IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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

Plaintiffs,

v.

National Football League, et al.,

Defendants.

Civil Action No: 0:11-cv-00748-RHK-JSM

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO CONSOLIDATE

Tom Brady, Drew Brees, Vincent Jackson, Ben Leber, Logan Mankins, Peyton Manning, Von Miller, Brian Robison, Osi Umenyiora, and Mike Vrabel, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

National Football League, et al.

Defendants.

Civil Action No. 0:11-cv-00639-SRN-JJG

Plaintiffs Carl Eller, Priest Holmes, Obafemi Ayanbadejo, and Ryan Collins (the "Eller Plaintiffs") respectfully submit this memorandum in support of their motion to consolidate the above-captioned actions, for all purposes, pursuant to Fed. R. Civ. P. 42(a).

Introduction

Pending before this Court are two separate actions arising out of the same body of facts which seek similar relief against the same defendants.

Resolution of each action turns on much of the same facts and evidence, requiring depositions of the same witnesses and production of the same documents. Motion practice in each action will likely address the same body of facts. Similarly, the applicable law to be applied will be similar, if not identical. Well-established principles of efficiency and judicial economy require that these actions be consolidated for all purposes before a single judge, pursuant to Fed. R. Civ. P. 42(a).

Argument

This Court enjoys broad discretion to consolidate related actions in order to spare needless cost or delay:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Fed. R. Civ. P. 42(a).

In considering consolidation under Rule 42(a), this Court must first determine whether the proceedings involve a common question of fact or law. If so, the Court must then "balance the time and effort consolidation would save against the inconvenience or delay which it would cause." *Kramer v. Boeing Co.*, 134 F.R.D. 256, 258 (D. Minn. 1991). The balance here tips sharply in favor of consolidation.

A. Common Issues of Fact Run Through Both Cases.

Both actions plainly share common issues of fact. The cases involve similar litigants with similar claims. *See* Wright and Miller, Federal Practice & Procedure Civil 2d § 2384 (stating "Actions involving the same parties are apt candidates for consolidation."). Both actions arise from a single body of facts and are based on largely the same evidence. As a result, each action will require depositions of many of the same people and production of the same documents. Each case exists because Defendants commenced a lockout on March 12, 2011 that, if continued, will result in the cancellation of the 2011 NFL season. That cancellation will directly affect the retired and rookie members of the putative class sought to be represented by the Eller Plaintiffs here, as well as active NFL players.

Given the overlapping nature of these two actions, there can be no dispute that they easily meet the threshold requirement for commonality under Rule 42(a).

B. Consolidation Would Promote the Efficient Resolution of Both Matters and Conserve Judicial Resources.

Consolidation of the *Eller* and *Brady* actions will further the interests of justice by avoiding unnecessary cost and delay. Consolidation "should be prudently employed as a valuable and important tool of judicial administration, invoked to expedite trial and eliminate unnecessary repetition and confusion." *Devlin v. Transp. Communicatons Int'l Union*, 175 F.3d 121, 130 (2d Cir. 1999) (internal citations omitted).

As set forth above, both actions arise from the same body of facts and as a result, much of the evidence in one case will be involved in the other. Consolidation will thus

prevent the needless duplication of discovery and will allow the Court to streamline case management by holding joint hearings and by following a master scheduling order. *See EEOC v. HBE Corp*., 135 F.3d 543, 551 (8th Cir. 1998) (holding that "it was appropriate to consolidate these claims and avoid the inefficiency of separate trials involving related parties, witnesses, and evidence").

C. Consolidation Would Not Result in Inconvenience, Delay, Expense, or Prejudice to Any Party.

Both cases have only recently been filed. There has been no scheduling order in either case nor has any discovery been commenced. No party would suffer inconvenience, delay, expense, or prejudice if these matters were consolidated. There is also no threat of unfair prejudice or inconvenience to any party. *See HBE Corp*., 135 F.3d at 551 (stating "Consolidation is inappropriate … if it leads to inefficiency, inconvenience, or unfair prejudice to party.") Rather, consolidation would benefit the litigants and the Court by streamlining discovery and motion practice and thus preserving judicial resources.

In short, the actions filed in *Eller* and *Brady* are perfect for consolidation. The cases bear an extremely close legal and factual relationship, and their consolidation will economize resources of the parties and the Court. Accordingly, the Court should grant the Eller Plaintiffs' motion to consolidate these actions for all purposes.

Conclusion

For the foregoing reasons, Eller Plaintiffs respectfully request that pursuant to Fed. R. Civ. P. 42(a), the Court consolidate *Eller et al v. NFL*, Civil No. 0:11-cv-00748-RHK-JSM, and *Brady v. NFL*, Civil No. 0:11-cv-00639-SRN-JJG.

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Respectfully Submitted,

s/Mark J. Feinberg

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