

UNITED STATES DISTRICT COURT

for the

Northern District of California

IN RE COLLEGE ATHLETE NIL LITIGATION

Plaintiff

v.

Defendant

Civil Action No. 4:20-cv-03919 CW

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: UNIVERSITY OF NORTH TEXAS, c/o Alan Stucky, Vice Chancellor and General Counsel Office of the General Counsel, 1901 Main Street, 7th Floor, Dallas, TX 75201

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attachments A-C

Table with 2 columns: Place (Veritext Court Reporting Service Center, 600 North Pearl St., Ste. 2230, Dallas, TX 75201) and Date and Time (10/12/2021 5:00 pm)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/21/2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk OR /s/ Benjamin J. Siegel Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs, who issues or requests this subpoena, are:

Benjamin J. Siegel, Hagens Berman Sobol Shapiro LLP, 715 Hearst Ave., Ste. 202, Berkeley, CA 94710; 510-725-3000

Notice to the person who issues or requests this subpoena: If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

# **ATTACHMENT A**

## ATTACHMENT A

### SCHEDULE OF DOCUMENTS TO BE PRODUCED

#### DEFINITIONS

1. The following rules of construction shall apply to all document requests: (a) the terms “All” and “Each” shall be construed as any, each or all; (b) “And” and “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside its scope; (c) “Including” shall be construed to mean “without limitation”; and (d) the use of the singular form of any word includes the plural and vice versa.

2. “Agreement” means any contract, arrangement or understanding, formal or informal, oral or written, between two or more persons, together with all modifications or amendments thereto.

3. “Communication” is used in its broadest sense to encompass any disclosure, transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether orally, in writing, face-to-face or by telephone, facsimile, videoconference, e-mail, text message or emoji, iMessage, WhatsApp, instant message application, Slack correspondence, and/or Microsoft Teams or Zoom comment.

4. “Data” means raw, produced, or computed numbers, facts, statistics, calculations, information, output, quantities, and/or figures that could be used as a basis for calculations, analysis, planning, reasoning, or discussion.

5. “Document” shall mean and refer to any and all documents, electronically stored information (“ESI”), memos, PowerPoints, Excel spreadsheets, databases, notes, emails, writings, drawings, graphs, charts, photographs, videos, sound recordings, images, and other data

or data compilations stored in any medium, including handwritten, typed, printed, pictorial, or graphic matter, however produced or reproduced, of every kind and description, and any other tangible thing, including without limitation any “writings,” “originals,” and “duplicates,” as defined in Fed. R. Civ. P. 34 and Fed. R. Evid. 1001. “Document” shall also include both final and draft versions of the same item.

6. “NCAA” means the National Collegiate Athletic Association, its subsidiaries, departments, divisions, and joint ventures/affiliates, including, without limitation, any organization or entity which it manages or controls, together with all present and former directors, officers, employees, agents, representatives or any persons acting or purporting to act on behalf of the National Collegiate Athletic Association.

7. The term “NIL” means the names, images, pictures, appearances, likenesses, or athletic reputations of all Student-Athletes participating in any of the Sports at Issue.

8. The term “NIL Activity” means any undertaking whereby a Student-Athlete receives compensation of any form, including both monetary and in-kind, for the licensing, sale, use, display or monetization of his or her NIL, including, but not limited to, signing autographs, selling apparel, endorsing or appearing on or in any product, or appearing (including via his or her likeness or voice) in any form of commercial or advertisement, whether on television, radio, print media, the internet, Social Media, or the like.

9. “Relating To” means, without limitation, analyzing, commenting on, comprising, concerning, constituting, dealing with, describing, discussing, evaluating, evidencing, exhibiting, exploring, identifying, mentioning, naming, negating, pertaining to, prepared for, regarding, relating or referring to, reflecting, showing, supporting, or otherwise involving, in whole or in part.

10. “Social Media” means any account creation or activity on any social media account or platform, including but not limited to, Facebook, Instagram, Twitter, YouTube, Snapchat, TikTok, Reddit, Pinterest, Twitch, Tumblr, and LinkedIn.

11. The “Sports at Issue” means all NCAA Division I men’s and women’s athletic programs administered by You.

12. “Student-Athlete” means the definition identified in the 2020-2021 NCAA Division I Manual, Bylaw 12.02.14 “Student-Athlete” for the Sports at Issue.

13. The terms “You” and “Your” mean the responding party, its predecessors, successors, subsidiaries, departments, divisions, joint ventures and/or affiliates, including, without limitation, any organization or entity which the responding party manages or controls, together with all present and former directors, officers, employees, agents, representatives, consultants or any persons acting or purporting to act on behalf of the responding party.

14. Unless otherwise noted, the “Relevant Time Period” means the period from June 1, 2016 through the present.

### **INSTRUCTIONS**

1. This subpoena and any and all Documents and Communications produced in response thereto are governed by a court-approved “Stipulation and Protective Order,” dated December 22, 2020. A copy of the Stipulation and Protective Order, along with relevant exhibits, are attached herein (the “Protective Order”). The Protective Order ensures that information meeting the standards of confidential or personally private information shall be maintained as confidential by the requesting parties and all receiving parties, and shall not be disclosed to anyone outside of the litigation absent court order. Documents responsive to this subpoena that contain such confidential or personally private information may be marked

“Confidential” or “Highly Confidential / Attorney Only Information,” as appropriate, but shall otherwise be produced in complete, unredacted form.

2. These requests call for the production of all responsive Documents and Communications that are within the possession, custody, or control of You or in the possession, custody, or control of Your present or former employees, representatives, agents, and persons consulted or otherwise available to You, Including without limitation Documents and Communications in the possession, custody, or control (Including in their work emails, computers, or mobile devices) of relevant employees such as coaches, the athletic department and its employees, the financial aid office and its employees, the office of the president and its employees, and other locations likely to contain responsive Documents and Communications.

3. If any responsive Document or Communication was but no longer is in Your possession, custody, or control, state the reason it is no longer in Your possession, custody, or control (*i.e.*, lost, missing, destroyed, transferred, disposed of) and explain the circumstances surrounding the disposition of the Document or Communication and the date it occurred.

4. If any Document or Communication covered by these requests is withheld by reason of a claim of attorney-client privilege, attorney work product protection, or any other privilege or protection, please furnish a log providing the following information with respect to each such withheld Document or Communication: date, author, recipients, general subject matter sufficient to make a prima facie determination whether the asserted privilege has been properly invoked, and the legal basis upon which it has been withheld.

5. If any Document or Communication is redacted on the basis of privacy, please identify such in the redaction or by furnishing a log providing the following information with



respect to each redaction: date, author, recipients, and type of information withheld on the basis of privacy.

6. With respect to any Document or Communication maintained or stored electronically, please harvest it in a manner that maintains the integrity and readability of all data.

7. Please produce All Documents and Communications maintained or stored electronically in native, electronic format with All relevant metadata intact. Encrypted or password-protected Documents and Communications should be produced in a form permitting them to be reviewed.

8. To the extent responsive Documents or Communications reside on databases and such other systems and files, You are requested to produce the relevant database in useable form and/or permit access for inspection, review and extraction of responsive information.

9. To the extent You use or compile responsive Data in a specific computer program, Including but not limited to Compliance Assistant, You are requested to produce the Data in a machine readable format.

10. You are requested to immediately meet and confer with plaintiffs' counsel regarding the manner in which You shall produce Documents stored electronically in order for the parties to try and reach agreement in this regard and avoid any unnecessary expense. The court has approved a "Stipulated Order Regarding Discovery of Electronically Stored Information," dated December 14, 2020 ("ESI Order"). A copy of the ESI Order is attached herein and should be reviewed prior to meeting and conferring.

11. These requests shall be deemed continuing so as to require further and supplemental production in accordance with Federal Rule of Civil Procedure 26(e).

12. These requests seek all responsive Documents created or generated during the Relevant Time Period, as well as responsive Documents created or generated outside the Relevant Time Period but which contain information concerning the Relevant Time Period.

## **DOCUMENT REQUESTS**

### **Request No. 1:**

All “squad list forms” and “supplementary forms” as defined in the 2020-2021 NCAA Division I Manual, Bylaw 15.5.11.2, prepared by You for the Sports at Issue, Including information identifying the sport and year denoted by the “squad list,” and each Student-Athlete in the Sports at Issue at Your institution’s name, sport, and year in school (e.g., Sophomore).

For avoidance of doubt, this Request does not include any player rosters or squad list forms for any club or intramural sport teams, or for any varsity sports not regulated by the NCAA.

### **Request No. 2:**

Documents and Data sufficient to show: every Student-Athlete in the Sports at Issue at Your institution who received any financial aid at any point during their time as a Student-Athlete at Your institution; any previous redshirt year by each such Student-Athlete; the years covered by such financial aid; the precise dollar amount of the financial aid, by source(s) (*i.e.*, athletic, institutional (*e.g.*, academic), third-party (*e.g.*, National Merit Scholarship), or a combination thereof), received by each such Student-Athlete for each year financial aid was received; each Student-Athlete’s maximum allowable financial aid for each year financial aid was received; what percentage of each such Student-Athlete’s maximum allowable financial aid was disbursed to the Student-Athlete each year in athletic financial aid; what percentage of each such Student-Athlete’s maximum allowable financial aid was disbursed to the Student-Athlete each year in total financial aid (both athletic and non-athletic); and, to the extent You maintain such distinctions, whether, for each year of the financial aid, the Student Athlete was/is classified by You as in-state, in-region, or out-of-state for tuition purposes. If data comes from a database where specific disbursements are assigned a code related to the type of funding (*e.g.*, athletic aid, Pell Grant, etc.), please provide a legend identifying the codes by type of aid.

To the extent Your institution uses Compliance Assistant, You may be able to satisfy this Request by providing authorization for the NCAA to release all relevant Compliance Assistant Data to Plaintiffs.

### **Request No. 3:**

All Documents, Communications and Data Relating To the Social Media activity of Student-Athletes at Your institution, Including Documents sufficient to show Student-Athletes’

name, social media handles and accounts, number of followers, activity/posts, paid activity/posts, impressions, engagement, demographics, platform, date or time, and payments received for Social Media activity. The Relevant Time Period for this Request is July 1, 2021 to the present.

**Request No. 4:**

All Documents, Communications and Data Relating To any Agreements that would, will or do provide compensation to any Student-Athlete at Your institution for NIL Activity, Including the identities of the contracting parties, the length of the Agreement, the amount of money or other compensation received or receivable by the Student-Athlete, and the type of NIL Activity done in exchange for the compensation (e.g., television commercial, autograph signing, Social Media endorsement). The Relevant Time Period for this Request is July 1, 2021 to the present.

**Request No. 5:**

All Documents, Communications and Data Relating To any compensation, either monetary or in-kind, provided by You to any Student-Athlete for NIL Activity, Including through any individual or group NIL licensing Agreements. The Relevant Time Period for this Request is July 1, 2021 to the present.

**Request No. 6:**

All Documents and Communications Relating To any rules, bylaws, requirements, regulations, or policies You maintain, or to which You or any Student-Athlete participating in any of the Sports at Issue at Your institution are subject to, Relating To Student-Athletes' NIL Activity or non-Student-Athletes' NIL Activity.

**Request No. 7:**

Documents sufficient to show any assignment, exchange, release or Agreement entered into by any Student-Athlete in any Sports at Issue at Your institution with You, the NCAA, or any athletics conference that authorizes the licensing, sale, use, display or monetization of the Student-Athlete's NIL by You, the NCAA, or any athletics conference.

**Request No. 8:**

All Documents, Communications and Data Relating To any media, sponsorship, licensing, or other commercial agreement entered into by You Relating to the Sports at Issue, Including all apparel and equipment contracts, sponsorship contracts, multimedia rights contracts, and contracts licensing the broadcast, rebroadcast, transmission, or retransmission of any athletic contest across any medium (Including television, radio, internet broadcasts, or any other form of electronic dissemination).

**Request No. 9:**

Documents sufficient to show the ratio of financial assistance between male and female Student-Athletes at Your institution.

**Request No. 10:**

All Documents and Communications Relating To feedback, opinions, responses, reactions, or commentary You have received from Your sponsors, broadcast partners, donors, boosters, fans or other third parties Relating To the impact of allowing Student-Athletes to earn compensation for their NILs or participate in NIL Activity on viewership and attendance of, monetary donations to and/or sponsorships for the Sports at Issue at Your institution.

**Request No. 11:**

All Documents and Communications Relating To any educational initiatives or other support, Including branding, marketing and financial literacy programs, that You offer to Student-Athletes at Your institution to help them maximize, secure, negotiate or otherwise manage their opportunities to engage in NIL Activity.

**Request No. 12:**

Any study, survey, report, analysis, examination, estimation, assessment, evaluation, forecast and/or projection Relating To compensation that Student-Athletes at Your institution have received since July 1, 2021, or may receive in the future, from NIL Activity.