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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **OAKLAND DIVISION**

12 EDWARD C. O'BANNON, JR., on behalf
 of himself and all others similarly situated,
 13
 Plaintiffs,
 14
 v.
 15 NATIONAL COLLEGIATE ATHLETIC
 ASSOCIATION (NCAA); ELECTRONIC
 16 ARTS, INC.; and COLLEGIATE
 LICENSING COMPANY,
 17
 Defendants.
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CASE NO. 4:09-CV-3329 CW

**DECLARATION OF BURKE MAGNUS IN
 SUPPORT OF NON-PARTY THE BIG 12
 CONFERENCE INC.'S
 ADMINISTRATIVE MOTION TO SEAL
 CONFIDENTIAL TRIAL EXHIBITS; DKT.
 178**

Judge: Hon. Claudia Wilken

1 I, BURKE MAGNUS declare as follows:

2 1. I am the Senior Vice President, College Sports Programming at ESPN, Inc.
3 (“ESPN”). I have personal knowledge of the facts stated herein, and if called upon to testify, I
4 could and would testify competently to such facts.

5 2. ESPN is a non-party in *O’Bannon v. NCAA, et. al*, Case No. 09-cv-3329-CW (the
6 “Action”).

7 3. On May 4, 2014, non-party The Big 12 Conference, Inc. (“Big 12”) filed an
8 administrative motion to seal confidential trial exhibits, including Exhibit 2165,
9 BIG_12_NCAA_00000791 - BIG_12_NCAA_00000836 (ESPN Agreement) (hereinafter
10 “ESPN-BIG 12 Agreement).

11 4. I understand that Big 12 produced the ESPN-Big 12 Agreement in the Action in
12 response to a subpoena served on Big 12 by Antitrust Plaintiffs. In doing so, I understand that
13 Big 12 designated the ESPN-Big 12 Agreement “Outside Attorneys’ Eyes Only,” because this
14 broadcast agreement contains highly sensitive commercial and proprietary information and trade
15 secrets, as well as confidentiality provisions protecting disclosure of the agreement’s terms.

16 5. For the reasons set forth below, public disclosure of the ESPN-Big 12 Agreement
17 would result in significant financial and competitive harm to ESPN, and therefore ESPN supports
18 Big 12’s request to have this exhibit sealed.

19 6. The Ninth Circuit recognizes that there are “compelling reasons” to maintain under
20 seal, and protect from disclosure to the public, documents that contain or amount to trade secrets
21 – which consist “of any formula, pattern, device or compilation of information which is used in
22 one’s business, and which gives him an opportunity to obtain an advantage over competitors who do
23 not know or use it.” *In re Electronic Arts*, 298 Fed. App’x 568, 569–70 (9th Cir.2008) (citing *Nixon*
24 *v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

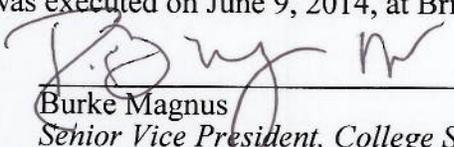
25 7. The ESPN-Big 12 Agreement, and the financial terms therein, are treated as
26 confidential by ESPN and Big 12, neither of which are parties to the Action. The highly
27 confidential financial information contained in the ESPN-Big 12 Agreement is protected from
28 public disclosure by a confidentiality agreement between ESPN and Big 12. *See* Ex. 2165, §

1 24.9. Such information includes, among other things, the terms and amount of ESPN's payment
2 to Big 12 in exchange for the right to broadcast particular collegiate athletic events. *See Ex.*
3 2165, § 3. If this information is made public, ESPN would be harmed as its public disclosure
4 would allow other potential contracting partners and/or competitors to obtain an advantage over
5 ESPN in future negotiations. The public disclosure of this financial information could result in a
6 competitive prejudice to ESPN in future negotiations with partners, because contracting partners
7 would know the exact amounts that ESPN paid under the ESPN-Big 12 Agreement.

8 8. The ESPN-Big 12 Agreement contains many more provisions that include unique,
9 proprietary and highly-sensitive information subject to the confidentiality agreement between
10 ESPN and Big 12 and which will competitively harm ESPN if publicly disclosed. Such
11 provisions include, but are not limited to, ESPN/ABC media rights (Ex. 2165 § 7); telecast and
12 distribution requirements (*id.* at §§ 4.3, 5.3 & 6.3); game selection procedures (*id.* at §§ 4.5, 5.4,
13 6.4 & Exhibit B); first negotiation and first refusal rights (*id.* at § 15); conference composition (*id.*
14 at § 14); conference championship rights (*id.* at § 12); conference distribution rights and
15 restrictions (*id.* at §§ 8.4 & 8.5); and tickets (*id.* at § 19). If this information is made public,
16 ESPN would be harmed as its public disclosure would allow other potential contracting partners
17 and/or competitors to obtain an advantage over ESPN in future negotiations.

18 9. For the foregoing reasons, ESPN respectfully requests that the Court grant non-
19 party Big 12's Administrative Motion to Seal Confidential Trial Exhibits.

20 I declare under penalty of perjury under the laws of the United States that the foregoing is
21 true and correct and that this declaration was executed on June 9, 2014, at Bristol, Connecticut.

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24 Burke Magnus
25 Senior Vice President, College Sports Programming
26 at ESPN, Inc.
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