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15
 16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 OAKLAND DIVISION

19
 20 In re Student-Athlete Name and Likeness
 Licensing Litigation.

Case No. 09-cv-1967-CW

21 **STIPULATED [~~PROPOSED~~] PROTECTIVE**
 22 **ORDER REGARDING CONFIDENTIALITY**
 23 **OF DOCUMENTS AND MATERIALS**
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1 In order to protect confidential information obtained from or disclosed by the respective
2 parties in connection with this case and pursuant to the Court’s authority under Federal Rule of
3 Civil Procedure 26(c) and Federal Rule of Evidence 502, the parties submit as follows:

4 **PURPOSES AND LIMITATIONS**

5 1. Disclosure and discovery activity in these actions are likely to involve production
6 of confidential, proprietary, or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
8 The unrestricted disclosure of such information would cause undue damage to the parties and their
9 businesses or to third parties. Accordingly, the parties in these actions hereby stipulate to and
10 petition the Court to enter the following Protective Order. The parties acknowledge that this Order
11 does not confer blanket protections on all disclosures or responses to discovery, and that the
12 protections outlined herein extend only to the limited information or items that are entitled to
13 treatment as confidential under applicable legal principles.

14 2. The parties further acknowledge, as set forth in ¶ 15, below, that this Protective
15 Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
16 forth the procedures that must be followed, and reflects the standards that will be applied, when a
17 party seeks permission from the Court to file material under seal.

18 3. Documents and other information produced by the parties hereto in connection
19 with these actions shall be used solely for purposes of prosecuting, defending, or attempting to
20 settle these actions, whether such information is designated “Confidential” or not. The protections
21 outlined in this Order, however, apply only to confidential information which has been
22 appropriately designated as such.

23 **NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

24 4. Except with the prior written consent of the party or non-party originally
25 designating a document, discovery response, or deposition transcript as “Confidential”,
26 confidential information as defined herein may not be disclosed to any person except as
27 specifically authorized herein.

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DESIGNATING CONFIDENTIAL MATERIAL

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2 5. Any party or non-party may designate as confidential (by stamping the relevant
3 page or portion “Confidential” or as otherwise set forth herein) any document, response to
4 discovery, or deposition transcript which that party or non-party (“Disclosing Party”) considers in
5 good faith to contain information involving trade secrets, confidential business, educational,
6 financial or other information subject to protection under California or federal law, or another
7 applicable legal standard (“Confidential Information”). Where a document or response consists of
8 more than one page, the first page and each page on which Confidential Information appears shall
9 be so designated.

10 6. A party or non-party may designate information disclosed by it during a deposition
11 or in response to written discovery as “Confidential” by so indicating in said responses or on the
12 record at the deposition and requesting the preparation of a separate transcript of such material.
13 Additionally a party may designate in writing, within 21 days after receipt of said responses or of
14 the deposition transcript for which the designation is proposed, that specific pages of the transcript
15 and/or specific responses be treated as Confidential Information. Any other party may object to
16 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
17 procedures described in ¶¶ 12(a)-(d) below. Deposition transcripts shall be treated in their entirety
18 as Confidential Information for 21 days after receipt. All parties shall affix the legend required by
19 paragraph 5 on each page of the deposition transcript designated Confidential at the deposition or
20 by subsequent written notice.

21 7. If it comes to a Disclosing Party’s attention that information or items that it
22 designated for protection do not qualify for protection, the Disclosing Party must promptly notify
23 all other parties that it is withdrawing the mistaken designation.

24 8. If timely corrected, an inadvertent failure to designate qualified information or
25 items as “Confidential” does not, standing alone, waive the designating party’s right to secure
26 protection under this Order for such material. If material is appropriately designated as
27 “Confidential” after the material was initially produced, the receiving party, on timely notification
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1 of the designation, must make reasonable efforts to assure that the material is treated in accordance
2 with the provisions of this Order.

3 **PERMISSIBLE DISCLOSURES**

4 9. Confidential Information that is designated as such in accordance with the terms of
5 this Protective Order shall not be disclosed to any person other than the following, and only to the
6 extent necessary to litigate these actions:

- 7 a) counsel for the respective parties to this litigation, including in-house
8 counsel and co-counsel retained for these actions;
- 9 b) employees of such counsel;
- 10 c) class representatives or any officer or employee of a party, to the extent
11 deemed necessary by counsel for the prosecution or defense of these actions;
- 12 d) consultants or expert witnesses retained for the prosecution or defense of
13 these actions, provided that each such person shall execute a copy of the certification annexed to
14 this Protective Order as Exhibit A before being shown or given any Confidential Information;
- 15 e) the original authors or recipients of the Confidential Information;
- 16 f) the Court, court personnel and court reporters; and
- 17 g) witnesses (other than persons described in ¶ 9(d)) who testify at deposition
18 or at trial, provided that such witnesses shall execute a copy of the certification annexed to this
19 Protective Order as Exhibit A before being shown or given any Confidential Information; and
- 20 h) persons or entities that provide litigation support services (*e.g.*,
21 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
22 retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that
23 such persons or entities shall execute a copy of the certification annexed to this Protective Order as
24 Exhibit A before being shown or given any Confidential Information.

25 10. A party or non-party may further restrict the use and disclosure of highly sensitive
26 Confidential Information by additionally designating them as “Counsel Only.” This designation
27 shall be made in the same manner as materials are designated Confidential by the addition of the
28 words “Counsel Only” to the legend appearing on the face of any document, response to discovery,

1 or deposition transcript or by written notice to all parties specifying the Bates numbers of the
2 documents subject to Counsel Only restrictions. Confidential Information designated as Counsel
3 Only may be disclosed to counsel for the respective parties to this litigation, including in-house
4 counsel and co-counsel retained for these actions, but not to any other officers, directors,
5 employees, or individuals of a non-producing party. Confidential Information designated as
6 Counsel Only may not be disclosed to class representatives or to non-party deposition/trial
7 witnesses except with the prior written consent of the party or non-party originally designating a
8 document, discovery response, or deposition transcript as Counsel Only. They may be disclosed to
9 all other persons named in paragraph 9, consistent with the terms of this Order.

10 11. The parties acknowledge and agree that examples of an appropriate Counsel Only
11 designation would be the financial terms of a party's licensing, broadcast or other commercial
12 agreements (e.g., the royalty rate, the minimum guarantee and/or annual payments), the net
13 revenues a party receives for sales of products, licenses, rights, etc., and the royalty, licensing or
14 similar payments made or received by a party. Plaintiffs reserve the right to challenge Counsel
15 Only designations if plaintiffs' counsel believes in good faith that such a designation is in conflict
16 with plaintiffs' counsel's obligations to the class representatives. Except as set forth above,
17 plaintiffs' agreement to the terms of this protective order shall not be construed as a waiver of
18 plaintiffs' right to challenge the Counsel Only designation in a timely fashion.

19 **RESOLVING DISPUTED CLASSIFICATIONS**

20 12. Should a party wish to object to a Confidential designation of any material, that
21 party shall make a written Designation Objection to the Disclosing Party, as set forth below:

22 a) Designation Objection: The objecting party shall identify with specificity
23 (*i.e.*, by document control numbers, deposition transcript page and line reference, or other means
24 sufficient to locate such materials) each document bearing a disputed Confidential designation. A
25 Designation Objection will trigger an obligation on the part of the Producing Party to make a good
26 faith determination of whether the disputed designation(s) is entitled to be treated as Confidential
27 Information pursuant to the terms of this Protective Order. Within ten (10) court days the
28 Producing Party shall respond in writing to the Designation Objection either agreeing to remove

1 the Confidential designation or stating the Producing Party's refusal to do so. During that period,
2 the parties will meet and confer in good faith.

3 b) Court Determination: If the Producing Party refuses to agree to remove the
4 Confidential designation pursuant to subsection (a) above, the Producing Party may make written
5 application to the Court for protective treatment. The application will be made within ten (10)
6 court days of receiving the Producing Party's refusal to remove the Confidential designation. If
7 the Producing Party fails to make such timely application, the Producing Party's designation will
8 be void.

9 c) Pending a ruling, the disputed designation shall continue to be treated as
10 Confidential Information under the terms of this Protective Order.

11 d) Nothing in this Protective Order shall be deemed to prevent a Producing
12 Party from arguing during the determination process for limits on the use or manner of
13 dissemination of information that is found to no longer constitute Confidential Information.

14 **CONFIDENTIAL INFORMATION AT TRIAL**

15 13. The terms of this Protective Order do not preclude, limit, restrict or otherwise apply
16 to the use of documents at trial. Subject to the Federal Rules of Evidence, Confidential
17 Information may be offered in evidence at trial or any court hearing, provided that the proponent of
18 the evidence gives ten court days advance notice to counsel for any party or non-party who
19 designated the information as Confidential. Any party may move the Court for an order that the
20 evidence be received in camera or under other conditions to prevent unnecessary disclosure. The
21 Court will then determine whether the proffered evidence should continue to be treated as
22 Confidential Information and, if so, what protection, if any, may be afforded to such information at
23 the trial.

24 **SUBPOENA BY OTHER COURTS OR AGENCIES**

25 14. If at any time any Confidential Information is subpoenaed by a court,
26 administrative or legislative body, or by any other person or entity purporting to have authority to
27 require the production of such information, the person to whom the subpoena is directed shall give
28 written notice thereof to any person who has designated such information as Confidential

1 Information within five days. After receipt of the notice specified under this paragraph, the person
2 seeking to maintain confidentiality shall have the sole responsibility for obtaining any order it
3 believes necessary to prevent disclosure of the Confidential Information that has been subpoenaed.
4 If the person seeking to maintain confidentiality does not move for a protective order within the
5 time allowed for production by the subpoena (or within such time as a court may direct or as may
6 be agreed upon between the designating person and the subpoenaing party) and give written notice
7 of such motion to the subpoenaing party and the person to whom the subpoena is directed, the
8 person to whom the subpoena or other request is directed may commence production in response
9 thereto. The person to whom the subpoena is directed shall not produce any Confidential
10 Information while a motion for a protective order brought pursuant to this paragraph is pending, or
11 while any appeal from or request for appellate review of such motion is pending, unless ordered by
12 a court to do so.

13 **FILING DOCUMENTS UNDER SEAL**

14 15. No Confidential Information shall be filed in the public record without the written
15 permission of the designating party, or a court's order. The parties shall comply with Civil L.R.
16 79-5.

17 16. Copies of any pleading, brief, or other document containing Confidential
18 Information which is served on opposing counsel shall be delivered in a sealed envelope stamped:

19 **CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER**

20 and shall be treated in accordance with the provisions of this Protective Order.

21 **NON-TERMINATION**

22 17. All provisions of this Protective Order restricting the communication or use of
23 Confidential Information shall continue to be binding after the conclusion of this action, unless
24 otherwise agreed or ordered.

25 18. Unless otherwise ordered or agreed to in writing by the Producing Party, within
26 sixty (60) days after the final termination of this litigation by settlement or exhaustion of all
27 appeals all parties in receipt of Confidential Materials shall use reasonable efforts to either return
28 such materials and copies thereof to the Producing Party or destroy such Confidential Material and

1 certify that fact. The Receiving Party's reasonable efforts shall not require the return or
2 destruction of Confidential Material that (i) is stored on backup storage media made in accordance
3 with regular data backup procedures for disaster recovery purposes, (ii) is located in the email
4 archive system or archived electronic files of departed employees, or (iii) is subject to legal hold
5 obligations. Backup storage media will not be restored for purposes of returning or certifying
6 destruction of Confidential Material, but such retained information shall continue to be treated in
7 accordance with the Order. Counsel for the parties shall be entitled to retain copies of court papers
8 (and exhibits thereto), correspondence, pleadings, deposition and trial transcripts (and exhibits
9 thereto), expert reports and attorney work product that contain or refer to Confidential Materials,
10 provided that such counsel and employees of such counsel shall not disclose such Confidential
11 Material to any person, except pursuant to court order. Nothing shall be interpreted in a manner
12 that would violate any applicable canons of ethics or codes of professional responsibility.

13 **MODIFICATION PERMITTED**

14 19. Nothing in this Protective Order shall prevent any party or other person from
15 seeking modification of this Protective Order or from objecting to discovery that it believes to be
16 otherwise improper.

17 **RESPONSIBILITY OF ATTORNEYS**

18 20. The counsel for the parties are responsible for employing reasonable measures,
19 consistent with this Protective Order, to control duplication of, access to and distribution of copies
20 of Confidential Information.

21 21. The counsel for the parties are responsible for administering and keeping the
22 executed original copy of Exhibit A pursuant to ¶ 9(d), (g), and (h) above.

23 **NO WAIVER**

24 22. Nothing herein shall be deemed to waive any applicable privilege or work product
25 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
26 protected by privilege or work product protection. Pursuant to the Court's authority under Federal
27 Rule of Evidence 502 and any other applicable law, rule, or legal principal, the inadvertent
28 production of documents or information subject to the attorney-client privilege or work-product

1 immunity shall not waive the privilege or immunity if a request for the return of such documents or
2 information is made promptly after the producing party learns of its inadvertent production.

3 23. Nothing contained in this Protective Order and no action taken pursuant to it shall
4 prejudice the right of any party to contest the alleged relevancy, admissibility or discoverability of
5 the confidential documents and information sought.

6 **IT IS SO STIPULATED.**

7 DATED: March 1, 2011

HAUSFELD LLP

8 By: /s/ Jon T. King

9 Jon T. King
10 Interim Co-Lead Class Counsel for Plaintiffs

11 DATED: March 1, 2011

HAGENS BERMAN SOBOL SHAPIRO, LLP

12 By: /s/ Leonard W. Aragon

13 Leonard W. Aragon
14 Interim Co-Lead Class Counsel for Plaintiffs

15 DATED: March 1, 2011

MILLER CANFIELD PADDOCK AND STONE,
16 PLC

17 By: /s/ Robert J. Wierenga

18 Robert J. Wierenga
19 Attorneys for Defendant NCAA

20 DATED: March 1, 2011

KEKER & VAN NEST LLP

21 By: /s/ R. James Slaughter

22 R. James Slaughter
23 Attorneys for Defendant Electronic Arts

24 DATED: March 1, 2011

KILPATRICK STOCKTON LLP

25 By: /s/ R. Charles Henn, Jr.

26 R. Charles Henn, Jr.
27 Attorneys for Defendant Collegiate Licensing
28 Company

IT SO ORDERED.

Dated: 3/7/2011



The Honorable Claudia Wilken
U.S. DISTRICT COURT JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[print or type full name]**, of

_____ **[print or type full address]**, declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Northern District of California on
_____ in the case of *In re Student-Athlete Name and Likeness Licensing Litigation.*, No.
09-cv-1967 CW. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order, and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any person
or entity in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Name: _____ **[printed name]**

Signature: _____ **[signature]**