

11cv039  
RHK/JSB

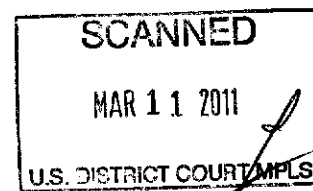
IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----X  
:
:
Tom Brady, Drew Brees, Vincent Jackson, Ben : Civil Action No. \_\_\_\_\_  
Leber, Logan Mankins, Peyton Manning, Von :  
Miller, Brian Robison, Osi Umenyiora, and :  
Mike Vrabel, individually, and on behalf of all :  
others similarly situated : Declaration of Tom Condon  
:
:
Plaintiffs, :
:
:
vs. :
:
:
NATIONAL FOOTBALL LEAGUE, et al., :
:
:
Defendants. :
:
----- X

Tom Condon, declares under penalty of perjury, as follows:

1. I am a NFL player agent and head the football division of CAA Sports. I am also a retired NFL player, having played in the league from 1974 to 1985. I have been representing players in the NFL since 1987. Over that time, I have represented hundreds of players and have negotiated hundreds of contracts.

2. Among the players that I currently represent are named plaintiffs Peyton Manning and Drew Brees. I am personally familiar with the contracts of both Mr. Manning and Mr. Brees, and the interactions and negotiations with their respective teams. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction.



### **Peyton Manning**

3. Peyton Manning is a quarterback, who has played for the Indianapolis Colts, and is widely considered to be one of the premiere quarterbacks in the National Football League ("NFL"). He was the first overall pick in the 1998 NFL Draft, has been selected to the Pro Bowl eleven times, is a four-time NFL MVP, and was the 2005 recipient of the Walter Payton Man of the Year Award, among other honors and accolades.

4. Mr. Manning has been a professional football player in the NFL since 1998, when he was selected by the Colts in the 1998 NFL draft, and I have represented him for the entirety of that time. Mr. Manning's contract with the Colts expires on March 3, 2011, at which point he will not be under contract with any NFL team. Thus, he should be free to negotiate and sign with any team in the NFL. By letter dated February 15, 2011, however, the Colts purported to designate Mr. Manning as an "Exclusive Franchise Player" under the CBA. Under this designation, the Colts are purporting to restrict Mr. Manning from signing a contract with any other NFL team for the 2011 NFL season.

5. I have had multiple discussions with the Colts regarding potentially signing Mr. Manning to a new long term contract. The Colts have repeatedly represented to me that they want to resign Mr. Manning, and they understand that Mr. Manning's next contract will have to be the biggest contract in the history of the NFL.

6. However, the Colts are claiming that they will be unable to continue negotiations with Mr. Manning about potential employment if the NFL imposes a

“lockout.” Even if the “lockout” were lifted, the Colts’ purported “Exclusive Franchise Player” designation suggests that other NFL teams will refuse to negotiate with Mr. Manning.

**Drew Brees**

7. Drew Brees is a quarterback for the New Orleans Saints, and is also widely considered to be one the premiere quarterbacks in the NFL. He has been selected to the Pro Bowl five times, was named the NFL’s Comeback Player of the Year in 2004, Offensive Player of the Year in 2008, and the MVP of Super Bowl XLIV, among other honors and accolades.

8. Mr. Brees has been a professional football player in the NFL since 2001, and I have represented him for the entirety of that time. He was originally selected by the San Diego Chargers in the 2001 NFL Draft. Mr. Brees’ initial contract with the Chargers expired after the 2004 NFL season. The Chargers then placed the “Franchise Player” designation on him. Under that designation, the Chargers had to tender Mr. Brees a one-year contract at a specified amount and no other NFL team could sign Mr. Brees to a contract without paying substantial compensation to the Chargers. He subsequently signed the one-year contract with the Chargers for the 2005 NFL season.

9. After the 2005 NFL season, Mr. Brees became an unrestricted free agent free to negotiate with any NFL team. Obviously, the ability of a player to be a free agent means more competition for his services and resulting higher compensation. On March 16, 2006, he signed a six year \$60 million contract with the New Orleans Saints. This contract was renegotiated in 2009 to provide certain relief to the Saints under the

salary cap. The renegotiated contract covered the 2009 NFL season and provided the Saints with the option of renewing the 2009 contract for the 2010, 2011 and 2012 NFL seasons at pre-determined salaries. The contract also provided the Saints with the option to renew the 2012 contract for the 2013 NFL season. The Saints exercised the option for the 2010, 2011 and 2012 seasons, but not yet for the 2013 season. Additionally, Mr. Brees' contract provides that the contract for the 2012 season, and the 2013 season if the option for the 2013 season is exercised, will automatically void if he is on the Saints' roster five days after the Saints conclude play in the 2011 season.

10. For the 2011 season, Mr. Brees' contract provides for a base salary of \$7,393,500, payable in equal weekly or bi-weekly installments over the course of the 2011 regular season. The contract also provides for a \$200,000 workout bonus if the Saints invite Mr. Brees to participate in their off season workout program, and Mr. Brees does participate in 90% of that program and satisfies the Saints' reasonable workout requirements. The workout bonus is payable in a lump sum within fifteen days of the conclusion of the Saints' off season workout program.

11. However, if the NFL imposes a "lockout," the Saints will refuse to honor the terms of Mr. Brees' contract, including failing to pay contractually-mandated salary and bonuses and refusing access to team facilities.

#### **Irreparable Harm**

12. Both Mr. Manning and Mr. Brees, as well as all other NFL players, will suffer irreparable injury under a "lockout" by the NFL. I know from personal experience, both as a player and an agent, that NFL player's careers, in general, are

exceedingly short compared to other professions. I have seen many NFL players leave the NFL after only a short time, and, from my experience, I believe that the average career of an NFL player is less than four years. One important factor contributing to the extremely abbreviated career length for NFL players is the constant risk of career-ending injury. I have seen the careers of numerous players cut short or ended by severe playing injuries, suffered both in games and practice. In addition, the wear and tear on just playing in the NFL is severe, and diminishes the physical capability of players over time. I believe these risks are typical for every NFL player.

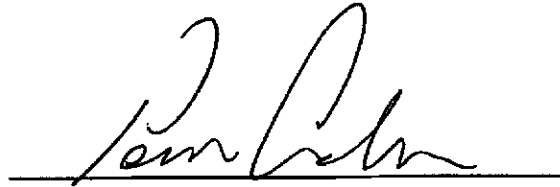
13. Indeed, a “lockout” imposed by the NFL threatens to rob Mr. Brees and Mr. Manning, and all other NFL players, of an entire year, or more, of their brief playing careers, which can not be recaptured. This is especially problematic because of the virtually constant need for NFL players to prove their skill and value on the playing field. Missing a year or more of playing in the NFL can cause the skills of NFL players to become rusty from the lack of competition, making it difficult for them to regain the full talents they exhibited prior to the absence from play. This could shorten or even end the careers of NFL players.

14. In addition, for Mr. Manning and other NFL players not currently under contract, a “lockout” will also deprive them of new contracts that would be negotiated in a free market, whose precise terms will be impossible to recreate.

15. For Mr. Brees and other NFL players with contracts, their injuries will also include NFL teams’ refusal to pay contractually owed amounts under their contracts and refusal to allow players to report for work at the appointed time.

16. It is my belief that Mr. Brees, Mr. Manning, and all other NFL players will not be able to fully recover from the harm they will suffer if they lose even part of an NFL season or off-season as a result of a "lockout."

Dated: March 10, 2011

A handwritten signature in cursive script, appearing to read "Tom Condon", is written over a solid horizontal line.

Tom Condon