

1 GLENN D. POMERANTZ (State Bar No. 112503)
glenn.pomerantz@mto.com
2 KELLY M. KLAUS (State Bar No. 161091)
kelly.klaus@mto.com
3 LUIS LI (State Bar No. 156081)
luis.li@mto.com
4 ROHIT K. SINGLA (State Bar No. 213057)
rohit.singla@mto.com
5 CAROLYN H. LUEDTKE (State Bar No. 207976)
carolyn.luedtke@mto.com
6 MUNGER, TOLLES & OLSON LLP
560 Mission Street
7 Twenty-Seventh Floor
San Francisco, California 94105-2907
8 Telephone: (415) 512-4000
Facsimile: (415) 512-4077
9

GREGORY L. CURTNER (*Pro Hac Vice*)
10 gcurtner@schiffhardin.com
ROBERT J. WIERENGA (State Bar No. 183687)
11 rwierenga@schiffhardin.com
KIMBERLY K. KEFALAS (*Pro Hac Vice*)
12 kkefalas@schiffhardin.com
SCHIFF HARDIN LLP
13 350 Main St., Suite 210
Ann Arbor, MI 48104
14 Telephone: (734) 222-1500
Facsimile: (734) 222-1501
15

Attorneys for Defendant
16 National Collegiate Athletic Association

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

20 EDWARD O'BANNON, *et al.*,

21
22 Plaintiffs,

23 v.

24 NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION; COLLEGIATE
25 LICENSING COMPANY; and
ELECTRONIC ARTS INC.,
26

27 Defendants.
28

Case No. 4:09-CV-3329-CW

**DEFENDANT NCAA'S OPPOSITION TO
THE ADMISSION OF EXHIBITS 2111
AND 2165**

Judge: Hon. Claudia Wilken

Judge: Hon. Claudia Wilken

Courtroom: 2, 4th Floor

Trial: June 9, 2014

1 The NCAA respectfully requests that the Court deny admission of PX 2111 and 2165.
2 PX 2111, which is a draft broadcast agreement between Southeastern Conference and
3 Jefferson-Pilot Sports Inc., dated July 27, 1999, is inadmissible hearsay and irrelevant because
4 there is no indication that the parties reached final agreement as to these terms. *See, e.g.,*
5 *Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 750 F.2d 1516, 1524 (11th Cir. 1985) (district court
6 appropriately exercised discretion in declining to admit unexecuted contract). And, PX 2165
7 pertains to telecast rights for the 2008-2009 through 2015-2016 academic years and thus is not the
8 long form agreement of PX 2117, which is a telecast agreement between The Big Twelve
9 Conference, ABC, ESPN, ESPN Regional Television for the 2000-2001 through 2007-2008
10 academic years.

11 Because PX 2111 and 2165 were submitted two weeks after the close of trial, *see* Dkt. No.
12 281 at 5 n.9, and without a sponsoring witness to provide context, and because these exhibits are
13 not executed long form versions of PX 2110 and 2117 contemplated by this Court's July 8, 2014
14 Order, Dkt. No. 278, APs' request to admit PX 2111 and 2165 should be denied as untimely. *See,*
15 *e.g., Purex Corp. v. Procter & Gamble Co.*, 664 F.2d 1105, 1109 (9th Cir. 1981).

16
17
18 DATED: July 15, 2014

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP

21
22 By: /s/ Jeslyn A. Miller
JESLYN A. MILLER

23 Attorneys for Defendant
24 National Collegiate Athletic Association
25
26
27
28