absurd as [it] may sound” a payment of even a penny over cost of attendance would transform amateur athletics to professional sports. ³⁸ American Athletic Conference Commissioner Michael Aresco “absolutely” agreed that “any dollar amount above calculated cost of attendance would harm amateurism.” ³⁹	References to testimony of Michael Aresco excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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15	48.	Fn. 38: Deposition of Mark Lewis, January 31, 2017 (henceforth Lewis Deposition), pp. 220-221.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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23	49.	Fn. 39: Deposition of Michael Aresco, November 16, 2016 p. 247.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opin-	N/A (already ruled upon)
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1		ions (Dkt. No.	
2		968)	
3	50.	Excluded pur-	N/A (already
4	Para. 51: The Not One Penny standard is consistent	suant to Order	ruled upon)
5	with the NCAA's long record of punishing schools	Resolving Mo-	
6	and athletes for even small unauthorized benefits. ⁴¹	tions to Ex-	
7	For example, a Stanford football player who rented	clude "New"	
8	an apartment for the summer to remain on campus	Expert Opin-	
9	was found to have received \$400 in impermissible	ions (Dkt. No.	
10	benefits from his landlord, consisting of meals,	968)	
11	movies, use of a vacation home, and a short-term		
12	loan (repaid) to buy a bicycle. The player's punish-		
13	ment was a fine of \$400 and loss of eligibility for		
14	one game, while Stanford was fined \$5,000. ⁴²		
15	51.	Excluded pur-	N/A (already
16	Fn. 41: The NCAA categorizes rule violations into	suant to Order	ruled upon)
17	four levels according to severity. Level I violations	Resolving Mo-	
18	include "a substantial or excessive impermissible	tions to Ex-	
19	benefit," Level II violations cover "more than a	clude "New"	
20	minimal... impermissible benefit," and Level III vi-	Expert Opin-	
21	olations include "a minimal impermissible benefit."	ions (Dkt. No.	
22	See http://www.ncaa.org/about/resources/media-	968)	
23	center/news/new- violation-structure. The bounda-		
24	ries between levels are not explicitly defined. Lev-		
25	els I and II violations can lead to post-season bans,		
26	financial penalties, and reductions in scholarships.		
27	See https://www.ncaa.org/sites/de-		
28	fault/files/Att2_Penalty%2BGuideline%2BMa-		

1	52.	Fn. 42: “Stanford Guilty of ‘Major’ NCAA Violations for First Time,” Los Angeles Times, September 15, 2016, at http://www.latimes.com/sports/more/la-sp-stanford-ncaa-violations-20160915-snap-story.html . The \$5,000 fine was for this violation plus a violation of the rules on limits to practices by the softball coach.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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10	53.	Fn. 43: In Jason White, et al., v. NCAA, et al., NCAA witnesses stated that moving to the amount of compensation of college athletes to COA would violate the principles of amateurism for this reason. For example, NCAA expert Professor Jerry Hausman stated that some components of the COA gap were “not as closely tied to the costs of a college education (e.g. laundry money or other personal expenses, which would be incurred regardless of whether a person is in or out of college are also more subjective and less well-defined),” and from this he concluded that “the COA Rule would introduce discussions of the amount of compensation” into recruiting, “which would in turn harm the concept of amateurism.” Expert Report of Professor Jerry A. Hausman, September 6, 2007, p. 30. Professor Thomas Kane also explained that COA included components that were “not educational services.” Expert Report of Thomas J. Kane (White),	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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	<p>September 6, 2007, p. 15. The NCAA asserted that keeping the GIA cap below full COA was needed to “prevent pay-for-play.” NCAA’s Memorandum of Points and Authorities in Support of Summary Judgment or, in the Alternative, Partial Summary Judgment, October 22, 2007, p. 40.</p>		
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1 2 3 4 5 6 7 8 9 10 11 12	54. Para. 67: When the COA cap was adopted in 2015, the NCAA expected that the value of a full athletic scholarship would increase by about \$2,500, but this turned out to be incorrect because the NCAA did not anticipate that many schools would find ways to increase their COAs within the federal guidelines. ⁶¹ In fact, adoption of the new COA cap introduced competition among colleges in the stipend that they offer, thereby causing many students who receive full COA scholarships to be paid substantially more than the COA cap that the NCAA thought that it was adopting.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
13 14 15 16 17 18 19 20 21	55. Fn. 61: For an analysis of the differences between expectations and reality during the first year of COA scholarships, see Jake New, “Playing the Game,” Inside Higher Ed, August 13, 2015, posted by Slate at http://www.slate.com/articles/life/inside_higher_ed/2015/08/colleges_are_inflating_federally_defined_tuition_cost_to_give_athletes_bigger.html .	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)

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1	56.	Para. 68: In 2015, surveys of nearly all FBS schools found that average COA stipends varied between \$1,400 and \$6,018 among Power Five schools, with a median of \$3,062 and a mean of \$3,780. ⁶² Among other FBS conferences, Conference USA, Mountain West, and Sun Belt had some schools that did not adopt COA and so paid no additional stipend, but only in the Sun Belt did the majority of schools pay no stipend in 2015. The median stipends in the remaining conferences were \$4,376 in the AAC, \$1,000 in Conference USA, \$3,177 in Mid-American, and \$3,720 in Mountain West, and among independents was \$3,350. The maximum stipend among non-Power Five schools was \$7,018. Thus, not only is the average stipend substantially larger than the NCAA expected, the variation among schools is substantial	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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18	57.	Fn. 62: John Charles Bradbury and Joshua D. Pitts, “Full Cost-of-Attendance Scholarships and College Choice: Evidence from NCAA Football,” <i>Journal of Sports Economics</i> , forthcoming (published online March 17, 2017, at http://journals.sagepub.com/doi/abs/10.1177/1527002517696958).	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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26	58.	Fn. 67: The autonomy of schools in setting standards for the Student-Athlete Opportunity Fund is illustrated by the requirement at the University of	Excluded pursuant to Order Resolving Mo-	N/A (already ruled upon)
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1		Texas, El Paso, that an athlete complete 10 hours of	tions to Ex-	
2		community service to be eligible for an award. See	clude “New”	
3		https://utepathletics.com/sports/2017/6/7/ath-	Expert Opin-	
4		leteservices-life-skills-SAOpportunityFund-	ions (Dkt. No.	
5		html.aspx.	968)	
6	59.	Para. 72: Many allowed uses of these funds are not	Excluded pur-	N/A (already
7		directly related to the costs of attending college.	suant to Order	ruled upon)
8		For example, the University of Washington guide-	Resolving Mo-	
9		lines for the Special Assistance Fund allow an eligi-	tions to Ex-	
10		ble student to receive up to \$500 per year for:	clude “New”	
11		“Clothing... and other essential expenses (e.g.,	Expert Opin-	
12		shoes, toiletries, cleaning supplies, backpack, um-	ions (Dkt. No.	
13		brella, pens, pencils, highlighters, etc.).” ⁷¹ The LSU	968)	
14		guideline lists among the acceptable uses of the		
15		Special Assistance Fund: hearing aids, vision ther-		
16		apy, dental expenses, and rental of non-expendable		
17		supplies not covered in COA. ⁷² Maryland used SAF		
18		money to buy an iPad for all of its athletes, while		
19		the University of Minnesota used SAF funds to pay		
20		for the travel of a football player to attend his		
21		aunt’s funeral, to buy a new dress for a women’s		
22		basketball player to wear when she was selected in		
23		the WNBA draft, and, more generally, to make		
24		grants to 375 athletes that averaged over \$1,000		
25		each. ⁷³		
26	60.	Fn. 71: “University of Washington Student-Athlete	Excluded pur-	N/A (already
27		Special Assistance Fund Policy and Procedures,” at	suant to Order	ruled upon)
28			Resolving Mo-	

1		https://static.gohuskies.com/pdf/genrel/special-assistance-fund-06.pdf .	tions to Exclude “New” Expert Opinions (Dkt. No. 968)	
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6	61.	Fn. 72: “NCAA Special Assistance Fund,” at http://www.lsusports.net/fls/5200/assets/docs/ad/compliance/pdf/safund.pdf .	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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14	62.	Fn. 73: David McCoy, “NCAA’s Little-Known Student Assistance Fund,” CBS Minnesota, January 12, 2014, at http://minnesota.cbslocal.com/2014/01/12/ncaas-little-known-student-assistance-fund/ .	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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22	63.	Para. 80: Originally the NCAA did not permit an athlete to benefit from a Pell Grant. If an athlete was awarded both an athletic scholarship and a Pell Grant, the college was required to deduct the amount of the Pell Grant from a student’s athletic scholarship, thus making the college, not the student, the beneficiary of the grant. In 1984,	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opin-	N/A (already ruled upon)
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1		the NCAA changed this policy to permit a college athlete to keep up to \$900 from a Pell Grant for “miscellaneous expenditures” that were included in the school’s cost of attendance but not in the NCAA’s GIA cap on athletic scholarships.	ions (Dkt. No. 968)	
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6	64.	Para. 81: The amount of a Pell Grant that a scholarship athlete could keep was gradually increased until, in 1995, an athlete was permitted to keep both a full athletic scholarship at the NCAA’s old GIA cap and a Pell Grant up to a maximum total equal to COA. Finally, in 2004, the NCAA rule changed again to allow students to receive a full athletic scholarship and to keep the full amount of the Pell Grant, even if the total exceeded COA. Thus, since 2004, some college athletes have received total grants that exceed COA.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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17	65.	Para. 82: In 2015, the NCAA’s cap on an athletic scholarship was raised by several thousand dollars to COA, and no further change was made in the rules with respect to Pell Grants. Thus, an extremely important change in the compensation of athletes since the decision in O’Bannon is that, beginning in 2015, all students who receive both a full COA athletic scholarship and any amount in a Pell Grant have total grants in excess of COA. The proportion of athletes who receive both a COA scholarship and a Pell Grant is not publicly available for all of the conferences and schools in Division I, but	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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1		publicly available information shows that this proportion is substantial and, in some cases, is half or more of the students who play football or basketball at FBS schools.		
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5	66.	Para. 83: For example, a financial report to the NCAA by Ohio State University that became public shows that 47 percent of Ohio State football players received Pell Grants in 2016-17, accounting for nearly half of all Pell Grants to male athletes at the school, and that 64 percent of the football players who received a Pell Grant also received a full COA athletic scholarship. ⁸⁵ Nearly one-fourth of Ohio State’s men’s basketball team and more than half of its women’s basketball team received Pell Grants. ⁸⁶	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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16	67.	Fn. 85: Sheridan Hendrix and Ashley Nelson, “Student-Athletes Look to Pell Grants to Subsidize Education,” The Lantern, May 15, 2018, at https://www.thelantern.com/2018/05/student-athletes-look-to-pell-grants-to-subsidize-education/ .	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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24	68.	Fn. 86: <i>Ibid.</i>	Excluded pursuant to Order Resolving Motions to Exclude “New”	N/A (already ruled upon)
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4	69.	Excluded pur-	N/A (already
5	Para. 84: Data acquired via freedom of information	suant to Order	ruled upon)
6	requests from Alabama colleges in 2014 show that	Resolving Mo-	
7	112 Auburn athletes (no breakdown by sport) re-	tions to Ex-	
8	ceived \$539,327 (over \$4,800 per athlete) from Pell	clude "New"	
9	Grants, and that 131 athletes at the University of	Expert Opin-	
10	Alabama, 67 of whom were football players, re-	ions (Dkt. No.	
11	ceived Pell Grants totaling \$566,495 (over \$4,300	968)	
12	per athlete). ⁸⁷ Six men's basketball players and ten		
13	women's basketball players at Alabama also re-		
14	ceived Pell Grants averaging \$5,382 and \$5,190, re-		
15	spectively. ⁸⁸ At Troy, 200 athletes received		
16	\$849,143 (over \$4,200 per athlete), of which 106		
17	were football players (average \$4,170), nine were		
18	men's basketball players (average \$4,872), and 13		
19	were women's basketball players (average		
20	\$4,902). ⁸⁹ Of the seven DI schools in Alabama that		
21	reported the number of Pell Grant recipients for		
22	each sport, the average number of football players		
23	receiving Pell Grants was 70 per college, which is		
24	well over half of the average number of players on		
25	a college football team. ⁹⁰ By comparison, in 2014		
26	(the year of the survey), 37 percent of all college		
27	undergraduates received Pell Grants. ⁹¹		
28	70.	Excluded pur-	N/A (already
	Fn. 87: Jon Solomon, "Pell Grants for Players: Di-	suant to Order	ruled upon)
	vision I Athletes in Alabama Got \$4.8 million in		

1		Need-Based Aid.” AL.com, April 10, 2014, at	Resolving Mo-	
2		http://www.al.com/sports/index.ssf/2014/04/pell_	tions to Ex-	
3		grants_for_players_divisi.html .	clude “New”	
4			Expert Opin-	
5			ions (Dkt. No.	
6			968)	
7	71.	Fn. 88: Jon Solomon, “Pell Grants for Players:	Excluded pur-	N/A (already
8		Crimson Tide Athletes’ Need-Based Aid by Sport,”	suant to Order	ruled upon)
9		AL.com, April 10, 2014, at	Resolving Mo-	
10		https://www.al.com/sports/in-	tions to Ex-	
11		dex.ssf/2014/04/pell_grants_for_players_ala-	clude “New”	
12		bam.html .	Expert Opin-	
13			ions (Dkt. No.	
14			968)	
15	72.	Fn. 89: Jon Solomon, “Pell Grants for Players:	Excluded pur-	N/A (already
16		Troy Athletes’ Need-Based Aid by Sport,”	suant to Order	ruled upon)
17		AL.com, April 10, 2014, at	Resolving Mo-	
18		https://www.al.com/sports/in-	tions to Ex-	
19		dex.ssf/2014/04/pell_grants_for_players_ala-	clude “New”	
20		bam_1.html .	Expert Opin-	
21			ions (Dkt. No.	
22			968)	
23	73.	Fn. 90: The NCAA does not restrict the number of	Excluded pur-	N/A (already
24		players on a team, but some conferences impose	suant to Order	ruled upon)
25		such limits. Among the eight Alabama DI colleges,	Resolving Mo-	
26		football rosters vary between 90 and 130.	tions to Ex-	
27			clude “New”	
28			Expert Opin-	

1			ions (Dkt. No.
2			968)
3	74.	Fn. 91: College Board, “Undergraduate Enrollment and Percentage Receiving Pell Grants Over Time,” Trends in Higher Education, at https://trends.collegeboard.org/student-aid/figures-tables/undergraduate-enrollment-and-percentage-receiving-pell-grants-over-time .	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)
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11	75.	Para. 88: A shopping spree for participating in a bowl game or a basketball tournament has nothing to do with the cost of attending school and cannot reasonably be called anything other than pay for play. Likewise, giving money to students to buy insurance against an injury that would jeopardize a professional career, to replace personal items that are lost in a disaster, to buy new clothes to attend a sports award, or to attend the funeral of a friend or relative, while humane, has nothing to do with educational expenses. A bonus for winning an Olympic gold medal cannot plausibly be anything other than pay for performance.	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))
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24	76.	Para. 89: All students who receive a full COA athletic scholarship and money from SAF, benefits that are incidental to participation, third-party athletics-related awards, and/or a Pell Grant receive far more than one penny in excess of their educational	Disclosure of inadmissible facts relied upon by expert
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	<p>expenses. The net effect of the new COA cap on athletic scholarships is that many class members now receive payments that go so far above their costs of attending college (including personal living expenditures) that they are able to help to support their parents and siblings. As the former Athletic Director at Kansas State, John Currie, was reported to have said, compensation is now sufficiently great that “some of our student-athletes walk away at the end of the semester and they’ve saved money.”⁹⁴</p>	<p>(FRE 703; FRE 802)</p>	
<p>77.</p>	<p>Para. 91: The distinguishing characteristic of college athletes is not that they are amateurs (which they are not according to any objective, non-tautological definition of the term), but that they are full-time college students who play for their schools. Plaintiffs in this litigation do not challenge the NCAA’s rules and policies that assure that athletes actually are students and that improve the likelihood that they will graduate. In this regard, Big 12 Commissioner Bob Bowlsby stated to the Knight Commission on Intercollegiate Athletics his views about college athletes:⁹⁵</p> <p>“I don’t think they’re amateurs... [T]he professionals are being paid and amateurs are doing it for the love of the game. And both of those are different than the college athletic environment. We typically categorize athletes as professionals or amateurs,</p>	<p>Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i>, 523 F.3d 1051, 1058–60 (9th Cir. 2008))</p>	<p>Sustained / Overruled</p>

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8	78.	Para. 92: Mr. Bowlsby’s three-part division of athletes is consistent with the facts. (1) An amateur is an athlete who competes without compensation and does not have to meet academic standards. (2) A professional is an athlete who is compensated and also has no academic requirements. (3) A college athlete is a student in the first five or six years of college who is making reasonable progress towards a degree, who may or may not be compensated (some are walk-ons), and hence who may or may not be a professional. This three-way division is consistent with the standard definitions of amateur and professional, and with the relief plaintiffs seek. Mr. Bowlsby’s trichotomy does not require maintaining the current compensation cap but does require ensuring that college athletes remain college students.	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))
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24	79.	Para. 94: One problem with defendants’ argument about procompetitive justifications is that it is based on the false premise that NCAA rules guarantee that college athletes receive no compensation	Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys.,</i>
25			Sustained / Overruled
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1		for participation in athletics other than for their education-related costs. As documented in this testimony, since 2015 many scholarship athletes have received compensation that substantially exceeds COA. As a result, the defendants' practices since 2015 do not accord with the NCAA's definition of amateurism.	<i>Inc.</i> , 523 F.3d 1051, 1058–60 (9th Cir. 2008))	
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8	80.	Fn. 98: Heckman Reply, pp. 11-12. Professor Heckman assumes that the only alternative to the status quo is a system in which college athletes are not students without offering an explanation for why this outcome would occur. Because the Noll Declaration assumes that the NCAA's rules and policies requiring college athletes to be students in good standing will remain in place, criticisms of it that are based on the premise that college sports will be separated from the rest of the university and college athletes stop being students are irrelevant.	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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19	81.	Fn. 99: <i>Ibid.</i> , p. 28. Professor Heckman's criticism is that the Noll Declaration analyzes only the effects of small changes in compensation, but concludes that large changes also would have no adverse effect on demand. (Professor Heckman does not define "small" and "large" nor does he explain why conferences, left to make their own rules, would adopt a system that led to "large" changes.) Professor Heckman's criticism is not relevant be-	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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	<p>cause defendants assert that small amounts of compensation in excess of COA would cause college athletes to be professionals and, in so doing, reduce demand. His criticism also is misplaced because, according to my understanding of rule of reason antitrust cases, the defendants bear the burden of proof that their anticompetitive conduct has a reasonable business justification, which here requires showing that an increase in compensation would negatively affect demand. The task of the Noll Declaration was to show that the defendants have not produced any economic evidence to support their assertion that the demand for college sports would be adversely affected if college athletes were paid more, regardless of whether the amount were small or large.</p>		
82.	<p>Para. 105: Statements and documents from interested parties sometimes provide information that can be useful in undertaking an economic analysis of alleged anticompetitive conduct. But statements by NCAA and college officials that state an opinion about the economic effects of anticompetitive conduct without any supporting analysis or facts are not a valid substitute for economic analysis as the basis for an economist to form scientific, professional opinions. With respect to the effect of compensation of college athletes on the popularity of college sports, such an analysis would examine</p>	<p>Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i>, 523 F.3d 1051, 1058–60 (9th Cir. 2008))</p>	<p>Sustained / Overruled</p>

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	<p>whether a measure of popularity (attendance, viewers, revenue) was affected by changes in compensation for participating in the sport, including the effects of episodes in which an athlete received compensation exceeding COA. Neither defendants’ economic experts nor fact witnesses have undertaken such a study, and defendants’ claim that compensation above COA by even one penny causes a decline in the popularity of college sports has no basis in either theoretical or empirical economics.</p>		
<p>83.</p>	<p>Para. 106: The opinions expressed by defendants’ fact witnesses are not a reliable basis for economic conclusions because they are based on incorrect factual premises: that college athletes currently are not paid to participate in athletics (they are – the NCAA lost that battle in 1957), and that compensation of college athletes is currently capped at COA (it isn’t – the Not One Penny standard currently is violated for many college athletes). The statements by defendants’ fact witnesses also conflate an athlete’s status as a student with an athlete’s status as an amateur. The claim that college sports would be less popular if college athletes were not students (like minor leagues, employing athletes whose only connection to the college is the team name) is not disputed. The issue in dispute is whether athletes who are genuine students at the college for which they play also must have their pay regulated by an</p>	<p>Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i>, 523 F.3d 1051, 1058–60 (9th Cir. 2008))</p>	<p>Sustained / Overruled</p>

1		industry-wide cartel manager, the NCAA, to main-		
2		tain the popularity of college sports.		
3	84.	Para. 112: To my knowledge, only one academic	Disclosure of	Sustained /
4		study undertakes a statistical test of whether the	inadmissible	Overruled
5		compensation system that was adopted in 2015 af-	facts relied	
6		fected the popularity of sports. ¹⁰⁹ This study exam-	upon by expert	
7		ines attendance and television ratings of football	(FRE 703; FRE	
8		games involving Power Five schools, and includes	802)	
9		an explanatory variable that is zero for all schools in		
10		2014 and equals the additional stipend that was paid		
11		by each school in 2015. Thus, the regressions test		
12		not only whether the move to COA affected the de-		
13		mand for big-time football, but also whether the		
14		amount of compensation had an effect. The results		
15		were negative: football attendance and television		
16		ratings among Power Five schools was unaffected.		
17	85.	Fn. 109: Thomas A. Baker III, Marc Edelman, and	Disclosure of	Sustained /
18		Nicholas M. Watanabe, "Debunking the NCAA's	inadmissible	Overruled
19		Myth that Amateurism Conforms with Antitrust	facts relied	
20		Law: A Legal and Statistical Analysis," <i>Tennessee</i>	upon by expert	
21		<i>Law Review</i> (forthcoming 2018), at https://pa-	(FRE 703; FRE	
22		pers.ssrn.com/sol3/papers.cfm?ab-	802)	
23		stract_id=3072641 .		
24	86.	Para. 113: Exhibit 168(c) shows revenues for FBS	Disclosure of	Sustained /
25		conferences from 2009-10 to 2015-16, plus frag-	inadmissible	Overruled
26		mentary data for 2016-17. These revenues mostly	facts relied	
27		come from television rights and bowl games, with	upon by expert	
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	<p>payments from the latter also mainly from television. Exhibit 168(c) can be used to infer the effects of several major events during the past few years. In general, total FBS revenues have grown throughout the period. The only exception is that total revenue was essentially flat between 2012-13 and 2013-14, reflecting the effect of the dissolution of the old Big East Conference, the sixth power conference before its demise and replacement in FBS by the American Athletic Conference. (Some old Big East schools joined a new Big East, which is a formidable power in men’s basketball but does not play FBS football.)</p>	<p>(FRE 703; FRE 802)</p>	
<p>87.</p>	<p>Para. 114: The effect, if any, of moving to a system of full COA scholarships plus additional compensation on total conference revenues would have occurred in 2014-15 and/or 2015-16. The district court’s <i>O’Bannon</i> decision and the announcement that the NCAA Board had approved allowing the Power Five conferences to pay full COA scholarships both occurred before the start of the 2014-15 football season. If the popularity of college sports was reduced by these announcements, revenues would have been adversely affected before implementation of the change, but revenues of FBS conferences increased by \$530 million (30 percent) in 2014-15.</p>	<p>Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)</p> <p>Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i>, 523 F.3d 1051, 1058–60 (9th Cir. 2008))</p>	<p>Sustained / Overruled</p> <p>Sustained / Overruled</p>

1	88.	Para. 115: When the system of full COA scholarships plus additional benefits was implemented in	Disclosure of	Sustained /
2		2015-16, FBS conference revenues rose another	inadmissible	Overruled
3		\$250 million (11 percent), including an increase	facts relied	
4		of nearly \$45 million (24 percent) among schools	upon by expert	
5		in FBS conferences other than the Power Five.	(FRE 703; FRE	
6		Among the five FBS conferences for which data are	802)	
7		available for 2016-17, revenues increased again for	Legal conclu-	Sustained /
8		four of the five FBS conferences and for the total	sion (FRE 702;	Overruled
9		for all five. Thus, even if some fans oppose paying	<i>Nationwide</i>	
10		college athletes more than COA, these data do not	<i>Transp. Fin. v.</i>	
11		reveal that their opposition has had a negative ef-	<i>Cass Info. Sys.,</i>	
12		fect on revenues.	<i>Inc.</i> , 523 F.3d	
13			1051, 1058–60	
14			(9th Cir. 2008))	
15				
16	89.	Para. 116: The main source of increased revenue	Disclosure of	Sustained /
17		for college sports is from television. All Power Five	inadmissible	Overruled
18		conferences have experienced rapid increases in	facts relied	
19		television revenues since 2015, when all Power	upon by expert	
20		Five schools adopted COA scholarships and, as a	(FRE 703; FRE	
21		result, many of their football and basketball players	802)	
22		began to be compensated substantially in excess of	Legal conclu-	Sustained /
23		COA. In 2017-18, each Power Five conference dis-	sion (FRE 702;	Overruled
24		tributed over \$25 million to each of its members,	<i>Nationwide</i>	
25		the Big Ten disbursed over \$50 million to its mem-	<i>Transp. Fin. v.</i>	
26		bers, ¹¹⁰ and three of the four other Power Five con-	<i>Cass Info. Sys.,</i>	
27		ferences expect to reach \$40 million per member	<i>Inc.</i> , 523 F.3d	
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1		soon. ¹¹¹ The increased revenue from television indicates that the popularity of college sports on television – mainly football and basketball – has not suffered from increasing the compensation of college athletes above COA.	1051, 1058–60 (9th Cir. 2008))	
2	90.	Fn. 110: Angelique S. Chengelis, “Michigan Athletics Projects \$2.5 million Surplus,” <i>Detroit News</i> , June 21, 2018, at https://www.detroit-news.com/story/sports/college/university-michigan/wolverines/2018/06/21/university-michigan-athletics-projects-2-5-million-budget-surplus/723113002/ .	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
3	91.	Fn. 111: The facts in this paragraph and the next paragraph are taken from the following: Jennifer Fierro, “In Horseshoe Bay, Big 12 Head Bob Bowsby Says Conference Is Alive and Well,” <i>DailyTrib.com</i> , May 10, 2017, at http://www.dailytrib.com/2017/05/10/speaking-horseshoe-bay-big-12-head-bob-bowsby-says-conference-alive-well/ ; Gil Lebreton, “Eight More Years of Annual Big Checks Keeping Oklahoma in Big 12,” <i>Star Telegram</i> , May 9, 2017, at https://www.star-telegram.com/sports/spt-columns-blogs/gil-lebreton/article149620194.html ; Brent Schrottenboer, “Panic in the Pac-12 as Conference Quickly Falls Behind Rivals,” <i>USA Today</i> , June 12, 2016, at https://www.usatoday.com/story/sports/2018/06/12/panic-pac-12-	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled

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	<p>conference-quickly-falls-behind-rivals/686880002/; and Chuck Carlton, “Here’s How Much Money Each Big 12 School Will Receive after Conferences Brings in Record \$364 Million,” <i>Dallas News</i>, June 1, 2018, at https://sportsday.dallasnews.com/college-sports/collegesports/2018/06/01/big-12-announces-record-revenue-of365-million-spring-meetings-close.</p>		
<p>92.</p>	<p>Para. 118: In 2019, the only Power Five conference without a dedicated TV network will be the Big 12, which sells television rights to some games directly to networks and allows each member school to sell rights to other games. Despite not controlling all TV rights and not having its own network, the Big 12 distributed \$36.5 million to each of its members in 2017-18, and expects to go over \$40 million in the near future. The Big 12’s policy of leaving some TV rights to its members enabled the University of Texas to create the Longhorn Network, which is dedicated to televising games and other programming involving the University of Texas. The Longhorn Network generates another \$20 million per year. Notwithstanding the concern expressed by Dr. Fenves about paying athletes more than COA, Texas seems to be doing quite well even though most of its scholarship basketball players are paid substantially more than COA.</p>	<p>Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)</p>	<p>Sustained / Overruled</p>

1	93.	Para. 120: Exhibit 168(d) contains the most recent data from the NCAA for “generated revenue,” or revenue directly attributed to the athletic department from such things as tickets, concessions, licensing, and broadcasting, and does not include allocations from a school’s central administration or student government. These data separate power conferences (“autonomy”) from the rest of FBS and also provide data on FCS schools and D-I schools that do not play football. For all groups, median generated revenues were lower in 2013-14 (before the <i>O’Bannon</i> decision) than in 2015-16 (when many college athletes began to receive compensation in excess of COA). These data are not consistent with the hypothesis that revenues for any category of Division I were adversely affected by the fact that many athletes at FBS schools, and most football and basketball players at some major powers, began to be paid more than COA.	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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20	94.	Para. 121: Still another information source that reports generated revenues for each sport is the data from the U.S. Department of Education that are collected in connection with the Equity in Athletics Disclosure Act (EADA). EADA revenues are similar to but usually slightly smaller than total revenues calculated by the NCAA. ¹¹⁴ EADA data are available for each sport, and so can be used to test whether the sports at issue in this litigation (football	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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1		and basketball) were adversely affected by the new		
2		compensation limits. Exhibit 168(e) shows the rev-		
3		enue from football and men's and women's basket-		
4		ball for FBS schools and the rest of Division I from		
5		2009-10 through 2016-17. These data show that		
6		neither the announcement of a change in NCAA		
7		compensation policy in 2014 nor its implementa-		
8		tion in 2015 had a negative effect on revenues from		
9		these sports.		
10	95.	Para. 124: Another method for testing the effect of	Excluded pur-	N/A (already
11		compensation above COA is to examine the effects	suant to Order	ruled upon)
12		on the popularity of sports when a college commits	Regarding Mo-	
13		an infraction of NCAA rules by providing excess	tions In Limine	
14		benefits to athletes. These violations provide an op-	(Dkt. No. 965)	
15		portunity to evaluate defendants' claims about the		
16		consequences of fielding a team that includes a		
17		player who is a professional according to the		
18		NCAA's rules.		
19	96.	Para. 125: To develop an empirical test of whether	Excluded pur-	N/A (already
20		the negative externality exists and is important re-	suant to Order	ruled upon)
21		quires an understanding of the timing and duration	Regarding Mo-	
22		of the negative externality of paying college ath-	tions In Limine	
23		letes more than COA. The explanation of the nega-	(Dkt. No. 965)	
24		tive externality in the <i>Elzinga Report</i> implies the		
25		following sequence of effects.		
26	97.	Para. 126: For the school that committed the in-	Excluded pur-	N/A (already
27		fraction, the benefit arises from an improvement in	suant to Order	ruled upon)
28		team quality. Presumably the college that violates		

1		the compensation rules receives this benefit when a	Regarding Mo-	
2		tainted “professional” begins playing. A negative	tions In Limine	
3		effect arising from attenuation of the connection of	(Dkt. No. 965)	
4		a school’s fans to its team (Professor Heckman re-		
5		fers to this as an example of the “economics of		
6		identity” ¹¹⁷) presumably cannot occur until fans		
7		know that the college player received impermissi-		
8		ble benefits, usually after this player begins to play		
9		at the school (in some cases much later). ¹¹⁸		
10	98.	Fn. 117: <i>Heckman Reply</i> , p. 19.	Excluded pur-	N/A (already
11			suant to Order	ruled upon)
12			Regarding Mo-	
13			tions In Limine	
14			(Dkt. No. 965)	
15	99.	Fn. 118: For example, excess payments to USC	Excluded pur-	N/A (already
16		Heisman Trophy winner Reggie Bush were first	suant to Order	ruled upon)
17		mentioned in the press in April 2006, but the ensu-	Regarding Mo-	
18		ing investigation lasted for several years and pun-	tions In Limine	
19		ishment was not imposed until June 2010. Bush	(Dkt. No. 965)	
20		moved on to the NFL from USC after the 2006 sea-		
21		son. See Neil Waechter, “Not Just O. J. Mayo –		
22		USC Has a History of Controversy,” <i>Bleacher Re-</i>		
23		<i>port</i> , May 18, 2008, at https://bleacherre-		
24		port.com/articles/24039-not-just-oj-mayo-		
25		usc-has-		
26		a-history-of-controversy , and “NCAA Delivers		
27		Postseason Football Ban,” <i>ESPN</i> , June 11, 2010, at		
28		http://www.espn.com/los-ange-		
		les/ncf/news/story?id=5272615 .		

1 2 3 4 5 6 7 8 9 10 11	100.	Para. 127: For other schools, the alleged negative externality, if it exists, presumably occurs when the infraction becomes public information, although this date is ambiguous because the possibility of a violation often is announced long before the violation is proved and punishment is rendered. Thus retrospectively, one can detect these effects by examining indicators of the popularity of both the school committing the violation and other teams through the evolution of the career of the player who received impermissible compensation.	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	101.	Para. 128: To illustrate how such a test could be performed, consider a highly publicized recent example of a violation of the NCAA's amateurism rules. Heisman Trophy winner Johnny Manziel, the Texas A&M quarterback, was investigated for signing autographs that were then sold. Although the NCAA concluded that the evidence was insufficient to prove that Manziel received an improper benefit for his autographs, he was nonetheless required to sit out the first half of his team's first game in 2013 as punishment for violating the NCAA's rules by being involved in selling his autograph. ¹¹⁹ The immediate effect of Manziel's case on Texas A&M (asserted to be positive) would be revealed by the popularity of games involving Manziel in the 2012 season, but this positive effect would be diminished in 2013 once the violation and punishment became	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)

1		publicly known. The alleged negative effects on		
2		other schools would be revealed in the popularity of		
3		their games in 2013 and subsequent seasons (2014-		
4		15 and beyond).		
5	102.	Fn. 119: The Manziel story is described in Claire	Excluded pur-	N/A (already
6		St. Amant, "Johnny Manziel Accused of Selling	suant to Order	ruled upon)
7		Autographs for \$10,000 in Improper Scheme," <i>Cul-</i>	Regarding Mo-	
8		<i>ture Map Dallas</i> , August 5, 2013. at http://dal-	tions In Limine	
9		las.culturemap.com/news/sports/08-05-13-johnny-	(Dkt. No. 965)	
10		manziel-selling-autographs-ncaa-investigation/ ;		
11		George Schroeder, "Analysis: The Johnny Manziel		
12		Autograph Case," <i>USA Today</i> , August 16, 2013, at		
13		http://www.usatoday.com/story/		
14		sports/ncaaf/sec/2013/08/15/johnny-manziel-texas-		
15		am-ncaa-investigation-autographs-for-		
16		money/2662257/ ; and Patrick Rishe, "Johnny Man-		
17		ziel's Half-Game Suspension Reflects Half-Witted		
18		NCAA Justice," <i>Forbes</i> , August 28, 2013, at		
19		http://www.forbes.com/sites		
20		/prishe/2013/08/28/johnny-manziels-half-game-		
21		suspension-reflects-half-witted-ncaa-unbalanced-		
22		justice/ .		
23	103.	Para. 129: ESPN televised the game in which Man-	Excluded pur-	N/A (already
24		ziel served his one-half-game suspension. The quar-	suant to Order	ruled upon)
25		ter-hour Nielsen audience ratings rose in the second	Regarding Mo-	
26		half after Manziel entered, peaked in the third quar-	tions In Limine	
27		ter as the game changed from close (28-21 at the	(Dkt. No. 965)	
28		half) to an easy victory for Texas A&M (52-28),		

1		and finished 61 percent above the average rating for		
2		ESPN's early Saturday games in 2012. ¹²⁰ Manziel's		
3		second game against top-ranked Alabama was tele-		
4		vised by CBS. The rating for this game was the		
5		highest of any college football game on CBS in 23		
6		years, up by 200 percent over the opening SEC		
7		game on CBS, Alabama versus Arkansas. ¹²¹ Obvi-		
8		ously, playing Johnny Manziel did not diminish the		
9		popularity of the games of his own team, implying		
10		that the negative effect of fielding a professional		
11		athlete on the popularity of Texas A&M football ei-		
12		ther did not exist or was swamped by all of the		
13		other factors that determine the popularity		
14		of a specific game involving specific teams.		
15	104.	Fn. 120: Rachel Bachman, "How Johnny Football	Excluded pur-	N/A (already
16		Moved the TV Needle," <i>Wall Street Journal</i> Sep-	suant to Order	ruled upon)
17		tember 13, 2013, at http://online.wsj.com/arti-	Regarding Mo-	
18		cle/SB100014241278873238465045790715331	tions In Limine	
19		62496244.html .	(Dkt. No. 965)	
20	105.	Fn. 121: Chip Patterson, "CBS: Alabama-Texas	Excluded pur-	N/A (already
21		A&M TV Ratings Highest in 23 Years,"	suant to Order	ruled upon)
22		CBSSports.com, September 15, 2013, at	Regarding Mo-	
23		http://www.cbssports.com/collegefootball/eye-on-	tions In Limine	
24		college-football/23663035/cbs-alabamatexas-am-	(Dkt. No. 965)	
25		tv-ratings-highest-in-23-years .		
26	106.	Para. 130: Professor Elzinga's hypothesized	Excluded pur-	N/A (already
27		"downward" spiral at other schools should be most	suant to Order	ruled upon)
28		apparent in the SEC, the conference in which Texas		

1		A&M is a member and plays eight of its twelve	Regarding Mo-	
2		regular season games. Depending on the timing of	tions In Limine	
3		the effect, the demand for SEC games should have	(Dkt. No. 965)	
4		been reduced in the year immediately following the		
5		scandal (2013-14), the year thereafter (2014-15), or		
6		both. But the data reveal no such negative effect. In		
7		2013-14, SEC conference revenues were up by		
8		more than \$40 million, and in the next fiscal year		
9		(2014-15), SEC revenue grew by another \$200 mil-		
10		lion (Exhibit 168(c) (Pls.' Trial Ex. 137)). Again, if		
11		the negative externality exists, it must be suffi-		
12		ciently small that other factors affecting the popu-		
13		larity of SEC football overwhelm the effect of		
14		Manziel's rules violation.		
15	107.	Para. 131: An example of a major case involving	Excluded pur-	N/A (already
16		unauthorized benefits occurred at Purdue, which	suant to Order	ruled upon)
17		was fined \$380,000 for, among other things, giving	Regarding Mo-	
18		players improper benefits. ¹²² One of the university	tions In Limine	
19		officials who was interviewed by Professor Elzinga	(Dkt. No. 965)	
20		was Morgan Burke, Purdue's former Director of		
21		Athletics. Professor Elzinga did not ask Mr. Burke		
22		about the effect of this violation and punishment on		
23		the demand for basketball at Purdue or its Big Ten		
24		rivals. Defendants' economic experts did not exam-		
25		ine any data about the effect of this case on the pop-		
26		ularity of men's basketball at Purdue and other Big		
27		Ten colleges to ascertain whether the facts are con-		
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1		sistent with the assertion that paying college ath-		
2		letes more than NCAA rules allow adversely affects		
3		the demand for college sports.		
4	108.	Fn. 122: “Purdue Hoops on Probation,” CBS	Excluded pur-	N/A (already
5		News, May 11, 1999, at	suant to Order	ruled upon)
6		http://www.cbsnews.com/news/purdue-hoops-on-	Regarding Mo-	
7		probation/ .	tions In Limine	
8			(Dkt. No. 965)	
9	109.	Para. 132: Major infractions of NCAA compensa-	Excluded pur-	N/A (already
10		tion rules are potentially important in this matter	suant to Order	ruled upon)
11		because they provide an opportunity that defend-	Resolving Mo-	
12		ants’ economic experts did not pursue for testing	tions to Ex-	
13		and measuring defendants’ alleged negative effect	clude “New”	
14		on the demand for college sports of playing profes-	Expert Opin-	
15		sionals (as the NCAA defines them) in college	ions (Dkt. No.	
16		games. Two relevant facts about Division I sports	968)	
17		lead to the conclusion that the alleged negative ex-		
18		ternality from fielding professionals does not exist		
19		or is too small to be detectable. One fact is that		
20		Level I and Level II violations of NCAA rules by		
21		Division I schools regarding compensation of ath-		
22		letes (either impermissible payments to recruits or		
23		excessive benefits to enrolled athletes) are not rare		
24		(a few per year). ¹²³ . . . Thus, repeated major infrac-		
25		tions in which fines and other penalties are imposed		
26		on colleges for excess benefits have not under-		
27		mined the popularity of college sports. The most		
28		plausible inference to draw from these data is that		

1		the negative effect on demand of violating the		
2		NCAA's compensation rules either does not exist		
3		or, if it does, is economically unimportant.		
4	110.	Fn. 123: Major (Level I or Level II) infractions are	Excluded pur-	N/A (already
5		listed at https://web3.ncaa.org /lstdbi/search?	suant to Order	ruled upon)
6		types=major&q=. This list includes all major viola-	Resolving Mo-	
7		tions, not just violations associated with impermis-	tions to Ex-	
8		sible benefits, but the latter can be found by search-	clude "New"	
9		ing the database using such terns as "benefits" and	Expert Opin-	
10		"financial aid." During academic year 2017, among	ions (Dkt. No.	
11		the major violations are improper benefits to foot-	968)	
12		ball players at Mississippi and basketball players at		
13		South Florida. Several impermissible benefits cases		
14		also occurred involving other sports at other D-I		
15		colleges.		
16	111.	Para. 133: Defendants assert that the current re-	Legal conclu-	Sustained /
17		strictions on compensation of college athletes en-	sion (FRE 702;	Overruled
18		hance the integration of college athletes into cam-	<i>Nationwide</i>	
19		pus life. In this regard defendants offer two argu-	<i>Transp. Fin. v.</i>	
20		ments. ¹²⁴ First, if student-athletes were paid more	<i>Cass Info. Sys.,</i>	
21		than they currently are, they would likely devote	<i>Inc.</i> , 523 F.3d	
22		more effort to and spend more time on their sports"	1051, 1058–60	
23		and less time on academics and college life. Sec-	(9th Cir. 2008))	
24		ond, defendants make reference to "the potential		
25		wedge paying student-athletes would create be-		
26		tween those students and the rest of the campus		
27		community." Neither of these claims is supported		
28		by economic evidence.		

1	112.	Para. 135: By comparison, defendants' assertions about the integration of athletes into campus life amount to the claim that colleges and students cannot be trusted to reach an agreement that is in their own mutual best interests. That is, colleges and students allegedly would harm themselves by entering into a compensation agreement that pays college athletes more than the rules allow. Here, paying athletes more than NCAA rules allow is alleged to have two adverse effects. First, campus life is made less pleasant because a wedge allegedly is driven between its athletes and other members of the campus community (other students, alumni, faculty, etc.). Second, the welfare of college athletes is reduced because the athletes' academic performance and connections to the campus community are undermined.	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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18	113.	Para. 136: In this hypothetical world of irrational colleges and athletes, the NCAA's rules governing compensation of athletes are paternalistic – to stop colleges and athletes from harming themselves. The premise of this argument is that competition itself is the problem – in a competitive market, colleges and their athletes allegedly will adopt mutually destructive compensation agreements, and the NCAA is doing college athletes a favor by adopting rules that transfer income from them to colleges by denying them access to a competitive market.	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	114.	Para. 140: First, a condition of receiving compensation as a college athlete is that a student must remain in good academic standing, so one could make precisely the same theoretical argument about incentives with respect to academic performance. That is, if compensation for class members increases, each athlete would have a greater incentive to remain academically eligible for athletic competition. Since 2015, athletic scholarships in Power Five conferences and in many other Division I schools cannot be withdrawn for reasons of athletic performance. ¹²⁸ If a class member's position on a team is assured because the student is an excellent athlete or has a guaranteed multi-year athletic scholarship, the only plausible ways that a scholarship can be lost is by failing academically or engaging in antisocial behavior, in which case the primary incentive from an increase in compensation of the class member is to increase academic effort and to improve personal behavior.	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
21 22 23 24 25 26 27 28	115.	Fn. 128: Cancellation of scholarships for reasons related to performance is still a problem at some schools. A recent example occurred at North Carolina Central, not exactly an athletic powerhouse, when, despite the school's best season in several years, a new coach cut several scholarship athletes from the team, including some who were near graduation. Steven J. Gaither, "NCCU Women's Hoops	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)

1		Cuts Nine Players, Including Scholarship Players,”		
2		HBCU Gameday, March 26, 2018, at		
3		https://hbcugameday.com/2018/03/26/nccu-wom-		
4		ens-hoops-cuts-nine-scholarship-players/amp/ .		
5		This action indicates that the commitment to the ac-		
6		ademic success of athletes by the NCCU athletics		
7		department is minimal.		
8	116.	Para. 142: As an empirical matter, the overall effect	Excluded pur-	N/A (already
9		on academic achievement of an increase in compen-	suant to Order	ruled upon)
10		sation of a class member is determined jointly by	Resolving Mo-	
11		all three factors: (1) the incentive to stay on a team;	tions to Ex-	
12		(2) the incentive to retain academic eligibility; and	clude “New”	
13		(3) the effect of higher income on the demand for	Expert Opin-	
14		higher education. Peer reviewed empirical research	ions (Dkt. No.	
15		shows that the combined effect of these three fac-	968)	
16		tors is that greater compensation of class members		
17		is likely to improve their academic performance.		
18	117.	Para. 144: Another important piece of economic	Excluded pur-	N/A (already
19		evidence is current trends in graduation rates	suant to Order	ruled upon)
20		among D-I athletes. An interesting natural experi-	Resolving Mo-	
21		ment occurred in 2015 when the NCAA cap on ath-	tions to Ex-	
22		letic scholarships was raised to COA, which caused	clude “New”	
23		the value of athletic scholarships to increase by	Expert Opin-	
24		\$2,000 to \$7,000 in cash payments at nearly all FBS	ions (Dkt. No.	
25		schools and many other D-I institutions. For many	968)	
26		class members, the 2015 changes caused their total		
27		compensation to rise substantially above COA. The		
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1		defendants' argument implies that such a substan-		
2		tial increase in cash compensation should have		
3		caused a substitution of effort towards athletics and		
4		away from academics, thereby causing graduation		
5		rates to fall. But in 2017, the graduation rate		
6		among Division I football, men's basketball and		
7		women's basketball players was higher than in		
8		2015, even though the graduation success rate in		
9		2015 was higher than in any previous year. ¹³²		
10	118.	Para. 146: The <i>Heckman Report</i> and the <i>Heckman</i>	Legal conclu-	Sustained /
11		<i>Reply</i> contain statistical analyses of, among other	sion (FRE 702;	Overruled
12		things, the graduation rates of athletes. Professor	<i>Nationwide</i>	
13		Heckman's regressions shed no light on whether	<i>Transp. Fin. v.</i>	
14		greater compensation of class members would af-	<i>Cass Info. Sys.,</i>	
15		fect their graduation rates. Hence Professor Heck-	<i>Inc.</i> , 523 F.3d	
16		man's regressions are irrelevant to assessing the va-	1051, 1058–60	
17		lidity of defendants' alleged procompetitive benefit	(9th Cir. 2008))	
18		of greater academic integration of college athletes.		
19	119.	Para. 147: Due to limitations of the available data,	Excluded pur-	N/A (already
20		Professor Heckman cannot measure the effect of	suant to Order	ruled upon)
21		the amount of compensation of FBS football and	Resolving Mo-	
22		Division I basketball athletes on academic success.	tions to Ex-	
23		Professor Heckman's data do not include the	clude "New"	
24		amount of financial aid that an athlete received	Expert Opin-	
25		while in college, which prevents him from testing	ions (Dkt. No.	
26		whether greater compensation affects graduation	968)	
27		rates. In addition, Professor Heckman's data are		
28		limited to the period in which the old GIA cap was		

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	<p>in place, so he cannot test whether graduation rates were affected by the change in NCAA compensation rules in 2015 that allowed students to receive cash stipends of several thousand dollars. The data also do not permit a test of whether partial scholarships that are awarded in sports other than football and basketball have a different effect on graduation rates than full scholarships. Finally, as Professor Heckman acknowledges,¹³⁴ available data do not enable him to know which sport an athlete played in college, so he infers whether an athlete is a football or basketball player from whether the athlete played either sport in high school, and for male athletes lumps both sports together. Thus, Professor Heckman’s regressions do not provide any insight into whether the amount of compensation that is received by an FBS football player or a Division I basketball affects that athlete’s academic achievement.</p>		
<p>120.</p>	<p>Para. 148: In summary, defendants have no evidence other than self-serving statements by NCAA and university officials that an increase in the value of athletic scholarships will reduce the academic performance of college athletes. Research on the effects of financial status on academic achievement shows that giving cash to low-income students improves their academic performance. Recent trends</p>	<p>Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i>, 523 F.3d 1051, 1058–60 (9th Cir. 2008))</p>	<p>Sustained / Overruled</p>

1		in graduation rates among college athletes demon-		
2		strate that academic success has improved substan-		
3		tially as compensation of college athletes has in-		
4		creased.		
5	121.	Para. 149: The defendants assert that “providing	Excluded pur-	N/A (already
6		student-athletes more than cost of attendance and	suant to Order	ruled upon)
7		allowable benefits would ‘distinguish’ them from	Resolving Mo-	
8		other students and potentially ‘create a wedge be-	tions to Ex-	
9		tween the student athletes and the regular student	clude “New”	
10		body, who are not receiving that type of compensa-	Expert Opin-	
11		tion.” ¹³⁵ This statement seems to be based on the	ions (Dkt. No.	
12		assumption that the “regular student body” receives	968)	
13		scholarships that are comparable to a full COA ath-		
14		letic scholarship. Unless this were the case, a full		
15		COA scholarship would, alone, “distinguish” an		
16		athlete from other students and “create a wedge”		
17		between athletes and other students “who are not		
18		receiving that type of compensation.” In fact, “reg-		
19		ular students” do not normally receive full COA		
20		scholarships, and the financial aid they do receive		
21		differs in many important ways from a full COA		
22		scholarship.		
23	122.	Fn. 135: <i>Defendants’ Summary Judgment Motion</i> ,	Excluded pur-	N/A (already
24		pp. 48-49, internal quotes from NCAA Vice Presi-	suant to Order	ruled upon)
25		dent Kevin Lennon.	Resolving Mo-	
26			tions to Ex-	
27			clude “New”	
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		Expert Opinions (Dkt. No. 968)	
123.	Para. 150: Need-based financial aid for “regular students” provides assistance up to the difference between COA and expected family contribution. ¹³⁶ While most college students receive some financial aid, few receive financial aid equal to COA because their expected family contributions are not zero.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
124.	Fn. 136: “EFC Calculator,” College Board, at https://bigfuture.collegeboard.org/pay-for-college/paying-your-share/expected-family-contribution-calculator .	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
125.	Para. 151: Moreover, financial aid for regular students is not just a grant like an athletic scholarship. The “net price” of college is COA less the sum of college tax benefits and grants that do not have to be repaid. ¹³⁷ The latter includes scholarship awards, but it also includes jobs paid from the federal work-study program for low-income students whose financial need exceeds the cap on Pell Grants. ¹³⁸ That is, low-income students who are not athletes often	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)

1		receive some of the financial aid that does not have		
2		to be repaid in the form of a job.		
3	126.	Fn. 137: “Focus on Net Price, not Sticker Price,”	Excluded pur-	N/A (already
4		College Board, at https://bigfuture.collegeboard.org/pay-for-college/paying-your-share/focus-on-	suant to Order	ruled upon)
5		net-price-not-sticker-price.	Resolving Mo-	
6			tions to Ex-	
7			clude “New”	
8			Expert Opin-	
9			ions (Dkt. No.	
10			968)	
11	127.	Fn. 138: “Federal Work-Study Jobs Help Students	Excluded pur-	N/A (already
12		Earn Money to Pay for College or Career School,”	suant to Order	ruled upon)
13		Office of Federal Student Aid, at https://studentaid.ed.gov/sa/types/work-study .	Resolving Mo-	
14			tions to Ex-	
15			clude “New”	
16			Expert Opin-	
17			ions (Dkt. No.	
18			968)	
19	128.	Para. 152: Most students face a significant “net	Excluded pur-	N/A (already
20		price” of college. Some of the net price may be cov-	suant to Order	ruled upon)
21		ered by other types of financial aid, such as student	Resolving Mo-	
22		loans and other on-campus jobs. There also is no	tions to Ex-	
23		restriction on “regular students” that total financial	clude “New”	
24		aid from all sources be capped at COA. In particu-	Expert Opin-	
25		lar, students can and some do hold campus jobs that	ions (Dkt. No.	
26		bring their total payments to more than COA.	968)	
27	129.	Para. 153: Some of the “net price” is usually paid	Excluded pur-	N/A (already
28			suant to Order	ruled upon)

1		by a student's family. The greatest source of differences in financial status among college students is differences in the incomes and wealth of their families. Family income and wealth are the primary factors in determining expected family contribution, which in turn affects the amount of financial aid that a student can receive.	Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	
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8	130.	Para. 154: Finally, an important difference between athletes and "regular students" is that only the former are eligible for benefits from financial assistance programs that are available only to athletes. Defendants focus exclusively on athletic scholarships in excess of COA, but ignore that SAF and benefits incidental to participation also "distinguish" athletes from other students because the latter "are not receiving that type of compensation."	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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17	131.	Para. 155: Defendants' fact witnesses do not mention these other sources of differences in financial status among students, let alone explain why a scholarship that goes even one penny above COA is more important than the difference between a full COA scholarship and a typical need-based scholarship, or than other sources of differences in financial status among students that are worth more than one penny, including other benefits that are available only to athletes. Nor do they provide any specific evidence, not even an example, of circum-	Excluded pursuant to Order Resolving Motions to Exclude "New" Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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1		stances in which the earnings of professional athletes who remain on campus as enrolled students created a wedge between athletes and other members of the campus community.		
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5	132.	Para. 156: Defendants' economic experts assert that the value of athletic scholarships can affect integration into campus life, but they provide no evidence that student integration is affected by the amount of compensation of athletes. The <i>Elzinga Report</i> (pp. 38-43, 92-93) asserts that if the value of an athletic scholarship exceeded COA, athletes would not be integrated into campus life and others would have less interest in the school. Professor Elzinga's only evidence for this claim is unsupported assertions by NCAA, conference, and university officials that are broadly consistent with his opinion. None of these witnesses has a basis for these opinions in any systematic study of student integration.	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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20	133.	Para. 161: One example that is not consistent with the hypothesis in the <i>Heckman Reply</i> that the financial success of an athlete undermines their relationship with others in the academic community is the experience of golfer Michelle Wie, who graduated from Stanford in 2012. Ms. Wie played professional golf during her entire period of enrollment as a student at Stanford and, in 2009, after two years of college, had total winnings on the LPGA tour of	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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	<p>over \$900,000.¹⁴³ During her senior year, as her golf earnings topped \$2 million, Ms. Wie stated that she was not treated any differently than any other student on campus.¹⁴⁴ In another interview, Ms. Wie spoke warmly about being part of the campus community and characterized her time at Stanford as “the best 4½ years of my life.”¹⁴⁵</p>		
<p>134.</p>	<p>Para. 162: Another example is Katie Ledecky, a current rising junior at Stanford who was paid more than \$100,000 for her performance at the Olympics and who, at the conclusion of the women’s NCAA swimming season this spring, announced that for the rest of her time in college she would swim professionally, rather than for Stanford, while nevertheless remaining enrolled as a student. Ms. Ledecky’s decision to turn pro was supported by her Stanford coach, and, despite turning pro, she continued to work out with her Stanford teammates and to live with five other members of the swimming team.¹⁴⁶ Before the end of Stanford’s 2017-18 academic year, at her first pro swimming event, Ms. Ledecky broke a world record.¹⁴⁷ In June, Ms. Ledecky won two honors that are pertinent to assessing her integration into campus life: outstanding Academic All-American of the year in all of college sports from the College Sports Information Directors of America, and the Stanford Department of Athletics’ award for “the athlete who attains the</p>	<p>Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)</p>	<p>Sustained / Overruled</p>

1		highest standards of athletic performance, leadership and academic achievement.” ¹⁴⁸ Ms. Ledecy has a 3.99 grade point average.		
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4	135.	Fn. 146: Nick Zaccardi, “Katie Ledecy Turns Pro,” <i>NBC Sports</i> , March 26, 2018, at https://olympics.nbcports.com/2018/03/26/katie-ledecy-turns-pro/ .	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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10	136.	Fn. 147: “Katie Ledecy Shatters Own World Record in First Pro Event,” <i>USA Today</i> , May 17, 2018, at https://www.usatoday.com/story/sports/olympics/2018/05/17/katie-ledecy-pro-event-1500-meter-freestyle/618722002/ .	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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16	137.	Fn. 148: “Katie Ledecy Wins Stanford Athletics’ Al Masters Award,” <i>Stanford News</i> , June 17, 2018, at https://news.stanford.edu/the-dish/2018/06/17/katie-ledecy-wins-stanford-athletics-al-masters-award/ .	Disclosure of inadmissible facts relied upon by expert (FRE 703; FRE 802)	Sustained / Overruled
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22	138.	Para. 163: As successful as some students who are also professional athletes have been, their rewards are not as great as the compensation of many college coaches. That is, a much bigger source of income differences on many Division I campuses is the compensation of college football and basketball	Excluded pursuant to Order Resolving Motions to Exclude “New”	N/A (already ruled upon)
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1		coaches. If income inequality has a substantial effect on the integration of the constituencies of a college, then coaching salaries would be an extremely important factor undermining integration.	Expert Opinions (Dkt. No. 968)	
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3	139.	Para. 164: In 2017, the highest paid public employee in 31 states was a college football coach, and in eight states the highest paid public employee was a college basketball coach, with coaches often earning several times as much salary as any other university employee, including the president. ¹⁴⁹ Among the 39 coaches who are the highest paid state employees, eight earned more than \$5 million and 26 more earned more than \$2 million.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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14	140.	Fn. 149: “Who’s the Highest Paid Person in Your State?” <i>ESPN</i> , March 20, 2018, at http://www.espn.com/espn/feature/story/_/id/22454170/highest-paid-state-employees-include-ncaa-coaches-nick-saban-john-calipari-dabo-swinney-bill-self-bob-huggins .	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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22	141.	Para. 165: A plausible indicator of the absence of adequate integration of athletes into the campus community is the failure of a college to implement the NCAA’s academic integrity rules to the effect that athletes must be students in good standing who are making adequate progress towards the degree of their choice. In recent years, whether athletes are	Excluded pursuant to Order Resolving Motions to Exclude “New”	N/A (already ruled upon)
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1		free to pursue their academic interests or, in the extreme, are steered into easy courses (perhaps fake) to keep them academically eligible, has become an important issue at many colleges.	Expert Opinions (Dkt. No. 968)	
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3	142.	Para. 166: For example, Josh Rosen, the UCLA star quarterback in 2017 who was the 10 th pick in the 2018 NFL draft, stated that while he loved school (he was an economics major), “football really dents my ability to take some classes that I need. There are a bunch of classes that are offered only one time. There was a class this spring I had to take, but there was a conflict with spring football... Look, football and school just don’t go together... Trying to do both is like trying to do two full time jobs... Human beings don’t belong in school with our schedules. No one in their right mind should have a football player’s schedule, and go to school. It’s not that some players shouldn’t be in school; It’s just that universities should help them more—instead of finding ways to keep them eligible.” ¹⁵⁰	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
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22	143.	Fn. 150: Josh Hayes, “Josh Rosen Q&A: UCLA QB on Injuries, NCAA and Post-NFL Goal to ‘Own the World,’” Bleacher Report, August 8, 2017, at http://bleacherreport.com/articles/2722587-josh-rosen-qa-ucla-qb-on-injuries-ncaa-and-post-nfl-goal-to-own-the-world .	Excluded pursuant to Order Resolving Motions to Exclude “New”	N/A (already ruled upon)
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1		Expert Opin-	
2		ions (Dkt. No.	
3		968)	
4	144.	Excluded pur-	N/A (already
5	Para. 167: Rosen’s complaint is reflected in the nu-	suant to Order	ruled upon)
6	merous cases that have arisen in recent years of ac-	Regarding Mo-	
7	ademic misconduct by universities to keep athletes	tions In Limine	
8	academically eligible. Since August 2015 (when	(Dkt. No. 965)	
9	the new scholarship rules were implemented), the		
10	following universities have been put on NCAA pro-		
11	bation for engaging in academic misconduct in-		
12	volving Division I football and basketball players.		
13	These infractions include having people take exams		
14	and write papers for athletes, forging academic rec-		
15	ords, or steering athletes into fake courses. The		
16	schools involved are: California State at Northridge		
17	(men’s basketball ¹⁵¹), Georgia Southern (foot-		
18	ball ¹⁵²), Louisiana Lafayette (football ¹⁵³), Univer-		
19	sity of Mississippi (women’s basketball ¹⁵⁴ and foot-		
20	ball ¹⁵⁵), Notre Dame (football ¹⁵⁶), Pacific (men’s		
21	basketball ¹⁵⁷), Southeast Missouri State (men’s		
22	basketball ¹⁵⁸), Southern Methodist (men’s bas-		
23	ketball ¹⁵⁹), Southern Mississippi (men’s basket-		
24	ball ¹⁶⁰) and Syracuse (football, men’s basket-		
25	ball ¹⁶¹).		
26	145.	Excluded pur-	N/A (already
27	Fn. 151: “Remanded California State University,	suant to Order	ruled upon)
28	Northridge Public Infractions Decision,” December		
	7, 2016, at https://web3.ncaa.org/lstdbi/search/mi-CaseView/report?id=102690 .		

1		Regarding Mo-	
2		tions In Limine	
3		(Dkt. No. 965)	
4	146.	Excluded pur-	N/A (already
5	Fn. 152: “Georgia Southern Placed on Two-Year	suant to Order	ruled upon)
6	Probation, Loses Scholarships for NCAA Viola-	Regarding Mo-	
7	tions,’ ESPN, July 8, 2016, at	tions In Limine	
8	http://www.espn.com/college-foot-	(Dkt. No. 965)	
9	ball/story/_/id/16860140/georgia-southern-placed-		
10	two-year-probation-loses-scholarships-ncaa-violations.		
11	147.	Excluded pur-	N/A (already
12	Fn. 153: “NCAA Releases Ruling on LA Lafayette	suant to Order	ruled upon)
13	Violations,” News Star, January 12, 2016, at	Regarding Mo-	
14	http://www.thenewsstar.com/story/sports/col-	tions In Limine	
15	lege/2016/01/12/ncaa-releases-ruling-ull- viola-	(Dkt. No. 965)	
16	tions/78687430/.		
17	148.	Excluded pur-	N/A (already
18	Fn. 154: “Violations Found in Ole Miss Women’s	suant to Order	ruled upon)
19	Basketball and Track Programs,” NCAA, October	Regarding Mo-	
20	7, 2016, at http://www.ncaa.org/about/re-	tions In Limine	
21	sources/media-center/news/violations-found- ole-	(Dkt. No. 965)	
22	miss-women-s-basketball-and-track-programs.		
23	149.	Excluded pur-	N/A (already
24	Fn. 155: “University of Mississippi Public Infrac-	suant to Order	ruled upon)
25	tions Decision,” December 1, 2017, at	Regarding Mo-	
26	https://web3.ncaa.org/lstdbi/ search/miCaseView/re-	tions In Limine	
27	port?id=102650.	(Dkt. No. 965)	
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1	150.	Fn. 156: “Notre Dame Must Vacate Football Wins After Academic Violations by Trainer,” <i>USA Today</i> , November 22, 2016, at https://www.usatoday.com/story/sports/ncaaf/2016/11/22/notre-dame-ncaa-violations-student-trainer/94280000/ .	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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7	151.	Fn. 157: “University of the Pacific Public Infractions Decision,” September 20, 2017, at https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102636 .	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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12	152.	Fn. 158: “Southeast Missouri State University Public Infractions Decision,” March 10, 2017, at https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102598 .	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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17	153.	Fn. 159: SMU Commits Men’s Basketball and Golf Violations,’ NCAA, September 29, 2015, at http://www.ncaa.org/about/resources/media-center/news/smu-commits-men-s-basketball-and-golf-violations .	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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22	154.	Fn. 160: “Former Southern Mississippi Men’s Basketball Coach Acted Unethically,” NCAA, April 8, 2016, at http://www.ncaa.org/about/resources/media-center/news/former-southern-mississippi-men-s-basketball-coach-acted-unethically .”	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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1	155.	Fn. 161: “Syracuse Did Not Control Athletics; Basketball Coach Failed to Monitor,” NCAA, March 6, 2015, at http://www.ncaa.org/about/resources/media-center/news/syracuse-did-not-control-athletics-basketball-coach-failed-monitor .	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
2	3	4	5	6
7	156.	Para. 168: Another academic fraud case involved North Carolina. Numerous football and basketball players were given credit for enrolling in courses that essentially did not exist in that students were assigned little or no work and were required to put forth little or no effort to receive a passing grade. The university’s commissioned investigation found that academic credit for fake courses had been given for eighteen years, that nearly half of the students enrolled in these courses were college athletes, that roughly 2/3 of these athletes played football, men’s basketball, or women’s basketball, and that academic advisers in the Department of Athletics steered college athletes into these courses to keep them academically eligible. ¹⁶² In the NCAA’s investigation, North Carolina renounced the findings of its own investigation, denied that NCAA rules had been violated because these courses also were taken by some students who were not athletes, and asserted that the content and quality of generally available courses was outside the NCAA’s jurisdiction. ¹⁶³ The NCAA largely agreed with North Caro-	Excluded pursuant to Order Regarding Motions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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1		lina on the jurisdictional issue, and ended up penal-		
2		izing the university only for the actions of one per-		
3		son with respect to members of the women’s bas-		
4		ketball team. This case exposes an enormous loop-		
5		hole in the NCAA’s rules in that academic fraud		
6		cannot be punished if the same fraud is committed		
7		on some other students as well as to athletes.		
8	157.	Fn. 162: Kenneth L. Weinstein, A. Joseph Jay III and Colleen Depman Kukowski, Investigation of Irregular Classes in the Department of African and Afro-American Studies at the University of North Carolina at Chapel Hill, October 16, 2014, pp. 3-4, at <a href="http://3qh929iorux3fdpl532k03kg.wpen-
gine.netdna-cdn.com/wp-content/uploads/
2014/10/UNC-FINAL-REPORT.pdf">http://3qh929iorux3fdpl532k03kg.wpen- gine.netdna-cdn.com/wp-content/uploads/ 2014/10/UNC-FINAL-REPORT.pdf .	Excluded pur- suant to Order Regarding Mo- tions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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16	158.	Fn. 163: “University of North Carolina at Chapel Hill Public Infractions Decisions,” October 13, 2017, at <a href="https://web3.ncaa.org/lstdbi/search/miCase-
View/report?id=102636">https://web3.ncaa.org/lstdbi/search/miCase- View/report?id=102636 .”	Excluded pur- suant to Order Regarding Mo- tions In Limine (Dkt. No. 965)	N/A (already ruled upon)
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21	159.	Para. 169: Notwithstanding the continued rise in graduation rates among Division I athletes, these rates are lowest for football, and below average for men’s and women’s basketball. The academic fraud cases listed above arise from the desire to keep college athletes eligible who are not receiving an adequate college education, let alone making	Excluded pur- suant to Order Resolving Mo- tions to Ex- clude “New” Expert Opin- ions (Dkt. No. 968)	N/A (already ruled upon)
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	<p>progress toward a degree. The NCAA’s Commission on College Basketball recently characterized the situation as follows: “The NCAA’s investigative and enforcement functions were designed for a simpler time, when rules violations did not put so much at stake. As a result, the NCAA as an enforcement entity has little credibility with the public and its members, and what it has continues to dwindle. There are multiple cases of compromised academic standards and institutional integrity to keep the money and talent flowing.”¹⁶⁴ As an economic matter, the gap between the revenue that athletes generate in FBS football and basketball and the compensation of those athletes enhances the incentive to engage in academic fraud to keep athlete’s eligible that compromises a college’s academic mission and overwhelms the NCAA’s enforcement efforts.</p>		
<p>160.</p>	<p>Fn. 164: Commission on College Basketball, “Report and Recommendations to Address the Issues Facing Collegiate Basketball,” April 2018, p. 2.</p>	<p>Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)</p>	<p>N/A (already ruled upon)</p>
<p>161.</p>	<p>Para. 170: An excellent example of the abandonment of the mission of college in pursuit of success and profit from college sports is the open use of</p>	<p>Excluded pursuant to Order</p>	<p>N/A (already ruled upon)</p>

1		“one and done” players. “One and done” refers to	Resolving Mo-	
2		players who, because the NBA does not permit	tions to Ex-	
3		players to be drafted until they are 19 years old, at-	clude “New”	
4		tend college only for a year with the intention of	Expert Opin-	
5		leaving college after one year to turn professional.	ions (Dkt. No.	
6		According to the NCAA’s Commission on College	968)	
7		Basketball, “One-and-done has played a significant		
8		role in corrupting and destabilizing college basket-		
9		ball... Elite high school players with NBA pro-		
10		spects and no interest in a college degree should not		
11		be ‘forced’ to attend college, often for less than a		
12		year.” ¹⁶⁵ Of course, colleges are not blameless here		
13		because they actively recruit players who are		
14		known to be planning to drop out of college as soon		
15		as their first college basketball season comes to an		
16		end.		
17	162.	Fn. 165: <i>Ibid.</i>	Excluded pur-	N/A (already
18			suant to Order	ruled upon)
19			Resolving Mo-	
20			tions to Ex-	
21			clude “New”	
22			Expert Opin-	
23			ions (Dkt. No.	
24			968)	
25	163.	Para. 171: One of the prime examples of a univer-	Disclosure of	Sustained /
26		sity that has recruited many “one-and-done” play-	inadmissible	Overruled
27		ers is Kentucky, and one of the people that Profes-	facts relied	
28		sor Elzinga interviewed for his expert report was	upon by expert	

1		the Director of Athletics at Kentucky, Mitch Barn-	(FRE 703; FRE	
2		hart. Professor Elzinga apparently did not ask Mr.	802)	
3		Barnhart any questions about the publicly stated		
4		policy of Kentucky’s basketball coach, John Calip-		
5		ari, to recruit “one- and-done” players. ¹⁶⁶ How		
6		much academic progress do these players make in		
7		their time at Kentucky (what fraction even finish		
8		their freshmen year)? Does public awareness that		
9		these players have no intention of being college stu-		
10		dents adversely affect interest in the basketball		
11		team? Coach Calipari defended the “one-and-		
12		done” system by pointing out that “they can come		
13		back and finish up!” ¹⁶⁷ Professor Elzinga could		
14		have inquired about the fraction of Kentucky play-		
15		ers who, after leaving school after their freshman or		
16		sophomore years, returned to college to earn their		
17		degrees.		
18	164.	Fn. 166: “By the Numbers: How Kentucky’s One-	Disclosure of	Sustained /
19		and-Dones Have Fared in NBA,” <i>Sports Illustrated</i> ,	inadmissible	Overruled
20		April 11, 2015, at	facts relied	
21		https://www.si.com/nba/2015/04/11/karl-anthony-	upon by expert	
22		towns-kentucky-	(FRE 703; FRE	
23		draft-one-and-dones-john-calipari-	802)	
24		success-anthony-davis. ”		
25	165.	Fn. 167: “John Calipari on Coaching Extreme Tal-	Disclosure of	Sustained /
26		ent, One-and-Dones and His All-NBA Team,”	inadmissible	Overruled
27		<i>Bleacher Report</i> , February 15, 2017, at	facts relied	
28		http://bleacherreport.com/articles/2691798-john-	upon by expert	
		calipari- on-coaching-extreme-talent-one-and-		

1		dones-and-his-all-nba-team?utm_source=face-	(FRE 703; FRE	
2		book.com&utm_medium=referral&utm_cam-	802)	
3		paign=programming-national.”		
4	166.	Para. 172: Professor Elzinga also did not ask the	Excluded pur-	N/A (already
5		President of the University of Texas about academic	suant to Order	ruled upon)
6		advising of athletes at his university. An investiga-	Regarding Mo-	
7		tion of academic pursuits of athletes at Texas found	tions In Limine	
8		no NCAA violations, but did find that academic ad-	(Dkt. No. 965)	
9		visers at Texas were steering athletes away from		
10		challenging courses and, in some cases, away from		
11		college majors that corresponded to their principal		
12		academic interests. ¹⁶⁸ Professor Elzinga’s notes		
13		from his interview do not indicate that he ques-		
14		tioned Dr. Fenves about whether steps have been		
15		taken to stop the Office of Athletics Student Services		
16		at Texas from steering athletes away from challeng-		
17		ing courses and majors.		
18	167.	Fn. 168: “Report that Clears UT Athletics of	Excluded pur-	N/A (already
19		Cheating Still Raises Red Flags,” <i>Dallas Observer</i> ,	suant to Order	ruled upon)
20		January 14, 2016, at http://www.dallasob-	Regarding Mo-	
21		server.com/news/report-that-clears-ut-athletics-of-	tions In Limine	
22		cheating-still-raises-red-flags-7931946 .	(Dkt. No. 965)	
23	168.	Para. 173: The discussion by the defendants and	Excluded pur-	N/A (already
24		their witnesses of the integration of athletes into	suant to Order	ruled upon)
25		campus life focuses on only one aspect of this issue:	Resolving Mo-	
26		whether increasing the compensation of athletes	tions to Ex-	
27		will harm their academic progress and attenuate the	clude “New”	
28		relationship between athletes and other members of		

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	<p>the campus community. But the recent history of college sports is replete with much more direct and significant examples of actions and policies at colleges that directly undermine the academic integrity of the institution. Unlike the issues of the academic integration of students that the defendants raise, which are not supported by any reliable, objective information, direct attacks on academic integrity in pursuit of athletic success are well documented, as is the NCAA’s failure to prevent them. The defendants and their witnesses give no sign that they even consider that academic fraud is a serious threat to academic integrity and that the NCAA’s steadfast efforts to punish vigorously even minor transgressions of its limits on benefits to athletes contributes to the incentive to engage in academic fraud.</p>	<p>Expert Opinions (Dkt. No. 968)</p>	
<p>169.</p>	<p>Para. 174: Professor Elzinga also claims that the effect of compensation in excess of the COA cap on the integration of athletes into campus life is a “negative externality.”¹⁶⁹ Professor Elzinga claim is incorrect. An externality refers to the effect of a transaction on others who are not parties to it. The relevant community with respect to the integration of athletes is the campus, and integration of athletes on one campus does not depend on how much athletes at another campus are being compensated.</p>	<p>Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)</p>	<p>N/A (already ruled upon)</p>

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	Hence, achieving this procompetitive benefit does not require collective action by all colleges.		
170.	Fn. 169: <i>Ibid.</i> , pp. 25-26.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
171.	<p>Para. 175: With respect to academic performance, the defendants’ hypothesized effect is that greater compensation causes an athlete to devote less time to academics. This outcome, if it were true, is the result of private actions by a college to compensate an athlete and a student to respond to the incentive to succeed as an athlete. This hypothesized academic effect is experienced by the parties to the transaction, which are the athlete and the college. Academic performance at one college is not affected by the compensation of athletes at another college and so does not create an effect that is external to the parties to the transaction. In short, a Harvard athlete’s grades are not affected by the compensation paid to an athlete at Stanford. That is, Katie Ledecky’s pay for her Olympic performance and her earnings from pro swimming since</p>	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)

1		she turned professional this spring are not likely to		
2		cause an academic crisis among Harvard athletes.		
3	172.	Para. 176: Note that defendants' alleged procom-	Excluded pur-	N/A (already
4		petitive benefit concerning academic achievement is	suant to Order	ruled upon)
5		distinct from the incentive that colleges have not to	Resolving Mo-	
6		take sufficiently into account the academic side of	tions to Ex-	
7		an athlete's campus life. Academic fraud, for exam-	clude "New"	
8		ple, reflects the powerful incentive to keep a good	Expert Opin-	
9		athlete eligible despite poor academic performance.	ions (Dkt. No.	
10		While this problem is less severe if athletes receive	968)	
11		greater compensation, as explained above, there re-		
12		remains a legitimate role for the NCAA or other gov-		
13		erning body to set and to enforce academic stand-		
14		ards for college athletes.		
15	173.	Para. 179: The defendants have not offered any re-	Excluded pur-	N/A (already
16		liable economic evidence that the current re-	suant to Order	ruled upon)
17		strictions on compensating college athletes have	Resolving Mo-	
18		procompetitive benefits. Nevertheless, I have been	tions to Ex-	
19		asked to assume in this part of my testimony that	clude "New"	
20		such procompetitive benefits exist and to analyze	Expert Opin-	
21		whether less restrictive alternatives to the chal-	ions (Dkt. No.	
22		lenged NCAA rules could be adopted that would	968)	
23		provide these same benefits. My conclusion is that		
24		such less restrictive alternatives exist.		
25	174.	Para. 180: The first task in carrying out this assign-	Excluded pur-	N/A (already
26		ment is to identify how the market for college ath-	suant to Order	ruled upon)
27		letes who play FBS football and Division I basket-	Resolving Mo-	
28		ball would work if the plaintiffs were granted the		

1		relief that they seek. The defendants persistently	tions to Ex-	
2		mischaracterize the goal of the plaintiffs as seeking	clude “New”	
3		to create a standard labor market for professional	Expert Opin-	
4		athletes who play for colleges, are paid individually	ions (Dkt. No.	
5		negotiated salaries, and are not students. ¹⁷⁰ This	968)	
6		characterization is grossly inaccurate. My under-		
7		standing is that the plaintiffs seek an injunction		
8		against enforcing current NCAA rules that restrict		
9		the benefits that a college athlete can receive for		
10		participating in FBS football and Division I basket-		
11		ball. This relief does not require or even contem-		
12		plate the outcome described by the defendants,		
13		which is to convert college conferences to profes-		
14		sional minor leagues or to take the “college” out of		
15		college sports.		
16	175.	Para. 181: The defendants’ alleged procompetitive	Excluded pur-	N/A (already
17		benefits can be recast as goals for structuring the	suant to Order	ruled upon)
18		system of compensation for athletes. That is, col-	Resolving Mo-	
19		lege athletes should be genuine students who par-	tions to Ex-	
20		ticipate in college sports for an amount of time that	clude “New”	
21		is reasonably needed to complete an undergraduate	Expert Opin-	
22		degree, college athletes should have high success in	ions (Dkt. No.	
23		achieving this academic goal, and college athletes	968)	
24		should be well-integrated into the campus commu-		
25		nity.		
26	176.	Para. 182: The relief that plaintiffs request would	Excluded pur-	N/A (already
27		not stop the defendants from retaining and enforcing	suant to Order	ruled upon)
28		other rules that serve these purposes and that are not		

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	<p>challenged in the <i>Complaints</i>, such as: (1) Requiring that college athletes be students in good standing who are making normal progress towards a degree; (2) Limiting the years of eligibility of college athletes; (3) Placing restrictions on the behavior of college athletes, coaches, other university officials, and people who are not associated with the university but who are interested in its athletics program; (4) Establishing limits on roster sizes and the number of scholarships in each sport; (5) Mandating that FBS and Division I members field a minimum number of intercollegiate athletic teams; and (6) Regulating recruitment of student athletes. Moreover, the proposed relief would not prevent a member school or even a conference from unilaterally adopting the current NCAA rules to limit remuneration and other benefits to college athletes. Plaintiffs seek only to prevent collusion on compensation of athletes among conferences, not to prevent each conference from having rules about such compensation.</p>	<p>Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)</p>	
<p>177.</p>	<p>Para. 183: This section discusses two less restrictive alternatives to current NCAA restrictions on compensation for students who play FBS football or Division I basketball. The first, “Conference Autonomy,” would decentralize the responsibility for making rules about allowed compensation and benefits to individual conferences in Division I. The second, “Procompetitive NCAA Compensation</p>	<p>Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)</p>	<p>N/A (already ruled upon)</p>

1		Rules,” consists of policies on compensating class		
2		members that the NCAA could adopt and enforce		
3		that would preserve competition for college ath-		
4		letes and that are better targeted than current rules		
5		at maintaining demand for college sports and inte-		
6		grating athletes into campus life.		
7	178.	Para. 184: One less restrictive alternative to the sta-	Excluded pur-	N/A (already
8		tus quo is for the college athletic system to operate	suant to Order	ruled upon)
9		as it did during the first half of the 20 th Century,	Resolving Mo-	
10		when each conference adopted and enforced its	tions to Ex-	
11		own compensation rules. In the current system, the	clude “New”	
12		first line of enforcement responsibility is the school	Expert Opin-	
13		itself. NCAA members are required to have on-	ions (Dkt. No.	
14		campus offices that educate athletes and coaches	968)	
15		about NCAA rules and that monitor compliance		
16		with these rules. Infractions cases often are initiated		
17		by self-reported violations and are concluded by		
18		adopting the punishment that the college recom-		
19		mends and imposes on itself. The second line of de-		
20		fense is the conference, which also investigates re-		
21		ported violations and imposes punishments. Thus,		
22		the institutions for self-governance among confer-		
23		ences with respect to rules regarding the compen-		
24		sation of athletes already are in place.		
25	179.	Para. 185: An important implication of the relief	Excluded pur-	N/A (already
26		that the plaintiffs actually seek, as opposed to de-	suant to Order	ruled upon)
27		fendants’ mistaken characterization of it, is that if a	Resolving Mo-	
28		conference believed that the popularity of FBS		

1		football and Division I basketball would be eroded	tions to Ex-	
2		by increasing compensation of college athletes by	clude “New”	
3		even \$1 more than is currently permitted, that con-	Expert Opin-	
4		ference independently could adopt compensation	ions (Dkt. No.	
5		rules that are essentially the same as the current	968)	
6		NCAA rules as long as each conference adopts		
7		these rules unilaterally.		
8	180.	Para. 194: Professor Elzinga’s first example as-	Legal conclu-	Sustained /
9		sumes that the current conference structure would	sion (FRE 702;	Overruled
10		continue to exist, but that conferences will adopt	<i>Nationwide</i>	
11		different compensation rules. Professor Elzinga	<i>Transp. Fin. v.</i>	
12		then argues that a conference that compensates ath-	<i>Cass Info. Sys.,</i>	
13		letes above COA (e.g., the Pac-12) would recruit	<i>Inc.</i> , 523 F.3d	
14		better athletes, field better teams, and, therefore,	1051, 1058–60	
15		gain a competitive advantage over another confer-	(9th Cir. 2008))	
16		ence that does not (e.g., the Big Ten). Professor El-		
17		zinga then incorrectly asserts that preventing a con-		
18		ference from gaining this advantage is a procom-		
19		petitive benefit. ¹⁸¹		
20	181.	Para. 202: The assumption that the negative de-	Legal conclu-	Sustained /
21		mand effect will not be felt sufficiently in a confer-	sion (FRE 702;	Overruled
22		ence is unjustified. College teams play most of their	<i>Nationwide</i>	
23		games against other conference members, and a	<i>Transp. Fin. v.</i>	
24		team’s intense rivals are mostly other conference	<i>Cass Info. Sys.,</i>	
25		members. Paying greater compensation can in-	<i>Inc.</i> , 523 F.3d	
26		crease the quality of all teams in the conference, but	1051, 1058–60	
27		cannot change the fact that some teams will do bet-	(9th Cir. 2008))	
28		ter than others in conference play. A conference has		

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21	182.	<p>Fn. 187: One cannot escape this problem by further assuming that the gain in quality of the Pac-12 is more than offset by the quality loss of the Big Ten.</p> <p>To argue that the net effect is negative is implicitly to argue that competition for athletes would disrupt competitive balance, which has been ruled out as a procompetitive benefit in this litigation and has been thoroughly discredited by scholarly research in the economics of sport.</p>	<p>Legal conclusion (FRE 702; <i>Nationwide Transp. Fin. v. Cass Info. Sys., Inc.</i>, 523 F.3d 1051, 1058–60 (9th Cir. 2008))</p>
22			Sustained / Overruled
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	183.	Para. 207: Another alternative to the NCAA’s current restrictions on compensation of college athletes is for the NCAA to adopt new, less restrictive rules and policies that more effectively promote the popularity of college sports and the integration of athletes into campus life while also promoting more competition in the relevant markets for college athletes. The core idea is that the NCAA would only prohibit cash compensation above COA that is unrelated to educational expenses or participation in academic life, excluding performance in athletics as a basis for compensation (except for existing participation benefits that the NCAA has already concluded do not adversely impact its alleged amateurism or integration objectives), and would adopt other rules designed to encourage academic integration and to permit greater compensations for a wide variety of benefits related to being a student and achieving academic success. This section describes a few examples.	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)
21 22 23 24 25 26 27 28	184.	Para. 210: The NCAA also could allow colleges to award bonuses to FBS football players and Division I basketball players for academic performance. ¹⁹⁰ For example, the NCAA could allow colleges to increase the value of a scholarship in each year in which an athlete makes normal progress towards a degree. Likewise, colleges could be permitted to add an additional bonus that is based on the	Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)	N/A (already ruled upon)

1		amount by which the athlete's grade point average		
2		exceeds the minimum requirement for retaining ac-		
3		ademic eligibility. ¹⁹¹		
4	185.	Fn. 190: Former NFL Commissioner Paul Taglia-	Excluded pur-	N/A (already
5		bue recently made a similar proposal to the Knight	suant to Order	ruled upon)
6		Commission on Intercollegiate Athletics. Michael	Resolving Mo-	
7		Smith, "Tagliabue: College Model Requires New	tions to Ex-	
8		Thinking," SPORTSBUSINESS JOURNAL, Jan.	clude "New"	
9		9-15, 2017, at https://www.sportsbusinessdaily.com/Journal/Issues/2017/01/09/Colleges/Taglia-	Expert Opin-	
10		bue.aspx .	ions (Dkt. No.	
11			968)	
12	186.	Fn. 191: As an illustration, imagine a bonus of	Excluded pur-	N/A (already
13		\$100 for each tenth of a point over the eligibility	suant to Order	ruled upon)
14		floor. Thus, if athletes are required to maintain a	Resolving Mo-	
15		grade point average of 2.0 to remain eligible for	tions to Ex-	
16		sports, then an athlete with a 4.0 average for the	clude "New"	
17		year would be paid a bonus of \$2,000.	Expert Opin-	
18			ions (Dkt. No.	
19			968)	
20	187.	Para. 211: Because colleges are required to moni-	Excluded pur-	N/A (already
21		tor the academic progress of their athletes to com-	suant to Order	ruled upon)
22		ply with academic eligibility requirements, awards	Resolving Mo-	
23		for academic success would not require significant	tions to Ex-	
24		implementation costs. Moreover, adopting a less re-	clude "New"	
25		strictive system in which educational objectives are	Expert Opin-	
26		incentivized through new benefits that the schools	ions (Dkt. No.	
27		would be free to adopt would be more effective	968)	
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	<p>than the current compensations rules in accomplishing the objective of improving the integration and academic success of class members.</p>		
<p>188.</p>	<p>Para. 212: In summary, even if defendants’ alleged procompetitive justifications are assumed to be valid, these objectives can be accomplished at least as effectively by less restrictive rules than the NCAA’s current restrictions on the compensation of college athletes.</p>	<p>Excluded pursuant to Order Resolving Motions to Exclude “New” Expert Opinions (Dkt. No. 968)</p>	<p>N/A (already ruled upon)</p>

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FILER'S ATTESTATION

I, Karen Hoffman Lent, am the ECF user whose identification and password are being used to file Defendants' Objections to Direct and Rebuttal Testimony of Dr. Roger G. Noll. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

/s/ Karen Hoffman Lent