

NATIONAL SPORTS LAW NEGOTIATION COMPETITION 2024

ROUNDS ONE AND TWO

*“Duck Tales”*¹

SHARED GENERAL FACTS FOR BOTH TEAMS

Starting new varsity intercollegiate athletic programs can be a challenge—even for the most well-funded universities and athletic departments.

In 2013, the University of Oregon (UO) founded a new varsity beach volleyball team in response to the NCAA’s recognition of beach volleyball on their list of Emerging Sports for Women. The program started small, with members of the 2014 and 2015 teams made up entirely from UO’s thriving indoor volleyball team. UO would quickly pick up recruits in future years, rapidly building a viable program.

But with rapid growth comes growing pains. Over the years, a rising chorus of beach volleyball team members would complain that UO was not properly supporting the team, especially in relation to their peers in other sports.

¹ This fact pattern is based on real-life active litigation: *Schroeder v. University of Oregon*, No. 23-cv-01806 (D. Or.). Per NSLNC Rules 6(a-d), while competition teams are permitted and encouraged to look outside of the fact pattern for additional *background* information, any outside information must be cited and must not change any material fact within the fact pattern. Specific to this negotiation problem, you are permitted to review party pleadings, law review articles, and news articles about the case for the purposes of background information. **To the extent that any differences exist between the facts included in this fact pattern and the real-life facts of the *Schroeder* litigation, the information contained within this fact pattern shall control.**

Outside documents relied on in fact pattern drafting and explicitly authorized for use in the negotiation include:

- The class action complaint (available at <https://www.classaction.org/media/schroeder-et-al-v-university-of-oregon.pdf>)
- The University of Oregon FY2023 Equity in Disclosure Act (EADA) report (https://goducks.com/documents/2024/1/17/NCAA_FRS_1.8.24_FINAL.pdf)
- The University of Oregon FY2022 Equity in Disclosure Act (EADA) report (https://goducks.com/documents/2023/1/11/FY2022_NCAA_EADA_REPORT.pdf)

All financial figures contained in the fact pattern come from these two EADA Reports or the class action complaint, and thus any financial numbers provided by negotiation teams must also come from these documents.

This chorus would hit a breaking point in July 2023, when an article was published in *The Oregonian*² alleging years of broken promises, horrid conditions, and a lack of caring by the athletic department. According to the article, beach volleyball recruits visiting campus as far back as 2018 were told that scholarships would soon be provided to the beach volleyball team up to the NCAA maximum of six and were shown a site where a fancy new beach volleyball complex would soon be built. However, the team was still in July 2023 playing in Amazon Park—a public park run by the city of Eugene with a bathroom with no stall doors (due to the city’s concerns about squatters and drug use) and only one small bench as seating for team members and/or spectators. The park also has no locker room facilities, meaning that the team would have to drive themselves the two miles from locker room facilities at Matthew Knight Arena without any place to wash off the sand from the courts after practices and games first.

Per the article, the players were frequently required to drive over 550 miles in university vans to away games in the Bay Area. In instances where the team did have access to air travel, the players claimed they had to stay at the family home of another player instead of hotels and sleep on air mattresses. These travel concerns were exacerbated by the fact that they rarely host home games due to the conditions of Amazon Park. Their 34-game Spring 2023 schedule included just three home games—and just one of those games was against an NCAA opponent.

As noted in this article, the team met with their team administrator, UO deputy athletic director and deputy Title IX coordinator Lisa Peterson, in Winter 2021 to complain about the conditions suffered by the team. Players left the meeting disappointed, as Peterson attempted to justify the conditions by arguing that the team was subsidized by the indoor volleyball team’s budget and that the team’s lack of funding was a department decision based on the team’s own lack of success and fan support. After Peterson left to take a position with the Pac-12 Conference in 2021, she was replaced as team administrator by UO chief compliance officer and senior associate athletic director Jody Sykes. While Sykes attempted to obtain more resources for the team from the athletic department—arranging for the placement of a portable toilet at Amazon Park in 2022—she was unsuccessful changing much besides that.

The publication of this article led to some controversy and public anger at the athletic department, but few immediate results for the team. At the same time, however, the article did

² James Crepea, *Oregon Ducks Beach Volleyball Players Detail Disparate Treatment That Experts Say Could Violate Title IX*, THE OREGONIAN (Jul. 22, 2023), <https://www.oregonlive.com/ducks/2023/07/oregon-ducks-beach-volleyball-players-detail-disparate-treatment-that-experts-say-could-violate-title-ix.html>.

catch the attention of plaintiffs’ attorneys. Backed by those attorneys, the beach volleyball team joined UO’s club rowing team—who has long-sought elevation to a varsity sport—to file a lawsuit on December 1, 2023, alleging that their treatment by the university violates Title IX.

The complaint specifically details Title IX violations in nine of the eleven categories of athletic benefits laid out by the Office of Civil Rights (OCR) 1979 Policy Interpretation: (1) Provision of Equipment and Supplies; (2) Scheduling of Games and Practice Times; (3) Travel and Per Diem Allowances; (4) Opportunity to Receive Coaching and Academic Tutoring; (5) Assignment and Compensation of Coaches and Tutors; (6) Provision of Locker Rooms, Practice, and Competitive Facilities; (7) Provision of Medical and Training Services; (8) Publicity; and (9) Recruiting. Within these nine categories, the team made several new allegations not included in the July 2023 article in *The Oregonian* and focused their attention on making stark comparisons between their team’s conditions and the conditions of Oregon’s football team. In contrast to beach volleyball, the football team is—according to the complaint—given access to:

palatial locker rooms, “fitting” rooms, and player lounges; state-of-the-art, personalized gear and equipment in seemingly endless quantities; preferential scheduling for training, practices, and games; chartered flights to away games; hotel stays before home games; huge quantities of food and travel per diems for more food, whether the money is needed or used for food or not; professional-quality practice and competitive facilities; their own theatre with seats upholstered in Ferrari leather, where they can watch movies and sporting events together; round-the-clock access to trainers and medical professionals; . . . and myriad other forms of support that one can hardly imagine.

Additionally, the complaint sought to broaden claims beyond simply focusing on beach volleyball. And of particular interest in the complaint is one of these broader allegations: that UO provides significantly more support to their male football players than their female athletes in name, image, and likeness (NIL) support. The complaint points specifically to UO football players’ eighth, twenty-eighth, and seventy-sixth placements on *On3*’s “NIL 100” list of the highest NIL earners in college sports. The complaint alleged that UO—both directly and indirectly through their NIL collective, Division Street—regularly favored male athletes over the women, leading to drastically smaller NIL earnings for UO female athletes compared to these men. Understandably, these NIL-focused allegations have received the bulk of attention in the outside commentary on the case, as commentators have noted that a favorable ruling for the plaintiffs could open NIL up to Title IX scrutiny and blur lines between athletic departments and private NIL collectives for Title IX purposes across the country.

In early July 2024, UO filed a motion for judgment on the pleadings,³ arguing that the plaintiffs' claim lacks merit for two distinct reasons. First, UO argued that the plaintiffs inappropriately only compare the conditions of the beach volleyball team to the conditions of the football team and that the comparison is ill-founded due the differences in team size and team need. Second, UO argued that the plaintiffs' focus on NIL is unsupported, as "[t]he outside entities offering those NIL opportunities are private companies that are not subject to Title IX."

The parties engaged in a two-day mandatory settlement conference in mid-July 2024. During this conference, appointed mediator Magistrate Judge Stacie F. Beckerman urged the parties to consider progress that had already been made—including to the fact UO announced plans one week after the lawsuit's filing to build a new beach volleyball complex at the site of the to-be-demolished Hamilton Hall dormitory on UO's campus—and implored the parties to work together to solve the remaining issues rather than going to trial. These talks were ultimately unsuccessful at settling the dispute, either in full or in part.

Acting on the advice of Judge Beckerman and the court, both sides have agreed to take another crack at reaching a settlement before the court issues a decision on the motion for judgment on the pleadings. Additionally, both sides have mutually agreed to switch up their negotiation teams to allow for different voices and possibly a fresher perspective on the issues by both sides. The two sides once again divided the settlement conference into two meetings—one morning, one afternoon—with set agendas on separate issues for each meeting.⁴ The hope is that the parties will be able to at least be able to narrow down the active litigation, if possible.

- The first meeting (*Round 1*) is to be focused on one-time expenses and more immediate Title IX concerns.
- The second meeting (*Round 2*) is to be focused on long-term budgeting for the beach volleyball team specifically.

Note: *The use of a calculator is permitted for both Rounds 1 and 2.*

³ UO also filed two similar motions on more procedural issues: a motion for partial summary judgment based on Title IX's statute of limitations and a motion to dismiss based on an argument that sixteen of the twenty-seven beach volleyball players lack standing to pursue injunctive and declaratory relief. Neither would end the lawsuit in its entirety, and are thus not considered relevant for the purposes of this negotiation problem.

⁴ The parties have mutually agreed to limit conversations in each meeting to the items within each agenda and not crossover topics between the two meetings.

CONFIDENTIAL FACTS FOR THE SCHROEDER PLAINTIFFS (ROUND ONE)

While the beach volleyball team appreciates the efforts UO has made to start to remedy the awful conditions that they have suffered over the past decade, those efforts are simply too little, too late. In fact, the beach volleyball team finds it truly ironic (and telling) that UO finally announced plans to build their own beach volleyball complex exactly one week after they announced plans to file this lawsuit. After years of lies and heartbreak due to broken promises from the UO athletic department the team has learned one critical lesson: at UO, only the squeakiest of wheels gets the grease. To achieve equitable conditions, the beach volleyball team has to threaten the very core of the UO athletic department by embarrassing them into action.

The beach volleyball team is grateful to the UO women's club rowing team for helping them promote their one-team grievance into a broader indictment on the athletic department as a whole. This seemed to be a source of contention for the plaintiffs in the initial July settlement talks—UO's representatives seemed to entirely forget that the rowing team was part of the lawsuit, focusing instead entirely on trying to solve individual problems faced by the beach volleyball team specifically. For the plaintiffs, the beach volleyball team feels that the time to settle the team's pettier grievances was several years ago. The entire UO athletic department needs a radical shift in direction, and the addition of the rowing team ensures that their problems cannot just be solved by catering to the beach volleyball team alone.

The U.S. Department of Education's Office of Civil Rights (OCR) has stated clearly that under Title IX's substantial proportionality test, any discrepancy between male and female athletes over 1 percent is actionable. UO is far beyond this cushion in several areas, including and most glaringly in their participation numbers. On their own, UO's participation numbers look bad, and they look even worse given that UO relies heavily on loopholes like counting eleven male practice squad players as members of the women's basketball team and double- and triple-counting female members of the track teams—practices that might be acceptable on to OCR on EADA reports, but have been rejected by courts actually applying the letter of Title IX in its true purpose and spirit.⁵

Given that discrepancy, UO should see the addition of a rowing team as a win-win, and it is frustrating to both teams that they do not. Looking at fellow Pacific Northwest Big Ten school University of Washington as a guide, rowing is a relatively inexpensive sport (just under \$900,000)

⁵ See, e.g., *Ohlensehlen v. University of Iowa*, 509 F. Supp. 3d 1085 (S.D. Iowa 2020).

that can support several dozen athletes. In fact, Washington reported 89 female rowers on their FY2023 EADA report; while the plaintiffs do feel that those numbers are inflated for Title IX purposes and would not hold up in court, the addition of this team would certainly go a long way towards showing a commitment to better support women's sports at UO (and, for the beach volleyball team, a long way towards rewarding the rowing team for their support). The fact that all of UO's comparable institutions—Oregon State, Washington, and Washington State—all have competitive and well-supported varsity rowing teams makes UO's failure to provide one all the more inexcusable and baffling.

Of course, the plaintiffs' trial attorneys are aware that Title IX can be satisfied in multiple ways, and noticed that the school stated in a July 2023 statement to *The Oregonian* that they “rely most heavily on prong three, that the institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.”⁶ But the plaintiffs' trial attorneys also know that UO does not regularly survey their students on their athletic interests and that courts are not always receptive to heavy reliance on those surveys (or the third prong generally) in Title IX cases, making reliance on this prong a potentially riskier litigation strategy. In their view, can a school really be accommodating the interests of athletes by placing them in the type of conditions suffered by beach volleyball—or by refusing to elevate a viable club rowing team?

Either way, both the rowing and beach volleyball teams are hopeful that a change in negotiation representatives on both sides can lead to an agreement that fits the needs of all three parties, not just UO's athletic department and the beach volleyball team. This—of course—now includes the rowing team, and the plaintiffs would be hard pressed to accept any deal that simply refuses to acknowledge them as a vital piece of the litigation. Whether UO wants to acknowledge it or not, their problems are part of the case now, and they deserve something for their trouble—especially since the viability of the rowers' case alone is certainly fair to question.

Of course, the beach volleyball team also needs far more than what they have been given to date. The beach volleyball team feels that UO should in no way be credited for their commitment to build the new beach volleyball facility on campus, especially given that the announcement seemed to come only as a response to the filing of this lawsuit. Such a commitment

⁶ James Crepea, *Oregon Ducks Beach Volleyball Players Detail Disparate Treatment That Experts Say Could Violate Title IX*, THE OREGONIAN (Jul. 22, 2023), <https://www.oregonlive.com/ducks/2023/07/oregon-ducks-beach-volleyball-players-detail-disparate-treatment-that-experts-say-could-violate-title-ix.html>.

is not only about ten years overdue but is the absolute bare minimum of what should be required to have a functional varsity program at any level of the NCAA—let alone for a power conference Division I school. The measure is too little, too late: more is now necessary for the beach volleyball team to drop the suit, regardless of what happens with rowing.

While a new on-campus beach volleyball complex is certainly better than what the team has now at Amazon Park, the team is still concerned about how training, nutrition, and weight room usage will be scheduled moving forward. The beach volleyball team currently splits their training time between Matthew Knight Arena (shared only with the basketball teams and the volleyball team) and the Cassanova Center at Autzen Stadium (shared with football), and UO has long required its female athletes to coordinate their practices and weight room training times in both spaces around not only football, but the other men's sports as well. The prior negotiation team was told by UO that when the new facility is built, the team will continue to have access to the facilities at Matthew Knight Arena, which will certainly help the team avoid the football issue, but not completely solve the problem.

In this regard, the beach volleyball team is very interested as to what the exact plan is for the beach volleyball complex. In their travels, the beach volleyball team has seen a lot of college beach volleyball facilities that are simply a few sand courts and a small shed for supplies. The team would like to know whether that minimalist approach is the plan, or whether UO has grander designs for the projected space. Will the complex have a building with dedicated locker rooms for the team? Office space for the coaching staff? At minimum, a bathroom? (Preferably with stall doors?) The team has been told nothing thus far beyond knowing that the complex is projected to be ready by late 2025 and has seen nothing aside from a picture of the projected location of the complex.

And even that projected date comes with some questions. First, the beach volleyball team is concerned about what will happen in the meantime while the new beach volleyball complex is being built. After all, construction delays happen, especially when dealing with the demolition of an existing building (and especially one built in the early 1960s). Will the team continue to have to suffer until the facility is built?

If the plan for beach volleyball's new complex requires heavy reliance on the Matthew Knight facilities, the beach volleyball team would like to know what basketball and indoor volleyball think about this plan. The facilities at the Matthew Knight are much smaller than those at Cassanova—since they accommodate a much smaller number of athletes. What will happen

when you add the beach volleyball team into the mix? It will certainly be nicer to have closer access to the facilities once the complex is built, but if the result is that the team will still be deprioritized against men's basketball—and even women's basketball and indoor volleyball—the result will be only marginally better than what they have now.

Additionally, UO again needs to be reminded that this suit is not just about the beach volleyball team. If the rowing team is elevated to varsity level, for example, which facility would they use? Further crowding the facilities at the Matthew Knight Arena does not seem like a good solution. And, if anything, pushing Cassanova to become even more football-only hardly seems like a positive step forward. A much better solution would be to simply stop prioritizing the football team. At the very least, UO should commit to at least listen to the needs of the women's teams in scheduling rather than merely defaulting to giving the football team whatever it wants at any time and for any reason.

And beyond the training, nutrition, and weight room facilities, the beach volleyball team is also concerned about locker room access at the Matthew Knight Arena. What happens, for example, if a men's basketball game and a beach volleyball game overlap? While UO beach volleyball home games have been few and far between up until now, the team assumes that the new complex will allow them to host more games, and hopefully even tournaments. Some assurances that those games and tournaments will also be a scheduling priority to UO would help—though frankly the team is not sure whether they can trust the department's word until they see it in action themselves.

Of the five locker rooms at Matthew Knight, three are already spoken for as devoted to the men's basketball team, women's basketball team, and indoor volleyball team respectfully, and include luxurious lounges alongside the locker rooms. As fellow UO athletes, the beach volleyball team seems no reason why they should not be given the same treatment, i.e., given their own dedicated locker room and lounge, either within Matthew Knight Arena or alongside their new complex. Pushing them into a visitor's locker room if and only if one is otherwise available—as has been the case for the past decade—would be unacceptable and illustrative of a lack of caring about the disparity between teams.

A final concern is NIL support. While both the beach volleyball team and the rowing team understand that much of NIL is beyond the control of the university—both at UO and at pretty much every other university—that does not seem to be the case for the football team. At UO, there seems to be very little separation between UO and the Division Street collective (and UO and Nike,

for that matter) when it comes to paying the football team, regardless of what UO says. In this sense, the teams were convinced to add NIL to the complaint by their attorneys, who see UO as a perfect test case for whether NIL is covered under Title IX—which could be especially relevant if college sports is headed towards revenue sharing based on NIL agreements.

While the teams themselves are not all that committed to testing this theory, they would like to see the benefits of UO's NIL program spread around a little more evenly, especially when it comes to Nike's seemingly endless supply of UO football endorsement deals. This is especially true for beach volleyball, which the team knows is a rapidly growing sport around the world. UO (and Nike) should see supporting the team through NIL endorsement deals as a win-win. The growth of women's basketball over the past year was almost entirely fueled by the popularity of individual stars like Caitlin Clark and Angel Reese, and beach volleyball can have the same explosion if their stars were more visible, helping the sport to become self-sustainable. Nike has the perfect platform to help the team do that, and UO has access to Nike that no other beach volleyball program can even begin to approach. In the eyes of the beach volleyball team, one conversation with Nike can help to make that happen.

Beyond the specifics of the Title IX claim, the beach volleyball team wants to ensure that UO is paying their legal fees—a common step for schools to make in the settlement of Title IX cases. The legal team estimates their expenses at around \$400,000, which closely matches the vast majority of other Title IX cases they have litigated at similar points in the proceedings.

Additionally, another common part of Title IX settlements is the appointment of an outside expert to monitor the athletic department moving forward. For example, a University of Iowa Title IX settlement in 2021 involved the retention of a sports law professor as an outside monitor for three years to ensure that Iowa took steps to further comply with Title IX and did not retaliate against the plaintiffs in less measurable ways. The plaintiffs would like to see this step adopted here as well. While beach volleyball is the most critical group in the plaintiff class, the entire UO athletic department needs significant change to fully comply with Title IX. Indeed, the legal team is confident that once an outside expert looks behind the hood of UO's operations there will be a strong push for adding sports like rowing, so the plaintiffs would be willing to accept this instead of an immediate commitment to add rowing if UO refuses to budge on the latter. Regardless, however, it is clear to all plaintiffs that some level of oversight and accountability is needed, and a mutually agreed upon outside expert can do just that.

CONFIDENTIAL FACTS FOR THE UNIVERSITY OF OREGON (ROUND ONE)

There are no words to express how frustrated UO leadership is to be saddled with this lawsuit. After all, from their perspective they operated beach volleyball with the best of intentions with beach volleyball—other priorities just kept getting in the way, and they just ran out of time to solve them. In that sense, timing alone has morphed this lawsuit from a fairly minor and easily solvable squabble into a case that could create broader problems for UO—and, given the radical NIL-focused theories the plaintiffs are espousing—possibly the rest of college sports as well.

When UO started the beach volleyball team back in 2014, they sought to start small, focusing on building up gradually over time. The program was a passion project of Lisa Peterson: she put everything she could into the program before leaving in 2022. While the beach volleyball team clearly did not always like what she had to say about the reality of the team’s viability, her departure exacerbated things more than the team will ever know. It is no surprise that complaints and this lawsuit all happened about a year after Peterson took the job with the Pac-12: without her, beach volleyball’s issues fell through the cracks even more.

A prime example is the team’s facilities. UO athletic department leadership has long acknowledged that pushing the team to Amazon Park is unacceptable even as a temporary solution, but despite Peterson’s push to build something on campus for the team Campus Planning Committee politics prevented her longtime plan of building a beach volleyball complex on campus for years in favor of dormitory renovations (which in turn delayed the long-planned demolition of Hamilton Hall). Plans originally drawn in 2019 were finally approved on October 3, 2023... less than one week after the team announced that they would be filing their lawsuit. Timing alone made a long-desired, long-considered, and long-planned natural next step in the department’s initial vision for the team seem unfairly reactionary and unduly hollow.

No member of the UO athletic department sees any of that as an excuse, but it is broader context that explains the situation. And UO leadership is frustrated that plaintiffs’ counsel dismissed and ignored this context in their July settlement talks. And yes, the lawsuit is now not just about the beach volleyball team. But the issues with that team are the root cause (and most major concern) in all of this, so that is UO’s focus in these talks. It is unfortunate that the rowing team’s inclusion has complicated settlement discussions and a shame that they seem likely to continue to do so moving forward, as UO leadership is far less sympathetic to their complaints.

An additional issue that UO leadership has about the plaintiffs' complaint is their dismissal of UO's overall pledge towards their women's sports program. After all, UO just raised over \$15 million in their recent Go Do Anything initiative—a fundraising campaign specifically to raise money for women's sports. Furthermore, the plaintiffs' claim in their complaint that none of this initiative was earmarked for beach volleyball: this is simply untrue. To the contrary, \$2.5 million of the sum is reserved for the construction of the new beach volleyball facility. This is a substantial sum UO leadership feels the plaintiffs are not giving proper credit to in their calculations. The school has an additional \$2 million remaining from the initiative that could be used towards more immediate beach volleyball concerns, though they would prefer to save it for future initiatives—including stashing some of it away to build up funds for the budget hit they will likely take for the more long-term beach volleyball budgetary changes on the table for the afternoon settlement meeting.

Beyond that, there is simply not enough money available for the settlement to both elevate the beach volleyball team to where it should be in the athletic department hierarchy *and* elevate the rowing team—especially if rowing would also need similar investment to avoid further beach volleyball-like problems. UO would have to earmark at least \$1 million right off the bat to elevate the club team to an even viable varsity sport, and at least the full \$2 million to support it in the way that the plaintiffs' lawyers would undoubtedly insist upon. Elevating rowing would also exacerbate existing weight and training room scheduling problems.

Moreover, while UO acknowledges that their Title IX participation numbers are not great, the numbers the plaintiffs cherry-picked out of the EADA report do not tell the whole story. For example, while it may look bad to outside actors that UO's EADA report counts eleven male practice squad players as members of the women's basketball team, doing so is a widely accepted practice among NCAA Division I schools and is deemed acceptable by the U.S. Department of Education's Office of Civil Rights (OCR). Even if some courts have pushed back on the use of EADA numbers,⁷ the illegality of the practice under Title IX is far less certain the plaintiffs apparently feel it is given that the litigation challenging the primacy of EADA report numbers all settled before trial. UO feels they are doing just fine when numbers from the EADA report are used instead of the plaintiffs' underdeveloped and out-of-context estimations.

⁷ See, e.g., *Ohlensehlen v. University of Iowa*, 509 F. Supp. 3d 1085 (S.D. Iowa 2020).

Either way, UO leadership does not claim to satisfy the substantial proportionality prong of Title IX anyway. Rather, they stake their compliance in the third “full and effective accommodation of athletics interests” prong. While it has been a bit since they sent out surveys to gauge athletic interests on campus and in the surrounding region as the prong requires, they are confident that their offering of eleven varsity women’s sports, including beach volleyball, allow them to more than meet the requirements of this standard. And while yes, UO has not done historically well to accommodate the beach volleyball team by the dictionary definition of the term, the legal reality of the prong is quite different. It is not not like they are cutting any women’s sports, which is usually where the biggest problems lie; merely failing to support a sport as much as they should does not mean that they are not letting the athletes participate at all. And regardless, UO is confident that they will be doing much better for beach volleyball once the inevitable additional investment in the beach volleyball team is added into the mix.

Of course, there are certainly areas where the beach volleyball team needs elevation, and UO is happy to commit additional expenses to these areas in exchange for a settlement. UO is confident that the new beach volleyball facility will alleviate most of the concerns expressed in the complaint. The plaintiffs still expressed concern about locker room and weight room access in July, but the new facility will be right next to Matthew Knight Arena and thus will provide easy access to its facilities. While those facilities are smaller than those at Cassanova, they are only used by basketball and indoor volleyball, so scheduling will be much less complicated than it has been at the Cassanova Center near Autzen Stadium, where priority is understandably given to the football team. It is much easier to schedule alongside a 15-member basketball team than a 120-member football team, even with the smaller space. Perhaps the plaintiffs are still concerned about whether men’s basketball will still be prioritized (and, truthfully, they will have to be) but UO can confirm that should not be an issue.

However, UO is ready to share more details on the planned beach volleyball complex, and those plans should hopefully assuage any of the team’s remaining concerns. While the bulk (around \$1.5 million) of the \$2.5 million construction budget must be committed to the initial Hamilton Hall demolition, this does leave \$1 million for UO to build a state-of-the-art beach volleyball complex. To accomplish this, plans for the 25,000 square foot complex include three sand courts, bleacher seating for around 200 fans, a small building with bathrooms (including showers), storage space, a locker room with a small lounge, and office space. But UO does want to be clear that the building is small due to space and budget constraints—there is not enough room

for visitor locker rooms, and the locker room and lounge will be quite a bit smaller and less luxurious than those committed to other teams. The bathrooms in the facility must also be shared with fans during games. Additionally, the beach volleyball locker room will be smaller than the one given to visiting teams—which could also cause some tension.

The location of the locker room will also not provide the most convenient access to the Matthew Knight facilities, but Matthew Knight is right next door. UO is hoping it will not be a big deal for the team to simply walk between the two as needed. If not, the team needs to know that any changes would have to be run by the architect and the Campus Planning Committee—an expensive proposition with the prospect of further delays. UO considered housing beach volleyball in Matthew Knight, but it was just not a viable option. While Matthew Knight has five locker rooms total, three are devoted for (and designed for) exclusive use by men's and women's basketball and volleyball and include lounges for those teams' exclusive use. Having two visitor locker rooms is a necessity for tournaments and other events, and adding a new locker room/lounge within Matthew Knight Arena is impossible due to space restraints. Visiting teams will have to walk to Matthew Knight Arena to use one of the two visitor locker rooms there. In cases of overlap, basketball will unfortunately have to be prioritized (as the original occupants of the building), but UO is hoping to schedule in a way where that is never an issue.

A final (and much more complicated) concern is NIL support. Ultimately, while the radical NIL-focused legal theories advanced by the beach volleyball team has been the source of much of the outside reporting on this case, UO leadership has repeatedly pointed out that the discussion of NIL in the complaint is limited to a mere six paragraphs in the 115-page complaint. These leaders feel that the previous negotiating teams erred by focusing too much on NIL in the July settlement negotiations instead of trying to solve the legitimate concerns specific to the beach volleyball team. They insist that a settlement can be reached with limited concessions (or preferably no concessions) to the team on the NIL issues, allowing the lawsuit to go away without tackling that thorny subject. They will be very pleased and much more willing to consider less favorable terms in other areas if this can indeed be accomplished.

If NIL continues to be a pressing issue for the plaintiffs, UO leadership remains insistent that their radical NIL-focused legal theories are, in fact, radical and unsupported by Title IX precedent. If anything, being forced by the plaintiffs to pressure Division Street into contributing more to female athletes would blur the carefully negotiated lines between the two even further. While UO leadership will freely admit behind closed doors that those lines are purely illusory (and

worry about what might be uncovered in discovery), they of course refuse to admit that fact to a group of Title IX plaintiffs' attorneys. As such, leadership would strongly push back against any assumption that UO can control how Division Street distributes its NIL deals.

The same is even more true for Nike. While UO is proud of its relationship with Nike and greatly values their support, UO cannot and will not speak for them. In fact, UO knows that Nike has greatly struggled lately, and does not have resources to commit to projects that will not be profitable. Regardless of sport, NIL deals have not shown promise in that space, so UO doubts that they would be able to convince Nike to take this step for beach volleyball.

Instead, UO can only commit to sign beach volleyball to NIL deals of their own if they can do so through revenue sharing, either through the *House v. NCAA* settlement or otherwise. Any deals with beach volleyball would not be much (maybe \$10,000 for each player) given the likelihood of a cap on that revenue sharing—the school needs as much of the cap as possible to pay much pricier top-level football players. But it would be something.

Leadership does have some concern that a courtroom loss on the NIL-focused theories in this case may also affect that revenue sharing pool that would be available in the *House* settlement, thus requiring that pool to be split evenly. But they feel that risk is remote and also know that a revenue sharing pool will be challenged under Title IX regardless of what happens in this lawsuit. In a world where Title IX is found to govern a revenue sharing distribution they obviously could and would offer more, but UO leadership will certainly not admit to Title IX's influence on that calculus in any deal here.

There are two final items that UO leadership would prefer not to talk about but is sure that the plaintiffs will bring it up themselves: attorney's fees and the prospect of retaining an impartial expert to monitor the athletic department Title IX violations. While both are common in Title IX settlements, UO leadership is strongly opposed to the latter. In almost all settlements where a monitor is appointed, the school is cutting a viable women's sport—a much more serious Title IX problem that does not exist here. UO is not cutting any sports and feels strongly that they comply under the third prong. The problem that exists here is an isolated beach volleyball problem, not a problem that requires oversight over the entire athletic department.

If necessary, however, UO would be begrudgingly willing to pay up to \$400,000 in legal fees to help make the suit go away for good. They would of course require itemized statements to ensure accuracy in billable hours and would fight any potential discrepancy, but such a move is unfortunately common in such cases—even when there is no real merit to the complaint.

CONFIDENTIAL FACTS FOR THE SCHROEDER PLAINTIFFS (ROUND TWO)

From a day-to-day perspective, the feelings of all the plaintiffs can be summarized in one word: exasperation. Whenever any female athlete at UO walks into any athletic building they are reminded of the primacy of football over every other sport. Football gets everything—palatial locker rooms, a fancy film room with seats upholstered in Ferrari leather, private jets, a private tailoring room with endless supplies of personalized uniforms and equipment, preferential scheduling, and even their own barber shop. Meanwhile, the beach volleyball team at the center of this lawsuit (and this second meeting) must dig drugs and dog feces out of the sand at their Amazon Park home court before their two solitary home games (compared to 28 away or neutral games) and bring their own toilet paper to practice so that they can use the Amazon Park public restroom with no stall doors.

The beach volleyball team fully understands that football deserves some degree of special budgetary treatment. After all, the football team is bringing in the vast majority of athletic department revenue, including booster donations. But the disparity between football and the female sports on campus should not be as stark as they are at UO. The failure of UO's athletic department to provide the women's teams with even the most basic amenities simply cannot be for lack of money, as the teams have been told time and time again. Putting aside comparisons to the football team, the frustration felt by the beach volleyball team is exacerbated every time they go on the road, especially to a school like Boise State: a school that gets a fraction of the revenue of UO, and yet can host tournaments and home games against actual Division I opponents on their beautiful, dedicated, on-campus beach volleyball complex with spectator seating. There is simply no excuse for UO to not provide the same or more.

The beach volleyball team appreciates the commitment already shown by the UO negotiation team regarding the more short-term items explored in the morning round of negotiations, including their commitment to building a new complex, and they expect further positive steps on those more immediate and overarching concerns in that first meeting. But the changes to ongoing budgetary items that UO has promised them specifically to date are hardly enough. In the eyes of the team, UO has to date only pledged what has already been promised (i.e., the new facility at the Hamilton Hall site) and enough additional support to increase the total operating expenses for the team to a mere \$900,000. This offer was deemed by the team to be a complete non-starter in July and remains similarly objectionable today.

A commitment of a \$900,000 budget for operating expenses would still place the team at the very bottom of UO's athletic offerings, just below men's tennis at \$904,293. The fact that an increase to \$900,000 would represent a more than 2x increase in beach volleyball funding (from the team's \$416,255 budget reported in UO's FY2023 EADA report) should be an indictment on the school's prior commitments to the program, not as a statement of good faith moving forward. The team might still have issues if the beach volleyball budget was *currently* \$900,000.

In an ideal world, the beach volleyball team would be funded similarly to football, which was given a whopping \$42,911,990 budget by the athletic program in FY2023. The team understands that this is not an apples-to-apples comparison given the huge difference in roster size (105 for football versus 19 for beach volleyball), but a proportionally similar per-athlete funding commitment would still give the beach volleyball team a yearly operating expenses budget of nearly \$6.8 million. Maybe achieving *that* number is unrealistic—yes, the team knows that the football team is asked to do far more for UO and in doing so ultimately generates the vast majority of athletic department revenue—but this calculus demonstrates the sheer unreasonableness of the discrepancy between how the two teams are funded.

Fortunately, there is a much more appropriate comparison sitting right in front of everybody: UO's *indoor* volleyball team. Per UO's 2023 EADA report, the indoor volleyball team had a total operating expenses budget of \$2,282,081—far above beach volleyball's \$416,255 and even still far above the offered increase to \$900,000. There are some differences between the two sports—beach volleyball needs a dedicated complex while the indoor team simply uses the basketball arena—the beach volleyball team sees no reason that their team should be funded any differently. If anything, beach volleyball should be given more to make up for the horrible conditions that the team has had to suffer through for the past decade. But given this clear one-to-one comparison, the team would be hard-pressed to accept a commitment from UO that funds them yearly at a level significantly less than the indoor volleyball team. This is especially true since—using comparisons to FY2022 and before as a guide—the indoor volleyball team's \$2,282,081 has almost certainly already gone up for FY2024 meaning that even funding beach volleyball at exactly that level would be playing catch-up.

There are some caveats when discussing that overall budget figure. The litigation attorneys for the team strategically limited the focus of the complaint to five specific budgetary items that represent the most pressing issues for team members: (1) scholarship commitments; (2) recruiting expenses; (3) travel expenses; (4) uniform, equipment, and supplies expenses; and (5) marketing and promotion expenses. As demonstrated in the EADA report, UO's team-by-team budgets also

include various other items like coaching and support salaries, game expenses, and medical expenses, but the understanding around the firm is that those other items are more based on need-based rather than representing static budgets items. This understanding was confirmed by UO in the July meetings.

The previous negotiation team was also told that, with appropriate increases, the team can expect those “other” budgetary items to represent about \$500,000 of the ultimate total operating expense budget. While this figure is still substantially lower than indoor volleyball, the source for the discrepancy is apparently simply because the indoor volleyball coaches are paid significantly more (around \$800,000 combined) than the beach volleyball coaches. This discrepancy will be handled separately when the well-liked beach volleyball is up for a new contract in a few years. As such, the team is willing to mostly accept this \$500,000 figure—especially since it apparently includes a dramatic increase in game expenses to account for actual home games—and focus the brunt of their attention on the five more pressing items mentioned in the complaint.

However, there is one area within that \$500,000 where the team does want to push back: guarantees. Guarantees are amounts paid to visiting schools to entice them to send their teams as visiting opponents. If UO is serious about showing that they are serious about beach volleyball, they will allow the team to show off their fancy new complex to the best non-conference opponents the NCAA has to offer. This could serve to excite home fans and show the world (including recruits) that UO is serious about their team joining that level of competition. A budget of just \$150,000 for guarantees—at least for the first year of the complex—would allow the team to bring in some of these top-level competitors. While that number may seem steep to UO given that it is just under the total level of funding for guarantees for all of UO’s women’s teams in FY2023 (\$157,756), it is an overall drop in the bucket when compared not only to UO’s total athletics budget, but also and especially football’s FY2023 guarantee payout of over \$1.7 million. Even committing that figure for just one—or allowing \$50,000 per year instead—would go a long way.

Of the five main budget items on the table for this discussion, the first obvious measure by which the athletic department can show its commitment to the team is athletic scholarships. To their credit, UO has already announced a commitment to fund the current NCAA beach volleyball maximum of six scholarships. Based on the July conversations—and as confirmed in UO’s FY2023 EADA report—each scholarship is valued by UO at around \$55,800, meaning that the six added scholarships will add about \$335,000 to the budget.

While the team certainly appreciates this gesture, they see this commitment as similar to the promised on-campus complex: it is a base-level commitment for which the athletic department

should hardly be given credit. Even if it is uncommon for beach volleyball teams to reach the maximum number of scholarships even at the power conference level, UO had promised the team that they would take this step for years; current seniors on the team were told that the team would get scholarships back when they were recruited five years ago. Presenting this as a gesture of goodwill after a lawsuit has been filed seems disingenuous.

The team does have some questions about this scholarship commitment moving forward, however. The team knows that at some point—either through approval of the settlement to the separate *House v. NCAA* antitrust lawsuit or through separate changes to NCAA rules—scholarship limits will be replaced by roster limits with schools able to provide as many scholarships as they have roster spots. Beach volleyball’s roster cap would be 19 athletes. The team hopes that UO will be willing to provide the team scholarships up to that limit exactly.

On a similar note, the team would like clarity from UO on whether walk-ons or partial scholarship grants will be allowed post-settlement. According to rumors, some programs are certainly seeing it that way, with coaches of lower-revenue sports already telling their non-scholarship players that they will lose their roster spots due to the changes that would be enacted by the House settlement, if and when it is approved. The beach volleyball team would like to know both how UO sees their program operating post-settlement and what will be the exact effect of the settlement on beach volleyball. Forcing the team to cut players because UO refuses to fund scholarships up to the limit would be a massive step backwards.

Recruiting is another item of major concern for the team. Up until FY2023, the team has been given barely anything for a recruiting budget—the team was only afforded \$3,775 for this essential task in FY2022. While the team appreciated that UO jumped this budget item to \$10,503 in FY2023 on their own, that figure is still the lowest in the athletic department. Again, indoor volleyball should be seen as a clear one-to-one comparison here—the teams have identical roster sizes and similar recruiting needs, and they received \$21,267 for recruiting in FY2023. That figure seems far more reasonable for beach volleyball. Given that football received almost \$2.2 million for recruiting (proportionally almost \$400,000), this is not a big ask.

In the same regard, it is ridiculous that indoor volleyball received nearly \$300,000 for travel expenses in FY2023 while beach volleyball received less than \$100,000—especially given that beach was asked to travel significantly more (30 away or road neutral site games versus 20 for indoor volleyball). UO should be applauded for funding indoor volleyball’s travel to this level—the \$300,000 travel budget nearly approaches football when their \$2.157 million travel budget is adjusted proportionally to account for the differing number of athletes (to around \$390,000)—but

that level of travel should be the standard, not the exception. Yes, moving forward indoor volleyball will naturally more expenses due to their drastically increased travel commitments with their move to the Big Ten Conference while beach will compete in the more local Mountain Pacific Sports Federation, but the FY2023 figures represented when both teams were still in the Pac-12 Conference. The problem to date has been related to travel conditions, not distance. As such, the team feels that there is no reason not to give beach volleyball a commitment similar to volleyball's \$300,000 in FY2023—in fact, this is one area where the team feels they have a strong case to exceed this number to remedy all of the past harm.

Uniforms and other equipment is another major concern. For years, beach volleyball has been forced to compete in ill-fitting hand-me-downs while other sports on campus—including other women's sports—are given not only fitted uniforms but other equipment to keep as well. The beach volleyball team still bitterly remembers back when UO was advertising their Women in Flight fundraising campaign for UO women's sports and the team was given Women in Flight shirts that had the numbers and initials of the indoor volleyball team on the tags—the shirts were already used by the indoor team. It was a perfect representation of the gross disparity between beach volleyball and every other UO sport.

Given beach volleyball's need for entirely new uniforms and equipment to replace their current hand-me-downs, UO should be willing to commit at least \$100,000 to the team's uniforms and equipment budget moving forward. While this is over the indoor volleyball team's FY2023 budget of \$86,406, it should be obvious to UO that the beach volleyball team simply has more that they need to buy or replace, given that they have only been afforded \$27,261 and \$33,387 in this budget category for FY2022 and FY2023 respectively.

Finally, the beach volleyball team also wants UO to commit a significant sum to the team for marketing and promotions. While UO does not seem to be willing to fund a specific marketing and promotions budget for any specific team (except, of course, football), instead devoting over \$1 million to a broader athletics marketing budget, beach volleyball has a lot of catching up to do. \$20,000 would represent the largest non-football budget by far—eclipsing even the FY2023 total for all of women's sports combined (\$13,412)—but such a commitment is needed to accommodate for past disparities. As with guarantees, even if this commitment is for only one year it would still help matters significantly.

CONFIDENTIAL FACTS FOR THE UNIVERSITY OF OREGON (ROUND TWO)

Of the two meetings, UO is much less optimistic about this afternoon meeting than the morning meeting. In the morning meeting, UO can say that they have already made significant short-term concessions to the beach volleyball team: building them a complex, devoting money for scholarships, etc.

And even the issue with the rowing team feels manageable: if UO can divide and conquer by addressing the beach volleyball team's legitimate concerns while leaving the rest of the lawsuit to die on the vine, the problems with the lawsuit should resolve themselves. After all, the beach volleyball team is by far the biggest threat; regardless of any legal exposure, the treatment of the team has generated significant negative publicity for the athletic department.

Yet a seeming disconnect between the parties on the long-term budgetary issues has been a source of immense frustration for UO leadership. While they feel that they can offer quite a bit to the beach volleyball team to try to get them to settle individually—in fact, they feel that they have already done much to remedy the awful treatment of the beach volleyball team—they also feel that the plaintiffs are being entirely unreasonable with their expectations for how the team will be managed moving forward. No, the beach volleyball team cannot be compared to the football team, as the plaintiffs did in their complaint in their first few meetings—there is no school in the entirety of the Power Four conferences that can or does give the same benefits to any of their athletes as they do to their football team. Making that comparison is simply unreasonable and beyond Title IX's expectations or scope.

Fixing the remaining issues should not be complicated or expensive. The change in settlement negotiation teams on both sides creates some hope that the new plaintiffs' representatives will be more willing to listen to reason in this regard and abandon what UO leaders saw as an extreme hardline approach from the previous negotiation team and from the tenor of the plaintiffs' complaint and pleadings to date. But the reality is that if the long-discussed settlement to *House v. NCAA* is eventually approved and UO is forced to add scholarships and devote around \$22 million per year for direct revenue sharing with athletes, UO (and most other schools) will have to adopt more explicitly something of a tiering model for their athletic department where the maximum investments are provided only to the sports who bring in the most money to the athletic department. Beach volleyball brought in less than \$200,000 in FY2023, meaning it simply cannot be a priority—especially in comparison to football (which brought in almost \$80 million).

UO is happy to provide the beach volleyball team the same benefits as the men's programs that will be placed on similar tiers—namely men's golf and tennis—and to that end UO is willing to make a commitment to increase beach volleyball's operating expenses from the \$416,213 in the most recently filed EADA report (FY2023) to more closely match the operating expenses of those teams (\$904,293 for men's tennis, \$1,182,604 for men's golf). But the football program is simply not an appropriate comparison.

When considering various budget line items, UO leadership is insistent on three overarching guidelines. First, UO leadership will categorically refuse any settlement that in any way draws a comparison between expenses allotted to the beach volleyball team and the football team. The two programs are entirely different beasts, and UO is hardly the only athletic program in the country to treat them that way. All comparative examples used to guide the beach volleyball budgeting process should be based on appropriate comparisons, and football (and even men's and women's basketball) are certainly not that.

Second, the UO athletic department wants as much as possible to avoid bogging down the negotiation into a micromanagement of each of the various line items in the EADA budget reports. Several of the listed expense categories in the EADA report are related to one-time emergent expenses that are not necessarily budgeted for in advance. UO would strongly prefer to keep the conversation focused on the bigger picture, namely, the overall budget for the team and the more pressing budgetary items addressed in the complaint: (1) scholarship commitments; (2) recruiting expenses; (3) travel expenses; (4) uniform, equipment, and supplies expenses; and (5) marketing and promotion expenses. If the parties can agree on an overall budget and specific budgets for these more pressing line-items, UO's athletic department would strongly prefer to have the power to fill in the blanks with other expenses to get to the rest of the overall budget as they see fit.

Finally, the final total operating expenses of the beach volleyball team should not under any circumstances exceed \$1.973 million—the average of all UO women's sports excluding women's basketball. This figure includes those line-items that should be off the table, some of which will increase drastically just by virtue of overall investment into the program. For example, one of the most dramatic areas of discrepancy is in game expenses, which makes sense: UO beach volleyball simply has not hosted all of that many games. UO estimates that with those increases, the budget categories off the table for today's meeting (e.g., game expenses, coaching salaries, overhead, medical expenses, etc.) will make up around \$500,000, meaning that UO would have at most around \$1.473 million to add to the team's budget in the five listed expenses categories. The

team was informed of this figure in the July meetings and did not make a fuss about it at the time, so UO is hopefully it will not be an issue moving forward.

At the same time, however, UO leadership does not want to foster an attitude among UO athletes that filing lawsuits yields results. Having so dramatic of an increasing in expenses allocated to beach volleyball that the sport's budget jumps to the higher tier of the women's programs would certainly foster that perception. And ultimately a huge part of the discrepancy in overall budget is in coaching salaries—a factor that hardly affects the team's day-to-day life. In that sense sport's budget should still be among the lesser funded women's programs at UO to the extent possible; far closer to women's tennis at \$1,041,255 than even the indoor volleyball program's budget of \$2,282,081 including the \$500,000 for the line items not covered by the five budget items UO is willing to discuss in this meeting.

With all of that said, UO leadership understands the concerns of the beach volleyball team and is committed to better support that team moving forward. Increasing the athletic department's commitment to beach volleyball can be accomplished in several different relatively easy ways, even without counting any expenses related to the new facility.

The first and most obvious step is by giving scholarships to the team. Current NCAA rules allow a maximum of six scholarships for beach volleyball teams. Reaching this maximum number was already the plan for the team, and as such UO will honor that commitment regardless of whether a settlement in this is reached. The addition will not be cheap—based on FY2023 EADA numbers, this addition would add approximately \$335,000 per year to the team budget (at around \$55,800 per scholarship)—but honoring this longheld promise is the least the UO athletic department can do.

There would be even more room for scholarship investment if the House settlement is approved. Scholarship limits will be removed in favor of broader roster limits, with scholarships allowed up to that roster limit. Beach volleyball's roster limit will be raised from six to 19, meaning that UO could be able to provide an additional thirteen scholarships. This would be another way where UO can show significant investment without much expense to themselves, as added scholarships can be counted towards the revenue sharing cap that will also be imposed by the settlement. Of course, this promise can only be contingent on approval of the settlement, and UO would strongly prefer not to commit to the full 19 scholarships, as each added scholarship is an extra \$55,800 or so that the school could not pay directly to their athletes.

Either way, UO can commit that no roster spots will be cut based on the settlement. While some schools have already started making cuts to walk-ons beyond the House settlement's new

roster caps, leading to some confusion in the industry as to how that will all work post-settlement, UO's understanding of the settlement is that beach volleyball has been and will continue to be at 19. The only question is how many of those 19 will receive scholarships and UO understands that they will have the flexibility to fund as many scholarships as they like—partial or otherwise—up to the roster cap.

Beyond scholarships, the complaint raised somewhat fair concerns about expenses provided to the beach volleyball team for recruiting, travel and per diem allowances, and uniforms and equipment. For recruiting, UO has already increased the beach volleyball team's recruiting budget from \$3,775 in FY2022 to \$10,503 in FY2023. This sum nearly matches the men's tennis team's budget of \$12,017 and the men's golf team recruiting budget of \$16,676, but UO would be willing to fully match or exceed either of those numbers by a little bit to ease any further concerns. However, UO does want to make sure that the plaintiffs are conceptualizing these numbers in the context of each particular team. Certain teams require more recruiting expenses for a simple reason: they have more roster spots to fill. The plaintiffs might be eyeing the track-and-field team's FY2023 recruiting expense at \$39,932, but that team has more than double the amount of athletes as beach volleyball. In a vacuum there is some argument to be made for UO to match the indoor volleyball team's \$21,267, but the indoor volleyball team is a much more proven revenue generator than beach volleyball, thus more investment is justified.

Similar considerations must be made for the team's travel budget. This in particular is an area where UO feels it has the most ground to make up—they acknowledge that requiring the team to spend most of their time on the road while not funding their travel to the level of other teams was likely a key catalyst for the bulk of the team's complaints. UO did increase beach volleyball's travel budget (which includes per diem allowances) from \$57,670 in FY2022 to \$97,350 in FY2023, but leadership acknowledges that these figures are still proportionally lagging behind men's tennis (\$112,637) and men's golf (\$164,387).

As a show of good faith, UO is willing to commit to doubling the team's travel budget to around \$200,000, but preferably only if the team takes concessions elsewhere. Having that much of a gap between beach volleyball and other women's sports like golf and tennis (which are both around \$100,000) could cause friction moving forward. The beach volleyball team needs to keep in mind the context of their travel: they are one of the few sports that did not enter the Big Ten Conference. They compete in the Mountain Pacific Sports Federation instead, meaning that they largely stay on the West Coast. By contrast, nearly all of UO's other sports (including, for

example, indoor volleyball) have to travel to the Midwest or East Coast for most conference road games, clearly requiring more expense.

Uniforms and other equipment is another fair concern. While UO did increase the team's budget in this area from \$27,261 in FY2022 to \$33,387 in FY2023, this figure is still less than half of the uniform and equipment budget of any other UO athletic program. Some of this can be explained by the nature of the respective sports—it would be difficult to fairly compare equipment costs for beach volleyball against golf, for example. But at the very least, UO would be willing to match apples to apples and match beach volleyball's uniform and equipment budget to the indoor volleyball team's FY2023 budget of \$86,406—a substantial increase.

Finally, UO leadership acknowledges that they currently have no budget for the beach volleyball team in marketing and promotion. While the comparable sports are not much better—men's golf gets \$7,297 and men's tennis gets \$1,351—UO acknowledges that having a blank on this line item does not help the perception that they are serious about elevating the program. While the reason for that exclusion is fairly simple—beach volleyball has not been advertised since there have not been any home games to advertise—that is also a problem that can fairly be attributed to UO. Leadership can do something to remedy that harm, but only within reason.

As such, as hesitant as they are to acknowledge Title IX's control over NIL or marketing and promotions generally (given that this item has never been considered relevant to Title IX calculations), they are willing to throw a few thousand dollars for a beach volleyball marketing and promotions budget if it will ease the plaintiffs' concerns and end this mess moving forward. However, anything more than a few thousand dollars would certainly cause issues with other teams, given that the highest marketing and promotions FY2023 expense for any non-football and non-basketball team was just over \$2,000 (baseball), and the highest for any women's non-football and non-basketball team is just \$1,885 (women's golf). UO simply prefers to market athletics collectively—in FY2023 the department spent over \$1 million in marketing not related to specific teams—and let the teams talk louder through their on-field success.