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 15 National Collegiate Athletic Association

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
 18

19 EDWARD O'BANNON, *et al.*,
 20
 21 Plaintiffs,
 22 v.
 23 NATIONAL COLLEGIATE ATHLETIC
 ASSOCIATION; COLLEGIATE
 24 LICENSING COMPANY; and
 ELECTRONIC ARTS INC.,
 25
 26 Defendants.

Case No. 09-CV-3329-CW
**DECLARATION OF SCOTT A. BEARBY
 IN SUPPORT OF DEFENDANT NCAA'S
 ADMINISTRATIVE MOTION TO SEAL
 CONFIDENTIAL TRIAL EXHIBITS**
 Judge: Hon. Claudia Wilken
 Judge: Hon. Claudia Wilken
 Courtroom: 2, 4th Floor

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1 I, Scott A. Bearby, declare that the following is true:

2 1. I am General Counsel for Defendant National Collegiate Athletic Association
3 (“NCAA”). I make this declaration of my own personal knowledge, and, if called to do so, could
4 testify competently to the facts stated herein under oath.

5 2. I submit this declaration pursuant to Local Rules 7-11 and 79-5. This declaration
6 supports the Defendant NCAA Administrative Motion to Seal Confidential Trial Exhibits
7 (“NCAA Administrative Motion to Seal”) filed on June 9, 2014.

8 3. The purpose of this declaration is to set forth facts by which NCAA believes there
9 are “compelling reasons” to seal certain judicial records. *See Kamakana v. City & County of*
10 *Honolulu*, 477 F.3d 1172, 1179-80 (9th Cir. 2006).

11 4. The following Exhibits on Plaintiffs’ Trial Exhibit List contain confidential
12 competitively sensitive financial terms, as to which there are compelling reasons for maintaining
13 the limited information in issue under seal:

- 14 • Ex. 400, 2010 Multi-Media Agreement between TBS, CBS, and the NCAA;
- 15 • Ex. 2218, 2010 Digital Rights Agreement between the NCAA and Turner
16 Sports Interactive, Inc..

17 **Exhibit 400, Multi-Media Agreement**

18 5. Plaintiffs’ Trial Exhibit 400 is the “Multi-Media Agreement” between Turner
19 Broadcasting System, Inc. (“TBS”), CBS Broadcasting Inc. and the NCAA, dated April 22, 2010.

20 6. Antitrust Plaintiffs previously filed an exhibit containing excerpts of the Multi-
21 Media Agreement with redactions that disclosed only the table of contents and selected provisions
22 on four pages out of the forty-seven page agreement, *Keller*, Case No. 09-CV-1967-CW
23 (“*Keller*”), Dkt. No. 655, after Magistrate Judge Cousins found the NCAA showed good cause for
24 redaction of confidential business information contained within the remainder of the
25 agreement. *See Keller* Dkt. No. 626.

26 7. The NCAA also filed a redacted version of an excerpt from the Multi-Media
27 Agreement in support of its motion for summary judgment, containing only one page from the
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1 Multi-Media Agreement. *See Keller*, Dkt. No. 931-8. The Court upheld the sealing of paragraph
2 13.1 on that page, because it “describes specific licensing rights.” *Keller* Dkt. No. 989, at 11.

3 8. The terms of Exhibit 400 not previously disclosed publicly should remain under
4 seal. These terms contain competitively sensitive information, including content licensing terms
5 and licensing rights obtained for consideration that could benefit third parties who wish to
6 participate in future negotiations for the licensing and distribution of NCAA content, and the
7 disclosure of this information to any competitors of TBS and CBS would prejudice TBS and/or
8 CBS, neither of whom is a party to this litigation.

9 9. The Multi-Media Agreement contains heavily negotiated provisions about the
10 planning, implementation, execution, and obligations of the parties with respect to the over-the-air
11 and cable television multi-channel coverage of the NCAA Men’s Division I Basketball
12 Championship and the March Madness Live web/internet platform.

13 10. Specifically, the agreement provides specific, confidential financial and technical
14 information that would unfairly allow media competitors and future bidders for NCAA
15 championship media to benefit. The simultaneous coverage of tournament games on four different
16 cable and over-the-air channels is unique and developed at great expense and creativity.

17 11. The March Madness Live website and application provisions also contain
18 proprietary, innovative information that would unfairly benefit media competitors and future
19 bidders for NCAA championship media. The business model contains confidential information
20 not intended to be open and available.

21 12. The agreement also provides for business and operational requirements specific to
22 the NCAA’s Corporate Partner Program.

23 13. Other than any provision that might relate to name, image, and likeness (or lack
24 thereof), the confidentiality of the specific technical, business, and other proprietary aspects of this
25 agreement—which are interwoven and difficult to redact in specific provisions because of their
26 connected nature —should be protected.

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1 14. The Multi-Media Agreement has an express confidentiality clause, providing that
2 no party may distribute a public statement or disclose the terms of the Agreement “without the
3 prior approval of all other Parties to the Agreement.”

4 **Exhibit 2218, Digital Rights Agreement**

5 15. Plaintiffs’ Trial Exhibit 2218 is the 2010 “Digital Rights Agreement” between the
6 NCAA and Turner Sports Interactive, Inc., a subsidiary of TBS, produced at Bates Number
7 NCAAPROD00295333.

8 16. Antitrust Plaintiffs previously filed the Digital Rights Agreement in redacted form,
9 *see Keller*, Dkt. No. 653, after Magistrate Judge Cousins found the NCAA and TBS showed good
10 cause for redaction of particular terms that contained confidential business information. *See*
11 *Keller*, Dkt. No. 645. The Magistrate Judge recognized that the redacted terms contain “contain
12 commercially valuable information that could competitively disadvantage [the NCAA and TBS] in
13 future negotiations.” *Id.* at 4.

14 17. The terms of Exhibit 2218 that the Magistrate Judge previously ordered sealed
15 should remain under seal. These terms contain competitively sensitive information, including
16 content licensing terms and licensing rights obtained for consideration that could benefit third
17 parties who wish to participate in future negotiations for the licensing and distribution of NCAA
18 content.

19 18. The Digital Rights Agreement contains heavily negotiated provisions about the
20 planning, implementation, execution, and obligations of the parties with respect to the
21 www.ncaa.com web site.

22 19. The ncaa.com web site features live streaming of the NCAA’s championship
23 rounds, so there is proprietary, technical information and business planning that competitors to
24 Turner would unreasonably benefit from, and which would provide an unfair advantage to those
25 other media companies with respect to their web operations and in any future negotiations with the
26 NCAA at the appropriate time of renegotiation.

