

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

<p>TOM BRADY, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>NATIONAL FOOTBALL LEAGUE, <i>et al.</i>,</p> <p style="text-align: center;">Defendants,</p>	<p>)</p>	<p>No. 0:11-cv-00639-SRN-JJG</p>
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**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO
EXTEND THE TIME TO RESPOND TO FIRST AMENDED CLASS ACTION
COMPLAINT (*BRADY* PLAINTIFFS)**

Defendants respectfully request an extension of their time from May 23, 2011 to July 6, 2011 to respond to the First Amended Class Action Complaint (*Brady* Plaintiffs). The *Eller* Plaintiffs have already consented to this extension, and an extension is justified for the *Brady* Plaintiffs in light of the pending Eighth Circuit appeal. The Eighth Circuit's expedited decision will likely inform both Defendants' decision whether to file motions to dismiss (and, if so, on which grounds) and this Court's resolution of any motions. Defendants sought consent from the *Brady* Plaintiffs for an extension, but they declined.

PROCEDURAL HISTORY

The *Brady* Plaintiffs filed a Class Action Complaint on March 11, 2011 (Doc. No. 1). Based upon the stipulation of the *Brady* Plaintiffs and Defendants, the Court entered orders extending the time to respond to the *Brady* Class Action Complaint up to and including April 27, 2011 (Doc. No. 40) and later to May 23, 2011 (Doc. No. 98).

The *Eller* Plaintiffs filed their Class Action Complaint on March 28, 2011 (Doc. No. 57) and their Amended Class Action Complaint on April 1, 2011 (Doc. No. 73). Based upon the stipulation of the *Eller* Plaintiffs and Defendants, the Court entered orders extending the time to respond to the *Eller* Class Action Complaint up to and including June 1, 2011. (Doc. No. 39 in Civ. No. 11-748.) This Court consolidated the *Brady* and *Eller* cases on April 11, 2011 (Doc. No. 55).

The *Brady* Plaintiffs filed their First Amended Class Action Complaint on May 3, 2011. (Doc. No. 119.) As a result, Defendants are currently required to respond to the *Brady* Plaintiffs' amended pleading "within the time remaining to respond to the original pleading," that is, on or before May 23, 2011. Fed. R. Civ. P. 15(a)(3).

An appeal from this Court's Order of April 25, 2011 is being heard on an expedited basis by the Eighth Circuit, and will be "submitted for decision

on a highly expedited schedule” on June 3, 2011. *Brady v. NFL*, No. 11-1898, at 13 (8th Cir. May 16, 2011) (per curiam) (District Court Doc. No. 122).

In light of this schedule, and the likely impact of the appellate decision on the responsive pleading that Defendants would file in response to the amended complaints, Defendants sought the consent of the *Brady* and *Eller* Plaintiffs to a brief extension of the time in which to respond to their respective complaints up to and including July 6, 2011. The *Eller* Plaintiffs agreed to such an extension (Doc. No. 125). On May 17, the *Brady* Plaintiffs stated they would not agree to extend the deadline to respond to plaintiffs’ Amended Complaint, prompting this motion.

DISCUSSION

Under Rule 6(b)(1) of the Federal Rules of Civil Procedure, this Court has the power “for good cause” to enlarge the period of time for any act required to be done within a specified time. When filed before the expiration of the deadline sought to be extended, Rule 6(b) “motions to extend are to be liberally permitted, consistent with the admonition of Rule 1 that the rules are to ‘be construed to secure the just, speedy, and inexpensive determination of every action.’” *Bader v. Craig-Hallum, Inc.*, 115 F.R.D. 582, 585 (D. Minn. 1987); *see* 4B Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1165 (3d ed. 2010) (“[A]n application for the enlargement of time

under Rule 6(b)(1) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.”).

Defendants respectfully submit that in light of the pending expedited appeal to the Eighth Circuit, it will be more efficient to the overall resolution of this action if Defendants’ responsive pleading is filed after the Court of Appeals has resolved the issues before it. The resolution of the appeal will likely inform the Defendants’ decision whether to file motions to dismiss (and, if so, on which grounds) or to answer plaintiffs’ complaints.

Plaintiffs will not be prejudiced by this extension. The *Eller* Plaintiffs have already consented to an extension up to and including July 6th. The *Brady* Plaintiffs will not be prejudiced by a similar extension. Indeed, if the pleadings are joined after the parties have the benefit of the Court of Appeals’ ruling, it will likely narrow the issues in the case and increase efficiencies. An extension of time will also avoid the parties having to divert resources to responding to motions to dismiss or counterclaims during the same time period that they are preparing for the oral argument in the Court of Appeals.

CONCLUSION

Accordingly, for the reasons set forth above, as well as based upon all of the files, records and proceedings in this case, Defendants respectfully request that the Court grant Defendants a short extension until July 6, 2011

to respond to the *Brady* Plaintiffs' First Amended Complaint and to enter an Order in the form provided herewith.

Respectfully submitted,

David Boies (*pro hac vice*)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504
(914) 749-8200
(914) 749-8300 (fax)

William A. Isaacson (*pro hac vice*)
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Ave., NW
Washington, DC 20015
(202) 237-2727
(202) 237-6131 (fax)

s/Daniel J. Connolly
Daniel J. Connolly #197247
Aaron D. Van Oort #315539
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7806
(612) 766-1600 (fax)

Gregg H. Levy (*pro hac vice*)
Benjamin C. Block (*pro hac vice*)
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401
(202) 662-6000
(202) 662-6291 (fax)

Counsel for the NFL and NFL Clubs

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