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National Collegiate Athletic Association

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

19 Plaintiff,

20 vs.

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

23 Defendants.

Case No. 09-cv-3329-CW

STIPULATION REGARDING
UNDISPUTED FACTS

Judge: Hon. Hon. Claudia Wilken
 Date: May 5, 2009
 Crtrm.: 2, 4th Floor

Trial Date: June 9, 2014

1 WHEREAS, the Court has ordered the National Collegiate Athletic Association (“NCAA”)
2 and the Antitrust Plaintiffs “to work in good faith to produce a joint statement of undisputed
3 facts—including any narrative of historical facts—which they shall submit to the Court no later
4 than June 6, 2014” (*O’Bannon* Dkt. No. 166 at 12),

5
6 **IT IS HEREBY STIPULATED AND AGREED THAT:**

7 **A. HISTORICAL FACTS RELATING TO THE NCAA.**

8 1. On November 6, 1869, Rutgers and Princeton met in New Brunswick, New Jersey,
9 for what came to be regarded as the first inter-collegiate football competition in American history.
10 Joseph N. Crowley, *The NCAA’s First Century – In the Arena*, at 2 (2006) (“*First Century*”)
11 (available at <http://www.ncaapublications.com/productdownloads/AB06.pdf>).

12 2. College football was well-established as a popular spectator sport by the 1890s,
13 drawing large crowds to games. *Id.* at 7.

14 3. College football in the late nineteenth century was beset by a large number of
15 serious injuries and even fatalities to players. At the same time, the organizers of teams at many
16 colleges hired players and allowed them to compete as non-students. It was common for colleges
17 to purchase players away from other colleges mid-season. These problems prompted concerns
18 among college presidents and faculty members, and prompted some to call for the abolition of
19 college football. *Id.* at 3-4.

20 4. By the early twentieth century, there were widespread calls for a national
21 organization to regulate collegiate athletics, especially football, and ensure that it remained
22 compatible with collegiate values. *Id.* at 4-7.

23 5. In 1905, President Theodore Roosevelt convened a White House conference with
24 the Presidents of Harvard, Princeton and Yale to discuss the injuries and deaths associated with
25 college football. *Id.* at 9-10, 231.

26 6. In that same year, representatives of 62 colleges and universities met to appoint a
27 rules committee for intercollegiate football. They created the Intercollegiate Athletic Association
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1 (“IAA”) with 62 charter member institutions. The IAA issued its first constitution and bylaws the
2 following year. *Id.* at 10, 231.

3 7. The first bylaws of the IAA, drafted and ratified in 1906, set forth the “Principles of
4 Amateur Sport,” and stated: “[e]ach institution which is a member of this Association agrees to
5 enact and enforce such measures as may be necessary to prevent violations of the principles of
6 amateur sports.”

7 8. The first bylaws of the IAA further stated: “[n]o student shall represent a College
8 or University in an intercollegiate game or contest who is paid or receives, directly or indirectly,
9 any money or financial concession or emolument as past or present compensation for, or as prior
10 consideration or inducement to play in, or enter any athletic contest, whether the said remuneration
11 be received from, or paid by, or at the instance of any organization, committee or faculty of such
12 College or University, or any individual whatever.”

13 9. In 1910, the IAA changed its name to the National Collegiate Athletic Association
14 (“NCAA”). *Id.* at 231.

15 10. The NCAA’s Committee on Amateur Law gave a presentation at the sixth annual
16 NCAA convention in 1911 proposing a number of regulations to deal with the assaults on
17 amateurism, namely, recruiting and player subsidies. The Committee’s Report proposed the
18 following as a “positive general law”: “[a]n Amateur is one who enters and takes part in athletic
19 contests purely in obedience to the play impulses or for the satisfaction of purely play motives and
20 for the exercise, training and social pleasures derived.” *Id.* at 19.

21 11. In 1916, the NCAA bylaws adopted a definition of an amateur athlete as “one who
22 participates in competitive physical sports only for pleasure, and the physical, mental, moral, and
23 social benefits directly derived therefrom.”

24 12. In 1921, President C.A. Richmond of Union College (New York) deplored “the
25 high cost of athletic victories.” He criticized the competition for bigger, better programs as
26 something “like the contest in dreadnoughts” that characterized the international situation in the
27 years before World War I. We have on our hands, he said, a “race of armaments.” *Id.* at 24.

28

1 13. In 1922, the NCAA adopted the “Ten-Point Code” that included provisions for:
2 conferences, the concept of amateurism, the freshman rule, a ban on playing professional football,
3 three-year participation limit, a prohibition on graduate student and “migrant” player participation,
4 faculty control, anti-betting, and ban on playing for noncollegiate teams. *Id.* at 24, 231.

5 14. In 1922, the NCAA added to the definition of amateurism: “[a]mateur sportsman is
6 one who engages in sport solely for the physical, mental or social benefits he derives therefrom,
7 and to whom the sport is nothing more than an avocation.” *Id.*

8 15. The NCAA Constitution today states “The Principle of Amateurism” as follows:
9 “[s]tudent-athletes shall be amateurs in an intercollegiate sport, and their participation should be
10 motivated primarily by education and by the physical, mental and social benefits to be derived.
11 Student participation in intercollegiate athletics is an avocation, and student-athletes should be
12 protected from exploitation by professional and commercial enterprises.”

13 16. At the 18th NCAA annual convention held in 1923, Professor C.W. Savage of
14 Oberlin College, who served on the NCAA’s Executive Committee and as a Vice-President of the
15 association, stated that “[i]n practically all of the great colleges and universities . . . there are being
16 built up great intercollegiate machines, great athletic systems, commercialized and
17 professionalized in spirit, that are fast assuming the proportions of stupendous Juggernauts . . .
18 which are threatening to crack every bone in our academic bodies, and to crush out our scholastic
19 veins every drop of the blood of idealism and inspiration.” *Id.*

20 17. In 1929, the Carnegie Foundation for the Advancement of Education issued a
21 report on intercollegiate athletics entitled “American College Athletics.” The report was
22 commissioned by several associations, including the NCAA. *Id.* at 26. The report found of the 112
23 schools surveyed, 81 provided inducements to students ranging from open payrolls and disguised
24 booster funds to no-show jobs at movie studios. The fundamental issues, the report’s authors
25 argued, were twofold: “‘commercialism and a negligent attitude toward the educational
26 opportunity for which a college exists.’ The defects of contemporary athletics programs,
27 particularly as they imposed heavy burdens on the athletes, included disproportionate time
28

1 requirements, isolation from the rest of the student body and highly compensated ‘professional’
2 coaches whose focus often was not on the education of their players.” *Id.*

3 18. At the 26th annual NCAA convention held in 1931, Thomas S. Gates, President of
4 the University of Pennsylvania, said, “[a]n institution has today the kind of athletic system its
5 President wants it to have or permits it to have. It is all very well to blame the abuses upon the
6 public or the alumni or the emphasis given in the newspapers. But in the last analysis, the
7 president is responsible.” *Id.* at 30.

8 19. At the 35th annual NCAA convention held in 1940, the NCAA Executive
9 Committee received comments asking for assurances that the amateur code was being enforced on
10 college campuses. A member of the NCAA Executive Committee stated, “[w]e are now
11 confronted with the problem as to whether the college Presidents have been fooled by the
12 conditions of their own institutions, or whether [they] intend that the code should be interpreted
13 differently than most of us understand it.” *Id.* At the same convention, the Executive Committee
14 was authorized to investigate alleged violations of the NCAA’s amateurism regulations and to
15 issue interpretations of the NCAA constitution. No enforcement authority was conferred on the
16 Executive Committee. *Id.*

17 20. At the 42nd annual NCAA convention held in 1948, the NCAA enacted the “Sanity
18 Code” to “alleviate the proliferation of exploitive practices in the recruitment of student-athletes.
19 *Id.* The Sanity Code required that financial aid be awarded without consideration for athletics
20 ability. The penalty for violating the Sanity Code was expulsion from the NCAA upon a two-
21 thirds vote of the membership.

22 21. In 1950, seven schools were found to be in violation of the Sanity Code, but were
23 not expelled. *Id.* at 31.

24 22. In 1951, Judge Saul Streit (“Streit”) of the New York Court of General Sessions
25 mounted a probe into the college athletics gambling scandal. In his findings, Judge Streit
26 recounted a pattern of abuses on the campuses involved in the scandals, concluding that
27 commercialism in football and basketball was “rampant,” and those sports are “no longer amateur
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1 sports.” Athletes “are bought and paid for.” Scouting and recruiting violations are “almost
2 universal.” Academic standards are evaded through “trickery, devices, frauds, and forgery.”
3 Responsibility for the scandals “must be shared not only by the crooked fixers and the corrupt
4 players, but also by the college administrators, coaches and alumni groups who participate in this
5 evil system” Finally, he said, presidents and faculty members must take charge of their
6 athletics programs, and the NCAA must “reorganize and revitalize” *First Century* at 31-32.

7 23. The NCAA did not have any rule-making or enforcement authority over its
8 members until the 1950s. The NCAA had no full-time administrative leader until 1951. In that
9 year, Walter Byers was named Executive Director of NCAA. In that same year, the NCAA
10 repealed the Sanity Code. *Id.* at 35, 234.

11 24. At the NCAA annual convention held in 1952, a new code was approved providing
12 limits on practice seasons and number of games; postseason competition; curriculum matters and
13 academic progress; financial assistance; eligibility; and adherence to the rules. The new code also
14 established a Membership Committee and a Subcommittee on Infractions. An “Enforcement
15 Committee” was established to work with the Committee on Infractions on enforcement of
16 findings. *Id.* at 36.

17 25. In 1956, the NCAA enacted a national standard governing athletic scholarships.
18 This standard defined a full “grant-in-aid” as an award to a college athlete for “commonly
19 accepted educational expenses,” subsequently defined as tuition, fees, room, board, books, and
20 laundry expenses. *Id.* at 45.

21 26. In 1973, the NCAA adopted a one-year limit on athletic scholarships, allowing for
22 the awards to be renewed on a year-to-year basis. In 2011, however, the NCAA Division I
23 member institutions adopted legislation removing the restriction on multiyear scholarships.
24 Today, Division I member institutions are free to offer multiyear athletic scholarships.

25 27. In 1973, the NCAA adopted a reorganization plan resulting in a federated, three
26 Division structure consisting of Divisions I, II and III. Each Division created separate operating
27 manuals and philosophy statements consistent with its own mission.

1 28. At the annual NCAA Convention held in 1990, many reforms were passed
2 including: the reduction of spring football practice in Division I, the reduction of regular season
3 basketball games from 28 to 25, the reduction of Division I-AA football financial aid awards from
4 70 to 65, the passage of rules requiring Division I and II institutions to provide graduation rate
5 information to prospective students, their parents, coaches, and the general public, as well as
6 mandated reductions in time demands on college athletes during practice and playing seasons.

7 *First Century* at 75.

8 29. In 1993, Cedric Dempsey became the President of the NCAA.

9 30. In 2003, Myles Brand became the President of the NCAA.

10 31. In October of 2010, Mark Emmert became President of the NCAA and currently
11 holds that title.

12 **B. FACTS RELATING TO EA AND CLC.**

13
14 32. Collegiate Licensing Company (“CLC”) is a trademark licensing company.

15 33. CLC is an authorized licensor of NCAA trademarks.

16 34. CLC is an authorized licensor of some NCAA member schools’ trademarks.

17 35. Electronic Arts, Inc. (“EA”) is a videogame manufacturer.

18 36. EA has created and sold NCAA-branded videogames but ceased creating any new
19 iterations of basketball-themed games in 2010 and football-themed games in 2013.

20 37. EA entered into licensing agreements to create and sell NCAA-branded video
21 games.

22 38. The NCAA received payment for the use of its marks in the sale of NCAA-branded
23 video games sold by EA.

24 39. For each year from 1997 through 2013, EA created and sold an annual “NCAA
25 Football” video game.

26 40. For each year from 1998 through 2008, EA created and sold an annual “NCAA
27 March Madness” video game.

1 41. For 2009 and 2010, EA created and sold an annual “NCAA Basketball” video
2 game.

3
4 **C. FACTS RELATING TO THE SPORTS AT ISSUE IN THIS LAWSUIT**

5 42. During the academic year 1982-83, 104 schools played football in the NCAA’s
6 Division I-A, which is now known as the Division I Football Bowl Subdivision. A total of 12,237
7 college athletes played Division I-A football during that year.¹

8 43. During the academic year 1992-93, 106 schools played football in the NCAA’s
9 Division I-A. A total of 12,529 college athletes played Division I-A football during that year.

10 44. During the academic year 2002-03, 117 schools played football in the NCAA’s
11 Division I-A. A total of 13,602 college athletes played Division I-A football during that year.

12 45. During the academic year 2012-13, 121 schools played football in the NCAA’s
13 Division I Football Bowl Subdivision. A total of 14,367 college athletes played Division I FBS
14 football during that year.

15 46. During the academic year 1982-83, 274 schools played men’s basketball in the
16 NCAA’s NCAA’s Division I. A total of 4,098 college athletes played Division I men’s basketball
17 during that year.

18 47. During the academic year 1992-93, 298 schools played men’s basketball in the
19 NCAA’s Division I. A total of 4,410 college athletes played Division I men’s basketball during
20 that year. There were 3,954 regular season games played by Division I men’s basketball teams
21 during that year, with a total attendance of 21,281,917 at those games.²

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23 _____
24 ¹ Statistics regarding the number of schools playing Division I-A/FBS football and Division I
25 men’s basketball, and the number of college athletes who played those sports, are taken from the
26 2012-13 NCAA Sports Sponsorship and Participation Rates Report, available at
27 [http://www.ncaapublications.com/p-4334-1981-82-2012-13-ncaa-sports-sponsorship-and-
28 participation-rates-report.aspx](http://www.ncaapublications.com/p-4334-1981-82-2012-13-ncaa-sports-sponsorship-and-participation-rates-report.aspx).

² Statistics regarding the number of Division I men’s basketball games played during a year, and
attendance at those games, are taken from [http://www.ncaa.org/championships/statistics/ncaa-
mens-basketball-attendance](http://www.ncaa.org/championships/statistics/ncaa-mens-basketball-attendance).

1 48. During the academic year 2002-03, 326 schools played men's basketball in the
2 NCAA's Division I. A total of 5,012 college athletes played Division I men's basketball during
3 that year. There were 4,437 regular season games played by Division I men's basketball teams
4 played during that year, with a total attendance of 22,737,432 at those games.

5 49. During the academic year 2012-13, 346 schools played men's basketball in the
6 NCAA's Division I. A total of 5,380 college athletes played Division I men's basketball during
7 that year. There were 5,165 regular season games played by Division I men's basketball teams
8 during that year, with a total attendance of 25,416,956 at those games.

9
10 Respectfully submitted,

11 HAUSFELD LLP

12
13 By: /s/ Michael Lehmann

14 Michael P. Lehmann
15 *Antitrust Plaintiffs' Class Counsel*
16 1700 K St. NW, Suite 650
17 Washington, DC 20006

16 Dated: June 6, 2014

17 MUNGER, TOLLES & OLSON LLP

18
19 By: /s/ Carolyn Luedtke³

20 Carolyn Hoecker Luedtke
21 Attorneys for Defendant NCAA
22 560 Mission Street, Twenty-Seventh Floor
23 San Francisco, California 94105-2907

22 Dated: June 6, 2014

24
25
26
27 ³ I, Sathya S. Gosselin, attest that I have obtained concurrence from Carolyn Hoecker Luedtke in
28 the filing of this Stipulation Regarding Undisputed Facts.

CERTIFICATE OF SERVICE

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I hereby certify that on June 6, 2014, 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/ Sathya S. Gosselin
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