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**VIA ELECTRONIC FILING**

Michael E. Gans, Clerk of Court  
U.S. Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton Courthouse  
111 South 10th Street  
St. Louis, MO 63102

Re: *National Football League Players Ass'n, on Behalf of Adrian Peterson v. National Football League et al.* (No. 15-1438)

Dear Mr. Gans:

Pursuant to FRAP 28(j), the NFLPA submits this letter regarding *National Football League Management Council v. National Football League Players Association*, 1:15-cv-05916-RMB-JCF (S.D.N.Y. Sept. 3, 2015) (“*Brady*”) (attached).

*Brady* involved cross-motions by the parties here either to confirm or vacate Commissioner Roger Goodell’s arbitration award (“Award”) upholding a four-game suspension imposed on Tom Brady. The NFLPA argued that the Award should be vacated for disregarding the essence of the parties’ CBA by sustaining Brady’s discipline in defiance of the undisputed CBA requirement of advance notice. The NFL did not dispute the advance notice requirement, but instead contended that the Award complied with it. Op. 29-32.

Citing “several significant legal deficiencies,” Judge Berman vacated the Award. Op. 20. In particular, while acknowledging “the deference afforded to arbitral decisions,” he held that the Award violated the essence of the CBA by defying the requirement “to provide professional football players with advance notice of prohibited conduct and potential discipline.” Op. 19-20. Judge Berman, like Judge Doty below, relied upon both decades of NFL jurisprudence affirming this CBA notice requirement—the “law of the shop”—and Commissioner Goodell’s sworn testimony in *Rice* that the NFL is “required to provide proper notice” of player discipline. Op. 18-32; see Op. 25 (“It is the ‘law of the shop’ to provide professional

football players with (advance) notice of prohibited conduct and of potential discipline.”).

As Judge Berman explained, the requirement of advance notice of potential discipline “*is at the heart of the CBA and, for that matter, of our criminal and civil justice systems.*” Op. 29 (emphasis added). And “[b]ecause there was no notice of a four-game suspension ... here,” Commissioner Goodell “dispense[d] his own brand of industrial justice.” Op. 25.<sup>1</sup>

*Brady* further confirms that, in sustaining the retroactive application of the NFL’s new personal conduct policy to Peterson, arbitrator Henderson violated the essence of the CBA and the undisputed requirement that players receive advance notice of potential discipline.

Respectfully submitted,

/s/Jeffrey L. Kessler

*Counsel for Plaintiff-Appellee National Football League Players Association*

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<sup>1</sup> Judge Berman also vacated the Award on the independent ground that it violated fundamental fairness, further establishing this ground as an appropriate basis for vacatur here. Op. 32-38.