

1 Steve W. Berman (*pro hac vice*)  
Craig R. Spiegel (SBN 122000)  
2 Emilee Sisco (*pro hac vice*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
3 1918 Eighth Avenue, Suite 3300  
Seattle, WA 98101  
4 Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
5 *steve@hbsslaw.com*  
*craigs@hbsslaw.com*  
6 *emilees@hbsslaw.com*

7 Bruce L. Simon (SBN 96241)  
Benjamin E. Shiftan (SBN 265767)  
8 PEARSON, SIMON & WARSHAW, LLP  
44 Montgomery Street, Suite 2450  
9 San Francisco, CA 94104  
Telephone: (415) 433-9000  
10 Facsimile: (415) 433-9008  
*bsimon@pswlaw.com*  
11 *bshiftan@pswlaw.com*

12 *Class Counsel for Jenkins and Consolidated  
Action Plaintiffs*

13 [Additional counsel listed on signature page]  
14

Jeffrey L. Kessler (*pro hac vice*)  
David G. Feher (*pro hac vice*)  
David L. Greenspan (*pro hac vice*)  
Joseph A. Litman (*pro hac vice*)  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166-4193  
Telephone: (212) 294-6700  
Facsimile: (212) 294-4700  
*jkessler@winston.com*  
*dfeher@winston.com*  
*dgreenspan@winston.com*  
*jlitman@winston.com*

Sean D. Meenan (SBN 260466)  
Jeanifer E. Parsigian (SBN 289001)  
WINSTON & STRAWN LLP  
101 California Street  
San Francisco, CA 94111  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
*smeenan@winston.com*  
*jparsigian@winston.com*

*Class Counsel for Jenkins and Consolidated  
Action Plaintiffs*

[Additional counsel listed on signature page]  
15

16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18 **OAKLAND DIVISION**

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

Case No. 4:14-md-02541-CW

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' OBJECTIONS TO DIRECT  
AND REBUTTAL TESTIMONY OF DR.  
DANIEL A. RASCHER AND DR. ROGER G.  
NOLL**

22 \_\_\_\_\_  
23 THIS DOCUMENT RELATES TO:

24 ALL ACTIONS  
25  
26  
27  
28

1           Between August and December 2017, the Parties filed lengthy and detailed motions to  
2 exclude certain—and in some cases, all—expert opinions offered by the opposing Party.<sup>1</sup> On April  
3 25, 2018, the Court issued a comprehensive order granting in part and denying in part the Parties’  
4 respective motions (ECF No. 815). In accordance with the parameters of that Order and pursuant to  
5 the Stipulation and Order for Pretrial Proceedings (ECF No. 836), on July 3, 2018, Plaintiffs filed  
6 their written expert direct testimony (ECF No. 865); on July 11, 2018, Defendants’ filed their expert  
7 testimony (ECF No. 883); and on July 17, 2018, Plaintiffs filed their expert rebuttal testimony (ECF  
8 No. 921). Shortly thereafter, each Party raised objections to the opposing Party’s proffered expert  
9 testimony, contending that each expert had exceeded the scope of his previously-disclosed report.  
10 And on July 19, 2018, the Court ordered a “[b]riefing schedule regarding ‘new’ expert opinions” to  
11 consider the Parties’ objections (ECF No. 927). After full briefing,<sup>2</sup> on August 16, 2018, the Court  
12 resolved those remaining objections (ECF No. 968) and thereby finalized the direct expert testimony  
13 that the Court intended to receive into evidence.

14           In the two months that have passed between the filing of Plaintiffs’ experts’ direct testimony  
15 and trial, Defendants never once indicated that they intended to file additional objections, nor did  
16 they seek to establish a schedule to accommodate the filing of such objections—a procedure that  
17 Defendants’ experienced trial attorneys know should have been coordinated with the Court and  
18 Plaintiffs’ counsel. Instead, Defendants waited until after trial started to hand to Plaintiffs’ counsel,  
19 and to offer to hand up to the Court, a 63-page set of new objections to the direct and rebuttal  
20 testimony of Dr. Daniel A. Rascher (the “Rascher Objections”) (ECF No. 1026).

21           Then, near the end of the first day of trial, Defendants stated, for the first time, their intent to  
22 file a similar set of new objections to the written testimony of Dr. Roger G. Noll—testimony which  
23 Defendants also had for months and to which they already objected. Indeed, hours later, Defendants  
24 filed an 88-page set of previously undisclosed objections to the direct and rebuttal testimony of Dr.  
25 Roger G. Noll (the “Noll Objections”) (ECF No. 1031) and it is safe to assume that Defendants have  
26 in their back pocket a third set of new objections that they are waiting to file in response to the July

27 \_\_\_\_\_  
<sup>1</sup> ECF Nos. 654, 704, 714, 748, 749.

28 <sup>2</sup> ECF Nos. 939, 946, 955.

1 3, 2018 direct testimony of Plaintiffs' expert, Hal Poret.

2           Permitting Defendants to proceed with their untimely objections would be unfair to both  
3 Plaintiffs and the Court. Defendants themselves acknowledged that they did not expect the Court to  
4 rule on the objections during the first day of trial. Indeed, by withholding their objections until the  
5 last second, Defendants ensured that (1) the Court would not have the opportunity to consider and  
6 address such objections when reading the corresponding testimony before trial; (2) Plaintiffs would  
7 be unable to address the objections with the relevant witness during redirect examination; and (3)  
8 Plaintiffs would be required to devote substantial time to respond to these latent objections in the  
9 middle of a long-anticipated trial.

10           Plaintiffs respectfully ask the Court to overrule each of the Rascher Objections and Noll  
11 Objections as untimely and to preclude Defendants from proffering similar and untimely objections  
12 to the direct testimony of Mr. Poret. If the Court were to permit Defendants to proceed with their  
13 untimely objections, Plaintiffs respectfully request that (1) the Court order that Defendants  
14 immediately file their written objections to the testimony of Mr. Poret; (2) Plaintiffs be permitted to  
15 file written responses to Defendants' objections on or before September 17, 2018; and (3) Plaintiffs  
16 be permitted to file written objections to Defendants' expert testimony on or before September 17,  
17 2018.

1 Dated: September 4, 2018

Respectfully submitted,

2 By /s/ Steve W. Berman  
3 Steve W. Berman (*pro hac vice*)  
4 Craig R. Spiegel (SBN 122000)  
5 Emilee Sisco (*pro hac vice*)  
6 HAGENS BERMAN SOBOL SHAPIRO LLP  
7 1918 Eighth Avenue, Suite 3300  
8 Seattle, WA 98101  
9 Telephone: (206) 623-7292  
10 Facsimile: (206) 623-0594  
11 *steve@hbsslw.com*  
12 *craigs@hbsslw.com*  
13 *emilees@hbsslw.com*

14 Jeff D. Friedman (SBN 173886)  
15 HAGENS BERMAN SOBOL SHAPIRO LLP  
16 715 Hearst Avenue, Suite 202  
17 Berkeley, CA 94710  
18 Telephone: (510) 725-3000  
19 Facsimile: (510) 725-3001  
20 *jefff@hbsslw.com*

21 By /s/ Bruce L. Simon  
22 Bruce L. Simon (SBN 96241)  
23 Benjamin E. Shiftan (SBN 265767)  
24 PEARSON, SIMON & WARSHAW, LLP  
25 44 Montgomery Street, Suite 2450  
26 San Francisco, CA 94104  
27 Telephone: (415) 433-9000  
28 Facsimile: (415) 433-9008  
*bsimon@pswlaw.com*  
*bshiftan@pswlaw.com*

*Class Counsel for Jenkins and Consolidated  
Action Plaintiffs*

29 Elizabeth C. Pritzker (SBN 146267)  
30 Jonathan K. Levine (SBN 220289)  
31 Bethany L. Caracuzzo (SBN 190687)  
32 Shiho Yamamoto (SBN 264741)  
33 PRITZKER LEVINE LLP  
34 180 Grand Avenue, Suite 1390  
35 Oakland, California 94612  
36 Telephone: (415) 692-0772  
37 Facsimile: (415) 366-6110

38 *Additional Class Counsel*

By /s/ Jeffrey L. Kessler  
Jeffrey L. Kessler (*pro hac vice*)  
David G. Feher (*pro hac vice*)  
David L. Greenspan (*pro hac vice*)  
Joseph A. Litman (*pro hac vice*)  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166-4193  
Telephone: (212) 294-6700  
Facsimile: (212) 294-4700  
*jkessler@winston.com*  
*dfeher@winston.com*  
*dgreenspan@winston.com*  
*jlitman@winston.com*

Sean D. Meenan (SBN 260466)  
Jeanifer E. Parsigian (SBN 289001)  
WINSTON & STRAWN LLP  
101 California Street  
San Francisco, CA 94111  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
*smeenan@winston.com*  
*jparsigian@winston.com*

*Class Counsel for Jenkins and Consolidated  
Action Plaintiffs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

By: /s/ Jeffrey L. Kessler  
Jeffrey L. Kessler