



NFL PLAYERS
ASSOCIATION

May 14, 2015

VIA E-MAIL

Troy Vincent
Executive Vice President
National Football League
345 Park Avenue
New York, NY 10154

Re: Notice of Arbitration Appeal of Tom Brady

Dear Troy,

We are in receipt of the discipline notice you issued on May 11, 2015, which imposes a four-game suspension without pay on New England Patriots Quarterback Tom Brady. This letter serves as notice of the NFLPA and Mr. Brady's disciplinary appeal on at least the following grounds:

First, as both Mr. Brady's discipline letter and the NFL's public statements make clear, you were tasked by Commissioner Goodell to determine whether Mr. Brady should be subject to discipline for conduct detrimental in connection with the events described in the Wells Report (the "Report"), and if so, to decide and impose the discipline. And, you have, in fact, imposed Mr. Brady's discipline pursuant to the Commissioner's purported delegation of his authority. Any such delegation is a plain violation of the CBA.

The CBA grants the Commissioner—and only the Commissioner—the authority to impose conduct detrimental discipline on players. CBA, Art. 46, § 1(a); *id.*, App. A, ¶ 15. This express CBA mandate is further confirmed by the "law of the shop." *See Rice* Art. 46 Appeal Decision ("*Rice*") at 15; *Bounty* Art. 46 Appeal Decision ("*Bounty*") at 4. Indeed, whereas the CBA expressly authorizes the Commissioner to delegate his authority to serve as Hearing Officer over Article 46 appeals, after consultation with the NFLPA, it contains no corresponding provision authorizing the Commissioner to delegate his exclusive role to impose conduct detrimental discipline to you or anyone else. You have no authority to impose discipline on Mr. Brady under the CBA, and such discipline must therefore be set aside.¹

¹ We also note that one arbitrator has previously found that you, in particular, are unfamiliar with proper NFL discipline procedures and have no role in imposing discipline. *Peterson* Art. 46 Appeal at 7.

Second, Mr. Brady's discipline cannot be sustained for the additional reason that it contravenes the governing CBA requirement of fair and consistent treatment. *See Rice* at 16; *Bounty* at 4. Your decision to suspend Mr. Brady for four games—*i.e.*, one-quarter of the NFL season—for his alleged “general[] aware[ness] of the actions of the Patriots’ employees involved in the deflation of the footballs” and “failure to cooperate fully and candidly with the [Wells] investigation” is grossly inconsistent with the League’s prior disciplinary treatment of similar alleged conduct, including lack of cooperation and not complying with League rules regarding game balls or other equipment.² The law of the shop from *Bounty*, *Rice*, and other proceedings requires that this *unfair* and *inconsistent* treatment of Mr. Brady—an exponential change in the severity of the punishment without notice or due process—be vacated. Indeed, no player in the history of the NFL has ever received anything approaching this level of discipline for similar behavior—a change in sanctions squarely forbidden by the CBA and the law of the shop.

Third, Mr. Brady's discipline is premised solely upon the Wells Report, which contains insufficient evidence to find that Mr. Brady committed any violation of NFL rules. Indeed, the Report is wrought with unsupported speculation regarding Mr. Brady's purported knowledge of, and involvement with, two Patriots employees' purported conduct, and grasps at dubious, contradictory and mischaracterized circumstantial evidence merely to conclude that it is “more probable than not” that Mr. Brady was “generally aware of” “inappropriate activities.” Report at 17. Mr. Wells conceded that “there is less direct evidence linking [Mr.] Brady to tampering activities than either [Messrs.] McNally or Jastremski.” *Id.* The Report—based on speculative possibilities piled on top of speculative possibilities and a disregard of contrary evidence—is a legally inadequate basis upon which to impose this unprecedented discipline.

The NFLPA and Mr. Brady reserve their right to challenge the May 11th discipline on additional grounds.

Please be advised that the NFLPA and Mr. Brady intend to call both you and Commissioner Goodell as essential witnesses in the proceeding. You both will be called upon to testify about, among other things, the circumstances surrounding the purported delegation of disciplinary authority from Commissioner Goodell to you in this matter and the factual basis for that purported delegation. You also will both be required to testify about when you became aware of the Colts' complaints about ball deflation and what decisions and steps were thereafter taken to set up what may have been a “sting operation” to try to implicate the Patriots and Mr. Brady. The latter conduct would present an additional ground for setting aside the discipline imposed.

² Apart from the inconsistent and unfair treatment, the NFLPA and Mr. Brady deny the assertion in Mr. Brady's discipline letter that he “fail[ed] to cooperate fully and candidly with the investigation,” or that he had any awareness of any deliberate rules violation asserted in the Report. Discipline Letter at 1.

Further, your personal involvement in the game-day events surrounding this matter render you inherently biased in any disciplinary determination (*see, e.g.*, Report at 64-72). All of these facts will require your testimony at the hearing.

In light of the above, the NFLPA believes that neither Commissioner Goodell nor anyone with close ties to the NFL can serve as arbitrator in Mr. Brady's appeal under governing legal standards. The credibility and testimony of both you and Commissioner Goodell will be at issue in the hearing as well as numerous procedural issues regarding your testimony and the testimony of the Commissioner. Thus, this matter is similar to the *Rice* appeal, where Commissioner Goodell properly concluded that a neutral with no ties to the League, Judge Barbara Jones, should be appointed as Hearing Officer to afford Mr. Rice a lawful hearing before an impartial and to maintain the integrity of the proceedings.

Accordingly, this letter will serve as a formal demand that the Commissioner follow the *Rice* precedent and appoint an independent person to serve as arbitrator over Mr. Brady's appeal. If the Commissioner does not appoint such a neutral arbitrator, the NFLPA and Mr. Brady will seek recusal and pursue all available relief to obtain an arbitrator who is not evidently partial.

Finally, to the extent any portion of Mr. Brady's discipline was imposed for any alleged on-field conduct, the League must immediately identify such discipline, the conduct that allegedly provided its basis, and comply with the appeals procedures set forth under Article 46, Section 1(b) of the CBA. *See Bounty Appeals Panel Decision* at 9.

Very truly yours,

A handwritten signature in black ink that reads "Tom DePaso". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Tom DePaso
NFLPA General Counsel

cc: Tom Brady
DeMaurice F. Smith, Esq.
Heather M. McPhee, Esq.
Ned Ehrlich, Esq.
Jeffrey L. Kessler, Esq.
David Greenspan, Esq.
Commissioner Goodell
Jeff Pash, Esq.
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