

EXHIBIT A

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Christopher D. Beatty (SBN 266466)
chris.beatty@katten.com
Ashley T. Brines (SBN 322988)
ashley.brines@katten.com
KATTEN MUCHIN ROSENMAN LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067
Telephone: 310.788.4400
Facsimile: 310.788.4471

Richard L. Farley (*pro hac vice* forthcoming)
Richard.farley@katten.com
Lindsey L. Smith (*pro hac vice* forthcoming)
lindsey.smith@katten.com
Kelsey R. Panizzolo (*pro hac vice* forthcoming)
Kelsey.panizzolo@katten.com
KATTEN MUCHIN ROSENMAN LLP
500 S. Tryon Street, Suite 2900
Charlotte, NC 28202-4213
Telephone: 704.344.3178

Attorneys for Plaintiff
The BrandR Group, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

THE BRANDR GROUP, LLC)
)
Plaintiff,)
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vs.)
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ELECTRONIC ARTS, INC., and DOES 1)
through 10, inclusive,)
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Defendants.)
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Case No.)
VERIFIED COMPLAINT for:
1. Tortious Interference with Contract
2. Violation of California Civil Code §
3344
3. Violation of Right of
Publicity/Misappropriation of
Likeness
4. Violation of California Business and
Professions Code § 17200, et seq.;
and
5. Declaratory Relief

1 Plaintiff The BrandR Group, LLC (“TBG”), by and through its attorneys Katten Muchin
2 Rosenman LLP, for its complaint in this action against Defendant Electronic Arts, Inc. (“EA
3 Sports” or “EA”), alleges as follows:

4 **NATURE OF THE CASE**

5 1. This dispute involves the rights of collegiate student-athletes to receive fair
6 compensation for the commercial use of their “name, image, and likeness” (“NIL”) and the
7 protection of the contractual rights of those engaged to advocate for those rights.

8 2. For more than 100 years, National Collegiate Athletic Association (“NCAA”) rules
9 limited the financial benefits student-athletes could accept for the use of their NIL. That rule
10 changed in the wake of the seminal Ninth Circuit rulings in *In re NCAA Student-Athlete Name &*
11 *Likeness Licensing Litig.*, 724 F.3d 1268, 1272 (9th Cir. 2013) and *O'Bannon v. NCAA*, 802 F.3d
12 1049 (9th Cir. 2015), and the Supreme Court’s decision in *NCAA v. Alston*, 141 S. Ct. 2141 (2021),
13 which ultimately divested the NCAA of its long-standing justification for prohibiting collegiate
14 athletes from commercializing their NIL and prompted the NCAA to suspend its previous
15 restrictions and allow student-athletes to profit from the use of their NIL.

16 3. With the removal of previous barriers to paying student-athletes for their NIL has
17 come a frenzy of marketing and advertising opportunities for young student-athletes arising from
18 their participation in collegiate sports.

19 4. This has proven especially true for those student-athletes participating in collegiate
20 football and basketball programs. Indeed, it is hard to overstate the popularity of these collegiate
21 sports in the United States, which contributes to the vast array of opportunities that are now
22 available to collegiate football and basketball players with the use of their NIL.

23 5. One such opportunity is the return of the *EA Sports College Football* video game
24 (“EA College Football” or the “Game”). Originally released in the 1990s, in 2013-2014, EA
25 announced that it was discontinuing its popular football video game amid an onslaught of NIL
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1 litigation in 2013-2014. The discontinuance of the Game was significant given that it reportedly
2 generated anywhere between \$80 million to \$125 million per year in sales revenue.¹

3 6. EA now plans to bring back its popular Game, but this time, EA intends to use
4 student-athletes' NIL and schools' intellectual property ("IP") to create a more realistic college
5 football experience for users – one that includes realistic-looking avatars of the players and the
6 actual branding, logos, and even fight songs from the players' schools. The Game presents an
7 exciting opportunity for young college football players to participate in what has historically been
8 a tremendously popular and successful video game; more importantly, it presents an opportunity
9 for these young athletes to be fairly compensated for helping to make that Game so successful.

10 7. Unfortunately, EA Sports is trying to avoid paying collegiate football players a fair
11 price for their participation in the Game, continuing the pre-*O'Bannon* pattern of large
12 corporations taking advantage of young student-athletes and capitalizing on their NIL. EA Sports
13 is reportedly offering student-athletes a flat fee of just \$500 per athlete to participate in a Game
14 which is expected to yield EA Sports significant revenue in year over year sales. As the contractual
15 representative for student-athletes in Group Rights Programs co-branded with schools' IP, this is
16 what TBG is trying to prevent.

17 8. TBG is a brand management, marketing, and licensing business that holds exclusive
18 Group Rights Licensing Agreements with dozens of FCS and FBS colleges and universities and
19 thousands of football players for these schools. Generally, under these agreements, TBG has been
20 engaged to act as the exclusive agent for student-athletes to secure third-party sponsorships and
21 licensing opportunities for Group Licensing Programs – defined as licensing or sponsorship
22 programs in which a collegiate licensee or collegiate sponsor uses the Athlete Attributes (as
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24 ¹ Kristi Dosh, *How much did Schools Make from EA Sports's NCAA Football Previously?*,
25 [https://businessofcollegesports.com/name-image-likeness/how-much-did-schools-make-from-ea-sportss-ncaa-](https://businessofcollegesports.com/name-image-likeness/how-much-did-schools-make-from-ea-sportss-ncaa-football-)
26 [football-](https://businessofcollegesports.com/name-image-likeness/how-much-did-schools-make-from-ea-sportss-ncaa-football-)
27 [previously/#:~:text=Industry%20analysts%20back%20then%20told,Sports%20total%20revenue%20per%20year .](https://businessofcollegesports.com/name-image-likeness/how-much-did-schools-make-from-ea-sportss-ncaa-football-)
28 (May 17, 2023) (reporting that *EA Sports College Football* generated \$125 million in annual sales revenue); *but see*
Steve Berkowitz, *How EA Sports's NCAA Football video game could make a comeback*,
[https://www.usatoday.com/story/sports/2019/05/20/how-ea-sportss-ncaa-football-video-game-could-make-](https://www.usatoday.com/story/sports/2019/05/20/how-ea-sportss-ncaa-football-video-game-could-make-comeback/3704876002/)
[comeback/3704876002/](https://www.usatoday.com/story/sports/2019/05/20/how-ea-sportss-ncaa-football-video-game-could-make-comeback/3704876002/) (May 20, 2019) (reporting that EA executive previously testified that *EA Sports College*
Football generated \$80 million in sales revenue on the sale of roughly 2 million units).

1 defined below) of three (3) or more current athletes from one sport or six (6) or more from multiple
2 sports in combination with school trademarks, logos, and other IP.

3 9. Unlike the student-athletes it represents, TBG is well-positioned to negotiate with
4 corporate sponsors and licensees – such as EA Sports – in order to ensure that its clients receive
5 fair market value for the use of their respective NIL. TBG is powered by a team of individuals
6 with decades of collective management experience for some of the world’s largest brands. TBG
7 and its principals have substantial experience in the group licensing business and have developed
8 significant goodwill among its clients and customers.

9 10. Since the announcement that EA was developing a new version of the Game, TBG
10 has paid careful attention to media and industry reports relating to EA’s use of players’ NIL and
11 schools’ IP. Representatives of TBG promptly notified EA of its exclusive Group Licensing
12 agreements and informed EA that any attempt to secure TBG’s collaborating schools’ and client
13 student athletes’ participation in the Game without the consent or involvement of TBG would be
14 a violation of those agreements.

15 11. Although TBG expressly informed EA of its exclusive contractual rights at
16 collaborating schools that are implicated by the TBG-represented student-athletes included in the
17 Game, EA is pressuring and coercing or attempting to coerce TBG’s exclusive collaborating
18 universities to opt-in to the Game, agreeing to a structure that will reportedly pay the student-
19 athletes a flat fee that is far below market value and does not include any payments for future
20 royalties.

21 12. Given the ever-changing landscape of collegiate NIL rights, there is no bright-line
22 rule for what a third-party must pay for the use of a student-athlete’s NIL in certain contexts. The
23 issue of collegiate NIL rights has dominated sports headlines and been a hotly litigated subject for
24 several years. Fortunately, while the legislation surrounding student-athlete NIL rights is
25 relatively new and still evolving, the law of contracts is not.

26 13. This is a textbook case of tortious interference by EA of TBG’s contractual rights
27 *with thousands of student-athletes* and at schools where TBG has exclusive Collaboration
28 Agreements. TBG files this Complaint to prevent EA Sports from intentionally interfering with

1 its contractual rights, violating its right to publicity, and causing irreparable harm to TBG and the
2 student-athletes it represents at collaborating schools.

3 **PARTIES, JURISDICTION AND VENUE**

4 14. Plaintiff TBG is a limited liability company organized under the laws of the state
5 of North Carolina with a principal place of business at 100 Corridor Road, Suite 200, Ponte Vedra
6 Beach, FL 32082.

7 15. Upon information and belief, Defendant EA Sports is corporation organized under
8 the laws of the state of Delaware with its principal office located at 209 Redwood Shores Parkway,
9 Redwood City, California 94065.

10 16. TBG is informed and believes, and on that basis alleges, that Defendants DOES 1
11 through 10, inclusive, are individually and/or jointly liable to TBG for the wrongs alleged herein.
12 The true names and capacities, whether individual, corporate, associate or otherwise, of
13 Defendants DOES 1 through 10, inclusive, are unknown to TBG at this time. Accordingly, TBG
14 sues Defendants DOES 1 through 10, inclusive, by fictitious names and will amend this Complaint
15 to allege their true names and capacities after they are ascertained.
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17 17. The Court has subject matter jurisdiction over this action, and venue is proper in
18 San Mateo County, because Defendant EA Sports maintains its principal place of business in
19 Redwood City, California.

20 18. The Court has general personal jurisdiction over Defendant EA Sports because it
21 maintains its principal place of business in Redwood City, California and the exercise of
22 jurisdiction over Defendant EA Sports is consistent with the Constitutions of California and the
23 United States of America.
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FACTUAL BACKGROUND

TBG and NIL Licensing

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3 19. TBG is a leader in the collegiate group licensing space, using its industry
4 experience and relationships to facilitate co-branding opportunities for student-athletes and their
5 schools.

6 20. Co-branding is the combining of the name, image, likeness, and other intellectual
7 property rights owned by a particular athlete, aggregated with the branding rights from another
8 entity, such as the school for which that athlete competes.

9 21. For example, when a fan wants to purchase the jersey of their favorite college
10 quarterback (“QB1”), the fan is purchasing an item that needs to be licensed from at least two
11 sources: (1) QB1, for the use of his NIL; and (2) QB1’s university, for the use of its logo and
12 related IP. TBG steps into this deal by grouping the rights and marketing them together to
13 companies—such as jersey manufacturers—in order to create an efficient and effective way to
14 create co-branded products, services, events and the like.

15 22. It is in this industry (among others) that TBG has invested significant time, energy
16 and money, building a sterling reputation and substantial goodwill, and in the process creating a
17 brand for itself.

18 23. Beginning as early as 2017, TBG believed that college athletics was likely to
19 undergo significant change with respect to NIL programs across the country to allow college
20 athletes to benefit from the marketing of their own name, image and likeness (a practice that was
21 largely prohibited until 2021).

22 24. Specifically, at that time, TBG believed the prohibition on athletes marketing their
23 own NIL was likely going to change or be eliminated, so it began developing a strategy to market
24 its professional sports group licensing experience to college athletic departments.

25 25. TBG invested significant time, effort, and money into this belief and strategy, even
26 before the rules surrounding NIL were changed, going so far as to develop co-branded programs
27 with one particular university’s alumni in two different sports so that the foundations for future
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1 work with current student-athletes would be in place when the NIL restrictions were lifted by the
2 NCAA.

3 26. When the NIL rules did eventually change in 2021, college athletes were permitted
4 to capitalize on their NIL while still in school, and TBG quickly became a leader in the new
5 industry of collegiate group licensing.

6 **TBG's Agreements with Schools and Student-Athletes**

7 27. To capitalize on co-branding opportunities for its student-athlete clients, TBG
8 enters into Collaboration Agreements with colleges and universities to manage the schools' Group
9 Licensing Programs – which it defines as “those licensing or sponsorship programs in which a
10 collegiate licensee or collegiate sponsor uses the Athlete Attributes of three (3) or more Athletes
11 from any one specific sport or six (6) or more Athletes from multiple sports in combination with
12 University trademarks.”

13 28. TBG typically defines Athlete Attributes to mean “the Athlete’s name, nickname,
14 initials, autograph/signature, facsimile, voice, caricature, photograph, portrait, picture, image,
15 likeness, jersey number, statistics, data, biographical information or any other identifiable feature
16 in Collegiate Group Licensing Programs of any kind.”

17 29. As used herein, “Partner Schools” refers to those colleges and universities with
18 whom TBG has entered into Collaboration Agreements to manage the schools' Group Licensing
19 Programs.

20 30. Pursuant to these Collaboration Agreements, TBG obtains the right to work with
21 its Partner Schools' licensees and sponsors to explore and develop co-branded opportunities for
22 student-athletes and to manage the schools' Group Licensing Programs.

23 31. In connection with the Collaboration Agreements, TBG separately contracts with
24 individual student-athletes at these Partner Schools, entering into Group Licensing Authorization
25 and Assignment Agreements (“GLAs”), through which a participating student-athlete grants and
26 assigns to TBG the right to use and to grant to licensees and sponsors the right to use the student-
27 athlete's NIL for co-branded opportunities with the student-athlete's school and sports team in
28 group licensing programs.

1 32. Presently, 65 of TBG’s Partner Schools have NCAA football programs, 54 of which
2 are Division I schools. TBG likewise has active GLAs with 3,725 current-roster² football players
3 at these Partner Schools, including players residing in California.

4 33. As used herein, “Client Athletes” refers to those 3,725 student-athlete football
5 players with whom TBG has entered into GLAs for the right to use and market the players’ NIL
6 in connection with their respective schools’ Group Licensing Programs.

7 34. TBG’s Collaboration Agreements and GLAs may differ slightly between parties,
8 but the material provisions relevant to this action are substantially the same across all of those
9 contract.

10 35. Each GLA provides for the assignment of the Client Athlete’s NIL rights in
11 connection with their school’s Group Licensing Program, stating as follows:

12 The undersigned, **an Athlete at [Partner School], hereby grants and**
13 **assigns to TBG** and its licensing affiliates during the term only of this
14 **Agreement, the worldwide right to use and to grant to licensees and**
15 **sponsors the right to use all or any combination of [Client Athlete’s]**
16 **name, nickname, initials, autograph/signature, facsimile, voice,**
17 **caricature, photograph, portrait, picture, image, likeness, jersey**
18 **number, statistics, data, biographical information or any other**
19 **identifiable feature (collectively known as “Athlete Attributes”)** in
20 Collegiate Group Licensing Programs that also include the use of [Partner
21 School’s] intellectual property. “Collegiate Group Licensing Programs” are
22 defined as those licensing or sponsorship programs in which a collegiate
23 licensee or collegiate sponsor uses the Athlete Attributes of three (3) or
24 more current [Partner School] Athletes from one sport or six (6) or more
25 from multiple sports, either in combination with University trademarks and
26 logos or separately as a group.

21 (emphasis added).

23 36. Attached as **Exhibit 1** is a true and correct copy of TBG’s GLA template that TBG
24 uses with its Client Athletes.³ The template GLA of Exhibit 1 is substantially similar to all of
25 TBG’s executed GLAs in all material aspects.

26 ² This number does not include incoming 2023 freshmen, a number of whom TBG has entered into GLAs with or
27 with whom TBG is in final discussions.

28 ³ TBG will provide a list of all Client Athletes with whom TBG has entered into GLAs upon request and once a
confidential protective order is entered.

1 37. TBG’s GLAs further clarify that, “[t]he focus of the Collegiate Group Licensing
2 Programs will be co-branded licensing opportunities involving groups of Athletes’ NIL along with
3 [the Partner School’s] IP.”

4 38. In combination, TBG’s Collaboration Agreements with the Partner Schools and
5 GLAs with the schools’ student-athletes allow TBG to pursue group NIL opportunities for Client
6 Athletes, knowing that they can use the schools’ logos and other IP to do so; in other words, while
7 TBG must collaborate with its Partner Schools to use their IP while pursuing opportunities for the
8 student-athletes, TBG’s clients in doing so are the student-athletes—not the schools.

9 39. In fact, TBG receives no compensation or royalties from the Partner Schools.
10 Pursuant to its agreements, Client Athletes assign to TBG the right to use and to grant to others
11 the right to use the Client Athletes’ NIL in Group Licensing deals, and TBG contracts directly with
12 sponsors and licensees for the use of its Partner Schools’ and Client Athletes’ NIL. TBG then
13 distributes the royalty revenues received from the sponsor or licensee to the participating Client
14 Athletes. Typically, TBG retains a percentage commission of the Client Athlete’s share of royalty
15 revenue received, including royalties from video game, trading card, merchandise, and apparel
16 sponsorships, and distributes the balance to the participating Client Athletes.

17 40. All of TBG’s Collaboration Agreements contain provisions designating TBG as
18 either the exclusive or preferred contractor for the Partner Schools’ Group Licensing Programs.

19 41. The following is a representative exclusivity provision from TBG’s Collaboration
20 Agreement with one Partner School in the Big Ten Conference:

21 6. EXCLUSIVITY. During the Term of this Agreement, [University]
22 recognizes TBG and [University’s] exclusive agent to develop, implement
23 and manage the Group Licensing Program among its current Athletes.
24 During such time, [University] shall not engaged any other third party,
25 without the express written consent of TBG, to develop, implement or
26 manage any similar program involving a group of any size of current or
27 former [University] Athletes.

28 42. Attached as **Exhibit 2** is a true and correct copy of a Collaboration Agreement
entered into between TBG and a Partner School, pursuant to which TBG is the exclusive manager

1 of the Group Licensing Program. The Collaboration Agreement attached as Exhibit 2 is
2 substantially the same as TBG's other Collaboration Agreements which grant TBG exclusivity.

3 43. Certain other of TBG's Collaboration Agreements include Preferred Provider
4 provisions, which state that the Partner School "shall consider TBG as its preferred provider of a
5 Group Licensing Program for Athletes, and shall not, without TBG's written consent, contract
6 with any other party to develop, implement or manage any substantially similar group licensing
7 program for groups of any size of Athletes."

8 44. Attached as **Exhibit 3** is a true and correct copy of a Collaboration Agreement
9 entered into between TBG and a Partner School, pursuant to which TBG is the preferred provider
10 for the Group Licensing Program. The Collaboration Agreement attached as Exhibit 3 is
11 substantially the same as TBG's other preferred provider agreements.

12 45. Pursuant to TBG's Collaboration Agreements, a third-party cannot use the Partner
13 School's trademarks, logos or other IP in combination with the NIL or other Athlete Attributes of
14 three or more of a Partner Schools' student-athletes from any one specific sport or six or more
15 student-athletes from multiple sports (i.e. Group Licensing) without TBG's authorization or
16 consent.

17 46. Note that while the Collaboration Agreements establish TBG as the exclusive or
18 preferred agent for Group Licensing Programs, neither the Collaboration Agreements nor the
19 GLAs prohibit or prevent the Partner Schools' student-athletes from individually marketing or
20 licensing their NIL, so long as such NIL use does not implicate the Group Licensing Program.

21 47. As an example, consistent with the Collaboration Agreement and the GLA, a
22 student-athlete from a Partner School could individually contract with an athletic apparel company
23 for the use of the athlete's NIL in an advertising campaign depicting only that individual (e.g.
24 Michael Jordan's "Air Jordan" campaign with Nike). In this example involving an individual
25 athlete, Group Licensing Rights are not implicated.

26 48. Conversely, Group Licensing Rights *would* be implicated if three or more members
27 of a Partner School's basketball team contracted with an athletic apparel company for the use of
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1 their NIL in an advertising campaign depicting the teammates with their school uniform and
2 branding.

3 49. In fact, the GLAs include express language making clear that TBG’s representation
4 applies only to Group Licensing Rights. Each GLA includes the following:

5 Please note that this Agreement does NOT limit an Athlete’s right to grant
6 the use of his/her individual Athlete Attributes or individual NIL for
7 publicity, advertising, or other commercial purposes, except that such
8 individual grants will not preclude the undersigned also from being covered
9 by the Collegiate Group Licensing Programs granted by TBG. This
10 Agreement also does not limit the Athlete’s right to join with other Athletes
11 to grant the group use of their NIL for publicity, advertising or other
12 commercial purposes IF any such other group NIL grant does not involve
13 any use or co-branding of any kind of [Partner School’s] own IP or property
14 (such as trademarks, logos, jerseys, names, nicknames, etc.)

15 50. As evidenced by this language, TBG’s mission is not to limit the commercial
16 opportunities for its Client Athletes, but rather to expand those opportunities and leverage TBG’s
17 expansive experience in Group Licensing, such that its Client Athletes receive fair compensation
18 for the use of their NIL in connection with the co-branding of their school.

19 51. Based on the reported compensation offered to student-athletes by EA for their
20 participation in the Game, EA’s strategy is contrary to TBG’s mission and certainly contrary to
21 the interests of TBG’s Client Athletes; EA’s strategy is, in fact, contrary to the interests of college
22 football student–athletes, generally.

23 **History of EA Sports Game**

24 52. Before NCAA rules allowed student-athletes to profit off of NIL, beginning in
25 1998, EA Sports produced and sold its NCAA-branded video game featuring various college
26 football teams that allowed users to control digital avatars of college football players in simulated
27 matches.⁴

28 ⁴ Gia Silahian, *EA Sports: It's in the Federal Legislation*, 45 *Hastings COMM. & ENT. L.J.* 75 (2023).

1 53. EA Sports first released the game in 1998, under the title “*NCAA Football 98*,” and
2 thereafter released a new version of *NCAA Football* each year until 2013 (the 1998-2013 version
3 of the game is collectively referred to herein as “*NCAA Football*”).

4 54. *NCAA Football* included a unique digital avatar for each college football player
5 represented in the game. The digital avatars did not identify the players by name, but they did
6 possess the same identifying attributes, including their playing position and uniform number.⁵

7 55. Consistent with NCAA rules at the time, EA Sports did not compensate the players
8 for use of their NIL in *NCAA Football*.⁶

9 56. The *NCAA Football* franchise was a consistent top-seller for EA Sports, generating
10 tens of millions in unit sales between 2005-2014.⁷

11 57. Despite its massive popularity, following a number of legal challenges regarding
12 compensation for student-athletes, EA Sports stopped producing *NCAA Football* in 2013.

13 58. After its discontinuation and in recent years, a college football video game was one
14 of the most-requested games by fans to EA Sports.⁸

15 **EA’s Announced Return of *EA Sports College Football***

16 59. On February 2, 2021, EA Sports announced that it was bringing back the Game, to
17 be relaunched as *EA Sports College Football*.

18 60. In its February 2, 2021 press release, EA Sports Executive Vice President and
19 General Manager, Cam Weber, touted that “[w]e’ve heard from the millions of passionate fans
20 requesting the return of college football video games,” and we are “beyond thrilled to say we are
21 back in development.”

22 61. EA Sports also announced that it would be partnering with Collegiate Licensing
23 Committee (“CLC”), a collegiate trademark licensing company, to develop the Game. In its

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25 ⁵ *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268, 1271 (9th Cir. 2013).

26 ⁶ *See id.*

27 ⁷ EA Sports Press Release, *Electronic Arts & CLC to Bring Back College Football Video Games*,
<https://ir.ea.com/press-releases/press-release-details/2021/Electronic-Arts--CLC-to-Bring-Back-College-Football-Video-Games/default.aspx> (February 2, 2021).

28 ⁸ *Id.*

1 February 2, 2021 announcement, EA revealed that it had reached a deal with CLC that includes
2 licenses for nearly 100 Football Bowl Subdivision (“FBS”)⁹ schools’ intellectual property – such
3 as logos, stadiums, mascots, and fight songs.¹⁰

4 62. CLC’s Chief Executive Officer, Cory Moss, shared in EA Sports’ excitement,
5 stating that he was excited to bring back “one of the most popular collegiate licensed products in
6 our history.”

7 63. EA Sports’ February 2021 announcement came amid uncertainty regarding NCAA
8 rules relating to student-athlete NIL rights, and at the time, EA Sports reported that the Game
9 would not include student-athlete NIL but noted that EA Sports was watching developments with
10 NIL closely.

11 64. Following the Supreme Court’s decision in *Alston*, EA Sports released the
12 following statement:

13 We are watching the recent developments regarding student-athlete
14 name, image and likeness very closely. It's still very early stages at
15 this point, and we plan to explore the possibility of including players
16 in EA SPORTS College Football. For now, our development team
17 is focused on working with our partners at CLC to ensure the game
18 authentically showcases the great sport of college football and the
19 more than 100 institutions signed on to be featured in our game.¹¹

20 65. Aware of the publicity surrounding EA Sports’ announcement about the Game, and
21 its related statements regarding the use of student-athlete NILs within the same, TBG reached out
22 to EA Sports early-on to ensure it was aware of and honored TBG’s rights with respect to group
23 licensing management for its Partner Schools.

24 66. In fact, as early as 2021, TBG’s representatives were in regular communication
25 with EA about TBG’s Collaboration Agreements with Partner Schools, with TBG regularly
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27 ⁹ NCAA Division I Football Bowl Subdivision is the highest level of college football and generally consists of the
28 largest schools in the NCAA. Presently, there are 133 schools in the FBS.

¹⁰ Mike Hume and Rick Maese, *EA Sports revives college football franchise as courts mull NCAA’s stance on
amateurism*, <https://www.washingtonpost.com/video-games/2021/02/02/ea-sports-college-football/> (February 2,
2021).

¹¹ Gia Silahian, *EA Sports: It's in the Federal Legislation*, 45 Hastings COMM. & ENT. L.J. 75 (2023).

1 reporting to EA about new partnerships formed and discussing possible opportunities for Group
2 Licensing, including participation of EA’s Partner Schools and Client Athletes in the Game.

3 67. Over the next year, TBG communicated with EA about its re-release of the Game,
4 the possible use of student-athlete NIL in the Game, and specifically about TBG’s exclusive rights
5 with respect to its Partner Schools’ Group Licensing Programs.

6 68. On April 15, 2022, Wesley Haynes, President and Founder of TBG, emailed Paul
7 Cairns, Chief Business Officer for EA to follow up from one of their recent conversations. In his
8 April 15, 2022 email, Mr. Haynes provided Mr. Cairns with six sample Collaboration Agreements
9 for FBS Partner Schools to ensure that EA was aware of and understood TBG’s rights. TBG is
10 now aware that EA intends to include all six of those Partner Schools in the Game.

11 69. On May 12, 2022, Mr. Haynes spoke with Mr. Cairns again about the continued
12 development of the Game and TBG’s rights with respect to Group Licensing Programs.

13 70. During the May 12, 2022 call, Mr. Haynes discussed TBG’s exclusive agreements
14 and asked whether EA planned to include TBG’s Partner Schools in the Game. Mr. Cairns
15 informed Mr. Haynes that “rest assured,” EA would put all of TBG’s Partner Schools and
16 Sponsored-Players in the Game and would enter into direct agreements with TBG at all schools
17 where TBG has rights. Mr. Cairns also stated that EA “100% plans to work with [TBG].”

18 71. Between May 2022 and May 2023, representatives of TBG and EA kept in touch
19 regarding EA’s relaunch of the Game and TBG’s growing list of Partner Schools for whom it is
20 the exclusive or preferred manager of Group Licensing Programs.

21 72. On May 17, 2023, Sean O’Brien, an Executive Vice President of EA, emailed Mr.
22 Haynes, *et al.*, reporting that EA had contracted with OneTeam Partners (“OneTeam”) to
23 “facilitate the opportunity for college athletes to opt in and be included in our CFB video game[.]”
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1 copy of the May 24, 2023 email correspondence between EA and TBG’s Partner School is attached
2 hereto as **Exhibit 5**.¹⁴

3 78. On May 30, 2023, EA Sports, through Senior Counsel, Betsy Contro, sent
4 correspondence to TBG’s counsel, confirming that “EA plans to provide eligible college football
5 athletes the opportunity to opt-in individually and license their likeness rights directly to EA for
6 inclusions in the Game.” A true and accurate copy of Ms. Contro’s May 30, 2023 email is attached
7 hereto as **Exhibit 6**.

8 79. Also in her May 30, 2023 email, Ms. Contro further stated that its aim is “to allow
9 individual athletes an inclusive and equitable opportunity to decide whether or not they would like
10 their name and likeness to be included in the Game and to license those (unencumbered) rights
11 directly from eligible student athletes, independently and unrelated to any potential licensing by
12 EA of other intellectual property rights (e.g., division, conference, school, group, etc.).”

13 80. Despite the clear implication of TBG’s Group Licensing rights, Ms. Contro
14 dismissed TBG’s contractual relationships, stating, “[t]o be clear, this has nothing to do with the
15 group rights with student athletes that BrandR claims to have.”

16 81. On May 31, 2023, TBG heard from certain of its Partner Schools that EA was
17 pressuring schools who had not yet opted in to the Game to approve their participation in the Game
18 by June 30, 2023.

19 82. TBG learned of EA’s June 30 deadline from representatives of certain of its Partner
20 Schools who asked TBG how they should proceed. TBG has heard from a number of Partner
21 Schools that the schools do not want to miss out on the opportunity for its student-athletes to
22 participate in the Game, but that they do not want to breach their contractual obligations to TBG.

23 83. On June 1, 2023, TBG’s counsel responded and sent EA Sports a second letter,
24 clearly explaining that if EA Sports intends to use the NIL of student-athletes in connection with
25 Partner Schools’ name, branding, logos, or other IP in the Game, and the Game involves more than
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28 ¹⁴ To protect the confidentiality and privacy of its Partner Schools, TBG has redacted Exhibit 5. TBG will provide
an unredacted copy of the email upon request and once a confidential protective order is entered.

1 three individual athletes, then the Game implicates group rights. A true and accurate copy of
 2 TBG's June 1, 2023 letter is attached hereto as **Exhibit 7**.

3 84. Also in its June 1, 2023 letter, TBG's counsel notified EA that TBG's Collaboration
 4 Agreements and GLAs required that EA recognize TBG as its clients' exclusive representative to
 5 the extent EA Sports wishes to include TBG's Partner Schools and Client Athletes in the Game.

6 85. On June 5, 2023, Ms. Contro emailed counsel for TBG and asked for a list of the
 7 student-athletes represented by TBG. Counsel for TBG responded on June 7, 2023, identifying
 8 the following Partner Schools for whom TBG is the exclusive or preferred partner for their
 9 respective Group Licensing Programs:

10 Appalachian State University	University of Louisville*	Oregon State University
11 Arizona State University	Marshall University	University of Pittsburgh
12 University of Arkansas	University of Maryland	Purdue University
13 Auburn University	University of Miami*	Rutgers, The State University of New Jersey (Rutgers University)
14 Baylor University	University of Michigan	Southern Methodist University
15 Boston College	Michigan State University	Syracuse University
16 Brigham Young University	Middle Tennessee State University	The University of Texas at Arlington
17 Campbell University	Mississippi State University	The University of Texas at Austin
18 University of Cincinnati	University of Missouri	Texas Christian University*
19 University of Colorado Boulder	Murray State University	The University of Texas at El Paso
20 Colorado State University	North Carolina Central University	The University of Texas Permian Basin
21 University of Connecticut	North Carolina State University	The University of Texas at San Antonio
22 University of Dayton	University of Nebraska-Lincoln	Towson University
23 University of Florida	The University of North Carolina at Chapel Hill	Troy University
24 Georgia Institute of Technology	University of North Texas	The University of Utah
25 Gonzaga University	Northwestern University	University of Virginia
26 University of Hawai'i at Manoa	Ohio University	University of Wyoming
27 University of Houston	The Ohio State University	Villanova University

1	Kansas State University	Oklahoma State University	Wake Forest University
2	Liberty University	Old Dominion University	West Virginia University
3	Louisiana Tech University	The University of Mississippi (Ole Miss)	William Marsh Rice University (Rice University)
4	University of Louisiana at Lafayette	Oral Roberts University	
5	*Schools for whom TBG's exclusivity rights are limited to the football program.		

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7 86. Also in its June 7, 2023 response, TBG provided EA with the following explanation
8 of how its Group Licensing rights are implicated by the use of TBG's Partner Schools and Student
9 Athletes in the Game:

10 Given the nature of the EA Sports College Football Game, we think
11 this list is sufficient to provide EA with a general understanding of
12 TBG's representation. As we explained previously, we presume
13 that the Game will require the use of NIL from three or more football
14 players from a given school, which necessarily implicates TBG's
15 Group Licensing Rights for its partner schools. TBG has entered
16 into Student-Athlete Group Licensing Authorization & Assignment
17 Agreements with almost all of the football players from these
18 schools, authorizing TBG to act as the student-athletes' exclusive
19 agent with respect to their respective school's Group Licensing
20 Program.

21 87. A true and accurate copy of TBG's June 7, 2023 email is attached hereto as **Exhibit**
22 **8.**

23 88. To date, EA has not responded to TBG's June 7, 2023 email. Counsel for TBG
24 followed up with Ms. Contro by email on June 12, 2023, requesting an opportunity to discuss
25 TBG's rights and EA's plans, but EA has not responded.

26 89. However, notwithstanding TBG's communications, EA Sports has informed (and
27 continues to inform) TBG's Partner Schools that Partner Schools negotiating and contracting
28 directly with EA Sports, and Client Athletes contracting directly with EA (or an EA affiliate) will
not interfere with TBG's exclusivity rights.

90. This assertion *by EA* is patently false.

91. EA cannot circumvent TBG's or its Partner Schools' and Client Athletes'
contractual rights by entering into individual and direct contracts for participation in the Game.

1 Indeed, TBG has *individual* and *direct* contracts with each of its Client Athletes. TBG’s GLAs
2 with its Client Athletes plainly assign to TBG the right to use and license its Client Athletes’ NIL
3 in licensing programs such as EA’s Game, where one Client Athlete’s NIL will be used in
4 combination with two or more teammates and their school’s IP.

5 92. Further, EA continues to push TBG’s Partner Schools to opt-in to the Game by its
6 arbitrary June 30 deadline or else they will be ineligible from participating.

7 93. Despite repeated notices that negotiating directly with Partner Schools or Client
8 Athletes violates TBG’s Collaboration Agreements, EA Sports continues to negotiate in direct,
9 knowing, and intentional interference with TBG’s contractual rights.

10 94. EA’s conduct and misrepresentations have disrupted TBG’s contractual
11 relationships with its Partner Schools and Client Athletes.

12 95. Indeed, certain of TBG’s Partner Schools have already opted-in to the Game,
13 violating their exclusive Collaboration Agreements with TBG, while others have expressed
14 confusion as to how they should proceed when they are interested in participating in the Game and
15 offering that opportunity to their student-athletes, but do not want to run afoul of their contractual
16 obligations with TBG.

17 **EA’s Compensation to Student-Athletes and Schools**

18 96. EA’s announced return of the Game prompted significant media interest,
19 particularly since EA revealed it would use student-athletes’ NIL in connection with their
20 respective teams’ logos and IP and that EA would compensate student-athletes for their NIL.

21 97. In the May 17, 2023 announcement, EA Sports reported that the participating
22 players “will receive compensation for being placed in the game,” and that details regarding “how
23 much an athlete will receive and the structure of payments – are still being finalized.”¹⁵

24 98. That same day, EA reportedly told ESPN that the goal is to be “as inclusive and
25 equitable as possible[,]” while OneTeam’s website referenced that if “the influence of individual
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28 ¹⁵ *Id.*

1 sales couldn't be figured out" that revenue would be divided equally among athletes included in
2 each licensing program.¹⁶

3 99. Since then, numerous articles have been published regarding the reported
4 compensation EA is offering to student-athletes for their participation in the Game. Reportedly,
5 EA plans to offer a flat, one-time payment of \$500 to each player for the use of their NIL in the
6 Game, and no payment for royalties on actual sales of the Game.¹⁷

7 100. TBG has also heard from its Partner Schools that EA is offering to pay participating
8 schools some percentage of income received from the Game, with the total compensation pool
9 available to schools being 10% of the Game's revenue, with guaranteed payments ranging from
10 \$10,400 to \$104,900 depending on variables such as the football program's prominence, recent
11 national ranking, etc.

12 101. EA's proposed compensation to players for participation in the Game is far below
13 market value.

14 102. Indeed this reported amount is far less than EA paid players in settlement of the
15 seminal NIL case, *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1056 (9th Cir.
16 2015), where former University of California, Los Angeles basketball player, Ed O'Bannon, sued
17 EA, *et al.*, after recognizing himself as a digital avatar in EA's *NCAA Basketball 2009* video game.
18 O'Bannon joined with other former NCAA basketball and football players to form the class of
19 student-athletes, with whom EA eventually settled for a total of \$60 million. Individual players
20 received varying amounts in the settlement, but reports indicate that players received on average
21 about \$1,600 each after payment of expenses and legal fees.¹⁸

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24 ¹⁶ Mike McDaniel, *EA Sports Reaches Agreement to Have FBS Players in College Football Game*,
25 <https://www.si.com/college/2023/05/17/ea-sports-reaches-agreement-real-fbs-players-college-football-game-nil>
(May 17, 2023).

26 ¹⁷ James Batchelor, *College football players urged to boycott EA Sports game over low pay*,
27 <https://www.gamesindustry.biz/college-football-players-urged-to-boycott-ea-sports-game-over-low-pay> (June 8,
2023).

28 ¹⁸ Stephen Totilo, *EA Sports reaches deal to pay college football athletes*, <https://www.axios.com/2023/05/18/ea-sports-college-football-deal> (May 18, 2023).

1 103. As another example, EA Sports is reportedly paying some National Football
2 League players \$28,000 each to appear in EA’s annual release of its *Madden* video game.¹⁹

3 104. Not only is the reported \$500 per player insufficient to compensate the Client
4 Athletes for the use of their NIL in the Game, but TBG recently learned that the potential cost to
5 players is even higher. EA is reportedly seeking exclusive rights to use participating schools’
6 trademarks and related indicia for any current or future simulation game play within college
7 football—not just the Game—and non-exclusive rights for non-simulation games. Thus, not only
8 would players’ compensation for the use of their NIL in the Game be capped at \$500, but they
9 would be precluded from earning additional compensation off of their NIL in other simulation
10 games such as arcade and video game opportunities.

11 105. This is exactly why it is critical that these student-athletes have the benefit of TBG’s
12 representation in negotiating with corporate giants like EA.

13 **The Client Athletes and TBG will be Irreparably Harmed if EA is not Enjoined**

14 106. EA has made clear its intent to violate not only TBG’s contractual relationships,
15 but also the Client Athletes’ right to contract for fair representation in negotiating Group Licensing
16 sponsorships and licensing deals.

17 107. TBG’s Client Athletes have made clear their intent and desire to be represented by
18 TBG in sponsorship and licensing opportunities involving Group Licensing Programs, specifically
19 those involving video games.

20 108. TBG’s GLAs state that “[t]he focus of the Collegiate Group Licensing Programs
21 will be co-branded opportunities involving groups of Athletes’ NIL along with [the Partner
22 School’s] IP[,]” and that the Client Athletes “shall receive 70% (Seventy Percent) of the royalties
23 from third-party licensees in the video game [category.]”

24 109. Unlike professional athletes, collegiate student-athletes do not yet have an
25 organized union to represent them in Group Licensing Programs.

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27 ¹⁹ Franca Quarneti, *EA Sports’ College Football Return Marred by Potential Boycott Over Poor Compensation*,
28 <https://www.benzinga.com/general/gaming/23/06/32786383/ea-sports-college-football-return-marred-by-potential-boycott-over-poor-compensation> (June 8, 2023).

1 110. For instance, players in the National Football League (“NFL”) are represented by
2 the NFL Players Association (“NFLPA”), and the NFLPA negotiates with EA for the licensing of
3 players’ NIL rights to be included in the annual *Madden* video game.

4 111. TBG’s Client Athletes do not have a union, but they are not without representation.
5 They have TBG, whom they engaged to leverage its industry expertise and substantial market
6 share of FBS Partner Schools and Client Athletes to negotiate fair compensation for the Client-
7 Athletes participation in Group Licensing Programs such as EA’s Game.

8 112. TBG is informed and understands that EA intends to include most—if not all—of
9 its Partner Schools and Client Athletes in the Game. This, of course, makes sense given that TBG’s
10 Partner Schools include 35 of the 65 teams in Power Five conferences²⁰, six of the 14 programs
11 appearing in the College Football Playoffs since 2014, nine teams ranked in the Associated Press
12 Top 25 at the end of the 2022-2023 college football season, and programs accounting for seven of
13 the 16 Bowl Championship Series (“BCS”) championships during the 1998-2013 BCS era.

14 113. Further, at least 54 of TBG’s Partner Schools were featured in past iterations of the
15 Game before it was discontinued.

16 114. Because of these relationships, TBG is well-positioned to influence the amount of
17 compensation to be paid by EA to not only its Client Athletes, but to all other student-athletes who
18 may wish to participate in the Game.

19 115. EA’s attempt to exclude TBG from discussions regarding the use of Client
20 Athletes’ NIL in the Game amounts to anticompetitive conduct that is contrary to the public
21 interest and public policy of California.

22 116. As collegiate NIL rights have evolved over the past several years, California has
23 particularly championed the rights of student-athletes to be fairly compensated for the use of their
24 NIL. California was the first state in the country to create a legal right for college athletes to be
25 compensated for the commercial use of their NIL. California’s Fair Pay to Play Act was
26 groundbreaking legislation in the area of student-athletes NIL rights, and importantly authorizes

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28 ²⁰ The “Power Five” conferences include the Atlantic Coast Conference, Big Ten Conference, Big 12 Conference,
Pac-12 Conference, and Southeastern Conference.

1 college athletes to hire agents and other representatives to assist them in negotiating and securing
2 commercial opportunities.²¹

3 117. EA seeks to reverse that evolution, denying not only TBG's Client Athletes the
4 right to their desired representation, but also denying all participating student-athletes fair
5 compensation for the use of their NIL in the Game.

6 118. Again, EA's conduct goes beyond its failure to offer fair compensation for the
7 Client Athletes' NIL in *this* Game, as EA is reportedly seeking to obtain exclusivity rights for the
8 use of Client Athletes' NIL in *other* simulation video games, compounding the unfairness of EA's
9 offer.

10 119. EA's interference with TBG's exclusive Collaboration Agreements has caused and
11 will continue to cause TBG immeasurable and irreparable harm.

12 120. EA's false and deceptive assurances to TBG's Partner Schools that contracting
13 directly with EA will not violate the Collaboration Agreements with TBG, as well as EA's artificial
14 deadline for the schools to opt-in to the Game by June 30, 2023 places TBG's Partner Schools in
15 the unenviable position of either breaching their contracts with TBG or potentially losing the
16 opportunity for themselves and their athletes to participate in the Game.

17 121. Similarly, EA's tactics are misleading and deceptive to TBG's Client Athletes, the
18 vast majority of who are not represented by attorneys or player's agents and who may unwittingly
19 opt-in to EA's game, not knowing that they are breaching their GLAs with TBG and that they are
20 also likely giving up other NIL sponsorship and licensing opportunities.

21 122. EA's tactics will also cause irreparable harm to TBG's Client Athletes, and to every
22 student-athlete who opts-in to their scheme for unfair compensation, because they are being
23 deprived of the opportunity to have their own representative negotiate on their behalves for fair
24 compensation for the use of their NIL. That is the fundamental purpose of TBG's Collaboration
25 Agreements, and that is what is being circumvented by EA's program and its misleading tactics.

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27 ²¹ See Cal. Educ. Code § 67456; Michael McCann, *What's Next After California Signs Game Changer Fair Pay to*
28 *Play Act into Law?*, <https://www.si.com/college/2019/09/30/fair-pay-to-play-act-law-ncaa-california-pac-12>
(September 30, 2019).

1 130. TBG does not consent to any agreement between EA (or any other third-party) and
2 its Partner Schools and Client Athletes for the use of their respective IP and NIL in the Game.

3 131. By requiring TBG's Partner Schools and Client Athletes to negotiate directly with
4 EA or an EA affiliate for their participation in the Game, EA is preventing TBG and its Partner
5 Schools and Client Athletes from performing their contractual obligations under the Collaboration
6 Agreements and GLAs.

7 132. Because of EA's interference and direct communications with TBG's Partner
8 Schools, certain of the Partner Schools have already either contracted directly with EA or agreed
9 to contract directly with EA for the use of their IP and their participation in the Game, in direct
10 violation of their contractual obligations to TBG.

11 133. EA ultimately intends to engage most—if not all—of TBG's Partner Schools and
12 Client Athletes to participate in the Game.

13 134. EA Sports intended to disrupt the performance of TBG, its Partner Schools, and
14 Client Athletes of their contractual obligations under the respective Collaboration Agreements and
15 GLAs. Further, EA Sports knew the disruption of the performance by the parties of their
16 obligations under the respective Collaboration Agreements and GLAs was substantially certain to
17 occur.

18 135. As a result of EA's interference with TBG's contractual relationships with its
19 Partner Schools and Client Athletes, TBG has been harmed by the deprivation of its contractual
20 right to represent its Client Athletes in negotiations with EA for fair compensation for the use of
21 the Client Athletes' NIL in the Game.

22 136. Also as a result of EA's interference with TBG's contractual relationships with its
23 Partner Schools and Client Athletes, TBG has suffered and will continue to suffer damages
24 resulting from lost royalties owed to TBG under the GLAs, in an amount to be determined at trial.
25 Disgorgement is also appropriate.

26 137. EA Sports' conduct was a substantial factor in causing TBG's harm.

27 138. Further, preliminary and permanent injunctive relief is appropriate to restrain EA
28 Sports from engaging in interference.

1 157. In its public reports to the media and private communications with TBG’s Partner
2 Schools, EA communicated a clear intent to use the NIL of most—if not all—of TBG’s Client
3 Athletes in its Game.

4 158. EA has knowingly engaged certain of TBG’s Partner Schools to participate in the
5 Game and has announced its intention to include the Partner Schools’ brand, logos, and other IP
6 in the Game.

7 159. EA has likewise announced its intention to appropriate and use the Client Athletes’
8 NIL for its own commercial gain, in violation of TBG’s Group Licensing Rights, without TBG’s
9 consent, and in knowing violation of its right of publicity.

10 160. EA’s knowing appropriation of the Client Athletes’ NIL is for its own commercial
11 gain and for the purpose of soliciting sales of EA’s NCAA College Football video game.

12 161. Based on the past performance of EA’s NCAA College Football game and reported
13 projections, EA expects to sell millions of units of its Game, generating hundreds of millions of
14 dollars in revenue from the sale of the Game, featuring TBG’s Partner Schools’ IP and Client
15 Athletes’ NIL.

16 162. EA’s Game will include the NIL of at least three student-athletes from the Partner
17 Schools represented in the Game, and thus, EA’s use of the Client Athletes’ NIL in the Game
18 constitutes Group Licensing, as defined by TBG’s Collaboration Agreements and GLAs, for which
19 TBG owns the exclusive rights.

20 163. TBG does not consent to EA’s use of its Client Athletes’ NIL in the Game.

21 164. As a direct and proximate result of EA’s violation of TBG’s right of publicity, TBG
22 has suffered and will continue to suffer damages resulting from lost royalties owed to TBG under
23 the GLAs, in an amount to be determined at trial. Disgorgement is also appropriate.

24 165. As a further direct and proximate result of the wrongful conduct set forth above,
25 TBG has been injured by the loss of the right to control the commercial exploitation of its Client
26 Athletes’ NIL.

27 166. Further, preliminary and permanent injunctive relief is appropriate to restrain EA
28 Sports from engaging in interference and violating TBG’s right of publicity.

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JURY DEMAND

Plaintiff TBG hereby demands a trial by jury.

KATTEN MUCHIN ROSENMAN LLP

By: /s/ Christopher D. Beatty

Christopher D. Beatty (SBN 266466)
chris.beatty@katten.com
Ashley T. Brines (SBN 322988)
ashley.brines@katten.com
2029 Century Park East, Suite 2600
Los Angeles, CA 90067
Telephone: 310.788.4400
Facsimile: 310.788.4471

Richard L. Farley (*pro hac vice* forthcoming)
Richard.farley@katten.com
Lindsey L. Smith (*pro hac vice* forthcoming)
lindsey.smith@katten.com
Kelsey R. Panizzolo (*pro hac vice*
forthcoming)
Kelsey.panizzolo@katten.com
500 S. Tryon Street, Suite 2900
Charlotte, NC 28202-4213
Telephone: 704.344.3178
Facsimile: 704.444.2050

ATTORNEYS FOR THE BRANDR GROUP,
LLC