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DOC #:  
DATE FILED: November 7, 2017

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**MEMO ENDORSED**

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November 7, 2017

**VIA ECF AND EMAIL**

Honorable Katherine Polk Failla  
United States District Court for the Southern District of New York  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

**Re: National Football League Management Council v. National Football League Players Association, Case No. 1:17-cv-06761-KPF**

Dear Judge Failla:

Pursuant to Your Honor's Individual Rules of Practice in Civil Cases, defendant National Football League Players Association ("NFLPA") hereby responds to plaintiff National Football League Management Council's ("NFLMC") November 6, 2017 letter requesting a pre-motion conference on its proposed motion for summary judgment to confirm the arbitration award and motion to dismiss the NFLPA's counterclaim to vacate the same.

The NFLPA opposes the filing of the NFLMC's proposed motions at this time and requests a pre-motion conference.<sup>1</sup> As the NFLMC acknowledges in its letter, the issues argued and decided by this Court's Order denying the NFLPA's request for a preliminary injunction are intertwined with the merits of this case. NFLMC Letter at 1-2, ECF No. 63. Accordingly, the NFLPA's appeal of this Court's Order will result in guidance from the Second Circuit Court of Appeals on the issues central to the parties' cross-motions. The NFLPA thus believes that the most efficient and sensible course of action—especially because the Circuit has expedited the NFLPA's request for the stay, and it will therefore be resolved quickly—would be to wait for the Circuit to rule on these overlapping merits issues before initiating the process of briefing motions to confirm and vacate before this Court. For that reason, the NFLPA respectfully requests that the Court schedule a pre-motion conference, as contemplated in Your Honor's Individual Rules, and then set a schedule for the parties' cross-motions to confirm and vacate the award only after the Second Circuit has provided guidance on these issues to the parties and the Court. This Court took a very similar approach with respect to the NFLPA's proposed Motion to Dismiss while the Fifth Circuit considered the NFLMC's appeal of the preliminary injunction granted by the Eastern

<sup>1</sup> The NFLPA agrees with the NFLMC's suggestion that the efficient course is to schedule, at the appropriate time, the parties to brief cross-motions to confirm and vacate the arbitration award (*see* NFLMC Letter at 1 n.2, ECF No. 63), but believes that time is after the Second Circuit rules on the pending appeal of the preliminary injunction ruling.

District of Texas. The same logic of waiting for the Circuit Court's guidance applies to the proposed motions here.

As Your Honor is aware, on November 1 the NFLPA moved the Second Circuit for an injunction pending appeal<sup>2</sup> and an expedited appeal of this Court's October 30, 2017 Order denying the NFLPA's motion for a preliminary injunction. *Nat'l Football League Mgmt. Council v. Nat'l Football League Players Ass'n*, No. 17-3510 (2d Cir.) (ECF No. 8-2). On November 3, the Second Circuit referred the NFLPA's motion to "the next available three-judge motions panel" and granted the NFLPA's request for an administrative stay during the pendency of its motion. 2d Cir. ECF No. 40. The NFLPA's motion is scheduled to be heard by a three-judge panel on Thursday, November 9, and, given the urgency with which the Appeals Court has scheduled argument on the NFLPA's motion, it is anticipated that the appeal will be resolved shortly thereafter.

Regarding its counterclaim, as Your Honor knows, the NFLPA seeks to vacate the arbitral award stemming from a proceeding in which the NFLPA and Ezekiel Elliott believe they were repeatedly "deprived of opportunities to explore pertinent and material evidence" necessary to afford them a fundamentally fair hearing. *See* ECF No. 31 (Crotty, J.). The Second Circuit will provide guidance to the parties and the Court on these issues in its expedited consideration of this Court's preliminary injunction ruling, and it would be extremely inefficient to begin the briefing process for a motion to confirm or a motion to vacate before the parties have the benefit of the Second Circuit's determination. Indeed, given the expedited initial schedule that the Second Circuit has already set, its ruling on the merits of the preliminary injunction appeal would likely come down in the midst of any briefing schedule that the Court would currently order, thereby requiring a new round of briefing. Under such circumstances, delaying any further motion practice in this Court is the most efficient way to proceed.

In light of the significant impact the Second Circuit's expedited decision on the NFLPA's appeal will have on issues central to the merits of this case, the NFLPA respectfully requests that, in the interest of efficiency, the parties appear for a pre-motion conference at the Court's convenience *after* a decision on the merits of the preliminary injunction appeal is rendered by the appellate court and that appropriate briefing schedules be set at that time for the NFLMC's motions to confirm and dismiss and the NFLPA's motion to vacate. The NFLPA further proposes that, following the Second Circuit's ruling, the parties meet and confer on a cross-motion briefing schedule which can then be presented to the Court at the pre-motion conference.

Respectfully submitted,

/s/ Jeffrey L. Kessler

Jeffrey L. Kessler

cc: All counsel of record (via ECF)

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<sup>2</sup> The NFLPA requested, in the alternative, that the Circuit Court grant an administrative stay of this Court's Order during the pendency of the NFLPA's motion.

Application GRANTED. Within 24 hours of a decision by the United States Court of Appeals for the Second Circuit on the appeal from this Court's denial of a preliminary injunction, the parties shall jointly submit either a single proposed briefing schedule or, if the parties are unable to so agree, each party's proposed briefing schedule.

Dated: November 7, 2017  
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Katherine Polk Failla". The signature is written in a cursive, flowing style.

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE