

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

3
4 EDWARD O'BANNON, et al.

No. C 09-3329 CW

5 Plaintiffs,

ORDER RESOLVING
PLAINTIFFS' MOTION
TO ADMIT EXHIBITS
(Docket No. 240)

6 v.

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

11 Defendants.
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11 On June 23, 2014, Plaintiffs moved to admit fifteen trial
12 exhibits. Defendant National Collegiate Athletic Association
13 (NCAA) objected to the admission of eleven of these exhibits.
14 After considering the parties' submissions, the Court resolves
15 Plaintiffs' motion to admit the exhibits as set forth below.

16 A. PX 2564

17 GRANTED. Dr. Rascher's amended chart may be admitted as a
18 summary exhibit under Federal Rule of Evidence 1006. The NCAA's
19 original objection to this exhibit is now moot in light of the
20 fact that Plaintiffs have removed all references to universities
21 that were not discussed in Dr. Rascher's expert reports.

22 B. PX 2282

23 DENIED. Plaintiffs move to admit the entire 2001 Knight
24 Commission report as an admission of a party opponent because the
25 report was signed by then-NCAA president Cedric Dempsey. The fact
26 that Dempsey was one of the twenty-seven signatories to this
27 report, however, does not suffice to convert every statement in
28 the report into an admission of the NCAA. Plaintiffs have also

1 failed to excerpt the relevant portions of the report. For these
2 reasons and those stated in the May 30, 2014 order resolving the
3 motions in limine, this exhibit may not be admitted in its
4 entirety.

5 C. PX 2046

6 GRANTED. This exhibit contains two e-mails sent from
7 university administrators to NCAA officials and other university
8 administrators in 2008. These e-mails may be admitted for the
9 limited purpose of showing their effect on any NCAA officials who
10 received them. United States v. Payne, 944 F.2d 1458, 1472 (9th
11 Cir. 1991). The e-mails may not, however, be admitted as
12 statements of a party opponent because the senders are not agents
13 or employees of the NCAA, even if they serve on NCAA committees.
14 See United States v. Bonds, 608 F.3d 495, 504 (9th Cir. 2010)
15 (recognizing that "statements are admissible under Rule
16 801(d)(2)(D)" if they were made by the party opponent's "employee
17 or agent").

18 D. PX 280

19 GRANTED. This exhibit contains an e-mail exchange between
20 two NCAA employees regarding statements made by certain university
21 presidents. As with PX 2046, the e-mails contained in this
22 exhibit may be admitted for the limited purpose of showing the
23 effect of those statements on any of the NCAA officials who
24 received them. Payne, 944 F.2d at 1472. The statements of
25 university presidents recounted in the e-mails may not be admitted
26 for their truth as admissions of party opponents nor as statements
27 of co-conspirators made in furtherance of the alleged conspiracy.
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1 E. PX 2598

2 GRANTED. The NCAA does not object to the admission of this
3 exhibit.

4 F. PX 2603

5 GRANTED. The NCAA does not object to the admission of this
6 exhibit.

7 G. PX 2604

8 GRANTED. The NCAA does not object to the admission of this
9 exhibit.

10 H. PX 2014

11 DENIED. This exhibit contains an e-mail exchange between
12 various Collegiate Licensing Company (CLC) employees. None of the
13 e-mails were sent by or to any NCAA agents or employees. Thus,
14 even though CLC remains an adverse party in this action, the e-
15 mails are not admissible against the NCAA.

16 I. PX 2487

17 GRANTED. This exhibit contains a 2002 report prepared by an
18 NCAA consultant at the NCAA's request. The NCAA concedes that the
19 report itself may be admitted as non-hearsay but objects to the
20 admission of certain statements made in the report by university
21 presidents and administrators. The statements of university
22 presidents and administrators constitute hearsay within hearsay
23 and, as such, may not be admitted for their truth. The statements
24 do not constitute admissions of party opponents because, as noted
25 above, university presidents and administrators are not agents or
26 employees of the NCAA.

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1 J. PX 2095

2 GRANTED. This exhibit contains a proposal presented to the
3 NCAA Division I Board of Directors in November 2013 by two
4 university presidents. The proposal does not constitute an
5 admission of a party opponent nor a statement of a co-conspirator
6 made in furtherance of the alleged conspiracy. Although this
7 proposal may not be admitted for the truth of its content, it may
8 be admitted for the limited purposes of showing its effect on the
9 recipients and the intent, motives, or beliefs of the presenters.
10 Fed. R. Evid. 803(3).

11 K. PX 2527

12 GRANTED. This exhibit contains a May 2014 letter that the
13 presidents of the twelve universities in the Pac-12 Conference
14 sent to the presidents of universities in the other four major
15 conferences. This letter may not be admitted for its truth but
16 may be admitted for the limited purposes of showing the existence
17 of less restrictive alternatives and the senders' intent, motives,
18 or beliefs. Fed. R. Evid. 803(3).

19 L. PX 2616

20 GRANTED. The NCAA does not object to the admission of this
21 exhibit.

22 M. PX 2287-1 & 2287-17

23 GRANTED. This exhibit contains an excerpt from a Knight
24 Commission report and may be admitted for the limited purpose of
25 showing that the NCAA refused to act upon certain reform
26 proposals. The NCAA's only objection to this excerpt -- that it
27 is "cumulative" and duplicative of Mark Emmert's testimony -- does
28 not provide grounds for excluding the exhibit.

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N. PX 2057-20

DENIED. This exhibit contains a page from an unidentified PowerPoint presentation. It is not clear who authored the presentation. Although Plaintiffs suggest in their brief that it may have been authored by an NCAA employee, they previously argued that it was authored by a conference commissioner. In light of this ambiguity, the exhibit may not be admitted.

O. PX 3081

GRANTED. This exhibit contains a document entitled, "Discussion of the Application of the Recommendations of the NCAA Study Group on the Use of Student-Athletes' Names and Likenesses." This exhibit may be admitted for the limited purpose of showing its effect on any NCAA officials who participated in the study group's discussion or were otherwise presented with the group's findings.

CONCLUSION

The NCAA's objections to these exhibits are resolved as set forth above.

IT IS SO ORDERED.

Dated: June 30, 2014



CLAUDIA WILKEN
United States District Judge