

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 EDWARD O'BANNON, et al.

No. C 09-3329 CW

4 Plaintiffs,

ORDER APPROVING
STIPULATION;
GRANTING IN PART
MOTION TO SEAL;
DENYING AS MOOT
MOTION TO
INTERVENE (Docket
Nos. 200, 204,
209)

5 v.

6 NATIONAL COLLEGIATE ATHLETIC
7 ASSOCIATION; ELECTRONIC ARTS
8 INC.; and COLLEGIATE LICENSING
9 COMPANY,

10 Defendants.

11 On June 12, 2014, the parties filed a stipulation with non-
12 party CBS Broadcasting, Inc. resolving CBS's motion to intervene.
13 The stipulation also resolved a portion of Defendant National
14 Collegiate Athletic Association's (NCAA) motion to seal.

15 This stipulation is approved except with respect to its
16 provisions addressing subsections 1(g) and 1(h) of the April 2010
17 "Multi-Media Agreement" between CBS, the NCAA, and Turner
18 Broadcasting System, Inc. (Exhibit 400). Although the parties
19 stipulated to redacting subsections 1(g) and 1(h) in their
20 entirety from any trial exhibits, the Court finds that those
21 subsections may only be partially redacted. The remaining
22 portions of the NCAA's motion to seal are resolved as set forth
23 below.

24 DISCUSSION

25 The NCAA moves to seal portions of an August 2010 "Digital
26 Rights Agreement" (Exhibit 2218) between the NCAA and Turner.

27 Trial exhibits may only be sealed for compelling reasons.

28 Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178-79 (9th

1 Cir. 2006). "The party requesting the sealing order must
2 articulate compelling reasons supported by specific factual
3 findings that outweigh the general history of access and the
4 public policies favoring disclosure, such as the public interest
5 in understanding the judicial process." Id. at 1178-79 (internal
6 citations and alterations omitted). "In turn, the court must
7 conscientiously balance the competing interests of the public and
8 the party who seeks to keep certain judicial records secret." Id.
9 at 1179 (internal citations and alterations omitted). "The mere
10 fact that the production of records may lead to a litigant's
11 embarrassment, incrimination, or exposure to further litigation
12 will not, without more, compel the court to seal its records."
13 Id. (citing Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d
14 1122, 1136 (9th Cir. 2003)). Nor will the moving party's
15 reference to a "stipulation or protective order that allows a
16 party to designate certain documents as confidential." Civil L.R.
17 79-5(d) (1) (A).

18 Plaintiffs have represented that the trial exhibits they
19 intend to introduce only contain excerpts from subsections
20 2.A.3.a.vi, 2.A.3.a.vii, 2.C.1.c, 3.A, 3.D, 4.B.6, and 4.B.7 of
21 the August 2010 agreement. The NCAA, Turner, and CBS have not
22 provided any compelling reasons for sealing these provisions.¹
23 Accordingly, Plaintiffs need not redact or excise from their trial

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25 ¹ The NCAA notes that the magistrate judge previously granted its
26 request to seal these provisions of the August 2010 agreement when
27 Plaintiffs sought to file it in support of their class certification
28 motion. See Case No. 09-1967, Docket No. 645, Nov. 5, 2012 Order. The
magistrate judge's sealing order does not govern here, however, because
he relied on the "good cause" standard, id. at 2, rather than the higher
"compelling reasons" standard that governs motions to seal trial
exhibits.

1 exhibits any excerpts from these particular provisions of the
2 agreement. They shall, however, redact any trial exhibits that
3 quote other provisions of the agreement.

4 CONCLUSION

5 The parties' stipulation (Docket No. 209) is APPROVED except
6 with respect to subsections 1(g) and 1(h) of the April 2010
7 agreement. The only portions of those subsections that may be
8 redacted are the specific percentages and number of games listed
9 therein. Any information that has previously been filed in the
10 public record may not be sealed.

11 The NCAA's motion to seal the August 2010 agreement (Docket
12 No. 200) is GRANTED in part and DENIED in part. Plaintiffs must
13 redact or excise from their trial exhibits any excerpts from this
14 agreement other than those from subsections 2.A.3.a.vi,
15 2.A.3.a.vii, 2.C.1.c, 3.A, 3.D, 4.B.6, and 4.B.7.

16 CBS's motion to intervene (Docket No. 204) is DENIED as moot
17 in light of the stipulation.

18 IT IS SO ORDERED.

19
20 Dated: June 17, 2014



CLAUDIA WILKEN
United States District Judge