IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Carl Eller, Franco Harris, Marcus Allen, Paul Krause, Lemuel Barney, Joseph DeLamielleure, Elvin Bethea, Michael Haynes, Obafemi Ayanbadejo, and Ryan Collins, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

National Football League, Arizona Cardinals, Inc., Atlanta Falcons Football Club LLC, Baltimore Ravens Limited Partnership, Buffalo Bills, Inc., Panthers Football LLC, Chicago Bears Football Club, Inc., Cincinnati Bengals, Inc., Cleveland Browns LLC, Dallas Cowboys Football Club, Ltd., Denver Broncos Football Club, Detroit Lions, Inc., Green Bay Packers, Inc., Houston NFL Holdings LP, Indianapolis Colts, Inc., Jacksonville Jaguars Ltd., Kansas City Chiefs Football Club, Inc., Miami Dolphins, Ltd., Minnesota Vikings Football Club LLC, New England Patriots, LP, New Orleans Louisiana Saints, LLC, New York Football Giants, Inc., New York Jets Football Club, Inc., Oakland Raiders LP, Philadelphia Eagles Football Club, Inc., Pittsburgh Steelers Sports, Inc., San Diego Chargers Football Co., San Francisco Forty Niners Ltd., Football Northwest LLC, The Rams Football Co. LLC, Buccaneers Limited Partnership, Tennessee Football, Inc., Washington Football Inc.. and National Football League Players Association, Tom Brady, Drew Brees, Vincent Jackson, Ben Leber, Logan Mankins, Peyton Manning, Von Miller, Brian Robison, Osi

Civil Action No: 11-cv-00639 SRN/JJG

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND CROSSCLAIM

Umenyiora, Mike Vrabel and DeMaurice Smith.

Defendants.
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INTRODUCTION

Plaintiffs Carl Eller, Obafemi Ayanbadejo, and Ryan Collins (the "*Eller* Plaintiffs") respectfully request leave of the Court to file and serve Plaintiffs' Second Amended Complaint ("SAC") pursuant to Fed.R.Civ.P. 15(a). The *Eller* Plaintiffs previously sought to enjoin the lockout perpetrated by the National Football League ("NFL" or "League") and its 32 member clubs. That cause of action remains although monetary relief is now sought in the SAC. Two new causes of action have been added. One is against the NFL Defendants, the National Football League Players Association ("NFLPA") and its Executive Director, DeMaurice Smith, and Tom Brady, Drew Brees, Vincent Jackson, Ben Leber, Logan Mankins, Peyton Manning, Von Miller, Brian Robison, Osi Umenyiora, and Mike Vrabel (the named plaintiffs in the case of *Brady v. NFL*, No. 0:11-cv-00639 SRN JGG (D. Minn.) ("the *Brady* Plaintiffs")) for unlawfully engaging in settlement negotiations intended to deprive former NFL players of benefits so that higher salaries can be paid to current NFL players. The second is a cause of action against the NFLPA for breach of fiduciary duties. These latter two claims became apparent to the *Eller* plaintiffs only within the last few weeks. The claims as to the *Brady* plaintiffs constitute a crossclaim pursuant to Fed.R.Civ.P. 13(g). The SAC also adds

additional plaintiffs. Two former plaintiffs—Priest Holmes and Antawan Walker—are filing separate notices of dismissal under Fed.R.Civ.P. 41(a)(1). The *Eller* Plaintiffs' Motion should be granted because there is no prejudice to Defendants, *Eller* Plaintiffs are acting in good faith without undue delay, and the *Eller* Plaintiffs will be prejudiced if they cannot file their Second Amended Complaint.

FACTUAL BACKGROUND

On April 11, 2011, the District Court ordered mediation which was to include **ALL** parties and was to occur before Chief Magistrate Judge Arthur Boylan. Mediation at which all parties were present occurred on April 14-15 and 19-20, and May 15-16. At all times in those proceedings, counsel for the *Eller* Plaintiffs alone represented the interests of retired NFL players. All parties agreed, in one form or another, that the *Eller* Plaintiffs would alone represent the interests of the retired players. Counsel for the *Eller* Plaintiffs have consistently stated that any settlement would have to have the direct input of the *Eller* Plaintiffs.

In the period since May 16, the NFL and NFLPA have held five negotiating sessions in Chicago, Boston, Long Island, Maryland and Minneapolis. Neither the *Eller* Plaintiffs nor their counsel were allowed to attend these meetings. However, it has become clear that the NFLPA and NFL have been negotiating issues relating to retired NFL players. Through cutting out the *Eller* Plaintiffs, the NFLPA and the NFL have conspired to set retiree benefit and pension levels at artificially low levels.

ARGUMENT

Eller Plaintiffs should be allowed to file their proposed SAC. The standard for

amending pleadings is intentionally liberal so that parties may resolve their disputes on the merits. Fed.R.Civ.P. 15(a) provides that leave to amend pleadings ". . . shall be freely given when justice so requires." Because of the Rules' open approach to amendments, the Eighth Circuit has held that a denial of a motion to amend "is justified only in the limited circumstances of 'undue delay, bad faith on the part of the moving party, futility of the amendment or unfair prejudice to the opposing party.'" *Krispin v. The May Dep't Stores Co.*, 218 F.3d 919, 924 (8th Cir. 2000); *see also Popp Telcom v. American Sharecom, Inc.*, 210 F.3d 928, 943 (8th Cir. 2000) (a motion to amend "should normally be granted absent good reason for a denial"). To further foster the liberality provided in by Rule 15(a), the Court has held that delay alone is an insufficient reason to deny a motion to amend, and the burden of proof is on the party opposing the motion to prove that the amendment would result in undue prejudice. *Roberson v. Hayti Police Dep't*, 241 F.3d 992, 995 (8th Cir. 2001).

In the instant case, the *Eller* Plaintiffs should be allowed to amend their Complaint to include additional allegations relating to intervening developments. The NFL Defendants named previously have not, nor will they, suffer undue prejudice. Generally, courts deny motions for leave to amend on the basis of undue prejudice only when the non-moving party is able to specifically articulate some form of obvious and severe hardship that it would suffer if the amendment is allowed. Typically, this situation arises when discovery has been completed or nearly completed, when the motion is made on the

eve of trial, or when the time for identifying necessary experts has expired. *See Williams v. Little Rock Municipal Water Works,* 21 F.3d 218, 224-225 (8th Cir. 1994). None of these concerns are present here. No discovery has commenced and no defendants have answered. Allowing the *Eller* Plaintiffs to file its Second Amended Complaint will not hinder in any way the defendants' ability to prepare a defense to any of the claims set forth in the Second Amended Complaint.

Finally, the *Eller* Plaintiffs will be prejudiced if they are not allowed to file their SAC, because and as stated earlier, the *Eller* Plaintiffs' amendments to their Complaint contain references to, and rely upon, unlawful behavior that did not exist when the Plaintiffs filed their Original and First Amended Complaint.

CONCLUSION

For the foregoing reasons, the *Eller* Plaintiffs respectfully request that the Court grant their Motion for an Order permitting them to file Plaintiffs' Second Amended Complaint pursuant to Fed.R.Civ.P. 15(a), including crossclaims against the *Brady* Plaintiffs, pursuant to Fed.R.Civ.P. 13(g).

Dated: July 4, 2011

Respectfully Submitted,

s/Shawn D. Stuckey

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6

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