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PRO HAC VICE APPLICATIONS
11 *FORTHCOMING*

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HOUSTON CHRISTIAN UNIVERSITY

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

18 GRANT HOUSE, et al.,
19 *Plaintiffs,*
20 v.
21 NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, et al.,
22 *Defendants.*

CASE NO.: 4:20-CV-03919-CW

**HOUSTON CHRISTIAN UNIVERSITY'S
NOTICE OF MOTION AND MOTION TO
INTERVENE**

Date: TBD
Time: TBD
Dept: TBD
Judge: Hon. Claudia Wilken

1 **NOTICE OF MOTION AND MOTION**

2 **TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that on [_____, at ____:____.m. *Court to insert*
4 *date/time if it deems a hearing is necessary on this Motion*], before the Honorable Claudia
5 Wilken, [Remotely, or in Courtroom ___, 1301 Clay Street, Oakland, CA 94612], Intervenor
6 Houston Christian University (“HCU”) will and hereby does move the Court for an order
7 intervening in the above-captioned action.

8 HCU’s Motion to Intervene (“Motion”) is brought on the grounds that it must intervene,
9 whether such intervention is mandatory or permissive, in this action to protect its rights and
10 interest relating to the property or transaction that is the subject of the action because the existing
11 parties in this action do not adequately represent HCU’s interest – despite their statements to the
12 contrary. Fed. R. Civ. P. 24(a) and (b).

13 This Motion is based on this Notice of Motion and Motion, the Memorandum of Points
14 and Authorities below, all pleadings, records and papers on file in this action, and upon such
15 further oral and documentary evidence as may be presented at the hearing on this Motion.

16 **REQUESTED RELIEF**

17 HCU respectfully requests that the Court allow it to intervene in the above-captioned
18 action so that it can represent its interests in the action.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 Intervenor, Houston Christian University (“HCU”), pursuant to Rule 24(a)(2), Fed. R. Civ.
21 Proc. (and in the alternative, Fed. R. Civ. P. 24(b)(1)), moves to intervene in this action as a matter
22 of right to protect its rights and interests relating to the property or transaction that is the subject of
23 the action. HCU is so situated that disposing of the action may as a practical matter impair or
24 impede the movant’s ability to protect its interest. Existing parties do not adequately represent
25 HCU’s interest. Houston Christian University’s Complaint in Intervention, “a pleading that sets
26 out the claim ... for which intervention is sought,” Rule 24(c), Fed. R. Civ. Proc., is attached hereto
27 as **Exhibit 1**.

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1 **I. BACKGROUND AND PROCEDURAL HISTORY**

2 On June 21, 2021, Plaintiffs filed their Consolidated Amended Complaint against
 3 Defendants, National Collegiate Athletic Association (“NCAA”), PAC-12 Conference (“PAC-
 4 12”), Big Ten Conference (“Big Ten”), Big Twelve Conference (“Big 12”), and Atlantic Coast
 5 Conference (“ACC”). ECF No. 164. On or about May 30, 2024, Plaintiffs and Defendants filed a
 6 document entitled “Joint Stipulation and [Proposed] Order Staying Action Pending Settlement
 7 Approval,” in which they announced that they “have agreed to the principal terms on which the
 8 Parties will settle this litigation.” ECF No. 420, p. 2, ll. 8-11. The parties claim that “the terms of
 9 the settlement were jointly agreed to after arms-length negotiations.” *Id.*, p. 2, l. 12. In response,
 10 the Court signed the proposed order. ECF. No 421. Pursuant to the Order, the case is currently
 11 stayed pending the filing of a long form settlement agreement and a motion for preliminary
 12 approval of the settlement. *Id.*

13 **II. LEGAL ARGUMENT**

14 **A. Federal Rule of Civil Procedure 24**

15 Pursuant to Fed. R. Civ. Proc. 24(a), a movant has the right to intervene in an action when
 16 it “claims an interest relating to the property or transaction that is the subject of the action, and is
 17 so situated that disposing of the action may as a practical matter impair or impede the movant’s
 18 ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ.
 19 Proc. 24(a)(2).

20 Intervention under Rule 24(a)(2) is appropriate upon satisfaction of a four-factor test: (1)
 21 the applicant must assert a “significantly protectable” interest relating to the property or transaction
 22 that is the subject of the action; (2) the applicant’s interest must be represented inadequately by the
 23 parties to the action; (3) the applicant must be situated such that disposition of the action may, as a
 24 practical matter, impair or impede its ability to protect that interest; and (4) the applicant’s motion
 25 must be timely. Fed. R. Civ. P. 24(a); *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)
 26 (citing *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1061 (9th Cir. 1997)).

27 A movant has a “significantly protectable” interest if that asserted interest is protected under
 28 some law and is related to the plaintiff’s claims. *California ex rel. Lockyer v. United States*, 450

1 F.3d 436, 441 (9th Cir. 2006) (citing Donnelly, 159 F.3d at 409). When evaluating a proposed
2 intervenor’s alleged interest, the Ninth Circuit has made clear that Rule 24(a)(2) does not require a
3 specific legal or equitable interest. *Fresno Cty. v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980). Rather,
4 “a party has a sufficient interest for intervention purposes if it will suffer a practical impairment of
5 its interests as a result of the pending litigation.” *Lockyer*, 450 F.3d at 441.

6 In addition, Fed. R. Civ. P. 24(b) allows a movant permissive intervention upon a timely
7 motion, if the movant is given a conditional right to intervene by a federal statute, or has a claim or
8 defense that shares with the main action a common question of law or fact. Fed. R. Civ. Proc.
9 24(b)(1).

10 As this Motion shows, HCU meets all of the criteria for a right of intervention under Fed.
11 R. Civ. P. 24(a). In the alternative, HCU also meets all of the criteria for permissive intervention
12 under Fed. R. Civ. P. 24(b)(1). This Motion was timely made. The proposed settlement will
13 adversely affect HCU. None of the parties, particularly the Defendants, has consulted with - much
14 less taken any step to protect - HCU’s interests. Neither HCU nor its conference were parties to this
15 litigation, had a seat at the negotiating table, or had any input into any resolution of this matter,
16 including the proposed settlement.

17 **B. Houston Christian University, its Diverse Student Body, and its Mission**

18 Founded in 1960, HCU is a Christian college of the highest order and is located in Houston,
19 Texas, one of the largest, most vibrant, and most diverse cities in the United States. The school
20 stresses quality of life as well as quality of learning. It offers an intimate college environment in
21 the heart of America’s fourth-largest city. According to its mission statement, HCU “provide[s] a
22 learning experience that instills in students a passion for academic, spiritual, and professional
23 excellence[.]” It has one of the most diverse student bodies in the country, with an ethnic
24 composition similar to that of Houston itself. It has 2,300 undergraduate students, 95% of whom
25 receive financial aid.

26 **C. The Proposed Settlement Adversely Affects HCU**

27 The proposed settlement adversely affects HCU and other similarly situated institutions of
28 higher education in numerous ways. Moreover, although HCU has 17 NCAA Division 1 sports

1 teams and is a member of the Southland Conference, none of the Defendants is adequately
 2 representing HCU's interests, much less the interests of those whom HCU serves. To the contrary,
 3 as they allege in ECF No. 420, the Defendants have presented the proposed settlement to HCU and
 4 other institutions as a fait accompli, without any regard to the adverse impact to these institutions.

5 **a. The Proposed Settlement Will Divert Funds from Academics to Athletics**
 6 **and thereby Institutionalize a Breach of Fiduciary Duty of Colleges and**
 7 **their Trustees**

8 The proposed settlement will cause HCU and other similarly situated institutions and their
 9 officers and trustees to be in violation of their fiduciary duties. This is no small matter, for a
 10 fiduciary duty is the highest duty recognized by law.

11 HCU, like most if not all institutions of higher education, has academics – the education of
 12 students and the conduct of research – as its core mission. The proposed settlement will cause the
 13 diversion of funds away from the basic academic mission of HCU and other similarly situated
 14 institutions at the expense of the core educational functions of educating students and conducting
 15 research. Even now, without the proposed settlement, NCAA member institutions annually lose
 16 untold millions of dollars by participating in Division I sports. Only a select few ever generate
 17 enough revenue from athletics to cover their expenses.

18 The proposed settlement institutionalizes the diversion of money that would otherwise inure
 19 to the member institutions for the core mission of education and research, by requiring them to pay
 20 damages for athletes' name, image, and likeness and establishing a continuing formula for doing
 21 so on a go-forward basis. Moreover, by formally institutionalizing the schools' involvement in
 22 name, image, and likeness fundraising, the proposed settlement mandates that institutions divert
 23 development efforts away from core academic missions and reallocate funds to athletics programs
 24 already deeply in debt.

25 **b. The Proposed Settlement Will Divert Higher Education Dollars from**
 26 **Marginalized and Underserved Populations of Students**

27 This is why the proposed settlement will have such a devastating effect on HCU. The
 28 proposed settlement will have numerous pernicious effects. It will cause the diversion of funds

1 from the core mission of research and education, and thereby raise costs for students and reduce
2 institutions' investment in higher education. That will reduce educational accessibility and lower
3 educational opportunity, particularly for marginalized and underserved populations.

4 This is especially egregious, coming as it does at a time when the cost of higher education
5 has risen dramatically. Students, especially from underserved and marginalized populations,
6 struggle to pay for educational expenses. They often require a longer number of years to complete
7 their degree requirements and incur more and more debt. At a school like HCU, with its
8 exceptionally diverse student population, virtually all of whom receive financial aid, the blow will
9 be crushing. Because of the diversion of funds from academics to athletics, many of the most
10 vulnerable, most underserved students will be forced to forego their dream of obtaining a higher
11 education.

12 In sum, the proposed settlement will privilege the pursuit of big-money college sports over
13 the needs of ordinary students whom institutions like HCU serve. It will conflict directly with the
14 stated purpose of virtually every institution of higher education in America, which is to educate
15 students. It forces the trustees and administrators of HCU and other similarly situated institutions
16 to confront a Hobson's Choice; it is a coercive take-it-or-leave-it offer that disregards the fiduciary
17 duties trustees and others have to their institutions and stakeholders. It will divert funds from a
18 university's core academic mission in favor of big-time sports entertainment.

19 **III. CONCLUSION**

20 For the foregoing reasons, Houston Christian University requests that the Court issue an
21 order allowing it to intervene as of right under Rule 24(a)(2), Fed. R. Civ. Proc. Alternatively, the
22 Court should order that HCU may intervene permissively under Rule 24(b)(1).

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Dated: June 20, 2024

Respectfully submitted,

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