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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

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

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION (NCAA); ELECTRONIC
ARTS, INC.; and COLLEGIATE LICENSING
COMPANY,

Defendants

Case No. 4:09-cv-3329 CW

DECLARATION OF KAREN BRODKIN

1 **DECLARATION OF KAREN BRODKIN**
2

3 I, Karen Brodtkin, declare as follows:

4 1. I am Executive Vice President of Business and Legal Affairs for non-party Fox Sports
5 Media Group, which includes Fox Sports Net, Inc. (“FSN”). FSN is the parent company for the
6 Fox-owned and operated regional sports networks that televise professional and college sporting
7 events and related content in various markets across the United States. In my role as Executive
8 Vice President, I also oversee all business and legal affairs for Fox Sports programming on the Fox
9 broadcast network (the “Fox Network”), one of the four major broadcast networks in the United
10 States. I have personal knowledge of the facts contained in this declaration and, if called as a
11 witness to testify in this matter, I could and would testify competently thereto.

12 2. I have served as Executive Vice President of Business and Legal Affairs since 2011,
13 and have worked for Fox Sports, Fox Sports Media Group, and/or Fox Cable Networks since 1998.
14 I have personal knowledge about the business affairs of FSN. My job responsibilities include legal
15 and business affairs for FSN, overseeing FSN’s acquisition and negotiation of television broadcast
16 rights agreements, and licensing agreements with third parties concerning television programming
17 rights that are held by FSN. My duties also include overseeing all production, talent, marketing and
18 advertising contracts on behalf of FSN.

19 **The Court’s Prior Ruling and Sanctions**

20 **In Favor of the Fox Broadcast Network**

21 3. In August 2011, the so-called “antitrust plaintiffs” in this lawsuit subpoenaed the Fox
22 Network (and the Big Ten Network, which is part-owned and operated by Fox) seeking, among
23 other things, television rights agreements for NCAA football and basketball. Fox Network objected
24 to the subpoenas on multiple grounds, including relevance, confidentiality, and undue burden. Fox
25 Network, through its counsel, proposed a reasonable compromise whereby it would produce only
26 those portions of its television rights agreements that mention student athletes’ rights of publicity,
27 names, images, or likenesses.
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1 4. The antitrust plaintiffs rejected Fox Network's reasonable compromise, and a
2 protracted discovery dispute ensued. On February 27, 2012, the Magistrate Judge in this action
3 denied antitrust plaintiffs' motion to compel (Case No. 4:11-mc-80300-CW, Dkt. 64). The
4 Magistrate Judge concluded that: "[antitrust plaintiffs] document requests ... call for highly
5 confidential commercial information from the nonparties and are not tailored to minimize the
6 potential prejudice that the nonparties could suffer by releasing such information. Given the
7 confidential nature of the agreements, the Court finds that the compromise proposed by the Big Ten
8 Network and Fox is reasonable and that antitrust plaintiffs have not established a substantial need
9 for any material that falls outside this proposed compromise." (Case No. 4:11-mc-80300-CW, Dkt.
10 64, p.9). On April 9, 2012, the District Court Judge denied antitrust plaintiffs' motion for relief
11 from the Magistrate's discovery order.

12 5. On August 7, 2012, the Magistrate Judge imposed \$30,380 in sanctions against the
13 antitrust plaintiffs and their counsel for failing to limit the unreasonable scope of their document
14 requests to Fox Network and Big Ten Network. (Case No. 4:11-mc-80300-CW, Dkt. 77, p.2-3).
15 On March 28, 2013, the District Court Judge denied antitrust plaintiffs' motion for relief from the
16 sanctions order.

17 **The Television Rights Agreements At Issue Here**

18 6. I understand that nonparties Big 12 Conference and Conference USA produced their
19 highly confidential television rights agreements with non-party FSN (dated April 1, 2011 and
20 January 4, 2011, respectively) in response to a document subpoena from antitrust plaintiffs (the
21 "FSN Television Agreements"). The FSN Television Agreements were designated as "Outside
22 Attorneys Eyes Only" under the protective order in this case.

23 7. I further understand that antitrust plaintiffs have designated the FSN Television
24 Agreements as trial exhibits, but refuse to consent to filing the agreements under seal, or to redact
25 the agreements consistent with the Court's order regarding the Fox Network and Big Ten Network
26 agreements (i.e., redacting all provisions except for those that mention student athletes' rights of
27 publicity, names, images, or likenesses).

1 **The FSN Television Agreements Are Highly Confidential**
2 **and Their Public Disclosure Will Irreparably Harm FSN**

3 8. The FSN Television Agreements contain non-public financial terms and other contract
4 terms that were privately negotiated between FSN and third parties that are not named in this
5 lawsuit (Big 12 Conference and Conference USA).

6 9. FSN goes to great lengths to protect this information (the “Confidential Information”)
7 from being disclosed. For example, FSN’s television rights agreements contain express and
8 implied confidentiality and non-disclosure provisions. FSN also has policies and practices that
9 require hard copies of its Confidential Information to remain on FSN’s secure premises absent a
10 legitimate business justification. Electronic data containing FSN’s Confidential Information is
11 stored on a computer system that is password-protected. Additionally, access to FSN’s
12 Confidential Information is limited to employees with a business need for the information. FSN
13 takes especially strong precautions protecting its revenue, cost and other financial information from
14 being publicly disclosed. This information is only distributed to a limited set of employees with a
15 business need for the information, and the information is kept in locked file rooms or locked
16 cabinets.

17 10. If FSN’s Confidential Information were publicly disclosed or otherwise made
18 available to FSN’s competitors or business affiliates, FSN would be severely prejudiced. For
19 example, if FSN’s television network competitors knew how much FSN was paying (or willing to
20 pay) for certain rights, those competitors would have an unfair negotiating advantage over FSN in
21 future competitive bidding situations. Similarly, if third parties with whom FSN does business
22 (such as advertisers or production companies) were to have access to FSN’s internal discussions
23 and television broadcast agreements, those parties would be given valuable insight into FSN’s
24 business strategy, putting FSN at a disadvantage in future negotiations.

25 11. Also, FSN has spent years developing the format of its rights agreements, and if those
26 agreements were disclosed to FSN’s competitors, the competitors would be given free access to the
27 fruits of FSN’s investment, labor and expertise. If FSN’s competitors or business partners had
28

1 access to FSN's revenue, cost or other financial information, it would give those companies
2 valuable insight into FSN's non-public finances and could severely undermine FSN's ability to
3 negotiate favorable business deals. This would severely undermine FSN's competitive advantage
4 in the marketplace.

5 **FSN's Concerns Would Be Adequately Addressed If The Court Applied Its Prior Ruling And**
6 **Permitted the Same Redactions As The Fox Network And Big Ten Network Agreements**

7 12. FSN respectfully requests that the FSN Television Agreements either be filed under
8 seal, or redacted except for those provisions that mention student athletes' rights of publicity,
9 names, images, or likenesses. This would give FSN sufficient protection against the harms
10 identified above and would be consistent with the Court's prior rulings that were made in
11 connection with the Fox Network and Big Ten Network. There is no basis for publicly filing
12 unredacted versions of the FSN Television Agreements, and doing so would be extremely
13 detrimental to non-party FSN's business.

14
15 I declare under penalty of perjury that the foregoing is true and correct. Executed on June 3,
16 2014 in Los Angeles, California.

17 

18
19 Karen Brodkin