



North America Europe Asia

200 Park Avenue  
New York, NY 10166  
T +1 212 294 6700  
F +1 212 294 4700

**JEFFREY L. KESSLER**  
Partner  
212-294-4698  
jkessler@winston.com

June 19, 2015

**VIA E-MAIL**

Commissioner Roger Goodell  
National Football League  
345 Park Avenue  
New York, NY 10154

Gregg Levy, Esq.  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001

**Re: Tom Brady Article 46 Appeal – Motion to Compel**

Dear Commissioner Goodell and Mr. Levy:

I write on behalf of the NFLPA and Tom Brady to request that you compel the NFL to produce certain witnesses and documents in connection with the hearing in this matter.<sup>1</sup>

On May 22, 2015, the NFLPA served the NFL with its discovery requests. *See* May 22, 2015 Discovery Letter (attached hereto as Exhibit A). Prior Article 46 arbitrations—including *Rice* and *Bounty*, heard by former Judge Barbara S. Jones and Commissioner Paul Tagliabue, respectively—establish as “law of the shop” players’ rights to examine relevant witnesses and documents in conduct detrimental arbitration appeals.

On June 15, 2015, the NFL advised the NFLPA that the League refuses to produce certain witnesses and documentary evidence fundamental to Mr. Brady’s right to a fair appeal hearing. *See* June 15, 2015 Letter from Dan Nash to Jeffery Kessler (attached hereto as Exhibit B). Specifically, the NFL refuses to produce Commissioner Goodell, NFL Executive Vice President of Football Operations Troy Vincent, and NFL Executive Vice President and General Counsel Jeff Pash to testify at the hearing. *Id.* The League also stated that “[Co-Lead

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<sup>1</sup> This request is without waiver of the NFLPA’s and Mr. Brady’s objection to Commissioner Goodell serving as Hearing Officer in Mr. Brady’s appeal due to his evident partiality. In addition, given the Commissioner’s and Mr. Levy’s request that we submit a post-hearing brief, the NFLPA is not submitting a pre-hearing statement of legal positions as Mr. Levy’s letter invited us to do. We have discussed this issue with counsel for the NFL, who agreed to proceed the same way.

Investigator Ted] Wells and his partner, Lorin Reisner, will be present at the hearing to address questions regarding the Report,” *id.* at 3, but in a meet-and-confer between the parties on June 16, the NFL’s counsel advised that the NFL does not believe Mr. Wells is a percipient witness and will refuse to offer his sworn testimony or make him available to participate in a normal cross-examination. Moreover, it appears that the NFL will not offer sworn testimony from *any* witness.

The NFL has further advised that it will not produce Paul, Weiss investigative files on the purported ground that they are attorney work product. The NFL’s refusal concerns the following NFLPA document request:

Document Request (1)(iii): All Documents created, obtained, or reviewed by NFL investigators (including by Mr. Wells and his investigative team at the Paul, Weiss firm and NFL security personnel) in connection with the Patriots Investigation (including all notes, summaries, or memoranda describing or memorializing any witness interviews).<sup>2</sup>

Discovery Letter at 2.

As set forth below, all of the requested (sworn) testimony and documents must be produced because they are highly relevant and necessary to provide Mr. Brady with a fair opportunity to try to overturn his discipline—a burden the NFL contends rests with Mr. Brady. In addition, sworn testimony is the established law of the shop in Article 46 proceedings when requested by a party. There is no basis for the NFL to refuse to provide sworn testimony here, including from Mr. Wells, whose report was the exclusive basis for the discipline at issue. To deny Mr. Brady the opportunity to confront his accusers under oath and to examine essential documents would be to deprive him of his right to a fundamentally fair hearing.

**I. Witnesses and Testimony**

**A. Commissioner Goodell, Mr. Vincent, Mr. Pash, and Mr. Wells Are Central Witnesses in Mr. Brady’s Appeal**

As you know, it is the NFLPA’s and Mr. Brady’s position that Commissioner Goodell improperly delegated his exclusive conduct detrimental disciplinary authority to Mr. Vincent. Mr. Vincent then imposed discipline upon Mr. Brady based solely on the conclusions of the NFL’s investigation—conducted jointly by Mr. Wells and Mr. Pash (the “Wells-Pash

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<sup>2</sup> The NFLPA and Mr. Brady also object to the NFL’s position on Request Nos. 2 and 3—concerning Commissioner Goodell’s delegation of his conduct detrimental authority—but is not moving to compel production of such documents on the basis of NFL counsel’s representation that there are no responsive documents.

Investigation")—into alleged ball deflation by the New England Patriots. The testimony of Mr. Vincent and Commissioner Goodell is thus required to enable Mr. Brady to establish the facts concerning the Commissioner's delegation of disciplinary authority.

Counsel for the NFL argues that Commissioner Goodell has already ruled in his denial of the NFLPA's and Mr. Brady's recusal motion that his delegation of disciplinary authority to Mr. Vincent was proper. Surely that is not the case. The NFLPA and Mr. Brady have not yet even had an opportunity to present evidence or argument in support of this ground for appeal. The NFL should be instructed that Commissioner Goodell has not ruled on the delegation issue, and he and Mr. Vincent should be compelled to testify on this subject.

But delegation is not the only basis for their testimony. They have direct knowledge of the Colts' complaints about deflation, which gave rise to this matter, and to the actions taken by the NFL and game officials on the day of the AFC Championship Game. Both witnesses also have knowledge of the investigation and facts leading to "preliminary findings" against the Patriots of a purported violation of League rules. There are no other witnesses who can provide the facts known to Mr. Vincent and Commissioner Goodell. *See* May 14, 2015 Appeal Letter at 2 (attached hereto as Exhibit C).

Mr. Pash and Mr. Wells are also essential witnesses. They were the co-leaders of the investigation culminating in the report that Mr. Vincent exclusively relied upon to impose discipline on Mr. Brady. Indeed, according to the NFL's own public statements, that "investigation [would be] *led jointly by [Mr.] Pash and Ted Wells . . .*"<sup>3</sup> The so-called "Wells Report" confirmed that, contrary to its given name, *Mr. Pash* served a co-lead role. *See* Report at 1 ("On January 23, 2015, the NFL publicly announced that it had retained Theodore V. Wells, Jr. and the law firm Paul, Weiss, Rifkind, Wharton & Garrison ("Paul, Weiss") to conduct an investigation, *together with NFL Executive Vice President Jeff Pash*, into the footballs used by the Patriots during the AFC Championship Game.") (emphasis added). Mr. Brady has a fundamental right to confront the co-lead investigators whose factual conclusions were the sole basis for Mr. Vincent's discipline.

It is law of the shop to compel NFL investigators to testify in Article 46 hearings. *See, e.g.,* Nov. 9, 2012 *Bounty* Pre-Hr'g Order No. 4 (Tagliabue, Arb.) (compelling NFL investigator Jeff Miller to testify at Article 46 appeal hearing) (attached hereto as Exhibit D). Mr. Wells's allegedly "independent" investigator status makes no difference, and in any event, he is not "independent." He took to the airways and became an *advocate* for the Wells-Pash Report, a marked departure from previous investigations he has conducted: "[W]hen I did the Dolphins reports, I did not talk to the press . . . When I did the investigation of Billy Hunter, I did not talk

<sup>3</sup> *NFL Investigation of Balls in AFC Title Game Led by Pash, Wells*, NFL.COM, Jan 23, 2015, <http://www.nfl.com/news/story/0ap3000000462476/article/nfl-investigation-of-balls-in-afc-title-game-led-by-pash-wells>.

to the press . . . When I did the investigation of Bernie Fine and the Syracuse basketball team, I did not talk to the press . . .” *Transcript of Ted Wells Conference Call*, BOSTON HERALD, May 12, 2015.<sup>4</sup>

The need for Mr. Wells and Mr. Pash to testify is compounded by the four-hour limitation—imposed by the Commissioner’s delegated “legal advisor,” Mr. Levy—for Mr. Brady to present his case. The consequence is to severely limit the number of witnesses Mr. Brady can examine. There simply is no other means for a full and efficient defense against the Wells-Pash findings without the testimony of both Mr. Wells and Mr. Pash.

As Judge Jones held in *Rice*, the “key elements of a ‘fundamentally fair hearing’” are a grievant’s ability to “present evidence and cross examine witnesses.” Oct. 22, 2014 *Rice* Decision on Discovery and Hearing Witnesses at 1 (Jones, Arb.) (quoting *Kaplan v. Alfred Dunhill of London, Inc.*, No. 96 Civ. 0258 (JFK), 1996 WL 640901, at \*5 (S.D.N.Y. Nov. 4, 1996)) (“*Rice* Discovery Order”) (attached hereto as Exhibit E). Any decision prohibiting the testimony of Commissioner Goodell, Mr. Vincent, Mr. Pash, or Mr. Wells would not only violate principles of fundamental fairness, but also would fly in the face of law of the shop precedent that an Article 46 hearing officer has the duty to compel the testimony of relevant NFL witnesses. *See, e.g., Rice* Discovery Order at 2 (Jones, Arb.) (compelling Commissioner Goodell and other NFL and Club executives to testify at Article 46 appeal hearing); Nov. 20, 2012 *Bounty* Appeal Pre-Hr’g Conference Tr. at 220:14-221:3 (Tagliabue, Arb.) (discussing voluntary and compelled testimony of NFL and Club witnesses, including Mr. Vincent, at Article 46 appeal hearing) (attached hereto as Exhibit F); Nov. 2, 2012 *Bounty* Pre-Hr’g Order No. 1 (Tagliabue, Arb.) (compelling Saints Defensive Coordinator Gregg Williams to testify at Article 46 appeal hearing) (attached hereto as Exhibit G).

For all of these reasons, we ask that you compel Commissioner Goodell, Mr. Vincent, Mr. Pash, and Mr. Wells to testify at the arbitration as requested by the NFLPA and Mr. Brady.

#### **B. All Witnesses Must Testify Under Oath**

During the June 16 meet-and-confer, counsel for the NFL advised that it will object to witnesses being called to testify under oath, including in particular Mr. Wells. The NFL contends that it is not a common practice in Article 46 proceedings for fact witnesses to be sworn. To support this position, the NFL’s counsel cited the recent Article 46 arbitration *In re Greg Hardy* (May 28, 2015) (Henderson, Arb.)

Counsel’s citation to the *Hardy* arbitration goes nowhere: there were *no* fact witnesses in *Hardy*, which is entirely different from having fact witnesses who were not sworn. *See*,

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<sup>4</sup> Available at [http://www.bostonherald.com/sports/patriots\\_nfl/the\\_bltz/2015/05/transcript\\_of\\_ted\\_wells\\_conference\\_call](http://www.bostonherald.com/sports/patriots_nfl/the_bltz/2015/05/transcript_of_ted_wells_conference_call).

generally, May 28, 2015 *Hardy* Tr. (including only opening remarks, rebuttal, and sur-rebuttal from counsel) (attached hereto as Exhibit H). Instead, the law of the shop from *Peterson*, *Rice*, and *Bounty*—arbitrations that actually had witnesses—was to *swear-in* those witnesses. This includes the *sworn* testimony of Commissioner Goodell in *Rice*, and the *sworn* testimony of Mr. Vincent in *Peterson*. See, e.g., Dec. 4, 2014 *Peterson* Hr'g Tr. at 152:18-21 (Mr. Vincent “duly sworn” to testify under oath) (attached hereto as Exhibit I); Nov. 5, 2014 *Rice* Hr'g Tr. at 85:19-22 (Commissioner Goodell “duly sworn” to testify under oath) (attached hereto as Exhibit J); see also *Vilma v. Goodell*, 12-CV-1283-HGB (E.D. La.), July 26, 2012 Hr'g Tr. at 208:13-16 (Mr. Levy telling the Court that if “[NFL witnesses] were asked to be sworn [at an Article 46 hearing], they would have been sworn . . .”) (attached hereto as Exhibit K). It is also common practice to have the NFL’s investigators—in this case, Paul, Weiss and Mr. Pash—testify under oath at Article 46 hearings. See, e.g., Nov. 5, 2014 *Rice* Hr'g Tr. at 217-289 (sworn testimony of Mr. Miller); Nov. 9, 2012 *Bounty* Pre-Hearing Order No. 4 (compelling Mr. Miller to testify).

There is simply no basis for the NFL witnesses to be given a free pass to not tell the truth by not having to testify under oath. Such a procedure would further deprive Mr. Brady of his right to a fundamentally fair proceeding and contravene settled CBA practice and precedent.

## II. Documents

Finally, we request an order compelling the production of any documents being withheld in response to Request No. 1—including interview notes and memoranda maintained by Paul, Weiss attorneys in the course of the Wells-Pash Investigation. The NFL does not dispute the relevance of the requested documents, which are obviously central to the issues on this appeal. Instead, the NFL has objected on the grounds that such documents are protected attorney work product. They are not.

For starters, the NFL bears the heavy burden of establishing the applicability of work-product protection to the withheld documents. *Allied Irish Banks v. Bank of Am.*, 252 F.R.D. 163, 173 (S.D.N.Y. 2008). Work-product protection only applies to “documents and tangible things that are prepared in anticipation of litigation or for trial. . . .” Fed. R. Civ. Pro 26(b)(3). As Wright & Miller have explained, documents should only be deemed prepared “in anticipation of litigation,” and thus within the scope of the work product doctrine, if “in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained *because of* the prospect of litigation.” Charles Alan Wright & Arthur R. Miller, 8 FEDERAL PRACTICE & PROCEDURE § 2024 (3d ed. 1998) (emphasis added). Numerous Courts of Appeal concur with this “because of” formulation. See, e.g., *Nat’l Union Fire Ins. Co. v. Murray Sheet Metal Co., Inc.*, 967 F.2d 980, 984 (4th Cir. 1992); *Simon v. G.D. Searle & Co.*, 816 F.2d 397, 401 (8th Cir.), cert. denied, 484 U.S. 917 (1987); *Senate of Puerto Rico v. U.S. Dep’t of Justice*, 823 F.2d 574, 586 n.42 (D.C. Cir. 1987); *In re Grand Jury Proceedings*, 604 F.2d 798, 803 (3d Cir. 1979); *Binks Mfg. Co. v. Nat’l Presto Indus., Inc.*, 709 F.2d 1109, 1118-19 (7th Cir. 1983); *Allied Irish Banks*, 252 F.R.D. at 173.

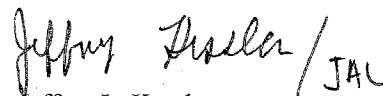
The Paul, Weiss investigative materials at issue in this case were *not* prepared because of litigation. They would have been prepared in their same form irrespective of this arbitration appeal or any other legal proceeding. In fact, the Paul, Weiss notes were created in connection with generating a report for public consumption and without any expectation of confidentiality. The Report recites extensively (and selectively) from Paul, Weiss and NFL investigator interviews, and the League cannot use the underlying investigative materials as a sword and shield. Even if work product protection ever applied to the interview notes, it has been waived. As in *Bounty*, all of the NFL's investigative files should be produced. *See* Nov. 27, 2012 *Bounty* Hr'g Tr. at 520-21; Nov. 29, 2012 *Bounty* Hr'g Tr. at 633-34, 889, 891 (attached hereto as Exhibit L). The same result compels production here. The NFL's refusal to produce such documentary evidence deprives Mr. Brady of his fundamental right to "present evidence." *Rice* Discovery Order at 1 (quoting *Kaplan*, 1996 WL 640901, at \*5).

### III. Conclusion

For the foregoing reasons, the NFLPA and Mr. Brady respectfully request that you order:

- (1) The NFL to produce Commissioner Goodell, Mr. Vincent, Mr. Pash, and Mr. Wells as witnesses at Mr. Brady's appeal hearing;
- (2) That all witness testimony shall be submitted under oath; and
- (3) The NFL produce all documents responsive to Request No. 1 which it is withholding as purported work product, including Paul, Weiss interview notes and memoranda.

Very truly yours,

  
Jeffrey L. Kessler

cc: DeMaurice F. Smith, Esq.  
Tom DePaso, Esq.  
Heather M. McPhee, Esq.  
Ned Ehrlich, Esq.  
David Greenspan, Esq.  
Dan Nash, Esq.  
Donald H. Yee, Esq.

# **EXHIBIT A**



**NFL PLAYERS**  
ASSOCIATION

May 22, 2015

**VIA E-MAIL**

Adolpho A. Birch III  
Sr. Vice President of Law & Labor Policy  
National Football League  
345 Park Avenue  
New York, NY 10154

**Re: Tom Brady Appeal Hearing – Request for Documents and Witnesses**

Dear Adolpho:

We write concerning the NFLPA and Tom Brady's appeal of the four-game suspension imposed by NFL Executive Vice President Troy Vincent on May 11, 2015. Specifically, we write to make our first request for the production of certain documents and witnesses which are necessary to afford Mr. Brady a fundamentally fair hearing. The requests set forth herein are consistent with the express terms of the CBA, past precedent in Article 46 proceedings, and principles of industrial due process.<sup>1</sup>

**Request for the Production of Documents**

The NFLPA requests that the NFL<sup>2</sup> produce the following Documents<sup>3</sup> in its possession, custody, or control:

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<sup>1</sup> As you know, the NFLPA and Mr. Brady have requested that Commissioner Goodell recuse himself as arbitrator of Mr. Brady's appeal due to his evident partiality. The requests contained herein are made without waiver to the NFLPA and Mr. Brady's objections to Commissioner Goodell serving as arbitrator.

<sup>2</sup> For purposes of these requests, "NFL" shall include the National Football League, its employees, attorneys, and independent contractors (including NFL security personnel and game referees). For the avoidance of doubt, the term "NFL" shall also include all lawyers and any other personnel involved in any way in investigating the subject matter described in the Wells Report (hereafter "the Patriots Investigation"), including, but not limited to, Mr. Wells and his team at the Paul, Weiss firm.

<sup>3</sup> "Documents" includes electronic and hardcopy documents (including handwritten notes), photographs, recordings (including video and audio recordings in any medium), tangible objects, or copies or portions of any of these items.



- (1) All Documents regarding the Patriots Investigation, including, but not limited to:
- i. All Documents purporting to support or related to the NFL's "preliminary findings" that the New England Patriots violated NFL playing rules in connection with the AFC Championship Game;
  - ii. All Documents created, obtained, or signed by the NFL relating to the Patriots' and/or Colts' footballs used in or prepared for the AFC Championship Game, including, but not limited to, all Documents created, obtained, or signed by Messrs. Blakeman, Prioleau, Riveron, Vincent, Grossi, and Farley;
  - iii. All Documents created, obtained, or reviewed by NFL investigators (including by Mr. Wells and his investigative team at the Paul, Weiss firm and NFL security personnel) in connection with the Patriots Investigation (including all notes, summaries, or memoranda describing or memorializing any witness interviews);
  - iv. All Documents prepared by NFL security personnel concerning the Patriots Investigation, including, but not limited to, all memoranda or other communications relating to the Patriots Investigation and all notes, summaries, or memoranda describing or memorializing any witness interviews;
  - v. All Documents that constitute or relate to communications among members of the AFC Championship Game officiating crew concerning the footballs used by the Patriots and/or Colts in the AFC Championship Game;
  - vi. All Documents that constitute or relate to communications regarding Mr. Brady and the Patriots Investigation;
  - vii. All Documents and facts and data considered by Exponent in their preparation of Appendix 1 and Appendix 2 to the Wells Report;
  - viii. All Documents and data considered by Dr. Daniel R. Marlow or anyone working with or assisting Dr. Marlow;
  - ix. All communications between the Paul, Weiss firm and the League concerning the Patriots Investigation, including, but not limited to, all e-mail communications; and
  - x. All Documents that form the basis for the findings and/or conclusions of the Wells Report.

- (2) All Documents relating to Commissioner Goodell's delegation of his conduct detrimental authority to Troy Vincent in this matter, including, but not limited to, all communications between Commissioner Goodell and Troy Vincent relating to (i) the Commissioner's delegation of his conduct detrimental authority to Mr. Vincent; (ii) the consideration and imposition of discipline on Mr. Brady; and (iii) communications with NFL owners or team personnel about the Patriots Investigation or the discipline imposed.
- (3) All Documents that the NFL contends support the Commissioner's authority under the CBA to delegate his exclusive conduct detrimental authority to Mr. Vincent.
- (4) All Documents concerning all prior incidents—whether implicating players, Clubs, or Club personnel—involving alleged or actual violations of NFL playing rules involving equipment, apparel, or other game-day playing items (including, but not limited to, footballs, tees, gloves, helmets, pads, eyewear, and cleats/turf shoes), regardless of whether discipline was ultimately assessed.
- (5) All Documents concerning all prior incidents involving an alleged failure to cooperate (including, but not limited to, any alleged failure to produce electronic information) on the part of an NFL player in an NFL investigation, regardless of whether or not discipline was ultimately assessed.
- (6) All Documents that the NFL contends support the basis for Mr. Brady's discipline, including, but not limited to, all Documents considered or relied upon by Mr. Vincent in imposing a four-game suspension on Mr. Brady.

#### **Request for the Production of Witnesses**

The NFLPA requests that the NFL compel the live attendance of at least the following witnesses at Mr. Brady's appeal hearing:

- (1) **Commissioner Roger Goodell:** Commissioner Goodell will be called to testify regarding (i) his delegation of his exclusive authority to impose conduct detrimental discipline to Mr. Vincent in Mr. Brady's matter; (ii) the events leading up to the AFC Championship Game, including his knowledge of any alleged violation by the Patriots of NFL playing rules prior to the AFC Championship Game and any communications with the Colts about such allegations; (iii) his involvement, knowledge, and participation in the League's "preliminary findings that game balls used by the Patriots" in the AFC Championship Game violated NFL playing rules; (iv) any discussions he had with other Clubs or the Paul, Weiss firm about the delegation or the discipline imposed; and (v) the League's prior punishment or lack of punishment concerning the incidents described in Document Requests 4 and 5 above.

- (2) **Troy Vincent:** Mr. Vincent will be called to testify regarding (i) Commissioner Goodell's delegation of his exclusive conduct detrimental authority to Mr. Vincent in Mr. Brady's matter and (ii) his involvement in the game-day events during the AFC Championship Game, including, but not limited to, his decision to measure the Patriots' and Colts' footballs at halftime, his role as an observer in the measurement process, and the decision not to inform the Patriots of the complaint filed by the Colts.
- (3) **Jeffrey Pash:** Mr. Pash, as the co-lead investigator with Mr. Wells on the Patriots Investigation, will be called to testify regarding (i) the NFL's involvement in the Paul, Weiss firm's work in connection with the Patriots Investigation and (ii) the League's prior punishment or lack of punishment concerning the incidents described in Document Requests 4 and 5 above.
- (4) **Alberto Riveron:** Mr. Riveron will be called to testify regarding his involvement in the game-day activities involving the testing of the Patriots' and Colts' footballs, including, but not limited to, his (i) testing of the intercepted ball in the first half of the AFC Championship Game; (ii) decision that the Patriots' and Colts' footballs should be inspected at halftime; and (iii) responsibility for setting up the process for testing the game balls at halftime.
- (5) **T. David Gardi:** Mr. Gardi will be called to testify regarding his role in the Patriots Investigation, including, but not limited to, his basis for informing Mr. Kraft one day following the AFC Championship Game that the NFL's "preliminary findings [are] that game balls used by the Patriots" in the AFC Championship Game violated NFL playing rules.
- (6) **Walt Anderson:** Mr. Anderson will be called to testify regarding (i) his measurement of the PSI in the Patriots' and Colts' footballs prior to the AFC Championship Game and (ii) the gauge he used to conduct such measurements.
- (7) **Clete Blakeman:** Mr. Blakeman will be called to testify regarding his measurement of the Patriots' and Colts' footballs at halftime of the AFC Championship Game.
- (8) **Dyrol Prioleau:** Mr. Prioleau will be called to testify concerning his measurement of the Patriots' and Colts' footballs at halftime of the AFC Championship Game.
- (9) **Dr. Robert Caligiuri:** Dr. Caligiuri will be called to testify concerning the bases for his findings and conclusions set forth in Exponent's expert report.
- (10) **Theodore V. Wells:** Mr. Wells will be called to testify concerning his investigation and the Investigative Report Concerning Footballs Used During the AFC Championship Game on January 18, 2015 which was prepared by Mr. Wells and his colleagues.

The NFLPA and Mr. Brady reserve the right to ask the NFL to provide additional witnesses at the hearing to be examined by the NFLPA (including, but not limited to, members of the NFL investigative team) and may seek further discovery. The NFLPA and Mr. Brady also reserve their right to call additional witnesses at the hearing not within the control of the NFL.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom DePaso". The signature is fluid and cursive, with the first name "Tom" and last name "DePaso" clearly distinguishable.

Tom DePaso  
NFLPA General Counsel

cc: Tom Brady  
DeMaurice F. Smith, Esq.  
Tom DePaso, Esq.  
Heather M. McPhee, Esq.  
Ned Ehrlich, Esq.  
David Greenspan, Esq.  
Jeff Pash, Esq.  
Adolpho Birch, Esq.  
Donald H. Yee, Esq.

# **EXHIBIT B**

**DANIEL L. NASH**  
+1 202.887.4067/fax: +1 202.887.4288  
dnash@akingump.com

June 15, 2015

VIA E-MAIL

Jeffrey Kessler  
David Greenspan  
Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166-4193

Re: Tom Brady Article 46 Appeal

Dear Jeffrey and David:

Following our discussions last week, this letter responds to Tom DePaso's May 22, 2015 letter to Adolpho Birch requesting documents and witnesses in the above-referenced matter.

**I. Request for the Production of Documents**

The NFL objects to the document requests because they are inconsistent with the express provisions in Article 46 of the CBA that govern this appeal. As you know, Article 46 does not provide for the type of discovery requests you have propounded, but rather provides only that "the parties shall exchange copies of any exhibits upon which they intend to rely no later than three (3) calendar days prior to the hearing." CBA, Art. 46, Sec. 2 (f)(ii). As Judge Jones confirmed in the *Ray Rice* proceedings, this provision "does not contemplate the production of any other documents" beyond the documents to be relied on at the hearing. *Ray Rice*, Decision on Discovery and Hearing Witnesses, at 1 (Oct. 22, 2014).

The NFL further objects on the grounds that the requests are overbroad, irrelevant, unduly burdensome, and plainly inconsistent with the procedures that govern Mr. Brady's appeal.

We also object to the extent the requests seek information that is protected from disclosure by the attorney-client privilege or the work product doctrine. This includes, without limitation, privileged communications between and among the Paul, Weiss firm and the NFL, as well as internal work product prepared by the Paul, Weiss firm.

Subject to and without waiving these or any other objections, on a non-precedential basis as to any future Article 46 proceeding, and subject to the confidentiality agreement entered into

Jeffrey Kessler  
June 15, 2015  
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by the parties, we are providing with this letter non-privileged, non-protected documents that are responsive to your requests. We reserve the right to supplement this production if additional documents become available. In addition, in accordance with CBA, Art. 46, Sec. 2 (f)(ii), we will provide you with any exhibits upon which we intend to rely prior to the hearing.

Request Number 1:

Request number 1 seeks documents relating to the "Patriots Investigation." In response, we are providing the report prepared by the independent investigators, Theodore Wells and the Paul, Weiss firm, entitled "Investigative Report Concerning Footballs Used During The AFC Championship Game On January 18, 2015" (the "Report"). We are also providing documents considered by the independent investigators in preparing the Report. This includes the Policy on Integrity of the Game & Enforcement of Competitive Rules specifically requested by Mr. Kessler on June 5, 2015.

Request Numbers 2 and 3:

We object to request numbers 2 and 3 as irrelevant because they seek documents relating only to legal arguments that have already been rejected by the Commissioner. In denying the NFLPA's recusal motion, the Commissioner confirmed that "he did not delegate [his] disciplinary authority to Mr. Vincent," but instead merely "concurred in [Mr. Vincent's] recommendation and authorized him to communicate to Mr. Brady the discipline imposed under [his] authority as Commissioner." *Tom Brady*, Decision on NFLPA's Motion to Recuse, at 1 (June 2, 2015). Thus, the NFLPA's requests for documents "relating to Commissioner Goodell's delegation of his conduct detrimental authority" or documents "that the NFL contends support the Commissioner's authority under the CBA to delegate his exclusive conduct detrimental authority" are wholly irrelevant to the remaining issues to be decided in this appeal. Subject to and without waiving these objections, no responsive documents exist.

Request Number 4:

In response to request number 4, we are providing documents relating to prior incidents involving alleged and actual violations of the NFL playing rules involving equipment, apparel, or other game-day items by NFL players, clubs, and club personnel.

Jeffrey Kessler  
June 15, 2015  
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Request Number 5:

In response to request 5, we are producing documents relating to prior incidents involving the failure to cooperate with an NFL investigation by NFL players.

Request Number 6:

In response to request number 6, we are providing the documents identified in response to request number 1, including the Report, which was the basis for the discipline imposed on Mr. Brady.

**II. Request for the Production of Witnesses**

We object to your request for witnesses to the extent they are overbroad, irrelevant, and inconsistent with the governing appeal procedures under Article 46, as well as on the specific grounds set forth below.

We object to your request for the testimony of Commissioner Goodell. For the reasons explained in his decision on the NFLPA's Motion to Recuse, Commissioner Goodell is neither a relevant nor necessary witness, and his appearance as a witness in this matter would be fundamentally inconsistent with the governing procedures under Article 46.

We object to your request for the testimony from League General Counsel Jeffrey Pash on the grounds of the attorney-client and attorney work product privileges, and because he is neither a relevant or necessary witness.

We object to your request for testimony from Troy Vincent on any of the subjects identified in your letter on the ground of relevance and on the ground that such testimony would not address any factual issues as to which there is a genuine dispute. We further object to Mr. Vincent's testimony as cumulative and unnecessary in the event other witnesses may be called to testify on the same topics.

We have provided the Report and related documents upon which Mr. Brady's discipline was based. Mr. Wells and his partner, Lorin Reisner, will be present at the hearing to address questions regarding the Report. Yet, although you have requested testimony from numerous witnesses regarding events during the AFC Championship Game and other matters that are detailed in the Report, there is no indication in Mr. Brady's appeal or your specific witness requests that any of the facts about which these witnesses could testify is *disputed*. For example,



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June 15, 2015  
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while you have requested testimony from numerous witnesses regarding the testing and measurement of the footballs on the day of the Patriots-Colts game, there is no indication that such testimony would be anything other than a repeat of the facts set forth in the Report. At a minimum, requiring multiple witnesses to testify about facts from the Report that are undisputed and involve the same events would serve only to unnecessarily prolong the hearing, which would be plainly inconsistent with the appeal process under the CBA.

Similarly, testimony regarding “the decision not to inform the Patriots of the complaint filed by the Colts,” or the report to the Patriots regarding the “preliminary findings” regarding the measurements of the Patriots’ game balls would not be relevant to any basis for Mr. Brady’s appeal. These topics are fully discussed in the Report and, again, there is no indication that such testimony would be necessary to resolve any *disputed* facts.

Subject to and without waiving these and any further objections as appropriate in the course of the hearing, we will make every effort to make the following witnesses available to testify at the hearing either in person or, if necessary, by telephone:

Dr. Caligiuri

Walt Anderson

David Gardi

Al Riveron

Clete Blakeman

Dyrol Prioleau

We are in the process of confirming the availability of these witnesses and will let you know as soon as possible if there are any scheduling issues.

**Akin Gump**  
STRAUSS HAUER & FELD LLP

Jeffrey Kessler  
David Greenspan  
June 15, 2015  
Page 5

We are available to meet and confer later this week at your convenience.

Sincerely,



Daniel L. Nash

cc: Tom DePaso  
Adolpho Birch

# **EXHIBIT C**

**NFL PLAYERS**  
ASSOCIATION

May 14, 2015

**VIA E-MAIL**

Troy Vincent  
Executive Vice President  
National Football League  
345 Park Avenue  
New York, NY 10154

**Re: Notice of Arbitration Appeal of Tom Brady**

Dear Troy,

We are in receipt of the discipline notice you issued on May 11, 2015, which imposes a four-game suspension without pay on New England Patriots Quarterback Tom Brady. This letter serves as notice of the NFLPA and Mr. Brady's disciplinary appeal on at least the following grounds:

*First*, as both Mr. Brady's discipline letter and the NFL's public statements make clear, you were tasked by Commissioner Goodell to determine whether Mr. Brady should be subject to discipline for conduct detrimental in connection with the events described in the Wells Report (the "Report"), and if so, to decide and impose the discipline. And, you have, in fact, imposed Mr. Brady's discipline pursuant to the Commissioner's purported delegation of his authority. Any such delegation is a plain violation of the CBA.

The CBA grants the Commissioner—and only the Commissioner—the authority to impose conduct detrimental discipline on players. CBA, Art. 46, § 1(a); *id.*, App. A, ¶ 15. This express CBA mandate is further confirmed by the "law of the shop." *See Rice* Art. 46 Appeal Decision ("*Rice*") at 15; *Bounty* Art. 46 Appeal Decision ("*Bounty*") at 4. Indeed, whereas the CBA expressly authorizes the Commissioner to delegate his authority to serve as Hearing Officer over Article 46 appeals, after consultation with the NFLPA, it contains no corresponding provision authorizing the Commissioner to delegate his exclusive role to impose conduct detrimental discipline to you or anyone else. You have no authority to impose discipline on Mr. Brady under the CBA, and such discipline must therefore be set aside.<sup>1</sup>

<sup>1</sup> We also note that one arbitrator has previously found that you, in particular, are unfamiliar with proper NFL discipline procedures and have no role in imposing discipline. *Peterson* Art. 46 Appeal at 7.

*Second*, Mr. Brady's discipline cannot be sustained for the additional reason that it contravenes the governing CBA requirement of fair and consistent treatment. *See Rice* at 16; *Bounty* at 4. Your decision to suspend Mr. Brady for four games—*i.e.*, one-quarter of the NFL season—for his alleged “general[] aware[ness] of the actions of the Patriots’ employees involved in the deflation of the footballs” and “failure to cooperate fully and candidly with the [Wells] investigation” is grossly inconsistent with the League’s prior disciplinary treatment of similar alleged conduct, including lack of cooperation and not complying with League rules regarding game balls or other equipment.<sup>2</sup> The law of the shop from *Bounty*, *Rice*, and other proceedings requires that this *unfair* and *inconsistent* treatment of Mr. Brady—an exponential change in the severity of the punishment without notice or due process—be vacated. Indeed, no player in the history of the NFL has ever received anything approaching this level of discipline for similar behavior—a change in sanctions squarely forbidden by the CBA and the law of the shop.

*Third*, Mr. Brady's discipline is premised solely upon the Wells Report, which contains insufficient evidence to find that Mr. Brady committed any violation of NFL rules. Indeed, the Report is wrought with unsupported speculation regarding Mr. Brady's purported knowledge of, and involvement with, two Patriots employees' purported conduct, and grasps at dubious, contradictory and mischaracterized circumstantial evidence merely to conclude that it is “more probable than not” that Mr. Brady was “generally aware of” “inappropriate activities.” Report at 17. Mr. Wells conceded that “there is less direct evidence linking [Mr.] Brady to tampering activities than either [Messrs.] McNally or Jastremski.” *Id.* The Report—based on speculative possibilities piled on top of speculative possibilities and a disregard of contrary evidence—is a legally inadequate basis upon which to impose this unprecedented discipline.

The NFLPA and Mr. Brady reserve their right to challenge the May 11th discipline on additional grounds.

Please be advised that the NFLPA and Mr. Brady intend to call both you and Commissioner Goodell as essential witnesses in the proceeding. You both will be called upon to testify about, among other things, the circumstances surrounding the purported delegation of disciplinary authority from Commissioner Goodell to you in this matter and the factual basis for that purported delegation. You also will both be required to testify about when you became aware of the Colts' complaints about ball deflation and what decisions and steps were thereafter taken to set up what may have been a “sting operation” to try to implicate the Patriots and Mr. Brady. The latter conduct would present an additional ground for setting aside the discipline imposed.

---

<sup>2</sup> Apart from the inconsistent and unfair treatment, the NFLPA and Mr. Brady deny the assertion in Mr. Brady's discipline letter that he “fail[ed] to cooperate fully and candidly with the investigation,” or that he had any awareness of any deliberate rules violation asserted in the Report. Discipline Letter at 1.

Further, your personal involvement in the game-day events surrounding this matter render you inherently biased in any disciplinary determination (*see, e.g.*, Report at 64-72). All of these facts will require your testimony at the hearing.

In light of the above, the NFLPA believes that neither Commissioner Goodell nor anyone with close ties to the NFL can serve as arbitrator in Mr. Brady's appeal under governing legal standards. The credibility and testimony of both you and Commissioner Goodell will be at issue in the hearing as well as numerous procedural issues regarding your testimony and the testimony of the Commissioner. Thus, this matter is similar to the *Rice* appeal, where Commissioner Goodell properly concluded that a neutral with no ties to the League, Judge Barbara Jones, should be appointed as Hearing Officer to afford Mr. Rice a lawful hearing before an impartial and to maintain the integrity of the proceedings.

Accordingly, this letter will serve as a formal demand that the Commissioner follow the *Rice* precedent and appoint an independent person to serve as arbitrator over Mr. Brady's appeal. If the Commissioner does not appoint such a neutral arbitrator, the NFLPA and Mr. Brady will seek recusal and pursue all available relief to obtain an arbitrator who is not evidently partial.

Finally, to the extent any portion of Mr. Brady's discipline was imposed for any alleged on-field conduct, the League must immediately identify such discipline, the conduct that allegedly provided its basis, and comply with the appeals procedures set forth under Article 46, Section 1(b) of the CBA. *See Bounty Appeals Panel Decision at 9.*

Very truly yours,



Tom DePaso  
NFLPA General Counsel

cc: Tom Brady  
DeMaurice F. Smith, Esq.  
Heather M. McPhee, Esq.  
Ned Ehrlich, Esq.  
Jeffrey L. Kessler, Esq.  
David Greenspan, Esq.  
Commissioner Goodell  
Jeff Pash, Esq.  
Adolpho Birch, Esq.  
Donald H. Yee, Esq.

# **EXHIBIT D**

**PAUL TAGLIABUE**

November 9, 2012

In the Matter of New Orleans Saints Pay-for-Performance / "Bounty"

**Pre-Hearing Order No. 4**

After issuing Pre-Hearing Order No. 3 addressing the conference to be held November 20, 2012 at Beveridge & Diamond, P.C. in Washington, DC, I have further considered the issues on appeal and correspondence received from the parties. Accordingly, I issue the following Order:

1. Jeff Miller will be required to provide in-person testimony and will be subject to reasonable cross-examination at a hearing before me on Tuesday, November 27 or December 4, 2012, depending on assuring availability of player parties to be present.
2. Three (3) days prior to the date of testimony for Mr. Miller, the NFL on its part, and the NFLPA and Mr. Vilma on their part, will each identify by letter to me a limited number of key documents essential to the direct and cross examination, respectively.
3. As stated in Pre-Hearing Order No. 1, my counsel, Beveridge & Diamond, P.C., will coordinate with counsel for all parties, as well as counsel for Gregg Williams, in an attempt to arrange for Mr. Williams' testimony. My counsel will undertake similar efforts regarding other non-party witnesses. They will do so within the framework that I outlined at the November 1, 2012 pre-hearing conference, namely, Ben Wilson and Harold Himmelman will work with NFL and players' counsel to determine how best to procure testimony. (See Transcript of November 1, 2012 Pre-Hearing Conference of New Orleans Saints Article 46 Appeal, 104:1-13.) Mr. Wilson and Mr. Himmelman will assure that all communications with a non-party witness, or his representative, will include party counsel or will otherwise be conducted with the consent of counsel for the parties to this proceeding.

/s/Paul Tagliabue

---

Paul Tagliabue

Cc: All counsel  
Benjamin F. Wilson  
Harold Himmelman



# **EXHIBIT E**



**In the Matter of Ray Rice**

Decision on Discovery and Hearing Witnesses

October 22, 2014

Following a meeting on June 16, 2014, National Football League ("NFL") Commissioner Roger Goodell suspended Baltimore Ravens running back Ray Rice for two games on July 23, 2014, for a February 15, 2014 incident in which he assaulted his then-fiancée, Janay Palmer. On September 8, 2014, a video of the assault was made public. Subsequently, on September 11, 2014, Commissioner Goodell suspended Mr. Rice indefinitely. Mr. Rice has brought this appeal seeking to have the second, indefinite suspension overturned. The parties have identified the primary factual issue as what Mr. Rice told the League about his assault of Ms. Palmer at the June 16 meeting. Against this factual background, at issue is whether Commissioner Goodell abused his discretion, or in other words, acted arbitrarily and capriciously, in suspending Mr. Rice indefinitely.

Document Requests:

Article 46 of the Collective Bargaining Agreement ("CBA") between the NFL and National Football League Players' Association ("NFLPA") identifies the procedures that govern appeals related to "action taken against a player by the Commissioner for conduct detrimental to the integrity of, or public confidence in, the game of professional football." Such an appeal is at issue here. The bargained-for procedures include "discovery" limited to the production of all documents that will be relied upon at the hearing at least three days prior to said hearing. NFL-NFLPA CBA, Art. 46 § 2(f)(ii). "Arbitrators are bound by the language of the contract, but equally important is they are restricted by what the language of the contract does not say." *Carrollton Bd. of Educ.*, 09-2 Lab. Arb. Awards (CCH) P 4632, at 8 (2009) (Allen, Arb.). Here, the collective bargaining agreement provides for tightly circumscribed discovery and does not contemplate the production of any other documents in an Article 46 proceeding other than under those terms.

That said, the NFL has already agreed to provide the NFLPA with the majority of their requested documents. I also find that the remaining NFLPA discovery requests are of tenuous relevance and in some instances a fishing expedition. The NFL has agreed to produce the requested documents in its possession aside from those responsive to portions of Document Request 8. The remaining scope of Request 8 seeks to comb through League files and e-mails based upon a single press report relying upon unnamed sources. The NFLPA does not need access to such documents in order to "present evidence and cross examine witnesses," the key elements of a "fundamentally fair hearing." *Kaplan v. Alfred Dunhill of London, Inc.*, No. 96 Civ. 0258 (JFK), 1996 WL 640901, at \*5 (S.D.N.Y. Nov. 4, 1996).

The NFL has also agreed to provide relevant documents within its possession that were provided to it by the Ravens. Because the issues as identified by both of the parties center on the knowledge of the League, not that of the Club, documents held independently by the Ravens are



not sufficiently relevant to this matter, and they need not be produced in order to ensure a fair hearing. As such, no further document production by the NFL or by the Ravens will be ordered.

The NFL is encouraged to produce these documents as soon as practicable, but they shall be produced no later than the close of business on Thursday, October 30, 2014. All parties are directed to produce the exhibits they will rely upon at the hearing no later than the close of business on Thursday, October 30, 2014, in conformity with the three-day timeframe provided for by Art. 46 § 2(f)(ii).

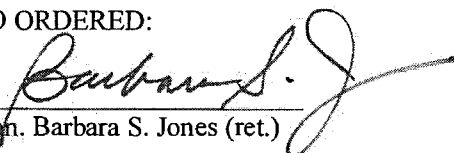
Witnesses:

While Article 46 of the CBA clearly identifies the scope of document discovery, it is silent on the scope of witness testimony at appeals hearings under the Article. Art. 46 § 2. As the player is plainly entitled to such a hearing upon request, it must be within the discretion of the hearing officer to determine the scope of the presentations, including compelling the witnesses necessary for the hearing to be fair.

As noted, both sides have cast as a central issue in the case what Mr. Rice said in the meeting with the League and Ravens officials on June 16, 2014. The NFL has already agreed to produce Adolpho Birch and Kevin Manara, two NFL lawyers who were present at that meeting. To limit the available witnesses knowledgeable about the content of that meeting to the individuals the NFL is willing to produce would prevent Mr. Rice from presenting his case and runs the risk of providing an incomplete picture of the content of a meeting that both parties have identified as critical. As such, all individuals present at the June 16, 2014 meeting between Mr. Rice and the League, including Commissioner Roger Goodell, Ravens General Manager Ozzie Newsome, and Ravens President Dick Cass are directed to be available to testify before the Hearing Officer at the hearing currently scheduled for November 5 and 6, 2014.<sup>1</sup> The NFL has also agreed to produce Chief Security Officer Jeffrey Miller.

The NFLPA has also sought the testimony of Ravens owner Steve Bisciotti, Ravens Head Coach John Harbaugh, and Ravens Senior Director of Security Darren Sanders. The request for production of these witnesses is denied. The NFLPA has not demonstrated that their testimony is necessary for Mr. Rice to present his case regarding the League investigation and discipline imposed by the Commissioner. Through the course of the hearing, should the parties present evidence that the presence of such witnesses is necessary for a full and fair hearing, the Hearing Officer will revisit the request.

SO ORDERED:

  
Hon. Barbara S. Jones (ret.)

<sup>1</sup> The NFLPA has indicated that it "believes" each of these individuals was in attendance at the June 16, 2014 meeting. If, in fact, any one of these individuals was not present, the parties should make a submission to the Hearing Officer forthwith so that this order may be reassessed.

# **EXHIBIT F**

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NEW ORLEANS SAINTS

ARTICLE 46 APPEAL

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PRE-HEARING CONFERENCE

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- - -

November 20, 2012

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Transcript of Pre-Hearing

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Conference held on November 20, 2012,

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commencing at 12:06 p.m., before Linda L.

17

Golkow, a Federally-approved Registered

18

Diplomate Reporter and Notary Public for

19

the District of Columbia.

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GOLKOW TECHNOLOGIES, INC.

877.370.3377 ph - 917.591.5672

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deps@golkow.com

1 for the 27th or the 29th.

2 MR. TAGLIABUE: I think we  
3 said the 29th.

4 MS. WHITE: Your preference  
5 is the 29th?

6 MR. WILSON: Then he will be  
7 the 29th.

8 MR. KESSLER: I think  
9 because of timing, we could fit  
10 another witness in on the 27th,  
11 but not Cerullo. In other words,  
12 Cerullo with Miller plus opening  
13 would be too much.

14 MR. TAGLIABUE: I'm  
15 directing, and I haven't had a  
16 chance to discuss this with Ben,  
17 but I just did a revision, I'm  
18 hoping to finalize tonight,  
19 setting these dates that we've  
20 discussed. And on the 27th, I'm  
21 directing that the League present  
22 Aiello and Vincent for testimony,  
23 unless counsel for NFL and NFLPA  
24 agree that another League employee

1 is a preferable witness, and that  
2 means better situated with  
3 knowledge of the subject matter.

4 MR. KESSLER: That's good.  
5 That would fill out the 27th  
6 nicely. So if we do that, those  
7 three things should be a full day.

8 MR. TAGLIABUE: That's just  
9 the way I've written it unless the  
10 two of you agree another witness  
11 its preferable, which means  
12 firsthand knowledge of the subject  
13 matter, which is what was  
14 suggested earlier.

15 MS. WHITE: Understood.

16 MR. WILSON: On the 29th,  
17 we're talking about Cerullo,  
18 correct?

19 MS. WHITE: Yes.

20 MR. KESSLER: Yes.

21 MR. WILSON: And then where  
22 are we with respect to Foran and  
23 Hummel?

24 MR. TAGLIABUE: My order

# **EXHIBIT G**



**PAUL TAGLIABUE**

November 2, 2012

In the Matter of New Orleans Saints Pay-for-Performance / "Bounty"

**Pre-Hearing Order No. 1**

Pursuant to my October 30, 2012, Notice and Agenda for Pre-Hearing Conference, we held a conference in Washington, DC on November 1, 2012 with counsel for all parties present. As outlined at the hearing and after full consideration of the issues, I issue the following Order:

1. Gregg Williams will be required to provide in-person testimony at a hearing before me in this matter and will be subject to reasonable cross-examination. Other requested in-person testimony will be addressed at an early date. Beveridge & Diamond, P.C. will coordinate with counsel for all parties as well as counsel for Mr. Williams to facilitate arrangements for Mr. Williams' testimony and to address possible arrangements for in-person testimony from Mike Cerullo.
2. The parties will confer in an effort to narrow the several disputed document production issues identified at the conference. They shall jointly submit to me a memorandum of no more than five pages describing any remaining disputes, and stating their respective positions on each disputed issue, by no later than 5:00 p.m. EST on Wednesday, November 7.
3. The standard of review and burden of proof for an appeal under CBA Article 46 present important legal issues that I will address at an early date, before the commencement of the hearing and in-person testimony.
4. As discussed at the conference yesterday, no hearing will be held on November 5 or November 6. Unless otherwise directed, the hearing will commence on November 20, 2012 at a location to be determined.

As discussed at the conference, I will issue my recusal decision by the end of the business day on Monday, November 5, 2012.

/s/Paul Tagliabue

---

Paul Tagliabue

Cc: All counsel  
Benjamin F. Wilson  
Harold Himmelman

**CONFIDENTIAL**

**NFLPA\_BRADY003315**

# **EXHIBIT H**

1 NATIONAL FOOTBALL LEAGUE

2 -----X

3 IN THE MATTER OF:

4

5 GREG HARDY

6

7 APPEAL HEARING

8 -----X

9

10

11 Thursday, May 28, 2015

12 10:06 a.m.

13

14

15 Akin, Gump, Strauss, Hauer & Feld LLP

16 1333 New Hampshire Avenue NW

17 Washington, D.C. 20036

18

19

20 BEFORE: HAROLD HENDERSON, HEARING OFFICER

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23 REPORTED BY:

24 JOSHUA B. EDWARDS, RMR, CRR, CLR

25 NOTARY PUBLIC OF THE STATE OF NEW YORK

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I N D E X

OPENING STATEMENTS	PAGE
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# **EXHIBIT I**

1 NATIONAL FOOTBALL LEAGUE

2 -----X

3 In the Matter of:

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6 ADRIAN PETERSON

VOLUME II

7

8 -----X

9 (A-P-P-E-A-L-S H-E-A-R-I-N-G)

10 December 4, 2014

11 2:39 p.m.

12 Akin Gump Strauss Hauer & Feld LLP

13 1333 New Hampshire Avenue, N.W.

14 Tenth Floor

15 Washington, D.C. 20026

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1 to resolve before. We move right into  
2 examination of Mr. Vincent.

3                   Troy, you have been called as a  
4 witness and appear here by Mr. Kessler. He  
5 will ask you questions and you answer the  
6 questions directly. When he is finished, you  
7 will have the opportunity for questions by  
8 Mr. Nash, if he so desires. If an objection  
9 is raised, I ask that you hold your answer, to  
10 stop, and let the lawyers talk to me about it,  
11 and we will resolve any objection. And you  
12 will be instructed whether to answer or not.  
13 Okay?

14                   THE WITNESS: Yes, sir.

15                   THE HEARING OFFICER: Mr.  
16 Kessler, your witness.  
17 Thereupon,

18                   TROY VINCENT  
19 was called for examination by counsel and,  
20 after having been duly sworn by the Notary,  
21 was examined and testified as follows:

22                   EXAMINATION BY COUNSEL FOR THE NATIONAL  
23                   FOOTBALL LEAGUE PLAYERS ASSOCIATION

24                   BY MR. KESSLER:

25                   Q. Good afternoon, Mr. Vincent. We

# **EXHIBIT J**



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CONFIDENTIAL

-----X

IN THE MATTER OF RAY RICE

-----X

HELD BEFORE BARBARA S. JONES

New York, New York

Wednesday, November 5, 2014

Reported by:

ROBIN NUNEZ

JOB NO. 86756.

1 CONFIDENTIAL

2 may be reluctant to sign. I don't know, I  
3 have not talked to any club. I don't know  
4 that the commissioner has talked to any  
5 clubs. I assume Mr. Rice's agents maybe  
6 have talked to clubs, but that's all in  
7 Mr. Rice's word. It is up to Mr. Rice to  
8 either sign a contract or go back to the  
9 commissioner and demonstrate that it is  
10 appropriate for him to be reinstated. And  
11 what they are really asking you to do, your  
12 Honor, is to issue an order saying that  
13 Mr. Rice can go back on the field without  
14 any conditions, it doesn't matter whether  
15 he -- none of this matters, he should just  
16 be allowed back on the field without any of  
17 the conditions that the commissioner might  
18 want to -- including things like making  
19 sure he's getting counselling, making sure  
20 that this is never going to happen again.  
21 Something similar to what the Court did. He  
22 still remains subject to the re-trial  
23 intervention agreement. Is he still  
24 following the pre-trial intervention  
25 agreement?

1 CONFIDENTIAL

2 Your Honor, I would submit that the  
3 commissioner under the CBA, under the  
4 constitution and the personal conduct  
5 policy clearly has the discretion to impose  
6 that kind of indefinite suspension. I would  
7 submit it was the responsible thing to do  
8 and that Mr. Rice's appeal, as a result,  
9 should be denied.  
10 ARBITRATOR JONES: All right, thank  
11 you.  
12 MR. KESSLER: If I can have just  
13 five minutes to respond to a few points  
14 that came up, that's all I need, maybe  
15 less.  
16 ARBITRATOR JONES: I'll give you  
17 four, Mr. Kessler.  
18 MR. KESSLER: Thank you, I  
19 appreciate it.  
20 ARBITRATOR JONES: Actually, these  
21 aren't supposed to be arguments as we know  
22 gentlemen. But this is a lot of law. I  
23 heard it from both sides. So go ahead.  
24 MR. KESSLER: Thank you so much,  
25 I'll be very brief.

1 CONFIDENTIAL

2 First of all, on the issue of  
3 disparate treatment, so I'll give you  
4 example, we'll elaborate this in the  
5 hearing, we have on November 25th, 2013 the  
6 case of Mr. Robert Sands. Mr. Robert Sands,  
7 and this is in Exhibit 72 of your book.  
8 ARBITRATOR JONES: Mr. Kessler, I  
9 think I'm going to hear this at the hearing  
10 and if you want an opportunity at the end  
11 of hearing, we can have more of this kind  
12 of back and forth.  
13 MR. KESSLER: I was just going to  
14 point out that he had been found guilty of  
15 two felonies, and not two games. So it is  
16 not an issue of uncertainty because  
17 normally if you're found guilty under the  
18 criminal justice system and you only get  
19 two games, there was no uncertainty.  
20 My second point, your Honor, is that  
21 this idea that the -- which is, I don't  
22 want to say that they are just making it up  
23 as they are going along, but they are  
24 making it up as they are going along. This  
25 idea that the commissioner --

1 CONFIDENTIAL

2 ARBITRATOR JONES: Mr. Kessler, you  
3 are going to have time at the end of this  
4 case --  
5 MR. KESSLER: Okay, your Honor,  
6 then I'll sit down if you heard enough.  
7 ARBITRATOR JONES: Okay, thank you.  
8 Is the NFL going forward with --  
9 MR. NASH: Yeah, we are going to  
10 present the commissioner. Can we take a  
11 short break?  
12 ARBITRATOR JONES: Sure, we will  
13 take ten minutes.  
14 (Off the record. 11:03 a.m.)  
15 (On the record. 11:18 a.m.)  
16 ARBITRATOR JONES: All right,  
17 Mr. Nash.  
18 MR. NASH: Thank you, your Honor.  
19 ROGER GOODELL,  
20 called as a witness, having been duly sworn  
21 by a Notary Public, was examined and  
22 testified as follows:  
23 EXAMINATION BY MR. NASH:  
24 Q. Good morning, Commissioner. Just can  
25 you give the judge a very brief background as

# **EXHIBIT K**



1           MR. LEVY: That's right.

2           THE COURT: Today was for the first time I heard  
3 anything about witnesses were going to be sworn or not sworn.  
4 I wasn't there, so --

5           MR. LEVY: I wasn't there, Your Honor, but  
6 Mr. Miller, who is the head of NFL security, the chief security  
7 officer for the League, Mr. Hummel, who was the lead  
8 investigator in this matter, were both present. They were both  
9 available. I believe there was a court reporter there.  
10 There's a transcript of the session.

11          THE COURT: Do you know if they would have been  
12 sworn?

13          MR. LEVY: I'm sure if they were asked to be sworn,  
14 they would have been sworn, but there was no request that they  
15 be sworn in that I know of. If there was, it would be in the  
16 transcript, but I'm almost certain that there was not.

17          THE COURT: Well, they didn't testify, so --

18          MR. LEVY: Well, no. Mr. Miller gave a lengthy  
19 presentation -- again, this is reflected in Exhibit T, the  
20 transcript of that proceeding -- a lengthy recitation of the  
21 nature of the investigation, who they talked to. He identified  
22 the exhibits that they relied on. That went on for some time.  
23 I don't believe Mr. Hummel gave testimony or spoke at that  
24 session, but Mr. Miller did.

25          THE COURT: That was in the afternoon?

# **EXHIBIT L**

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HIGHLY CONFIDENTIAL

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7 BY AGREEMENT OF ALL PARTIES,  
8 both lawyer and nonlawyer, I understand  
9 that I cannot and will not share,  
10 distribute or discuss (except with my  
11 attorneys) in whole or in part the  
12 contents of the transcript that I  
13 receive.

10

11

12 NEW ORLEANS SAINTS  
13 ARTICLE 46 APPEAL PROCEEDINGS

13

14

November 27, 2012

15

16

17 Transcript of Article 46  
18 Appeal Proceedings held on November 27,  
19 2012, commencing at 8:00 a.m. at the  
20 offices of Beveridge & Diamond, 1350 I  
21 Street, N.W., Suite 700, Washington,  
22 D.C., before Linda L. Golkow, a  
23 Federally-approved Registered Diplomate  
24 Reporter, Certified Livenote Reporter and  
Notary Public for the District of  
Columbia.

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deps@golkow.com

24

1 another one that's an assessment  
2 of the performance --

3 MS. WHITE: We will get them  
4 as well?

5 MR. TAGLIABUE: Yes.

6 MR. WILSON: Absolutely.

7 MR. TAGLIABUE: One of them  
8 is what we were looking at today,  
9 another copy of that in the file.  
10 I don't think anything is huge,  
11 but that's for you to decide. And  
12 I don't think anything in there is  
13 particularly sensitive, but you  
14 will get them tomorrow.

15 MR. KESSLER: Very good.

16 MR. TAGLIABUE: On the  
17 interview notes and witness  
18 memoranda, I'm going to be going  
19 through that early in the morning  
20 with Patrick, and the likelihood  
21 is that we will produce some of  
22 those documents that have been  
23 turned over to us by counsel that  
24 will relate to cross-examination



1 of either Cerullo, Williams and  
2 Vitt in all likelihood based on  
3 the testimony that I heard here  
4 from Mr. Miller today.

5 We're not going to turn over  
6 everything, and how much we're  
7 going to turn over I don't know  
8 yet until I reread some of what I  
9 read late last night and some  
10 things that I haven't even yet  
11 read, but I will do that early.

12 MS. WHITE: Is it understood  
13 that whatever you redirect to be  
14 turned over doesn't affect a  
15 waiver --

16 MR. TAGLIABUE: Correct.

17 MS. WHITE: -- and we can  
18 agree on some confidentiality  
19 parameters?

20 MR. TAGLIABUE: Correct.  
21 And that was addressed yesterday  
22 by Sean.

23 MS. WHITE: I knew it was,  
24 but I didn't know --

1 - - -  
2  
3 HIGHLY CONFIDENTIAL  
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7 BY AGREEMENT OF ALL PARTIES,  
8 both lawyer and nonlawyer, I understand  
9 that I cannot and will not share,  
10 distribute or discuss (except with my  
11 attorneys) in whole or in part the  
12 contents of the transcript that I  
13 receive.  
14

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17 NEW ORLEANS SAINTS  
18 ARTICLE 46 APPEAL PROCEEDINGS  
19  
20 - - -  
21

22 November 29, 2012  
23 - - -  
24

25 Transcript of Article 46  
26 Appeal Proceedings held on November 29,  
27 2012, commencing at 8:00 a.m. at the  
28 offices of Beveridge & Diamond, 1350 I  
29 Street, N.W., Suite 700, Washington,  
30 D.C., before Linda L. Golkow, a  
31 Federally-approved Registered Diplomat  
32 Reporter, Certified Livenote Reporter and  
33 Notary Public for the District of  
34 Columbia.  
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1 if that's appropriate?

2 MR. TAGLIABUE: Yes.

3 MR. KESSLER: Let's do that.

4 - - -

5 (Whereupon, a recess was  
6 taken from 9:23 a.m. until  
7 9:42 a.m.)

8 - - -

9 MR. TAGLIABUE: Mr. Kessler,  
10 as you requested, I've gone and  
11 reviewed quickly the investigative  
12 memorandum that reports Mr.  
13 Foran's interview with Coach  
14 Childress, and I assume you also  
15 got the portion that reports his  
16 interview with Mr. Hargrove?

17 MR. KESSLER: Yes.

18 MR. TAGLIABUE: And as I  
19 explained to you off the record  
20 briefly, this investigative report  
21 goes into other interviews that I  
22 don't believe were the subject of  
23 Mr. Foran's direct testimony. So,  
24 we have not yet given you those.

1 I will continue to review what we  
2 have not given you from this  
3 memorandum to make sure that we've  
4 given everything that's relevant  
5 to this witness's testimony and to  
6 the issues that you are urging  
7 here with respect particularly to  
8 Mr. Hargrove. You emphasized in  
9 your opening remarks that each of  
10 the players that you're  
11 representing has a case that has  
12 some facts in common but also  
13 stems heavily on individual facts,  
14 and I believe this certainly is an  
15 example of these issues that Mr.  
16 Foran has addressed are, at least  
17 in part, what you were referring  
18 to in your opening statement, and  
19 also what Ms. White referred to in  
20 her opening statement relative to  
21 the suspension of Mr. Hargrove.  
22 So, for that reason, we're going  
23 to proceed, and you have this  
24 document.

1           A.     No.

2           Q.     The declaration that  
3 ultimately you signed as Exhibit 48,  
4 could you put that in front of you,  
5 please?

6           A.     Sure.

7                   MR. TAGLIABUE: This might  
8 be a good place to stop. We're at  
9 15 minutes and we can give you, I  
10 think, these documents.

11                   MR. GINSBERG: I'm sorry?

12                   MR. TAGLIABUE: We can give  
13 you the documents to review. It  
14 is 2:30 now. That's a nice  
15 breaking point and we're changing  
16 the subject. If you are going to  
17 his declaration, the documents  
18 we're about to give you, which are  
19 the redacted witness memoranda,  
20 might be helpful. So we'll give  
21 them to all counsel and then take  
22 as much time as you need, and then  
23 you've got 45 -- whenever we  
24 resume, you will have 45 minutes

1 - - -

2 - - -

3 (Whereupon, a recess was  
4 taken from 2:30 p.m. until  
5 2:39 p.m.)

6 - - -

7 MR. TAGLIABUE: Just for the  
8 record, I'll state that during the  
9 break we gave to counsel redacted  
10 copies of two witness interview  
11 memoranda from the files of the  
12 NFL. We've marked as Exhibit 155  
13 the witness interview memoranda  
14 that begins with the words, "On  
15 November 13, 2011," and we've  
16 marked as Exhibit 156 the witness  
17 interview memorandum that begins  
18 with the words, "On December 2,  
19 2011."

20 I think for now that's all  
21 we need to say about these  
22 documents for the purposes of  
23 identification. We will discuss  
24 at the end of the day objections