

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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| NATIONAL FOOTBALL LEAGUE PLAYERS | : |
| ASSOCIATION, on its own behalf and on behalf | : |
| of TOM BRADY, | : |
| | : |
| | : |
| Petitioner, | : |
| | : |
| -v.- | : |
| | : |
| NATIONAL FOOTBALL LEAGUE and | : |
| NATIONAL FOOTBALL LEAGUE | : |
| MANAGEMENT COUNCIL, | : |
| | : |
| | : |
| Respondents. | : |
| | : |
| ----- X | |

Case No.

**MEMORANDUM OF LAW
IN SUPPORT OF *EX PARTE*
MOTION TO SEAL
PORTIONS OF PETITION,
MEMORANDUM AND
CERTAIN EXHIBITS
THERETO**

INTRODUCTION

Petitioner National Football League Players Association (“NFLPA”), the union for players in the National Football League, on its own behalf and on behalf of New England Patriots quarterback Tom Brady, requests that the Court enter an *ex parte* order granting permission to file under seal: (i) certain portions of a Petition to Vacate Arbitration Award (the “*Brady* Petition”); (ii) certain portions of a Memorandum of Law in Support of Motion for Preliminary Injunction, or in the alternative, for Expedited Disposition (the “*Brady* Memorandum”); and (iii) certain exhibits submitted in support of the *Brady* Petition and preliminary injunction motion (“Confidential Exhibits”).

We have provided the Court with copies of redacted and unredacted versions of the *Brady* Petition. If the Court grants the present motion to seal, Petitioner will publicly file the Redacted *Brady* Petition and file the Unredacted *Brady* Petition only in hard copy and under seal.

We have also provided the Court with copies of redacted and unredacted versions of the *Brady* Memorandum. If the Court grants the present motion to seal, Petitioner will publicly file the Redacted *Brady* Memorandum and file the Unredacted *Brady* Memorandum only in hard copy and under seal.

We have further provided the Court with a copy of the Confidential Exhibits submitted in support of Brady's petition and motion for a preliminary injunction. If the Court grants the present motion to seal, the Confidential Exhibits will be filed only in hard copy and under seal.

If the Court grants Petitioner's present motion to seal, Petitioner will then file only the Redacted *Brady* Petition and Redacted *Brady* Memorandum via the Court's Electronic Case Filing System ("ECF"). The Unredacted *Brady* Petition and Unredacted *Brady* Memorandum will remain under seal. In addition, if the present motion to seal is granted, placeholders for the Confidential Exhibits will be filed via ECF and the Confidential Exhibits will remain under seal.

Petitioner's motion to file under seal is being made in order to comply with a Confidentiality Agreement entered into with Respondents National Football League ("NFL") and National Football League Management Council in the underlying Brady arbitration and a similar confidentiality agreement in another NFL-related matter.

FACTUAL BACKGROUND

On January 18, 2015, the New England Patriots played the Indianapolis Colts for the AFC Championship at Gillette Stadium, an open air stadium. Following that game, the NFL launched an investigation into whether the footballs used by the Patriots were improperly deflated below the pressure range permitted by NFL rules, an investigation that has become publically known as “Deflate-gate.” On May 6, 2015, the results of the Deflate-gate investigation were made public in a report known as the “Wells Report.”

On May 11, 2015, NFL Executive Vice President Troy Vincent issued a disciplinary letter to Tom Brady suspending him for four games based upon the limited factual conclusions from the Wells Report regarding Brady’s purported “general awareness” that two members of the Patriots equipment personnel allegedly deflated Patriots footballs prior to the 2015 AFC Championship Game and Brady’s purported failure to cooperate with the investigation.

On May 14, 2015, Brady timely appealed his suspension. Commissioner Roger Goodell named himself as arbitrator for Brady’s appeal. An arbitration hearing on Brady’s appeal occurred on June 23, 2015 (“*Brady Arbitration*”).

On July 28, 2015, Commissioner Roger Goodell issued an Arbitration Award the arbitration award (“Award”) upholding Brady’s suspension. The Award does little more than rehash the Wells Report while ignoring the arguments presented by the NFLPA and Brady which form the basis for the instant *Brady* Petition. Brady suffers irreparable harm each day the unlawful Award remains in effect. The NFLPA and Brady will be filing a Petition to Vacate Arbitration Award (“*Brady Petition*”) and Memorandum of Law in

Support of Motion for Preliminary Injunction, or in the alternative, for Expedited Disposition (“*Brady* Memorandum”). The Undredacted *Brady* Petition and Undredacted *Brady* Memorandum set forth information from the *Brady* Arbitration, as well as information from the arbitration between the NFLPA, Ray Rice, and the NFL (the “*Rice* Arbitration”), which became part of the arbitration record in the *Brady* Arbitration and are offered in support of the *Brady* Petition and *Brady* Memorandum.

Certain information from the *Brady* Arbitration has been deemed to be confidential and is protected by a confidentiality agreement executed by the parties to the *Brady* Arbitration. Affidavit of Erin K. F. Lisle (July 29, 2015) (“*Lisle* Aff.”), Ex. 1 (the “*Brady* Confidentiality Agreement”).

The *Brady* Confidentiality Agreement requires that:

[A]ny non-public information, documents, or testimony produced or otherwise disclosed in this proceeding (including any hearing or other transcripts containing such information) (collectively, “Confidential Materials”) may be disclosed only to (a) executives or counsel of the NFL, the NFLMC, or their retained investigators and experts in connection with this matter; (b) executives, officers, or counsel of the NFLPA or Mr. Brady, or their retained investigators and experts in connection with this matter; (c) the Hearing Officer and persons working with the Hearing Officer in connection with the Proceeding; (d) court reporters, videographers or other qualified persons taking testimony; (e) witnesses at or in preparation for the Proceeding; and (f) such other persons as the Parties may agree upon in writing, and may be used only for purposes of this or any other proceeding under the CBA, provided however that the NFL’s voluntary production of documents or witnesses in this case cannot be cited as a waiver or precedent in any other proceeding. Nothing in this Confidentiality Agreement shall prevent a party from disclosing or otherwise using any materials produced by that party in discovery—whether Confidential Materials or non-confidential. However, public disclosure of a party’s own Confidential Materials will render those materials non-confidential.

Lisle Aff. Ex. 1 ¶ 1. Further, the *Brady* Confidentiality Agreement provides that: “[i]f any party seeks judicial relief relating to this proceeding or any portion thereof, the parties agree to file any documents containing Confidential Materials under seal.” *Id.* ¶ 2.

The Unredacted *Brady* Petition and Unredacted *Brady* Memorandum quote and/or describe “Confidential Materials” as that term is defined in the *Brady* Confidentiality Agreement. The NFLPA is thus required to protect such “Confidential Materials” from disclosure under the foregoing terms of the *Brady* Confidentiality Agreement. *See id.*

In addition, in the course of the *Brady* Arbitration, information from the *Rice* Arbitration was submitted. The information from the *Rice* Arbitration has been deemed to be confidential and is protected by a confidentiality agreement executed by the parties to the *Rice* proceeding. Lisle Aff. Ex. 2 (the “*Rice* Confidentiality Agreement”).

The *Rice* Confidentiality Agreement requires that:

Except as provided below, any non-public information or documents, or any testimony produced or otherwise disclosed in this proceeding . . . shall be deemed confidential and may be disclosed only to (a) executives or counsel of the NFL, the NFLMC, the Baltimore Ravens, or their agents; (b) executives, officers or counsel of the NFLPA and Mr. Rice, or their agents; (c) the Hearing Officer and persons working for the Hearing Officer; (d) court reporters, videographers or other qualified persons taking testimony; (e) witnesses at or in preparation for the Proceeding; and (f) such other persons as the Parties may agree upon in writing.

Id. Ex. 2 (*Rice* Confidentiality Agreement ¶ 1).

The *Rice* Confidentiality Agreement further requires that: “[s]uch confidential information may be used only for purposes of this or any other proceeding under the CBA [Collective Bargaining Agreement]. . . .” *See id.* ¶ 2.

The Unredacted *Brady* Petition and Unredacted *Brady* Memorandum quote testimony given by NFL Commissioner Roger Goodell in the *Rice* Arbitration. The NFLPA is required to protect Commissioner Goodell's testimony from disclosure under the foregoing terms of the *Rice* Confidentiality Agreement. *See id.*

Some of the exhibits to the *Brady* Petition and *Brady* Memorandum also involve information that is subject to the *Rice* Confidentiality Agreement, including the transcript and exhibits from the *Rice* Arbitration ("Confidential Exhibits").

Accordingly, the NFLPA moves the Court for permission to file under seal those Confidential Exhibits as well as the Unredacted *Brady* Petition and Unredacted *Brady* Memorandum.

ARGUMENT


The materials subject to this motion are encompassed within the confidentiality agreements previously agreed to by the parties. *See Lisle Aff. Exs. 1 and 2.* In cases such as this, where the parties have previously agreed that certain sensitive information is confidential, courts generally uphold the parties' confidentiality designations and permit the materials to be filed under seal. *See, e.g., IDT Corp. v. eBay*, 709 F.3d 1220, 1123-24 (8th Cir. 2013) (portions of complaint setting forth confidential business information produced subject to a protection order in another matter were properly sealed by the district court; remanding for determination of whether the entire complaint should be sealed, or just those excerpts containing the confidential information). Accordingly, the NFLPA respectfully requests that the Court issue an Order sealing certain portions of the

Unredacted *Brady* Petition, Unredacted *Brady* Memorandum and the Confidential Exhibits thereto.

CONCLUSION

Based on the foregoing arguments, the NFLPA respectfully requests that the Court enter an Order sealing certain portions of the Unredacted *Brady* Petition, Unredacted *Brady* Memorandum and the Confidential Exhibits thereto.

Dated: July 29, 2015


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