

1 Gregory L. Curtner (*pro hac vice*)
 2 Robert J. Wierenga (SBN183687)
 3 Kimberly K. Kefalas (*pro hac vice*)
 4 Atleen Kaur (*pro hac vice*)
 5 Suzanne L. Wahl (*pro hac vice*)
 6 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
 7 101 North Main St., 7th Floor
 8 Ann Arbor, MI 48104
 9 Telephone: (734) 663-2445
 Facsimile: (734) 663-8624
 Email: curtner@millercanfield.com
 wierenga@millercanfield.com
 kefalas@millercanfield.com
 kaur@millercanfield.com
 wahl@millercanfield.com

10 Jason A. Geller (SBN168149)
 11 Glen R. Olson (SBN111914)
 12 David Borovsky (SBN 216588)
 13 LONG & LEVIT LLP
 14 465 California Street, 5th Floor
 15 San Francisco, CA 94104
 Telephone: (415) 397-2222
 Facsimile: (415) 397-6392
 Email: jgeller@longlevit.com
 golson@longlevit.com
 dborovsky@longlevit.com

17 Attorneys for Defendant National Collegiate Athletic Association

18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
 20 **OAKLAND DIVISION**

21 EDWARD C. O'BANNON, JR., on behalf of
 himself and all others similarly situated,
 22 Plaintiff,

23 v.

24 NATIONAL COLLEGIATE ATHLETIC
 ASSOCIATION (a/k/a the "NCAA"), and
 25 COLLEGIATE LICENSING COMPANY,
 (a/k/a "CLC").
 26 Defendants.

Case No. 09-cv-3329 CW

**JOINT CASE MANAGEMENT
 STATEMENT**

Date: November 17, 2009
 Time: 2:00 p.m.
 Dept: Courtroom 2, 4th Floor
 Judge: Hon. Claudia Wilken

Date Comp. Filed: July 21, 2009

27 **JOINT CASE MANAGEMENT STATEMENT**

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1 The undersigned parties met and conferred in advance of the November 17, 2009 Case
2 Management Conference. In light of the pending motions to consolidate, dismiss, strike, and
3 appoint interim lead counsel, as well as Plaintiff's indication that, depending on the outcome of
4 the motion to consolidate, he may be filing an amended complaint, the parties agreed that it was
5 premature to discuss discovery, initial disclosures and related matters at this time. However,
6 Plaintiffs O'Bannon and Keller are currently coordinating on drafting a proposed schedule of
7 discovery, initial disclosures and related matters for submission to Defendants, if their cases are
8 consolidated. Therefore, the parties hereby submit this Case Management Conference statement,
9 which reflects the early stage of these proceedings.
10

11 1. Jurisdiction and Venue. The Court has diversity jurisdiction over this action
12 pursuant to 28 U.S.C. § 1332(a) and (d) because the amount in controversy for the purported class
13 exceeds \$5,000,000. There are no issues regarding personal jurisdiction and no parties remain to
14 be served. Defendant NCAA and CLC have moved to transfer venue to the United States District
15 Court for the Southern District of Indiana pursuant to 28 U.S.C. § 1404.
16

17 2. Facts. Plaintiff is a former college basketball player. He alleges, on behalf of
18 himself and a class of other former college football and basketball players, that Defendants have
19 unlawfully conspired with various third parties to fix the price paid to Plaintiff for the use of his
20 name, likeness or image and to boycott him to deprive him of compensation for such use. Based
21 on these allegations, Plaintiff asserts causes of action under the federal antitrust laws, Section 1 of
22 the Sherman Act, 15 U.S.C. § 1, and under state common law for unjust enrichment and an
23 accounting. Defendants deny that they have fixed prices paid to Plaintiff or that they have
24 undertaken any actions to deny him compensation for the use of his name, likeness, or image.
25 Defendants further deny that they, individually or together, have violated the federal antitrust
26
27

28 **JOINT CASE MANAGEMENT STATEMENT**

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1 laws, including Section 1 of the Sherman Act, or that they have been unjustly enriched or that
2 Plaintiff is entitled to an accounting.

3 3. Legal Issues. The principal legal issues are set forth Plaintiff's complaint and in
4 detail in Defendants' motions to dismiss and Plaintiff's oppositions thereto.

5 4. Motions. Defendants each filed separate motions to dismiss, which are pending.
6 Defendants also have jointly filed a Motion to Transfer Venue, which is also pending.
7

8 Plaintiff has filed a motion to consolidate this action with the *Keller* matter, which motion
9 is pending.

10 In addition, Plaintiff's counsel has filed a motion to be appointed interim co-lead counsel,
11 which motion is pending.

12 Should the Court not grant their motions to dismiss, both parties anticipate filing motions
13 for summary judgment.
14

15 In addition, if the Court does not grant the motions to dismiss, the Court will hear motions
16 with respect to the certification of the proposed class.

17 5. Amendment of Pleadings. After the Court rules on his motion to consolidate this
18 action with the *Keller*, Plaintiff anticipates filing an amended complaint. No other amendment of
19 pleadings is anticipated at this time.

20 6. Evidence Preservation. The parties will discuss the issue further during the Rule
21 26 conference on discovery matters after resolution of the pending motions and pleadings.
22 Plaintiff believes that the Court should order the parties to conduct a Rule 26 conference within
23 30 days of the filing of an amended consolidated complaint or the denial of Plaintiff's motion to
24 consolidate.
25
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28 **JOINT CASE MANAGEMENT STATEMENT**

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1 addressed at a Rule 26 conference within 30 days of the filing of an amended consolidated
2 complaint or the denial of Plaintiff's motion to consolidate.

3 18. Trial: The parties currently anticipate that this matter will be tried to a jury. In
4 light of the unsettled nature of the pleadings and the pending motions to consolidate, dismiss,
5 strike, and appoint interim lead counsel, the parties believe it is premature to estimate the length
6 of trial.

7
8 19. Disclosure of Non-party Interested Entities of Persons: Each party has filed the
9 "Certification of Interested Entities or Parties." In addition, the parties individually state as
10 follows:

11 Defendant Electronic Arts Inc. has no parent corporation or publicly held corporation
12 owning 10% or more of its shares.

13 Defendant National Collegiate Athletic Association has no parent corporation or publicly
14 held corporation owning 10% or more of its shares.

15 Defendant Collegiate Licensing Company's parent corporation is IMG Worldwide, Inc.,
16 owning 10% or more of its shares.

17
18 Respectfully submitted,

19 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

20 Dated: November 10, 2009

21 By: /s/ Robert J. Wierenga

22 Robert J. Wierenga (SBN183687)

23 Attorneys for Defendant NCAA

24 Dated: November 10, 2009

25 By: /s/ Peter M. Boyle

26 Peter M. Boyle (*pro hac vice*)

27 KILPATRICK STOCKTON LLP

28 Attorneys for Defendant CLC

JOINT CASE MANAGEMENT STATEMENT

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Dated: November 10, 2009

By: /s/ Megan Jones

Megan Jones (*pro hac vice*)
HAUSFELD LLP
Attorneys for Edward C. O'Bannon, Jr.

JOINT CASE MANAGEMENT STATEMENT

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification to the e-mail addresses registered.

By: /s/ Jason A. Geller
Jason A. Geller (SBN168149)
LONG & LEVIT LLP
Attorneys for Defendant NCAA

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JOINT CASE MANAGEMENT STATEMENT
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