

AKIN GUMP STRAUSS HAUER & FELD LLP
Robert H. Pees (rp0393)
Jessica Oliff Daly (jd9012)
One Bryant Park
New York, New York 10036
rpees@akingump.com
Tel: (212) 872-1000
Fax: (212) 872-1002

AKIN GUMP STRAUSS HAUER & FELD LLP
Daniel L. Nash
Stacey R. Eisenstein
Gregory W. Knopp
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
Tel: (202) 887-4000
Fax: (202) 887-4288

Counsel for Plaintiff National Football League Management Council

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NATIONAL FOOTBALL LEAGUE
MANAGEMENT COUNCIL,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION,

Defendant.

Case No:

COMPLAINT

This is an action to confirm an arbitration award pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §§ 185 *et seq.*

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 and 29 U.S.C. § 185.

2. Venue is proper in this District pursuant to 29 U.S.C. § 185(a) and 28 U.S.C. § 1391.

PARTIES

3. The National Football League Management Council (“NFL Management Council”) is the sole and exclusive bargaining representative of present and future employer member clubs of the NFL. The NFL Management Council’s principal place of business is in New York, New York.

4. The National Football League Players Association (“NFLPA”) is the exclusive bargaining representative of all NFL Players. The Players Association regularly represents players in the Southern District of New York, and some of its members reside in this judicial district.

FACTS

5. The parties are bound by a Collective Bargaining Agreement (“CBA”) negotiated between the NFL Management Council (on behalf of the NFL member clubs) and the NFLPA (on behalf of all NFL players). Relevant portions of the CBA are attached hereto as Exhibit A.

6. Article 46 of the CBA expressly acknowledges the authority of the NFL Commissioner to discipline players for conduct that he determines is “detrimental to the integrity of, or public confidence in, the game of professional football[.]” *See* Ex. A, Art. 46, § 1(a).

7. Paragraph 15 of the standard NFL Player Contract, which is part of the CBA, further acknowledges the Commissioner's authority to discipline players for engaging in "conduct detrimental to the integrity of, or public confidence in, the game of professional football" including where they engage in conduct that impairs "public confidence in the honest and orderly conduct of NFL games" or "the integrity and good character of NFL players." CBA, App. A, ¶ 15. The Commissioner's disciplinary authority over integrity-of-the-game matters specifically includes the right to suspend players for a definite period or indefinitely. *See id.*

8. "All disputes" over discipline imposed by the Commissioner for conduct detrimental to the league must be resolved exclusively under the final and binding appeal procedures set forth in Article 46 of the CBA. Under Article 46, players have the right to appeal their discipline at a hearing at which the Commissioner may preside "at his discretion." *See* Ex. A, Art. 46.

9. On May 11, 2015, the NFL notified New England Patriots quarterback Thomas Brady that, pursuant to the Commissioner's authority under Article 46 of the CBA, he will be suspended without pay for the first four games of the 2015 NFL regular season games for engaging in conduct detrimental to the integrity of and public confidence in the game of professional football. As set forth in the letter from the NFL informing Brady of the discipline, the suspension is based on his role in the deflation of the Patriots' footballs during the AFC Championship Game and his failure to fully and candidly cooperate with the NFL's investigation into the matter.

10. On May 14, 2015, the NFLPA appealed Brady's suspension pursuant to Article 46 of the CBA.

11. On June 23, 2015, a hearing was held before NFL Commissioner Roger Goodell at the NFL Management Council's offices located at 345 Park Avenue, New York, New York 10154.

12. On July 28, 2015, the Commissioner issued a final written decision on the NFLPA's appeal of Brady's suspension ("Decision"), which is attached hereto as Exhibit B.

13. The Decision denied the NFLPA's appeal and confirmed Brady's suspension.

14. Under the CBA, the Decision constitutes the "full, final and complete disposition of the dispute and will be binding upon the player(s), Club(s) and parties to this Agreement[.]" Ex. A, art. 46, § 2(d).

COUNT 1 – CONFIRMATION OF ARBITRATION AWARD

1. The NFL Management Council repeats and re-alleges Paragraphs 1-14 as if set forth fully herein.

2. The NFL Management Council seeks an order confirming the Decision under well-established principles of federal labor law. The Decision was issued in full accord with the parties' CBA and draws its essence from the parties' agreements, as it interprets the terms of the CBA and Brady's NFL Player Contract.

3. The NFL Management Council is entitled to confirmation and enforcement of the Decision and entry of judgment in conformity of the Decision pursuant to the Labor Management Relations Act, 29 U.S.C. § 185.

PRAYER FOR RELIEF

WHEREFORE, the NFL Management Council respectfully requests that this Court enter an Order:

(a) Confirming the Decision;

- (b) Entering judgment in favor of the NFL Management Council against the NFLPA; and
- (c) Providing the NFL Management Council with such other and further relief as the

Court deems proper.

New York, NY
Dated: July 28, 2015

/s/ Robert H. Pees

AKIN GUMP STRAUSS HAUER & FELD LLP
Robert H. Pees (rp0393)
Jessica Oliff Daly (jd9012)
One Bryant Park
New York, New York 10036
rpees@akingump.com
Tel: (212) 872-1000
Fax: (212) 872-1002

AKIN GUMP STRAUSS HAUER & FELD LLP
Daniel L. Nash*
Stacey R. Eisenstein*
Gregory W. Knopp
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
Tel: (202) 887-4000
Fax: (202) 887-4288

*Counsel to Plaintiff National Football League
Management Council*

**Pro Hac Vice* application forthcoming

Exhibit A



**COLLECTIVE
BARGAINING
AGREEMENT**

August 4, 2011



NFL PLAYERS
A S S O C I A T I O N

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ARTICLE 46 COMMISSIONER DISCIPLINE

Section 1. League Discipline: Notwithstanding anything stated in Article 43:

(a) All disputes involving a fine or suspension imposed upon a player for conduct on the playing field (other than as described in Subsection (b) below) or involving action taken against a player by the Commissioner for conduct detrimental to the integrity of, or public confidence in, the game of professional football, will be processed exclusively as follows: the Commissioner will promptly send written notice of his action to the player, with a copy to the NFLPA. Within three (3) business days following such written notification, the player affected thereby, or the NFLPA with the player's approval, may appeal in writing to the Commissioner.

(b) Fines or suspensions imposed upon players for unnecessary roughness or unsportsmanlike conduct on the playing field with respect to an opposing player or players shall be determined initially by a person appointed by the Commissioner after consultation concerning the person being appointed with the Executive Director of the NFLPA, as promptly as possible after the event(s) in question. Such person will send written notice of his action to the player, with a copy to the NFLPA. Within three (3) business days following such notification, the player, or the NFLPA with his approval, may appeal in writing to the Commissioner.

(c) The Commissioner (under Subsection (a)), or the person appointed by the Commissioner under Subsection (b), shall consult with the Executive Director of the NFLPA prior to issuing, for on-field conduct, any suspension or fine in excess of \$50,000.

(d) The schedule of fines for on-field conduct will be provided to the NFLPA prior to the start of training camp in each season covered under this Agreement. The 2011 schedule of fines, which has been provided to and accepted by the NFLPA, shall serve as the basis of discipline for the infractions identified on that schedule. The designated minimum fine amounts will increase by 5% for the 2012 League Year, and each League Year thereafter during the term of this Agreement. Where circumstances warrant, including, but not limited to, infractions that were flagrant and gratuitous, larger fines, suspension or other discipline may be imposed. On appeal, a player may assert, among other defenses, that any fine should be reduced because it is excessive when compared to the player's expected earnings for the season in question. However, a fine may be reduced on this basis only if it exceeds 25 percent of one week of a player's salary for a first offense, and 50 percent of one week of a player's salary for a second offense. A player may also argue on appeal that the circumstances do not warrant his receiving a fine above the amount stated in the schedule of fines.

Section 2. Hearings:

(a) **Hearing Officers.** For appeals under Section 1(a) above, the Commissioner shall, after consultation with the Executive Director of the NFLPA, appoint one or more designees to serve as hearing officers. For appeals under Section 1(b) above, the parties shall, on an annual basis, jointly select two (2) or more designees to serve as hearing officers. The salary and reasonable expenses for the designees' services shall be

shared equally by the NFL and the NFLPA. Notwithstanding the foregoing, the Commissioner may serve as hearing officer in any appeal under Section 1(a) of this Article at his discretion.

(b) **Representation.** In any hearing provided for in this Article, a player may be accompanied by counsel of his choice. The NFLPA and NFL have the right to attend all hearings provided for in this Article and to present, by testimony or otherwise, any evidence relevant to the hearing.

(c) **Telephone Hearings.** Upon agreement of the parties, hearings under this Article may be conducted by telephone conference call or videoconference.

(d) **Decision.** As soon as practicable following the conclusion of the hearing, the hearing officer will render a written decision which will constitute full, final and complete disposition of the dispute and will be binding upon the player(s), Club(s) and the parties to this Agreement with respect to that dispute. Any discipline imposed pursuant to Section 1(b) may only be affirmed, reduced, or vacated by the hearing officer, and may not be increased.

(e) **Costs.** Unless the Commissioner determines otherwise, each party will bear the cost of its own witnesses, counsel and other expenses associated with the appeal.

(f) **Additional Procedures for Appeals Under Section 1(a).**

(i) **Scheduling.** Appeal hearings under Section 1(a) will be scheduled to commence within ten (10) days following receipt of the notice of appeal, except that hearings on suspensions issued during the playing season (defined for this Section as the first preseason game through the Super Bowl) will be scheduled for the second Tuesday following the receipt of the notice of appeal, with the intent that the appeal shall be heard no fewer than eight (8) days and no more than thirteen (13) days following the suspension, absent mutual agreement of the parties or a finding by the hearing officer of extenuating circumstances. If unavailability of counsel is the basis for a continuance, a new hearing shall be scheduled on or before the Tuesday following the original hearing date, without exception.

(ii) **Discovery.** In appeals under Section 1(a), the parties shall exchange copies of any exhibits upon which they intend to rely no later than three (3) calendar days prior to the hearing. Failure to timely provide any intended exhibit shall preclude its introduction at the hearing.

(iii) **Record; Posthearing Briefs.** Unless the parties agree otherwise, all hearings conducted under Section 1(a) of this Article shall be transcribed. Posthearing briefs will not be permitted absent agreement of the NFL and NFLPA or the request of the hearing officer. If permitted, such briefs shall be limited to five pages (single-spaced) and must be filed no later than three (3) business days following the conclusion of the hearing.

Section 3. Time Limits: Each of the time limits set forth in this Article may be extended by mutual agreement of the parties or by the hearing officer upon appropriate motion.

Section 4. One Penalty: The Commissioner and a Club will not both discipline a player for the same act or conduct. The Commissioner's disciplinary action will preclude or supersede disciplinary action by any Club for the same act or conduct.

Section 5. Fine Money:

(a) Fines will be deducted at the rate of no more than \$2,500 from each pay period, if sufficient pay periods remain; or, if less than sufficient pay periods remain, the fine will be deducted in equal installments over the number of remaining pay periods. For the 2016–2020 League Years, the amount will increase from a rate of \$2,500 to \$3,500 from each pay period.

(b) For any fine imposed upon a player under Section 1(b), no amount of the fine will be withheld from the player's pay pending the outcome of the appeal, except that if: (i) the fine is imposed on or after the thirteenth (13th) week of the regular season; (ii) the player or the NFLPA does not timely appeal; or (iii) the hearing on a fine imposed for conduct occurring through the thirteenth (13th) week of the regular season is delayed by the player or the NFLPA for any reason beyond the time provided for in Section 2(b) of this Article, the full amount of the fine shall be promptly collected.

(c) Unless otherwise agreed by the parties., fine money collected pursuant to this Article shall be allocated as follows: 50% to the Players Assistance Trust and 50% to charitable organizations jointly determined by the NFL and the NFLPA. In the absence of said joint determination, the NFL and the NFLPA shall each determine a charitable organization or organizations to which half of the second 50% shall be allocated.

APPENDIX A
NFL PLAYER CONTRACT

THIS CONTRACT is between _____, hereinafter “Player,” and _____, a _____ corporation (limited partnership) (partnership), hereinafter “Club,” operating under the name of the _____ as a member of the National Football League, hereinafter “League.” In consideration of the promises made by each to the other, Player and Club agree as follows:

1. TERM. This contract covers _____ football season(s), and will begin on the date of execution or March 1, _____, whichever is later, and end on February 28 or 29, _____, unless extended, terminated, or renewed as specified elsewhere in this contract.

2. EMPLOYMENT AND SERVICES. Club employs Player as a skilled football player. Player accepts such employment. He agrees to give his best efforts and loyalty to the Club, and to conduct himself on and off the field with appropriate recognition of the fact that the success of professional football depends largely on public respect for and approval of those associated with the game. Player will report promptly for and participate fully in Club’s official mandatory minicamp(s), official preseason training camp, all Club meetings and practice sessions, and all preseason, regular season and postseason football games scheduled for or by Club. If invited, Player will practice for and play in any all-star football game sponsored by the League. Player will not participate in any football game not sponsored by the League unless the game is first approved by the League.

3. OTHER ACTIVITIES. Without prior written consent of the Club, Player will not play football or engage in activities related to football otherwise than for Club or engage in any activity other than football which may involve a significant risk of personal injury. Player represents that he has special, exceptional and unique knowledge, skill, ability, and experience as a football player, the loss of which cannot be estimated with any certainty and cannot be fairly or adequately compensated by damages. Player therefore agrees that Club will have the right, in addition to any other right which Club may possess, to enjoin Player by appropriate proceedings from playing football or engaging in football-related activities other than for Club or from engaging in any activity other than football which may involve a significant risk of personal injury.

4. PUBLICITY AND NFLPA GROUP LICENSING PROGRAM.

(a) Player hereby grants to Club and the League, separately and together, the right and authority to use, and to authorize others to use solely as described below, his name, nickname, initials, likeness, image, picture, photograph, animation, persona, autograph/signature (including facsimiles thereof), voice, biographical information and/or any and all other identifying characteristics (collectively, “Publicity Rights”), for any and all uses or purposes that publicize and promote NFL Football, the League or any of its

member clubs in any way in any and all media or formats, whether analog, digital or other, now known or hereafter developed, including, but not limited to, print, tape, disc, computer file, radio, television, motion pictures, other audio-visual and audio works, Internet, broadband platforms, mobile platforms, applications, and other distribution platforms. Without limiting the foregoing, this grant includes the right to use Player's Publicity Rights for the purpose of publicizing and promoting the following aspects of NFL Football, the League and/or any of its member clubs: brands, games, ticket sales, game broadcasts and telecasts, programming focused on the NFL, one or more NFL clubs and/or their games and events (e.g., coaches shows, highlight based shows such as *Inside the NFL*, behind-the-scenes programming such as *Hard Knocks*), other NFL-related media offerings (e.g., branded content segments featuring NFL game footage and other programming enhancements), media distribution platforms (e.g., NFL.com, NFL Mobile, NFL Network), official events (e.g., NFL Kickoff, NFL Draft), officially sanctioned awards programs (e.g., Rookie of the Year), and public service or community oriented initiatives (e.g., Play60). For purposes of clarity, the foregoing grant of rights includes the right and authority to use, and to authorize affiliates or business partners to use, after the term of this Agreement any Publicity Rights fixed in a tangible medium (e.g., filmed, photographed, recorded or otherwise captured) during the term of this Agreement solely for the purposes described herein. Notwithstanding anything to the contrary, the foregoing grant does not confer, during or after the term of this Agreement, any right or authority to use Player's Publicity Rights in a manner that constitutes any endorsement by Player of a third-party brand, product or service ("Endorsement"). For purposes of clarity, and without limitation, it shall not be an Endorsement for Club or the League to use, or authorize others to use, including, without limitation, in third party advertising and promotional materials, footage and photographs of Player's participation in NFL games or other NFL events that does not unduly focus on, feature, or highlight, Player in a manner that leads the reasonable consumer to believe that Player is a spokesperson for, or promoter of, a third-party commercial product or service.

Player will cooperate with the news media, and will participate upon request in reasonable activities to promote the Club and the League.

Player and National Football League Players Association, including any of its affiliates ("NFLPA") do not and will not contest during or after the term of this agreement, and this hereby confirms their acknowledgment of, the exclusive rights of the League, Club and any NFL member club (i) to telecast, broadcast, or otherwise distribute, transmit or perform, on a live, delayed, or archived basis, in any and all media now known or hereafter developed, any NFL games or any excerpts thereof and (ii) to produce, license, offer for sale, sell, market, or otherwise distribute or perform (or authorize a third party to do any of the foregoing), on a live, delayed, or archived basis, any NFL games or any excerpts thereof, in any and all media now known or hereafter developed, including, but not limited to, packaged or other electronic or digital media.

Nothing herein shall be construed to grant any Publicity Rights for use in licensed consumer products, whether traditional or digital (e.g., video games, trading cards, apparel), other than such products that constitute programming (as described herein) or news and information offerings regardless of medium (e.g., DVDs, digital highlight offerings).

(b) Player hereby assigns the NFLPA and its licensing affiliates, if any, the exclusive and unlimited right to use, license and sublicense the right to use his name, nickname, initials, autograph/signature (including facsimiles), voice, picture, photograph, animation, image, likeness, persona, jersey number, statistics, data, copyrights, biographical information and/or other personal indicia (individually and collectively, “Rights”) for use in connection with any product, brand, service, appearance, product line or other commercial use and any sponsorship, endorsement or promotion thereof, when more than five (5) NFL player Rights are involved, regardless of team affiliation and whether that number is reached using player Rights simultaneously or individually, in any form, media, or medium (now known or hereafter developed) during a consecutive 12-month period (a “group licensing program”). For sponsorships, endorsements, and promotions, group licensing programs are further defined as those: (a) in any one product category, as defined by industry standards; or (b) in different categories if the products all use similar or derivative design or artwork, or one player product is used to promote another player product.

The Rights may also be used for the promotion of the NFLPA, its affiliated entities and/or its designees (the “NFLPA Entities”), provided such promotion does not constitute an endorsement by Player of a commercial product not a part of a group licensing program. Player agrees to participate, upon request of the NFLPA and without additional compensation, in reasonable activities to promote the NFLPA Entities, which shall include (i) up to three (3) personal appearances per year or (ii) up to fifteen (15) minutes per week dedicated to promoting the NFLPA Entities. Player retains the right to grant permission to others to utilize his Rights if that individual or entity is not concurrently utilizing the Rights of five (5) or more other NFL players for any commercial purpose whatsoever. If Player’s inclusion in an NFLPA program is precluded by an individual exclusive endorsement agreement, and Player provides the NFLPA with immediate written notice of that preclusion, the NFLPA agrees to exclude Player from that particular program. Should Player fail to perform any of his obligations hereunder, the NFLPA may withhold payments owed to Player, if any, in connection with this Group Licensing Assignment.

In consideration for this assignment of rights, the NFLPA agrees to use the revenues it receives from group licensing programs to support the objectives as set forth in the Bylaws of the NFLPA and as otherwise determined by the NFLPA Board. The NFLPA further agrees to use reasonable efforts to promote the use of NFL player Rights in group licensing programs, to provide group licensing opportunities to all NFL players, and to monitor and police unauthorized third-party use of the Rights. The NFLPA makes no representations regarding group licensing other than those expressed herein. This agreement shall be construed under Virginia law.

The assignment in this paragraph shall expire on December 31 of the latter of (i) the third year following the execution of this contract, or (ii) the year after this contract expires, and may not be revoked, terminated or otherwise assigned in any manner by Player until such date. Neither Club nor the League is a party to the terms of this paragraph, which is included herein solely for the administrative convenience and benefit of Player and the NFLPA.

Nothing in Paragraph 4b shall be construed or deemed to modify in any way the rights set forth in Paragraph 4a, and the fact that Paragraph 4b (or any of the terms thereof) appears in the Player Contract shall not be referred to, relied upon, or otherwise cited by Player and/or the NFLPA or any of its affiliates in any dispute or legal proceeding as evidence that the NFL, any NFL entity, any Club or Club Affiliate, or any licensee of any of the foregoing has consented, agreed, acknowledged, or does not contest the applicability or interpretation of Paragraph 4b.

5. COMPENSATION. For performance of Player's services and all other promises of Player, Club will pay Player a yearly salary as follows:

\$	/*	for the 20____season;
\$	/*	for the 20____season;
\$	/*	for the 20____season;
\$	/*	for the 20____season;
\$	/*	for the 20____season.

(* - designates the compensation Club will pay player if the player is not on Club's Active/Inactive List)

In addition, Club will pay Player such earned performance bonuses as may be called for in this contract; Player's necessary traveling expenses from his residence to training camp; Player's reasonable board and lodging expenses during preseason training and in connection with playing preseason, regular season, and postseason football games outside Club's home city; Player's necessary traveling expenses to and from preseason, regular season, and postseason football games outside Club's home city; Player's necessary traveling expenses to his residence if this contract is terminated by Club; and such additional compensation, benefits and reimbursement of expenses as may be called for in any collective bargaining agreement in existence during the term of this contract. (For purposes of this contract, a collective bargaining agreement will be deemed to be "in existence" during its stated term or during any period for which the parties to that agreement agree to extend it.)

6. PAYMENT. Unless this contract or any collective bargaining agreement in existence during the term of this contract specifically provides otherwise, Player will be paid 100% of his yearly salary under this contract in equal weekly or biweekly installments over the course of the applicable regular season period, commencing with the first regular season game played by Club in each season. Unless this contract specifically provides otherwise, if this contract is executed or Player is activated after the beginning of the regular season, the yearly salary payable to Player will be reduced proportionately and Player will be paid the weekly or biweekly portions of his yearly salary becoming due and payable after he is activated. Unless this contract specifically provides otherwise, if this contract is terminated after the beginning of the regular season, the yearly salary payable to Player will be reduced proportionately and Player will be paid the weekly or bi weekly portions of his yearly salary having become due and payable up to the time of termination.

7. DEDUCTIONS. Any advance made to Player will be repaid to Club, and any properly levied Club fine or Commissioner fine against Player will be paid, in cash on demand or by means of deductions from payments coming due to the Player under this contract, the amount of such deductions to be determined by Club unless this contract or any collective bargaining agreement in existence during the term of this contract specifically provides otherwise.

8. PHYSICAL CONDITION. Player represents to Club that he is and will maintain himself in excellent physical condition. Player will undergo a complete physical examination by the Club physician upon Club request, during which physical examination Player agrees to make full and complete disclosure of any physical or mental condition known to him which might impair his performance under this contract and to respond fully and in good faith when questioned by the Club physician about such condition. If Player fails to establish or maintain his excellent physical condition to the satisfaction of the Club physician, or make the required full and complete disclosure and good faith responses to the Club physician, then Club may terminate this contract.

9. INJURY. Unless this contract specifically provides otherwise, if Player is injured in the performance of his services under this contract and promptly reports such injury to the Club physician or trainer, then Player will receive such medical and hospital care during the term of this contract as the Club physician may deem necessary, and will continue to receive his yearly salary for so long, during the season of injury only and for no subsequent period covered by this contract, as Player is physically unable to perform the services required of him by this contract because of such injury. If Player's injury in the performance of his services under this contract results in his death, the unpaid balance of his yearly salary for the season of injury will be paid to his stated beneficiary, or in the absence of a stated beneficiary, to his estate.

10. WORKERS' COMPENSATION. Any compensation paid to Player under this contract or under any collective bargaining agreement in existence during the term of this contract for a period during which he is entitled to workers' compensation benefits by reason of temporary total, permanent total, temporary partial, or permanent partial disability will be deemed an advance payment of workers' compensation benefits due Player, and Club will be entitled to be reimbursed the amount of such payment out of any award of workers' compensation.

11. SKILL, PERFORMANCE AND CONDUCT. Player understands that he is competing with other players for a position on Club's roster within the applicable player limits. If at any time, in the sole judgment of Club, Player's skill or performance has been unsatisfactory as compared with that of other players competing for positions on Club's roster, or if Player has engaged in personal conduct reasonably judged by Club to adversely affect or reflect on Club, then Club may terminate this contract. In addition, during the period any salary cap is legally in effect, this contract may be terminated if, in Club's opinion, Player is anticipated to make less of a contribution to Club's ability to

compete on the playing field than another player or players whom Club intends to sign or attempts to sign, or another player or players who is or are already on Club's roster, and for whom Club needs room.

12. TERMINATION. The rights of termination set forth in this contract will be in addition to any other rights of termination allowed either party by law. Termination will be effective upon the giving of written notice, except that Player's death, other than as a result of injury incurred in the performance of his services under this contract, will automatically terminate this contract. If this contract is terminated by Club and either Player or Club so requests, Player will promptly undergo a complete physical examination by the Club physician.

13. INJURY GRIEVANCE. Unless a collective bargaining agreement in existence at the time of termination of this contract by Club provides otherwise, the following Injury Grievance procedure will apply: If Player believes that at the time of termination of this contract by Club he was physically unable to perform the services required of him by this contract because of an injury incurred in the performance of his services under this contract, Player may, within 60 days after examination by the Club physician, submit at his own expense to examination by a physician of his choice. If the opinion of Player's physician with respect to his physical ability to perform the services required of him by this contract is contrary to that of the Club's physician, the dispute will be submitted within a reasonable time to final and binding arbitration by an arbitrator selected by Club and Player or, if they are unable to agree, one selected in accordance with the procedures of the American Arbitration Association on application by either party.

14. RULES. Player will comply with and be bound by all reasonable Club rules and regulations in effect during the term of this contract which are not inconsistent with the provisions of this contract or of any collective bargaining agreement in existence during the term of this contract. Player's attention is also called to the fact that the League functions with certain rules and procedures expressive of its operation as a joint venture among its member clubs and that these rules and practices may affect Player's relationship to the League and its member clubs independently of the provisions of this contract.

15. INTEGRITY OF GAME. Player recognizes the detriment to the League and professional football that would result from impairment of public confidence in the honest and orderly conduct of NFL games or the integrity and good character of NFL players. Player therefore acknowledges his awareness that if he accepts a bribe or agrees to throw or fix an NFL game; fails to promptly report a bribe offer or an attempt to throw or fix an NFL game; bets on an NFL game; knowingly associates with gamblers or gambling activity; uses or provides other players with stimulants or other drugs for the purpose of attempting to enhance on-field performance; or is guilty of any other form of conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football, the Commissioner will have the right, but only after giving Player the opportunity for a hearing at which he may be represented by counsel of his choice, to

fine Player in a reasonable amount; to suspend Player for a period certain or indefinitely; and/or to terminate this contract.

16. EXTENSION. Unless this contract specifically provides otherwise, if Player becomes a member of the Armed Forces of the United States or any other country, or retires from professional football as an active player, or otherwise fails or refuses to perform his services under this contract, then this contract will be tolled between the date of Player's induction into the Armed Forces, or his retirement, or his failure or refusal to perform, and the later date of his return to professional football. During the period this contract is tolled, Player will not be entitled to any compensation or benefits. On Player's return to professional football, the term of this contract will be extended for a period of time equal to the number of seasons (to the nearest multiple of one) remaining at the time the contract was tolled. The right of renewal, if any, contained in this contract will remain in effect until the end of any such extended term.

17. ASSIGNMENT. Unless this contract specifically provides otherwise, Club may assign this contract and Player's services under this contract to any successor to Club's franchise or to any other Club in the League. Player will report to the assignee Club promptly upon being informed of the assignment of his contract and will faithfully perform his services under this contract. The assignee club will pay Player's necessary traveling expenses in reporting to it and will faithfully perform this contract with Player.

18. FILING. This contract will be valid and binding upon Player and Club immediately upon execution. A copy of this contract, including any attachment to it, will be filed by Club with the League Commissioner within 10 days after execution. The Commissioner will have the right to disapprove this contract on reasonable grounds, including but not limited to an attempt by the parties to abridge or impair the rights of any other club, uncertainty or incompleteness in expression of the parties' respective rights and obligations, or conflict between the terms of this contract and any collective bargaining agreement then in existence. Approval will be automatic unless, within 10 days after receipt of this contract in his office, the Commissioner notifies the parties either of disapproval or of extension of this 10-day period for purposes of investigation or clarification pending his decision. On the receipt of notice of disapproval and termination, both parties will be relieved of their respective rights and obligations under this contract.

19. DISPUTES. During the term of any collective bargaining agreement, any dispute between Player and Club involving the interpretation or application of any provision of the NFL collective bargaining agreement or this contract will be submitted to final and binding arbitration in accordance with the procedure called for in any collective bargaining agreement in existence at the time the event giving rise to any such dispute occurs.

20. NOTICE. Any notice, request, approval or consent under this contract will be sufficiently given if in writing and delivered in person or mailed (certified or first class) by

one party to the other at the address set forth in this contract or to such other address as the recipient may subsequently have furnished in writing to the sender.

21. OTHER AGREEMENTS. This contract, including any attachment to it, sets forth the entire agreement between Player and Club and cannot be modified or supplemented orally. Player and Club represent that no other agreement, oral or written, except as attached to or specifically incorporated in this contract, exists between them. The provisions of this contract will govern the relationship between Player and Club unless there are conflicting provisions in any collective bargaining agreement in existence during the term of this contract, in which case the provisions of the collective bargaining agreement will take precedence over conflicting provisions of this contract relating to the rights or obligations of either party.

22. LAW. This contract is made under and shall be governed by the laws of the State of _____.

23. WAIVER AND RELEASE. Player waives and releases: (i) any claims relating to the 2011 lockout; (ii) any antitrust claims relating to the Draft, restrictions on free agency, franchise player designations, transition player designations, the Entering Player Pool, the Rookie Compensation Pool, or any other term or condition of employment relating to conduct engaged in prior to the date of this Agreement; and (iii) any claims relating to conduct engaged in pursuant to the express terms of any collective bargaining agreement during the term of any such agreement. This waiver and release also extends to any conduct engaged in pursuant to the express terms of the Stipulation and Settlement Agreement in *White*. This waiver and release does not waive any rights player may have to commence a grievance under the 2006 CBA or to commence a grievance or other arbitration under the 2011 CBA.

24. OTHER PROVISIONS.

(a) Each of the undersigned hereby confirms that (i) this contract, renegotiation, extension or amendment sets forth all components of the player's remuneration for playing professional football (whether such compensation is being furnished directly by the Club or by a related or affiliated entity); and (ii) there are not undisclosed agreements of any kind, whether express or implied, oral or written, and there are no promises, undertakings, representations, commitments, inducements, assurances of intent, or understandings of any kind that have not been disclosed to the NFL involving consideration of any kind to be paid, furnished or made available to Player or any entity or person owned or controlled by, affiliated with, or related to Player, either during the term of this contract or thereafter.

(b) Each of the undersigned further confirms that, except insofar as any of the undersigned may describe in an addendum to this contract, to the best of their knowledge, no conduct in violation of the Anti-Collusion rules took place with respect to this contract. Each of the undersigned further confirms that nothing in this contract is designed or intended to defeat or circumvent any provisions of the collective bargaining agreement dated August 4, 2011, including but not limited to the Rookie Compensation

Pool and Salary Cap provisions; however, any conduct permitted by that Agreement shall not be considered a violation of this confirmation.

(c) PERFORMANCE-BASED PAY. Player's attention is called to the fact that he may be entitled to Performance-Based Pay in accordance with the procedures outlined in Article 28, and that his eligibility for such pay is based on a formula that takes into account his playtime percentage and compensation

25. SPECIAL PROVISIONS. THIS CONTRACT is executed in six (6) copies. Player acknowledges that before signing this contract he was given the opportunity to seek advice from or be represented by persons of his own selection.

PLAYER

CLUB

Home Address

By

Telephone Number

Club Address

Date

Date

PLAYER'S AGENT

Address

Telephone Number

Date

Copy Distribution:

White-League Office	Yellow-Player
Green-Member Club	Blue-Management Council
Gold-NFLPA	Pink-Player Agent

Exhibit B



NATIONAL FOOTBALL LEAGUE

July 28, 2015

FINAL DECISION ON ARTICLE 46 APPEAL OF TOM BRADY

I. Background

ROGER GOODELL
Commissioner

On January 18, 2015, the Indianapolis Colts and New England Patriots played the AFC Championship Game at Gillette Stadium in Foxboro. During the game, a question arose as to whether the footballs being used by the Patriots were inflated to levels consistent with the league's Official Playing Rules. The league office promptly undertook an investigation, and soon after retained a team led by Ted Wells of Paul, Weiss, Rifkind, Wharton & Garrison to conduct an independent inquiry. Mr. Wells and his team conducted an extensive investigation, the results of which were documented in a report that was released to the public on May 6, 2015 (the "Wells Report").

On May 11, 2015, relying on the factual findings and evidentiary record detailed in the Wells Report, I authorized discipline to be imposed on the New England Patriots in the form of a fine and loss of draft choices, and I authorized the suspension of New England quarterback Tom Brady without pay for the first four games of the 2015 regular season. These disciplinary decisions were communicated by NFL Executive Vice President for Football Operations Troy Vincent, Sr. In addition, the Patriots advised me that the club had indefinitely suspended two of its employees, John Jastremski, an assistant equipment employee, and James McNally, a game-day employee who served as the attendant in the Officials' Locker Room.

The Patriots did not appeal from the discipline that was imposed on the club. That discipline is not under review here. Mr. Brady, through the NFL Players Association, filed a timely appeal of his suspension. On June 23, 2015, at a hearing in that appeal, almost ten hours of sworn testimony and counsel argument were presented, resulting in a transcript more than 450 pages long. The hearing record also included more than 300 exhibits, including videos, scientific reports, newspaper articles and other publicly available material, and more than thirty summaries of interviews conducted by NFL security representatives prior to the retention of Paul Weiss.

Following the hearing, the NFLPA (on Mr. Brady's behalf) and the NFL Management Council each filed a post-hearing brief. Both before and after the hearing, Mr. Brady's attorneys and agents submitted additional correspondence, including phone records from Mr. Brady's cellphone carrier.

The most significant new information that emerged in connection with the appeal was evidence that on or about March 6, 2015—the very day that he was interviewed by Mr. Wells and his investigative team—Mr. Brady instructed his assistant to destroy the cellphone that he had been using since early November 2014, a period that included the AFC Championship Game and the initial weeks of the subsequent investigation. During the four months that it was in use, almost 10,000 text messages were sent or received by Mr. Brady using that cellphone. At the time that he arranged for its destruction, Mr. Brady knew that Mr. Wells and his team had

requested information from that cellphone in connection with their investigation. Despite repeated requests for that information, beginning in mid-February 2015 and continuing during his March 6, 2015 interview by the investigators, information indicating that Mr. Brady might have destroyed his cellphone was not disclosed until months later, on June 18, 2015, and not confirmed until the day of the hearing itself.

This decision is issued pursuant to Article 46 of the Collective Bargaining Agreement between the NFL and NFLPA, which confirms the Commissioner's authority to impose discipline for conduct by a player that is "detrimental to the integrity of, or public confidence in, the game of professional football." Under Article 46, this decision "will constitute full, final and complete disposition of the dispute and will be binding upon the player(s), Club(s) and the parties to this Agreement."

II. Factual Determinations and Findings

The record in this appeal is extensive. It includes a 139-page investigative report prepared by the Paul Weiss team, which itself was accompanied by separate and detailed analyses prepared by Exponent, a scientific and engineering consulting firm that was engaged by the Paul Weiss investigators. The Wells Report and accompanying material were the product of an extensive and independent investigation and formed the factual basis for the discipline that was imposed on both the Patriots and Mr. Brady.

While the factual record is detailed and in some respects contested, there are several points that are not in dispute and important to this decision.

First, there is no question that the NFL Official Playing Rules prescribe a specific permissible range of inflation for footballs, namely 12.5 to 13.5 pounds per square inch ("psi").

Second, at least by the time of the AFC Championship Game, the inflation level of the footballs was a matter of particular interest to Mr. Brady. He told the Patriots' equipment staff that he wanted the footballs inflated at the lowest permissible level; he reviewed a highlighted copy of the provision of the Playing Rules that addressed inflation of footballs; and he instructed the equipment staff to present a copy of the rule to the game officials. On the day of the AFC Championship Game, Mr. McNally told referee Walt Anderson that Mr. Brady wanted the balls inflated to a pressure of 12.5 psi. He told the investigators that "Tom ... always has me pass a message to the Official's [sic] that he likes the balls at the minimum permissible PSI of 12.5. ... I know this is what Tom wants, and I have been personally told by him of the ball weight preference."

Third, prior to the game and pursuant to established protocol, Mr. Anderson examined each of the Patriots' footballs in the Officials' Locker Room and, after adding air to two of the balls, confirmed that they were all inflated to a pressure at or slightly above 12.5 psi. (Mr. Anderson similarly inspected the Colts' footballs and confirmed that they were inflated to a level consistent with the Playing Rules.)

Fourth, after the footballs were examined and certified by the referee (but still prior to the start of the game), and without the knowledge or approval of Mr. Anderson or any other member of the officiating crew, Mr. McNally left the Officials' Locker Room with the Patriots' footballs and went into a bathroom where he remained, behind a locked door, for approximately one minute and forty seconds. (Mr. McNally initially told NFL investigators that he had walked directly from the Officials' Locker Room to the field.) Mr. McNally's unannounced removal of the footballs from the locker room was a substantial breach of protocol, one that Mr. Anderson had never before experienced. Other referees interviewed by the investigators said that they too would have considered Mr. McNally's actions to be a breach of protocol and that he had not engaged in similar conduct in the games that they had worked at Gillette Stadium.

Fifth, based on a complaint from the Colts during the first half of the game, which echoed concerns that the Colts had expressed on the day before the game, eleven of New England's footballs were tested at halftime; all were below the prescribed air pressure range as measured on each of two gauges. Four of Indianapolis's footballs were tested at halftime; all were within the prescribed air pressure range on at least one of the two gauges.

Sixth, on Monday, January 19, 2015—the day after the AFC Championship Game, as the fact of a league investigation into the possible deflation of the footballs was becoming public—Mr. Brady spoke to Mr. Jastremski by phone for more than 25 minutes, exchanged twelve text messages (which were recovered from Mr. Jastremski's cellphone) and met with him in person in “the QB room.” These communications between Mr. Brady and Mr. Jastremski were their first significant cellphone communications (calls or texts) for at least the prior six months. Mr. Brady thought they would have spoken by phone no more than once or twice during the prior six months. Neither Mr. Brady nor Mr. Jastremski could recall exchanging any text messages during the prior six months. And Mr. Jastremski was clear that he had never before met with Mr. Brady in “the QB room.” This pattern of multiple conversations and text messages continued on January 20 and 21.

Seventh, Mr. Brady, through his attorneys, declined to provide the investigators with access to highly relevant electronic information, such as emails and text messages. (The investigators had confirmed their earlier request for such information by email to Mr. Brady's lawyers/agents on February 28, 2015 and they reiterated their request when they interviewed Mr. Brady on March 6, 2015.) He did so despite the very substantial protections offered by the investigators to maintain the privacy of his personal information. On this basis, as well as the Wells Report's conclusion that Mr. Brady's denials of involvement in the tampering scheme were not credible, I found that Mr. Brady had failed to cooperate with the investigation.

As noted above, on June 18, 2015, shortly before the hearing and nearly four months after the investigators had first requested information from his cellphones, Mr. Brady's counsel submitted correspondence and other materials indicating that the cellphone that Mr. Brady had used from November 6, 2014, through March 5 or 6, 2015, was unavailable because it had been destroyed, and that the text messages exchanged on that cellphone could not be retrieved.

At the hearing, Mr. Brady testified that it is his practice to destroy (or to give to his assistant to destroy) his cellphone and SIM cards when he gets a new cellphone. Mr. Brady also testified that, based on his typical practice, he would have asked to have the existing cellphone destroyed at or about the same time that he began using his new cellphone. According to records provided by Mr. Brady, he began using a new cellphone—and based on what Mr. Brady and his counsel described as his ordinary practice, gave his old cellphone to his assistant to be destroyed—on or about March 6, 2015, the very day that he met with Mr. Wells and his team to be questioned about the tampering allegations.

Even though the prior request for his text messages was discussed during that interview, neither Mr. Brady nor his counsel ever advised Mr. Wells that the cellphone that Mr. Brady had used during the key time period had been destroyed. During the four months that Mr. Brady used that cellphone, he exchanged nearly 10,000 text messages with a wide range of individuals. Following the appeal hearing, Mr. Brady's representatives provided a letter from his cellphone carrier confirming that the text messages sent from or received by the destroyed cellphone could no longer be recovered.

The record contains much more information bearing on this matter. It includes text messages between Mr. Jastremski and Mr. McNally in which Mr. McNally refers to himself as "the deflator"; that expressly refer to inflation and deflation of footballs and "needles" in the context of deflating footballs; and that reflect Mr. McNally's requests for cash, shoes, clothing and items autographed by Mr. Brady.

The record also includes detailed scientific analysis by Exponent. That analysis was in turn reviewed by Professor Daniel Marlow, a professor of physics (and former chairman of the department of physics) at Princeton. The experts from Exponent concluded, and Professor Marlow agreed, that the deflation of the Patriots' footballs cannot be fully explained by environmental factors or scientific principles such as the Ideal Gas Law. As noted in the Exponent report, the absence of a "credible scientific explanation for the Patriots' halftime measurements tends to support a finding that human intervention accounted for the deflation of the Patriots' footballs." This finding is buttressed by the opinion of Professor Marlow, whom I found to be highly credible at the hearing, and who testified that he "was highly impressed with the level of detail, thought, planning and execution" of Exponent's work; that it was "really a first-class piece of work"; and that "the conclusions are correct." When viewed as part of the complete evidentiary record, Exponent's conclusions support my finding that the deflation of the footballs was the result of human tampering.

Neither Mr. Jastremski nor Mr. McNally appeared as a witness at the appeal hearing. At the close of the hearing, the parties were asked whether the record should be held open to permit testimony from these two individuals, so that I could directly evaluate their credibility, before making a decision on the appeal. Mr. Brady and the NFLPA disclaimed any need to do so, even though Mr. Brady described Mr. Jastremski as a "friend" and both would presumably have first-hand knowledge of the facts relating to Mr. Brady's denials and other aspects of his testimony.

Further, as noted in the Wells Report, there are important topics about which Mr. McNally has not been interviewed; had he testified, he could have addressed those subjects,

which include his characterization of himself as “the deflator.” The Management Council has argued that an adverse inference should be drawn from the NFLPA’s decision not to seek testimony from Mr. Jastremski and Mr. McNally. That is not necessary because, on the basis of the entire record, most of their statements to the investigators are not credible, as the Paul Weiss investigators found.

It is against the backdrop of these fundamental facts that I consider the arguments made by the NFLPA and Mr. Brady on appeal. In doing so, I have drawn upon my experience of more than thirty years with the National Football League, including nearly nine years as Commissioner.

III. The Governing Standards

Article 46, Section 1(a) of our Collective Bargaining Agreement addresses discipline for conduct by a player that is “detrimental to the integrity of, or public confidence in, the game of professional football.” The CBA recognizes that the Commissioner has authority to decide what constitutes conduct detrimental, to determine whether a player has engaged in conduct detrimental, and to determine and impose appropriate discipline if he finds that a player has engaged in conduct detrimental. This has been true throughout the long history of collective bargaining between the NFL and the NFLPA, a period of more than four decades.

This is an appeal proceeding under Article 46. I serve as the hearing officer in this appeal pursuant to Section 2 of that Article. With respect to conduct detrimental proceedings involving issues relating to the integrity of the game, the Collective Bargaining Agreement reflects a decision by the NFLPA and the NFL to accept the Commissioner’s judgment. This has also been true for decades, and has been reflected in every collective bargaining agreement between the parties.

In appeals of Commissioner discipline under Article 46, the hearing officer gives appropriate deference to the findings and disciplinary decision under review; that is so even when the Commissioner serves as hearing officer. For that reason, as I said publicly prior to the hearing, I was eager to hear any new information, including testimony from Mr. Brady, that might cause me to reconsider the discipline initially imposed. Insofar as I received at the hearing testimony or documentary evidence of which I had been previously unaware, that information was considered anew.

The underlying standard of proof for factual findings in Article 46 proceedings is “preponderance of the evidence,” or, stated differently, “more probable than not.” Without exception, my findings below more than satisfy that standard, especially taking into account the credibility of the witnesses, including Mr. Brady, which I had ample opportunity to evaluate at the hearing.

As always, I am bound, of course, by standards of fairness and consistency of treatment among players similarly situated, and I have had those standards in mind throughout my consideration of this appeal.

IV. The Issues Presented on Appeal

A. Was the decreased air pressure in the footballs the result of tampering or of natural environmental factors?

At the hearing, the NFLPA and Mr. Brady did not contest the findings of the Wells Report regarding the pre-game activities of Mr. McNally. Thus, it is undisputed that: (a) Mr. McNally informed the referee, Walt Anderson, of Mr. Brady's preferred level of inflation; (b) Mr. Anderson confirmed that the footballs were in fact inflated to that level; (c) prior to the start of the game, Mr. McNally removed the Patriots' footballs from the Officials' Locker Room without informing or receiving permission from any of the game officials; (d) after leaving the Officials' Locker Room with the footballs, Mr. McNally proceeded to a small restroom, locked himself inside and remained there for approximately one minute and forty seconds; and (e) Mr. McNally did so even though he had access to the men's room facilities in the Officials' Locker Room. The NFLPA and Mr. Brady also did not dispute the finding in the Wells Report that, based on experiments conducted by Exponent, this period was more than enough time for Mr. McNally to have released air from each of the Patriots' footballs.

Instead, the hearing focused on the reliability of the other scientific evidence discussed in the Wells Report and set forth in Appendix 1 to the report. The NFLPA and Mr. Brady submitted alternative scientific analyses (including, for example, the study published by economists from the American Enterprise Institute) and presented expert testimony from Dean Edward Snyder of the Yale School of Management, an economist who specializes in industrial organization. I have carefully considered Dean Snyder's testimony, along with that of three experts called by the Management Council, all of whom had been involved in the underlying scientific and engineering analysis reflected in the Wells Report: Dr. Robert Caligiuri of Exponent, an expert in mechanical and materials engineering; Dr. Duane Steffey of Exponent, an expert in statistics; and Professor Marlow of Princeton.

The principal issue addressed by the experts was whether the decline in pressure reflected in measurements of the Patriots' game balls at halftime could be explained by factors other than tampering. I find that the full extent of the decline in pressure cannot be explained by environmental, physical or other natural factors. Instead, at least a substantial part of the decline was the result of tampering.

In reaching this conclusion, I took into account Dean Snyder's opinion that the Exponent analysis had ignored timing, *i.e.*, the fact that the Patriots' footballs, which were tested first, had less time to warm at halftime than did the Colts' footballs. Dr. Caligiuri and Dr. Steffey, however, both explained how timing was, in fact, taken into account in both their experimental and statistical analysis; they concluded, based on physical experiments, that timing of the measurements did have an effect on the pressure, but that timing in and of itself could not account for the full extent of the pressure declines that the Patriots' game balls experienced. Dean Snyder, in contrast, performed no independent analysis or experiments; nor did he take issue with the results of the Exponent experimental work that incorporated considerations of timing and were addressed in detail in the testimony of Dr. Caligiuri and Dr. Steffey.

I also considered Dean Snyder's other two "key findings," as well as the arguments summarized in the NFLPA's post-hearing brief, including criticisms of the steps taken in the Officials' Locker Room at halftime to measure and record the pressure of the game balls.¹ I was more persuaded, however, by the testimony of Dr. Caligiuri, Dr. Steffey, and Professor Marlow and the fact that the conclusions of their statistical analysis were confirmed by the simulations and other experiments conducted by Exponent. Those simulations and other experiments were described by Professor Marlow as a "first-class piece of work."²

On these issues, the testimony of Professor Marlow, who had been retained by the Paul Weiss investigators to evaluate, critique and second-guess Exponent's work plan and conclusions, was especially persuasive and credible. Professor Marlow described his role as that of the "designated skeptic." His endorsement of Exponent's conclusions and his rebuttal of Dean Snyder's criticisms carried substantial weight.³

As the Exponent study notes, its findings were made "to a reasonable degree of scientific certainty." It bears emphasis, however, that my finding of tampering with the game balls is not based solely on the Exponent study and the testimony of the scientific experts, but instead on consideration of all of the evidence in the record, including the conduct, text messages, and other communications discussed in both the Wells Report and at the hearing. This full record establishes that the reduction in the pressure of the Patriots footballs was due at least in substantial part to tampering.

B. What role, if any, did Mr. Brady have in the scheme to tamper with the footballs?

There is no dispute with the conclusion in the Wells Report that "it is unlikely that an equipment assistant and a locker room attendant would deflate game balls without Brady's knowledge and approval" and that Mr. McNally and Mr. Jastremski would not "personally and

¹ There was argument at the hearing about which of two pressure gauges Mr. Anderson used to measure the pressure in the game balls prior to the game. The NFLPA contended, and Dean Snyder opined, that Mr. Anderson had used the so-called logo gauge. On this issue, I find unassailable the logic of the Wells Report and Mr. Wells's testimony that the non-logo gauge was used because otherwise neither the Colts' balls nor the Patriots' balls, when tested by Mr. Anderson prior to the game, would have measured consistently with the pressures at which each team had set their footballs prior to delivery to the game officials, 13 and 12.5 psi, respectively. Mr. Wells's testimony was confirmed by that of Dr. Caligiuri and Professor Marlow. As Professor Marlow testified, "There's ample evidence that the non-logo gauge was used."

² For similar reasons, I reject the arguments advanced in the AEI Report. The testimony provided by the Exponent witnesses and Professor Marlow demonstrated that none of the arguments presented in that report diminish or undermine the reliability of Exponent's conclusions.

³ Mr. Wells testified that Professor Marlow was expressly engaged as a "double-check" on the work performed by Exponent. He further testified, and Dr. Caligiuri confirmed, that all of the experts who participated in the investigation were instructed to act as if they were "court-appointed" experts and to provide "objective science."

unilaterally [have] engaged in such conduct in the absence of Brady's awareness and consent." Indeed, in response to my question, Mr. Brady confirmed at the hearing that the Patriots' equipment personnel would not do anything to a game ball that was inconsistent with what he wanted.

Mr. Brady denies having been involved in the scheme to deflate the footballs. But in considering the entire record, including Mr. Brady's testimony, the credibility of other witnesses and the documentary evidence, I cannot credit this denial for the following reasons.

Among other things, the unusual pattern of communication between Mr. Brady and Mr. Jastremski in the days following the AFC Championship Game cannot readily be explained as unrelated to conversations about the alleged tampering of the game balls.

The evidence reflects that, after having virtually no communications by cellphone for the entire regular season, on January 19, the day following the AFC Championship Game, Mr. Brady and Mr. Jastremski had four cellphone conversations, totaling more than 25 minutes, exchanged twelve text messages, and, at Mr. Brady's direction, met in the "QB room," which Mr. Jastremski had never visited before.⁴ In one of the text messages, Mr. Jastremski told Mr. Brady that "Dave will be picking your brain later about it. He's not accusing me or anyone. Trying to get to the bottom of it. He knows it's unrealistic you did it yourself."⁵ On the following day, January 20, Mr. Brady and Mr. Jastremski spoke twice, for a total of nearly ten minutes, and exchanged two text messages. On January 21, Mr. Brady and Mr. Jastremski again texted and then spoke twice for more than twenty minutes. The source for all of this information was Mr. Jastremski's cellphone.

Mr. Brady testified that he was unable to recall any specifics of those discussions and he suggested that their principal subject was preparation of game balls for the Super Bowl.⁶ But the need for such frequent communication beginning on January 19 is difficult to square with the fact that there apparently was no need to communicate by cellphone with Mr. Jastremski or to

⁴ The Wells Report indicates that, as of January 19, 2015, the most recent prior cellphone communication between Mr. Brady and Mr. Jastremski that the investigators could identify from the materials provided to them had occurred on July 4, 2014; that Mr. Jastremski was not sure if he had communicated by cellphone or text with Mr. Brady between July 2014 and December 2014, and that at most they had done so fewer than three times during that entire period; and that Mr. Brady did not recall if he had communicated by cellphone or text with Mr. Jastremski in 2014. Mr. Brady's phone bills, provided by his agent shortly before the hearing, indicate two short calls (3 minutes duration in total) between Mr. Brady and Mr. Jastremski on October 11, 2014.

⁵ In context, it is clear that "Dave" was Dave Schoenfeld, the Patriots' Equipment Manager. I understand from the Wells Report that, in his interview with the investigators, Mr. Jastremski denied that "it" in the last sentence of the text message referred to deflation of footballs. But given the context of the text messages exchanged that day, it is very hard to believe that denial.

⁶ In response to the question, "Why were you talking to Mr. Jastremski in those two weeks?," Mr. Brady responded, in sum: "I think most of the conversations centered around breaking in the balls." For the reasons noted, I do not fully credit that testimony.

meet personally with him in the “QB room” during the preceding twenty weeks of the regular season and post-season prior to the AFC Championship Game. This was true even though, as Mr. Brady testified, there were occasions (such as the game against the New York Jets on October 16, 2014) when he was plainly dissatisfied with the preparation of the footballs, including their inflation level, and even though, only two days prior to the AFC Championship Game, he and Mr. Jastremski had decided to use an entirely new method to prepare the game balls that involved much less use of a particular conditioner called Lexol and much more intensive “gloving” of the footballs. (Tr. 68–69 (“I asked John to make up 24 brand new balls without putting any Lexol on them.”).)

The sharp contrast between the almost complete absence of communications through the AFC Championship Game and the extraordinary volume of communications during the three days following the AFC Championship Game undermines any suggestion that the communications addressed only preparation of footballs for the Super Bowl rather than the tampering allegations and their anticipated responses to inquiries about the tampering.

In addition, throughout the period in which Mr. Brady and Mr. Jastremski were having such frequent communications, Mr. Jastremski was in frequent communication with Mr. McNally. On January 19, only six minutes after his first conversation with Mr. Brady, Mr. Jastremski called Mr. McNally; they spoke for nearly ten minutes. They spoke multiple additional times throughout the remainder of the day for a total of 22 minutes; their conversations included Mr. McNally’s giving Mr. Jastremski a “heads up” that the latter’s name had been mentioned in the former’s interview by NFL Security. There were multiple, lengthy phone conversations between Mr. McNally and Mr. Jastremski over the next several days.

The frequent and lengthy conversations between Mr. Brady and Mr. Jastremski and, in turn, between Mr. Jastremski and Mr. McNally, are important in numerous respects. Text messages exchanged during the latter half of the 2014 regular season that were recovered from Mr. Jastremski’s cellphone reveal that Mr. Jastremski and Mr. McNally had discussed Mr. Brady’s views about the pressure of game balls and made multiple references to Mr. Jastremski’s providing a “needle” for Mr. McNally’s use. Those texts included Mr. Jastremski’s statement to Mr. McNally, in the context of an exchange about the pressure of game balls, that Mr. Brady “actually brought you up and said you must have a lot of stress trying to get them done.”

I agree with the Wells Report and reject as implausible Mr. McNally’s interpretation of the quoted text message—*i.e.*, that it referred to someone other than Mr. Brady and that the “stress” referred to Mr. McNally’s efforts to resell his Patriots game tickets. The text messages immediately before and after that message (all within a range of about two and a half minutes) plainly refer to Mr. Brady, and the context of their exchange plainly involves the inflation levels of footballs. Given that there is no dispute that Mr. McNally’s only assigned responsibility with respect to the game balls was to deliver them, I find that “trying to get them done” referred to tampering with the inflation level of the balls. No credible alternative explanation for that

message has been offered by Mr. McNally, Mr. Jastremski or Mr. Brady and the decision not to seek Mr. McNally's testimony at the hearing has foreclosed any other conclusion.⁷

Furthermore, there is another text message in which Mr. McNally, expressing anger with Mr. Brady, states that "the only thing deflating sun[day] is his passing rating." Equally, if not more telling, is a text message earlier in 2014, in which Mr. McNally referred to himself as "the deflator," and, a short time later, stated that he was "not going to espn ... yet." Again, the absence of Mr. McNally from the hearing leaves these text messages unexplained by the person who sent them.

These exchanges must be considered in the context of demands from Mr. McNally, communicated to and through Mr. Jastremski, for consideration from Mr. Brady. There are multiple requests by Mr. McNally for footballs "for Tom to sign," apparel, and shoes. And in response to a text message from Mr. Jastremski in which he says "I have a big needle for you this week," Mr. McNally responds: "Better be surrounded by cash and newkicks ... or it's a rugby sunday."⁸ Finally, about a week before the AFC Championship Game, Mr. Jastremski told Mr. McNally that it would be a "big autograph day for you," and several days later, in the Patriots' equipment room, Mr. Brady (i) autographed two footballs and handed them to Mr. McNally and (ii) signed a Brady game-worn jersey for Mr. McNally.

In short, the available electronic evidence, coupled with information compiled in the investigators' interviews, leads me to conclude that Mr. Brady knew about, approved of, consented to, and provided inducements and rewards in support of a scheme by which, with Mr. Jastremski's support, Mr. McNally tampered with the game balls. The result was to undermine, if

⁷ The NFLPA and the Management Council were asked to address in their post-hearing briefs whether, before deciding this appeal, I should hear directly from Mr. Jastremski and Mr. McNally, each of whom has been suspended by the Patriots. The NFLPA took the position that because both witnesses had denied any scheme to deflate the Patriots' game balls, there was "no need to call them as witnesses. Brady sought to confront his accusers, not those who have already provided exculpatory evidence." The Management Council noted that, based on their interviews with the investigators and NFL Security, the Wells Report contained numerous findings with respect to Mr. McNally's and Mr. Jastremski's conduct and credibility and argued that to the extent that Mr. Brady and the NFLPA wished to contest these findings, it was incumbent on them to call both witnesses. The Management Council also argued that in light of the findings in the Wells Report with respect to their conduct and credibility, I should draw an adverse inference—that "their testimony would have confirmed Brady's involvement"—from the NFLPA's failure to call them as witnesses. While I am permitted to do so, I decline to draw any such adverse inference from Mr. Brady's decision not to seek the testimony of either witness. However, there is no question, based on the Wells Report, the NFL Security interviews, and other record evidence, that any "exculpatory evidence" offered by Mr. Jastremski or Mr. McNally to the investigators, including their denials of a tampering scheme, is not credible.

⁸ When asked about this message by the investigators, Mr. McNally acknowledged that the reference to "rugby" meant a football that was over-inflated. In context, it is plain that the word "newkicks" referred to shoes.

not vitiate, the game officials' efforts to ensure that the game balls used by the Patriots complied with league rules.⁹

C. Did Mr. Brady refuse to cooperate with the investigation?

There is no question that Mr. Brady declined to make available to investigators electronic information, including text messages and emails, related to the subject of the investigation.¹⁰ He did so despite repeated requests for such information and notwithstanding the investigators' offer to allow his counsel to select the responsive communications so that the privacy of his personal communications could be maintained.

The evidence that was produced in connection with the hearing reinforces this conclusion. On the eve of the hearing, the NFLPA submitted a declaration from a forensic expert, Brad Maryman, who had been engaged to review Mr. Brady's cellphones for responsive information *after* the discipline letter had been issued and months after the information was first requested. Mr. Maryman's review was extremely limited. It consisted of a review of two cellphones used by Mr. Brady, one from the spring of 2014 through November 5, 2014 and another from March 6, 2015 through April 8, 2015. Because Mr. Maryman believed that the period of use for the second cellphone was outside the scope of the investigation, he conducted no analysis of its contents. With respect to the first phone, Mr. Maryman conducted only a limited review, searching available SMS and MMS messages for a select number of names and telephone numbers, rather than for all communications falling within the categories of information sought by the investigators.

⁹ Even accepting Mr. Brady's testimony that his focus with respect to game balls is on a ball's "feel," rather than its inflation level, there is ample evidence that the inflation level of the ball does matter to him. That evidence starts with his testimony that he wanted his game balls inflated to the lowest level permissible under the rules, and includes what Mr. McNally told the investigators, including for example that he (Mr. McNally) had told referee Anderson about Mr. Brady's inflation-level preferences. Mr. Brady's claim that he does not focus on inflation levels is also inconsistent with his reaction to what he thought were over-inflated footballs used in a 2014 game. There are also multiple public statements by Mr. Brady, including his having described 12.5 psi as "the perfect grip for me" and his statement in a prior season that "I like the deflated ball" (after it had been spiked by one of his teammates), a statement that, even if made in a joking manner, indicates a preference for less-inflated footballs.

¹⁰ Specifically, the investigative team asked for the production of "documents and email/text messages (including on [Mr. Brady's] phone)" during the period from September 1, 2014 to the present that fell within specified "categories of information," including "non-privileged communications concerning the preparation of game balls, ... the ball preparation process, inflation of balls, deflation of balls, providing balls to game officials and the movement of footballs between the officials' locker room and the playing field." In addition, investigators requested the production of "text messages or other communications between Mr. Brady, John Jastremski, Dave Schoenfeld and Jim McNally from September 1, 2014 to the present regardless of subject, as well as a log of the above calls between Mr. Brady and those individuals since January 17, 2015."

More importantly, Mr. Maryman was *not* given access to the cellphone that Mr. Brady had used between November 6, 2014 and March 5 or 6, 2015, the period that included the AFC Championship Game, its immediate aftermath, and the first six weeks of the investigation. As a result, the substance of relevant text messages on that cellphone was not, and could not be, reviewed. All we know is that Mr. Brady exchanged nearly 10,000 text messages with many individuals over this period of approximately four months.¹¹

As I have previously noted, Mr. Brady's agent explained, and Mr. Brady confirmed in his testimony, (a) that his ordinary practice, when he gets a new cellphone, is to give the old cellphone to his assistant for destruction and (b) that he followed that ordinary practice with the cellphone that he used from November 6, 2014 until early March 2015. But he offered no explanation of why, on March 5 or 6, 2015, he replaced the cellphone that he had been using since November 6, 2014. (Mr. Brady testified that he did not have a schedule for periodically changing cellphones.)

Mr. Brady explained that when he changes cellphones, he gives his old cellphone to an assistant with the instruction "to destroy the phone so that no one can ever, you know, reset it or do something where the information is available to anyone." But this conflicts with the fact that the cellphone that he had used prior to November 6, 2014 was, in fact, available for Mr. Maryman's review. Had Mr. Brady followed what he and his attorneys called his "ordinary practice," one would expect that the cellphone that he had used prior to November 6, 2014 would have been destroyed long before Mr. Maryman was hired. No explanation was provided for this anomaly.

The evidence and testimony presented at the hearing demonstrate that Mr. Brady gave the cellphone that he had used since November 6, 2014 to his assistant for destruction on either March 5 or, more likely, March 6, the first date of active use of the second cellphone given to Mr. Maryman for review. That date of the cellphone's destruction—on or about March 6, 2015—is very significant. March 6 was the date on which Mr. Brady was interviewed by Mr. Wells and his team. (The date of that meeting was confirmed on March 3, 2015, several days before the cellphone was destroyed.) The investigators' request for access to information recorded in Mr. Brady's cellphone, which had been communicated several weeks before, was renewed on February 28, 2015, a week before the interview, in an email to Mr. Brady's lawyers. That request was addressed at length during the interview, but at no time did Mr. Brady ever suggest that the cellphone had been (or would soon be) destroyed. Moreover, Mr. Brady

¹¹ After the hearing and after the submission of post-hearing briefs, Mr. Brady's certified agents offered to provide a spreadsheet that would identify all of the individuals with whom Mr. Brady had exchanged text messages during that period; the agents suggested that the League could contact those individuals and request production of any relevant text messages that they retained. Aside from the fact that, under Article 46, Section 2(f) of the CBA, such information could and should have been provided long before the hearing, the approach suggested in the agents' letter—which would require tracking down numerous individuals and seeking consent from each to retrieve from their cellphones detailed information about their text message communications during the relevant period—is simply not practical.

admitted in his testimony that he was personally aware, prior to March 6, 2015, of the investigators' request for information from his cellphone.

Mr. Brady's direction that his cellphone (and its relevant evidence) be destroyed on or about March 6 is very troubling. Rather than simply failing to cooperate, Mr. Brady made a deliberate effort to ensure that investigators would never have access to information that he had been asked to produce. Put differently, there was an affirmative effort by Mr. Brady to conceal potentially relevant evidence and to undermine the investigation. Mr. Brady's conduct gives rise to an inference that information from his cellphone, if it were available, would further demonstrate his direct knowledge of and involvement with the scheme to tamper with the game balls prior to the AFC Championship Game.¹² Mr. Brady's affirmative action to ensure that this information would not be available leads me to conclude that he was attempting to conceal evidence of his personal involvement in the tampering scheme, just as he concealed for months the fact that he had destroyed the cellphone requested by the investigators.

Mr. Brady's failure to cooperate and his destruction of potentially relevant evidence are significant because the ability to conduct an investigation—whether by NFL staff or by independent parties retained by the NFL—ultimately depends on cooperation. Neither the NFL nor any NFL member club has subpoena power or other means to compel production of relevant materials or testimony. Nonetheless, the NFL is entitled to expect and insist upon the cooperation of owners, League employees, club employees and players in a workplace investigation and to impose sanctions when such cooperation is not forthcoming, when evidence is hidden, fabricated, or destroyed, when witnesses are intimidated or not produced upon reasonable request, or when individuals do not provide truthful information. Moreover, in such cases, there is no question that the Hearing Officer may draw an adverse inference from the lack of cooperation and may reasonably interpret available evidence in a manner that supports findings of misconduct.

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The evidence fully supports my findings that (1) Mr. Brady participated in a scheme to tamper with the game balls after they had been approved by the game officials for use in the AFC Championship Game and (2) Mr. Brady willfully obstructed the investigation by, among other things, affirmatively arranging for destruction of his cellphone knowing that it contained potentially relevant information that had been requested by the investigators. All of this indisputably constitutes conduct detrimental to the integrity of, and public confidence in, the game of professional football.

¹² I do not accept the argument, advanced by NFLPA counsel on Mr. Brady's behalf, that in failing to provide information from his phones to the investigators, Mr. Brady was acting on the advice of counsel. Even if I were inclined to accept that argument, there is no evidence that Mr. Brady's counsel advised him to *destroy* his phone and thereby preclude recovery of potentially relevant electronic information exchanged during the key time period.

V. The Discipline

As noted above, I am very much aware of, and believe in, the need for consistency in discipline for similarly situated players. The NFLPA is wrong, however, to suggest that because no player may have been suspended before for tampering with game footballs or obstructing an investigation, a suspension cannot be issued here. Under the CBA, the law of the shop is clear, as explained by Hearing Officer Henderson in the *Tony McDaniel* appeal:

Each case is unique in its facts and circumstances. While it is important that similar cases be treated similarly for discipline purposes, differences are not always apparent, and it is often difficult to see those distinctions long after decisions are made. Reliance on past decisions, without benefit of all the factors considered, is misplaced.¹³

No prior conduct detrimental proceeding is directly comparable to this one. Here we have a player's uncoerced participation in a scheme to violate a competitive rule that goes to the integrity of the game. Unlike any other conduct detrimental proceeding of which I am aware, and certainly unlike any cited by either party, this scheme involved undermining efforts by game officials to ensure compliance with League rules.

The scheme, which sought to secure a competitive advantage on the playing field, was coupled with not only (i) a failure to cooperate with the League's investigation, but also (ii) destruction of potentially relevant evidence with knowledge that the evidence had been sought in the investigation.

The conduct at issue here is therefore fundamentally different from that of the players who were found to have engaged in conduct detrimental in the *Bounty* proceeding. Commissioner Tagliabue there placed great emphasis on his view that the misconduct of the Saints' players was in large part the result of pressure from coaches and other management representatives, resulting in the players' "not hav[ing] much choice but to 'go along'." The bounty program was largely developed and administered by the coaches, and the pressure on the players extended to "obstruction of the original investigation [which was] directed by Saints' officials." There is no evidence of any such pressure on Mr. Brady here.¹⁴

¹³ In the *Hardy* opinion, Hearing Officer Henderson went on to say: "The Commissioner's authority and discretion in deciding appropriate discipline is not circumscribed or limited by the CBA, and he is not forever bound to hold discipline at the same level. In my experience as a hearing officer I have seen, and upheld, increases in the level of discipline without prior notice, not surprising with a policy which is unilaterally promulgated by the league without negotiation." As I further explain below, here there is no "usual level of discipline" because the conduct detrimental at issue in this proceeding is fundamentally different from the conduct detrimental at issue in any other proceeding.

¹⁴ Even with respect to similar behavior, Commissioner Tagliabue in his *Bounty* decision made clear that "this case should not be considered a precedent for whether similar behavior in the

To the contrary, the Wells Report documented that the Patriots' ownership, executives, coaching staff, and the head equipment manager, Mr. Schoenfeld, had no knowledge of or participation in the scheme. Those findings are not challenged on appeal. Nor was there a challenge to the record evidence that Mr. Jastremski and Mr. McNally sought to hide their actions from Mr. Schoenfeld, and that Mr. Jastremski warned Mr. Brady that Mr. Schoenfeld would be asking him about the condition of the footballs that had been used in the AFC Championship Game.

The conduct at issue here is also very different from that which led to the discipline imposed on Brett Favre, who was investigated for a violation of League workplace policies. The conduct alleged there (which the League was unable to prove) was of a kind that reflects poorly on the League but does not go to the integrity of the competition on the field. In Mr. Favre's case, I found that he had not been "fully candid" with the NFL staff in several respects that resulted in a longer and more costly review than might otherwise have been required; on that basis I imposed a fine. My findings with regard to Mr. Brady's conduct, including his involvement with the tampering scheme and his destruction of relevant evidence, are fundamentally different.¹⁵

The conduct at issue here is also very different from the ball-warming incident in Minnesota last year, in which a *Carolina Panthers* ball attendant was observed warming a ball on the *Vikings*' sideline; there was no evidence of any intentional attempt to violate or circumvent the rules, no player involvement, and no effort to conceal the ball attendant's conduct. As Mr. Vincent testified, the ball never got into the game and the matter "was addressed immediately."

The conduct at issue here is also very different from the incident involving the Jets' equipment staff member who "attempted to use" unapproved equipment in plain view of the officials to prepare kicking balls prior to a 2009 game against the Patriots. There was no evidence of any player involvement. However, it bears mention that the Jets' employee was suspended from his regular game-day duties for a period longer than the suspension under review here.¹⁶

future merits player suspensions or fines" because his over-riding objective there was to bring closure to the entire *Bounty*-related set of issues.

¹⁵ Nor do the statements attributed to Aaron Rodgers, who (according to a third party) was reported to have commented that he liked to push the limit in terms of inflating balls to see if the officials took air out of the balls when they were measured prior to the game, present a comparable situation. Here, the balls were tampered with *after* the officials had approved them for use in the game.

¹⁶ That suspension itself disproves the NFLPA's argument that any discipline here must be limited to a fine of \$25,000, an amount that would be a substantial punishment for a game-day employee, but a mere token for any player. Indeed, the language from the Game Operations Manual upon which the NFLPA relies for that argument expressly states that discipline "is *not*

ROGER GOODELL
Commissioner

In terms of the appropriate level of discipline, the closest parallel of which I am aware is the collectively bargained discipline imposed for a first violation of the policy governing performance enhancing drugs; steroid use reflects an improper effort to secure a competitive advantage in, and threatens the integrity of, the game. Since the advent of our testing for steroid use in the 1980s and now, pursuant to our Collective Bargaining Agreement, the first positive test for the use of performance enhancing drugs has resulted in a four-game suspension without the need for any finding of actual competitive effect.

In our most recent Collective Bargaining Agreement, the parties (a) agreed to continue that level of a discipline for a first violation and (b) further agreed that a player found to have used both a performance enhancing drug and a masking agent would receive a six-game suspension. The four-game suspension imposed on Mr. Brady is fully consistent with, if not more lenient than, the discipline ordinarily imposed for the most comparable effort by a player to secure an improper competitive advantage and (by using a masking agent) to cover up the underlying violation.¹⁷

VI. Notice and Other Legal Issues Advanced on Appeal

Contrary to the NFLPA's arguments, I find that Mr. Brady had more than adequate notice that he could be subject to "conduct detrimental" discipline, including suspension, for the conduct at issue here.

First, despite the union's arguments to the contrary, the record is undisputed that prior to January 18, 2015, the date of the AFC Championship Game, Mr. Brady was fully aware of the rule expressly regulating the permissible inflation range for game balls. Mr. Brady testified about his knowledge of that rule and that he had taken steps in the past to call the relevant provision to the attention of game officials.

Second, the CBA does not require itemization of specific categories of misconduct that may be deemed "conduct detrimental" and subject to discipline. As the CBA-prescribed standard limited" to such a fine, and I decline to adopt an interpretation of that passage that disregards its plain meaning.

¹⁷ The four-game suspension is also consistent with the suspension recently imposed on the General Manager of the Cleveland Browns for a first violation of a league rule intended to maintain fair competition and the integrity of the game. The length of that suspension reflected, and was explicitly mitigated by, the General Manager's self-reporting and transparency in acknowledging wrongdoing. There are no such mitigating factors here.

There are similar examples of discipline imposed on coaches for conduct detrimental that bears on the integrity of the game, including the one-year suspension of Sean Payton and the six-game suspension of Joe Vitt imposed in connection with the Saints' pay-for-performance bounty program. I do not rely on those examples to determine the discipline imposed on Mr. Brady, but they reinforce my conclusion, based principally on the penalties associated with violations of the steroid policy, that the discipline imposed on Mr. Brady is not excessive or without precedent, and is in fact fair and reasonable.

ROGER GOODELL
Commissioner

NFL Player Contract makes clear, such determinations are left to the “reasonabl[e] judg[ment]” of the Commissioner. Mr. Brady had knowledge and notice of that fact.

Tampering with the game balls after they have been approved by the game officials—an effort to undermine the game officials’ responsibility to ensure that game balls are in compliance with League rules—is plainly within the scope of matters that may reasonably be judged by the Commissioner to affect the integrity of, and public confidence in, the game of professional football. Mr. Brady knows that players are subject to suspension for violations of the Playing Rules and had no reason to believe that a suspension could not be imposed for the conduct at issue here.¹⁸

The same principle undermines the NFLPA’s contention that Mr. Brady was unaware that he could be disciplined for “declining to respond to the Wells discovery requests” or “failing to cooperate” with the investigation. As a threshold matter, there is no disagreement about the obligation of club employees, including players, to cooperate with a proper League investigation. Moreover, the conduct at issue here—specifically the willful destruction of potentially relevant evidence—goes well beyond Mr. Brady’s failure to respond to or fully cooperate with the investigation.

In the CBA-prescribed standard NFL Player Contract itself, each player “recognizes the detriment to the League and professional football that would result from impairment of public confidence in the honest and orderly conduct of NFL games or the integrity and good character of NFL players.” Such conduct includes “any ... form of conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football.” Even without regard to the arbitration precedents cited by the Management Council in its post-hearing brief (at pages 8–9), Mr. Brady’s conduct during the investigation falls squarely within the scope of conduct that may be reasonably judged by the Commissioner to be “conduct detrimental” to the League. There should be no question in anyone’s mind that active obstruction of a conduct detrimental investigation may and will itself be deemed conduct detrimental and subject to discipline, as the standard Player Contract provides, by a fine in a reasonable amount, by suspension for a period certain or indefinitely, or by termination of the player’s contract.¹⁹

¹⁸ As Commissioner Tagliabue observed in the *Bounty* decision, “The matters that can affect such integrity and public confidence [in the game of professional football] evolve and change over time depending on developments within and external to the League, and the parties to the CBAs have agreed not to operate with a static or frozen definition of conduct detrimental.”

¹⁹ The NFLPA’s argument about the NFL’s Policy on Integrity of the Game & Enforcement of Competitive Rules is misplaced. That Policy imposes certification and reporting requirements on clubs and certain senior club executives, thereby providing an additional means of *enforcing* rules that ensure fair competition; it also prescribes protocols for investigations of competitive violations by clubs. (Inasmuch as the investigation addressed conduct by the Patriots, it is not surprising that the Wells Report cited this Policy.)

The Policy was not the source or the basis for the discipline imposed here. The bar on conduct detrimental to the integrity of and public confidence in the game of professional football is instead reflected in the standard form, collectively bargained Player Contract, among other

Indeed, a player of Mr. Brady's tenure in the league and sophistication, and who was represented by highly experienced counsel (both personal and NFLPA-engaged), cannot credibly contend that he believed that he could, without consequences, destroy his cellphone on or about the day of his interview with the investigators when he knew in advance of the interview that the investigators were seeking the cellphone for the evidence that it contained. And the belated attempt by his representatives to remedy this failure to cooperate—ultimately by asking the NFL to track down nearly 10,000 text messages sent to or received from a substantial number of other individuals—is simply insufficient. The NFLPA and Mr. Brady's representatives have identified no instance in or outside the NFL in which such conduct has been deemed satisfactory cooperation with an investigation.

Finally, the CBA-mandated standard NFL Player Contract, which Mr. Brady signed, makes clear and provides notice that, in the event of a finding of conduct detrimental, the Commissioner may "suspend Player for a period certain or indefinitely."

In sum, Mr. Brady had notice, and in fact was fully aware of, the established rule governing the pressure of NFL game balls; he had notice and ample reason to expect that a violation of that rule, especially one that sought to undermine the efforts of game officials to ensure that game balls were in compliance with League rules, would be deemed conduct detrimental; he had notice and ample reason to expect that false or misleading statements and/or destruction of evidence requested for use in an investigation of conduct detrimental would itself be deemed conduct detrimental; and he had notice and ample reason to expect that such conduct detrimental could lead to his suspension.

* * *

Finally, the NFLPA and Mr. Brady have argued that I improperly delegated my "conduct detrimental" authority and that the Paul Weiss investigation was not independent. Neither argument has merit.

First, as made clear in my opinion of June 22, 2015, I did not delegate my authority as Commissioner to determine conduct detrimental or to impose appropriate discipline. I was directly involved in the assessment of Mr. Brady's conduct that led to his suspension and in determination of the suspension itself; I concurred in Troy Vincent's recommendation and authorized him to communicate to the club and to Mr. Brady the discipline imposed under my authority as Commissioner. Second, there was no delegation of any authority to the investigators.

documents, and it was in place long before the Policy was issued. As the discipline letter makes clear, Mr. Brady was suspended for conduct detrimental to the integrity of and public confidence in the game of professional football, not for a violation of the Policy.

The fact that he claimed to be unaware of the Policy is therefore irrelevant to any issue in this appeal, including the issue of notice. In any event, the record demonstrates that at the very least, Mr. Brady had constructive notice of that Policy, which in response to his counsel's request, was provided to his counsel by the Paul Weiss team on March 3, two or three days before Mr. Brady destroyed his cellphone.

ROGER GOODELL
Commissioner

To the contrary, I reviewed the facts set forth in the Wells Report to determine, whether in my own judgment, the identified conduct constituted “conduct detrimental.”

Nor is there any basis for the NFLPA’s suggestion that the Wells Report was not the product of an independent investigation.²⁰ The Report itself makes clear, and the hearing testimony of Mr. Wells confirmed, that the investigation and report represent solely and entirely the findings and conclusions of the Wells investigatory team.²¹

CONCLUSION

I entered into the appeal process open to reevaluating my assessment of Mr. Brady’s conduct and the associated discipline. Especially in light of the new evidence introduced at the hearing—evidence demonstrating that he arranged for the destruction of potentially relevant evidence that had been specifically requested by the investigators—my findings and conclusions have not changed in a manner that would benefit Mr. Brady.

Notwithstanding my enormous respect for his accomplishments on the field and for his contributions and role in the community, I find that, with respect to the game balls used in the

²⁰ The NFLPA takes the position that because the NFL asserted attorney-client privilege for certain of its communications with Paul, Weiss and because a Paul, Weiss attorney asked questions of witnesses at the appeal hearing, the investigation was not “independent.” For the reasons stated in the text, among others, I disagree. But this disagreement does not matter: If the entire investigation had been conducted by in-house NFL employees instead of an outside law firm, I would still view it as a thorough and reliable basis for my findings and conclusions and a thorough and detailed means of providing Mr. Brady and the NFLPA notice of the conduct detrimental for which the suspension was imposed.

²¹ Asserting that Mr. Brady was denied a fundamentally fair hearing, the NFLPA’s post-hearing brief raises again issues resolved in my pre-hearing rulings, including the denial of the NFLPA’s request to question NFL General Counsel Jeff Pash and the denial of the NFLPA’s request for access to Paul, Weiss’ internal records. With one exception, those issues were addressed in pre-hearing opinions (or above) and will not be addressed again here.

The exception relates to the NFLPA’s argument that NFL General Counsel Jeff Pash played a significant role in the investigation and should have been required to testify at the hearing. I reject that argument for several reasons, including those set forth in my Decision on Hearing Witnesses. The NFLPA’s premise—that Mr. Pash played a significant role in the investigation—is simply incorrect, as Mr. Wells confirmed at the hearing. He testified that “Jeff Pash did not attend any witness interviews. I did not ... involve him [in] my deliberations with respect to my assessment of those interviews. Mr. Pash played no substantive role in the investigation ... and [any comments that he may have provided on a draft of the report] did not impact in any substantive fashion the conclusions with respect to my findings with respect to” Mr. Brady. In any event, the NFLPA waived this argument by not seeking at the hearing reconsideration of my decision denying its motion to compel Mr. Pash’s testimony. (See Decision on Hearing Witnesses and Testimony, June 22, 2015, at 3.)

AFC Championship Game and the subsequent investigation, Mr. Brady engaged in conduct detrimental to the integrity of, and public confidence in, the game of professional football.

The four-game suspension is confirmed. In response to a concern raised by the NFLPA, this will confirm that compensation for the intervening bye week will be paid to Mr. Brady in equal installments over the remainder of the season once he returns from his suspension.



Handwritten signature of Roger Goodell in black ink, featuring a stylized cursive script.

ROGER GOODELL

ROGER GOODELL
Commissioner