

# Exhibit B

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

TAYLOR SMART AND MICHAEL HACKER,  
Individually and on Behalf of  
All Those Similarly Situated,

Plaintiffs,

vs.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, an unincorporated  
association;

Defendant.

CASE NO. 2:22-cv-02125-WBS-CSK

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING MOTION  
FOR PRELIMINARY APPROVAL OF  
SETTLEMENT**

Courtroom: 5, 14th Floor  
Judge: The Honorable William B.  
Shubb

1 Having considered the Motion for Preliminary Approval of  
2 Settlement, the declarations filed in support, the pleadings and  
3 other papers on file in this action, the statements of counsel  
4 and the parties, and the terms and conditions of the proposed  
5 Settlement Agreement, the Court hereby orders that the motion is  
6 GRANTED, and further orders as follows:

7 **The Settlement Class Meets the Requirements of Rule 23**

8 1. The Settlement Agreement calls for certification of the  
9 following Settlement Class:

10 All persons who pursuant to NCAA Division I Bylaw  
11 11.7.6, served as a "volunteer coach" in college  
12 baseball at an NCAA Division I school from November 29,  
2018 to July 1, 2023.

13 2. The Court finds that the Settlement Class meets all of  
14 the Rule 23 class certification factors.

15 3. The Settlement Class contains around 1,000 class  
16 members. This far exceeds the presumptive threshold. Numerosity  
17 is therefore satisfied.

18 4. Adjudicating the legality of the NCAA's volunteer coach  
19 rule will be a common question that drives the resolution of the  
20 litigation. Rule 23(a)'s commonality requirement is met.

21 5. The injuries alleged by the named Plaintiffs arise from  
22 the same course of conduct stemming from the same uniform policy  
23 that affected all members of the Settlement Class, so the named  
24 Plaintiffs' claims are typical under Rule 23(a).

25 6. The named Plaintiffs have shown that they are  
26 vigorously and diligently prosecuting the case, as they have  
27 responded to discovery requests and been deposed. Their interests  
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1 are aligned, and they are adequate class representatives under  
2 Rule 23(a).

3 7. Likewise, the named Plaintiffs have retained counsel  
4 experienced in class actions and in antitrust actions. Their  
5 counsel at Korein Tillery, LLC have vigorously prosecuted the  
6 case since its inception, and through their diligence, have  
7 positioned the case for a very favorable result for the class.  
8 Class counsel is therefore adequate.

9 8. The common issues in the case also predominate under  
10 Rule 23(b)(3) for purposes of the Settlement Class. Several  
11 important, common questions predominate, including: the existence  
12 of a conspiracy, and whether the NCAA's volunteer coach bylaw  
13 amounted to an unreasonable restraint of trade under antitrust  
14 laws. In a related case, the Court recently held – after the  
15 parties settled this case – that common issues predominated when  
16 certifying a litigation class on behalf of volunteer coaches in  
17 sports other than baseball who challenged the same volunteer  
18 coach rule. *Ray v. NCAA*, Case No. 1:23-cv-00425-WBS, (E.D. Cal.  
19 Mar. 11, 2025), ECF No. 128 at 25. The Court concludes the same  
20 here for the Settlement Class.

21 9. Also, the Court concludes that resolving this case as a  
22 class on behalf of such a large number of volunteer coaches is  
23 far superior to litigating hundreds of individual cases  
24 separately. The superiority requirement under Rule 23(b)(3) is  
25 met.

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1 10. The Court therefore finds that all the class  
2 certification requirements of Rule 23 are met and preliminarily  
3 certifies the Settlement Class for purposes of the Settlement.

4 11. The Court appoints the named Plaintiffs, Taylor Smart  
5 and Michael Hacker, as class representatives of the Settlement  
6 Class.

7 12. The Court appoints Korein Tillery, LLC, and in  
8 particular Garrett R. Broshuis and Steven M. Berezney, as Class  
9 Counsel of the Settlement Class.

10 **The Settlement Agreement Warrants Preliminary Approval**

11 13. The Court concludes that the Settlement Agreement is  
12 sufficiently within the range of reasonableness to warrant  
13 preliminary approval. Courts may preliminarily approve a  
14 settlement when it is fair, adequate, and reasonable under Rule  
15 23(e). *Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, No.  
16 2:21-cv-1639, 2023 WL 4747691, at \*7 (E.D. Cal. July 25, 2023).  
17 The Ninth Circuit's "*Churchill*" factors are to be considered:

18  
19 (1) the strength of the plaintiff's case; (2) the risk,  
20 expense, complexity, and likely duration of further  
21 litigation; (3) the risk of maintaining class action  
22 status throughout the trial; (4) the amount offered in  
23 settlement; (5) the extent of discovery completed and  
the stage of the proceedings; (6) the experience and  
views of counsel; (7) the presence of a governmental  
participant; and (8) the reaction of the class members  
of the proposed settlement.

24 *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021) (citing  
25 *Churchill Vill. v. Gen. Elec.*, 361 F.3d 566 (9th Cir.  
26 2004)).

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1           14. "Because some of these factors cannot be considered  
2 until the final fairness hearing, at the preliminary approval  
3 stage, the court need only determine whether the proposed  
4 settlement is within the range of possible approval, and resolve  
5 any glaring deficiencies in the settlement agreement before  
6 authorizing notice to class members." *Kabasele*, 2023 WL 4747691,  
7 at \*6. The Court concludes that all relevant factors weigh in  
8 favor of preliminary approval.

9           15. The Court has reviewed the terms of the Settlement  
10 Agreement. The strength of Plaintiffs' case and the risk,  
11 expense, and complexity of further litigation all weigh in favor  
12 of preliminary approval. The case presented many novel issues  
13 that remained unresolved. Risks at several stages of the  
14 litigation remained: risks at class certification, risks at  
15 summary judgment, and risks at trial, as well as those arising  
16 out of subsequent appeals. And antitrust cases, by their nature,  
17 are highly complex and expensive.

18           16. The Court also finds that the relief provided by the  
19 Settlement Agreement strongly favors preliminary approval. The  
20 Settlement establishes a fund of \$49.25 million, which is close  
21 to 100% of the possible actual damages owed. That is a terrific  
22 result for the class given the number of novel issues and the  
23 stage of this case. The fund is non-reversionary.

24           17. The stage of the proceedings likewise favors  
25 preliminary approval. The parties had completed much of fact  
26 discovery, had filed class certification briefs, had filed expert  
27 declarations in support of those briefs, and had deposed expert  
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1 witnesses. The parties were fully informed about the strengths  
2 and weaknesses of their respective cases at the time they entered  
3 into the Agreement.

4 18. The experience and views of counsel also favor  
5 preliminary approval. The parties were represented by  
6 sophisticated counsel with significant experience in class  
7 actions and experience in the industry. Counsel represents that  
8 they carefully evaluated the risks and benefits of continued  
9 litigation and concluded that this Agreement represents the best  
10 possible outcome for class members.

11 19. The Court finds that the Settlement Agreement was  
12 negotiated at arm's length and is not collusive. The parties  
13 engaged in a formal mediation session with a respected mediator.  
14 The parties then resumed settlement discussions after undertaking  
15 further discovery and briefing. Therefore, both sides have  
16 zealously advocated for their respective clients, and there is no  
17 sign of collusion.

18 20. The Court finds that the Settlement Agreement does not  
19 call for preferential treatment of class representatives or of  
20 certain segments of the class. An objective formula will be used  
21 to calculate the amount owed to a class member. And while the  
22 Court will reserve a final decision on the amount to be awarded  
23 as incentive awards to the named Plaintiffs, the Court finds that  
24 the proposed incentive awards are within the realm of  
25 reasonableness to warrant preliminary approval.

26 21. The Court has reviewed the releases that are set forth  
27 in the Settlement Agreement. The releases are tied to claims that  
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1 were pled or that could have been pled in the operative  
2 complaint. The Court finds that the releases are fair and  
3 reasonable under the circumstances.

4 22. The Court will reserve a final decision on the amount  
5 of attorneys' fees and costs to be awarded until after the final  
6 approval hearing, but the Court finds that Class Counsel's  
7 proposed fee and cost award are within the realm of  
8 reasonableness to warrant preliminary approval. Class Counsel has  
9 litigated this novel and complex case on a contingent basis and  
10 achieved excellent results.

11 **The Notice to Be Sent and Schedule to Be Followed**

12 23. The Court appoints Kroll Settlement Administration as  
13 the Settlement Administrator. The Court finds that Kroll has  
14 extensive experience in the administration of large class action  
15 settlements, and will adequately perform the administrative role.

16 24. The Court approves the form of the email, postcard, and  
17 long-form notices attached as Exhibits A-C and directs Kroll to  
18 commence the notice campaign within 14 days of this Order, or as  
19 soon as practicable. The parties may make non-substantive edits  
20 to the notice without Court approval. The Court finds that the  
21 proposed form and method of notice is the best practicable under  
22 the circumstances and, when completed, shall provide due and  
23 sufficient notice of the Settlement and of the final approval  
24 hearing in full compliance with the Federal Rules of Civil  
25 Procedure.

26 25. The Court hereby sets the below schedule for the  
27 dissemination of notice to potential members of the Settlement  
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1 Class, for members of the Settlement Class to object to or  
 2 exclude themselves from the Settlement Agreement, and for the  
 3 Court’s Fairness Hearing, at which time the Court will determine  
 4 whether the Settlement Agreement should be finally approved as  
 5 fair, reasonable, and adequate. The Court may order the Fairness  
 6 Hearing to be postponed, adjourned, or continued. If that occurs,  
 7 the updated hearing date shall be posted on the Settlement  
 8 Website, but other than the website posting the Parties will not  
 9 be required to provide any additional notice to Settlement Class  
 10 members.

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Event	Date
Deadline for the Settlement Administrator to Commence Notice to the Class (“Notice Date”)	[DATE] (14 days after this Order, or as soon as practicable)
Deadline for Plaintiffs to File Their Petition for Attorneys’ Fees, Litigation Costs, and Incentive Awards	[DATE] (30 days before End of Notice Period)
Deadline for Class Members to Opt-Out, Object, or Take Other Actions Relating to the Settlement (“End of Notice Period”)	[DATE] (60 days after the Notice Date)
Plaintiffs to File their Motion for Final Approval of the Settlement; and Respond to Any Class Member Objections	[DATE] (15 days after End of Notice Period)
Final Fairness Hearing	[DATE] (approximately 35 days after the filing of Plaintiffs’ Motion for Final Approval)

1 It is so ordered.

2 DATE:

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