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 14 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

		CIVIL ACTION NO. CV-09-4128 (CW)
BRYON BISHOP, On Behalf of Himself and)	
All Others Similarly Situated,)	
)	JOINT CASE MANAGEMENT
Plaintiff,)	STATEMENT
v.)	
)	
ELECTRONIC ARTS, INC., NATIONAL)	Date: December 17, 2009
COLLEGIATE ATHLETIC ASSOCIATION)	Time: 2:00 p.m.
and COLLEGIATE LICENSING COMPANY,)	Judge: Hon. Claudia Wilken
)	Courtroom: 2, 4 th Floor
Defendants.)	
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JOINT CASE MANAGEMENT STATEMENT
 Case No. CV-09-4128 (CW)

1 On December 9, 2009, the undersigned parties met and conferred in advance of
2 the December 17, 2009 Case Management Conference. In light of the pending motions
3 to consolidate and dismiss, the parties agreed that it was premature to discuss discovery
4 at this time. Therefore, the parties hereby submit this Case Management Statement
5 which reflects the early stage of these proceedings.
6

7 1. Jurisdiction and Venue: The Court has diversity jurisdiction over this
8 action pursuant to 28 U.S.C. § 1332(a) and (d) because the amount in controversy for the
9 purported class exceeds \$5,000,000. There are no issues regarding personal jurisdiction
10 and no parties remain to be served. Defendants have moved to transfer the venue of a
11 related case, *O'Bannon v. NCAA, et al.*, to the United States District Court for the
12 Southern District of Indiana, and reserve the right to file a similar motion in this matter if
13 their motion to transfer *O'Bannon* is granted. Plaintiff Bishop intends to oppose any
14 motion by defendants to transfer venue of this action.
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17 2. Facts: Plaintiff is a former college football player. He alleges, on behalf
18 of himself and a class of other former and current college football and basketball players,
19 that Defendants unlawfully used Plaintiffs' likenesses in video games and asserts causes
20 of action for statutory and common law violation of his right of publicity, conspiracy,
21 unfair competition, breach of contract, and unjust enrichment. Defendants deny that they
22 use Plaintiff's likeness in any video games, which is the basis for all of his claims.
23 Defendants further deny that they, individually or together, have violated Plaintiff's right
24 of publicity, have unlawfully conspired, unfairly competed with Plaintiff, breached any
25 contract with Plaintiff, or been unjustly enriched at Plaintiff's expense.
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1 3. Legal Issues: The principal legal issues are set forth in Plaintiff's Prayer
2 for Relief in his complaint, in detail in Defendants' motions to dismiss the related *Keller*
3 case and Plaintiff Keller's opposition thereto, and in Defendant Electronic Arts, Inc.'s
4 Special Motion to Strike in the *Keller* case and the opposition thereto.
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6 4. Stipulation re Defendants' Time to Move or Answer: In view of the fact
7 that the allegations in the *Bishop* complaint are substantially similar to the allegations in
8 the *Keller* complaint, and because Defendants' motion to dismiss the *Keller* case is fully
9 briefed and scheduled for argument, plaintiff Bishop and Defendants have entered into a
10 stipulation extending the time for Defendants to move or answer in response to the
11 *Bishop* complaint until 30 days after the entry of this Court's order deciding the motion to
12 dismiss *Keller*.
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14 5. Motion to Consolidate: Plaintiff Bishop has moved to consolidate the
15 *Bishop* and *Keller* cases. Plaintiff Bishop is aware that the Keller and O'Bannon
16 plaintiffs have moved to consolidate those two actions. Plaintiff Bishop does not support
17 the consolidation of this action with the *O'Bannon* action.
18

19 6. Motion for Appointment of Lead Counsel: Plaintiff Bishop believes that
20 the appointment of interim lead counsel should be deferred until after the Court rules on
21 the pending motions to consolidate.
22

23 7. Evidence Preservation: The parties have informed one another that each
24 has taken appropriate action to preserve evidence likely to be relevant and/or related to
25 the issues raised by the Plaintiff's Complaint, including evidence in electronic form.
26 Plaintiff attempted to identify exactly what Defendants were doing to preserve such
27 evidence, but Defendants would only confirm that they were fulfilling their obligations
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1 under law. Neither party has waived any right regarding the preservation of evidence.

2 8. Disclosures: As described above, in light of the unsettled nature of the
3 pleadings and the pending motions to consolidate and dismiss, the parties believe it is
4 premature to exchange initial disclosures at this time.
5

6 9. Discovery: As described above, in light of the unsettled nature of the
7 pleadings and the motions to consolidate and dismiss, the parties believe that it is
8 premature to discuss a discovery plan at this stage.
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10 10. Class Action: In light of the unsettled nature of the pleadings and the
11 pending motions to consolidate and dismiss, the parties believe that it is premature to
12 discuss any proposal for how and when to address class certification.

13 11. Related Cases: Several cases have been filed that are related to this case,
14 including the following that have been filed in this Court: *Keller v. Electronic Arts, et al.*
15 (CV-09-1967); *O'Bannon, Jr. v. National Collegiate Athletic Association, et al.* (CV-09-
16 3329); *Newsome v. National Collegiate Athletic Association, et al.* (CV-09-4882);
17 *Anderson v. National Collegiate Athletic Association, et al.* (CV-09-5100); *Wimprine v.*
18 *National Collegiate Athletic Association, et al.* (CV-09-5134); *Jacobson v. National*
19 *Collegiate Athletic Association, et al.* (CV-09-5372); and *Rhodes v. National Collegiate*
20 *Athletic Association, et al.* (CV-09-5378).
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23 In addition, the following cases are pending in federal court in Tennessee and also
24 relate to the alleged unauthorized use of college athletes' likenesses in video games:

25 *Hubbard v. Electronic Arts, Inc.*, United States District Court for the Eastern District of
26 Tennessee, Case No. CV-09-233; *Hubbard v. Electronic Arts Inc.*, United States District
27 Court for the Eastern District of Tennessee, Case No. CV-09-234; and *Nuckles v.*
28

1 *National Collegiate Athletic Association, et al.*, United States District Court for the
2 Eastern District of Tennessee, Case No. CV-09-236.

3 In addition, the following action is pending in federal court in New Jersey and
4 also relates to the alleged unauthorized use of athletes' likenesses in video games: *Hart*
5 *et al. v. Electronic Arts, Inc.*, Case No. 09-cv-05990-FLW-LHG.

7 12. Relief: Plaintiff seeks:

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9 A. Certification of the action as a class action pursuant to the Federal Rules
10 of Civil Procedure;

11 B. A declaration by this Court that Defendants' conduct constituted a
12 conspiracy, and that they are each jointly and severally liable for the conduct of or
13 damage inflicted by any other defendant;

14
15 C. Actual damages, statutory damages, punitive damages, and such other
16 relief as provided by the statutes cited herein;

17 D. Disgorgement of all profits earned by Defendants from the sale of video
18 games containing the likenesses of Plaintiffs and the class;

19
20 E. Pre-judgment and post-judgment interest on such monetary relief;

21 F. The costs of bringing this suit, including reasonable attorneys' fees; and

22 G. All other relief to which Plaintiff and the class may be entitled at law or in
23 equity.

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25 13. Settlement and ADR: In light of the unsettled nature of the pleadings and
26 the pending motions to consolidate and dismiss, the parties believe it is premature to
27 discuss the prospects for settlement at this stage. But the parties are open, at an
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1 appropriate later date, to all reasonable mechanisms the court believes will help facilitate
2 a timely resolution of this case.

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4 14. Consent to Magistrate Judge for All Purposes: All parties do not consent
5 to the use of a magistrate judge to conduct all further proceedings.

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7 15. Other References: In light of the unsettled nature of the pleadings and the
8 pending motions to consolidate and dismiss, the parties believe that it is premature to
9 discuss the prospects for reference to arbitration, a special master, or the Judicial Panel on
10 Multidistrict Litigation.

11
12 16. Narrowing of Issues: In light of the unsettled nature of the pleadings and
13 the pending motions to consolidate and dismiss, the parties believe that it is premature to
14 discuss the prospect of narrowing the issues.

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16 17. Expedited Schedule: The parties do not believe that this is the type of case
17 that could be handled on an expedited basis.

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19 18. Scheduling: In light of the unsettled nature of the pleadings and the
20 pending motions to consolidate and dismiss, the parties believe it is premature to discuss
21 scheduling for the designation of experts, discovery, hearing of dispositive motions,
22 pretrial conference, and trial.

23
24 19. Trial: The parties currently anticipate that this matter will be tried before
25 a jury. In light of the unsettled nature of the pleadings and the pending motions to
26 consolidate and dismiss, the parties believe that it is premature to estimate the length of
27 trial.
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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF system which will send notification to the e-mail addresses registered.

By: /s/ Steven A. Asher
Steven A. Asher (*pro hac vice*)
WEINSTEIN KITCHENOFF & ASHER LLC
Attorneys for Plaintiff Bryon Bishop