UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, on its own behalf and on behalf of EZEKIEL ELLIOTT,	§	
	§	CASE NO. 4:17-cv-00615
Petitioner,	§	
v.	§	EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION
NATIONAL FOOTBALL LEAGUE and NATIONAL FOOTBALL LEAGUE MANAGEMENT COUNCIL,	§	
Respondents.	§	

NOTICE OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that Petitioner National Football League Players Association, through its undersigned attorneys, respectfully moves this Court for an Order, pursuant to Federal Rule of Civil Procedure 65, enjoining Respondents National Football League and National Football League Management Council, their officers, agents, servants, employees and attorneys from enforcing the forthcoming arbitration award to be issued by Arbitrator Harold Henderson by September 5, 2017, which the NFLPA expects will prevent Ezekiel Elliott from participating in League games or practices or utilizing League facilities, until further order of this Court. Absent relief from this Court, the suspension upheld by the award would take immediate effect, inflicting irreparable harm on Elliott before this Court would have any opportunity to act on the Petition.

Petitioner's motion is made pursuant to Federal Rule of Civil Procedure 65 and is based upon the Emergency Motion for Temporary Restraining Order or Preliminary Injunction herein and the Petition to Vacate the Arbitration Award submitted in this action. Respondents were

provided notice of this motion in accordance with Federal Rule of Civil Procedure 65, and the declarations attached demonstrate that, absent preliminary relief, Elliott will suffer immediate and irreparable injury before Respondents can be heard in opposition.

Dated: September 1, 2017

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EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

PRELIMINARY STATEMENT

Petitioner National Football League Players Association ("NFLPA" or "Union"), on its own behalf and on behalf of Dallas Cowboys running back Ezekiel Elliott ("Elliott"), brings this Emergency Motion for a Temporary Restraining Order or Preliminary Injunction to prevent the National Football League ("NFL" or "League") from enforcing the six-game suspension imposed by NFL Commissioner Roger Goodell. The NFLPA expects that on or before September 5, Arbitrator Harold Henderson will issue an arbitral decision (the "Award") denying Elliott and the NFLPA's disciplinary appeal. The Award—and ensuing suspension—would then take immediate effect, inflicting instantaneous and irreparable harm. Although the Court need not act until the Award is issued, Elliott and the NFLPA will demonstrate now that they readily satisfy the requirements for preliminary injunctive relief should Elliott's appeal be denied.

To obtain such relief, the Fifth Circuit requires only that movants present serious questions about their claims. Here, however, Elliott and the NFLPA show a likelihood of success on the ultimate merits of their vacatur claim. The Labor Management Relations Act, 29 U.S.C. § 185 ("LMRA") and the Federal Arbitration Act, 9 U.S.C. § 10 ("FAA") do not sanction an Award, such as this one, that is borne out of a fundamentally unfair arbitration where critical evidence is suppressed at every turn. There are at least three reasons why.

First, Lisa Friel and other unknown senior NFL executives conspired to conceal critical evidence about Elliott's innocence from all those involved in the disciplinary process—from Elliott, his Union, and his team to Commissioner Roger Goodell (the disciplinarian) and his panel of outside expert advisors. As detailed in the Petition to Vacate Arbitration Award (Doc. No. 1) ("Petition") and the arbitral record appended thereto, Kia Roberts—the NFL's Director of Investigations, who co-led the NFL's nearly year-long investigation into the allegations that Elliott

committed acts of domestic violence, and who personally conducted every witness interview—concluded that the accuser, Tiffany Thompson, *was not credible and that there was insufficient corroborating evidence to proceed with* ***any*** *discipline of Elliott*. But senior NFL executives conspired to suppress this information from the Commissioner and his panel of outside expert advisors who were responsible for imposing discipline. While we are unaware of the exact motivations, it appears that Friel and others had determined that Elliott needed to be made an example of to show the NFL's "tough" stance on domestic violence. This suppression of exculpatory evidence—including from the NFLPA and Elliott—infected the arbitral process and yielded an Award that cannot stand under federal labor law.

Second, despite the fact that Elliott's appeal turned on the credibility of his accuser, he and the NFLPA were denied their fundamental right to cross-examine Thompson at the arbitration hearing. No criminal charges were ever brought against Elliott precisely because the Ohio prosecutor, like the League's co-lead investigator Roberts, found that Thompson's claims and the other evidence amounted to "conflicting and inconsistent information across all incidents." Yet, not only did the Arbitrator refuse to require any testimony from Thompson, he even denied Elliott and the NFLPA access to the NFL investigators' notes of their six interviews with Thompson.

Third, the Arbitrator also denied Elliott and the NFLPA the right to question Commissioner Goodell, who imposed the discipline. The Commissioner's testimony would have established what he knew and did *not* know and the scope of the efforts to suppress exculpatory information. This evidence was fundamental to the arbitration because the NFL's lawyers argued to Henderson that he should defer to the Commissioner's fact-finding. But no such deference could possibly have been appropriate where the Commissioner had been kept in the dark about critical information, such as the fact that the NFL executive principally responsible for conducting the

investigation concluded that the accuser was not credible and that the corroborating evidence was insufficient to justify any discipline against Elliott.

With respect to the remaining elements for obtaining preliminary injunctive relief, they should be non-controversial and are supported by ample precedent. It is hard to imagine how the NFL could even try to deny that Elliott will suffer severe and irreparable harm to his season, career, and reputation should he be suspended for six-games—nearly half of an NFL season, where careers are precarious and short. *See* Declaration of J. Arceneaux, Jr. ("Arceneaux Decl.") ¶¶ 5-6, submitted herewith. Injunctive relief would also prevent the Cowboys from losing their star running back for games that cannot be re-played. *See* Declaration of J. Cohen ("Cohen Decl.") ¶ 7, submitted herewith. As to the balance of hardships, enjoining the suspension would simply maintain the status quo while the Court considers the Petition. Elliott was an active member of the Cowboys during the full year that the League spent investigating Thompson's accusations. And the NFL faces no risk of cognizable harm because permitting the unlawful suspension of the Cowboys star player could upset competitive balance around the League and the NFL could simply suspend Elliott at a later date should the Petition ultimately be denied. Finally, public interest also supports enjoining employee discipline where it is the product of an unjust and fundamentally unfair arbitration that is contrary to the most basic tenets of due process.

SUMMARY OF FACTS ABOUT THE UNDERLYING ARBITRATION[1]

On July 22, 2016, law enforcement officers in Columbus, Ohio began investigating allegations made by Tiffany Thompson—a woman with whom Elliott had an intimate relationship—that Elliott had engaged in multiple incidents of domestic violence against her over

[1] For a more detailed description of the underlying facts and relevant factual support for this motion, the NFLPA refers the Court to the Petition and the extensive arbitral record and exhibits appended thereto, all of which the NFLPA incorporates by reference.

the course of the week of July 16, 2016. Elliott was never arrested. Police on the scene found no probable cause because of "conflicting versions of what had taken place over the listed dates." Nor was Elliott ever charged with any crime. On September 6, 2016, after an extensive investigation, the Columbus city prosecutor's office made a public statement that their office would not be charging Elliott at all, due to "the totality of the evidence" revealing "conflicting and inconsistent information across all incidents," including the claims of Elliott's accuser, the only witness against him. Ex. A-NFLPA-40. Elliott, for his part, has all along categorically denied that he engaged in any wrongful acts or abuse toward Thompson.

Pursuant to the NFL's Personal Conduct Policy ("PCP"), however, the League takes the position that it may discipline players under the NFL-NFLPA collective bargaining agreement ("CBA") for "conduct detrimental" to the NFL even in the absence of criminal findings. But there is an important caveat. The PCP provides that in cases where a player is accused of criminal behavior, but no criminal charges are levied, the Commissioner may impose discipline only if "***credible evidence*** establishes that [the player] engaged in conduct prohibited by this [PCP]." Ex. A-NFLPA-16 at 5. It is also undisputed that such discipline must be "fair and consistent." Ex. A-NFLPA-15 at 8; Arb. Hr'g Tr. (Aug. 29), Ex. C at 84:3-7.

Contrary to the Ohio authorities' conclusion, the NFL proceeded with its own investigation into Thompson's allegations, led by NFL Director of Investigations Kia Roberts. The League conducted 22 witness interviews—including six with Thompson—and collected extensive documentary and other evidence from Thompson and Columbus law enforcement. Exs. A-NFLPA-44 & 49. The NFL's investigation, which lasted almost a year, culminated with the release of the Investigative Report ("Elliott Report") on June 6, 2017. Ex. A-NFLPA-44. As part of the

investigative process, the Commissioner was given advice about whether to impose discipline from four outside expert advisors that he had designated under the PCP. Ex. A-NFLPA-49 at 2.

The Commissioner ultimately decided that during the week of July 16, 2016, Elliott had committed three out of five acts of domestic violence alleged by Thompson. Ex. A-NFLPA-49 at 3-6. But what the Commissioner and his advisors apparently did not know (and what Elliott and the Union clearly did not know), is that Friel and other NFL executives had deliberately concealed the fact that Roberts—who had personally conducted all of the fact witness interviews and co-authored the Elliott Report—had reached the conclusion that Thompson's accusations were incredible, inconsistent, and not supported by corroborating evidence sufficient to support the imposition of any discipline against Elliott. *See* Doc. No. 1 at ¶¶ 45-58; Arb. Hr'g Tr. (Aug. 30), Ex. C at 301:22-302:4 (Roberts' conclusion); *id*. at 265:15-21 (decision to omit conclusions in Elliott Report); Arb. Hr'g Tr. (Aug. 29), Ex. C at 161:16-22 (Roberts never met with outside expert advisors); *id.* at 163:11-13 (Roberts excluded from meeting with Commissioner). The shocking revelation of this effort to suppress exculpatory evidence during the arbitration confirmed that the entire discipline and disciplinary appeal process had been irretrievably corrupted.

NFL Director of Investigations Roberts reached her conclusions because, among other things, Thompson repeatedly lied to the investigators, told her friend to lie to police about the abuse, gave inconsistent accounts of the alleged incidents, destroyed relevant e-mails and text messages, plotted to extort money from Elliott, and threatened Elliott that she would ruin him and his career because he did not want the same type of relationship that Thompson did. *See* Doc. No. 1 at ¶ 42; *e.g.*, Ex. A-NFLPA-30; Ex. A-NFLPA-41; Ex. A-NFLPA-44 at 98, 100; *see also e.g.*, Ex. A-NFLPA-48 at 9, 11, 12, 15-16, 20, 22-29 (collecting evidence from NFL investigation). Specifically, as Roberts testified at the arbitration, she "ha[d] concerns about [Thompson's]

credibility," it "seemed like there were ***numerous witnesses*** who what they had to say was in, you know—***diametrically opposed*** to what [Thompson] stated had occurred that evening," and in her nine-year career as a (former) prosecutor, Roberts had never "cho[sen] to put a witness on the stand knowing that they had this many inconsistencies in their testimony." Arb. Hr'g Tr. (Aug. 29), Ex. C at 172:24, 173:19-22; 226:21-25 (emphasis added).

The NFL's co-lead investigator, NFL Senior Vice President Lisa Friel, testified that she was fully aware of Roberts' conclusion that there was not enough corroborating evidence to overcome Thompson's credibility problems to proceed with discipline. Arb. Hr'g Tr. (Aug. 30), Ex. C at 301:22-302:4. Friel and unidentified NFL counsel, however, decided to keep Roberts' conclusions out of the Elliott Report (*id.* at 265:15-21) and Roberts was thereafter excluded from meeting with Commissioner Goodell or his outside expert advisors. Arb. Hr'g Tr. (Aug. 29), Ex. C at 161:16-22; 163:11-13. The apparent desire to portray the NFL's new domestic violence policy as "tough" caused those who suppressed the evidence to corrupt the fairness of the process.

Deprived of the most important conclusions from the investigation in the Elliott Report or through his outside expert advisor meeting (which Henderson stated during the arbitration was the relevant record before the Commissioner (*see* Arb. Hr'g Tr. (Aug. 30), Ex. C at 348:18-349:15), on August 11, 2017, Commissioner Goodell suspended Elliott for six games on the ostensible basis of "substantial and persuasive" evidence that Elliott had committed "conduct detrimental" to the NFL and violated the PCP by committing three out of five alleged acts of domestic violence against Thompson. Ex. A-NFLPA-49 at 3-6. Elliott timely filed an appeal of his discipline pursuant to the procedures set forth in Article 46 of the CBA. Exs. A-NFLPA-58 & 50.

Article 46 provides that the hearing officer (arbitrator) on appeal is either the Commissioner or his designee. In this case, Commissioner Goodell designated Henderson, who

served 16 years as the NFL's Executive Vice President for Labor Relations and Chairman of Respondent National Football League Management Council's Executive Committee. Upon information and belief, Henderson is still employed part-time by the NFL and has been paid millions of dollars by the NFL in the past decade. Doc. No. 1 at ¶ 18.

Given the central importance of Thompson's credibility to the issues before the Arbitrator, and the PCP's requirement of "credible evidence" in matters where there are no criminal charges, Elliott and the NFLPA requested that the NFL produce Thompson for cross-examination as well as their investigator notes of interviews with Thompson. The NFL refused to provide all of this critical evidence and its hand-selected Arbitrator denied the NFLPA's Motion to Compel. Exs. A-NFLPA-53 & 55. Petitioners were thus denied the right to confront the lone accuser and gain access to critical exculpatory evidence in a he-said/she-said proceeding to determine, among other things, the "credible evidence" that already had been infected by evidence suppression.

The arbitration appeal hearing was held on August 29-31 before Henderson. Arb. Hr'g Trs., Ex. C. In addition to the testimonial revelations from Roberts and Friel recounted above, Elliott testified categorically, emphatically, and under oath that he is innocent of the allegations of alleged abuse. *See e.g.*, Arb. Hr'g Tr. (Aug. 30), Ex. C at 86:4-10. Further, although there was no other eye-witness to the alleged incidents besides Elliott and Thompson, Alvarez Jackson was present in Elliott's apartment during the week of the alleged incidents, and he testified at the arbitration that he neither saw nor heard any evidence of abusive conduct or learned of any claims of abuse from Thompson. *Id.* at 222:1-16.

At the end of the hearing, Henderson announced that he would issue his Award shortly, which the NFLPA understands to mean this weekend. Arb. Hr'g Tr. (Aug. 31), Ex. C at 140:18-23. The Award already is fatally tainted by a fundamentally unfair arbitration process and if it

sustains any suspension it will inflict immediate and irreparable harm before this Court has an opportunity to rule on the ultimate merits of the Petition. This threat of immediate suspension is imminent.

ARGUMENT

"A plaintiff seeking a preliminary injunction must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat that plaintiff will suffer irreparable harm if the injunction is not granted; (3) the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) the injunction will not disserve the public interest." *Dickey's Barbecue Pit, Inc. v. Celebrated Affairs Catering, Inc.*, 2017 WL 1079431, at *2 (E.D. Tex. Mar. 22, 2017) (Mazzant, J.) (citing *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008)).

A. Elliott and the NFLPA's Likelihood of Success on their Petition

To obtain preliminary injunctive relief in the Fifth Circuit, a movant must establish that it has a likelihood of success on the merits of its claims by presenting a prima facie case. *Daniels Health Scis., LLC v. Vascular Health Scis.*, 710 F.3d 579, 582 (5th Cir. 2013). This "does not mean Plaintiffs must prove they are entitled to summary judgment." *Dickey's Barbeque*, 2017 WL 1079431, at *2 (citing *Byrum v. Landreth*, 566 F.3d 442, 446 (5th Cir. 2009)). Indeed, "[o]n the 'substantial likelihood of success' element, 'it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.'" *Terex Corp. v. Cubex Ltd.*, 2006 WL 3542706, at *2 (N.D. Tex. Dec. 7, 2006).

The Petition, and the arbitral record and exhibits appended thereto, presents Elliott and the NFLPA's case on the merits. The Award will rest upon a patently and fundamentally unfair arbitral process that is contrary to the fundamental fairness required of all arbitral proceedings.

See FAA § 10(a)(3); *United Paperworkers Int'l v. Misco, Inc.*, 484 U.S. 29, 40 (1987); *Murphy Oil USA, Inc. v. United Steel Workers AFL-CIO Local 8363*, 2009 WL 537222, at *3 (E.D. La. Mar. 4, 2009) (vacating award).[2] For purposes of the preliminary relief requested here, however, the Court need only find that Petitioners have raised serious and substantial questions that persist with respect to the merits. *See Terex Corp.*, 2006 WL 3542706, at *2. Those questions doubtless exist here, where at issue is an arbitration violating the long-standing mandates that a minimum level of procedural fairness be present in every arbitral proceeding. *See, e.g.*, *Gulf Coast Indus. Workers Union v. Exxon Co., USA*, 70 F.3d 847, 850 (5th Cir. 1995) (affirming vacatur of award procured from "fundamentally unfair" arbitration proceedings); *accord Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 300–01 (5th Cir. 2004).

An arbitrator's unreasonable restriction of access to evidence, both documentary and testimonial, that is important to the case is a recognized ground for vacatur within the Fifth Circuit and across jurisdictions. *Karaha Bodas*, 364 F.3d at 300–01 ("It is appropriate to vacate an arbitral award if the exclusion of relevant evidence deprives a party of a fair hearing.") (upholding award despite exclusion of evidence because denial of a continuance and additional discovery did not prevent plaintiff from presenting its case). Indeed, "[a]rbitrators have an affirmative duty to insure that relevant documentary evidence in the hands of one party is fully and timely made available to the other side…. [A] failure to discharge this simple duty would constitute a violation of FAA § 10(a)(3), where a party can show prejudice as a result." *Ostrom v. Worldventures Mktg., LLC*, 160 F. Supp. 3d 942, 950 (M.D. La. 2016); *see also ICAP Corporates, LLC v. Drennan*, 2015 WL

[2] In reviewing the validity of a labor arbitration award issued in Section 301 (LMRA) cases, courts look to the FAA for guidance. *Int'l Chem. Workers Union v. Columbian Chems. Co.*, 331 F.3d 491, 494 (5th Cir. 2003) (citing *Misco*, 484 U.S. at 41 n.9 ("courts have often looked to the [FAA] for guidance in labor arbitration cases")).

10319308, at *6 (D.N.J. Nov. 18, 2015) ("[P]arties to an arbitration 'must be allowed to present evidence without unreasonable restriction ... and must be allowed to confront and cross-examine witnesses ... Where a party to an arbitration does not receive a full and fair hearing on the merits, a district court will not hesitate to vacate the award.'"); *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20-21 (2d Cir. 1997) (vacating award where panel "excluded evidence . . . pertinent and material to the controversy"). Other jurisdictions have specifically identified investigative files as subject to this affirmative duty. *E.g. Home Indem. Co. v. Affiliated Food Distribs. Inc.*, 1997 WL 773712, *4 (S.D.N.Y. Dec. 12, 1997).

Applying these principles, there can be no serious dispute that the Petition presents serious questions, if not a strong likelihood of success, that the underlying arbitration and process were fundamentally unfair. Senior NFL executives corrupted the proceedings by concealing from the NFLPA, Elliott, the Commissioner, and his panel of outside expert advisors, the fact that the NFL's Director of Investigations—who had personally interviewed every witness in the investigation—believed that Elliott's accuser was so incredible, and the corroborating evidence so lacking, that no discipline was appropriate. It is hard to imagine a more fundamentally unfair and corrupt disciplinary and arbitral process than one where the opposing party is conspiring to conceal critical and exculpatory facts.

Further, it was fundamentally unfair to deprive Elliott and the NFLPA of the right to confront and cross-examine the sole accuser in a proceeding where the Arbitrator assigned them the burden of proof on the essential issue of whether the discipline was in compliance with the PCP by being based on "credible evidence." There was no other eye-witness or direct evidence of what allegedly happened, so Thompson's testimony was essential, yet Elliott and the NFLPA were deprived the right of confrontation or even access to the NFL's investigator notes from the six

times the NFL interviewed Thompson. The Arbitrator's express duty under the PCP was to determine if there was a fair and consistent basis for the Commissioner's determination that there was "credible evidence" to support the imposition of discipline against Elliott, but he declined to enable the NFLPA and Elliott to have a fair opportunity to meet their burden of proof on this issue by having the ability to cross-examine the accuser and present the notes of the investigators who interviewed her. Ex. A-NFLPA-55 at 2. The need for access to such evidence was especially critical here, where even Friel—who tried to conceal the exculpatory conclusions of her co-lead investigator Roberts—admitted that some of the accuser's statements and claims of abuse were not credible. Arb. Hr'g Tr, (Aug. 30), Ex. C at 267:1-2 (Thompson has "credibility issues"); Ex. A-NFLPA-45 at 151:22-152:7 (Thompson's claim of abuse on July 22 was incredible).

It was also fundamentally unfair for Henderson to refuse to compel the Commissioner's testimony. The NFL argued to the Arbitrator that he should defer to the Commissioner's fact-finding, but in light of the revelations about Roberts, the only way to determine what facts had been considered by the Commissioner and what facts were concealed was to question the Commissioner himself. Friel's concealment of Roberts' conclusions had tainted the proceedings from the start. If any arbitral record could satisfy the Fifth Circuit's standards for vacating an arbitration on fundamental fairness grounds, it is this one, with a record unprecedented in NFL arbitrations of an affirmative effort by NFL executives to conceal exculpatory evidence and to undermine the integrity of the CBA disciplinary and arbitration processes.[3]

[3] Not only did Henderson defy the labor law requirement of fundamental fairness, he defied CBA precedent that players have a right to obtain important testimony and evidence at the arbitration hearing, including from Commissioner Goodell. *See Brady* Decision on Hearing Witnesses and Discovery (June 22, 2015), Ex. F at 2 (ordering live testimony of Ted Wells, who "supervised the investigation and preparation of the Investigative Report that serve[d] as the basis for Mr. Brady's discipline"); *Rice* Order on Discovery and Hearing Witnesses (Oct. 22, 2014), Ex. A-NFLPA-14

B. Elliott Will Suffer Irreparable Harm If His Suspension Is Not Enjoined

Elliott unquestionably satisfies the requirement that a party seeking a TRO or preliminary injunction show that it is "likely to suffer irreparable harm in the absence of preliminary relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). "[T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate'"; wherever the threatened harm "would impair the [district court's] ability to grant an effective remedy," irreparable harm exists. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). Thus, the Fifth Circuit has held that, "where a district court has determined that a meaningful decision on the merits would be impossible without an injunction, the district court may maintain the status quo and issue a preliminary injunction to protect a remedy." *Id.*

As set forth in the attached declaration of Elliott's agent, Joseph Arceneaux, Jr., the careers of professional football players are short and precarious, providing a limited window in which players have the opportunity to play football in pursuit of individual and team achievements. Arceneaux Decl. ¶ 6. A long line of cases establish that, as a matter of law, depriving professional athletes of the ability to practice and play inflicts irreparable harm. *See, e.g.*, *Brady v. NFL*, 779 F. Supp. 2d 992, 1005 (D. Minn. 2011) ("the threat of harm shown by [football players] here, including lost playing time, constitutes irreparable harm"), *rev'd on other grounds*, 644 F.3d 661 (8th Cir. 2011); *NFLPA v. NFL* ("*Starcaps*"), 598 F. Supp. 2d 971, 982 (D. Minn. 2008)

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at 2 (exercising "discretion of the hearing officer" to "compel[] the witnesses necessary for the hearing to be fair" and ordering live testimony of all witnesses present for "central issue in the case," including Commissioner Goodell); *Bounty* Pre-Hearing Order No. 4 (Nov. 9, 2012), Ex. G at 1 (ordering live testimony of lead investigator Jeff Miller for "reasonable cross-examination").

("[i]mproper suspensions . . . can undoubtedly result in irreparable harm"); *Prof'l Sports, Ltd. v. Virginia Squires Basketball Club Ltd. P'ship*, 373 F. Supp. 946, 949 (W.D. Tex. 1974).[4]

Elliott stands to miss nearly half of the NFL's sixteen-game regular season and will be prohibited from practicing with his team leading up to the games for which his suspension is in effect. Arceneaux Decl. ¶ 5. Missing any games could deprive Elliott of the ability to achieve individual successes and honors, such as earning a spot in the Pro Bowl for a second consecutive season. Arceneaux Decl. ¶ 8; *see also Starcaps*, 598 F. Supp. 2d at 982 ("a player who has been suspended … is ineligible for post-season awards such as the Pro-Bowl. Those honors carry significant economic and non-economic benefits"). Furthermore, the significant monetary losses that Elliott will suffer due to the six-game suspension cannot be calculated because of the snowball effect on Elliott's reputation, earning potential, and overall market value. Arceneaux Decl. ¶ 10. Indeed, it is very difficult for a professional athlete (or anyone else) to reverse a nationally ingrained perception that the athlete committed domestic abuse. *Id.* ¶ 9. Such damage to Elliott's reputation is not remediable by this Court. *See Valley v. Rapides Parish School Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) ("the threat of injury to [employee's] reputation … satisf[ies] irreparable injury" requirement); *Starcaps*, 598 F. Supp. 2d at 982 ("Not only does the player lose playing time, but his reputation may be irretrievably tarnished").

C. The Balance of Hardships Favors Issuing the Injunction

In addition to finding irreparable harm to the movant, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *See Winter*, 555 U.S. at 24 (internal citations omitted). Fifth Circuit courts

[4] *See also Jackson v. NFL*, 802 F. Supp. 226, 231 (D. Minn. 1992); *Bowman v. NFL*, 402 F. Supp. 754, 756 (D. Minn. 1975); *Haywood v. NBA*, 401 U.S. 1204, 1205 (1971); *Linseman v. World Hockey Ass'n*, 439 F. Supp. 1315, 1319 (D. Conn. 1977).

consider whether the "threat of ineffective remedy also outweighs the damage which the injunction might cause." *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 687 (5th Cir. 1980).

If Elliott misses so much as one game, that bell cannot be unrung. But if the Court issues an injunction which merely maintains the status quo until a decision on the Petition can be made, there will be no harm to the NFL even if the Court were to ultimately deny the Petition. The League would simply suspend Elliott at a later time. For example, in the *Starcaps* case, the District of Minnesota enjoined enforcement of an NFL arbitration award upholding suspensions. 598 F. Supp. 2d at 984. The court later decided to confirm the award and the players thereafter served their suspensions with no harm to the NFL. Where, as here, there are serious questions about the propriety of the arbitral process, preliminary injunctive relief can even benefit the NFL because "both the NFLPA and the NFL have an interest in ensuring that the suspensions meted out under the Policy are not tainted by alleged bias and wrongdoing." *Id.* at 983.

Further, the requested injunction will merely maintain the status quo because Elliott was an active member of the Cowboys during the entire year when Roberts was investigating Thompson's accusations. Continuing the status quo a little while longer while the Court decides the Petition will not harm the NFL. On the contrary, one of its members—the Cowboys—will also face irreparable harm if the requested TRO and preliminary injunction is denied. *See Starcaps*, 598 F. Supp. 2d at 982 (teams suffer irreparable harm where players "central to their team's chances of making the playoffs" are prevented from playing); Cohen Decl. ¶ 6; Arceneaux Decl. ¶ 7. The sports media unsurprisingly has predicted that the Cowboys' chances of making the playoffs in 2017 will diminish if Elliott, the starting running back in one of the NFL's elite rushing offenses, is suspended for six games.

D. The Injunction Is Aligned with the Public Interest

Finally, when considering the public interest, courts "look[] to the broader ramifications of any potential recovery." *Janvey*, 647 F.3d at 601. "This factor overlaps considerably with [balance of hardships]." *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016). An injunction to preserve the status quo while the Court reviews the integrity of the arbitral proceedings below will benefit many constituents—including NFL players, fans of the Cowboys and the NFL, and all persons subject to arbitration provisions, among others. For example, forestalling the suspension will avoid devaluation for Cowboys season ticketholders and anguish for Cowboys fans for whom lost games "[are] not compensable monetarily and [are] therefore an irreparable harm." *Starcaps*, 598 F. Supp. 2d at 982.

Moreover, the "public interest easily favors an injunction" where, as here, one is necessary to maintain the status quo between the parties until a determination on the merits is made, and the enjoined party "can be effectively vindicated after a trial on the merits." *Texas*, 809 F.3d at 187 (public interest favored injunction "given the difficulty of restoring the *status quo ante*" if the injunction were not issued); *Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997). "As courts have recognized for more than a century, the public interest lies in ensuring that innocent people are not subject to unjust punishment." *Starcaps*, 598 F. Supp. 2d at 983. Accordingly, "[i]f the suspensions at issue are improper," injunctive relief is warranted, as "allowing those suspensions to go forward violates the public interest." *Id.*

CONCLUSION

For all of the reasons set forth herein, as supported by the accompanying Petition, exhibits, and declarations, the NFLPA respectfully requests that the Court preliminarily enjoin any suspension of Elliott affirmed by the Award until its final ruling on the Petition.

Dated: September 1, 2017

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel has complied with the meet and confer requirement in Local Rule CV-7(h). Jeffrey L. Kessler, counsel for Petitioner National Football League Players Association and Ezekiel Elliott, conferred with Daniel Nash, counsel for Respondents National Football League and National Football League Management Council, via telephone on September 1, 2017 regarding Petitioner's Emergency Motion for Temporary Restraining Order or Preliminary Injunction. Counsel for Respondents stated that Respondents opposed the requested relief. The discussions ended at an impasse, leaving an open issue for the court to resolve. LR CV-7(i).

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