IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Carl Eller, Priest Holmes, Obafemi Ayanbadejo, Ryan Collins, and Antawan Walker, individually, and on behalf of all others similarly situated,

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

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.

Defendants.

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

INTRODUCTION

Plaintiffs Carl Eller, Obafemi Ayanbadejo, and Ryan Collins (the "*Eller* Plaintiffs") respectfully move the Court for leave to file and serve their Second Amended Complaint ("SAC") pursuant to Fed.R.Civ.P. 15(a) and Crossclaims pursuant to Fed.R.Civ.P. 13. 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 proposed SAC.

Two additional 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 negotiating collectively to reach an agreement that deprives former NFL players of increased 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 two claims became apparent to the *Eller* Plaintiffs only recently. The claims as to the *Brady* Plaintiffs constitute a crossclaim pursuant to Fed.R.Civ.P. 13(g).

In light of the Eighth Circuit's Opinion in *Brady v. NFL*, 2011 U.S. App. LEXIS 14111 (8th Cir. 2011) ("*Brady*"), the *Eller* Plaintiffs plan to file a request for a hearing on the requested injunctive relief.

The proposed SAC also adds additional plaintiffs. One former plaintiff—Antawan Walker—is filing a separate notice of dismissal under Fed.R.Civ.P. 41(a)(1).

The *Eller* Plaintiffs' Motion should be granted because there is no prejudice to Defendants, the *Eller* Plaintiffs are acting in good faith without undue delay, and the *Eller* Plaintiffs will be prejudiced if they cannot file their SAC.

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 16-17. 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 of retired players' claims 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 sessions. 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.

Additionally, on July 8, 2011 the Eighth Circuit Court of Appeals rendered its decision in *Brady*, which now provides an additional reason for amending the *Eller* Plaintiffs' First Amended Complaint. *See Brady*, 2011 U.S. App. LEXIS at 14111.

ARGUMENT

The *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 this liberal 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). To further foster the liberality provided 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 – including the actions by Defendants, Mr. Smith, and the *Brady* Plaintiffs, in addition to the Eighth Circuit's Opinion in *Brady*.

The Defendants and Cross-Defendants named previously have not, nor will they, suffer undue prejudice. Generally, courts refuse 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, no defendants have answered, no trial date has been set, and no deadline for identifying experts has passed. Allowing the *Eller* Plaintiffs to file their SAC will not hinder in any way the ability of the Defendants, or Cross-Defendants, to prepare a defense to any of the claims set forth in the SAC.

Finally, the *Eller* Plaintiffs will be prejudiced if they are not allowed to file their proposed SAC, because the *Eller* Plaintiffs' amendments to their Complaint involve, and rely upon, unlawful behavior that did not exist when the Plaintiffs filed their Original Complaint and First Amended Complaint, and the recent decision in *Brady* now provides an additional reason for amending the *Eller* Plaintiffs' 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 their SAC pursuant to Fed.R.Civ.P. 15(a), including Crossclaims against the *Brady* Plaintiffs, pursuant to Fed.R.Civ.P. 13(g).

Dated: July 13, 2011

Respectfully Submitted,

s/Shawn D. Stuckey

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