

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:24-cv-00238-CCE-JEP

REESE BRANTMEIER and MAYA
Joint, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION,

Defendant.

PLAINTIFFS' BRIEF IN
SUPPORT OF MOTION FOR
CLASS CERTIFICATION

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GLOSSARY

Term	Definition
Answer	Defendant NCAA's Answer to First Amended Complaint, Dkt. 64
Brantmeier Decl.	Declaration of Plaintiff Reese Brantmeier in Support of Motion for Class Certification and Preliminary Injunction, Dkt. 22-1 (May 24, 2024)
FAC	First Amended Complaint (Dkt. 58)
ITA	Intercollegiate Tennis Association
Joint Decl.	Maya Joint's Declaration in Support of Plaintiff's Motions for Class Certification and Preliminary Injunction, Dkt. 22-3 (June 21, 2024)
Suppl. Joint Decl.	Maya Joint's Supplemental Declaration in Support of Plaintiff's Motions for Class Certification and Preliminary Injunction, Dkt. 36-2 (Aug. 5, 2024)
3rd Suppl. Joint Decl.	Plaintiff Maya Joint's Third Supplemental Declaration (Feb. 7, 2025), Ex. B herewith
NCAA	National Collegiate Athletic Association
NCAA Eligibility Center	The body approved by the Board of Governors to determine the initial eligibility of aspiring student-athletes to compete in the NCAA, as stated in NCAA ByLaw 14.1.2.3.
NCAA Bylaws	NCAA Manual, p. 12-412.
NCAA Constitution	NCAA Manual, p. 2-11
NCAA Manual	NCAA, Division I 2024-25 Manual, available at https://www.ncaapublications.com/p-4701-2024-2025-ncaa-division-i-manual.aspx .
NIL	Name, Image, and Likeness
Plaintiffs	Reese Brantmeier and Maya Joint
Prize Money	A monetary award to an athlete based on place finish or performance in tennis as referenced in NCAA Bylaws 12.1.2.4.1 and 12.1.2.4.2
Prize Money Rules	Restrictions on the amount of Prize Money an individual may accept in tennis embodied in NCAA Bylaws 12.1.2(a) and (d) and 12.1.2.4.2
Student-Athlete	An individual who, while attending college, competes on the college team in an NCAA sport.

Plaintiffs Reese Brantmeier and Maya Joint, on behalf of themselves and all others similarly situated, by and through undersigned counsel, respectfully submit this Brief and accompanying materials in support of Plaintiffs' Motion for Class Certification pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(b)(3) and Local Rule 23(b) and consistent with this Court's Amended Scheduling Order (Dkt. 65).

NATURE OF THE CASE

This action is brought by Plaintiffs Reese Brantmeier and Maya Joint ("Plaintiffs") on behalf of themselves and two proposed classes of similarly situated National Collegiate Athletic Association ("NCAA") Division I Student-Athletes competing in men's and women's tennis who have participated or intend to participate in non-NCAA athletic events that award prize money based on performance (the "Proposed Classes" or "Classes"). First Amended Complaint (Dkt. 58) ("FAC") ¶ 1.¹ Under long-standing amateurism regulations, the NCAA prohibits Tennis Student-Athletes from accepting cash awards, bonuses, and other monetary prizes (collectively, "Prize Money") awarded by third parties for their performance in non-NCAA competitions,

¹ Plaintiffs filed the FAC on November 8, 2024, The NCAA answered the FAC on December 23, 2024. Dkt. 64.

such as the U.S. Open Tennis Championships. FAC ¶¶ 46-53. With certain exceptions related to Student-Athletes’ “actual and necessary expenses” (as deemed by the NCAA) incurred at such competitions and an exemption of \$10,000 per calendar year prior to enrollment, the NCAA bylaws provide that a Student-Athlete forfeits eligibility and is barred from intercollegiate competition in the sport of tennis if they accept Prize Money in connection with non-NCAA tennis competitions (the “Prize Money Rules”). FAC ¶¶ 44-52. Plaintiffs seek relief on behalf of themselves and proposed Damages and Injunctive Relief classes from the application and past effects of the NCAA’s Prize Money Rules, to compensate class members for past forfeited amounts and to allow them to retain Prize Money for their performances in non-NCAA competitions without losing their collegiate eligibility. FAC ¶ 150. Accordingly, Plaintiffs seek certification of the Classes pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

A. The NCAA and Tennis Student-Athlete Compensation

The NCAA comprises more than 1,100 colleges, universities, and athletic conferences throughout the United States and governs college sports. FAC ¶

30, Admitted.² The NCAA's Constitution and Bylaws are adopted by the member institutions and enforced through the NCAA's established program. FAC ¶ 30, Admitted. The NCAA Manual includes the NCAA's Constitution, operating Bylaws, and over 500 pages of promulgated regulations governing all aspects of college sports. The NCAA's members are classed into three divisions, including over 350 Division I institutions operating the highest level and most lucrative college athletic programs in the country. FAC ¶ 31, Admitted.

The NCAA's amateurism rules have historically prohibited two categories of scholar-athlete compensation (1) compensation associated with the use of a Student-Athlete's name, image, and likeness ("NIL") rights, and (2) compensation associated with "pay-for-play," or member institutions directly paying Student-Athletes for their athletic services. FAC ¶¶ 44-46; NCAA Bylaw 12.1.2. At issue here are the NCAA's "Amateur Status" and various "Exceptions to Amateurism Rules," Bylaws 12.1.2 and 12.1.2.4, which govern Student-Athletes' acceptance of Prize Money for athletic performance in non-NCAA competitions. FAC ¶¶ 49-52, Admitted.

² Allegations in the FAC which have been in whole or in part acknowledged as true in Defendant NCAA's Answer to First Amended Complaint, Dkt. 64, are referred to herein as "Admitted."

While both prospective and current tennis Student-Athletes are permitted to enter non-NCAA competitions against or with professional athletes under NCAA Bylaws 12.2.3.2., they forfeit collegiate eligibility if they receive pay in any form, including Prize Money, for their performance or participation in non-NCAA competitions. NCAA Bylaw 12.1.2(a). The NCAA's primary exception to such prohibition is set forth in Bylaw 12.1.2.4.2:

12.1.2.4.2 Exception for Prize Money—Tennis.

12.1.2.4.2.1 Prior to Full-Time Collegiate Enrollment. In tennis, prior to full-time collegiate enrollment, an individual may accept up to \$10,000 per calendar year in prize money based on place finish or performance in athletics events. Such prize money may be provided only by the sponsor of an event in which the individual participates. Once the individual has accepted \$10,000 in prize money in a particular year, the individual may receive additional prize money on a per-event basis, provided such prize money does not exceed the individual's actual and necessary expenses for participation in the event. The calculation of actual and necessary expenses shall not include the expenses or fees of anyone other than the individual (e.g., coach's fees or expenses, family member's expenses).

12.1.2.4.2.2 After Initial Full-Time Collegiate Enrollment. In tennis, after full-time collegiate enrollment an individual may accept prize money based on place finish or performance in an athletics event. Such prize money may not exceed actual and necessary expenses and may be provided only by the sponsor of the event. The calculation of actual and necessary expenses shall not include the expenses or fees of anyone other than the individual (e.g., coach's fees or expenses, family member's expenses).

Id. Although the NCAA allows Student-Athletes to receive reimbursement of “actual and necessary” expenses incurred through their participation, the NCAA alone determines what constitutes “actual and necessary” and arbitrarily excludes many items such as expenses incurred more than two weeks before the beginning of a tournament and expenses for a parent traveling with a minor athlete to an out-of-town event. Brantmeier Decl. ¶¶ 26-28.

In recent years, the NCAA’s rules governing Student-Athlete compensation have come under fire. FAC ¶¶ 58, 67, Admitted. As a result of recent litigation, the NCAA’s amateurism rules prohibiting educational-related compensation, NIL related compensation, and certain other benefits beyond “cost of attendance” scholarships have been struck down or suspended. FAC ¶¶ 59-71, Admitted. Pertinent here, however, the NCAA’s rules related to the acceptance of Prize Money earned in non-NCAA competitions remain intact. *Id.* ¶ 72, Admitted. This “hypocrisy” is recognized widely, including by the leadership of the Intercollegiate Tennis Association (“ITA”), the governing body of varsity college tennis.³

³ “ITA Submits a Letter of Concern to Judge Claudia Wilken,” ITA Tennis (Jan. 29, 2025) <https://wearecollegetennis.com/2025/01/29/ita-submits-a-letter-of-concern-to-judge-claudia-wilken/> (“At the same time when it is reported that the pay of some football players is now three to four, or even six, million dollars

Going back decades, the highest and most prestigious levels of non-NCAA competition tennis have been open to college Student-Athletes, including, but not limited to, the Olympics, the U.S. Open Tennis Championships, Wimbledon, the Australian Open and the other tennis tournaments. *Id.* ¶¶ 53-54, Admitted. These competitions include substantial Prize Money for player compensation. For example, the 2024 U.S. Open offered \$75 million in total compensation to players, with prize money for reaching the first round or “main draw” reaching \$100,000.⁴ Those benefits, however, are all but foreclosed to prospective and current Student-Athletes. The NCAA’s arbitrary rules restrict the amount of Prize Money that Student-Athletes competing in Tennis may accept, causing anticompetitive harm to the markets for their labor and reducing their earning ability. Exhibit A, Expert Report of Andrew D. Schwarz in Support of Plaintiffs’ Motion for Class Certification (“Schwarz Rpt.”) ¶¶ 6, 47-51. These rules restrict and harm competition within

per year, tennis players have been told that they may not accept prize money for well-earned victories at the U.S. Open Tennis Championships, a premiere Grand Slam event where the best in the world compete. This is also the case at other professional tennis tournaments. The hypocrisy is maddening.”)(last accessed Jan. 29, 2025)

⁴ “2024 U.S. Open Prize Money: Largest Purse in Tennis History on Offer at this Year’s Event in New York.” ATP Tour.com (Aug. 7, 2024) <https://www.atptour.com/en/news/us-open-2024-prize-money> (last accessed Feb. 7, 2025).

Division 1 Tennis, pushing professional caliber players to withdraw from or forgo NCAA Division 1 Tennis competition entirely or forego earnings from Prize Money. Schwarz Rpt. ¶¶ 49-51

B. Plaintiffs' and Class Members' Injury from the NCAA's Restrictions

Plaintiff Brantmeier is a junior at the University of North Carolina at Chapel Hill (“UNC”) competing for its NCAA Division I women’s tennis team.⁵ Brantmeier Decl. ¶ 7. Brantmeier was a member of UNC’s 2023 NCAA Division I Women’s Tennis National Championship team, and, in February 2024, was ranked No. 2 in singles and No. 1 in doubles by the ITA. Brantmeier Decl. ¶¶ 8-9. Before college, Brantmeier experienced great success as a high school Student-Athlete, advancing to the third round of singles in the qualifying tournament at the 2021 U.S. Open and to the main draw in doubles. Brantmeier Decl. ¶¶ 10-12. As a result of her performance, Brantmeier was entitled to receive \$48,913 in Prize Money. Brantmeier Decl. ¶¶ 13-14. However, due to the NCAA’s Prize money restrictions, Brantmeier was forced

⁵ While Brantmeier suffered a torn meniscus in February of 2024 requiring her to miss the remainder of the 2024 season, she has since returned to NCAA competition on behalf of UNC. “Women’s Tennis Takes Down No. 1 Georgia” (Feb. 1, 2025), GoHeels.com, <https://goheels.com/news/2025/2/1/womens-tennis-takes-down-no-1-georgia-4-3> (last accessed Feb. 7, 2025).

to forfeit much of that money to maintain her collegiate eligibility. Brantmeier Decl. ¶ 18.

After Brantmeier enrolled at UNC in August 2022, the NCAA refused to certify her amateur status, challenging certain expenses she submitted related to her 2021 U.S. Open participation. Brantmeier Decl. ¶¶ 19-22. For example, the NCAA insisted that Brantmeier could apply only one half of her hotel expenses to offset her prize money because the then 16-year-old traveling athlete shared a room with her mother. Brantmeier Decl. ¶ 28. In January 2023, after requiring her to make a charitable contribution of \$5,100 related to the “challenged” expenses, the NCAA finally certified Brantmeier’s eligibility and cleared her to play at UNC. *Id.* ¶¶ 29-30.

Plaintiff Joint was an incoming freshman student for the Fall 2024 semester at the University of Texas at Austin. Joint Decl. ¶ 3. In high school, she was rated a five-star prospect and ranked the No. 3 recruit in the United States and No. 1 recruit in Michigan by the Tennis Recruiting Network. *Id.* ¶ 4. She competed in many national and international tennis tournaments that awarded Prize Money; however, to preserve her eligibility to play Division 1 Tennis, she was forced to forfeit thousands of dollars in Prize Money. *Id.* ¶¶ 9-12. For example, in 2024, she advanced to the third round of singles in the 2024 Australian Open Qualifying Tournament and was entitled to receive \$45,163

(USD), *id.* ¶ 15, but the NCAA's Prize Money Rules allowed her to accept only \$5,929. *Id.* ¶ 16. That same year, she advanced to the second round of qualifying competition at Wimbledon but was forced to forfeit \$19,370 in Prize Money to maintain her eligibility at the University of Texas. *Id.* In mid-November 2024, Joint notified Texas that she had decided withdraw from the women's tennis team. Ex. B, 3rd Suppl. Joint Decl. ¶ 3. On November 30, 2024, Texas notified Joint that her scholarship and eligibility were cancelled effective at the conclusion of the Fall 2024 semester. *Id.* ¶ 4. Since the beginning of 2025, she has continued to compete in non-NCAA competitions, including the 2025 Australian Open, and has earned and accepted over \$100,000 in Prize Money. *Id.* ¶¶ 7-8. Having already forfeited Prize Money earned in previous tournaments, she suffered money damages by the operation of the Prize Money Rules. She remains interested in playing NCAA Division I tennis in the future, *Id.* ¶ 8, but is ineligible to do so, absent the requested injunctive relief.

As a result of the NCAA's Prize Money Rules, Plaintiffs and all other similarly situated Division I Tennis players have been and will remain forced to forfeit Prize Money earned in non-NCAA tennis competition. Brantmeier Decl. ¶¶ 26-30; Joint Decl. ¶¶15-16; Suppl. Joint Decl. ¶¶3-4.

ARGUMENT

A. The Rule 23 Standard

For a class to be certified, plaintiffs “must affirmatively demonstrate . . . compliance” with Rule 23. *Sims v. BB&T Corp.*, 2017 WL 3730552, at *1 (M.D.N.C. Aug. 28, 2017) (Eagles, J.) (internal citations omitted). Courts in the Fourth Circuit have repeatedly held that “federal courts should ‘give Rule 23 a liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and . . . promote judicial efficiency.’” *Gunnells v. Healthplan Servs.*, 348 F.3d 417, 424 (4th Cir. 2003) (internal citation omitted). (quoting *In re A.H. Robins*, 880 F.2d 709, 740 (4th Cir. 1989) (internal citations omitted)), *see also McMillan v. Kansas City Life Ins. Co.*, 2025 WL 66192, at *7 (D. Md. Jan. 10, 2025).

Class certification decisions are left to the sound discretion of the Court. *See Thomas v. Louisiana-Pac. Corp.*, 246 F.R.D. 505, 507 (D.S.C. 2007). Because the Court has the discretion to revisit grants of class certification, any doubt regarding class certification should be resolved in favor of allowing the class action. *See, e.g., DeLoach v. Philip Morris Cos., Inc.*, 206 F.R.D. 551, 568 (M.D.N.C. 2002); *S.C. Nat. Bank v. Stone*, 139 F.R.D. 325 (D.S.C. 1991).

Rule 23 prescribes a two-part test for determining whether a proposed class action should be certified. First, a plaintiff must satisfy four threshold requirements: numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a). Second, the plaintiff must satisfy at least one of the three subsections of Fed. R. Civ. P. Rule 23(b). Here, Plaintiffs satisfy the requirements for a damages class under Rule 23(b)(3), and for an injunctive relief class under Rule 23(b)(2).

B. The Proposed Classes Satisfy the Requirements of Rule 23(a).

Plaintiffs bring this action on behalf of themselves and the following Proposed Classes.

an Injunctive Relief Class under Rule 23(b)(2) consisting of all persons who, at any time between March 19, 2020 and the date of judgment in this action,

- (i) competed in NCAA Division 1 Tennis, or
- (ii) were ineligible to compete in NCAA Division I Tennis due to the Prize Money Rules.

a Damages Class under Rule 23(b)(3) consisting of all persons who, at any time between March 19, 2020 and the date of judgment in this matter, have voluntarily forfeited Prize Money earned in a tennis tournament, and

- i) have competed in NCAA Division I Tennis, or
- ii) have submitted information to the NCAA Eligibility Center.

These definitions are modified from those in the First Amended Complaint, to improve clarity and assure that membership in the Classes is

set by objective criteria. The Damages Class is now defined to include individuals who voluntarily forfeited prize money and competed in NCAA Division 1 Tennis, but also individuals, including prospective Student-Athletes that have not yet enrolled in a Division 1 school but who submitted information to the NCAA Eligibility Center. These individuals are reasonably presumed to have forfeited prize money in order to maintain their NCAA eligibility, as the only reason to provide such information is to be able to compete in the NCAA,⁶ and Plaintiffs are aware of no reason to voluntarily forfeit Prize Money other than to maintain NCAA eligibility. Such refinements to class definitions following discovery are appropriate. *McMillan*, 2025 WL 66192, at *10 (“the Court disagrees that the . . . Plaintiff is bound by the class definition proposed in the amended complaint;” certifying class).

1. *Rule 23(a)(1) – Numerosity is Satisfied*

Numerosity is satisfied if the proposed class is so numerous that joinder of all members in a single action is impracticable. Fed. R. Civ. P. 23(a)(1). Here, numerosity is easily satisfied. The Damages Class comprises individuals who donated or declined prize money before it was issued in order to preserve their

⁶ See Defendant’s Opposition to Plaintiff’s Motion for Preliminary Injunction, Dkt. 33 at 7 (“To compete in NCAA competitions, student-athletes must be certified by the Eligibility Center, which collects and verifies information about prospective student athletes submitted by the student-athletes...”).

NCAA eligibility and those who later donated prize money to comply with NCAA investigational demands, and by a conservative includes at least 66 members. Schwarz Rpt. ¶¶8, 48. This number is likely to increase as additional tennis Student Athletes will be forced to forfeit Prize Money between the present and the date a final judgment is entered. *Id.* “A class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone.” *Ciarciello v. Bioventus Inc.*, 2024 WL 5155539, at *3 (M.D.N.C. Dec. 18, 2024) (Eagles J.) (citing *In re Zetia (Ezetimibe) Antitrust Litig.*, 7 F.4th 227, 234 (4th Cir. 2021)); see also *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass’n*, 375 F.2d 648, 653 (4th Cir. 1967) (18 class members suffices). NCAA Division 1 Tennis contains over 350 member schools and thousands of Tennis Student-Athletes, containing numerous additional Damages Class members, each capable of being identified and ascertained.⁷

The Injunctive Relief Class comprises a vast pool of present, past, and future Student-Athletes. As the NCAA admits, “there are several thousand student-athletes who are currently members of Tennis teams at more than 260

⁷ “Ascertainability” is an implicit “requirement that the members of a proposed class be ‘readily identifiable.’” *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). The Court must be able to “readily identify the class members in reference to objective criteria...without extensive and individualized fact-finding or mini-trials.” *Id.* (quotations omitted). Here, the class members are readily identifiable by the NCAA’s records.

Division I schools.” See Answer ¶ 155. Joinder of such individuals is entirely impractical, as the Rule 23(b)(2) class includes a vast pool of present and prospective young tennis players that is geographically dispersed. See *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 311 F.R.D. 532, 539 (N.D. Cal. 2015) (numerosity met for Rule 23(b)(2) class where the proposed classes comprise thousands of potential members). That the class members are not centrally located, but are geographically scattered, further demonstrates impracticality of joinder. *Coreas v. Bounds*, 2020 WL 5593338 at *11 (D. Md. Sept. 18, 2020).

2. Rule 23(a)(2) – Commonality is Satisfied

Commonality requires the existence of “questions of law or fact common to the class.” Fed R. Civ P. 23(a)(2) (emphasis added). As the Fourth Circuit emphasized, “[t]he threshold requirements of commonality and typicality are not high. Rule 23(a) requires only that resolution of the common questions affect all or a substantial number of the class members.” *Brown v. Nucor*, 576 F.3d 149, 153 (4th Cir. 2009). A single common issue suffices. *Cerrato v. Durham Pub. Schs. Bd. of Educ.*, 2017 WL 2983301, at *3 (M.D.N.C. March 17, 2017) (“[i]ndeed, a single common question is sufficient to satisfy the rule.”) (quoting *Haywood v. Barnes*, 109 F.R.D. 568, 577 (E.D.N.C 1986)); see also *In*

re College Athlete NIL Litig., 2023 WL 8372787, at *6 (N.D. Cal. Nov. 3, 2023) (same).

Here, common issues abound. Common questions for both Proposed Classes include whether the NCAA's Prize Money rules violate the Sherman Act. Schwarz Rpt. ¶¶ 11-51 (explaining how common evidence will demonstrate each element of a Sherman Act violation: the NCAA's monopoly/monopsony power, the existence for relevant markets in athletic labor for male and female tennis athletes; that the Prize Money Rules are restrictions on trade in these markets; that significant barriers to entry preclude a rival to the NCAA from arising; and that the NCAA's actions cause harm to competition). The existence of damages can also be calculated using common evidence although individual damages will vary. *Id.* For the Injunctive Relief Class, common questions include all of the liability questions above, and also whether an injunction enjoining enforcement of the Prize Money rules is an appropriate remedy to address the class members' irreparable harm. And for the Damages Class, common questions include the appropriate measure of damages to address the NCAA's past violations. *Id.* ¶¶ 56-70; see *In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013) (Koh, J.) (holding that commonality requirement was met because "Plaintiffs have demonstrated the existence of at least one common

question capable of generating a common answer (antitrust liability),” and reasoning that “[w]here an antitrust conspiracy has been alleged, courts have consistently held that ‘the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist.’” (citation omitted); *see also In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 311 F.R.D. at 539 (commonality requirement satisfied where common questions include the characteristics of the markets Plaintiffs identify in their complaints, whether NCAA rules have harmed competition in those markets, and whether the NCAA’s procompetitive justifications for its conduct are legitimate.) (cleaned up, citation omitted); *see also In re Sulfuric Acid Antitrust Litig.*, 2007 WL 898600, at *4 (N.D. Ill. Mar. 21, 2007) (“whether or not that conspiracy existed-i.e., whether or not Defendants’ [sic] practiced ‘standardized conduct’ toward all parties-is one that is common to all Defendants.”); *Moehrl v. Nat’l Assoc. of Realtors*, 2023 WL 2683199, at *11 (N.D. Ill Mar. 29, 2023). Commonality is thus satisfied.

3. *Rule 23(a)(3) – Typicality is Satisfied*

Typicality under Rule 23(a)(3) “determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct.” *Sprague v. GMC*, 133 F.3d 388, 399 (6th Cir. 1998)

(en banc) (cited with approval in *Broussard v. Meineke Disc. Muffler Shops*, 155 F.3d 331, 344 (4th Cir. 1998)). “In the antitrust context, generally, typicality will be established by plaintiffs and all class members alleging the same antitrust violation by defendants.” *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 311 F.R.D. at 539. (cleaned up, citations omitted). Not all class members’ claims need be identical. *Sprague*, 133 F.3d at 399; *Woodard v. Online Info. Servs.*, 191 F.R.D. 502, 505 (E.D.N.C. 2000) (citing *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 636 (D.S.C. 1992), *aff’d*, 6 F.3d 177 (4th Cir. 1993)). Instead, typicality is satisfied if the class representative’s claims “arise from the same practices, and are based on the same theory of law, as the class claims.” *Woodard*, 191 F.R.D. at 505; *see also Rodger v. Elec. Data Sys. Corp.*, 160 F.R.D. 532, 537 (E.D.N.C. 1995) (factual variations do not defeat certification when the claims are based on the same legal theory).

Here, Plaintiffs’ claims are typical of those of *all* class members -- *i.e.*, the NCAA’s Prize Money Rules violate antitrust law, thus damaging all class members. Both Brantmeier and Joint, were compelled to forgo or repay Prize Money, are typical of those of the proposed Damages Class. Likewise, the Plaintiffs’ claims are typical of the proposed Injunctive Relief Class, since Brantmeier remains restricted by the prize money rules while she continues to

compete at UNC, and Joint's future eligibility to compete in Division 1 Tennis is compromised by her acceptance of Prize Money. Competitors in the woman's tennis labor market can represent competitors in the men's tennis labor market where, as here, the challenged rules and the methods of calculating damages are the same for both groups, and the evidence of the NCAA's market power in both markets is essentially the same. *In re College Athlete NIL Litig.*, 2023 WL 8372787 at *4-5 (N.D. Cal. Nov. 3, 2023): (participant in the men's swimming labor market certified to represent competitors in labor markets for all NCAA sports other than basketball and football in challenge to NIL restrictions). The typicality requirement is satisfied.

4. *Rule 23(a)(4) – Adequacy of Representation is Satisfied*

Adequacy under Rule 23(a)(4) has two requirements. First, the Plaintiffs must be represented by adequate counsel. *Woodard*, 191 F.R.D. at 506 (citing *Cent. Wesleyan*, 6 F.3d at 183). "The adequacy of plaintiffs' counsel, like that of the individual plaintiffs, is presumed in the absence of specific proof to the contrary." *Stone*, 139 F.R.D. at 330-331. Here, Plaintiffs' counsel are all skilled attorneys with extensive experience in complex antitrust litigation, and class

actions, and well suited to prosecute this action. *See* Exs. 1 and 2 to the Stock Decl. attached as Ex. C.

Second, the named plaintiff must not have interests antagonistic to those of the class. *Woodard*, 191 F.R.D. at 506 (*citing Barnett v. W.T. Grant Co.*, 518 F.2d 543, 546 (4th Cir. 1975)). Neither Brantmeier nor Joint have interests that are antagonistic to those of the Proposed Class. Each seeks relief from the NCAA's unlawful Prize Money rules, which harm all members of the classes. Brantmeier Decl. ¶ 40. Each experienced the harm wrought by the NCAA's rules, including the forfeiture of significant Prize Money. Brantmeier and Joint are highly motivated to pursue termination of the NCAA's challenged conduct. *See* Brantmeier Decl. ¶¶ 40-42; 3rd Suppl. Joint Decl. ¶¶ 8-10. Moreover, they have already demonstrated commitment to the Proposed Classes by assisting counsel in the litigation, participating in discovery, meeting with the undersigned attorneys, and providing declarations. Brantmeier Decl. ¶ 42; 3rd Suppl. Joint Decl. ¶ 10. Thus, the adequacy requirement has been satisfied.

C. The Proposed Injunctive Relief Class Satisfies the Requirements of Rule 23(b)(2).

Besides satisfying the requirements of Rule 23(a), the Proposed Class satisfies Rule 23(b)(2). Class certification is proper under Rule 23(b)(2) where, as here “the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or

corresponding declaratory relief with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2); *see McKnight v. Circuit City Stores, Inc.*, 1996 WL 454994, at *6 (E.D. Va. Apr. 30, 1996) (granting class certification under Rule 23(b)(2) where employer’s practices harmed employees on a common basis). Here, the NCAA’s challenged conduct is uniform as to all Division 1 Tennis athletes, and its codified rules limit Student-Athletes from earning Prize Money.⁸ These rules demonstrate that the NCAA has and will continue to “[act] on grounds generally applicable to the class.” It is common in the antitrust context to certify a 23(b)(2) class to prevent future anticompetitive acts by a defendant, which cannot be addressed with damages alone. *See e.g. In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 597 (N.D. Cal. 2010); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 264 F.R.D. 603, 611 (N.D. Cal. 2009) (same); *In re Vitamin C Antitrust Litig.*, 279 F.R.D. 90, 112-13 (E.D.N.Y. 2012).

As such, injunctive or declaratory relief is appropriate for the class as a whole, Fed. R. Civ. P. 23(b)(2). *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d

⁸ As the NCAA’s restrictive rules regarding Prize Money are clear on their face, there is no genuine inquiry necessary to determine whether the NCAA’s actions are generally applicable among the class. Compared to a case where a defendant is acting in an off-the-record manner or without a firm policy in writing, this evidence is plain.

311, 330 (4th Cir. 2006) (“The underlying premise of the [Rule 23(b)(2)] class [is] that its members suffer from a common injury properly addressed by class-wide relief...”) (citing *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 413 (5th Cir. 1998)). The Plaintiffs’ claims—and the injunctive relief sought—strongly favor class certification under Rule 23(b)(2).

D. The Proposed Damages Class Satisfies the Requirements of Rule 23(b)(3)

Plaintiffs also satisfy Rule 23(b)(3) because “questions of law or fact common to class members predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3); *Jordan v. Preferred Fin. Corp., LLC*, 2022 WL 17833053, at *5 (M.D.N.C. Dec. 21, 2022) (Eagles, J.).

1. Class-wide questions of law and fact predominate

As in previous litigations regarding the NCAA’s anticompetitive conduct, “an assessment of whether an antitrust violation under Section 1 exists naturally lends itself to common proof.” *College Athlete NIL Litig.* 2023 WL 8372787, at *8. As such, the predominance requirement is “readily met” in antitrust cases. *In re Allstate Corp. Sec. Litig.*, 966 F.3d 595, 603 (7th Cir. 2020). The challenged conduct here concerns a set of explicit collusive rules that Defendant NCAA and its co-conspirators have agreed to uniformly apply

to all Division I Tennis players, following the same or similar procedures to determine the amount of Prize Money that must be forfeited, or that would result in ineligibility for each prospective or then-current Student-Athlete. *See Wallace v. Greystar Real Estate Partners, LLC*, 2022 WL 561411, at *4 (M.D.N.C. Feb. 24, 2022) (certifying 23(b)(3) class where the “same or similar procedure applied to each Class member”). The same evidence will therefore permit class members to demonstrate liability. *Id.*

Class-wide proof can be used to show that the challenged anticompetitive NCAA rules have damaged each member of the proposed Damages class. *Preferred Fin. Corp., LLC*, 2022 WL 17833053, at *5. The amount of Prize money earned by each athlete competing in non-NCAA tennis competition is readily available across several publicly available websites, which provide the dates of each event in which that athlete participated, and the amount of prize money won. The NCAA has collected information on the amount of prize money received by pre-college scholar-athletes, which has been produced in discovery. The difference between the amount each earned and the amount each received represents damages. Schwarz Rpt. ¶¶ 56-63. Using this method, Plaintiffs’ expert Andrew D. Schwarz estimates that among 66 members of the Damages Class, total damages are approximately \$1.5 million. *Id.* ¶¶62, 68. While Student-Athletes enrolled in college report their income from outside

tournaments only to their schools, not to the NCAA, it is possible to estimate their damages. *Id.* ¶¶ 62-64. Information for precise calculation of damages can easily be collected through a simple claim form submitted by each Class member. *Id.* ¶ 68.

While there is variation in the amount of damages for each athlete, all forfeiture or refusal to accept such prize money is attributable to the same rules. Likewise, there is no need at the class certification stage for Plaintiffs to calculate class-wide damages, or even show that “damages must be susceptible of measurement across the entire class for the purposes of Rule 23(b)(3) purposes. *In re Zetia a class (Ezetimibe) Antitrust Litig.*, 7 F.4th at 237 (citing cases). And in any case Plaintiffs need not show that a methodology that will work with certainty at this time. []. Rather -and certainly prior to the completion of merits discovery - Plaintiffs need only present a likely method for determining class damages, not a fully developed methodology. *DeLoach v. Philip Morris Companies, Inc.*, 206 F.R.D. 551, 565 (M.D.N.C. 2002) (certifying 23(b)(3) class despite need for completion of merits discovery before expert’s damages benchmark methodology could be developed). The question of individualized damages for the forgone prize money of each Student-Athlete is one that can be made “relatively easy by use of claim forms and data” *Id.* at 566; see Schwarz Rpt. ¶ 68.

2. *A Class Action is Superior to other methods for the adjudication of the Controversy.*

A class action is no doubt a superior method to resolve the claims of the Damages Class. *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006) (quoting Fed. R. Civ. P. 23(b)(3)). Class treatment avoids the necessity of numerous tennis athletes litigating separate lawsuits in courts throughout the country – all asserting the same claims, relying on the same discovery, and proffering the same damage models. Such duplication of effort would increase burdens on all parties, create uncertainty for all parties, and waste judicial resources. Here, class treatment allows finality and closure on the fundamental issue of whether the NCAA’s rules violate the law. *See Robinson v. Nationstar, Inc.*; 2019 WL 4261696, at *18 (D. Md. Sept. 9, 2019) (citing *Stillmock v. Weis Mkts., Inc.*, 385 F.App’x 267, 275 (4th Cir. 2010)).

CONCLUSION

For the foregoing reasons, the Court should certify the Proposed Classes, appoint Plaintiffs as class representatives, and appoint Plaintiffs’ counsel as class counsel. Pursuant to LR 7.3(c)(1), Plaintiffs also request oral argument.

This the 7th day of February, 2025.

MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC

By: /s/ Arthur M. Stock
ARTHUR STOCK
North Carolina State Bar No. 17613
DANIEL K. BRYSON
North Carolina State Bar No. 15781
LUCY N. INMAN
North Carolina State Bar No. 17462
900 W. Morgan Street
Raleigh, North Carolina 27603
(919) 600-5000
dbryson@milberg.com
linman@milberg.com
astock@milberg.com

PEGGY J. WEDGWORTH
New York State Bar No. 2126159
405 East 50th Street
New York, NY 10022
(212) 594-5300
pwedgworth@milberg.com

MILLER MONROE & PLYLER PLLC

JASON A. MILLER
North Carolina State Bar No. 39923
1520 Glenwood Avenue
Raleigh, North Carolina 27608
(919) 809-7346
jmiller@milleronroe.com

JOEL LULLA, *Of Counsel*
New York State Bar No. 1865823
1520 Glenwood Avenue
Raleigh, North Carolina 27608
(919) 809-7346

joel_lulla@yahoo.com

*Counsel for Plaintiff and the
Proposed Class*

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2025 the foregoing was electronically filed with the Clerk of the U.S. District Court, Middle District of North Carolina, using the CM/ECF system, which will serve and send notification of such filing to all parties:

Calanthe Arat
Rakesh N. Kilaru
Tamarra D. Matthews Johnson
Matthew Skanchy
WILKINSON STEKLOFF
2001 M Street NW, 10th Floor
Washington, DC 20036
carat@wilkinsonstekloff.com
rkilaru@wilkinsonstekloff.com
tmattthewsjohnson@wilkinsonstekloff.com
mskanchy@wilkinsonstekloff.com

Mattie Bowden
ArentFox Schiff LLP
1717 K Street, NW
Washington, DC 20006
mattie.bowden@afslaw.com

Alan M. Ruley
Bell, Davis & Pitt
PO Box 21029
Winston-Salem NC 27120
aruley@belldavispitt.com

By: /s/ Arthur M. Stock
Arthur M. Stock

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Arthur M. Stock