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12 Right of Publicity Class Counsel

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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 SAMUEL MICHAEL KELLER, on behalf of
18 himself and all others similarly situated,

19 Plaintiff,

20 v.

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

24 Defendants.

Case No. 4:09-cv-1967 CW

**PETITION FOR ORDER TO SHOW
CAUSE WHY OBJECTOR'S
COUNSEL SCOTT A. KRON SHOULD
NOT BE SANCTIONED**

Judge: Hon. Claudia Wilken
Date: November 17, 2015
Time: 2:30 p.m.
Courtroom: Courtroom 2, 4th Floor

1 Plaintiffs in *Keller v. Electronic Arts, Inc.*, Case No. 4:09-cv-01967-CW (N.D. Cal.)
 2 (“Keller”) and *Alston v. Electronic Arts, Inc.*, 3:13-cv-05157-FLW-LHG (D.N.J.) (collectively,
 3 “Plaintiffs”), respectfully request per Local Rule 1-4 that this Court impose sanctions upon attorney
 4 Scott Kron, who is counsel for Objector Nathan Harris. Mr. Kron has violated Local Rule 11-4, and
 5 has ignored requirements to meet and confer in good faith regarding Plaintiffs’ motion for an
 6 appeal bond.

7 **FACTUAL BACKGROUND**

8 Attorney Scott Kron represents Nathan Harris, who objected to Plaintiffs’ settlement with
 9 the NCAA and has appealed this Court’s denial of his objections. On October 2, 2015, Class
 10 Counsel arranged a telephonic meet and confer for 3:00 p.m. PST, a time chosen by Mr. Kron, to
 11 discuss, among other topics, the motion for an appeal bond currently before the Court (“Bond
 12 Motion”). Class Counsel wanted to determine if the objectors would voluntarily post a bond and if
 13 the parties could mutually agree on a bond amount. Class Counsel also asked to meet and confer
 14 regarding the upcoming motion for sanctions Class Counsel intends to file in the Ninth Circuit
 15 arising out of the written attempts by Objectors’ counsel to extort fees for themselves in return for
 16 dismissing their clients’ appeals.

17 During the meet and confer, Mr. Kron stated that his client couldn’t afford the proposed
 18 bond amount, but refused to confer about what amount his client could afford.¹ He also refused to
 19 discuss whether his retainer agreement required him to advance costs—an obviously relevant
 20 source of funds for the bond.² He then became extremely agitated and loud, referring to the Court-
 21 approved settlements with Electronic Arts and the NCAA collectively as “a piece of sh*t
 22 settlement.”³ Also during this meet and confer, Mr. Kron personally attacked the assembled Class
 23 counsel, repeatedly referring to them as “f*ckers.” After one of Mr. Kron’s outrageous, profane
 24 outbursts, Class Counsel Robert Carey attempted to moderate Mr. Kron’s conduct by informing
 25

26 _____
 27 ¹ Exhibit 1, Declaration of Celeste H.G. Boyd (“Boyd Decl.”) ¶ 11.

² *Id.* ¶ 12.

³ *Id.* ¶ 8.

1 him that this type of conduct by an attorney could cause disbarment.⁴ Instead, Mr. Kron became
 2 even more agitated and began aggressively threatening Class counsel stating specifically: “I look
 3 forward to creating major f*cking problems for you,” and “You’re about to have big f*ckin’
 4 problems soon.”⁵ When counsel informed Mr. Kron that the motion for sanctions in the Ninth
 5 Circuit would include emails that he falsely claimed Class counsel had promised to keep
 6 “confidential,” Mr. Kron threatened counsel that if the emails were made public they would —“see
 7 what the f*ck happens.”⁶ Mr. Kron refused to give any more details regarding his unspecified
 8 threat. Mr. Kron then hung up without informing the other participants that he was leaving the
 9 call.⁷

10 The entire meet and confer lasted, from the time Mr. Kron joined the call, 21 minutes, *see*
 11 Boyd Decl. Ex. A (UberConference Report), and the following Class Counsel were present: Stuart
 12 M. Paynter and Celeste H.G. Boyd of The Paynter Law Firm, PLLC; Robert B. Carey and Leonard
 13 W. Aragon of Hagens Berman Sobol Shapiro LLP; and Sathya Gosselin of Hausfeld, LLP.⁸ A
 14 substantial amount of that time was counsel waiting in silence for counsel for objector Darrin
 15 Duncan to join the call.⁹

16 ARGUMENT

17 Civil Local Rule 11-4 outlines the standards of professional conduct required of any
 18 attorney permitted to practice in the Court. The duties and responsibilities outlined in the Rule
 19 include being familiar and complying “with the standards of professional conduct required of
 20 members of the State Bar of California.” Civ. L.R. 11-4(a)(1); *see also S.E.C. v. King Chuen Tang*,
 21 831 F. Supp. 2d 1130, 1141 (N.D. Cal 2011). The Rule also requires that each attorney “[p]ractice
 22 with the honesty, care, and decorum required for the fair and efficient administration of justice.”
 23 Civ. L.R. 11-4(a)(4). “[R]efer[ring] to opposing counsel in inappropriate terms” constitutes a

24 ⁴ Exhibit 2, Declaration of Robert B. Carey (“Carey Dec.”) ¶ 4.

25 ⁵ Boyd Decl. ¶ 9.

26 ⁶ Boyd Decl. ¶ 9.

27 ⁷ *Id.* ¶ 10.

28 ⁸ *Id.* ¶ 4.

⁹ *See id.* ¶ 5 & Ex. A.

1 breach of the “decorum” referred to in the Rule. *Elliot v. San Francisco Residential Rent*
 2 *Stabilization & Arbitration Bd.*, No. C 06-04842 SBA, 2008 WL 4104211, at *5 (N.D. Cal. Sept. 3,
 3 2008). When meeting and conferring, attorneys must discuss issues in good faith and “maintain the
 4 respect due to the courts of justice and judicial officers.” L.R. 1-5(n); Bus. & Prof. Code § 6068(b).
 5 Moreover, this Court’s professionalism guidelines require counsel to “at all times be civil,
 6 courteous, and accurate in communicating with opponents or adversaries, whether in writing or
 7 orally.” N.D. Cal. Guidelines for Professional Conduct ¶ 8.

8 Violating the statutes and rules governing attorney professionalism is sanctionable. Local
 9 Rule 1-4 provides that a failure to comply with local rules, including Rule 11-4, “may be a ground
 10 for [the] imposition of any authorized sanction.” Civ. L.R. 1-4. Courts can exercise their inherent
 11 powers to impose sanctions where counsel and/or his client has “willfully abused [the] judicial
 12 process or otherwise conducted litigation in bad faith.” *In re Itel Sec. Litig.*, 791 F.2d 672, 675 (9th
 13 Cir. 1986) (internal citations omitted). In the discovery context, Court’s routinely sanction
 14 attorneys for failing to meet and confer in good faith. *See, e.g., A. Farber and Partners, Inc. v.*
 15 *Garber*, 234 F.R.D. 186, 194-95 (C.D. Cal. 2006); *Woodland v. Viacom Inc.*, 255 F.R.D. 278
 16 (D.D.C 2008); *V.D.B. Pac. B.V. v. Chassman*, 277 F.R.D. 121 (S.D.N.Y. 2011).

17 Mr. Kron’s constant use of profanity and his repeated aggressive threats to class counsel
 18 that they were “f*ckers” and he would create “big f*ckin’ problems” for them constitute clear
 19 breaches of the decorum and professionalism required by Local Rule 1-4. Mr. Kron’s conduct has
 20 created an environment in which it is impossible for Class counsel to be assured that their
 21 communications with him will not be met by a barrage of profanity and threats.¹⁰ Moreover, by
 22 referring to both Court-approved Settlements collectively as a “piece of sh*t settlement,” Mr. Kron
 23 has failed to maintain due respect for this Court, which approved the settlements as fair, adequate
 24 and reasonable.

25 Mr. Kron has also violated the letter and spirit of the requirement to meet and confer in
 26 good faith. Class Counsel and Objectors’ counsel had an agreed-upon meet and confer scheduled.
 27 This meet and confer was a good faith attempt to resolve the bond issue before filing the Bond

28 ¹⁰ Carey Decl. ¶ 5.

1 Motion. Mr. Kron hung up on Class Counsel after his barrage of expletives, preventing the parties
2 from resolving any issues related to the bond, such as what the objectors could reasonably afford to
3 post, whether he had contractually committed to paying costs, or whether a stipulated bond amount
4 could be negotiated. Due to Mr. Kron's unprofessional conduct, Class Counsel unnecessarily
5 incurred time organizing, preparing for, and participating in the meet and confer.

6 Class Counsel respectfully requests that Mr. Kron be sanctioned for his conduct by
7 requiring Mr. Kron to pay the reasonable attorneys' fees for the time spent engaging in the meet
8 and confer and preparing this petition. *A. Farber and Partners*, 234 F.R.D. at 194-95 (finding that
9 plaintiff established a good faith effort by seeking to meet and confer with defendant, to no avail,
10 and was thus entitled to reasonable expenses incurred in making a motion to compel, including
11 attorneys' fees); *Elliot*, No. C 06-04842 SBA, 2008 WL 4104211, at *5.

12 CONCLUSION

13 For the foregoing reasons, Plaintiffs request that the Court issue an order to show cause
14 why Objector's counsel Scott Kron should not be sanctioned pursuant to Local Rule 1-4 and the
15 Court's inherent powers for his belligerent and unprofessional conduct. Plaintiffs believe that an
16 appropriate sanction would be an order requiring Mr. Kron to pay Class Counsel's costs and fees
17 (i) associated with filing this petition and (ii) for the time spent by all present Class Counsel in an
18 effort to meet and confer with Objectors' counsel on October 2, 2015.

19
20 Respectfully submitted this 12th day of October, 2015.

21 HAGENS BERMAN SOBOL SHAPIRO LLP

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Class Counsel for Right of Publicity Plaintiffs

EXHIBIT 1

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Class Counsel for Right of Publicity Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAMUEL MICHAEL KELLER, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ELECTRONIC ARTS, INC.; NATIONAL
COLLEGIATE ATHLETICS ASSOCIATION;
COLLEGIATE LICENSING COMPANY,

Defendants.

Case No. 4:09-cv-1967 CW

**DECLARATION OF CELESTE H.G.
BOYD IN SUPPORT OF PETITION
FOR ORDER TO SHOW CAUSE WHY
OBJECTOR'S COUNSEL SCOTT A.
KRON SHOULD NOT BE
SANCTIONED**

Judge: Hon. Claudia Wilken
Date: November 17, 2015
Time: 2:30 p.m.
Courtroom: Courtroom 2, 4th Floor

1 I, Celeste H.G. Boyd, declare as follows:

2 1. I am Of Counsel for The Paynter Law Firm, PLLC. Unless otherwise stated, I have
3 personal knowledge of the information set forth in this Declaration.

4 2. I, along with additional Class Counsel, scheduled a meet and confer with Scott Kron and
5 Caroline Tucker, counsel to Nathan Harris and Darrin Duncan (collectively, “Objectors”), to occur
6 on Friday, October 2, 2015, at 6pm EST.

7 3. Mr. Kron chose the time for this call, and Ms. Tucker previously agreed on the time and
8 date of the meet and confer.

9 4. Attached as *Exhibit A* to this Declaration is a true and correct copy of the report of this
10 call from UberConference, the service used to host the meet and confer. In addition to myself, the
11 following Class Counsel were present on the call: Stuart M. Paynter of The Paynter Law Firm;
12 Leonard W. Aragon and Robert B. Carey of Hagens Berman Sobol Shapiro LLP, and Sathya
13 Gosselin of Hausfeld LLP.

14 5. Exhibit A demonstrates (1) that Mr. Kron joined the conference at 5:59pm EST, at which
15 time all other participants except for Ms. Tucker were on the call; (2) that Ms. Tucker, counsel for
16 Objector Darrin Duncan—who joined the call from a number labeled “Brooks Tim”—joined the
17 call at 6:09pm and left the call 6 minutes later at 6:15pm EST.

18 6. The meet and confer was scheduled to discuss issues relating to Objectors posting a bond
19 for the Class prior to their appeal, and was a prerequisite to Class Counsel filing a motion for the
20 bond and for sanctions in the Ninth Circuit for filing appeals for an improper purpose.

21 7. I kept contemporaneous notes during the call of the verbatim quotes by Mr. Kron
22 described below.

23 8. During the meet and confer, Mr. Kron referred to the settlements negotiated by Class
24 Counsel with Defendants Electronic Arts, NCAA, and Collegiate Licensing Company (CLC) as “a
25 piece of sh*t.”

26 9. Also during the meet and confer, Mr. Kron used vulgar language when referring to
27 assembled counsel on the teleconference, calling counsel “f*ckers” and specifically saying: “I look
28 forward to creating major f*cking problems for you,” and “You’re about to have big f*ckin’

1 problems soon,” and—when counsel informed Mr. Kron that the motion for sanctions would
2 include email evidence that he falsely claimed was confidential—“. . . see what the f*ck happens.”

3 10. Mr. Kron then hung up in the middle of the meet and confer without informing the other
4 participants that he was leaving the call.

5 11. During the meet and confer, Mr. Kron stated that his client couldn’t afford the proposed
6 bond amount, but refused to answer any questions about what amount his client could afford.

7 12. Mr. Kron also refused to state whether his retainer agreement required him to advance
8 costs.

9 I declare under penalty of perjury under the laws of the United States that the foregoing is
10 true and correct.

11 Executed this 12th day of October, 2015 in Vass, North Carolina.

12
13 /s/ Celeste H.G. Boyd

14 Celeste H.G. Boyd
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EXHIBIT A



Stuart Paynter <stuart@smplegal.com>

Call Summary - 10/02/2015

1 message

UberConference <noreply@uberconference.com>

Fri, Oct 2, 2015 at 6:22 PM

To: stuart@paynterlawfirm.com



Call Summary - 10/02/2015

October 2, 5:57PM - 6:20PM EST

🕒 23 minutes

How was the call quality? Rate it [here](#).

Participants

In order of appearance



Stuart Paynter

🕒 5:57PM - 6:20PM 📱 919-913-4550 🎤 13 min



602-840-5900

🕒 5:58PM - 6:20PM 📱 602-840-5900 🎤 3 min



Kron And Card L

🕒 5:59PM - 6:20PM 📱 949-367-0520 🎤 5 min



919-370-6300

🕒 5:59PM - 6:20PM 📱 919-370-6300 🎤 1 min



Hausfeld Evans

🕒 5:59PM - 6:20PM 📞 202-540-7200 🎤 1 min



Brooks Tim

🕒 6:09PM - 6:15PM 📞 949-235-9024 🎤 1 min

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Add a professional touch to your business by choosing a toll-free conference number.

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EXHIBIT 2

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6 Right of Publicity Class Counsel

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 SAMUEL MICHAEL KELLER, on behalf of
12 himself and all others similarly situated,

13 Plaintiff,

14 v.

15 ELECTRONIC ARTS, INC.; NATIONAL
16 COLLEGIATE ATHLETICS ASSOCIATION;
COLLEGIATE LICENSING COMPANY,

17 Defendants.

Case No. 4:09-cv-1967 CW

**DECLARATION OF ROBERT B.
CAREY IN SUPPORT OF PETITION
FOR ORDER TO SHOW CAUSE WHY
OBJECTOR'S COUNSEL SCOTT A.
KRON SHOULD NOT BE
SANCTIONED**

Judge: Hon. Claudia Wilken
Date: November 17, 2015
Time: 2:30 p.m.
Courtroom: Courtroom 2, 4th Floor

1 I, Robert B. Carey, declare as follows:

2 1. I am a partner at Hagens Berman Sobol Shapiro LLP. Unless otherwise stated, I
3 have personal knowledge of the information set forth in this Declaration.

4 2. I, along with additional Class Counsel, attended a meet and confer with Scott Kron
5 counsel to Objector Nathan Harris on Friday, October 2, 2015, at 6pm EST.

6 3. Never in my over twenty-eight years as an attorney have I ever had opposing
7 counsel be so freely belligerent and profane as Mr. Kron was during our meet and confer. From the
8 outset, Mr. Kron either refused to discuss germane issues or raised his voice and cursed at me and
9 other Class Counsel. The concurrently filed declaration of my co-counsel Celeste H.G. Boyd
10 accurately records some of the specific language used by Mr. Kron.

11 4. In response to Mr. Kron's hostile, angry and threatening behavior, I attempted to
12 caution Mr. Kron that this type of conduct by an attorney could cause disbarment. Rather than
13 moderate his conduct, Mr. Kron became more agitated. It is hard to present by written description
14 how disturbing Mr. Kron's epithets were to the meet-and-confer process—they were not just
15 profane words; mostly, they were directed at opposing counsel.

16 5. Mr. Kron's conduct has created an environment in which, going forward, it will be
17 difficult for counsel to meet and confer without some oversight.

18
19 Executed this 12th day of October, 2015 in Phoenix, Arizona.

20
21 /s/ Robert B. Carey

22 Robert B. Carey

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAMUEL MICHAEL KELLER, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ELECTRONIC ARTS, INC.; NATIONAL
COLLEGIATE ATHLETICS ASSOCIATION;
COLLEGIATE LICENSING COMPANY,

Defendants.

No. CV-09-01967 CW

**[PROPOSED] ORDER TO SHOW
CAUSE WHY OBJECTOR'S
COUNSEL SCOTT A. KRON
SHOULD NOT BE SANCTIONED**

The Honorable Claudia Wilken

Right of Publicity Plaintiffs, having filed a Petition for Order to Show Cause why Objector's Counsel Scott A. Kron Should Not Be Sanctioned ("Petition"), and good cause appearing; therefore, pursuant to Local Rule 1-4 and the Court's inherent powers, IT IS HEREBY ORDERED that Right of Publicity Plaintiffs' Petition is GRANTED.

Within seven (7) court days of the date of this Order, Attorney Scott Kron shall file a statement as to why he should not be sanctioned for the conduct described in the Petition in the amount of Class Counsel's costs and fees (i) associated with filing this petition and (ii) for the time spent by all present Class Counsel in an effort to meet and confer with Objectors' counsel on October 2, 2015.

Class Counsel may file a response to Mr. Kron's statement within five (5) court days.

IT IS SO ORDERED.

Dated: _____

HON. CLAUDIA WILKEN
UNITED STATES DISTRICT COURT JUDGE

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