

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

MICHAEL P. LEHMANN (SBN 77152)  
 mlehmann@hausfeld.com  
 BONNY E. SWEENEY (SBN 176174)  
 bsweeney@hausfeld.com  
 BRUCE J. WECKER (SBN 78530)  
 bwecker@hausfeld.com  
 HAUSFELD LLP  
 44 Montgomery Street, Suite 3400  
 San Francisco, California 94104  
 Telephone: (415) 633-1908  
 Facsimile: (415) 358-4980

8 *Plaintiffs' Class Counsel*

9  
 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 OAKLAND DIVISION

13  
 14 EDWARD C. O'BANNON, JR. on behalf  
 of himself and all others similarly situated,

15 Plaintiffs,

16 v.

17 NATIONAL COLLEGIATE ATHLETIC  
 18 ASSOCIATION (NCAA); ELECTRONIC  
 ARTS, INC.; and COLLEGIATE  
 19 LICENSING COMPANY,

20 Defendants.

Case Nos. 4:09-cv-1967 CW, 4:09-cv-3329 CW

**[PROPOSED] ORDER GRANTING  
 PLAINTIFFS' MOTIONS FOR  
 ATTORNEYS' FEES, REIMBURSEMENT  
 OF EXPENSES, AND CLASS  
 REPRESENTATIVE INCENTIVE  
 AWARDS**

Judge: The Honorable Claudia Wilken  
 Courtroom: 2, 4th Floor  
 Trial: June 9-27, 2014

1           The Court, having considered the motions for attorneys’ fees, expenses, and class  
2 representative incentive awards submitted by class counsel on behalf of the plaintiffs in:  
3 *O’Bannon v. NCAA*, Case No. 09-3329; *Hart v. Electronic Arts, Inc.*, Case No. 09-CV-05990-  
4 FLW-LHG (D.N.J.); and *Keller v. Electronic Arts, Inc. et al.*, Case No. 4:09-cv-01967-CW (N.D.  
5 Cal.) (collectively, “Plaintiffs’ Class Counsel”); and having reviewed the pleadings and other  
6 papers filed in this action, the responses of class members, and the statements of counsel and the  
7 party, hereby finds as follows:

8           1.       Plaintiffs’ Class Counsel, on behalf of the *O’Bannon*, *Hart*, and *Keller* Plaintiffs,  
9 executed an amended settlement agreement with Electronic Arts, Inc. (“EA”) on July 23, 2014,  
10 which was filed with the Court on July 24, 2014. *O’Bannon* Dkt. No. 288-1. The settlement  
11 created a \$40 million cash fund (“EA Settlement Fund”) for current and former National  
12 Collegiate Athletic Association (“NCAA”) Division I men’s basketball and FBS football players  
13 whose names, images, and likenesses may have appeared in NCAA-branded videogames created  
14 and sold by EA.

15           2.       A total fee award in the amount of \$12,000,000—30% of the EA Settlement  
16 Fund—is fair and reasonable under the percentage-of-the-recovery method based upon the  
17 following factors: (1) the results obtained by counsel in this case, *see Vizcaino v. Microsoft Corp.*,  
18 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001), *aff’d*, 290 F.3d 1043 (9th Cir. 2002); (2) the  
19 risks and complex issues involved in this case, which were significant and required a high level of  
20 skill and high-quality work to overcome, *see In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036,  
21 1046 (N.D. Cal. 2008); (3) that the attorneys’ fees requested were entirely contingent upon  
22 success and that counsel risked time and effort and advanced costs with no ultimate guarantee of  
23 compensation, *see In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.  
24 1994); (4) that the range of awards made in similar cases justifies an award of 30% here, *see In re*  
25 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989); and (5) that the class members  
26 have been notified of the requested fees and had an opportunity inform the Court of any concerns  
27 they have with the request. These factors justify an upward adjustment of the Ninth Circuit’s 25%  
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1 benchmark. As such, the Court finds that the requested fee award comports with the applicable  
2 law and is justified by the circumstances of this case.

3 3. The Court has confirmed the reasonableness of the fee award by conducting a  
4 lodestar crosscheck. The Court finds that Plaintiffs' Class Counsel's reasonable lodestar was  
5 \$\_\_\_\_\_ based on historic hourly rates. Accordingly, the Court's designated fee award to  
6 Plaintiffs' Class Counsel represents a negative multiplier of \_\_\_\_\_. This negative multiplier  
7 confirms the reasonableness of the fee award.

8 4. The Court finds that it is appropriate and reasonable to allocate the fee award in  
9 the following proportions, in consideration and recognition of the various contributions by each  
10 set of counsel: \$8,000,000 to be allocated to *O'Bannon* Class Counsel (also referred to as  
11 Antitrust Class Counsel); \$\_\_\_\_\_ to be allocated to *Hart* Class Counsel; and \$\_\_\_\_\_ to  
12 be allocated to *Keller* Class Counsel.

13 5. The Court finds that *O'Bannon* Class Counsel incurred a total of \$1,836,505.89 in  
14 litigation costs and expenses in prosecuting this litigation. The Court finds that these costs and  
15 expenses were reasonably incurred in the ordinary course of prosecuting this case and were  
16 necessary given the complex nature and nationwide scope of the case.

17 6. The Court finds that *Hart* Class Counsel incurred a total of \$\_\_\_\_\_ in  
18 litigation costs and expenses in prosecuting this litigation. The Court finds that these costs and  
19 expenses were reasonably incurred in the ordinary course of prosecuting this case and were  
20 necessary given the complex nature and nationwide scope of the case.

21 7. The Court finds that *Keller* Class Counsel incurred a total of \$\_\_\_\_\_ in  
22 litigation costs and expenses in prosecuting this litigation. The Court finds that these costs and  
23 expenses were reasonably incurred in the ordinary course of prosecuting this case and were  
24 necessary given the complex nature and nationwide scope of the case.

25 8. The Court has also considered the reasonableness of incentive awards for the  
26 named class representatives. The Court deems the application for \$15,000, \$5,000, and \$2,500  
27 incentive awards reasonable and justified given: (1) the risks—reputational, financial, and  
28 otherwise—faced by class representatives in bringing this lawsuit; and (2) the work performed

1 and the active participation in the litigation and settlement processes by the class representatives  
2 on behalf of members of the class.

3 Accordingly, it is hereby **ORDERED**:

4 9. Plaintiffs' Class Counsel collectively are awarded \$12,000,000 in attorneys' fees,  
5 to be paid from the EA Settlement Fund.

6 10. Of the \$12,000,000 fee award, *O'Bannon* Class Counsel is awarded \$8,000,000;  
7 *Hart* Class Counsel is awarded \$\_\_\_\_\_ ; and *Keller* Class Counsel is awarded  
8 \$\_\_\_\_\_. These allocations are to be paid with a proportional share of the interest earned  
9 on the Settlement Fund for the same time period and at the same rate as that earned on the  
10 Settlement Fund until dispersed to Plaintiffs' Class Counsel.

11 11. *O'Bannon* Class Counsel is awarded reimbursement of their reasonable litigation  
12 costs and expenses in the amount of \$1,836,505.89.

13 12. *Hart* Class Counsel is awarded reimbursement of their reasonable litigation costs  
14 and expenses in the amount of \$\_\_\_\_\_.

15 13. *Keller* Class Counsel is awarded reimbursement of their reasonable litigation costs  
16 and expenses in the amount of \$\_\_\_\_\_.

17 14. Class representatives Edward C. O'Bannon, Jr., Ryan Hart, and Samuel Michael  
18 Keller shall each receive an incentive award in the amount of \$15,000.

19 15. Class representatives Oscar Robertson, William Russell, Harry Flournoy, Alex  
20 Gilbert, Sam Jacobson, Thad Jaracz, David Lattin, Patrick Maynor, Tyrone Prothro, Damien  
21 Rhodes, Eric Riley, Bob Tallent, Danny Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake  
22 Smith, Darius Robinson, Moses Alipate, Chase Garnham, and Shawne Alston shall each receive  
23 an incentive award in the amount of \$5,000.

24 16. Class representatives Bryan Cummings, LaMarr Watkins, and Bryon Bishop shall  
25 each receive an incentive award in the amount of \$2,500.

26 17. The attorneys' fees awarded, reimbursement of litigation costs and expenses, and  
27 incentive awards shall be paid from the Settlement Fund and the interest earned thereon.  
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18. With respect to fees awarded and expenses reimbursed to *O'Bannon* Class Counsel, lead counsel Hausfeld LLP shall have the sole authority to allocate those funds to *O'Bannon* Class Counsel firms in a way that, in the opinion of lead counsel, reflects each firm's contribution to the institution, prosecution, and resolution of the litigation.

19. This order shall be entered of this date pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finding that there is no just reason for delay.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_

Claudia Wilken  
United States Senior District Judge