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 National Collegiate Athletic Association

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
 17

18 EDWARD O'BANNON, et al.,

19 Plaintiffs,

20 v.

21 NATIONAL COLLEGIATE ATHLETIC
 22 ASSOCIATION; COLLEGIATE
 LICENSING COMPANY; AND
 23 ELECTRONIC ARTS INC.,

24 Defendants.
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 26
 27
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Case No. 09-cv-3329-CW

**DEFENDANT NCAA'S
 ADMINISTRATIVE MOTION FOR
 CLARIFICATION OF TIMING OF
 INJUNCTION**

Judge: Hon. Claudia Wilken
 Courtroom: 2, 4th Floor

1 The NCAA respectfully seeks urgent clarification of a discrete issue with respect to the
2 timing of the Court's injunction. The NCAA seeks this clarification on an urgent basis because it
3 has already started receiving queries from numerous college administrators across the country
4 seeking guidance regarding the effect of the Court's injunction on the NCAA's rules. The NCAA
5 also does not wish to violate the injunction, even unintentionally (or to be accused of having done
6 so), due to a misunderstanding.

7 The NCAA respectfully requests clarification that the injunction does not prohibit the
8 application of the current NCAA rules with respect to student-athletes who were enrolled or will
9 enroll in college before July 1, 2016, and takes effect for student-athletes enrolling after July 1,
10 2016, at the beginning of the next recruiting cycle, *i.e.*, August 1, 2015.

11 The Court's Findings of Fact and Conclusions of Law states that the injunction "will not
12 take effect until the start of next FBS football and Division I basketball recruiting cycle." Doc. 291
13 at 98:7-8. The term "recruiting cycle" is potentially ambiguous. Under existing NCAA rules,
14 student-athletes in the next recruiting cycle (*i.e.*, student-athletes who would first enroll in college
15 in Fall 2016) may receive offer letters from colleges starting on August 1, 2015. Bylaw
16 13.9.2.2. NCAA seeks to confirm that the existing NCAA rules can remain in force until August
17 1, 2015, although we understand the injunction would not permit the NCAA to adopt or enforce
18 rules inconsistent with the injunction on or after that date.

19 Relatedly, Paragraph 2 of the injunction says that "[t]his injunction shall not affect any
20 prospective student-athlete who will enroll in college before July 1, 2016." Doc. 292 at 2
21 ¶ 2. Paragraphs 1(a) and 1(b) of the injunction, however, refer to the licensing or use of
22 "prospective, current, or former" student-athlete NILs. This has prompted concerns among
23 colleges and universities that the injunction might, contrary to the Court's opinion, apply
24 immediately to current student-athletes. Based on the Court's opinion, the NCAA believes the
25 language of Paragraph 1 refers to compensation only for student-athletes first enrolling after July
26 1, 2016. Otherwise the injunction would permit colleges and conferences to compensate current
27 student-athletes before the NCAA's member colleges have an opportunity to consider new rules
28 consistent with the injunction.

1 Colleges are in the midst of the offer letter process for prospective student-athletes
 2 planning to start college in 2015. Budgets and financial aid for the coming academic year are
 3 already in place or being finalized. The status of the rules governing current and 2015 enrolling
 4 student-athletes needs to be clear as soon as possible. And as to student-athletes starting college in
 5 or after 2016, the NCAA member colleges may need to adopt new rules to address a variety of
 6 matters raised by the injunction and the Court’s opinion, including equal distribution of licensing
 7 revenues, caps on payments relating to licensing revenues, the implementation of a trust fund,
 8 etc. As the Court’s Findings appreciate, it takes time for the hundreds of Division I colleges to
 9 consider and adopt new rules.

10 Using the August 1, 2015, offer date for student-athletes enrolling in 2016 provides clarity
 11 for the coming academic year, an unambiguous deadline for the implementation of the injunction,
 12 and time for the NCAA member colleges and conferences to establish any new rules appropriate
 13 in light of the injunction.

14
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16 DATED: August 10, 2014

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP

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20 By: /s/
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 23 National Collegiate Athletic Association

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