

# EXHIBIT I

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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 )  
 IN RE NCAA STUDENT-ATHLETE )  
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 NAME AND LIKENESS LICENSING ) CASE NO.  
 ) 4:09-cv-1967 CW  
 LITIGATION )  
 )  
 -----)

VIDEOTAPED DEPOSITION of JOHN D. WELTY  
FRESNO, CALIFORNIA  
MONDAY, MAY 20, 2013

Reported by:  
VANESSA HARSKAMP  
CSR No. 5679, RPR, CRR, CCP

8 Q. Could you state your full name for the  
9 record, sir?

10 A. John Welty.

16 Q. Okay. How did it come about that you  
17 prepared a declaration which was submitted to the  
18 court in mid March in opposition to the class  
19 certification motion?  
20 A. I was contacted by Mark Emmert, the  
21 President of the NCAA.

18 Who prepared the declaration?

21 THE WITNESS: The -- I'm not sure of the  
22 exact person, but the firm representing the NCAA.

5 Q. Okay. Before you signed the declaration,  
6 did you do any research?

7 A. Yes.

8 Q. And could you describe the research you  
9 did, please?

10 A. I reviewed our budget for some of the  
11 financial figures that are included in the  
12 declaration.

24 Q. So basically your research was limited to  
25 confirming the numbers for the athletic budget for

1 Fresno State; is that correct, sir?

2 A. That's correct.

25

Q. Okay. And then you came to Fresno State?



1 A. That's correct.

2 Q. And you have been here ever since?

3 A. Yes.

4 Q. And when you came, did you come in as the  
5 President?

6 A. Yes.

7 Q. And you have been the President since '91?

8 A. That's correct.

9 Q. So about 22 years?

10 A. Yes.

11 Q. Okay. And I understand you are retiring  
12 soon?

13 A. Yes. At the end of July.

1 I football or Division I basketball?

2 A. From time to time there have been  
3 discussions about whether that is an alternative we  
4 should consider. Largely in football, when other  
5 CSU schools dropped football, we have had  
6 discussion about: Can we sustain the program here?

7 Q. And were any studies done, anything on a  
8 formal level?

9 A. No.

10 Q. No -- any papers produced?

11 A. I don't believe so.

12 Q. Any economic analysis prepared?

13 A. No.

14 Q. So these are just sort of informal  
15 discussions with some of your colleagues?

16 A. That's correct.

13 Q. And do you know how much the  
14 breakdown between the money that comes through the  
15 California State University system versus student  
16 tuition?

17 A. Well, roughly 48 percent of our general  
18 fund is from the State of California, and 52  
19 percent comes from student fees.

1 Q. Okay. And then the next item, sir, is  
2 "NCAA distributions." And

3 If you can explain that, please?

4 A. These are distributions that come to the  
5 conference and are distributed -- well, excuse me.  
6 NCAA distributions covers the basketball  
7 units, revenue based upon the number of sports we  
8 offer, revenue for the student-athlete opportunity  
9 fund, and then there is a couple of other  
10 miscellaneous distributions.

11 Q. So just so I'm clear, does this money come  
12 directly from the NCAA to Fresno State, or is the  
13 Western Athletic Conference -- or strike that -- is  
14 the Mountain West Conference and before that the  
15 Western Athletic Conference an intermediary?

16 A. The -- for basketball units and the  
17 student-athlete opportunity fund, the conference is  
18 an intermediary.

19 I think the revenue for the number of  
20 sports we offer comes directly from the NCAA.

21 Q. And what is your understanding of the  
22 NCAA's source of revenue?

23 Where does its revenue come from?

24 A. Its primary source of revenue is the men's  
25 basketball contract.

4 Q. Any other source, to your knowledge?

5 A. Well, there are other sources, but the --  
6 you know, that include sponsorships, other  
7 championships, and there is revenue sources there  
8 too, but it's pretty small.

9 Q. But the bulk of the money is from the  
10 spring annual basketball tournament known as March  
11 Madness?

12 A. Yes.

13 Q. And do you have an understanding as to, in  
14 general terms, the amount of money that generates  
15 in revenue for the NCAA?

16 A. I don't recall the exact annual figure,  
17 the contract is a multi-year contract of over a  
18 billion dollars.

3                   When the money comes to Fresno State  
4 from the conference, I take it that the other  
5 schools within the Mountain West Conference share  
6 in that revenue stream?

7           A.   Yes.

8           Q.   And how is that allocated? Is it by  
9 student population or is it a different metric?

10          A.   No, each university has one share, and  
11 that's allocated based upon the shares, so --

12          Q.   So it's basically pro rata?

13          A.   Yes.

14          Q.   Regardless, if you are the biggest team,  
15 and the biggest school in the conference or the  
16 smallest?

17          A.   Right, it has nothing to do with the  
18 students.

15 Q. So, for example, you've told us that  
16 Fresno State now, on an annual basis, awards 235  
17 athletic scholarships; right?

18 A. (Witness nods head).

19 Q. Is that correct?

20 A. Yes.

17

Q.

18

And is it correct that you are saying here that

19

Fresno State does not own the rights of current or

20

former student-athletes, to their name, image or

21

likeness?



1

**THE WITNESS:** That's correct.

25

**Q.** Now, do you have any understanding if a

1 student-athlete decides to come here and play, say,  
2 football or men's basketball, if they have to sign  
3 any forms in order to play on the team?

4 A. We do have some forms that they sign, yes,  
5 when they --

6 Q. And could you tell me what forms they have  
7 to sign in order to play?

8 A. Well, I don't know all of the forms, but  
9 they have to do with their agreeing to comply with  
10 university rules, regulations, as well as NCAA  
11 regulations.

12 Q. And who prepares the forms?

13 A. The athletic department.

4 Q. And is it your understanding to the extent  
5 whatever forms you require here that if a player, a  
6 student-athlete is unwilling to sign it, that he  
7 would not be eligible to play on that particular  
8 team?

10 THE WITNESS: That's correct.

12 Q. Are you aware of any instances during the  
13 time that you've been president where a student-  
14 athlete refused to sign a particular form that  
15 Fresno State required and was still allowed to  
16 play?

17 A. No.

6 Q. And then you go on to say, quote, "The  
7 number one complaint we receive from coaches and  
8 student-athletes alike regarding television  
9 appearances is that they would like to be on  
10 television more often."

11 Has any student-athlete ever approached  
12 you directly and complained about that?

13 A. Yes.

14 Q. On how many occasions?

15 A. I may hear about that five to eight times  
16 a year.

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8 Q. And I take it that the football coach is  
9 highly compensated?

11 THE WITNESS: In relation to what? In  
12 relation to the president, yes.

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22 Q. And he earns north of a million dollars a  
23 year?

24 A. No.

25 Q. Less?

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1 A. Yes.

2 Q. How much, approximately?

3 A. Base is in the neighborhood of 650, plus  
4 bonus opportunities.

12 Q. The football coach --

13 A. Relative to --

14 Q. -- makes the most salary, the most  
15 compensation of all your other athletic coaches?

16 A. At Fresno State, yes.

17 Q. And typically the number 2 salaried person  
18 is the men's basketball coach?

19 A. That's correct.

20 Q. Okay. Take a look at paragraph 15,  
21 please. What year are you referring to here when  
22 you talk about the \$2.4 million and those other  
23 numbers?

24 A. This is a projection for the -- it would  
25 be the '13-'14 academic year, the 2.4, from the

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1 Mountain West.

2 Q. Okay. And when you say, "revenues from  
3 institutional and conference television  
4 broadcasts," briefly, what are you referring to?

5 A. Well, I'm talking about the conference  
6 contract that we have.

10 Q. And then the total revenue you are  
11 projecting for the next football season is  
12 approximately \$4 million?

13 A. That's correct.

20 Q. And you are saying that the total revenues  
21 for men's basketball are approximately \$1 million?

22 A. That's correct.

6 Q. Okay. Now, when you talk about student-  
7 athletes, do you differentiate in your mind the  
8 notion of student-athletes being compensated on a  
9 deferred basis when they are former student-  
10 athletes, versus being paid while they are actually  
11 at university?

12 A. No, I think paying them either way is --  
13 would go beyond what I would consider to be  
14 appropriate for an educational institution.

15 Q. Okay. But you don't disagree with the  
16 notion that collegiate sports, particularly  
17 football and men's basketball, has become big  
18 business?

21 Q. And I don't say that in a pejorative way.

22 A. There -- no, I don't disagree with that.

23 Q. I mean, there's hundreds of millions of  
24 dollars of revenue now in the modern era being  
25 generated from the playing of these athletic



1 events.

2 A. That's correct.

3 Q. Now, you go on to say in your declaration  
4 that, "any such state of affairs would be a  
5 disaster for intercollegiate athletics and higher  
6 education."

7 Fair to state that's your opinion;  
8 correct?

9 A. That is correct.

10 Q. And why do you think it would be a  
11 disaster?

12 A. Well, I think it would -- and first of  
13 all, and I believe there's intercollegiate  
14 athletics as part of the educational mission of the  
15 institution, and I think if we got into paying  
16 student-athletes, particularly if the belief is  
17 that you pay football and basketball players, I  
18 think it would be illegal under Federal Title IX  
19 law.

20 Secondly, I think it would create a  
21 situation where you would have, even if you could  
22 do that, you would have unevenness between football  
23 and basketball players and other intercollegiate  
24 athletes, and it goes beyond what I would consider  
25 to be part of our educational mission, because a

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- 1 student-athlete does receive grant-in-aid, receives
- 2 lots of other support in order to provide for their
- 3 educational success.

12 Q. Okay. All right. Let's take a look at  
13 paragraph 17, please. And if I understand the  
14 first part of your paragraph, you are saying, well,  
15 in your view, your opinion they could -- schools  
16 could end up offering different amounts to  
17 different student-athletes; is that what you are  
18 suggesting there?

19 A. Yes.

4                   So, hypothetically, if there's 15 players  
5 on the basketball team and they all shared equally,  
6 you wouldn't have that problem that you are  
7 articulating?

8           A. Well, I think there would be a problem  
9 between different institutions, because some would  
10 be able to pay more than others.

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1 Q. I understand  
2 what you are saying, but realistically if someone  
3 is a top recruit, isn't it true that, say, in  
4 football, that it's unlikely, regardless whether  
5 the NCAA rules are changed in the future or not,  
6 that the top recruits are still going to end up at,  
7 quote, "the major schools," you know, for football,  
8 Alabama, Florida, Ohio State, et cetera, and  
9 respectfully are probably not going to be  
10 considering Fresno State or San Diego State, et  
11 cetera?

13 THE WITNESS: That's true.

15 Q. And that that probably won't change,  
16 regardless if the rules change in the future or  
17 not?

19 THE WITNESS: Well, it may not. I mean,  
20 again, I think if there's different levels paid,  
21 that's going to influence the student-athlete  
22 probably.

23 BY MR. STEYER:

24 Q. I understand what you are saying.  
25 But if it were, if hypothetically it's on

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1 a group license basis, the average athlete, the  
2 average good high school athlete, USC and UCLA are  
3 not going to be recruiting him anyway as a  
4 practical matter, wouldn't you agree with that,  
5 regardless if they end up sharing some of the  
6 revenue?

8 THE WITNESS: Probably not.

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19 Q. If you could look at paragraph 18,  
20 please?

21 You say, quote, "Introduction of that kind  
22 of commercial recruiting compensation -- recruiting  
23 competition for and between student-athletes would  
24 be devastating to Fresno State's ability to recruit  
25 student-athletes." Unquote.

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1           But isn't it true, as we've been  
2           discussing, that you are still going to end up  
3           recruiting from the same pool, in all likelihood?

5           **THE WITNESS:**   Not necessarily.

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1 Q. And so wouldn't you agree that in all  
2 likelihood that's not going to -- your pool is not  
3 going to change that much, regardless if NCAA  
4 changed its rules and in the future student-  
5 athletes could on a group basis participate in some  
6 of the revenue from some of these revenue streams?

9 THE WITNESS: No, probably not.

11 Q. Okay. I understand, by the way, you may  
12 not agree with it philosophically as an educator,  
13 that I get, but in terms of, you know, the  
14 actuality, it doesn't seem like much would change?

15 A. And you also have to realize it's -- under  
16 Title IX, it's illegal, so it would force us to  
17 change how we approach intercollegiate athletics.



3 Q. And would you also agree, and I don't have  
4 the numbers off the top of my head, that here at  
5 Fresno State, like many institutions, your  
6 graduation rates for student-athletes generally  
7 speaking are lower than for your general student  
8 population?

10 THE WITNESS: That's not correct.

11 BY MR. STEYER:

12 Q. How about as to football?

13 A. They are higher than the general  
14 population.

15 Q. And what are they, if you know, off the  
16 top of your head?

17 A. They are in the, I believe, high 50  
18 percentage or the low 60s, for the football team.

19 Q. And how about men's basketball?

20 A. They are, I don't know specifically.  
21 There again, I think they are in the 50s.

25 Q. Okay. Take a look at paragraph 20. And

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1 you talk about that it's possible that Fresno State  
2 might cease playing Division I or Football Bowl  
3 Subdivision sports entirely. I mean, you haven't  
4 studied this; is that a fair statement, sir?

5 A. No, I have looked at this pretty carefully  
6 in terms of the financing of intercollegiate  
7 athletics here.

8 Q. Here at Fresno State?

9 A. That's correct.

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9 Q. You know, if the rules changed and they  
10 allowed some form of a group license for the  
11 student-athletes, either currently or after  
12 eligibility ends, to participate in some of the  
13 revenue streams from football and basketball, has  
14 anyone told you they would stop playing Division I?

15 A. I think among discussion among presidents,  
16 there have been a lot of discussion about what  
17 different form intercollegiate athletics would take  
18 if we move outside of that.

19 Q. But no one has specifically said that to  
20 you; correct?

23 THE WITNESS: No, that's not correct. I  
24 mean, in discussions we've had, a number of  
25 presidents have taken that position.

8                   And you say that, "If Fresno State were to  
9                   move to Division III, all athletics grants-in-aid  
10                   would be eliminated."

11                   And can you explain why that is, please?

12                   A.   Well, in Division III athletic grants-in-  
13                   aids are prohibited.

14                   Q.   Okay.   By the NCAA's rules?

15                   A.   Yes.

Q.

9           Are there schools within the California  
10 State University system that you are aware of who  
11 have left Division I, or the FBS form of  
12 subdivision of football?

13           A. There are at least three schools that come  
14 to mind that have dropped football that were in,  
15 previously in FBS, what is now FBS, Fullerton, Long  
16 Beach and Northridge.