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VIA HAND DELIVERY

August 4, 2009

The Hon. Claudia Wilken
United States District Court
Northern District of California
Oakland Division
1301 Clay Street, Suite 400 S
Oakland, CA 94612-5212

Re: *Keller v. Electronic Arts, Inc., et al.*, Case No. CV: 09-1967 (CW) “*Keller*”

O’Bannon, Jr. v. National Collegiate Athletic Association, et al., Case No. CV:
09-3329 (MMC) (“*O’Bannon*”)

Dear Judge Wilken:

I write with respect to the above-captioned *Keller* and *O’Bannon* actions, both of which are putative class actions brought on behalf of various groups of current and former collegiate athletes regarding the alleged unlawful use and licensing of their images by the National Collegiate Athletic Association (“NCAA”), its licensing arm the Collegiate Licensing Company (“CLC”), and Electronic Arts, Inc. (“EA”). I am one of the counsel for plaintiff Edward C. O’Bannon, Jr., along with Michael Lehmann of my firm’s San Francisco office, Boies Schiller & Flexner LLP, and several other firms.

On July 29, 2009, my firm filed a motion to designate the *Keller* and *O’Bannon* actions as related actions (*see Keller* Dkt. Entry No. 45) (the “Motion to Relate”). As more fully described therein, the *O’Bannon* action is much broader than the *Keller* action, but there is a certain overlap between the two actions with respect to the use of former players’ images in videogames. The *O’Bannon* action further details numerous other alleged unlawful uses of former players’ images in formats including DVDs offered for sale and rental, photographs, video on-demand services, “stock footage” sold to corporate advertisers and other purchasers for

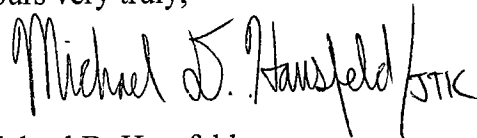
use in commercials and other end-products, apparel sales, and rebroadcasts of “classic” games on television

On Thursday July 23, 2009, as further described in the Motion to Relate, my firm requested that plaintiff’s counsel in the *Keller* action stipulate to the related case designation. On Tuesday, July 28, 2009, plaintiff’s counsel declined to stipulate to the request. That same day, however, plaintiff’s counsel in the *Keller* action filed a Motion for Appointment of Interim Lead Counsel (*see Keller* Dkt. Entry No. 31) (the “*Keller* Interim Lead Counsel Motion”) and requested that it be appointed interim lead counsel for a class of certain players whose images have been utilized in EA’s videogames. Plaintiff’s counsel in the *Keller* action subsequently filed an opposition to the Motion to Relate, as did the Defendants therein.

Under the current briefing schedule in the *Keller* action, any oppositions to the *Keller* Interim Lead Counsel Motion would be due on August 13, 2009. Plaintiff in the *O’Bannon* action will wish to be heard on this matter. However, the deadline for the Court to rule on the Motion to Relate is not until August 24, 2009. *See* Civil L.R.3-12(f) and 7-11(b)). Until that determination is made, and in view of the overlap between the *Keller* and *O’Bannon* actions, the undersigned respectfully submits that consideration of interim lead counsel issues is premature.

The undersigned further respectfully suggests that an appropriate course of action is for the Court (1) to issue an Order deferring any further briefing on lead counsel issues in the *Keller* action; (2) to make a related case determination pursuant to the Motion to Relate; and (3) if it grants the Motion to Relate, to then set a briefing schedule in which plaintiffs’ counsel in both the *O’Bannon* and *Keller* actions can outline the similarities and differences in their actions, and suggest appropriate interim class leadership appointments. I believe that the briefing referenced in suggestion (3) could occur on an expedited basis, thereby eliminating any substantial delay in the efficient prosecution of these matters.

Yours very truly,

A handwritten signature in black ink that reads "Michael D. Hausfeld" followed by a stylized flourish that appears to be "JTK".

Michael D. Hausfeld
Counsel for Plaintiff Edward O’Bannon

cc: All Counsel Appearing in *Keller* and *O’Bannon*
ECF Dockets (via e-filing notification)