

1 MICHAEL D. HAUSFELD (*pro hac vice*)
 mhausfeld@hausfeldllp.com
 2 HILARY K. SCHERRER (SBN 209451)
 hscherrer@hausfeldllp.com
 3 SATHYA S. GOSSELIN (SBN 269171)
 sgosselin@hausfeldllp.com
 4 SWATHI BOJEDLA (*pro hac vice*)
 sbojedla@hausfeldllp.com
 5 HAUSFELD LLP
 1700 K Street, NW, Suite 650
 6 Washington, D.C. 20006
 Telephone: (202) 540-7200
 7 Facsimile: (202) 540-7201

8 MICHAEL P. LEHMANN (SBN 77152)
 mlehmann@hausfeldllp.com
 9 BRUCE J. WECKER (SBN 78530)
 bwecker@hausfeldllp.com
 10 HAUSFELD LLP
 44 Montgomery Street, Suite 3400
 11 San Francisco, California 94104
 Telephone: (415) 633-1908
 12 Facsimile: (415) 358-4980

13 *Plaintiffs' Counsel*

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

18 EDWARD C. O'BANNON, JR. on behalf
 19 of himself and all others similarly situated,

20 Plaintiffs,

21 v.

22 NATIONAL COLLEGIATE ATHLETIC
 ASSOCIATION (NCAA); ELECTRONIC
 23 ARTS, INC.; and COLLEGIATE
 LICENSING COMPANY,

24 Defendants.
 25

Case No. 4:09-cv-3329 CW

**PLAINTIFFS' OPPOSITION TO NCAA'S
MOTION TO ADMIT EXHIBITS**

Judge: The Honorable Claudia Wilken
 Courtroom: 2, 4th Floor
 Trial: June 9, 2014

1 On June 27, 2014, the NCAA filed its Motion to Admit Exhibits. Dkt. No. 255. The
2 NCAA has moved to admit two categories of documents. The first are a series of contracts for
3 which they have laid no foundation, and many of which are incomplete or almost fully redacted.
4 The second are excerpts from named Plaintiffs' books. Plaintiffs respectfully request that the
5 Court deny admission of these exhibits.

6 **I. Contracts**

7 Plaintiffs object generally to the NCAA attempting to dump contracts into the record
8 without giving Plaintiffs and the Court the opportunity to examine a witness on their contents.
9 Furthermore, for many of these contracts, witnesses were present at trial who could potentially
10 testify on these documents, and Plaintiffs were not notified until after the witnesses had left the
11 stand that the NCAA intended to attempt to admit these contracts. For example, the NCAA seeks
12 to admit TX 2102 and TX 2110, which are SEC contracts that Greg Sankey may have had
13 knowledge of. TX 3086 is a contract involving the Big Ten, about which Jim Delany may have
14 been able to testify. For the additional specific reasons below, these contracts should not be
15 admitted.

16 A. TX 2110 – The NCAA represents that this exhibit is an agreement between ESPN
17 and the SEC for broadcast rights to certain SEC athletic events. In fact, it is a letter confirming
18 key points of a contract, and the sender states that “we intend to enter into a long-form document
19 more definitively stating the various details of our agreement.” TX 2110-1. It is therefore
20 incomplete and not probative for the points for which the NCAA intends to use it, which is to
21 show a lack of name and likeness language.

22 B. TX 2117 – The NCAA represents this exhibit as an agreement between the Big
23 Twelve and ESPN for broadcast rights to Big Twelve games. As with the previous exhibit, it is
24 instead a letter memorializing key terms of an agreement, with a promise to execute a fuller
25 “Long-Form Agreement” in the future. TX 2117-1. It is therefore incomplete and not probative
26 for the points for which the NCAA intends to use it, which is to show a lack of name and likeness
27 language.

28

1 C. TX 2119 – This is an agreement between the Atlantic Coast Conference and
2 Raycom Sports, Inc., and Jefferson-Pilot Sports, Inc. for telecast rights to conference games. It is
3 heavily redacted; only a handful of paragraphs are visible. Indeed, much of the “Grant of Rights”
4 section is redacted from the contract. The “Indemnification” and “Additional Warranty”
5 language is also redacted. Not only is its current form not probative of the NCAA’s arguments,
6 but it would also be misleading and unfair under Fed. R. Evid. 1003 because Plaintiffs and the
7 Court lack access to the original, unredacted language.

8 D. TX 2179 – Like TX 2110 and 2117 discussed above, this exhibit consists of short
9 letters confirming the material terms of a contract extension between Notre Dame and NBC for
10 the broadcast of games. The initial extension letter contains four such material terms, and the
11 subsequent extension letter contains eight terms. This is clearly not a complete contract
12 containing all relevant provisions, and it is not probative of the NCAA’s arguments relating to
13 name and likeness rights.

14 E. TX 3086 – This is an extremely redacted version of a contract between a number
15 of conferences (including the Big Ten and Conference USA) and certain BCS bowls. Three
16 paragraphs of the entire contract are not redacted—the introductory language, the definition of
17 “BCS Games”, and a single sentence in Exhibit B that requires approval by the NCAA of any
18 advertisement involving a student-athlete. As such, it is not probative of the NCAA’s arguments
19 regarding name and likeness rights, and it is misleading and unfair under Fed. R. Evid. 1003
20 because Plaintiffs and the Court lack access to the original, unredacted language.

21 F. TX 2141, TX 2147 - Plaintiffs have no specific objections to these contracts.

22 **II. Named Plaintiffs’ Book Excerpts**

23 The NCAA’s proposed trial exhibits of excerpted portions of certain named Plaintiffs’
24 books are irrelevant to the claims in this litigation. For example, TX 3741 contains several pages
25 of Oscar Robertson’s personal account of his childhood; it is unclear why that is relevant to this
26 litigation. TX 3742 similarly contains David Lattin’s opinions about his professional career that
27 are not relevant to this litigation.
28

1 For the foregoing reasons, Plaintiffs respectfully request that the Court deny the NCAA's
2 Motion to Admit Exhibits.

3
4 Dated: June 30, 2014

Respectfully submitted,

5 By: /s/ Swathi Bojedla

6 Michael D. Hausfeld (*pro hac vice*)
7 Hilary K. Scherrer (Cal. Bar No. 209451)
8 Sathya S. Gosselin (Cal. Bar. No. 269171)
9 Swathi Bojedla (*pro hac vice*)
10 HAUSFELD LLP
11 1700 K Street, NW, Suite 650
12 Washington, DC 20006
13 Telephone: (202) 540-7200
14 Facsimile: (202) 540-7201
15 E-mail: mhausfeld@hausfeldllp.com
16 hscherrer@hausfeldllp.com
17 sgosselin@hausfeldllp.com
18 sbojedla@hausfeldllp.com

19 Michael P. Lehmann (Cal. Bar No. 77152)
20 Arthur N. Bailey, Jr. (Cal. Bar No. 248460)
21 HAUSFELD LLP
22 44 Montgomery Street, 34th Floor
23 San Francisco, CA 94104
24 Telephone: (415) 633-1908
25 Facsimile: (415) 358-4980
26 E-mail: mlehmann@hausfeldllp.com
27 abailey@hausfeldllp.com

28 *Plaintiffs' Class Counsel*

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification to the e-mail addresses registered.

/s/ Swathi Bojedla
Swathi Bojedla
HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006

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