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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

**DECLARATION OF MICHAEL D.
HAUSFELD IN SUPPORT OF
ANTITRUST PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND CLASS
REPRESENTATIVE INCENTIVE
AWARDS**

Judge: Hon. Claudia Wilken
Courtroom: Courtroom 4, 2nd Floor
Trial: June 9-27, 2014

1 1. I, Michael D. Hausfeld, submit this declaration under penalty of perjury in
2 connection with Antitrust Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses,
3 and Class Representative Awards.

4 2. I am the Chairman of the law firm Hausfeld LLP (“HLLP”) and Court-appointed
5 lead counsel for the Antitrust Plaintiffs (“APs”) in the previously consolidated cases captioned *In*
6 *re NCAA Student-Athlete Name and Likeness Licensing Litigation*, Case No. 09-1967, and Court-
7 appointed lead counsel for the plaintiffs in *O’Bannon v. NCAA*, Case No. 09-3329 (“*O’Bannon*”).
8 The facts stated herein are based on my personal knowledge unless stated otherwise.

9 3. My firm bore principal responsibility for the investigation, filing, day-to-day
10 litigation, and settlement of this matter, as well as the continued litigation against co-defendant
11 National Collegiate Athletic Association (“NCAA”) after a settlement was reached releasing
12 defendants Electronic Arts, Inc. (“EA”) and Collegiate Licensing Company (“CLC”) in exchange
13 for \$40 million. My firm coordinated the work of 33 other firms (collectively, including my own
14 firm, “Antitrust Class Counsel”) in litigating and settling this matter.

15 4. At all times during the pendency of this litigation, our work was done on a pure
16 contingency basis, with no guarantee of recovery. To date, Antitrust Class Counsel have received
17 no reimbursement for time spent or expenditures advanced in this litigation.

18 5. During the pendency of the litigation, Antitrust Class Counsel engaged in
19 intermittent settlement discussions with EA and CLC. Finally, on September 10, 2013, APs,
20 joined by plaintiffs in *Hart v. Electronic Arts, Inc.*, Case No. 09-CV-05990-FLW-LHG (D.N.J.)
21 (“*Hart*”), and plaintiffs in *Keller v. Electronic Arts, Inc.*, Case No. 4:09-cv-01967-CW (N.D.
22 Cal.) (“*Keller*”), reached an agreement in principle with EA, also releasing claims against CLC
23 (“Settlement in Principle”). From that point forward, APs stayed all litigation efforts against EA
24 and CLC. The settling parties finalized and executed their settlement agreement on May 15,
25 2014, and later amended the agreement on July 23, 2014.

26 6. Following that settlement, APs continued litigating against the NCAA and
27 ultimately prevailed following a three-week bench trial in June 2014, *see O’Bannon v. Nat’l*
28 *Collegiate Athletic Ass’n*, No. C 09-3329 CW, 2014 WL 3899815 (N.D. Cal. Aug. 8, 2014),

1 securing permanent injunctive relief as well. APs have submitted a separate fee request under the
2 Clayton Act seeking fees from the NCAA related to that victory. Case No. 09-3329, Dkt. Nos.
3 319 (Motion for Attorneys' Fees, Costs, and Expenses), 341 (Amended Motion for Attorneys'
4 Fees, Costs, and Expenses) ("NCAA Fee Motion"). I incorporate by reference here my earlier
5 declaration of November 19, 2014, Case No. 09-3329, Dkt. No. 341-2, and will endeavor not to
6 burden the Court with unnecessary volume in this declaration given the Court's familiarity with
7 this litigation and its contours over the last six years, including Antitrust Class Counsel's
8 painstaking efforts against all three defendants.

9 7. As part of the process of filing the NCAA Fee Motion, attorneys from my firm
10 received, reviewed, and analyzed detailed time records relating to work against all defendants to
11 remove certain categories of time. These records included the names of timekeepers, hourly
12 rates, lodestar, and detailed descriptions of time billed. The process by which my firm worked
13 with other Antitrust Class Counsel to ensure the reasonableness of the fees requested is outlined
14 in further detail in the Declarations of Swathi Bojedla, Case No. 09-3329, Dkt. Nos. 337-3, 361-1.

15 8. Through this process, Antitrust Class Counsel removed time relating to several
16 categories of work, including time related to damages calculations and class certification of a
17 damages class, in an exercise of billing judgment. Antitrust Class Counsel also submitted time
18 records using historical hourly rates, rather than current rates, again in an exercise of billing
19 judgment. The NCAA has made no objection to these hourly rates, which reflect the prevailing
20 market rates in the Northern District of California for lawyers of reasonably comparable skill,
21 experience, and reputation. *See* Case No. 09-3329, Dkt. No. 341-1.

22 9. Each Antitrust Class Counsel firm submitted time details and a declaration
23 describing their firm's experience and qualifications, total lodestar requested, hourly rates, costs
24 and expenses, and an affirmation that the lodestar, costs, and expenses were true and accurate.
25 *See* Case No. 09-3329, Dkt. Nos. 341-1 through -34.

26 10. Having reviewed these declarations and time records, and based on the sworn
27 statements of my co-counsel as well as my experience working with these firms, I affirm that the
28 attorneys who worked on this case are experienced and qualified in class action and antitrust

1 litigation; that the hourly rates charged were customary in this District for the pendency of the
2 case; and that the hours were reasonably expended in the prosecution of the case.

3 11. When submitting these records, each Antitrust Class Counsel firm segregated time
4 (if any existed for that firm, and only to the extent separable given the multitude of issues
5 common to all defendants) spent litigating principally against EA and CLC (“EA/CLC-specific
6 time”). Twenty-four firms had EA/CLC-specific time, while nine did not. My firm submitted
7 declarations from HLLP and each of the 32 other firms detailing total EA/CLC-specific time and
8 all other lodestar after exercising billing judgment. Case No. 09-3329, Dkt. No. 341. A final firm
9 had only EA/CLC-related settlement time and so did not file a declaration with the NCAA Fee
10 Motion.

11 12. The total EA/CLC-specific lodestar for the 24 firms that submitted EA/CLC-
12 specific time, as calculated from the declarations submitted with APs’ NCAA Fee Motion, is
13 \$3,550,840.15. A chart of the EA/CLC-specific lodestar per firm is included below:

Firm	Lodestar (Taken from NCAA Fee Motion)
Boies Schiller & Flexner LLP	\$44,326.40
Cafferty Clobes Meriwether & Sprengel	\$142,452.50
Cozen O’Connor	\$325.00
Faruqi & Faruqi	\$59,862.50
Finkelstein Thompson LLP	\$17,695.00
Freed Kanner London & Millen LLC	\$239,252.00
Grant & Eisenhofer P.A.	\$48,587.00
Gustafson Gluek PLLC	\$24,621.00
Hausfeld LLP	\$242,101.00
Heins Mills & Olson P.L.C.	\$91,916.50
Labaton Sucharow	\$136,642.50
Lieff Cabraser Heimann & Bernstein, LLP	\$47,081.50
Lite DePalma Greenberg, LLC	\$197,690.00
Minami Tamaki LLP	\$7,259.50
Morrison Sund PLLC	\$92,114.00

Pearson, Simon & Warshaw, LLP	\$143,797.00
Pittman, Dutton & Hellums P.C.	\$3,440.00
Provosty & Gankendorff, L.L.C.	\$53,095.00
Reinhardt Wendorf & Blanchfield	\$8,007.00
Robbins Geller Rudman & Dowd LLP	\$98,846.25
Spector Roseman Kodroff & Willis, P.C.	\$148,202.50
Steyer Lowenthal Boodrookas Alvarez & Smith LLP	\$1,141,805.00
Venable LLP	\$9,301.50
Zelle Hofmann Voelbel & Mason LLP	\$552,419.50
Total	\$3,550,840.15

13. The total lodestar attributable to litigation against *all* defendants from the case's inception until September 10, 2013, after exercising billing judgment and as calculated from the declarations and time details submitted with APs' NCAA Fee Motion, is \$33,438,899.20. For purposes of this calculation, Antitrust Class Counsel subtracted all lodestar from September 10, 2013 (the date of the mediation that spawned the settlement) onward from each firm's NCAA Fee Motion declaration to reach the totals reflected in the chart below:

Firm	Lodestar from inception to September 9, 2013
Boies Schiller & Flexner LLP	\$812,317.20
Cafferty Clobes Meriwether & Sprengel	\$3,355,569.50
Cozen O'Connor	\$49,000.00
Cuneo Gilbert & LaDuca LLP	\$186,520.00
Faruqi & Faruqi	\$399,532.50
Finkelstein Thompson LLP	\$85,075.00
Freed Kanner London & Millen LLC	\$714,205.00
Grant & Eisenhofer P.A.	\$2,495,404.50
Gustafson Gluek PLLC	\$247,151.00
Hausfeld LLP	\$9,961,610.00
Heins Mills & Olson P.L.C.	\$1,439,187.00
Kralowec Law Group	\$36,982.50
Labaton Sucharow	\$619,840.00

Firm	Lodestar from inception to September 9, 2013
Lieff Cabraser Heimann & Bernstein, LLP	\$327,215.00
Lite DePalma Greenberg, LLC	\$1,421,747.50
Markovits, Stock & Demarco, LLC	\$5,730.00
Meredith Cohen Greenfogel & Skirnick, P.C.	\$106,367.50
Minami Tamaki LLP	\$597,818.00
Morrison Sund PLLC	\$685,444.00
Murray Frank LLP	\$278,905.00
Pearson, Simon & Warshaw, LLP	\$467,786.50
Pittman, Dutton & Hellums P.C.	\$177,851.00
Provosty & Gankendorff, L.L.C.	\$687,574.00
Reinhardt Wendorf & Blanchfield	\$411,489.00
Robbins Geller Rudman & Dowd LLP	\$840,939.00
Roda Nast	\$22,933.00
Spector Roseman Kodroff & Willis, P.C.	\$838,142.75
Steyer Lowenthal Boodrookas Alvarez & Smith LLP	\$3,172,098.75
Tharrington Smith, LLP	\$13,810.00
Venable LLP	\$827,148.00
Waite, Schneider, Bayless & Chelsey Co.	\$324,687.50
Zelle Hofmann Voelbel & Mason LLP	\$1,816,453.50
Zimmerman Reed PLLP	\$12,365.00
Total	\$33,438,899.20

14. Some firms chose to segregate costs and expenses directly correlated with EA/CLC-specific time (“EA/CLC-specific costs and expenses”) in their declarations supporting the NCAA Fee Motion. Of the 24 firms who submitted EA/CLC-specific time, four noted EA/CLC-specific costs and expenses. Since the submission of the NCAA Fee Motion, my firm has requested all co-counsel firms to identify any EA/CLC-specific costs and expenses that were included in their declaration supporting the NCAA Fee Motion but not specifically identified as relating to EA/CLC in that motion. An additional five firms have since broken out EA/CLC-specific costs and expenses from their NCAA Fee Motion declarations for the purposes of this

1 Motion. The aggregate EA/CLC-specific costs and expenses included in the NCAA Fee Motion
 2 across nine firms was \$16,541.89. Those totals by firm are below:

Firm	Expenses
Boies Schiller & Flexner LLP	\$224.31
Finkelstein Thompson LLP	\$10.51
Freed Kanner London & Millen LLC	\$576.17
Labaton Sucharow	\$126.14
Lite DePalma Greenberg, LLC	\$3,019.87
Pearson, Simon & Warshaw, LLP	\$809.50
Robbins Geller Rudman & Dowd LLP	\$1,023.26
Steyer Lowenthal Boodrookas Alvarez & Smith LLP	\$10,213.15
Zelle Hofmann Voelbel & Mason LLP	\$538.98
Total	\$16,541.89

13 15. My firm has also requested details from all Antitrust Class Counsel for costs and
 14 expenses advanced in conjunction with the mediation and the advancement of the settlement
 15 agreement. These costs and expenses, most of which are travel-related or for the payment of
 16 mediator Randy Wulff, the cost of which was shared among the parties, were not previously
 17 requested in the NCAA Fee Motion. They are broken down below:

Firm	Expenses
Hausfeld LLP	\$11,820.06
Heins Mills & Olson P.L.C.	\$2,208.11
W. Pitts Carr & Associates	\$251.14
<i>O'Bannon</i> Litigation Fund	\$7,416.16
Total	\$21,695.47

26 16. Antitrust Class Counsel also advanced significant funding, through assessments to
 27 the *O'Bannon* litigation fund or directly, for the cost of expert fees for class-certification reports
 28 that helped prompt a settlement here. These costs were necessary in prosecuting the case, and the

1 work of the experts was instrumental in achieving a settlement agreement. For purposes of this
2 application, Antitrust Class Counsel is requesting reimbursement of a total of \$1,798,268.53 in
3 expert costs, which were paid from the *O'Bannon* litigation fund unless otherwise stated, as
4 follows:

5 (a) \$221,600.00 for invoices paid to Dr. Roger Noll, Professor Emeritus of Economics at
6 Stanford University and Senior Fellow at the Stanford Institute for Economic Policy
7 Research, through July 3, 2013. Dr. Noll submitted two expert reports in support of
8 APs' class certification motion, one at the opening stage and one at the rebuttal
9 stage—both concluding that the evidence that an economist would use to prove
10 liability for the injunctive class and the damages class is common to all members of
11 the classes, and that damages reliably can be calculated by a method that is
12 predominantly common to all members of the damages class. Case No. 09-1967, Dkt.
13 Nos. 633, 748-1.

14 (b) \$72,962.85 for invoices paid to Dr. Robert McCormick, Professor Emeritus in the
15 John E. Walker Department of Economics, Clemson University, through July 2, 2013.
16 Dr. McCormick submitted a rebuttal report at class certification, in which he
17 responded to the arguments advanced by Defendants' experts Dr. Lauren Stiroh, Dr.
18 Daniel Rubinfeld, and Dr. James Heckman (including their criticisms of Dr. Noll), and
19 affirmed that impact and damages could be proven in this matter using evidence
20 common to the class. Case No. 09-1967, Dkt. No. 748-3.

21 (c) \$1,503,705.68 for invoices paid to Dr. Daniel Rascher, Director of Academic
22 Programs for the Sport Management Master's Program and Professor at the University
23 of San Francisco, and his firm OSKR through August 2, 2013 (\$801,755.55 of which
24 was directly advanced by my firm, with the remainder coming from the *O'Bannon*
25 litigation fund). OSKR provided a range of economic and other analyses to Antitrust
26 Class Counsel and in support of Dr. Noll. Dr. Rascher submitted a rebuttal report at
27 class certification, in which he opined on, among other things, the prevalence, in
28 professional sports, of group licensing for names, images, and likenesses, and equal

1 sharing of that licensing revenue. Case No. 09-1967, Dkt. No. 748-4.

2 All of these experts costs were billed for work performed prior to the September 2013 Settlement
3 in Principle, while APs were still actively litigating against EA and CLC. Of these costs,
4 \$1,725,305.68 were requested in the NCAA Fee Motion, and \$72,962.85 were not previously
5 requested.

6 17. The resulting total in costs and expenses requested here, when one tallies the sums
7 in paragraphs 14 through 16, is \$1,836,505.89. These expenses are reasonable, were necessarily
8 incurred, and are reflected in the books and records of each firm as they are maintained in the
9 ordinary course of business. These books and records are prepared from expense vouchers and
10 check records and are an accurate record of expenses incurred. A chart of these requested
11 expenses broken down by firm and by type is included below:
12

	Fedex/ Delivery	Travel	Books	Computer Research	Tel/ Fax	Copies	Experts	Mediator	Court Fees	Total
13 Boies Schiller & Flexner LLP				\$224.31						\$224.31
14 Finkelstein Thompson LLP					\$2.11	\$8.40				\$10.51
15 Freed Kanner London & Millen LLC		\$576.17								\$576.17
16 Hausfeld LLP		\$11,820.06					\$801,755.55			\$813,575.61
17 Heins Mills & Olson P.L.C.		\$2,208.11								\$2,208.11
18 Labaton Sucharow	\$21.04		\$16.99	\$15.44	\$7.07	\$65.60				\$126.14
19 Lite Depalma Greenberg, LLC		\$3,019.87								\$3,019.87
20 Pearson, Simon & Warshaw, LLP	\$331.58			\$252.92		\$225.00				\$809.50
21 Robbins Geller Rudman & Dowd LLP		\$918.26				\$105.00				\$1,023.26
22 Steyer Lowenthal Boodrookas Alvarez & Smith LLP	\$494.56	\$9,718.59								\$10,213.15

	Fedex/ Delivery	Travel	Books	Computer Research	Tel/ Fax	Copies	Experts	Mediator	Court Fees	Total	
1											
2	Zelle Hofmann Voelbel & Mason LLP	\$396.03			\$142.95					\$538.98	
3											
4	W. Pitts Carr & Associates	\$12.24				\$38.90			\$200	\$251.14	
5	O'Bannon Litigation Fund						\$996,512.98	\$7,416.16		\$1,003,929.14	
6	Total	\$859.42	\$28,657.09	\$16.99	\$492.67	\$152.13	\$442.90	\$1,798,268.53	\$7,416.16	\$200	\$1,836,305.89

7

8 18. Of that \$1,836,505.89 total, \$1,741,847.57 was sought in the NCAA Fee Motion,

9 consisting of the EA/CLC specific costs and expenses identified in paragraph 14 and the expert

10 costs for Dr. Rascher and Dr. Noll identified in paragraph 16. Settlement costs identified in

11 paragraph 15 and the expert costs for Dr. McCormick identified in paragraph 16 were not

12 previously requested, totaling \$94,658.32. In the event that the Court awards the total amount of

13 costs and expenses sought by Antitrust Class Counsel in this request, doing so would reduce the

14 total costs and expenses Antitrust Class Counsel seek from the NCAA by \$1,741,847.57 (the full

15 extent of overlapping costs and expenses), to a new total of costs and expenses sought from the

16 NCAA of \$3,459,719.40 (\$5,201,566.97 - \$1,741,847.57). *See* Case No. 09-3329, Dkt. No. 361,

17 at 15.

18 **Antitrust Class Counsel's Extensive History of Litigation in this Case**

19 19. Antitrust Class Counsel litigated this antitrust conspiracy case exhaustively against

20 EA, CLC, and the NCAA before settling all claims against EA and CLC in September 2013.

21 That pre-settlement work, the bulk of which occurred while *Hart* and *Keller* lingered on appeal,

22 included:

- 23 a. Conducting research, including industry research and witness interviews;
- 24 initiating and facilitating meetings with numerous potential witnesses;
- 25 conducting research and analysis regarding licensing and marketing of
- 26 professional and collegiate names, images, and likenesses and trademarks;
- 27 researching each of the three co-defendants as well as dozens of other co-
- 28 conspirators; researching jurisdiction and venue issues for complaints;

- 1 initiating and managing service on each defendant;
- 2 b. Researching, compiling evidence for, and filing various individual complaints;
- 3 the Consolidated Amended Complaint, totaling 157 pages; the Second
- 4 Consolidated Amended Complaint, totaling 166 pages; and the Third
- 5 Consolidated Amended Complaint, totaling 212 pages;
- 6 c. Frequent communication with hundreds of potential class members inquiring
- 7 with interest in this high-profile litigation;
- 8 d. Successfully defending eight total motions to dismiss, including two filed by
- 9 EA and three filed by CLC;
- 10 e. Conducting meet and confers with each defendant regarding multiple types of
- 11 discovery propounded by and received by APs (including document requests,
- 12 interrogatories, and Fed. R. Civ. P. 30(b)(6) depositions), drafting
- 13 correspondence regarding issues with discovery responses, and researching,
- 14 drafting, and filing briefing concerning a dozen motions over discovery
- 15 disputes;
- 16 f. Responding to over 100 interrogatories and over 300 requests to admit
- 17 propounded by defendants;
- 18 g. Negotiating the production of and reviewing 1,161,043 pages of documentary
- 19 evidence (235,656 documents) from defendants over the course of three years,
- 20 including 45,395 documents totaling 204,564 pages produced by EA and
- 21 83,647 documents totaling 193,945 pages produced by CLC;
- 22 h. Negotiating the production of and reviewing 46,346 pages of documentary
- 23 evidence from third-party productions, documents which were primarily
- 24 obtained through open-records requests and third party subpoenas to colleges,
- 25 universities, conferences, and broadcasters, with great resistance from those
- 26 institutions;
- 27 i. Taking approximately 40 depositions of defendant, third party, and expert
- 28 witnesses, including 11 depositions of EA and CLC witnesses, and defending

1 36 depositions of class representatives, unpaid consultants, and expert
2 witnesses;

3 j. Briefing class certification over the course of a year, which spanned seven
4 briefs, including sur-replies (but not including numerous additional briefs
5 relating to defendants' unsuccessful motions to strike). In all, the class-
6 certification record contained 11 class-certification expert reports totaling over
7 1,000 pages, 11 related expert depositions, hundreds of exhibits, and 32
8 supporting declarations.

9 20. My brief summary of these activities cannot compare with the time details that the
10 Court has already received from all 33 Antitrust Class Counsel law firms, which catalogue every
11 litigation task performed from inception to settlement of this matter (and continuing on through
12 summary judgment and trial against the NCAA).

13 ***Keller and Hart Appeals***

14 21. On February 8, 2010, less than a year after *O'Bannon* and *Keller* had begun, the
15 Court denied EA and CLC's motions to dismiss and EA's anti-SLAPP motion to strike. Case No.
16 09-1967, Dkt. No. 151. Ten days later, EA appealed the Court's ruling on EA's anti-SLAPP
17 motion to strike and sought to stay all proceedings and discovery against it. Case No. 09-1967,
18 Dkt. No. 154. The Court subsequently granted EA's stay request as to "proceedings and
19 discovery on *Keller's* claims against EA" but not as to proceedings and discovery on the
20 *O'Bannon* class claims against EA. Case No. 09-1967, Dkt. No. 253 at 6-10.

21 22. As *Keller* Class Counsel focused on their appeal in their Ninth Circuit, Antitrust
22 Class Counsel advanced their litigation, proceeding to discovery and briefing various issues. The
23 docket in Case No. 09-1967 reflects the considerable litigation activity that occurred in *O'Bannon*
24 from 2011 to 2013 at a time when the *Keller* Plaintiffs were largely occupied in the Ninth Circuit.
25 On February 15, 2011, oral argument in the *Keller* appeal was heard in the Ninth Circuit. On
26 March 29, 2012, the Ninth Circuit issued the following order: "Given the regrettable and
27 untimely death of Judge Pamela Rymer, the panel has concluded that re-argument in this case is
28 appropriate. Therefore, the submission for decision in this case is withdrawn, and IT IS HEREBY

1 ORDERED that oral argument will take place in San Francisco, California at the James R.
2 Browning Courthouse on July 19, 2012 at 2:00 p.m.,” which was later rescheduled for July 13,
3 2012. In light of this delay, this Court vacated all scheduling in *Keller* but entered a
4 comprehensive scheduling order for class certification, summary judgment, and trial in
5 *O’Bannon*, which was amended in the months that followed, but only by several months. Case
6 No. 09-1967, Dkt. No. 458.

7 23. On August 31, 2012, Antitrust Class Counsel filed the APs’ opening motion for
8 class certification, which included 81 exhibits and two expert reports. That filing initiated nearly
9 a year of class-certification activity, spanning seven briefs, hundreds of exhibits, and 11 expert
10 reports, and culminating in a class-certification hearing on June 20, 2013.

11 24. From 2010 to 2013, while *Keller* was on appeal, *Keller* Class Counsel played a
12 limited role in discovery, briefing, and day-to-day litigation. The Court permitted *Keller* Class
13 Counsel to depose NCAA and CLC witnesses without invading the substance of matters on
14 appeal—but *Keller* Class Counsel had a limited role in coordinated depositions, which typically
15 consisted of Antitrust Class Counsel questioning the witness for the first three to five hours, with
16 *Keller* Class Counsel asking any remaining questions at the very end. *Keller* Class Counsel
17 attended virtually every deposition that Antitrust Class Counsel took or defended (sometimes in
18 person and sometimes by phone), including expert depositions, but did not ask any questions at
19 many of them.

20 25. On July 31, 2013, the Ninth Circuit issued its decision in *Keller*, affirming this
21 Court’s February 8, 2010 decision.

22 26. *Hart* Plaintiffs faced similar delays in litigating their case in the District of New
23 Jersey. After the amended complaint was filed in October 2010, EA filed its Motion to Dismiss
24 or in the Alternative for Summary Judgment. *Hart* Dkt. No. 31. While that briefing was
25 underway in January 2011, the *Hart* Court issued an order staying the case until the Supreme
26 Court’s ruling on *Schwarzenegger, et al. v. Entertainment Merchants Association, et al.*, No. 08-
27 1448, a case involving First Amendment application to videogames, issued. *Hart* Dkt. No. 50.
28 Once the case moved forward again in July 2011, the parties continued briefing, and the *Hart*

1 Court granted EA's motion for summary judgment and dismissal of the *Hart* case on September
2 9, 2011. *Hart* Dkt. No. 55. Plaintiffs appealed to the Third Circuit, which eventually overturned
3 the trial court's ruling on May 21, 2013, nearly two years later. *Hart* Dkt. No. 59. The case was
4 reopened in the district court on July 17, 2013, with little opportunity to litigate before the
5 Settlement in Principle was reached. Thus, as with the *Keller* case, while Antitrust Class Counsel
6 were litigating against EA and CLC, the *Hart* case was dormant in many respects.

7 **Mediation, Settlement, and Total Lodestar for Cross-Check Purposes**

8 27. With the *O'Bannon* class certification (as to a damages class and an injunctive
9 class) looming, the parties attended a one-day mediation with mediator Randy Wulff on
10 September 10, 2013 in Oakland, California, which subsequently yielded the Settlement in
11 Principle totaling \$40 million and releasing EA and CLC from all claims asserted in *O'Bannon*,
12 *Keller*, and *Hart* (and related cases).

13 28. Antitrust Class Counsel (now limited largely to my own firm) spent a significant
14 amount of time negotiating and then facilitating the settlement from September 2013 to the
15 present, including:

- 16 a. Conducting detailed analysis of EA and CLC evidence, financial data, liability,
17 and likelihood of class certification to make accurate demands and evaluations
18 of their positions;
- 19 b. Conducting the mediation, preparing a mediation brief, and numerous in-
20 person meetings, telephone calls, and e-mail exchanges with experienced
21 counsel for EA, as well as counsel for other plaintiff groups, over the course of
22 many months regarding the terms of the settlement;
- 23 c. Vetting settlement and claims administrators and negotiating terms to ensure
24 the highest quality cost-effective notice and administration for the class;
- 25 d. Preparing a non-traditional notice program for potential claimants in this
26 unique case, including negotiating notice language with EA, NCAA, and other
27 plaintiffs' counsel, analyzing and editing long-form and publication notice, and
28 evaluating potential avenues for publication notice appropriate for the nature of

1 this settlement class;

- 2 e. Frequent communication with class representatives and hundreds of class
3 members regarding the settlement, including answering phone messages,
4 emails, and letters.

5 29. This time related to the EA/CLC settlement agreement and settlement facilitation
6 was not previously requested in the NCAA Fee Motion. The amount of lodestar incurred for
7 those activities by Antitrust Class Counsel is \$544,966.52. A chart of lodestar by firm for
8 EA/CLC settlement time is below:

Firm	Settlement Lodestar
Hausfeld LLP	\$429,258.5
Heins Mills & Olson P.L.C.	\$37,016.50
Lite DePalma Greenberg, LLC	\$8,960.00
Venable LLP	\$6,633.00
W. Pitts Carr & Associates ¹	\$56,645.02
Zelle Hofmann Voelbel & Mason LLP	\$6,453.50
Total	\$544,966.52

14
15 30. The total lodestar for time litigating against the NCAA, EA, and CLC until
16 September 2013, plus the total lodestar for settlement negotiation, facilitation, and advancement
17 is \$33,983,865.72. This figure was calculated by adding the settlement and mediation time from
18 paragraph 29 to the total lodestar against all defendants up until the Settlement in Principle was
19 reached from paragraph 14. This \$33,983,865.72, when combined with the ROP Counsel's
20 lodestar, represents the appropriate lodestar cross-check.

21 **Class Representatives**

22 31. The *O'Bannon* class representatives expended significant time on the litigation
23 that inured to the benefit of the class. Each class representative had to search through his files for
24 contracts, forms, emails, and other records, both from their collegiate careers and afterwards.
25 These searches were often conducted in hard copy by physically searching through boxes of
26 documents. For some class representatives, records were searched for and produced that dated
27 back to the 1990s. This was a time-consuming and complicated process.

28 ¹ The attorney billing rates for this firm, which were not previously filed with the Court in
conjunction with the NCAA Fee Motion, range from \$290 (associates) to \$550 (senior partner).

1 32. The *O'Bannon* class representatives also expended significant time and effort in
2 preparing for and attending depositions. Each deposition often entailed two days of work: a day
3 for preparation with Class Counsel, and another day for an hours-long deposition in which class
4 representatives were often subjected to questioning from up to three different defense attorneys
5 for three different defendants.

6 33. The *O'Bannon* class representatives have stayed up to date on the litigation
7 through e-mails and calls with Antitrust Class Counsel. They have also conferred with Antitrust
8 Class Counsel concerning the settlement of this matter and served as point persons for other class
9 members who have reached out about the litigation and the settlement. Since receiving
10 preliminary approval of the settlement, class representatives have also served as resources in
11 informing other class members of the settlement and relevant deadlines.

12 34. Finally, the *O'Bannon* class representatives have performed all of these functions
13 without any guarantee of reimbursement or compensation for the work they performed for the
14 benefit of the class.

15 35. For their efforts in support of the class, each of the *O'Bannon* class
16 representatives—Oscar Robertson, William Russell, Harry Flournoy, Alex Gilbert, Sam
17 Jacobson, Thad Jaracz, David Lattin, Patrick Maynor, Tyrone Prothro, Damien Rhodes, Eric
18 Riley, Bob Tallent, Danny Wimprine, Ray Ellis, Tate George, Jake Fischer, Jake Smith, Darius
19 Robinson, Moses Alipate and Chase Garnham—is deserving of an incentive and participation
20 award of \$5,000. Edward C. O'Bannon, Jr., who has worked tirelessly in support of this litigation
21 and the class, and whose name has become synonymous with this litigation, is deserving of an
22 incentive and participation award of \$15,000, in recognition of the outsize contributions that he
23 has made to this litigation and the benefits ultimately obtained by the class.

24 **Objections of Tate George**

25 36. Tate George is a class representative for the settlement class who voluntarily
26 dismissed his individual claims against the NCAA and withdrew as a named plaintiff and class
27 representative for the injunctive class (while reserving all rights as an absent class member and
28 without prejudice to any participation award the Court may approve in this litigation) after a jury

1 found him guilty of four counts of wire fraud.

2 37. Mr. George has raised two objections to the settlement, proceeding *pro se*. Mr.
3 George's objection is the only objection to the settlement received thus far, out of an estimated
4 100,000 class members.

5 38. First, Mr. George objected to the percentage of fees that would be eventually
6 sought by counsel for the settlement class, noting, however, that he believes that \$5 million in
7 attorney fees is reasonable. That objection was not yet ripe at the time it was made, as the Court
8 was not yet requested to rule on the amount of attorneys' fees that would be awarded in
9 connection with the settlement.

10 39. Second, Mr. George objected to the likely recoveries of and potential incentive
11 awards for the class representatives, insisting that each class representative should receive
12 approximately \$417,000, differentiating them significantly from their settlement class-member
13 peers.

14 40. I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct and that this declaration was executed this 13th day of April, 2015,
16 at Washington, DC.

17
18
19 /s/ Michael D. Hausfeld
Michael D. Hausfeld