IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Carl Eller, Priest Holmes, Obafemi Ayanbadejo, and Ryan Collins, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

National Football League, Arizona Cardinals, Inc., Atlanta Falcons Football Club LLC, Baltimore Ravens Limited Partnership, Buffalo Bills, Inc., Panthers Football LLC, Chicago Bears Football Club, Inc., Cincinnati Bengals, Inc., Cleveland Browns LLC, Dallas Cowboys Football Club, Ltd., Denver Broncos Football Club, Detroit Lions, Inc., Green Bay Packers, Inc., Houston NFL Holdings LP, Indianapolis Colts, Inc., Jacksonville Jaguars Ltd., Kansas City Chiefs Football Club, Inc., Miami Dolphins, Ltd., Minnesota Vikings Football Club LLC, New England Patriots, LP, New Orleans Louisiana Saints, LLC, New York Football Giants, Inc., New York Jets Football Club, Inc., Oakland Raiders LP, Philadelphia Eagles Football Club, Inc., Pittsburgh Steelers Sports, Inc., San Diego Chargers Football Co., San Francisco Forty Niners Ltd., Football Northwest LLC, The Rams Football Co. LLC, Buccaneers Limited Partnership, Tennessee Football, Inc., Washington Football Inc.

Defendants.

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Civil Action No:

CLASS ACTION COMPLAINT

INTRODUCTION

1. This class action is brought to enjoin violations by each defendant of the federal antitrust laws and for declaratory relief as described below. Plaintiffs are former professional football players who played with the National Football League ("NFL").

2. The Defendants are the NFL and its 32 member teams. Although the NFL might be viewed as a type of joint venture, The United States Supreme Court held last year in *American Needle, Inc. v. NFL*, 130 S.Ct. 2201, 2212-13 (2010) that each member team is legally capable of conspiring with other member teams in violation of the antitrust laws:

> The NFL teams do not possess either the unitary decisionmaking quality or the single aggregation of economic power characteristic of independent action. Each of the teams is a substantial, independently owned, and independently managed business. "[T]heir general corporate actions are guided or determined" by "separate corporate consciousnesses," and "[t]heir objectives are" not "common." ... The teams compete with one another, not only on the playing field, but to attract fans, for gate receipts and for contracts with managerial and playing personnel.

3. The NFL is also an adjudicated monopolist that acquired its monopoly power in the market for professional football in violation of Section 2 of the Sherman Act (15 U.S.C. §2). Thus, in *United States Football League v. NFL*, 644 F. Supp. 1040, 1057-58 (S.D.N.Y. 1986), *aff'd*, 842 F.2d 1335 (2d Cir. 1988) ("*USFL*"), the court upheld jury determinations that (a) the NFL held monopoly power in the professional football market, receiving 95% of the revenues from major league

professional football and (b) it had acquired that power through "predatory conduct." These findings have been given collateral estoppel effect in subsequent antitrust cases against the NFL. *E.g.*, *McNeil v. NFL*, 790 F.Supp. 871, 889-96 (D. Minn. 1992) ("*McNeil II*"). Those findings are entitled to similar effect in this case.

4. The NFL has also been determined to have abused its dominant position in the market for professional football services, which is the relevant market at issue in this case. For example, in *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977) ("*Mackey*"), the issue was the validity of the "Rozelle Rule," which decreed that when a football player's contract with an NFL club expired and he moved to a different club, his present employer had to provide compensation to his former employer, with the NFL Commissioner resolving any dispute. The United States Court of Appeals for the Eighth Circuit upheld the district court's determination of liability after a 55-day trial. The appellate court found that the relevant market was one for professional football services (*id*. at 617-18) and that the "Rozelle Rule, as enforced, unreasonably restrains trade in violation of §1 of the Sherman Act" (*id*. at 622).

5. Likewise, it has been determined that the NFL's College Draft "cannot be regarded as 'reasonable' under the antitrust laws." *Smith v. Pro-Football*, 420 F. Supp. 738, 747 (D.D.C. 1976), *aff'd in part and rev'd in part on other grounds*, 593 F.2d 1173 (D.C. Cir. 1978) ("*Smith*"). This determination as well is entitled to collateral estoppels effect here.

6. Similarly, after a ten-week trial, a jury in another case held that the NFL's conspiratorial Right of First Refusal/Compensation rules (known as "Plan B"

Rules) that limited the mobility of professional football players after their contracts expired and they became "free agents" had a "a substantially harmful effect on competition in the relevant market for the services of professional football players." *McNeil v. NFL*, No. 4-90-476, 1992 WL 315292 at *1 (D. Minn. Sept. 10, 1992) ("*McNeil III*").

7. In 1992, a group of players brought suit seeking relief for injuries they suffered as a result of the very same anticompetitive restraints that the jury in *McNeil III* found violated Section 1 of the Sherman Act. In *Jackson v. NFL*, 802 F.Supp. 226 (D. Minn. 1992) ("*Jackson*"), the district court gave collateral estoppel effect to the jury's findings. *Id*. at 229-30. It then issued a temporary restraining order against the enforcement of the Plan B Rules, stating that "the four players who remain restricted by the Plan B rules make a sufficient showing of irreparable harm because they suffer irreparable injury each week they are restricted under an illegal system of player restraints." *Id*. at 230-31.

8. In this case, the Defendants--the NFL and its separately-owned and independently-operated member teams--have jointly agreed and conspired to deny class members the ability to provide and/or market their services in the major league market for professional football players through an unlawful group boycott and price-fixing arrangement and through anticompetitive restraints on the market freedom of prospective players. This boycott has included a lockout of rookie players seeking an NFL contract for the first time. The lockout has also injured retired or former NFL players who depend upon the NFL for pension and health benefits and who were denied the benefit levels that

would have existed in a competitive market. The admitted purpose of this group boycott is to coerce Plaintiffs and the other players to agree to a new anticompetitive system of players restraints that will, *inter alia*, drastically reduce prospective player compensation levels and benefit levels for retired or former players.

9. The group boycotts, concerted refusals to deal and price-fixing that Defendants are carrying out are *per se* illegal acts under Section 1 of the Sherman Act (15 U.S.C. § 1). They also constitute an unreasonable restraint of trade under the rule of reason. As a result of Defendants' anticompetitive agreements, former professional football players who depend on the NFL for health and retirement benefits are injured, as are existing NFL players and future professional football players who are seeking employment by an NFL club who will be prevented from offering or providing their services in a competitive market and from receiving a competitive market value for their services, and will be denied the freedom of movement available to employees in virtually every other industry in the United States.

JURISDICTION AND VENUE

10. These claims arise and are brought under Section 16 of the Clayton Act, (15 U.S.C. § 26), and Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

11. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337.

12. Venue in this action is proper pursuant to 15 U.S.C. § 22. Each of the Defendants can be found, resides, has an agent, or transacts business in the District of Minnesota, and the unlawful activities were or will be carried on in part by one or more of the Defendants within this district.

THE PARTIES

13. Plaintiff Carl Eller ("Eller") was a premier defensive end in the NFL who played for the Minnesota Vikings from 1964-78 and for the Seattle Seahawks in 1979. He was selected to the Pro Bowl six times (1968-71, 1973-74), was selected as First-team All Pro five times (1968-71, 1973), First-team All Conference seven times (1968-73, 1975), the Newspaper Enterprise Association's NFL Defensive Player of the Year in 1971, and the 1970s All Decade Team. In 2004, he was elected to the Pro Football Hall of Fame. Eller retired after the 1979 season. Eller is the President of the Retired Players Association ("RPA"), a non-profit organization dedicated to providing powerful national advocacy and collegial support for retired professional football players, their families and the community at large.

14. Plaintiff Priest Holmes was a running back in the NFL who played for the Baltimore Ravens (1997-2001) and the Kansas City Chiefs (2001-07). He was selected to the Pro Bowl three times (2001-03), was an All-Pro selection in 2001-03, was NFL Offensive Player of the Year in 2002, and received the Ed Block Courage Award in 2004. He earned a Super Bowl ring with the Baltimore Ravens in Super Bowl XXXV. He retired in 2007.

15. Plaintiff Obafemi Ayanbadejo ("Ayanbadejo") was a fullback in the NFL who played for the Minnesota Vikings (1997-98), Baltimore Ravens (1999-2001), Miami Dolphins (2002-03), Arizona Cardinals (2004-06), and Chicago Bears (2007). Ayanbadejo earned a Super Bowl ring with the Baltimore Ravens in Super Bowl XXXV.

Ayanbadejo was released by the Chicago Bears in 2007 and joined the California Redwoods of the United Football League in 2009.

16. Plaintiff Ryan Collins was a tight end in the NFL who played for the Baltimore Ravens and Cleveland Browns.

17. Defendant NFL, which maintains its offices at 280 Park Avenue, New York, New York, is an unincorporated association consisting of the 32 separately-owned and independently-operated professional football teams that are listed below. The NFL is engaged in interstate commerce in the business of, among other things, operating the sole major professional football league in the United States.

18. The other Defendants are the 32 NFL member teams, each of which, upon information and belief, is a corporation, except where noted below. The NFL and its member teams are referred to collectively herein as the "NFL Defendants." Upon information and belief, each of the Defendant teams is a separately-owned and independent entity which operates a professional football franchise for profit under the team name and in the cities set forth below:

NFL Defendant Team Owner	State of Organization	Team Name (City)
Arizona Cardinals, Inc.	Arizona	Arizona Cardinals
Atlanta Falcons Football Club LLC	Georgia	Atlanta Falcons
Baltimore Ravens Limited Partnership	Maryland	Baltimore Ravens
Buffalo Bills, Inc.	New York	Buffalo Bills
Panthers Football LLC	North Carolina	Carolina Panthers

Chicago Bears Football Club, Inc.	Delaware	Chicago Bears
Cincinnati Bengals, Inc.	Ohio	Cincinnati Bengals
Cleveland Browns LLC	Delaware	Cleveland Browns
Dallas Cowboys Football Club, Ltd.	Texas	Dallas Cowboys
Denver Broncos Football Club	Colorado	Denver Broncos
Detroit Lions, Inc.	Michigan	Detroit Lions
Green Bay Packers, Inc.	Wisconsin	Green Bay Packers
Houston NFL Holdings LP	Delaware	Houston Texans
Indianapolis Colts, Inc.	Delaware	Indianapolis Colts
Jacksonville Jaguars Ltd.	Florida	Jacksonville Jaguars
Kansas City Chiefs Football Club, Inc.	Texas	Kansas City Chiefs
Miami Dolphins, Ltd.	Florida	Miami Dolphins
Minnesota Vikings Football Club LLC	Minnesota	Minnesota Vikings
New England Patriots, LP	Delaware	New England Patriots
New Orleans Louisiana Saints LLC	Texas	New Orleans Saints
New York Football Giants, Inc.	New York	New York Giants
New York Jets Football Club, Inc.	Delaware	New York Jets
Oakland Raiders LP	California	Oakland Raiders
Philadelphia Eagles Football Club, Inc.	Delaware	Philadelphia Eagles
Pittsburgh Steelers Sports, Inc.	Pennsylvania	Pittsburgh Steelers
San Diego Chargers Football Co.	California	San Diego Chargers

San Francisco Forty Niners Ltd.	California	San Francisco 49ers
Football Northwest LLC	Washington	Seattle Seahawks
The Rams Football Company LLC	Delaware	St. Louis Rams
Buccaneers Limited Partnership	Delaware	Tampa Bay Buccaneers
Tennessee Football, Inc.	Delaware	Tennessee Titans
Washington Football Inc.	Maryland	Washington Redskins

CLASS ACTION

19. Plaintiffs are representatives of a class, as defined by Rule 23(b)(1) and/or Rule 23(b)(2) of the Federal Rules of Civil Procedure, and bring this action on behalf of themselves and a class with respect to which the NFL has acted or refused to act on grounds that apply generally to the class.

20. The class is composed of: (a) all retired or former professional football players who were employed by any NFL member club but are not now employed by the NFL or any member club and who receive health, retirement or other benefits from the NFL pursuant to the "Bert Bell/Pete Rozelle NFL Player Retirement Plan" (the "Plan") or other benefit plans subsidized by the NFL, as described below, and (b) potential rookie professional football players who, as of March 11, 2011 to the date of final judgment in this action and the determination of any appeal therefrom, have not previously commenced negotiation with any NFL club concerning employment and have not been selected in any NFL College Draft.

21. The class consists of persons who do not fall within the definition of the Collective Bargaining Unit ("CBU") contained in the 2006-12 Collective Bargaining Agreement ("CBA") between the NFL Management Council and the NFL Players Association ("NFLPA"). The "Preamble" to that CBA describes the CBU as follows:

> This Agreement, which is the product of bona fide, arm's length collective bargaining, is made and entered into as of the 8th day of March, 2006, in accordance with the provisions of the National Labor Relations Act, as amended, by and between the National Football League Management Council ("Management Council" or "NFLMC"), which is recognized as the sole and exclusive bargaining representative of present and future employer member Clubs of the National Football League ("NFL" or "League"), and the National Football League Players Association ("NFLPA"), which is recognized as the sole and exclusive bargaining representative of present and future employee players in the NFL in a bargaining unit described as follows:
>
> 1. All professional football players employed by a member club of the National Football League;
>
> 2. All professional football players who have been previously employed by a member club of the National Football League who are seeking employment with an NFL Club;
>
> 3. All rookie players once they are selected in the current year's NFL College Draft; and
>
> 4. All undrafted rookie players once they commence negotiation with an NFL Club concerning employment as a player.

22. The class is so numerous and geographically so widely dispersed that joinder of all members is impracticable. There are questions of law and fact common to the class. Plaintiffs' claims are typical of the claims of the class that they represent, and the Plaintiffs will fairly and adequately protect the interests of the proposed class.

23. Each person in the class is, has been, and/or will be subject to uniform agreements, rules and practices among the Defendants that restrain competition for player services, including, but not limited to, those described herein as the "lockout" and all restraints of trade that the lockout seeks to further.

24. The prosecution of separate actions by individual members of the class would create the risk of:

(a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

25. In construing and enforcing their uniform agreements, rules and practices, and in taking and planning to take the actions described in this complaint, the Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief would be appropriate for the class as a whole.

26. A class action may be maintained under Rule 23(b)(2) when the exclusive relief sought is injunctive relief.

NATURE OF INTERSTATE TRADE AND COMMERCE

27. The primary business in which Defendants are engaged is the operation of major league professional football teams and the sale of tickets and telecast rights to the public for the exhibition of the individual and collective football talents of players such as Plaintiffs. To conduct this business, the NFL Defendants must compete with each other for and retain the professional services of players, such as Plaintiffs, who were or will be signed to contracts to play football for the various NFL defendant teams.

28. The business of major league professional football is distinct from other professional sports businesses, as well as from college and minor league professional football. Its distinguishing features include: the rules of the sport and the season during which it is played; the talents of and rates of compensation for the players, for which playing football is their full-time profession; the nature and amounts of trade and commerce involved; and the unique demand for the NFL Defendants' games by the consuming public, both as ticket purchasers and as home viewers of and listeners to television and radio.

29. The NFL Defendants' operation of and engagement in the business of major league professional football involves a substantial volume of interstate trade and commerce, including, *inter alia*, the following interstate activities: travel; communications; purchases and movement of equipment; broadcasts and telecasts of league games; advertisements; promotions; sales of tickets and concession items; sales of

merchandise and apparel; employment of players and referees; and negotiations for all of the above.

30. The NFL Defendants' aforementioned interstate transactions involve collective annual expenditures and receipts in excess of $9.3 billion. But, as Dan Greeley, CEO of Network Insights, has noted:

> The NFL is like Procter & Gamble. There's the holding company, the core operation, but then each brand has its own team and world of revenue. Like Tide: That's a P&G product but within that there are different types of Tide and a number of people that make money from it. So the $9.3 billion pie just scratches the surface and doesn't get into how much is spent around stadiums, merchandise, agents, all the way down to mom-and-pop shops.

31. Annually, the NFL redistributes upwards of $4 billion in radio, television and digital earnings across its 32 teams—$125 million apiece, plus an equal share for the league—and that number shows no sign of declining. The 19 highest-rated fall television programs (and 28 of the top 30) were NFL games, and this year's Super Bowl was the most-watched program ever. The NFL earns huge amounts annually from its telecasting deals with, *inter alia*, ESPN ($1.1 billion), DirecTV ($1 billion), NBC ($650 million), Fox ($712.5 million), and CBS ($622.5 million).

32. Companies pour money into the league's coffers for the right to associate their brands with the NFL. Among those making such contributions are Pepsi ($560 million over eight years, starting in 2004) and Gatorade ($45 million a year, plus marketing costs and free Gatorade for teams). Verizon is paying $720 million over four years to be the league's wireless service provider. Nike paid $1.1 billion to acquire the

NFL's apparel sponsorship. Previous partner Reebok had been selling $350 million annually in NFL-themed gear. The league has a $1.2 billion, six-year deal with beer sponsor Anheuser-Busch, but teams still cut their own deals when it comes to pouring rights at stadiums.

33. Teams can collect $25-$30 million for stadium naming rights, usually on 10-year deals. The largest is Reliant Energy's $10 million per year contract with the Houston Texans. In Los Angeles, Farmers Insurance has promised $700 million over 30 years to name a stadium for a team that doesn't exist yet.

34. Many NFL clubs own in whole or in part the stadiums in which they play, which can be a source of major commercial value, as reflected in the following chart:

STADIUM, TEAM	OPENED	PRICE (2010 DOLLARS)	% PRIVATE
New Meadowlands, NY	2010	$1.6B	100
Cowboys Stadium, DAL	2009	$1.15B	56
Lucas Oil Field, IND	2008	$780M	13
U. of Phoenix Stadium, ARI	2006	$493M	32
Lincoln Financial, PHI	2003	$588M	65
Ford Field, DET	2002	$504M	49
Gillette Stadium, NE	2002	$373M	100
Reliant Stadium, HOU	2002	$526M	39

Qwest Field, SEA	2002	$422M	29
Invesco Field, DEN	2001	$683M	39
Heinz Field, PIT	2001	$312M	16

35. In 2010, more than 17 million fans passed through NFL turnstiles, paying anywhere from $54.51 (Cleveland Browns) to $117.84 (New England Patriots) for the average game ticket. Though the league won't open its books, numbers for the publicly-held Green Bay Packers ("Packers") offer some insight into what teams reap at the ticket office and concession stands. In 2010, the Packers cleared $60,059,646 from home and away game tickets plus private boxes. Projected over 32 teams, that's nearly $2 billion annually. The Packers reaped $13 million from concessions, parking and local media in 2010, which translates to $416 million on a league-wide basis.

36. The class members have been employed by and/or are seeking new employment with, or will seek future employment with one or more of the defendant teams in interstate commerce as professional football players.

FACTUAL ALLEGATIONS

The NFL's Monopoly Power

37. As noted above, the NFL Defendants possess monopoly power in the market for major league professional football in the United States, and have willfully acquired or maintained that monopoly power in violation of Section 2 of the Sherman Act. The relevant market for assessing the restraint of trade at issue is the market for the services of major league professional football players in the United States. As noted

above, Defendants have monopoly power within that market and have repeatedly been found to have abused that power in violation of the federal antitrust laws.

38. The NFL Defendants comprise the only major professional football league in the United States. The NFL Defendants are the only United States market participants for the services of major league professional football players. Together, they monopolize and/or restrain trade in the United States market for the services of major league professional football players. The only actual or potential competition that exists in this market is among the separately-owned and independently-operated NFL teams. Rather than engaging in competition for the players' services, however, the NFL Defendants have combined and conspired to eliminate such competition among themselves for NFL players through group boycotts, price-fixing arrangements, and concerted refusals to deal. This is being accomplished by the NFL Defendants jointly adopting and imposing "rules" and "policies", including the lockout, that have the purpose and effect of preventing players from offering their services to NFL teams in a competitive market and limiting the benefits that retired players would have otherwise received in a competitive market.

The SSA And Successive CBAs

39. The NFL is a recidivist violator of the antitrust laws as reflected in *USFL*, *Mackey*, *McNeil II* and *III*, *Smith* and *Jackson*.

40. After the jury verdict in *McNeil III*, the NFL and players entered into a Stipulation & Settlement Agreement ("SSA") on February 26, 1993. A month later, the NFLPA advised the NFL that it had received authorization from a majority of players to

serve as their collective bargaining agent. The district court approved the settlement agreement in *White v. NFL*, 822 F.Supp. 1389 (D. Minn. 1993).

41. Also in 1993, the NFL and NFLPA entered into a CBA that mirrored the SSA. The parties amended and extended the CBA in 1996, 1998, and 2002. In 2006, the parties renegotiated the CBA for 2006-2012, creating the CBU described above. On May 20, 2008, the NFL opted out of the final two years of the then-current versions of the CBA. As a consequence, the CBA was due to expire as of March 4, 2011. *See White v. NFL*, No. 4-92-906 (DSD), 2011 WL 706319 at *1 (D. Minn. March 1, 2011) ("*White II*"). The opinion in *White II* is attached as Exhibit A to this complaint and incorporated by reference herein.

42. The NFL has the Plan referred to above, which is a merger of two prior plans in 1993. This Plan has been revised in accordance with the 1996, 1998, 2002 and 2006 amendments to the CBA. The most recent version was amended and restated on April 1, 2007. The Plan provides for retirement benefits, total and permanent disability benefits, line of duty disability benefits and death benefits. The Plan is subsidized by NFL member clubs. Pursuant to Paragraph 3.1 of the Plan, the NFL clubs make contributions according to various actuarial assumptions and methods set forth in Appendix A to the Plan. Pursuant to Paragraph 3.2 of the Plan, the NFL clubs are obligated to contribute to the Plan to the extent required by Paragraph 3.1, ERISA and the operative CBA.

43. The Plan is run by a Retirement Board consisting of three persons selected by the NFLPA, three persons selected by the NFL Management Council and, in

an *ex officio* capacity, the NFL Commissioner. Pursuant to paragraph 10.1 of the Plan, it may be terminated if no CBA has been in effect for more than one year.

44. There also exists a separate health benefit plan for retired or former NFL players known as the "88 Plan." The 88 Plan is designed to assist players who are vested under the Plan and who are determined to have dementia (including Alzheimer's Disease), as this condition is defined in the 88 Plan. The 88 Plan will pay the cost of medical and custodial care for eligible players, including institutional custodial care, institutional charges, home custodial care provided by an unrelated third party, physician services, durable medical equipment, and prescription medicine. For eligible players who are institutionalized as an in-patient, the maximum annual benefit is $88,000. For eligible players who are not institutionalized as an in-patient, the maximum annual benefit is $50,000. 88 Plan benefits may be paid on behalf of an eligible player even if that player is also receiving total and permanent disability benefits from the Plan, but only if he is in the "Inactive" category.

45. There also exists an "NFL Player Care Plan" subsidized by the NFL. The NFL Player Care Plan provides a uniform administrative framework for a range of programs that benefit eligible former NFL players. Currently, these benefits are: (a) joint replacement benefits; (b) assisted living benefits; (c) discount prescription drug benefits; (d) Medicare supplement insurance benefits; (e) spine treatment benefits; (f) neurological care benefits; and (g) life insurance benefits.

46. There also exist other miscellaneous benefit plans that provide benefits to former players and are subsidized by the NFL. These include an annuity

program (a type of deferred compensation program) and, a Joint Replacement Benefit Plan (assisting retired players who need joint replacement surgery).

47. The various iterations of the CBA had an Article XVII dealing with the EPP or Rookie Cap, which was a subset of the overall salary cap for NFL clubs. In the 1993 CBA, the EPP was originally set at $56 million or $2 million per club and was increased to 3.5 percent of "Defined Gross Revenues" ("DGR") for the first capped year of 1994. After 1994, the EPP was initially allowed to grow at the same annual rate as DGR until the 1998 CBA, when pool growth was limited to 10 percent. Beginning with the 2002 iteration of the CBA, the EPP was frozen for 2002-03 and held to five percent growth thereafter. This system is reflected in the 2006 CBA, where EPP is set at the previous year's level (excluding "Formula Allotments" ("FAs") for compensatory draft selections increased by the same percentage as the projected "Total Revenue" ("TR") for that year over the prior year up to a level of five percent. FAs for draft selections were set by the NFL and NFLPA "and shall not be disclosed to Clubs, Players, Player Agents or the public." 2006 CBA, §XVII(4)(j). Under this system, the rookies' share of the overall players' salary cap was cut from 6.5 percent in 1997 to 3.7 percent by 2009. In 2009, rookies made up 16.4 percent of NFL rosters but the rookie share was limited to just two percent of total revenue, leaving 55 percent for veteran players.

48. A 2007 article that did an economic analysis of the EPP came to the conclusion that:

> In summation, rookie contracts are not only constrained by a franchise Rookie Cap, but in general are further constrained by an agreed upon valuation of each draft pick's worth. This

> valuation is not the result of market forces, the same interplay of supply and demand that determines veteran contracts, but rather is the result of a well-protected formula that artificially depresses rookie contracts.

49. Major League Baseball ("MLB") has nothing analogous to the Rookie Cap. Even some NFL club representatives, such as William Polian, President of the Indianapolis Colts, have conceded that the Rookie Cap should be substantially changed or eliminated.

The NFL's Decision to Terminate the SSA and CBA And Engage In A Lockout

50. As reported by ESPN, shortly after the NFL and NFLPA entered into the March 2006 iteration of the CBA, the NFL club owners began to consider the possibility of a lockout. The word "lockout" became a popular term among owners. According to witness testimony and documents filed in recent litigation over NFL television contracts, a lockout was on the agenda of all NFL owners' meetings in 2007 and early 2008.

51. Internal NFL documents and testimony from NFL Commissioner Roger Goodell ("Goodell") in *White II* indicated that the NFL club owners knew early in 2008 that "in order for them to get a new labor deal that works for them, they need to be able to sustain a lockout, which requires financing and requires proper planning." Dallas Cowboys owner Jerry Jones told his fellow owners that they "needed to realistically assume they were locking out in 2011" to obtain a CBA that "worked for them."

52. The "financing" aspect of a lockout involved securing, in effect, "lockout insurance" from broadcasters with whom the NFL had existing contracts. As the court in *White II* explained (2011 WL 706319 at *2) (citations omitted):

> Soon after opting out of the CBA, the NFL began to negotiate extensions of its broadcast contracts. Rights fees in the broadcast contracts generate approximately half of the NFL's total revenues. Existing broadcast contracts effectively prevented the NFL from collecting revenue during a lockout in 2011 because the contracts did not require broadcasters to pay rights fees during a lockout or required the NFL to repay lockout fees in 2011. Moreover, some of the NFL's loan obligations include "average media revenues" covenants which provide that an "event of default" occurs if average annual league media revenues fall below a specified value. The NFL worried that its creditors could argue that a default event had occurred if the NFL locked out the Players in 2011, the same year that some broadcast contracts were set to expire, and that a default would give the Players bargaining power in labor negotiations. In light of "market conditions and strategic considerations," the NFL understood that it was "prudent to consider [broadcast contract] extension alternatives today."

53. As of May of 2008, the NFL had television broadcasting contracts with DirecTV for the 2006-10 seasons, with CBS, FOX and NBC, respectively, for the 2006-11 seasons, and with ESPN for the 2006-13 seasons.

54. Beginning in July of 2008, the NFL began to negotiate a contract extension with DirecTV. The resulting extended contract provided that DirecTV would pay a substantial fee if the 2011 season was not cancelled and up to 9% more, at the NFL's discretion, if the 2011 season was cancelled. "As a result, the NFL could receive substantially more from DirecTV in 2011 if it locks out the Players then if it does not." *White II*, 2011 WL 706319 at *2.

55. In April of 2009, the NFL began negotiating with CBS and Fox. Under the existing contracts, the broadcasters had to pay rights fees during a work stoppage, but would be entitled to refunds for the first three cancelled games during the affected season and for the remaining cancelled games during the following season. Under the renegotiated contracts, the the requirement that the NFL repay rights fees attributable to the first three lost games in the affected was eliminated and the NFL could repay the funds, plus money-market interest, over the term of the contract. If an entire season was cancelled, the contracts were automatically extended for an additional season. "Initially, FOX expressed reluctance to pay rights fees during a work stoppage. Goodell Direct Test. 19. The NFL considered opposition to the work-stoppage provision a 'deal breaker[ ].' " *White II*, 2011 WL 706319 at *3. The NBC contract negotiation, commenced in March of 2009, contained similar concessions.

56. In the fall of 2009, the NFL negotiated with ESPN that: (a) ESPN would, at the NFL's discretion, pay up to the full rights fee during a work stoppage; (b) a credit for the first three cancelled games of the season would be applied the same year; (c) the NFL could request less than the full rights fee; and (d) the NFL would repay the funds, with LIBOR interest plus 100 basis points, over the term of the contract. If an entire season was cancelled, the contract would be extended for an additional season. The NFL was not liable to repay more than ESPN's yearly rights fee. As part of this deal, ESPN got certain additional digital rights. "ESPN agreed to pay rights fees for July 2010 through July 2014. ESPN requested that the fee not be payable in the event of a work stoppage, but the NFL rejected the request. The NFL stated that the digital deal and the

work-stoppage provisions were 'linked.' " *White II*, 2011 WL 706319 at *4 (citations omitted).

57. The court in *White II* found (2011 WL 706319 at *8):

> However, under the terms of the SSA, the NFL is not entitled to obtain leverage by renegotiating shared revenue contracts, during the SSA, to generate post-SSA leverage and revenue to advance its own interests and harm the interests of the Players. Here, the NFL renegotiated the broadcast contracts to benefit its exclusive interest at the expense of, and contrary to, the joint interests of the NFL and the Players. This conduct constitutes "a design ... to seek an unconscionable advantage" and is inconsistent with good faith.

58. As an example of this bad faith, the court in *White II* offered the following (2011 WL 706319 at *12 n.4 (citation omitted)):

> The NFL's "Decision Tree" is one glaring example of the NFL's intent and consideration of its own interests above the interests of the Players. Moving forward with a deal depended on the answer to the question: "Does Deal Completion Advance CBA Negotiating Dynamics?" If yes, the NFL should "Do Deal Now"; if no, the NFL should "Deal When Opportune."

A copy of this "Decision Tree" is attached as Exhibit B to this complaint. Similarly, an internal NFL document entitled "Key Current NFL Media Objectives" (attached as Exhibit C to this complaint) referred to "secur[ing] access to revenue in 2011 if a work stoppage occurs"; this would permit "greater leverage in upcoming labor negotiations." Other internal NFL documents (attached as Exhibits D and E to this complaint) referred to "shift[ing] leverage in labor negotiations away from Union…ability to pull money into a Work Stoppage year" and using revised broadcasting contracts as "leverage in negotiations…no hold up value for union." Goodell and NFL CEO Steve Bornstein

conceded in testimony in *White II* that the lockout insurance was a critical element in renewing the broadcast deals.

59. As a result of these broadcasting contract renegotiations, the NFL obtained a $4 billion war chest to use against the NFLPA in the event of a lockout.

60. The "planning" aspect of the NFL's lockout strategy was explained in an ESPN article:

> The owners' planning was equally bold. The league and its lawyers knew the players had been highly successful in antitrust litigation against the owners in the past, as a series of cases led by the late union leader, Gene Upshaw, resulted in skyrocketing salaries, bonuses for players and free agency and vastly increased health and disability benefits. If a lockout was to succeed, the owners reasoned, they must do something about their exposure to antitrust liabilities. In a development that stunned lawyers, judges and law professors across the nation, the league and its attorneys asked the U.S. Supreme Court to review a case the NFL had already won, arguing for an expansion of the decision to a total exemption from antitrust scrutiny. If the league's strategy had been successful in *American Needle Inc. v. NFL*, it would have eliminated the most formidable weapon the players had in their quest for fair treatment from team owners.
>
> But in a 9-0 decision, the Supreme Court rejected the league's claim of immunity from antitrust laws. It was a humiliating end to an owner strategy that could have changed the entire landscape of sports labor. As a result, the league likely faces another antitrust lawsuit from the players in Doty's courtroom, which, based on their track record there, is the last place the owners want to be.

61. The NFL's planning for a lockout took other forms as well.

62. NFL club owners began imposing lockout clauses in coaches' and executives' contracts that gave clubs the right to reduce compensation in the event of a

lockout. Examples of such clauses included language allowing the clubs to reduce, terminate, or suspend the contract on 20 days' notice, reduce salary by 50 percent if a lockout continued for more than 90 days, terminate the employee without pay on 60 days' notice, and extend the contract another year at the same terms as 2011 if at least eight NFL games are canceled due to a lockout.

63. In February of 2008, the NFL asked the United States Court of Appeals to end the jurisdiction of District Judge David Doty over the free agency/salary cap system. The NFL claimed that Judge Doty was biased in favor of the players. The appellate court rejected this contention. *White v. NFL*, 585 F.3d 1129, 1138-41 (8th Cir. 2009).

64. In March of 2008, the NFL retained veteran labor-relations attorney, Bob Batterman ("Batterman"), as outside counsel. Batterman is widely credited for orchestrating the 2004-05 lockout in the National Hockey League.

65. In December of 2008, the NFL began a strategic and premeditated course of action designed to reduce expenses by laying off 15 percent of its staff.

66. In March of 2009 at the annual NFL owners' meeting, the NFL club owners passed a resolution allowing all NFL teams to opt out of a defined benefit pension plan for NFL coaches and executives. As a result, nine teams have opted out of the league's established policy and now provide less beneficial pension plans to coaches and executives.

67. In December of 2009, the NFL informed the NFLPA of its intent to terminate the Supplemental Revenue Sharing ("SRS") program that purportedly promotes

competitive balance and helps the lower-revenue clubs compete. Andrew Brandy, the former Vice-President of the Green Bay Packers, described the NFL's decision to pull out of the SRS plan as "sending a clear message to its players and the union that the teams that want to go under the floor and cut team payroll to pre-2006 levels, say $85-$90 million…will now have a legitimate reason for doing so."

68. In February of 2010, The NFL launched a new website, www.NFLlabor.com, to exclusively address labor matters and present the league's position on negotiations with the NFLPA.

69. In February of 2010, the NFLPA initiated proceedings against the league because it discovered that the NFL did not provide its lower-revenue clubs with all of the SRS that was promised in the CBA for the years 2006-08.

70. In that same month, the NFL announced the hiring of former NFLPA President Troy Vincent as Vice-President for Player Development for Active Players, less than a year after he lost the election to be the NFLPA's Executive Director and as the league and union are engaged in contentious negotiations for a new CBA. The timing of the hiring raised questions about the league's motives; William Gould, former Chairman of the National Labor Relations Board ("NLRB"), said it was quite uncommon for management to hire a former leader of the union it negotiates against during the midst of collective bargaining.

71. In that same month, the NFL rejected the NFLPA's proposal to continue the salary cap system for an additional year.

72. In August of 2010, the NFL team executives negotiated contracts of the 2010 first-round draft picks in a manner that reflected their belief that there would be a lockout in 2011 by changing the payment date of option bonuses from the first two weeks of the league year, which begins in March, to around the time the first regular-season game is played in 2011, whenever that might be.

73. In September of 2010, the NFL informed its employees of its three-phase plan that will require many of its employees to take unpaid leaves of absences as well as pay cuts.

74. In October of 2010, the NFL's political action committee, "Gridiron PAC," made donations to Speaker Nancy Pelosi, both the House Minority and Senate Majority leaders and the chairmen of the House and Senate judiciary committees, who oversee the league in numerous capacities, as well as several other influential lawmakers. An Associated Press report stated: "The union wants Congress to use its leverage to help prevent a lockout. The NFL, by contrast, wants Congress to butt out,"

75. In October of 2010, the NFL required banks lending to its teams to extend the traditional six-month grace period for declaring a default to stretch instead through to the end of the 2011 season in preparation for a lockout.

76. In the context of these ongoing developments, the NFL and NFLPA were negotiating a new CBA for over two years before the efforts failed.

77. Initially, NFL club owners had three proposals. The first was to reduce the players' salary cap revenue base by allowing an 18 percent increase in new stadium cost credits. This base reduction would cut the players' share of total revenue

(57.5 percent in 2009) by about 10 percent. The second proposal sought to modify the existing EPP by imposing a rookie wage scale. In their third proposal, the NFL club owners wanted to increase the regular season from 16 to 18 games by reducing the preseason from four to two games.

78. Throughout these negotiations, the NFLPA sought to obtain information from the NFL that would back up the latter's demands. Exhibits F through K are copies of letters sent by Richard Berthelsen, General Counsel for the NFLPA, to NFL representatives on August 6, 2009 and on May 18, June 7, July 8, October 27, and December 15, 2007 asking for information on NFL club costs, television contracts and insurance and benefits. As several of the letters reflect, the NFL was not all that forthcoming in providing some of this information. NFL club members declined to attend negotiation sessions with representatives of the NFLPA. The parties were also discussing proposals that would have increased benefits to retired NFL players.

Renunciation By The NFLPA And The NFL's Lockout

79. On February 10, 2011, the NFL filed a charge against the NFLPA with the NLRB, accusing the union of failing to negotiate in good faith.

80. Four days later, federal mediator George Cohen ("Cohen") was brought in and numerous days of mediation ensued in which the parties extended the expiration date of the CBA several times.

81. The mediation was unsuccessful. On March 11, 2011, Cohen issued the following statement:

> [T]he parties have not achieved an overall agreement , nor have they been able to resolve the strongly held, competing positions that separated them on core issues.
>
> In these circumstances, having reviewed all of the events that have transpired, it is the considered judgment of myself and Deputy Director Scott Beckinbaugh, who has been engaged with me throughout this process, that no useful purpose would be served by requesting the parties to continue the mediation process at this time.

A copy of Cohen's statement is attached as Exhibit O.

82. On March 11, 2011, DeMaurice Smith ("Smith"), Executive Director of the NFLPA, sent a letter to all NFL Club Presidents and General Managers, informing them that the NFLPA had "renounced its status as collective bargaining agent for all NFL players." As a result, no NFLPA representative "has the authority or authorization to engage in any collective bargaining discussions, grievance processing or any other activities associated with collective bargaining on behalf of players at either the club or the league level." The letter stated that the NFLPA would also no longer be overseeing the activities of player agents. A copy of this letter is attached as Exhibit L to this complaint. On the same day, Smith sent a similar letter to Goodell, which is attached as Exhibit M to this complaint.

83. The practical significance of these communications was explained in *Powell v. NFL*, 764 F. Supp. 1351, 1358-59 (D. Minn. 1991) (footnote and citations omitted):

> Based on the foregoing, the court holds that the plaintiffs are no longer part of an "ongoing collective bargaining relationship" with the defendants. The NFLPA no longer engages in collective bargaining and has also refused every

> overture by the NFL defendants to bargain since November of 1989. The NFLPA further has abandoned its role in all grievance arbitrations and has ceased to regulate agents, leaving them free to represent individual players without NFLPA approval. The plaintiffs have also paid a price for the loss of their collective bargaining representative because the NFL defendants have unilaterally changed insurance benefits and lengthened the season without notifying the NFLPA.
>
> Because no "ongoing collective bargaining relationship" exists, the court determines that nonstatutory labor exemption has ended. In the absence of continued union representation, the Eighth Circuit's rationale for the exemption no longer applies because the parties may not invoke any remedy under the labor laws, whether it be collective bargaining, instituting an NLRB proceeding for failure to bargain in good faith or resorting to a strike.

Accord McNeil II, 790 F.Supp. at 883-84.

84. By March 11, 2011, the NFLPA had amended its bylaws to prohibit it or its members from engaging in collective bargaining with the NFL, the NFL's member clubs or their agents.

85. The NFLPA is in the process of filing a labor organization termination notice with the United States Department of Labor.

86. An application is being filed with the Internal Revenue Service to reclassify the NFLPA for tax purposes as a professional association rather than a labor organization.

87. On March 11, 2011, the NFL sent a letter to Smith announcing its intention to commence a lockout on March 12. A copy of that letter is attached as Exhibit N to this complaint. The lockout took effect sat the appointed time.

88. On March 11, 2011, certain NFL players filed a lawsuit against the NFL in connection with some of the events described herein, alleging various antitrust, contract and tort theories. *Brady v. NFL*, No. 0:11-cv-00639 SRN JGG (D. Minn.). A preliminary injunction hearing in that case is currently scheduled for April 6, 2011.

89. After the filing of that lawsuit, on March 17, 2011, Goodell wrote directly to NFL players, presenting the league's side of the controversy. Certain players responded on March 19, pointing out the deceptions contained in Goodell's letter.

90. The position taken by the NFL in the aforementioned lawsuit is that the lockout will continue until the NLRB rules on the league's complaint, which could take many months, if not years. As explained above, however, members of the class were, as of March 11, 2011, not members of the collective bargaining unit described in the 2006 CBA and the pendency of any NLRB ruling would have no effect on them.

91. Reaction to the NFL's lockout strategy has been negative, even before it was effectuated. A *New York Times* article quoted Fay Vincent, the former Commissioner of MLB, as saying: "[b]ut it's hard to look at these circumstances and not see a case of owners' wanting their cake and eating it, too." As he added: "[t]he N.F.L. is the premier sports business in the country by a large margin….There is only one way to go, and that is down. It's pretty dangerous to tamper with fans' passion and good will."

92. Similarly, in the March 21, 2011 issue of *New Yorker*, economic analyst James Surowiecki noted:

> You might say that .that's capitalism--those who provide the capital for an enterprise deserve to reap the profits. But the N.F.L. isn't capitalist in any traditional sense. The league is

> much more like the trusts that dominated American business in the late nineteenth century, before they were outlawed. Its goal is not to embrace competition but to tame it, making the owners' business less risky and more profitable. Unions are often attacked for trying to interfere with the natural workings of the market, but in the case of football it's the owners, not the union, who are the real opponents of the free market. They have created a socialist paradise for themselves that happens to bring with it capitalist-size profits. Bully for them. But in a contest between millionaire athletes and billionaire socialists it's the guys on the field who deserve to win.

93. Jonathan Weiler, Professor of International Studies at the University of North Carolina Chapel Hill has likewise noted that players (including former players), not club owners, bear the brunt of any lockout:

> But the two sides are not really comparable. Yes, there are many wealthy players in the NFL, but the vast majority will not be for most of their lives.
>
> If they stick on NFL rosters for a full season or more, they make great salaries by normal standards. But the average NFL player won't last four years in the league and this is, in itself, a misleading figure, because there are plenty of players who last 10-15 years. So, if the average player tenure in the league is 3.6 years..., the median tenure of an NFL player, which is a much more relevant gauge of the life of a typical player, is less than that figure implies.
>
> The media (and the owners) spend a lot of time focusing on the salaries of players like Sam Bradford and Albert Haynesworth. But for every Haynesworth or Bradford, there are dozens of players who may make the league minimum for the short duration in which they play in the league. And given the significant long-term health problems that many NFL players face, the impact of those problems on their job prospects, the bills they owe, those few years of good earnings can evaporate quickly. No NFL owner is ever going to be out on the street. By contrast, NFL players do find

themselves there (remember Hall-of-Fame center Mike Webster?).

In sum, every single owner is insanely wealthy by any reasonable standard and will remain so for the rest of their lives. The same cannot be said of many players….

But it's much worse than the simple fact that the majority of players who put on an NFL uniform at some point will not last in the league very long nor make a ton of money. One central justification under capitalism for rewarding some people with great wealth is the risk they take to achieve that wealth. That risk, while pursued for the sake of self-interest, contributes to a greater good in the form of innovation and wealth creation. No such risk accrues to NFL owners, however. Once you are granted a franchise, you are granted a license to print money. Incompetent owners may cost their team wins on the field, but they will still make a killing off the field.

NFL revenues run to $8 billion a year and, as Forbes magazine frequently points out, many other benefits redound to owners of sports franchises, even if those benefits don't show up on franchise balance sheets. King writes that it's a burdensome new reality for NFL franchises that they have to finance new stadiums on their own, rather than have taxpayers pay for them. Only in the outrageously entitled world of the super-wealthy would it be burdensome that rather than being handed a billion dollar asset, they might actually have to pay for it themselves. And Jerry Jones' new stadium, for example, was built with an estimated quarter of a billion dollars in public funds. Furthermore, if building new stadiums weren't a profitable endeavor in the long run, let me assure you that teams wouldn't be building them in the first place.

The stadium financing issue aside, the risk in the NFL is all on the side of the players. They are the ones who exist in an intensely competitive market for talent. And they are the ones who put their bodies on the line everyday. It's the players, not the owners who, in football especially, but to lesser degrees in other sports, risk the possibility of a lifetime of pain and discomfort or, as the evidence about the long-term effects of

brain trauma increasingly shows, depression and suicide (and those realities the NFL spent many years denying).

Rutgers' Eric LeGrand, paralyzed from the neck down Saturday night in an on-field collision, is only the latest reminder of this simple, indisputable fact: the risk is all on the side of the players. All of it. The owners cannot lose and they don't lose. Period. The players can lose catastrophically. Remarkably, while King does discuss the players' concerns about pensions and health care for retired players, he fails to mention the long-term health consequences from playing football, as if that has no relevance to the players' views about much of the league's revenue they're entitled to.

****

The owners win when media focus on things like the rookie wage scale, 60% revenue sharing, and the like. The owners lose when media point out that only the players are putting their lives and bodies on the line in a cauldron of intense competition. The reality is that owners of sports franchises are, in many cases, spoiled brats who expect to make impossibly large sums of money by dint of the fact that, since they are already rich, they are entitled to become richer still. They assume virtually no risk, earn massive sums of guaranteed money regardless of the product they put on the field and still feel a need -- with the indispensable aid of Commissioner Goodell -- to distort basic facts about the nature of sports economics and their own profitability.

As I wrote a few years ago, in the context of growing evidence of the devastating long-term impact of traumatic brain injury on retired NFL players, this is especially indefensible.

And remember one more thing -- when there is a work stoppage in sports, it's almost always blamed on the players. But the 2011 season, if it isn't played, will be because of an owners' lockout, not a players' strike. And in keeping with their true nature, the owners have announced that, if there is a lockout, they will stop paying for players' health insurance, though they are still estimated to receive an estimated $1

> billion in TV revenue next year, regardless of whether a game is played.

94. The concerns about brain injuries to former NFL players caused by concussions during their service in the league have been increasing in recent years as a result of several studies of former NFL players. An article in the *New York Times* dated October 21, 2010 reported the following:

> A 2000 study surveyed 1,090 former N.F.L. players and found more than 60 percent had suffered at least one concussion in their careers and 26 percent had had three or more. Those who had had concussions reported more problems with memory, concentration, speech impediments, headaches and other neurological problems than those who had not, the survey found.
>
> A 2007 study conducted by the University of North Carolina's Center for the Study of Retired Athletes found that of the 595 retired N.F.L. players who recalled sustaining three or more concussions on the football field, 20.2 percent said they had been found to have depression. That is three times the rate of players who have not sustained concussions.
>
> As scrutiny of brain injuries in football players has escalated in the past few years, with prominent professionals reporting cognitive problems and academic studies supporting a link more generally, the N.F.L. and its medical committee on concussions have steadfastly denied the existence of reliable data on the issue.
>
> But in September 2009, a study commissioned by the N.F.L. reported that Alzheimer's disease or similar memory-related diseases appear to have been diagnosed in the league's former players vastly more often than in the national population — including a rate of 19 times the normal rate for men ages 30 through 49.

The NFL's Imposition of Anticompetitive Restrictions Upon NFL Players

95. Upon information and belief, the NFL Defendants have jointly conspired and agreed to impose the aforementioned lockout prohibiting all competition for player services, player signings, and employment and/or a system of anticompetitive restraints on player movement, salaries, contract signings, and payment of compensation and retirement/health benefits due under existing contracts or plans.

96. As part of this lockout, all NFL Defendants have conspired and agreed, *inter alia*, to prevent NFL teams from negotiating, or even communicating with, or employing NFL players, thereby completely eliminating a competitive market for player services. In addition, NFL teams have conspired and agreed not to honor existing contracts with NFL players, by not paying them and precluding their access to team facilities and personnel.

97. The owners' collective purpose in imposing the lockout is to ensure the continuance of the league's illegally obtained monopoly and the profits derived therefrom by forcing the non-unionized NFL prospective, active and former players to agree to wage, revenue and benefit reductions and anticompetitive restrictions.

98. The lockout by the NFL Defendants constitutes an illegal group boycott, price-fixing agreement, and/or restraint of trade in violation of the Sherman Act, under both the *per se* rule and the rule of reason standard.

99. The NFL and its teams have also announced that they will hold the 2011 College Draft on April 28-30, 2011. The College Draft is one of the longest-running restraints on competition for player services in the NFL. It has the purpose and effect of dividing the market for first year or "rookie" player services among the NFL

teams, who would otherwise compete against each other for rookie players, through a number of anticompetitive restraints, including a limitation on the compensation that can be paid to those players.

100. As described above, for College Drafts prior to the 2011 College Draft, the SSA and CBA provided for a limitation on compensation to drafted players by what was known as the EEP or Rookie Cap.

101. There was no agreement in the SSA or 2006 CBA concerning an EEP or any similar restraint, for the 2011 College Draft or any College Draft thereafter.

102. The limitation on total compensation embodied by the College Draft with an EEP or any similar restriction will be enforced by a group boycott among the NFL Defendants. This group boycott takes the form of a concerted refusal to deal with potential NFL players except through restrictive anticompetitive practices, including a price-fixing agreement. The conspiracy with respect to the College Draft with an EEP has been furthered by the lockout described above.

The Irreparable Injuries of Plaintiffs, the Class And The Public

103. Upon information and belief, the NFL Defendants intend to continue imposing their lockout, the College Draft with EEP and/or other restrictions with anticompetitive effects. Absent such restrictions, the class members would be free to work in the 2011 off-season and beyond, to offer their services to NFL teams in a competitive market and to receive retirement and health benefits established through the operation of a competitive marketplace. Class members and the public will suffer severe and irreparable harm if they are prevented from working during the 2011 NFL off-season

and season, offering their services to NFL teams in a competitive market, and/or receiving health and retirement benefits.

104. The injuries which the class members are incurring and will continue to incur will not be fully compensable by monetary damages. This is particularly true due to the short length of NFL careers (the average length of which is 3.6 years), the virtually constant need for NFL players to demonstrate their skill and value on the football practice and playing fields, the life-threatening injuries caused to many former NFL players as a result of their service to the NFL, and the difficulty in estimating and proving the amount of monetary damages suffered by Plaintiffs as a result of the NFL Defendants' unlawful conduct. Contributions to the health and benefit plans described above are directly jeopardized by the loss of revenue caused by a cancelled season. If no new CBA is created within a year, the Plan mentioned above can be terminated, pursuant to its own terms. And the amounts contributed in several of these plans were affected by the terms in the 2006 CBA that has expired. The threatened injuries to the Plaintiffs and class members are irreparable, warranting the issuance of preliminary and permanent injunctive relieve for the class. Moreover, several programs sponsored by the NFL Player Care Foundation and The Professional Athletes Foundation ("Foundations") are put in jeopardy by the lockout because, although the Foundations are independent, a portion of the funding for the Foundations, and other similar programs, are funded in part by money received from fines collected from players who commit rules violations and infractions both off and on the field, and from money received from damages resulting from anti-collusion infractions. The lockout, coupled with the extinguishment of the 2006 CBA

means these fines no longer support these programs. This will result in the removal of vital services for the retirees --which particularly affects those who would otherwise not be able to afford them, *i.e.*, the high percentage of retired players who live off of less than $200 per month in pensions. If these programs are not provided in a timely way, it could result in a player not finding an illness in time, not obtaining vital prescription drugs, and/or medical treatment, and so on. The affected programs are: (a) the Cardiovascular Health Program provides extensive cardiovascular screenings and education, health screenings, obesity screening and nutritional counseling; (b) the Prostate screening program; (c) the NFL Neurological Care Program which evaluates and treat spine-related conditions among retired players; (d) the Priority access to eligible retired players for assisted living; (e) the Discount Prescription Drug Card program; (f) the Medicare supplement program; (f) the Player Assistance Trust, which provides financial assistance to former players for financial crises, completion of bachelor degrees, and programs provided by NFL Care Foundation; (g) access by retires to their medical records which could prevent a timely diagnosis; (h) testing and treatment for dementia under the 88 Plan; and (h) tuition assistance programs for retired players will be eliminated and a retired player may be unable to finish his education.

105. Rookies who are deprived of the ability to play in the 2011 NFL season also suffer irreparable injury. If they don't play because of the lockup, their careers are shortened and they will be in the unenviable position of competing for slots on NFL clubs against the rookie contingent available during the year that play resumes. They are also denied honors that may enhance their careers. And they are put at a greater

risk of injury when they do return because of not having played for months or perhaps years.

106. The public interest is also affected by the NFL's lockout. As noted above, millions of NFL fans watch NFL games in person or on television. They will be injured irreparably by a continuation of the lockout that would cause cancellation of the 2011 NFL season. Player and league records would not be achieved, existing records would not be broken and an entire NFL season would be lost.

COUNT I

Violation of Section 1 of The Sherman Act

107. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

108. There is a relevant market for the services of major league professional football players in the United States. The lockout orchestrated by the NFL Defendants will substantially restrain and injure competition in that market and will continue to do so.

109. The lockout constitutes an agreement among competitors to eliminate competition for the services of major league professional football players in the United States and to refuse to pay contractually-owned compensation to players currently under contract with the NFL Defendants for the 2011 season and beyond, in violation of Section 1 of the Sherman Act.

110. The lockout operates as a perpetual horizontal group boycott and price-fixing agreement, which is unlawful per se.

111. The lockout also constitutes an unreasonable restraint of trade under the rule of reason. The NFL Defendants have monopoly power in the relevant market. The NFL Defendants' group boycott and price-fixing agreement is a naked restraint of trade without any pro-competitive purpose or effect. In fact, its stated objective is to reduce player wages and benefits for former or retired NFL players that would have otherwise prevailed in a competitive market. Moreover, the lockout agreement is not in any way necessary for the production of NFL football or the achievement of any procompetitive objective.

112. The lockout is being undertaken in furtherance of other anticompetitive practices engaged in by the NFL Defendants, including, inter alia, the College Draft with EEP.

113. Each of the NFL Defendants is a participant in this unlawful combination or conspiracy.

114. The Plaintiffs and class members have suffered and will suffer antitrust injury to their business or property by reason of the continuation of this unlawful combination or conspiracy. The lockout has injured and will continue to injure Plaintiffs and class members by depriving them of the ability to work as, receive contractually-mandated compensation for, and/or offer their services as professional football players in a free and open market, as well as depriving retirement and health benefits to retired or former players that they would have received in a competitive market.

115. Monetary damages are not adequate to compensate Plaintiffs or other class members for the irreparable harm they have and will continue to suffer, warranting injunctive relief.

COUNT II

Declaratory Judgment: Interpretation of the SSA

116. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

117. Article XX, Section 1, of the SSA provides: "[p]ursuant to the Final Consent Judgment in this Action, the Court shall retain jurisdiction over this Action to effectuate and enforce the terms of this Agreement and the Final Consent Judgment." Thus, this Court has exclusive jurisdiction to enforce and interpret the terms of the SSA.

118. Article XVIII, Section 5(b) of the SSA provides:

> In effectuation of this Agreement, the Parties agree that, after the expiration of the express term of the CBA, in the event that at that time or any time thereafter a majority of players indicate that they wish to end the collective bargaining status of any Players Union on or after expiration of any such CBA, the Defendants and their respective heirs, executors, administrators, representatives, agents, successors and assigns waive any legal rights they may have to assert any antitrust labor exemption defense based upon any claim that the termination by the players or any Players Union of its status as a collective bargaining representative is or would be a sham, pretexts, ineffective, requires additional steps, or has not in fact occurred.

119. Pursuant to the foregoing article, the NFLPA on March 11, 2011 renounced its representative status "on" the date of the expiration of the 2006 CBA.

120. Plaintiffs and class members seek a declaration, pursuant to 28 U.S.C. § 2201, that, under the SSA, the NFL Defendants have waived any right to assert any labor exemption defense based on any claim that the players' decision to terminate the status of the NFLPA as their collective bargaining representative is in any way a sham, pretext, ineffective, requires additional steps, or has not in fact occurred.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment with respect to their Complaint as follows:

1. Certifying the class proposed in this Complaint pursuant to Fed. R. Civ. P. 23(b)(1) and 23(b)(2);

2. Declaring that the lockout violates Section 1 of the Sherman Act, and enjoining it;

3. Declaring that the NFL Defendants' future imposition of the anticompetitive Draft with an EPP violates Section 1 of the Sherman Act, and enjoining any implementation of the 2011 College Draft until the issues related to the antitrust violations are resolved;

4. Enjoining the NFL Defendants from agreeing to deprive the players of the ability to work as professional football players or negotiate the terms of that employment in a competitive market.

5. Enjoining the NFL Defendants from agreeing to withhold contractually-owed amounts to players (including health and retirement benefits) currently under contract for the 2011 NFL season and beyond.

6. Declaring that, pursuant to the SSA over which this Court has exclusive jurisdiction, the NFL Defendants have waived any right to assert any antitrust labor exemption defense based upon any claim that the termination of the NFLPA's status as the players' collective bargaining representative is a sham, pretext, ineffective, required additional steps, or has not in fact occurred.

7. Enjoining NFL Defendants from taking any punitive or discriminatory actions against the Plaintiffs or class members;

8. Placing all disputed sums at issue in this litigation in escrow until a judgment or settlement is reached in this matter;

9. Enjoining the NFL Defendants or their designees from terminating the Plan;

10. Awarding Plaintiffs their costs and disbursements in this action, including reasonable attorneys' fees;

11. Granting Plaintiffs and class members such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury.

Dated: March 28, 2011

Respectfully Submitted,

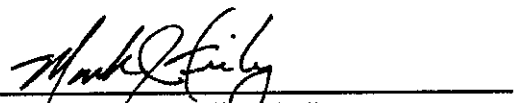

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EXHIBIT A

--- F.Supp.2d ----, 2011 WL 706319 (D.Minn.)
(Cite as: 2011 WL 706319 (D.Minn.))

HOnly the Westlaw citation is currently available.

United States District Court,
D. Minnesota.
Reggie WHITE, Michael Buck, Hardy Nickerson, Vann McElroy and Dave Duerson, Plaintiffs,
v.
NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.; Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.; Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots Limited Partnership; The New Orleans Saints Limited Partnership; New York Football Giants, Inc.; New York Jets Football Club, Inc.; The Philadelphia Eagles Football Club, Inc.; B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers Football Company; The San Francisco Forty-Niners, Ltd.; The Seattle Seahawks, Inc.; Tampa Bay Area NFL Football Club, Inc.; and Pro-Football, Inc., Defendants.

Civil No. 4-92-906(DSD).
March 1, 2011.

Background: Professional football players brought action against football league alleging it violated the settlement and stipulation agreement (SSA) the parties had entered into. Special master ruled in favor of league. Players objected.

Holding: The District Court, David S. Doty, J., held that the conduct of league constituted a breach of provision of SSA requiring it to use best efforts to maximize revenue for both league and players during years covered by SSA.

Recommendation adopted in part and overruled in part.

West Headnotes

[1] Federal Civil Procedure 170A 1900

170A Federal Civil Procedure
170AXIII Reference
170Ak1896 Report, Findings and Conclusions
170Ak1900 k. Conclusiveness in General. Most Cited Cases

Federal Civil Procedure 170A 1901

170A Federal Civil Procedure
170AXIII Reference
170Ak1896 Report, Findings and Conclusions
170Ak1901 k. Clear Error in General. Most Cited Cases

On appeal, a special master's conclusions of law are reviewed de novo and factual findings are reviewed under the clearly erroneous standard.

[2] Contracts 95 147(2)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k147 Intention of Parties
95k147(2) k. Language of Contract. Most Cited Cases

Under New York law, the terms of a contract must be construed so as to give effect to the intent of the parties as indicated by the language of the contract.

[3] Contracts 95 152

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k151 Language of Instrument
95k152 k. In General. Most Cited Cases

Under New York law, the court should also give the words in a contract their plain and ordinary meaning unless the context mandates a different interpretation.

[4] Contracts 95 143.5

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k143.5 k. Construction as a Whole. Most Cited Cases

Under New York law, the court must give effect and meaning to each term of a contract, making every reasonable effort to harmonize all of its terms.

[5] Contracts 95 153

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k151 Language of Instrument
95k153 k. Construction to Give Validity and Effect to Contract. Most Cited Cases

Under New York law, the court must interpret a contract so as to effectuate, not nullify, its primary purpose.

[6] Compromise and Settlement 89 11

89 Compromise and Settlement
89I In General
89k10 Construction of Agreement
89k11 k. In General. Most Cited Cases

Under New York law, the phrase "consistent with sound business judgment" in stipulation and settlement agreement (SSA) between football league and players, that required football league to exercise good faith in carrying out the SSA consistent with sound business judgment, permitted football league to consider its long-term interests in renegotiating broadcast agreements, provided it did so while acting in good faith and using best efforts to maximize total revenues for each SSA playing season.

[7] Contracts 95 189

95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law, an obligation in a contract that a party must use "best efforts" imposes a higher obligation than a provision requiring a party to act good faith.

[8] Contracts 95 189

95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law, good faith connotes an actual state of mind motivated by proper motive and encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage; it requires that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.

[9] Compromise and Settlement 89 20(1)

89 Compromise and Settlement
89I In General
89k20 Performance or Breach of Agreement
89k20(1) k. In General. Most Cited Cases

Under New York law, conduct of football league in renegotiating broadcast contracts to benefit its exclusive interest in ensuring revenue for itself during a possible player lockout, in order to gain a bargaining advantage over players and help league achieve a more favorable collective bargaining agreement (CBA), at the expense of, and contrary to, the joint interests of the league and the players in maximizing total revenues for each playing season covered by stipulation and settlement agreement (SSA) that league and players had entered into, constituted a design to seek an unconscionable advantage, that was inconsistent with the good faith that the league was required to exercise under the SSA.

[10] Compromise and Settlement 89 20(1)

89 Compromise and Settlement
89I In General
89k20 Performance or Breach of Agreement

89k20(1) k. In General. Most Cited Cases

Under New York law, conduct of football league in failing to act in good faith so as to maximize total revenues for each playing season covered by stipulation and settlement agreement (SSA) entered into with players, constituted a breach of the SSA; league renegotiated broadcast agreements so as to ensure revenue for itself during a possible player lockout, and to avoid possibility of defaulting on its debt obligations, at expense of maximizing revenue for both league and players during years covered by SSA.

[11] Contracts 95 189

95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law, there is no more significant context for a best efforts obligation than the agreement of which it is a part or is made so; best efforts necessarily takes its meaning from the circumstances.

[12] Contracts 95 189

95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law a best efforts clause imposes an obligation to act with good faith in light of one's own capabilities.

[13] Contracts 95 189

95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law, a party obligated to give best efforts maintains the right to give reasonable consideration to its own interests and is allowed a reasonable variance in the exercise of sound business judgment.

[14] Contracts 95 189

95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law, although a best-efforts provision does not require a promisor to spend itself into bankruptcy, it does prohibit a promisor from emphasizing profit above everything else without fair consideration of the effect on the promisee.

[15] Contracts 95 189

95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law, a best-efforts clause requires the promisor to do more than treat a promisee's interest as well as its own.

[16] Compromise and Settlement 89 20(1)

89 Compromise and Settlement
89I In General
89k20 Performance or Breach of Agreement
89k20(1) k. In General. Most Cited Cases

Under New York law, conduct of football league in actively renegotiating broadcast contracts to ensure favorable changes for itself and disadvantage the players, while failing to seek revenue for modifications to the broadcast contracts in seasons covered by the settlement and stipulation agreement (SSA) that had been entered into between league and players, constituted breach of provision of SSA requiring league to use best efforts to maximize revenue for both league and players during years covered by SSA.

[17] Contracts 95 189

95 Contracts

95II Construction and Operation
95II(C) Subject-Matter
95k189 k. Scope and Extent of Obligation. Most Cited Cases

Under New York law, a promisor's consideration of its own interests becomes unreasonable under best efforts clause when it is manifestly harmful to the party to which it has obligations.

[18] Injunction 212 9

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k9 k. Nature and Existence of Right Requiring Protection. Most Cited Cases

The court considers four factors in determining whether an injunction should issue: (1) the threat of irreparable harm to the movant in the absence of relief, (2) the balance between that harm and the harm that the relief may cause the non-moving party, (3) the likelihood of the movant's ultimate success on the merits and (4) the public interest.

[19] Injunction 212 14

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k14 k. Irreparable Injury. Most Cited Cases

Injunction 212 17

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k15 Inadequacy of Remedy at Law
212k17 k. Recovery of Damages. Most Cited Cases

Irreparable harm, for purposes of determining whether injunctive relief is warranted, occurs when a party has no adequate remedy at law because its injuries cannot be fully compensated through money damages.

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ORDER

DAVID S. DOTY, District Judge.

***1** This matter is before the court upon the objection in part by Class Counsel and the National Football League Players' Association (collectively, Players or NFLPA) to the February 1, 2011, opinion of Special Master Stephen B. Burbank. Based on a review of the file, record and proceedings before the court, and for the reasons stated, the court adopts in part and overrules in part the recommendation of the special master.

BACKGROUND

This appeal arises out of a proceeding commenced by the Players pursuant to Article XXII of the *White* Stipulation and Settlement Agreement (SSA). [FN1] *See* ECF No. 524. The Players allege that the National Football League, its member clubs and the National Football League Management Council (collectively, NFL) violated the SSA by ignoring the obligation to act in good faith and use best efforts to maximize total revenues for both the NFL and the Players for each SSA playing season. In this appeal, the court must, in considering the special master's opinion, determine (1) what the SSA requires of the parties; and (2) whether the NFL violated the SSA when it extended and renegotiated broadcast contracts with DirecTV, CBS, FOX, NBC and ESPN (collectively, broadcasters).

I. Historical Context

On September 10, 1992, following a ten-week trial, a jury found the NFL in violation § 1 of the

Sherman Antitrust Act, 15 U.S.C. § 1. *See* *McNeil v. Nat'l Football League (Plan B Free Agency)*, No. 4-90-476, 1992 WL 315292, at *1 (D.Minn. Sept.10, 1992). Following the verdict, individual players sought injunctive relief to become free agents for the 1992 season. *See* *Jackson v. Nat'l Football League*, 802 F.Supp. 226, 228 (D.Minn.1992). Based on the *McNeil* verdict, the court temporarily enjoined enforcement of Plan B. *Id.* at 235. Less than two weeks after the *McNeil* verdict, players Reggie White, Michael Buck, Hardy Nickerson, Vann McElroy and Dave Duerson brought an antitrust class action seeking injunctive relief in the form of total or modified free agency. *See* *White v. Nat'l Football League*, 822 F.Supp. 1389 (D.Minn.1993). The parties decided to settle their financial and labor disputes, and a mandatory settlement class was certified for damages and injunctive relief. The NFLPA became the official exclusive bargaining authority for football players in March 1993. The NFL and the Players formed the SSA to bring an end to a wide range of litigation. On April 30, 1993, the court approved the SSA. The parties also entered into a Collective Bargaining Agreement (CBA) that mirrors the SSA. The parties amended and extended the CBA in 1996 and 1998. In 2006, the parties renegotiated the CBA for 2006-2012.

On May 20, 2008, the NFL opted out of the final two years of the current CBA and SSA because, among other reasons, it believed that the current agreement "does not adequately recognize the costs of generating the revenues of which the players receive the largest share," and other elements of the deal "simply are not working." Ex. 77.[FN2] As a result, the SSA and CBA expire on March 4, 2011. The NFL recognized that a lockout was "realistically" possible in order to achieve a new agreement more favorable to its interests. Tr. 771; *see* Ex. 221.

***2** Soon after opting out of the CBA, the NFL began to negotiate extensions of its broadcast contracts. Rights fees in the broadcast contracts generate approximately half of the NFL's total revenues. Goodell Direct Test. 4. Existing broadcast contracts effectively prevented the NFL from collecting revenue during a lockout in 2011 because the contracts did not require broadcasters to pay rights fees during a lockout or required the NFL to repay lockout fees in 2011. Op. 20-21, ¶¶ 12-22; Ex. 228, at 00065812. Moreover, some of the NFL's loan obligations include "average media revenues" covenants which provide that an "event of default" occurs if average annual league media revenues fall below a specified value. Op. 20, ¶ 9; *id.* at 21, ¶ 11; Siclare Direct Test. 1, 3. The NFL worried that its creditors could argue that a default event had occurred if the NFL locked out the Players in 2011, the same year that some broadcast contracts were set to expire, and that a default would give the Players bargaining power in labor negotiations. Op. 21, ¶ 23; Goodell Direct Test. 3. In light of "market conditions and strategic considerations," the NFL understood that it was "prudent to consider [broadcast contract] extension alternatives today." Ex. 228, at 00065812.

II. Broadcast Contracts

In May 2008, the NFL had broadcast contracts with DirecTV for the 2006-2010 seasons, with CBS, FOX and NBC, respectively, for the 2006-2011 seasons, and with ESPN for the 2006-2013 seasons (collectively, previous contracts).

A. DirecTV

The NFL's contract with DirecTV was to expire at the end of the 2010 season. The previous contract had no work-stoppage provision. As a result, the NFL would receive no revenue if it locked out the Players. DirecTV had the exclusive right to broadcast a "Red Zone" channel featuring scoring opportunities from every regular-season Sunday afternoon game. The NFL wanted to offer its own version of the Red Zone. Op. 22, ¶ 31; Rolapp Direct Test. 4.

The NFL and DirecTV began negotiations in July 2008. The extended contract provides that DirecTV will pay a substantial fee if the 2011 season is not cancelled and up to 9% more, at the NFL's discretion, if the 2011 season is cancelled. Of the total amount payable in the event of a cancelled season, 42% of that fee is nonrefundable and the remainder would be credited to the following season. Op. 27, ¶¶ 71-72; Goodell Direct Test. 11. As a result, the NFL could receive substantially more from DirecTV in 2011 if it locks out the Players then if it does not. DirecTV would have considered paying more in 2009 and 2010 "to have [the work-stoppage provision] go away." Tr. 410.

In the extended contract, DirecTV: (1) gained the right to distribute Sunday Ticket via broadband; (2) gained packaging flexibility; (3) maintained the exclusive right to carry out-of-market games (Sunday

Ticket); and (4) maintained the nonexclusive right to carry programming that features year-round, 24-hour football programming (the NFL Network) through the end of the 2014 season. Op. 27, ¶ 74; Tr. 379; Goodell Direct Test. 15. The NFL gained the immediate right to distribute "look-ins" of Sunday Ticket games as part of its Red Zone channel. Op. 27, ¶ 74; Tr. 381. DirecTV agreed to pay an increased average rights fee for 2011 through 2014. The NFL did not seek an increase in rights fees for the 2009 and 2010 seasons, and those fees remained unchanged. Op. 26, ¶ 62; Goodell Direct Test. 7.

B. CBS & FOX

***3** The NFL's contracts with CBS and FOX were to expire at the end of the 2011 season. Under the previous contracts, CBS and FOX had to pay rights fees in the event of a work stoppage. The NFL and the networks would then negotiate a refund and, if necessary, resolve disputes through arbitration. If refunds were due, the NFL had to repay fees for the first three cancelled games during the affected season, with the remainder due the following season. If a work stoppage occurred in 2011, the final year of the contract, the NFL had to repay CBS and FOX that same year. The NFL began simultaneous negotiations with CBS and FOX in April 2009.

The NFL and CBS and FOX, respectively, extended the contracts through the 2013 season. Under the extended contracts, the new work-stoppage provision: (1) eliminates the requirement that the NFL repay rights fees attributable to the first three lost games in the affected season; (2) allows the NFL to request less than the full rights fee; and (3) allows the NFL to repay the funds, plus money-market interest, over the term of the contract. Op. 32, ¶ 126. If an entire season is cancelled, the contracts extend for an additional season. *Id.* ¶ 127. Initially, FOX expressed reluctance to pay rights fees during a work stoppage. Goodell Direct Test. 19. The NFL considered opposition to the work-stoppage provision a "deal breaker[ ]." Ex. 163.

CBS and FOX gained highlight rights, streaming rights and advertising flexibility for the 2009-2010 seasons. *See* Op. 30, ¶¶ 106, 107-08, 119; Goodell Direct Test. 21; Rolapp Direct Test. 11. The NFL gained the immediate right to distribute "look-ins" of CBS and FOX games for its Red Zone channel and the right to distribute highlights through its wireless provider. *See* Op. 30, ¶ 103; Rolapp Direct Test. 11. CBS and Fox agreed to pay increased rights fees for the 2012 and 2013 seasons. The NFL did not seek increased rights fees for the 2009, 2010 and 2011 seasons, and they remained unchanged. CBS, FOX and the NFL approved the respective contract extensions in May 2009.

C. NBC

The NFL's broadcast contract with NBC was to expire at the end of the 2011 season. The previous contract contained a work-stoppage provision identical to the provisions in the previous CBS and FOX contracts. The NFL and NBC began negotiations in March 2009.

The NFL extended NBC's contract through the 2013 season. Under the extended contract, the new work-stoppage provision: (1) eliminates the requirement that the NFL repay rights fees attributable to the first three lost games in the affected season; (2) allows the NFL to request less than the full rights fee; and (3) allows the NFL to repay the funds, plus money-market interest, over the term of the contract. Op. 39, ¶ 190; Goodell Direct Test. 21, 24. If an entire season is cancelled, the contract extends for one year with the right to broadcast the Super Bowl that year. Op. 39, ¶ 191; Goodell Direct Test. 24.

***4** In extension negotiations, NBC felt that the NFL was "hosing" it by its rights fees demand. Op. 39, ¶ 185; Tr. 1339. To "bridg[e] the gap," the NFL agreed to award NBC an additional regular-season game for the 2010-2013 seasons. Op. 38, ¶ 181; Tr. 1048-1050, 1339. The NFL did not seek additional rights fees for the 2009, 2010 and 2011 seasons, and they remained unchanged. NBC agreed to pay increased rights fees for the 2012 and 2013 seasons.

NBC gained limited digital and advertising rights for the 2009-2010 seasons. The NFL gained the immediate right to stream Sunday Night Football via its wireless partner and certain "lookin" rights. The NFL and NBC approved the contract extension in May 2010.

D. ESPN

The NFL's contract with ESPN for Monday Night Football was to expire in 2013. This contract was not extended, but the work-stoppage provision was amended. Op. 40, ¶ 194; *id.* at 41, ¶¶ 204-05; Goodell

Direct Test. 25-26. The previous contract contained a work-stoppage provision similar to the provisions in the previous CBS, FOX and NBC contracts, except that the NFL could be required to repay damages incurred by ESPN due to lost subscription fees. ESPN wanted to obtain additional digital rights from the NFL. Op. 40, ¶ 195. The NFL and ESPN negotiated digital rights and a new work-stoppage provision in fall 2009. Op. 40, ¶¶ 198-200; Goodell Direct Test. 25.

In the event of a cancelled season, the new work-stoppage provision provides that: (1) ESPN would, at the NFL's discretion, pay up to the full rights fee; (2) a credit for the first three games of the season would be applied the same year; (3) the NFL may request less than the full rights fee; and (4) the NFL would repay the funds, with LIBOR interest plus 100 basis points, over the term of the contract. Op. 42, ¶¶ 214-15; Tr. 302-03. If an entire season is cancelled, the contract extends for an additional season. Op. 42, ¶ 213; Rolapp Direct Test. 17. The NFL is not liable to repay more than ESPN's yearly rights fee.

ESPN gained (1) the right to use NFL footage in linear distribution of regular programming across digital platforms (excluding the right to distribute live Monday Night Football wirelessly); (2) the right to stream live Monday Night Football highlights on its website; (3) the right to show game highlights online; (4) incremental international rights; and (5) broad wireless rights. Op. 40, ¶ 199; Rolapp Direct Test. 16-17. The NFL gained the right to distribute in-progress highlights of ESPN's Monday Night Football game on NFL.com and wireless devices.

ESPN agreed to pay rights fees for July 2010 through July 2014. Op. 40, ¶ 198; Goodell Direct Test. 25. ESPN requested that the fee not be payable in the event of a work stoppage, but the NFL rejected the request. Goodell Direct Test. 25. The NFL stated that the digital deal and the work-stoppage provisions were "linked." Op. 41, ¶ 208; Tr. 889-90. To secure ESPN's agreement to the work-stoppage provision, the NFL granted the right to a Monday Night Football "simulcast" via the wireless partner. Op. 41, ¶ 209; Tr. 891-92.

E. Comcast & Verizon

***5** In 2008, the NFL was engaged in litigation with cable provider Comcast over limited carriage of the NFL Network. Op. 34, ¶ 141; Goodell Direct Test. 12. After securing contract extensions with CBS and Fox, the NFL concluded a carriage agreement with Comcast, whereby Comcast agreed to carry the NFL Network on an expanded digital tier, leading to an 8-million subscriber increase in distribution. Op. 34, ¶¶ 1447-48; *id.* at 35, ¶ 150; Goodell Direct Test. 22; Tr. 1038. As a result, the NFL Network revenue increased substantially from 2008 to 2009. Op. 35, ¶ 150; Siclare Direct Test. 14.

In February 2010, Verizon Wireless (Verizon) became the NFL's wireless partner. Op. 43, ¶ 220; Rolapp Direct Test. 15. Verizon agreed to pay higher fees than the NFL's previous wireless partner, resulting in large increases in direct and indirect value. Op. 43, ¶¶ 223, 225; Rolapp Direct Test. 15. Access to the NFL's Red Zone channel, Sunday night football streaming, in-progress highlights, and post-season live audio helped the Verizon deal move forward. Op. 43, ¶ 228; Rolapp Direct Test. 15-16. In the event of a work stoppage, Verizon is obligated to pay a non-refundable rights fee. Op. 44, ¶ 230; Rolapp Direct Test. 3.

In total, the NFL negotiated access to over $4 billion in rights fees in 2011 if it locks out the Players. Of that sum, it has no obligation to repay $421 million to the broadcasters.

III. Present Action

On June 9, 2010, the Players sought a declaration that the NFL violated Article X, § 1(a)(i) and Article XIX, § 6 of the SSA when it extended and renegotiated broadcast contracts without satisfying its duty to maximize total revenues in SSA years 2009 and 2010, which would inure to the benefit of both the Players and the NFL. The special master held a trial on January 4-7 and 13, 2011. On February 1, 2011, the special master found that the NFL violated Article X, § 1(a)(i) when it granted NBC an additional regularseason game in the 2010 season and granted ESPN an additional right in the 2010 season in exchange for an amended work-stoppage provision. Op. 46, ¶¶ 15-16. The special master granted the Players $6.9 million in damages for the NBC violation, and determined that the Players had not met their burden of demonstrating damages with respect to the ESPN violation. Op. 47-48. The special master found that the NFL did not otherwise breach the SSA. The Players objected in part to the special master's opinion. The court now considers the objection.

--- F.Supp.2d ----, 2011 WL 706319 (D.Minn.)
(Cite as: 2011 WL 706319 (D.Minn.))

DISCUSSION

[1][2][3][4][5] On appeal, the special master's conclusions of law are reviewed de novo and factual findings are reviewed under the clearly erroneous standard. *See White v. Nat'l Football League (Rob Moore)*, 88 F.Supp.2d 993, 995 (D.Minn.2000); *see also* Fed.R.Civ.P. 53(f)(3)(A)-(4) (factual findings reviewed for clear error and legal conclusions reviewed de novo). New York law governs interpretation of the SSA. As the court has previously stated:

> ***6** Under New York law, the terms of a contract must be construed so as to give effect to the intent of the parties as indicated by the language of the contract. The objective in any question of the interpretation of a written contract, of course, is to determine what is the intention of the parties as derived from the language employed. The court should also give the words in a contract their plain and ordinary meaning unless the context mandates a different interpretation.

See White v. Nat'l Football League (30% Rule), 899 F.Supp. 410, 414 (D.Minn.1995). Further, the court must give effect and meaning to each term of the contract, making every reasonable effort to harmonize all of its terms. *See Reda v. Eastman Kodak Co.*, 233 A.D.2d 914, 649 N.Y.S.2d 555, 557 (N.Y.App.Div.1996). The court must also interpret the contract so as to effectuate, not nullify, its primary purpose. *See id.* Here, the primary purpose of the SSA was to settle numerous labor and financial disputes between the Players and the NFL, and to secure revenue for their mutual benefit. The SSA and the CBA have been amended several times to continue labor harmony between the parties.

I. Alleged SSA Violations

Article X, § 1(a)(i) of the SSA provides that:

> The NFL and each NFL team shall in good faith act and use their best efforts, consistent with sound business judgment, so as to maximize Total Revenues for each playing season during the term of this Agreement....

SSA Art. X, § 1(a)(i). The SSA defines total revenues as:

> "Total Revenues" ("TR") means the aggregate revenues received or to be received on an accrual basis, for or with respect to a League Year during the term of this Agreement, by the NFL and all NFL Teams (and their designees), from all sources, whether known or unknown, derived from, relating to or arising out of the performance of players in NFL football games....
>
> *Id.*

The Players argue that the special master erred by concluding that the NFL did not breach the SSA, finding that the good-faith requirement adds nothing to the SSA, erroneously interpreting "sound business judgment" and total revenues, and declining to issue an injunction. The Players "bear the burden of demonstrating by a clear preponderance of the evidence that the challenged conduct was in violation of Article X." SSA Art. XV, § 3.

A. Consistent with Sound Business Judgment

The court first considers the meaning of the words "consistent with sound business judgment" because this language is essential to interpreting the meaning of "good faith" and "best efforts" in Article X. The special master found that "consistent with sound business judgment" qualifies the duty to act in good faith and use best efforts to maximize total revenues, thereby rejecting the Players' argument that it imposes an additional obligation. Op. 14.

The language of § 1(a)(i) cannot be construed by looking at each word in isolation. *See Dore v. La Pierre*, 226 N.Y.S.2d 949, 952 (N.Y.Sup.Ct.1962) ("In interpreting a contract, particular words should not be considered as isolated from the context."). The court looks to the entire sentence and the words surrounding the phrase for guidance. *See Popkin v. Sec. Mut. Ins. Co. of N.Y.*, 48 A.D.2d 46, 367 N.Y.S.2d 492, 495 (N.Y.App.Div.1975). In this case, applying the principle of *noscitur a sociis* and considering punctuation and grammatical structure, the court agrees with the special master that "consistent with sound business judgment" qualifies the duties to act in good faith and use best efforts.

***7** The special master erred, however, in his application and analysis of "consistent with sound business judgment." He reasoned that "it would be absurd and commercially unreasonable" to allow the Players to substitute their own business judgment for that of the NFL, Op. 13-14, because he relied on cases

that interpret the business-judgment rule as it applies to fiduciary duties of corporate directors. *See In re Lipper Holdings, LLC*, 1 A.D.3d 170, 766 N.Y.S.2d 561, 562 (N.Y.App.Div.2003) (reviewing limited partnership agreement); *Auerbach v. Bennett*, 47 N.Y.2d 619, 629-30, 419 N.Y.S.2d 920, 393 N.E.2d 994 (N.Y.1979) (reviewing corporate action). The rationale for the businessjudgment rule does not apply here. In a corporate context, the business-judgment rule exists to insulate corporate directors from personal liability when they take good-faith risks on behalf of a corporation. The rule protects directors from actions by stockholders (owners) and others. Unlike corporate directors and stockholders, whose interests generally align, the interests of management (owners) and labor are adversarial. Therefore, in the SSA, the words "sound business judgment" do not grant the same discretion enjoyed by corporate directors.

The special master should have considered the intent of the parties and the context from which this language arose. The NFL and Players formed the SSA to avoid the consequences of the jury verdict finding the NFL in violation of antitrust law. The level of discretion allowed by the SSA is constrained by the context and hard bargaining which establish the intent of the parties and the meaning of that language.

[6] The court must construe the SSA in light of the language agreed to by the parties and New York law. The phrase "consistent with sound business judgment" qualifies, and is qualified by, the SSA requirement that the parties act in good faith and use best efforts to maximize total revenues for the joint benefit of the Players *and* the NFL. Indeed, "consistent with sound business judgment" allows the NFL to consider its long-term interests provided it does so while acting in good faith and using best efforts to maximize total revenues for each SSA playing season. *Accord Dist. Lodge 26 of Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. United Techs. Corp.*, 689 F.Supp.2d 219, 242 (D.Conn.2010) (considering contract's "every reasonable effort" provision).[FN3] "Sound business judgment" does not allow the NFL to pursue its own interests at the expense of maximizing total revenues during the SSA. Therefore, the special master committed legal error in his interpretation of "sound business judgment," which effectively nullified pertinent terms of the SSA.

B. Good Faith

[7] Good faith and best efforts are distinct obligations:

> Good faith is a standard that has honesty and fairness at its core and that is imposed on every party to a contract. Best efforts is a standard that has diligence at its essence and is imposed on those contracting parties that have undertaken such performance. The two standards are distinct, and that of best efforts is the more exacting....

***8** 2 E. Allan Farnsworth, *Farnsworth on Contracts* § 7.17c (3d ed.2004) (citation omitted); *see also Grossman v. Melinda Lowell, Attorney at Law, P.A.*, 703 F.Supp. 282, 284 (S.D.N.Y.1989) (best efforts imposes additional obligation); *Ashokan Water Servs., Inc. v. New Start, LLC*, 11 Misc.3d 686, 807 N.Y.S.2d 550, 556 (N.Y.Civ.Ct.2006) ("A best efforts requirement must be reconciled with other clauses in the contract to the extent possible, not used as a basis for negating them.") (citation and internal quotation marks omitted). The special master correctly stated that best efforts imposes a "higher obligation" than good faith. Op. 12-13 (citing *Ashokan Water Servs.*, 807 N.Y.S.2d at 555); *see also Kroboth v. Brent*, 215 A.D.2d 813, 625 N.Y.S.2d 748, 814 (N.Y.App.Div.1995) (" 'best efforts' requires more than 'good faith' "). However, the special master then declined to analyze the SSA's good faith obligation because he reasoned that "under New York law, any breach of the duty of good faith will also constitute a failure to exert best efforts, although the converse is not always true." Op. 12-13. The failure to separately analyze good faith constitutes legal error.

[8] Good faith "connotes an actual state of mind ... motivated by proper motive" and "encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage." *Ashokan Water Servs.*, 807 N.Y.S.2d at 554 (citation and internal quotation marks omitted). In addition, good faith requires that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 746 N.Y.S.2d 131, 773 N.E.2d 496, 500 (N.Y.2002) (citation omitted).

[9] Broadcast contracts are an enormous source of

shared revenue for the Players and the NFL. Under the SSA, the Players rely on the NFL to negotiate these contracts on behalf of *both* the NFL's own interests *and* the interests of the Players. In May 2008, the NFL opted out of the final two years of the CBA, and recognized that a lockout in 2011 would help achieve a more favorable CBA. Thereafter, the NFL sought to renegotiate broadcast contracts to ensure revenue for itself in the event of a lockout. *See, e.g.*, Exs. 98, 102, 110, 131, 228. The record shows that the NFL undertook contract renegotiations to advance its own interests and harm the interests of the players.[FN4] The NFL argues that the SSA does not require it to act in good faith in 2011 or subsequent seasons, that lockouts are recognized bargaining tools and that it is entitled to maximize its post-SSA leverage. The court agrees.[FN5] However, under the terms of the SSA, the NFL is not entitled to obtain leverage by renegotiating shared revenue contracts, during the SSA, to generate post-SSA leverage and revenue to advance its own interests and harm the interests of the Players. Here, the NFL renegotiated the broadcast contracts to benefit its exclusive interest at the expense of, and contrary to, the joint interests of the NFL and the Players. This conduct constitutes "a design ... to seek an unconscionable advantage" and is inconsistent with good faith. *See* *Ashokan Water Servs.*, 807 N.Y.S.2d at 554 (citation and internal quotation marks omitted).

***9** [10] The NFL next argues that any injury to the Players' interests will occur after the termination of the SSA. The court disagrees. As a result of the broadcast contract renegotiations, the NFL demanded and received "material[ly]" different, immediately effective work-stoppage agreements. *See, e.g.*, Bornstein Dep. 168-69. Moreover, at least one broadcaster would have considered paying more in the 2009-2010 seasons "to have [the work-stoppage provision] go away," Tr. 410, indicating that the NFL's inflexibility with respect to lockout provisions resulted in less total revenues for the 2009-2010 seasons. The NFL also argues that the broadcast contracts were renegotiated to avoid defaulting under certain loan covenants. That fact alone substantiates value to the NFL without a corresponding increase in total revenues. Moreover, the value of the renegotiated contracts far exceeds the amount needed to satisfy loan covenants, and the DirecTV contract creates a financial incentive to institute a lockout. Further, the decision to lockout the Players is entirely within the control of the NFL, thereby rendering a debt default also entirely within its control. Lastly, the debt covenants are of the NFL's own making. The risk of debt default brought about by a lockout does not excuse or justify a breach of the SSA. Therefore, construing the good faith obligation as modified by "consistent with sound business judgment," the NFL breached the SSA by failing to act in good faith so as to maximize total revenues for each SSA playing season.[FN6] The special master committed legal error by failing to properly interpret the good faith provision and by finding no breach.[FN7]

C. Best Efforts

[11][12] "There is, of course, no more significant context for a 'best efforts' obligation than the agreement of which it is a part or is made so." *Ashokan Water Servs.*, 807 N.Y.S.2d at 556. Best efforts "necessarily takes its meaning from the circumstances." *Bloor v. Falstaff Brewing Corp.*, 454 F.Supp. 258, 266 (S.D.N.Y.1978) (citation and internal quotation marks omitted). Under New York law "a best efforts clause imposes an obligation to act with good faith in light of one's own capabilities." *Bloor v. Falstaff Brewing Corp.*, 601 F.2d 609, 613 n. 7 (2d Cir.1979) (internal quotation marks omitted). Capability "is a far broader term than financial ability" and "must take into account [the promisor's] abilities and opportunities which it created or faced." *Bloor*, 454 F.Supp. at 267 (internal quotation marks omitted).

[13][14][15] A party obligated to give best efforts maintains the "right to give reasonable consideration to its own interests," *Bloor*, 601 F.2d at 614, and is allowed a "reasonable variance ... in the exercise of sound business judgment," *Bloor*, 454 F.Supp. at 269. Although a best-efforts provision does "not require [a promisor] to spend itself into bankruptcy," it does prohibit a promisor from "emphasizing profit *uber alles* without fair consideration of the effect" on the promisee. *Bloor*, 601 F.2d at 614. A best-efforts clause requires the promisor to do more than treat a promisee's interest "as well as its own." *Id.*

***10** The special master failed to analyze the total capabilities and the market power of the NFL because he found it "difficult to believe that" the parties intended best efforts to "require the NFL to seek additional consideration for rights already under contract." Op. 15. This is another example of importing corporate law to a sui generis agreement that was forged at the anvil of litigation, threatened repercussions and hard bargaining. [FN8]

Moreover, although the rights fees for the 2009-2010 seasons were already agreed upon, the renegotiated contracts materially changed almost every other aspect of the previous contracts. Further, the NFL gave digital rights in 2009 and 2010 without incremental payments to convince two broadcasters to agree to work-stoppage provisions. See Op. 46, ¶ 16; Exs. 160, 163, 170; Tr. 866-77. The NFL gave digital and other rights in 2009 and 2010 without incremental payments to convince other broadcasters to pay increased rights fees in 2012 and subsequent seasons. See Op. 46, ¶ 15; Ex. 167, at 00003736. The NFL made no effort to maximize total revenues in 2009-2010 in exchange for those rights.

The court agrees with the special master that the best-efforts clause does not require the NFL to "constantly badger[ ] its broadcast ... partners for more money" without offering anything in return. Op. 15. However, the SSA requires the NFL to use best efforts to maximize total revenues for the 2009-2010 seasons when it enters into widespread and lucrative contract renegotiations. [FN9] As the special master noted, the law disfavors "those who come to regret deals they have made and seek to switch the locus of risk ex post." Op. 15. However, by actively renegotiating broadcast contracts to ensure favorable changes for itself and disadvantage the Players, the NFL did precisely that. As a result, the failure of the NFL to seek revenue for modifications to the broadcast contracts in the 2009-2010 seasons is inconsistent with best efforts.

In applying the total-capabilities analysis, the court finds that the NFL's capabilities are formidable and extensive. "Capability is a far broader term than financial ability" and includes the NFL's market power and "the opportunities which it created or faced." *Bloor*, 454 F.Supp. at 267. Along with favorable lockout protection and digital rights agreements, the NFL secured annual rights fees increases large enough to be considered an "enormous accomplishment." Goodell Direct Test. 10, 20-21, 24; *see* Op. 22, ¶¶ 25-26. According to one network executive, "[y]ou know you've reached the absolute limits of your power as a major network ... [when] the commissioner of the National Football League calls you ... and says ... [w]e're done, pay this or move on .... [the NFL has] market power like no one else, and at a certain point in time, they'll tell you to pack it up or pay the piper." Tr. 1346. The record indicates that, using its market power, the NFL had substantial capability to maximize total revenues for the 2009 and 2010 playing seasons when it entered into broadcast contract renegotiations.

***11** [16][17] To the extent that "consistent with sound business judgment" modifies the best efforts requirement, the NFL may consider its long-term interests but not at the expense of maximizing total revenues for each SSA season for the joint benefit of itself and the Players. A promisor's consideration of its own interests becomes unreasonable when it is manifestly harmful to the party to which it has obligations. *See* *Van Valkenburgh, Nooger & Neville, Inc. v. Hayden Pub. Co.*, 30 N.Y.2d 34, 330 N.Y.S.2d 329, 281 N.E.2d 142, 145 (N.Y.1972); *accord* *Dist. Lodge 26*, 689 F.Supp.2d at 242. "Consistent with sound business judgment" does not permit the NFL to enhance its long-term interests at the expense of its present obligations.[FN10] The record shows, however, that the NFL did just that. In considering broadcast contract renegotiations, the NFL consistently characterized gaining control over labor as a short-term objective and maximizing revenue as a long-term objective. *See, e.g.*, Exs. 142, 201, 228. The NFL used best efforts to advance its CBA negotiating position at the expense of using best efforts to maximize total revenues for the joint benefit of the NFL *and* the Players for each SSA playing season. Moreover, at least three networks expressed some degree of resistance to the lockout payments. As it renegotiated the contracts, the NFL characterized network opposition to lockout provisions to be a deal breaker and "clearly a deal" it would not consider. Ex. 163. To the contrary, the evidence shows that maximizing total revenues for SSA seasons was, at best, a minor consideration in contract renegotiations. Therefore, the court finds that the NFL breached Article X, § 1(a)(i) in extending or renegotiating its broadcast contracts. Accordingly, the special master committed legal error in failing to properly interpret the SSA's requirement to act in good faith and use best efforts, consistent with sound business judgment, to maximize total revenues for each SSA playing season, and thus finding no breach.

II. Remedies

[18][19] In his "recommendations of relief," the special master did not consider injunctive relief. *See* Op. 46-48. The special master's failure to consider injunctive relief constitutes legal error. The court considers four factors in determining whether an injunction should issue: (1) the threat of irreparable

harm to the movant in the absence of relief, (2) the balance between that harm and the harm that the relief may cause the non-moving party, (3) the likelihood of the movant's ultimate success on the merits and (4) the public interest. *Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir.1981) (en banc).[FN11] Irreparable harm occurs when a party has no adequate remedy at law because its injuries cannot be fully compensated through money damages. *See Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319 (8th Cir.2009). The issue of the extent to which, and whether, money damages can compensate the Players has not been fully briefed or argued before the court. Therefore, the court determines that additional briefing and a hearing concerning remedies are warranted before it issues its final order.

CONCLUSION

***12 IT IS HEREBY ORDERED** that:

1. The court adopts the special master's "recommendations for relief" paragraphs 1 and 2, see Op. 47, as there is no objection to these findings and recommendations before the court;

2. The court overrules the special master's findings as to the NFL's breach of the SSA relating to its contracts with DirecTV, CBS, FOX, NBC and ESPN, and holds that the NFL breached the SSA as to those contracts; and

3. The court orders that a hearing be held concerning relief to be granted to the Players arising from the NFL's breach of the SSA. The hearing shall consider the award of both money damages and equitable relief, including injunction. District of Minnesota Local Rule 7.1(b) will dictate briefing schedules and related procedures.

FN1. The parties amended the SSA in 1993, 1996, 2002 and 2006.

FN2. "Ex." refers to joint trial exhibits submitted at the hearing before the special master. "Tr." refers to the transcript of the hearing before the special master. "Direct Test." refers to direct testimony declarations. "Op." refers to the special master's February 1, 2011, opinion.

FN3. "New York courts use the term reasonable efforts interchangeably with best efforts." *Monex Fin. Servs. Ltd. v. Nova Info. Sys., Inc.*, 657 F.Supp.2d 447, 454 (S.D.N.Y.2009) (citation and internal quotation marks omitted).

FN4. The NFL's "Decision Tree" is one glaring example of the NFL's intent and consideration of its own interests above the interests of the Players. *See* Ex. 216, at 00081969. Moving forward with a deal depended on the answer to the question: "Does Deal Completion Advance CBA Negotiating Dynamics?" If yes, the NFL should "Do Deal Now"; if no, the NFL should "Deal When Opportune." *Id.*

FN5. The court notes, however, that a lockout is usually an economic weapon employed in response to a strike. *See* 48B Am.Jur.2d *Labor & Labor Relations* § 2652 ("A lockout is a legitimate move by an employer in the face of a strike....").

FN6. The NFL rankles under the restriction to its enormous market power imposed by the *White* settlement after the jury in *McNeil* found that the NFL had abused its power in unlawful restraint of trade. The facts underlying this proceeding illustrate another abuse of that market power wherein various broadcasters of NFL games were "convinced" to grant lucrative work-stoppage payments to the NFL if the NFL decides to institute a lockout. Typical work-stoppage provisions anticipate a strike by players, not a work stoppage created by the NFL itself. Whether the contract provisions insuring these payments might ultimately be deemed unenforceable because of their potentially collusive nature is not an issue before this court, but the court does consider the abuse of the NFL's market power when finding that it did not act in good faith to benefit both itself and the Players, as required by the SSA.

FN7. As a result, the court need not analyze whether the NFL also violated SSA Article XIX, § 6.

FN8. The special master noted that "a signed writing is sufficient to overcome the traditional refusal to enforce a promise to pay more in the absence of additional consideration." Op. 15. The special master erred in relying on the preexisting duty rule. The rule does not apply where, as here, the parties do, or promise to do, something in addition to their preexisting duties. *See, e.g.*, *Care Travel Co., Ltd. v. Pan Am. World Airways, Inc.*, 944 F.2d 983, 990 (2nd Cir.1991) (airline promised that it would not terminate contract within 90 days, even though it had right to do so, and agency agreed to operate as nonexclusive agent).

FN9. The court rejects the argument that such an interpretation hypothetically requires the NFL to sell tickets or sponsorship rights for a future season in 2009 or 2010. Unlike the hypothetical scenario, here the NFL renegotiated contracts for years within the term of the SSA and obtained immediate benefits from those renegotiations.

FN10. The NFL urges the court to follow an unpublished Fourth Circuit case, which held that the duty to use best efforts "consistent with its overall business objectives" allows the defendant "to act in accordance with its own objectives if they conflict with those of [plaintiff]." *Mylan Pharm., Inc. v. Am. Cyanamid Co.*, Nos. 94-1502, 94-1472, 1995 WL 86437, at *6 (4th Cir.1995). This unpublished case is not persuasive or controlling authority. *See* 8th Cir. R. 32.1A; 2d Cir. R. 32.1. Moreover, it provides no analysis or substantive reasoning for its interpretation.

FN11. The factors are the same for a permanent injunction except that the movant must show actual success on the merits. *See Vonage Holdings Corp. v. Minn. Pub. Util. Comm'n*, 290 F.Supp.2d 993, 996 (D.Minn.2003) (citing *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 546 n. 12, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)).

END OF DOCUMENT

EXHIBIT B

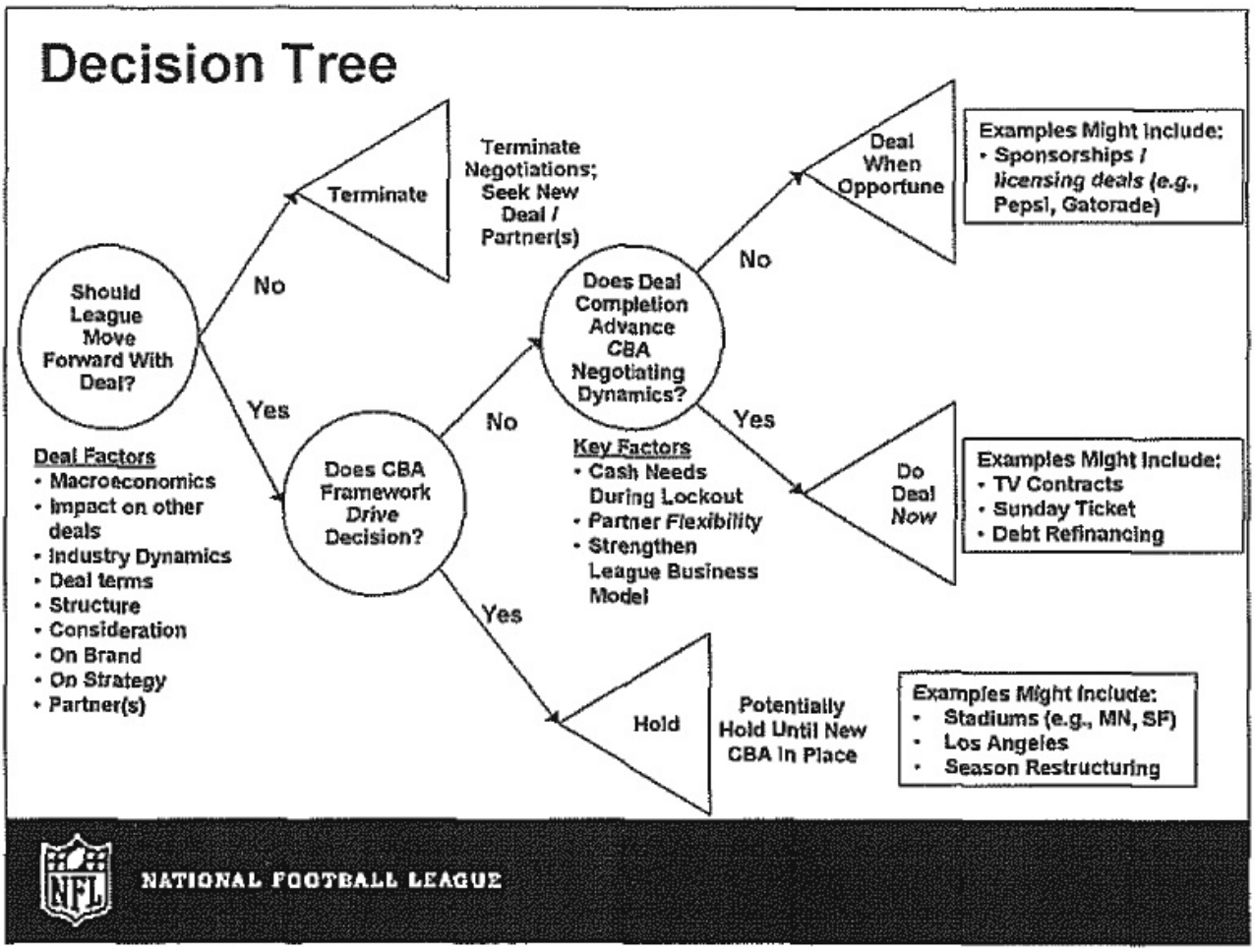
Decision Tree
Should League Move Forward With Deal?
No
Terminate
Terminate Negotiations; Seek New Deal / Partner(s)
Yes
Does CBA Framework Drive Decision?
No
Does Deal Completion Advance CBA Negotiating Dynamics?
No
Deal When Opportune
Examples Might Include:
• Sponsorships / licensing deals (e.g., Pepsi, Gatorade)
Yes
Do Deal Now
Examples Might Include:
• TV Contracts
• Sunday Ticket
• Debt Refinancing
Yes
Hold
Potentially Hold Until New CBA In Place
Examples Might Include:
• Stadiums (e.g., MN, SF)
• Los Angeles
• Season Restructuring
Deal Factors
• Macroeconomics
• Impact on other deals
• Industry Dynamics
• Deal terms
• Structure
• Consideration
• On Brand
• On Strategy
• Partner(s)
Key Factors
• Cash Needs During Lockout
• Partner Flexibility
• Strengthen League Business Model
NATIONAL FOOTBALL LEAGUE

EXHIBIT C

Key Current NFL Media Objectives

	Requirements	Assessment
[redacted]		
Greater Leverage in Upcoming Labor Negotiations	▪ Secure access to revenue in 2011 if a work stoppage occurs ▪ Likely involves current partners and deals beyond 2011	Accomplished as part of any likely extension… optimal timing ASAP

What alternatives allow NFL to accomplish all three objectives?

EXHIBIT D

Current Television Packages
Short Term Extension Alternative

Concept	▪ Two-year extension of current Sunday packages
Rationale	[redacted] ▪ Shifts leverage in labor negotiations away from Union…ability to pull money into a Work Stoppage year

[redacted]

Is this structure attractive to NFL? Should it be explored further?

EXHIBIT E

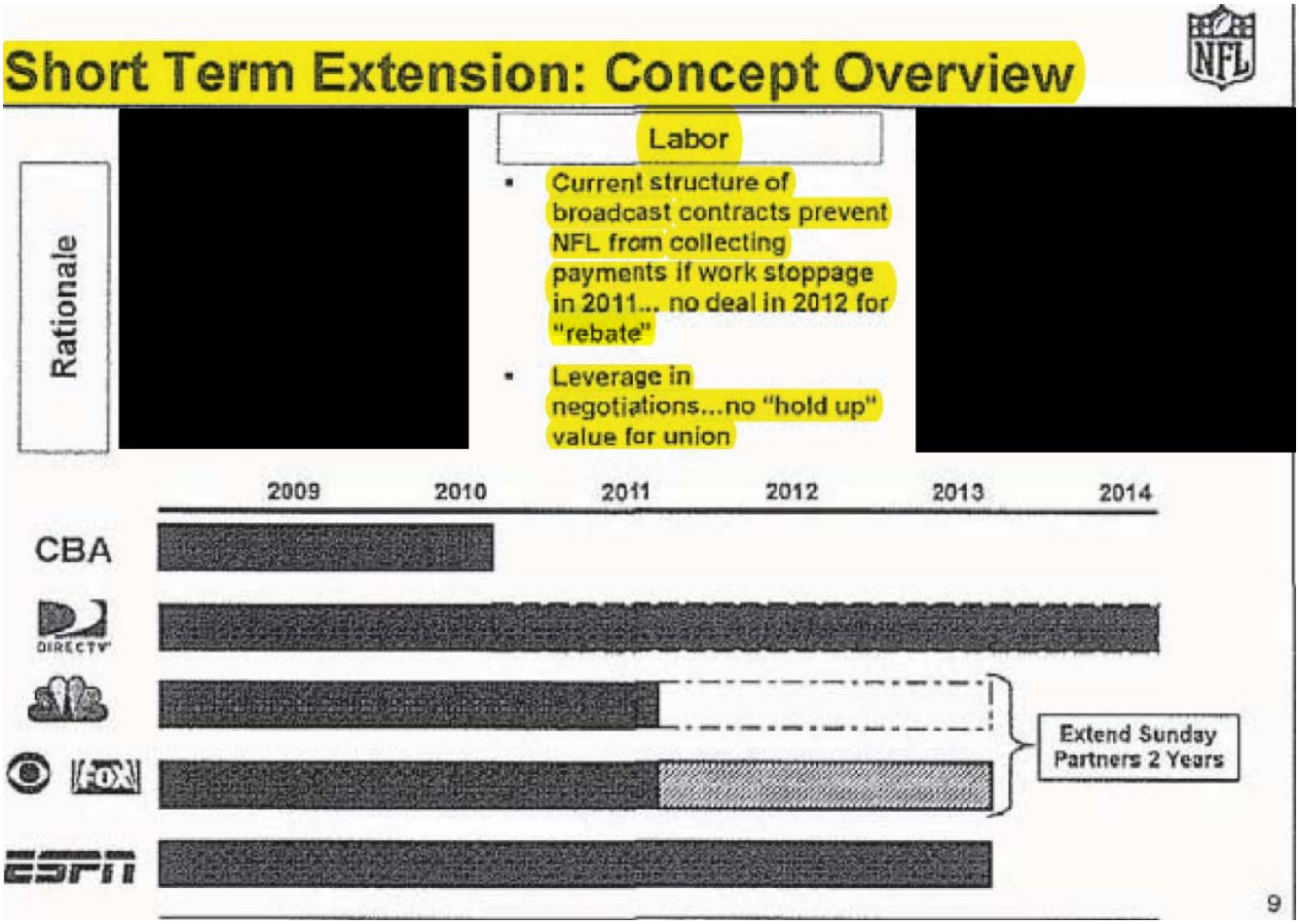
Short Term Extension: Concept Overview
Rationale
[redacted]
Labor
Current structure of broadcast contracts prevent NFL from collecting payments if work stoppage in 2011... no deal in 2012 for "rebate"
Leverage in negotiations...no "hold up" value for union
[redacted]
2009
2010
2011
2012
2013
2014
CBA
DIRECTV
FOX
ESPN
Extend Sunday Partners 2 Years
9

EXHIBIT F

1133 20th Street, NW • Washington, DC 20036 202.756.9100 202.756.9317

August 6, 2009

VIA E-MAIL AND FIRST CLASS MAIL

Jeffrey Pash, Esq.
National Football League
280 Park Avenue
New York, NY 10017

NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

Dear Jeff:

Before responding to your letter of July 10, 2009 regarding our request for certain information relevant to collective bargaining, I took some time to research our past dealings regarding the NFLPA's right to review television contracts. As I had recalled, we requested copies of the television contracts in preparation for bargaining back in 1981, and when the league refused to provide them, we filed an unfair labor practice charge in Region 2 of the National Labor Relations Board. That charge resulted in the filing of a Complaint by the NLRB against the NFL Management Council on April 19, 1982, saying that the league's refusal to allow the NFLPA to review television contracts was a violation of Section 8(a)(1) and (5) of the National Labor Relations Act.

After an evidentiary hearing on the Complaint, Judge Julius Cohn ruled in favor of the NFLPA on September 27, 1982, and ordered the NFL, among other things, to cease and desist from failing and refusing to furnish the non-monetary terms of the TV contracts to the union. That NLRB case was settled as part of an NLRB Settlement Agreement signed on December 11, 1982. That Agreement provided in Paragraph 1.a. (7) and (8) that the NFL was to make available for the NFLPA's inspection the non-financial terms of all media contracts. A copy of the Agreement is enclosed for your review.

Against this backdrop, it would seem that your current failure or refusal to share at least the non-financial terms of the television contracts with us violates legal precedent. It makes no difference, as you state on page 3 of your letter, that "The new television agreements, which you request in your letter, cover seasons not included within the current agreement." The contracts we sought in 1982 also covered seasons subsequent to the term of the then current CBA, and the same was true of the TV contracts we requested to see when we returned to bargaining in 1987.

Accordingly, I trust that you will reconsider your refusal to provide the NFLPA with copies of the new television contracts with CBS, NBC, and Direct TV. The League and the Clubs committed long ago to provide non-financial terms, and in view of the obvious relevance of financial terms, and the stated willingness in your letter to share the "expected revenues from those contracts when the negotiations focus on overall revenue," it seems the financial terms should be provided as well.

In addition, I remind you of our request for the audited financials of the clubs which DeMaurice made in his May 18, 2009 letter to Roger. Although you declined to provide that information in your letter of June 1, 2009, you did say at the end of our first bargaining session

on June 3 in New York that we deserved to have "more specifics" on why the clubs needed concessions from the NFLPA in the economic area. That view was essentially repeated near the end of our July 14 session in Washington when Greg Levy stated that your side realized that you needed to give us more information on the "specific areas" in which clubs have experienced increased costs in recent years. This was after we stated that we needed to see club financials in order to be persuaded that there is a financial problem before we can begin discussing any solutions. As of this date, however, no financial information has been provided.

As a further matter, you and other members of your committee have told us that not all of the owners' objections to the current CBA are "data driven" or for that matter, rational. For example, we were told at the June 3 meeting that our side "should not assume that the owners' decision to terminate was "all rational or numbers-based," and that "each owner has his own reasons."

To make any real progress, we therefore believe that we need to know more about the owners' reasons for terminating, whether they be rational or not. We need to see specific economic information which we can use to evaluate the need for change, and we need to understand, to the best of our ability, what each owner's reasons are for discontinuing the partnership which has performed so well for both of us since its inception in 1993. None of that information has been forthcoming so far, but we trust that will not remain the case as we prepare for our next round of talks.

In that respect, DeMaurice has asked me to discuss with you possible dates in either the second or third weeks in August. Please let us know if that time frame fits your committee's schedule. Meanwhile, you will also recall that you agreed that the next meeting will be most productive if you are ready to begin presenting whatever proposals you wish to make on behalf of the owners for changing our current agreement. Since the owners were the parties terminating the existing deal, it is incumbent upon them to come forward and propose what specific changes they are seeking. Frankly, since the termination by the owners was so long ago, we are surprised and cannot understand why we have not yet received any proposal from the owners' side. We hope and trust that this situation will shortly change, as the uncapped year is coming closer, and we urge you to come to the next meeting with some specific proposals that we can evaluate.

Sincerely,

Richard Berthelsen

cc: DeMaurice Smith

EXHIBIT G

1133 20th Street, NW • Washington, DC 20036 202.756.9100 202.756.9317

NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

June 7, 2010

VIA EMAIL AND FIRST CLASS MAIL

Jeffrey Pash
National Football League
280 Park Avenue
New York, NY 10017

Re: **Schedule of Club Costs for Collective Bargaining**

Dear Jeff:

Since June of last year we have had a total of thirteen bargaining sessions between our two bargaining committees and another series of subcommittee meetings dealing with specific subjects. We have also exchanged numerous written proposals and counter proposals on a variety of subjects, both economic and non-economic. Despite the large number of issues we have discussed, however, I think it is fair to say that the one core issue that has separated us the most has been your demand for an eighteen per cent reduction in the cost of player salaries and benefits.

You have consistently maintained in every one of our meetings that this eighteen per cent shift is necessary, not because of player costs, but instead because of significant increases in the clubs' non-player costs since our current CBA was first negotiated in 1993. You and other members of your committee have stated on numerous occasions that the owners are being "squeezed" (presumably a reference to cash flow) by the current system because their non-player costs have increased so significantly. You have made factual representations, for example, that the owners bear a much higher percentage of stadium and game day costs than they did when the CBA was first agreed to, and that they have had to spend considerably more money in recent years to promote ticket sales and to generate sponsorships. You have cited examples ranging from the Green Bay Packers having to pay for new high definition televisions in their luxury suites to the Dallas Cowboys having to spend money to promote the sale of lottery tickets because of their sponsorship agreement with the Texas Lottery.

In response, we have consistently told you that we needed to have relevant financial information from the clubs' books which would allow us to evaluate these assertions. As you know, under the salary cap system we have had direct access to club and league revenue and player cost information, and the right to audit the books of both the clubs and the League in those two areas on a confidential basis. Unfortunately,

though, the one area of club and league financial information we have not had full access to is the non-player costs, and it is those costs which are at the very heart of the issue which now separates us at the bargaining table.

In one of our sessions last year, you did provide our committee with a one page "Schedule of Costs" which listed cost items in various general categories, including "Direct Costs," "Stadium Rent and Stadium Operating Costs," "Sales and Marketing," etc. for 2007, 2008, and projected costs for the 2012 season. But the listed costs were not broken down by club and were very general in nature. You later provided us with four more pages of general cost items in January of this year entitled "Schedule of Costs, Detail Information," but that schedule only provided subcategories of the same information provided previously for 2007 and 2008. It did not include any breakdown by club, and it did not provide any comparison of those costs to similar costs in any prior year of our CBA term.

It is incumbent upon the NFLPA as the players' bargaining agent to be able to evaluate and verify your assertions about cost increases so that we can properly respond and develop our own counterproposals. With that in mind, the NFLPA has retained the services of a labor economics consulting firm here in Washington to advise us on what is needed. The firm specializes in labor economics and analysis, and it believes that we need to obtain more specific, club-by-club data about the costs you listed in your Schedules.

In particular, we request that you make available those parts of the original books and records of the individual clubs which show the actual expenditures each club has made in the cost categories listed in your schedules (see copy of your schedules attached for your convenience). These original books and records should cover all of the years since 1993, since your assertions at the table have most often referred to 1993 as the comparison point. (For example, in our first session in New York on June 3, 2009 you personally stated that there had been "significant increases in stadium costs" and "other costs" since 1993, and in our session in Washington on November 24, 2009 you stated that there has been a significant "shift from public to private responsibility" for game day and stadium expenses from 1993 to the present.)

To properly evaluate and verify these and other assertions, we feel it is necessary to see the individual club books (or copies of those books) from 1993 and subsequent years which show expenditures in these important areas, and to compare them to the same categories of expenditures in 2008, 2009, and 2010. (It would be preferable to

receive this information in electronic form, but we will work with you to make it as convenient as possible if you wish to provide it in some other form.) In turn, we can then see what percentage of all revenues these costs represented in 1993 (and later years) compared to the present. The data you have given us show that these costs, as a percentage of revenue, have remained relatively constant in recent years (17.9% in 2007, 18.3 % in 2008, and 18.1% forecasted for 2012), so a comparison to the earlier years of the CBA would be more meaningful. We would also request that you tell us how the percentage increases in the costs listed on your attached schedules compare to any increases in other non-player costs which are not listed on those schedules.

Of course, if some of the clubs do not have original books and records going back to 1993, we would like to see whatever they have from the earliest years available. Also, if it is instead your position that the cost increases in the areas in question are a more recent phenomena, and that a later year than 1993 is more useful as a comparison point, we request that you provide the requested club records from that year forward.

I look forward to your response to this information request. Please be assured that we will work with you to make the process of providing it as convenient as possible for the NFL and the clubs. This task may be somewhat time-consuming, but we think it is a necessary one in order to advance the bargaining process. In an interview last month, Bob Batterman was quoted as saying that "we are as far apart as [he] could imagine" in our current bargaining. We acknowledge that we are "far apart", but we believe the reason is that we do not have the information requested in this letter. Hopefully we can begin to narrow the gap by your agreeing to provide that information as soon as possible. In making this request, the NFLPA is not superseding our repeated requests for the full audited financials. We continue to believe those audited financials would be an effective way to move forward to an agreement, but we are making this narrower request in hopes of making progress.

Sincerely,

Richard Berthelsen
General Counsel

cc: DeMaurice Smith
w/ enclosures

Schedule of Costs

CONFIDENTIAL - for Collective Bargaining Purposes Only

EXHIBIT A

($ in millions)

	2007 Season		2008 Season		2012P Season	
Direct Costs (not deducted from TR)						
Fulfillment Costs	42.6		47.5		59.5	
Direct Labor	38.8		41.3		51.8	
Cost of Goods Sold	31.4		39.3		49.3	
Printing / Signage / Production	20.9		15.0		18.8	
Rent/Utilities	19.2		24.1		30.1	
Merchandising Direct Costs	18.0		16.7		20.9	
Sales Commissions	10.5		10.6		13.3	
Suite Costs	6.2		7.1		8.9	
Other	9.8	197.4	5.6	207.2	7.0	259.6
Stadium Rent	51.6		56.3		49.4	
Stadium Operating Costs (non D&A)						
Day of Game	84.7		86.4		97.0	
Facility Maint / Repairs	71.7		70.4		74.1	
Stadium related non DOG.	49.2		56.8		109.4	
Practice facility	35.3	292.5	42.4	312.3	41.9	371.8
Sales and Marketing						
Comp. & Benefits/ T&E	104.3		108.6		120.9	
Advertising & Promo	29.8		35.7		29.8	
Credit Card Fees	24.3		28.7		24.0	
Supplies / Shipping	15.2		15.1		14.4	
Barter and other Fulfillment	8.1		8.0		6.5	
Prof. Fees	6.5		7.0		5.6	
Excess Comps.	3.0		9.0		7.6	
Occupancy	2.9		3.1		2.6	
Other	12.9	207.0	15.7	230.8	13.2	224.6
Stadium Debt Service						
Interest Expense	125.0		158.3		201.9	
Principal	64.7	189.7	83.8	242.1	157.2	359.1
Game Travel						
Air Charters / Travel		72.2		86.8		90.9
Post Season Operations		55.0		54.3		63.6
Capital Expenditure (not including stadium construction or major renovation)		262.0		245.0		280.0
Total Costs		1,275.8		1,378.5		1,649.6
Total Revenue ("TR")		7,129.2		7,546.3		9,099.0
Costs as % of Current TR		17.9%		18.3%		18.1%

This schedule is prepared for discussion purposes only, the NFLMC expressly reserves all rights to amend or supplement.

Schedule Of Costs
Detail Information - Direct Costs not Currently Deducted from TR
(\$ in millions)

	2007		2008	
Fulfillment Costs - Sponsorship rights fees				
Game day Hospitality	13.6		10.2	
Non Game - Sponsor events; trips , etc.	11.0		12.4	
Game day Other	4.1		7.4	
Non Game Day T&E / Hospitality	5.0		4.8	
Non Game Day Promo Events	5.3		6.4	
Other	3.6	42.6	6.3	47.5
Direct Labor				
Website	4.0		4.2	
Concessions	4.3		8.3	
Parking	4.9		3.8	
Stadium Clubs	0.3		0.6	
Merchandise / Novelties	22.6		21.8	
Other	2.7	38.8	2.6	41.3
Cost of Goods Sold (not currently deducted from TR)				
Concessions	3.4		8.8	
Parking	2.4		1.3	
Signage	4.9		4.0	
Stadium Clubs	4.8		2.4	
Merchandise / Novelties	9.6		15.7	
Other	6.3	31.4	7.1	39.3
Printing / Stadium Signage / Production				
Naming Rights	0.3		0.1	
Stadium signage	3.3		2.1	
Merchandise / Novelties	5.9		4.9	
Stadium clubs			0.2	
Production - purchase of time	4.8		4.5	
Website hosting fees	2.1		1.9	
Website Design	0.9		0.6	
Production equip costs	0.4		(0.2)	
Other	3.2	20.9	0.9	15.0

Schedule Of Costs
Detail Information - Direct Costs not Currently Deducted from TR
(in millions)

	2007			2008		
Rent / Utilities / Maintenance						
Rent						
Concessions	0.4			0.4		
Parking	5.6			6.0		
Stadium clubs	0.2			0.7		
Merchandise / Novelties	8.9	15.1		9.2	16.3	
Utilities						
Parking	0.2			0.2		
Merchandise / Novelties	1.4	1.6		0.6	0.8	
Maintenance						
Concessions	0.1			-		
Parking	1.1			0.7		
Stadium clubs				0.6		
Other	1.3	2.5		2.9	4.2	
Catering						
Concessions	-			0.4		
Stadium clubs	-	-	19.2	2.4	2.8	24.1
Merchandise Direct Costs						
Merchandise/Novelties	0.7			0.6		
Online Sales	-			0.9		
Proshops	1.4			2.3		
In-house merchandising	15.9		18.0	12.9		16.7
Sales Commissions						
Sponsorship	10.7			10.4		
Other	(0.2)		10.5	0.2		10.6
Suite Costs						
Depreciation	3.1			4.3		
Rent	2.8			1.8		
Interest	-			(0.2)		
Taxes	0.3		6.2	1.2		7.1
Other			9.8			5.6
Total Direct Costs			197.4			207.2

Schedule Of Costs
Detail Information - Stadium Rent and Operating Costs
(millions)

	2007		2008	
Stadium Rent		51.6		56.3
Stadium Operating Costs				
Day of Game				
Compensation & Benefits	10.0		10.8	
Travel / Meals / Entertainment	5.7		6.4	
Supplies	3.8		4.9	
Building / Facility Rent	4.5		4.3	
Utilities / Communications	3.5		3.4	
Maint. & Repairs	1.0		1.0	
Sanitation	6.6		6.1	
Security	22.0		22.0	
Insurance	0.4		0.4	
Media Relations	1.1		1.5	
Special Events	4.3		1.3	
Outside Labor	10.0		10.6	
Game Entertainment	6.7		8.0	
Other	5.1	84.7	5.7	86.4
Facility / Maint.				
Compensation & Benefits	16.7		15.6	
Travel / Meals / Entertainment	0.1		0.1	
Utilities / Communications	18.3		19.2	
Maint. & Repairs	18.1		19.9	
Supplies	5.6		5.8	
Other	12.9	71.7	9.8	70.4
Stadium Related				
Compensation & Benefits	20.8		23.8	
Travel / Meals / Entertainment	1.2		1.8	
Supplies	3.0		4.3	
Occupancy	24.2	49.2	26.9	56.8
Practice Facility				
Compensation & Benefits	6.3		7.9	
Travel / Meals / Entertainment	0.1		0.2	
Supplies	3.1		4.0	
Occupancy	25.8	35.3	30.3	42.4
		292.5		312.3

Schedule Of Costs
Detail Information
(in millions)

	2007		2008	
Sales & Marketing				
Compensation & Benefits	104.3		108.6	
Advertising	29.8		35.7	
Credit Card Fees	24.3		28.7	
Supplies / Shipping	15.2		15.1	
Barter & other Fulfillment	8.1		8.0	
Professional Fees	6.5		7.0	
Excess Comps	3.0		9.0	
Occupancy	2.9		3.1	
Other	12.9	207.0	15.6	230.8
Stadium Debt Service				
Interest Expense	125.0		158.3	
Principal	64.7	189.7	83.8	242.1
Game Travel - Team Charter Flights		72.2		86.8
Post Season Operations				
Transportation	15.5		13.8	
Entertainment / Lighting / Sound	7.9		6.5	
Construction	6.7		6.5	
Facility rent / utilities	9.9		8.8	
Security	6.4		5.8	
Game Operations	4.7		4.6	
Insurance	1.8		1.8	
Staff Costs	1.1		1.4	
Promotional / Media	1.0		0.6	
Other	-	55.0	4.5	54.3
Capital Expenditures		262.0		245.0

EXHIBIT H

1133 20th Street, NW • Washington, DC 20036 202.756.9100 202.756.9317

NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

July 8, 2010

VIA EMAIL AND FIRST CLASS MAIL

Jeffrey Pash
National Football League
280 Park Avenue
New York, NY 10017

Re: Your Letter of July 5, 2010

Dear Jeff:

This is in reply to your letter of July 5, 2010 regarding our request for club cost information.

First, I am glad that you recognize your obligation to produce information "which is reasonably required to verify assertions of financial fact" that you have made in support of your proposal. However, your letter goes on to imply that the club cost information we requested in my June 7, 2010 letter does not relate to the assertion of any financial facts which you have made in support of your proposal. In our view, nothing could be further from the truth.

Indeed, to date the sole basis which you have advanced for your proposal to reduce player costs by 18 percent has been the alleged growth in the non-player costs which you listed on the schedule you gave us back in November. And the only "assertions of financial fact" that you have given us in support of that proposal are the ones contained on that schedule and the additional sheets you gave us on January 19. At almost every bargaining session so far, we have asked you why, if the current economic model is in such need of change, did you agree to continue that model in the CBA extensions we agreed to in 1996, 1998, 2002, and again in 2006? Invariably, your answer has been that the costs on that schedule have increased dramatically since the model was originally agreed to in 1993. Our response, therefore, has been to request reliable information that would verify that increase, and to compare it to increases in other cost areas as well as revenues. That request admittedly involves a historical comparison of costs, but it is made because your proposal necessitates that comparison. In fact, and as our labor economics consultants have advised, it would be difficult to imagine anything more relevant to our current bargaining than the "then and now" information we seek. Your letter pretends otherwise, but there can be no dispute that your 18 per cent proposal is grounded in that very information. If it is not, you should take it off the table and we can try to make progress in another way.

Second, your letter is quite disingenuous in stating that we have accepted the "accuracy" of the information on your schedule and that we have accepted your assertion that the owners are being "squeezed" financially by the current system. As for the scheduled non-player costs you gave us, we have made it clear to you that we would not be fulfilling our statutory duty and responsibility to our members if we accepted your bare numbers as a basis for changing the CBA. As we have stated and your side has acknowledged, we have an "information challenge" vis' a vis' our members which we can only meet by obtaining information which verifies your bare numbers, and which verifies your position that these numbers have changed dramatically since the CBA was first agreed to in 1993. And as for the owners being "squeezed" by the current system, what we have acknowledged is that they (and you) have made that claim, not that it is true. To the contrary, DeMaurice Smith specifically stated in one of our meetings that Forbes Magazine reported that average club profits for 2008 were over $30 million, and that did not indicate any "squeezing" of their bottom lines. He also said that we were going to assume that the Forbes figures were accurate, at least until it is demonstrated by you that they were not. And while we have acknowledged that costs in certain areas have been increasing, we have stated that those increases have to be compared to increases in revenues and profits over the same period of time in order to be meaningful.

It is also disingenuous for you to suggest that any financial analysis done by the NFLPA has demonstrated any "squeezing" of the owners' bottom line. The financial analysis we have given you to date instead shows that there has been a decrease in the players' percentage of all revenue since 2006. While you claim that the players received over 70% of incremental Total Revenue since 2006, you ignore the fact that "Total Revenue" is determined by subtracting deductions for certain non-player costs which have increased, thanks to our agreement, from $473 million in 2005 to over $1 billion in 2009. Naturally, if the permitted deductions were to increase as we agreed, the players' percentage of the remaining difference was also going to increase. But as we stressed to you in our analysis, if the players' percentage is viewed (as it should be) as a percentage of all revenue, the trend, if any, has been downward, and not in any direction that would "squeeze" the owners.

Finally, you try once again in your letter to find fault with us for refusing to meet. Let me repeat that we are not refusing to meet. We have only asked that, in advance of meeting, you indicate in writing what information you are willing to provide. As your letter demonstrates, the spoken word can often be misconstrued, while the written word is less subject to debate or misinterpretation. Also, your letter of July 5 indicates a willingness to provide us with the requested club data for 1993, "as an initial matter." I trust that this will be followed by club data for 1994 and subsequent years. If not, please advise.

Meanwhile, we would be glad to meet with you or your representative(s) to discuss any logistical issues in transmitting the information to us.

Sincerely,

Richard Berthelsen
General Counsel

cc: DeMaurice Smith

EXHIBIT I

1133 20th Street, NW • Washington, DC 20036 202.756.9100 202.756.9317

October 27, 2010

Jeffrey Pash
National Football League
280 Park Avenue
New York, NY 10017

NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

Re: Club Cost/Return on Investment Data

Dear Jeff:

I am writing as a follow up regarding the financial data the NFL has been willing, and not willing, to provide to the NFLPA. After reviewing the limited cost data that the NFL most recently provided to us, we believe additional information is urgently needed to assist the NFLPA in carrying out its duty to assess the accuracy of the NFL's proposals and the claims the NFL has made in bargaining, and developing its own counterproposals.

From the very beginning of our negotiations, your side has made it abundantly clear that the owners don't believe that they are getting an adequate return on their investment in the current system because costs are too high. To try to support this position, you selected a series of supposedly escalating Club cost items which currently add up to about 18% of Total Revenue, and you proposed that those items be included as additional deductions from Total Revenue in the future. Through this mechanism, you would thereby shift 18% of the revenues from the player's side of the ledger to the owners' side, and thereby achieve a return on investment that you believe would be satisfactory to the owners.

After receiving your proposal, we thus naturally asked for the information necessary for us to verify, evaluate and bargain over the specific financial proposal that has been presented as the owners' main economic proposal. We pointed out in my letter of June 7, 2010 that these cost items appeared to be the "core issue" in our negotiations, and we argued that they were thus highly relevant to our role as the bargaining representative of the players, especially if they had been consistently and significantly escalating since our original deal was made, as you had claimed in our bargaining sessions. You eventually agreed to give us club-by-club breakdowns on these cost items for the years 1993, 1995, 2000, 2005, 2007, and 2008, but you quickly tried to shift attention away from the owners' return on investment concerns by contending that the costs in question were not the reason you wanted a change in the system. For example, before you gave us any further information, you stated in a letter dated June 17, 2010 that the owners "have not maintained that additional costs credits are necessary because of significant increases in non-player costs over the years. Instead, [the owners] have argued more generally that the current economic model fails to incentivize greater investment prospectively." In other words, you would have us believe that increasing costs and the owners' return on investment was not an issue for your side, and that instead the issue was whether the owners' had an "incentive" to grow the game in the future.

We believe, however, that such statements were simply a pretext to try to defeat our right to the financial information that the owners have put at issue in the negotiations, and that the owners' highest priority was and still is to significantly increase their return on investment by having a greater share of their non-player costs deducted from revenue before the players' share is determined. As much as you might otherwise say in writing, the statements made by your side at the table have consistently made it clear that "costs," "margins," and "return on investment" are your highest priority. For example:

- In our July 14, 2009 meeting in Washington, D.C., Anthony Noto, then the CFO of the NFL, made a presentation to the NFLPA in which he claimed that the NFL's costs were increasing and that revenues were no longer increasing at the same rate, with the result that the owners' rate of return has been reduced and is inadequate. Noto also claimed that the players had received 75% of all incremental revenue since 2006 (an assertion we have subsequently shown you is not accurate), and that this resulted in reduced incremental cash flow to the owners. Noto made all of these assertions as a basis for the owners seeking concessions from the players.

- On December 18, 2009, at another bargaining session, you stated that the League had shown the NFLPA how costs have increased and profits have decreased. In that same meeting, Noto reiterated, as a justification for the League's position, that, of the $3.7 billion in incremental revenue generated since 2006, the players received 75% of that revenue, and that NFL club average margins are down 200 basis points (an assertion we have never received any data to test its accuracy or to determine how this was calculated). Noto also claimed that the owners now finance 75% of stadiums, not 25% as before.

- At that same meeting, New York Giants owner John Mara stated that returns are not high enough, and he would not support any deal without fundamental economic change.

- At a bargaining session on January 5, 2010, you once again stated, as a justification for the owners' position, that margins are down, and that the owners are being squeezed. You also asserted that a reason for the proposal of an 18% reduction in the players' share was that the owners did not have enough revenues, net of the costs used to generate them, which costs have grown.

- In a bargaining session on January 12, 2010, Noto stated that the owners were not backing off their proposal for an 18% reduction in the players' share of revenues, claiming that the owners need that level of reduction because profit margins are declining and returns are not adequate. Noto also asked whether the players would guarantee the owners a specific return on equity.

- On February 6, 2010, at our meeting with the NFLMC Executive Committee at the Super Bowl, New England Patriots owner Robert Kraft stated, in support of the NFL's bargaining position, that he expects to make $100 million a year on $1 billion (10%), but that it is acceptable in a sports business to make $50 million a year on $1 billion (5%); that owners have a lot of costs that are not recognized, and that NFL owners have stopped innovating because of inadequate returns on investment.

- Noto said in that same meeting that he thought the financial information the NFLPA presented at the meeting concerning the players' share of revenue over time did not change the NFL's point of view, and did not change the owners' conclusion – the issue, he said, is that owners are being squeezed, and margins are deteriorating. Noto said the

players' share of incremental revenue since 2006 was a symptom, not the disease – players received $2.6 billion in incremental revenue since 2006 and the owners were $200 million "in the hole." Noto went on to state in support of the NFL's position that the owners' average operating profit was just $7 million, and all of the rest of the money covered costs (not subtracting capital expenses).

- At a bargaining session on February 25, 2010, Noto asserted in support of the NFL's position that revenues are now at a level so that returns are insufficient for the owners, and all game-related expenses should be deducted. Green Bay Packer President Mark Murphy stated that the current economic model is not working and the owners need substantial change. He was asked by a player attending that session whether the issue is cash flow, and Murphy responded affirmatively, stating that expenses are growing at a faster rate than revenues.

It is obvious from the above that the NFL's demand for an 18% reduction in the players share is, in fact, based on a claim that non-player costs have increased at a higher rate than revenues, and that the owners' return on investment is thus purportedly shrinking and not high enough according to the owners. The union's ability to verify, evaluate and bargain over the NFL's core economic proposal requires the union to have access to the financial information on which the NFL's proposal is based. We also need this information to evaluate the NFL's alternative characterization of its position -- that the current economic split of revenues with the players does not provide either an "adequate return" on the teams' investment or an "adequate incentive" to "invest in the future."

Even if all of the bargaining statements by the owners reviewed above were ignored, and we credited your recent statements that the owners' position is just based on a claim that clubs have insufficient "incentives" to justify further investments "necessary to grow the game" (see your letter of 7/5/10), we would still be entitled to this additional information. In evaluating whether the current CBA system provides sufficient financial incentives to the clubs to invest in the game, it clearly makes a difference whether, under the current system, clubs have an annual return on investment of say, $5 million or $50 million each.

Moreover, the limited cost information you have provided to date has not made any case for the "fundamental change" that John Mara and others have said that you need. According to our labor economists who have analyzed the cost data you have given us, since 2000, there has been only a small difference between the growth of the costs you want deducted and revenue growth.[1] We therefore need the other cost data you have not given us to see whether the increase in non-player costs you have claimed does, or does not, exist.

Further, the cost data provided to us to date shows that just a small group of teams account for the majority of some cost categories, and that the disparity in costs is enormous between the teams, indicating even more why the NFLPA cannot assess the NFL's investment incentive position without seeing all of the rest of the costs of each team and each team's return on investment information. Such disparities

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[1] For example, our labor economist calculated that the costs on the schedules you gave us represented 14.1% of all revenue in 2000 compared to 16.1% in 2008, and 15.4% of Total Revenue in 2000 compared to 18.3% in 2008, in each case an increase of only a couple of percentage points or less.

indicate that any financial issues that purportedly exist may be extremely localized to particular teams, based upon conditions that do not generally apply across the League and thus do not justify an across-the-board, 18% reduction in player salaries, as opposed to solutions targeted to conditions at particular teams.[2] Indeed, several of the teams with increased costs appear to be teams that have also had recent massive increases in revenues (in part, presumably, because of the capital investments made by those teams). Without return on investment and the missing cost data, it is impossible to tell if the few teams with large cost items disclosed to us have been receiving an adequate return on investment as the other cost categories and return on investment data would be necessary to make those determinations.

The cost categories for the data given us also do not seem uniform or consistent so we need the other categories to assess the accuracy of these figures. It is simply not possible to tell whether the cost categories in your proposal (which you claimed are more closely related to revenue generation than the categories you excluded) make any sense without considering the nature and size of the cost categories you did not include in your proposal.

Our economists have also advised us that franchise values are an integral part of determining an owner's return on investment. In order to assess the economic justification for your proposal, we therefore need to see information concerning how clubs' investments have been rewarded through capital appreciation and how much that appreciation has been.

Accordingly, after examining the limited cost data provided to date and consulting with our labor economists, we believe it is necessary to renew our requests, made on July 29, 2010, for additional return on investment information, and additional non-player cost data. Specifically, we request the following information:

1. A club-by-club accounting for all of the non-player costs not included for the years in question in the club cost data you previously gave us (plus data for any League entities).

2. Data sufficient to disclose each club's annual return on investment for each year from 1993 to the present, including annual data for net cash flow, EBITDA, interest, taxes, depreciation, amortization, capital contributions, and dividends or other payments to owners (or entities controlled by or existing for the benefit of owners or their families), and any such data for League entities.

3. Data sufficient to disclose the economic terms of all NFL franchise acquisitions and sales from 1993 to the present. We can discuss the details of this disclosure to make it as efficient

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[2] For example, in 2008 capital expenditures (capex) comprised nearly 18% of the increased expense deductions sought by the NFL, but more than one-half of those capex expenses arose from just two teams (i.e., nearly 10% of all of the increased deductions sought by the NFL arose in 2008 from a single expense category for just two teams). Indeed, even when including the volatile capex category -- which is not even considered to be an operating expense under standard accounting practices -- the aggregate growth rate for the cost categories for which the NFL wants additional credits has, in fact, slowed since the 2006 CBA was entered into.

as possible, but we assume the request is not unduly burdensome since the League should have records from its approval process as to the terms of each franchise sale.

Please let us know as soon as possible if you will provide us with the requested information. Without such data, we simply cannot constructively respond to the owners' assertions that the current system does not adequately recognize their costs, or yield the owners an adequate return on investment.

Sincerely,

Richard Berthelsen

cc: DeMaurice Smith
Kevin Mawae

EXHIBIT J

1133 20th Street, NW • Washington, DC 20036 202.756.9100 202.756.9317

NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

VIA E-MAIL AND FIRST CLASS MAIL

December 15, 2010

Dennis Curran
Senior Vice-President and General Counsel
National Football League Management Council
280 Park Avenue
New York, NY 10017

Re: NFLPA Request for Documents and Other Information

Dear Dennis:

As you know, Article XLIX of our Collective Bargaining Agreement ("CBA") provides in Section 5 that "Upon request by the NFLPA, the Management Council will promptly provide the NFLPA with any document or other information relating to group insurance, including materials relating to experience and costs." Pursuant to that provision, the NFLPA is requesting the following information for the current plan year (September 1, 2010 through August 31, 2011) and for the four preceding plan years. As used herein, the term "document" refers to both hard copy and electronically stored information and data, including email.

The documents the NFLPA requests the Management Council to promptly provide are as follows:

1. A copy of each of the insurance policies which covered or cover the various benefits provided for in Article XLIX of the CBA for the current year and the four previous plan years.
2. All premium billing statements from each insurance carrier providing or which has provided Article XLIX insurance benefits during the current plan year and preceding four plan years.
3. A copy of any other documents governing or pertaining to the provision of the various benefits provided for in Article XLIX of the CBA for the same periods, including any:
    a. Summary Plan Descriptions ("SPD's") provided to active and/or former players;
    b. Document(s) comprising the "NFL Player Insurance Plan" as that term has been used in SPD's provided to NFL players, and any amendments thereto; and
    c. Document(s) comprising the "NFL Players Insurance Trust" and any amendments thereto.
4. Any communications among and between the NFL, the NFLMC, AON Consulting, Inc., Cigna Insurance Company, any active player or former player, the NFL Alumni Association, MetLife Insurance Company, or any other entity or individual acting on behalf of any of those entities, pertaining to:

a. The extension or provision of coverage for active or former players of any of the benefits described in Article XLIX of the CBA for any period beyond March 3, 2011;
b. The question of whether or not the NFL, the NFLMC, or any of the clubs will continue paying for the coverage of any of the benefits described in Article XLIX of the CBA for any active or former players after March 3, 2011; and
c. Any distinction between players or groups of players as to which of them will or will not have the cost of insurance benefits described in Article XLIX of the CBA paid for them by the NFL, the NFLMC, or any of the clubs for any period beyond March 3, 2011.

5. A copy of every version of the healthcare enrollment materials for life, dental, and health insurance that were distributed to any active or former players during the last five league years, including the folders or packets containing such materials.

The CBA requires this information to be produced "promptly" upon request by the NFLPA, so I trust that you will be able to produce them by the end of next week.

Sincerely,

Richard A. Berthelsen
General Counsel

cc: DeMaurice F. Smith
NFLPA Executive Committee

EXHIBIT K

1133 20th Street, NW • Washington, DC 20036 202.756.9100 tel 202.756.9317 fax

May 18, 2010

VIA FACSIMILE

NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

Jeffrey Pash
National Football League
280 Park Avenue
New York, NY 10017

Re: Amended Television Contracts

Dear Jeff:

It has come to our attention that you have obtained "lockout insurance" from your broadcast partners (DirecTV, CBS, FOX, NBC and ESPN) as a result of your most recently negotiated TV contracts (broadcast, cable and satellite), the terms of which would allow the NFL and its clubs to continue to receive payments from those broadcast partners even if there is a lockout in 2011. We are also aware of your statements that the TV contracts only provide for a "lockout loan" and that while the NFL will be paid the TV money even during a lockout, such monies are only loans which must be repaid in the future.

A lockout would take away NFL games from our fans and would be harmful to our game. Our ongoing negotiations over a new CBA should not prevent the games from being played. Therefore, we ask that you confirm by your signature below that, notwithstanding any language in the TV contracts to the contrary, the NFL and its member clubs agree that they will not accept monies, loans or any other form of financing from their broadcast partners for any games that are not played due to a lockout. By agreeing accordingly, the NFL would be confirming its good-faith desire to reach an agreement on a new CBA in a timely manner. If you are in agreement, please sign and return a copy of this letter to me by Friday, May 21, 2010.

Sincerely,

Richard Berthelsen
General Counsel

Seen and Agreed:

_____ Date: May ___, 2010
Jeffrey Pash
On behalf of the NFL and its Clubs

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	2407
RECIPIENT ADDRESS	12126817571
DESTINATION ID	
ST. TIME	05/18 12:16
TIME USE	00'21
PAGES SENT	2
RESULT	OK

F A X C O V E R

NFL PLAYERS ASSOCIATION

Date: 5-18-10

Attention: Jeff Pash

Fax number: 212-681-7571

Office location: Richard Berthelsen

☐ URGENT ☐ REPLY ASAP ☐ PLEASE COMMENT ☐ PLEASE REVIEW ☐ FOR YOUR INFORMATION

TOTAL PAGES, INCLUDING COVER: 2

Comments:

Re: Amended Television Contracts

EXHIBIT L

NFL PLAYERS
ASSOCIATION

LEGAL DEPARTMENT

MEMORANDUM

To: NFL Club Presidents and General Managers
From: DeMaurice Smith, Executive Director, NFLPA
Date: March 11, 2011
Re: Renunciation of NFLPA Bargaining Rights

As of 4:00 p.m. Eastern Time today the NFLPA has renounced its status as the collective bargaining agent for all NFL players. As a result, no representatives of the NFLPA, including our previously elected Player Representatives or Alternates, has the authority or authorization to engage in any collective bargaining discussions, grievance processing, or any other activities associated with collective bargaining on behalf of the players at either the club or the league level.

As a further result of this change in its status, the NFLPA will no longer be regulating or overseeing the activities or conduct of Contract Advisors (agents) who were previously certified by the NFLPA to represent individual players in player contract negotiations with NFL clubs. From this point forward, any agent, whether or not he or she was previously certified by the NFLPA under its prior agent regulation system, should be viewed strictly as a representative of the individual players he or she represents, and not in any way as a representative of the NFLPA for bargaining purposes or otherwise.

I wish you and your club good luck for the upcoming season.

cc: Roger Goodell
Jeff Pash

EXHIBIT M

1133 20th Street, NW • Washington, DC 20036 202.756.9100 202.756.9317

NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

March 11, 2011

VIA FACSIMILLE AND OVERNIGHT MAIL

Commissioner Roger Goodell
National Football League
280 Park Avenue
New York, N.Y. 10017

Re: Renunciation of Collective Bargaining Status

Dear Roger:

This is to advise you that, pursuant to a vote in which a majority of the players indicated that they wished to end the collective bargaining status of the NFLPA, the NFLPA is renouncing its status as the players' collective bargaining representative and disclaiming interest in continuing as the collective bargaining agent of the players as of 4:00 p.m. eastern time today. It is the players' intention to instead operate hereafter as a professional association dedicated to improving the business conditions of professional football players in the National Football League, including the enhancement and the protection of the contracting rights of its members. By copy of this letter to each of the member clubs of the NFL, I am also informing them of this important change in our status.

Sincerely,

DeMaurice Smith
Executive Director

cc: NFL Member Clubs
NFLPA Executive Committee

EXHIBIT N

NATIONAL FOOTBALL LEAGUE

Dennis Curran
Senior Vice President
of Labor Litigation & Policy

March 11, 2011

VIA EMAIL

DeMaurice Smith
Executive Director
National Football League Players Association
1133 20th Street, N.W.
Washington, DC 20036

Dear De:

Please be advised that, assuming the National Football League ("NFL") and the National Football League Players Association ("Union") have not agreed upon terms for a collective bargaining agreement by 11:59 p.m. on March 11, 2011 (when the parties' current agreement expires), the NFL's member Clubs will institute a lockout of members of the Union's bargaining unit immediately thereafter.

In the event of a lockout, Clubs will be delivering letters to their players in the form attached hereto. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Dennis Curran

cc: Roger Goodell
Jeff Pash
Richard Berthelsen

[On Club Letterhead]

March 11, 2011

[Player Name]

[Address]

Dear [Player Name]:

This is to inform you that the [Club Name] ("Club") will institute a lockout of its players at 12:00 a.m. Eastern time on March 12, 2011.

During the lockout, the following will be in effect:

1. You may not enter any Club facility or the stadium, except for the purpose of attending a non-Club event or Club charitable event.

2. You will not receive any compensation from the Club.

3. The Club will not pay for or provide health insurance or other active-player benefits or services. You have already received separate communications regarding your option to pay for health benefits continuation under COBRA.

4. You will not be permitted to perform any services under your Player Contract or otherwise perform any duties for the Club. This includes, but is not limited to, any duties you would otherwise be performing at Club facilities, such as playing, practicing, working out, attending meetings, consulting with Club medical or training staff (except as provided below), and making promotional appearances for the Club.

5. Testing and treatment obligations under the Policy and Program for Substances of Abuse and Policy on Anabolic Steroids and Related Substances will cease.

6. If you need information from the Club's human resources department (such as copies of your tax information, child support correspondence, or to arrange collection of personal property you may have left on Club premises), please call [human resources representative's name and title] at [contact number].

7. Except for the human resources representative noted above, Club personnel (coaches, trainers and other non-player staff) will not communicate with you regarding football or any other Club or NFL business issues. This means that they will not communicate with you regarding any issues relating to your current or potential contract terms, or about collective bargaining negotiations between the NFL and the Union.

This will be the case whether you are currently under contract with the Club or not.

8. If you have an agent, the same procedures stated above concerning access to Club facilities and communications with the Club will apply to your agent.

9. The Club will not give you any further instructions or guidance as to workouts or training.

10. Except for injured players rehabilitating from football-related injuries, the Club will not provide, arrange or pay for facilities, equipment or other services relating to training or workouts. Injured players will receive a separate letter regarding their treatment and rehabilitation during a lockout. Clubs will not provide or pay for treatment for non-football related injuries or illnesses.

11. Club security and Player Development staff will not assist you with legal or other problems.

12. If you engage in any activities during the lockout, even training, you do so at your own risk. Any injury resulting from such activities will not be the responsibility or liability of the Club or the NFL. You are free to engage in alternate employment during the lockout, but you will not be protected by the Club or the NFL against injuries during such employment. Once a new labor agreement is reached between the NFL and the Union, you may be expected to report to the Club immediately. Therefore, you should structure any alternate employment so you can return to the Club promptly after a new labor agreement is reached.

Should you have any questions, please contact the NFL Players Association.

Sincerely,

[Club Executive]

EXHIBIT O

NEWS RELEASE

FEDERAL MEDIATION AND CONCILIATION SERVICE
OFFICE OF PUBLIC AFFAIRS
WASHINGTON, D.C. 20427

Friday, March 11, 2011
For Immediate Release
Web site: www.fmcs.gov

Contact: John Arnold
Director of Public Affairs
Phone: (202) 606-8100

Statement by FMCS Director George H. Cohen on NFL-NFLPA Talks

WASHINGTON, DC — As a follow up to the NFL's and NFLPA's agreeing to my invitation on February 17, 2011 to conduct further negotiations under the auspices of the FMCS, over the past four weeks 17 days of mediation have taken place. During this extensive period, a wide variety of issues—both economic and work related—were addressed in a professional, thoughtful manner, consistent with what one would expect to take place in a constructive collective bargaining setting. Those issues were explored at length; consensus emerged in a number of them; and in others, differences were narrowed and focused.

Regrettably, however, the parties have not achieved an overall agreement, nor have they been able to resolve the strongly held, competing positions that separated them on core issues.

In these circumstances, after carefully reviewing all of the events that have transpired, it is the considered judgment of myself and Deputy Director Scot Beckenbaugh, who has been engaged with me throughout this process, that no useful purpose would be served by requesting the parties to continue the mediation process at this time. For our part, the Agency has advised the parties that we will be willing and prepared to continue to facilitate any future discussions upon their mutual request.

###

The Federal Mediation and Conciliation Service, created in 1947, is an independent U.S. government agency whose mission is to preserve and promote labor-management peace and cooperation. Headquartered in Washington, DC, with 10 district offices and 67 field offices, the agency provides mediation and conflict resolution services to industry, government agencies and communities.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Carl Eller, Priest Holmes, Obafemi Ayanbadejo and Ryan Collins, individually, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Hennepin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Zelle Hofmann Voelbel & Mason, LLP, 500 Washington Ave. S., Ste. 4000, Mpls, MN 55415; (612) 339-2020

DEFENDANTS

National Football League, et al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☒ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
15 USC 26 and 15 USC 1

Brief description of cause:
Injunctive and other relief under Clayton Act and Sherman Antitrust Act

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Susan Richard Nelson DOCKET NUMBER 0:11-cv-00639 SRN/JJG

DATE 03/28/2011

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____