UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

A.H., by her Guardian, SHAYANNA JENKINS HERNANDEZ, Plaintiff, v. NATIONAL FOOTBALL LEAGUE, THE NATIONAL FOOTBALL LEAGUE FOUNDATION, individually and as successor in interest to NFL CHARITIES, NFL PROPERTIES LLC, individually and as successor in interest to NFL PROPERTIES, INC., RIDDELL, INC., RIDDELL SPORTS GROUP, INC., ALL AMERICAN SPORTS CORP., BRG SPORTS, INC. f/k/a/ Easton-Bell Sports, Inc., BRG SPORTS, LLC f/k/a Easton Bell Sports, LLC, EB SPORTS CORP., and BRG SPORTS HOLDING CORP. f/k/a RBG Holdings Corp., Defendants.	CIVIL ACTION No. 17-12244

MEMORANDUM OF LAW IN SUPPORT OF
NFL DEFENDANTS' MOTION TO STAY PROCEEDINGS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

Defendants the National Football League ("NFL"), NFL Properties LLC ("NFLP"), and the NFL Foundation f/k/a NFL Charities ("NFLC" and, together with the NFL and NFLP, the "NFL Defendants") respectfully submit this Memorandum of Law in support of their motion to stay all proceedings in the above-captioned action pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") on whether this case should be transferred to the Eastern District of Pennsylvania to become part of *In re National Football League Players' Concussion Injury Litigation*, 12-md-2323 (E.D. Pa.) ("MDL 2323"), as a "tag-along" action pursuant to J.P.M.L. Rule 7.1, or a decision by the Honorable Anita B. Brody in MDL 2323 as to whether Plaintiff should be enjoined from proceeding with this litigation on the grounds that Plaintiff is a Settlement Class Member.[1]

PRELIMINARY STATEMENT

A primary objective of the multidistrict litigation process is the promotion of justice and judicial economy through the litigation of the same or similar issues in a single federal forum. As such, stays pending decisions by the JPML are routinely granted. Such stays ensure that litigation does not proceed outside the context of an MDL proceeding until the JPML has first had the opportunity to determine if the case should, in the interests of justice and judicial economy, be transferred to the MDL court—in this case, the Honorable Anita B. Brody in the Eastern District of Pennsylvania, who has been presiding over the NFL concussion cases for over five years, and who has exclusive jurisdiction over Settlement Class Members, including Plaintiff.

---

[1] For the reasons explained in this motion, the NFL Defendants do not concede that, and in fact contest whether, this Court has jurisdiction over this litigation or the parties thereto. By filing of this motion, the NFL Defendants do not waive, and expressly reserve, their arguments that Judge Brody has exclusive jurisdiction over this litigation and over Plaintiff and the NFL Defendants, as parties thereto.

The NFL Defendants have already notified the JPML that this case is a "tag-along" action to MDL 2323, and the NFL Defendants anticipate that the JPML will transfer this case to MDL 2323 for centralized pretrial proceedings.[2] Although the vast majority of former NFL players who brought suit against the NFL Defendants in MDL 2323 agreed to a Class Action Settlement Agreement that Judge Brody approved on April 22, 2015 (the "Settlement Agreement"), 34 complaints filed on behalf of 64[3] opt-out plaintiffs remain pending before Judge Brody in MDL 2323 against the NFL Defendants or the NFL's Member Clubs and involve questions of law and fact substantially similar to those raised in this action. Indeed, as explained below, the underlying allegations of negligence and concealment contained in Plaintiff's Complaint are nearly identical to allegations brought against the NFL Defendants in MDL 2323. As such, a stay pending a decision by the JPML will serve the interests of justice and judicial economy.

Moreover, Plaintiff submitted to the continuing and exclusive jurisdiction of the transferee court by electing to be a Settlement Class Member who released her litigation

---

[2] In fact, the JPML issued a conditional transfer order to transfer a substantially similar action previously *filed by this same Plaintiff* to MDL 2323. Compl., *Hernandez* v. *Nat'l Football League*, No. 17-cv-11812 (D. Mass. Sept. 21, 2017), ECF No. 1; Conditional Transfer Order (CTO-100), *In re: Nat'l Football League Players' Concussion Injury Litig.*, MDL No. 2323 (J.P.M.L. Oct. 13, 2017), ECF No. 680. In a blatant act of forum shopping, following entry of the JPML's order, Plaintiff immediately dismissed her action and re-filed it in Massachusetts state court. Notice of Voluntary Dismissal Without Prejudice, *Hernandez* v. *Nat'l Football League*, No. 17-cv-11812 (D. Mass. Oct. 13, 2017), ECF No. 7; Compl., ECF No. 1-1. The NFL Defendants promptly removed the action to this Court. (Notice of Removal, ECF No. 1.) The NFL Defendants reserve all rights with respect to Plaintiff's improper forum shopping, including the right to seek costs pursuant to Federal Rule of Civil Procedure 41.

[3] These figures include the claims of Danny Gorrer and Adrian Robinson (and his representatives and family members), who were not eligible members of the Settlement Class—and therefore did not formally opt out—but who have pending claims against the NFL in MDL 2323. Indeed, Robinson and his representatives and family members are represented by the same counsel as Plaintiff here. See Notice of Removal Ex. A, *Robinson* v. *Nat'l Football League*, No. 17-cv-02736 (June 16, 2017), ECF No. 1.

claims in MDL 2323. To the extent that Plaintiff disputes whether she is a Settlement Class Member, and thus subject to the exclusive jurisdiction of the transferee court, it is for the MDL court—with exclusive jurisdiction to interpret and enforce the terms of the Settlement Agreement between the NFL (and NFLP) and the Settlement Class—to address that threshold issue. Indeed, should the JPML fail to expeditiously transfer this case, the NFL Defendants intend and expressly reserve the right to file a motion before Judge Brody in MDL 2323 seeking to enjoin Plaintiff from proceeding with this litigation on that basis.

Absent a stay, this Court would have to supervise pretrial proceedings and make rulings in a case over which it could soon lose jurisdiction. And while no prejudice will befall Plaintiff due to a short stay, the denial of a stay, by contrast, will burden the NFL Defendants, who would be required to duplicate in this Court the efforts that they are certain to undertake in the opt-out cases currently pending in the transferee court. Such duplication of efforts is particularly egregious here, where Plaintiff is a Settlement Class Member who has released her claims against the NFL Defendants. A short stay will also avoid the possibility of potentially conflicting rulings, to the detriment of the NFL Defendants and judicial efficiency in general. Indeed, the NFL Defendants understand that Plaintiff will contest removal and seek remand. Not only is it common and entirely appropriate for a transferee court to decide a motion to remand, but the very issue presented by such a motion here—whether federal labor law preempts the concussion-related claims of former NFL players and their family members—is, in fact, currently being briefed before Judge Brody in the remaining proceedings in MDL 2323, and thus should be decided by the MDL court in order to ensure consistency of rulings.

District courts considering allegations similar to those alleged here have routinely stayed further proceedings pending action by the JPML. *See* Order at 3, *Pyle* v. *Nat'l Football League*, No. 12-cv-6493 (S.D.N.Y. Oct. 1, 2012), ECF No. 24; *Duerson* v. *Nat'l Football League*, No. 12-cv-2513, 2012 WL 1658353, at *6 (N.D. Ill. May 11, 2012). In light of these decisions, confirming that cases such as this should be stayed until they are centralized as part of MDL 2323, there is no reason to devote additional judicial and party resources to further proceedings in this Court, particularly given that Plaintiff has already submitted to the exclusive jurisdiction of the MDL transferee court.

For these reasons, and the reasons below, the NFL Defendants respectfully request a stay of all proceedings in this action pending the JPML's decision to transfer this case to the Eastern District of Pennsylvania or Judge Brody's decision as to whether Plaintiff shall be enjoined from proceeding with this litigation.

BACKGROUND

On November 15, 2017, the NFL Defendants promptly provided notice to the JPML, pursuant to J.P.M.L. Rule 7.1, of the pendency of this case as a "tag-along" action to MDL 2323. Notice of Potential Tag-Along Action, MDL. No. 2323 (J.P.M.L. Nov. 15, 2017), ECF No. 684. MDL 2323 was established on January 31, 2012, when the JPML entered an order transferring three civil actions from the United States District Court for the Central District of California to the Eastern District of Pennsylvania for centralized pretrial proceedings of cases involving allegations against the NFL stemming from concussions sustained while playing professional football in the NFL. Since the Transfer Order, the JPML has issued 100 conditional transfer orders transferring over 192 additional cases to the

Eastern District of Pennsylvania for centralized pretrial proceedings before the Honorable Anita B. Brody.

In creating MDL 2323, the Panel expressly held that the cases have common questions of fact, making centralization appropriate:

> On the basis of the papers filed and hearing session held, we find that these four actions involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Pennsylvania will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The subject actions share factual issues arising from allegations against the NFL stemming from injuries sustained while playing professional football, including damages resulting from the permanent long-term effects of concussions while playing professional football in the NFL.

Transfer Order at 1, *In re Nat'l Football League Players' Concussion Injury Litig.*, MDL No. 2323 (J.P.M.L. Jan. 31, 2012), ECF No. 61.

Following the establishment of MDL 2323 and the transfer of these cases to the MDL proceedings, Judge Brody stayed all pending motions, deadlines for responsive pleadings, and discovery, and put into place a number of procedures designed to coordinate and consolidate pretrial proceedings. For example, Judge Brody required plaintiffs in MDL 2323 to file a master administrative complaint, and, in turn, the NFL and NFLP filed a motion to dismiss that master administrative complaint on preemption grounds. Master Administrative Class Action Compl., MDL 2323 (June 7, 2012), ECF No. 84; Defs.' Mot. to Dismiss on Preemption Grounds, MDL 2323 (Aug. 30, 2012), ECF No. 3590. While that motion remained pending, the court—on April 22, 2015, and as amended on May 8, 2015—issued a Final Order and Judgment certifying a Settlement Class and approving a Class Action Settlement Agreement between the NFL (and NFLP) and the Settlement Class. Final

Order and J., MDL 2323, ECF No. 6510; Am. Final Order and J., MDL 2323, ECF No. 6534. Settlement Class Members had the right to opt out of the Settlement Class until October 14, 2014, Order ¶ 4(g), MDL 2323 (July 7, 2014), ECF No. 6084, and there are currently 94 former NFL players or their family members who opted out from the Settlement Class and whose claims are pending before Judge Brody. *See* Stipulation and Order, MDL 2323 (Nov. 6, 2017), ECF No. 8899; NFL Concussion Settlement: Timely Opt Out Requests Containing All Information Required by Section 14.2(a) or Otherwise Approved by the Court (Updated Aug. 24, 2017), https://nflconcussionsettlement.com/Documents.aspx. Those who did not opt out are bound by the terms of the Settlement Agreement, including the Release—through which Settlement Class Members expressly waived and released all past, present, and future claims, among others, arising out of head injuries sustained during NFL football play or CTE—and the Release was expressly incorporated into the court's Final Order and Judgment. Settlement Agreement § 18.1, MDL 2323 (Feb. 13, 2015), ECF No. 6481-1; Am. Final Order & J. ¶ 10, MDL 2323, ECF No. 6534. In addition, the MDL transferee court retained "continuing and exclusive jurisdiction" over Settlement Class Members and the Settlement Agreement (including "any suit, action, proceeding, or dispute arising out of, or relating to, [the] Settlement Agreement"). Settlement Agreement § 27.1, MDL 2323, ECF No. 6481-1; Am. Final Order & J. ¶ 17, MDL 2323, ECF No. 6534.

Plaintiff is the daughter of the late Aaron Hernandez, who played in the NFL from 2010 to 2012 and was released by the New England Patriots in 2013 after being arrested for homicide. *See Patriots Release Aaron Hernandez*, ESPN (June 27, 2013), http://www.espn.com/boston/nfl/story/_/id/9424845/aaron-hernandez-released-new-england-

patriots. Mr. Hernandez was found guilty of first-degree murder in 2015, and he committed suicide while incarcerated in April 2017. *See* Susan Candiotti, *Aaron Hernandez Guilty of Murder in Death of Odin Lloyd*, CNN (Apr. 16, 2015), http://www.cnn.com/2015/04/15/us/aaron-hernandez-verdict/; Victor Mather, *Aaron Hernandez Hanged Himself in Prison, Officials Say*, N.Y. Times (Apr. 19, 2017), https://www.nytimes.com/2017/04/19/sports/aaron-hernandez-dead.html?_r=0.

For the reasons outlined below, *see infra* Part I, Plaintiff is a Settlement Class Member who made, through her guardian, an informed election on how to move forward in MDL 2323. Specifically, Plaintiff did *not* opt out of the Class Action Settlement and thus has released, among many other claims, her CTE-related claims against the NFL Defendants.

Moreover, Plaintiff in this case, like plaintiffs in the other cases still pending in MDL 2323, seeks to hold the NFL Defendants liable, through claims sounding in negligence and concealment (*i.e.*, fraud), for purported damages allegedly sustained as the result of suffering concussions while playing professional football. For example, this Complaint, like the actions already consolidated, alleges that the NFL failed to adequately protect players from neurological injury, including CTE. (*Compare* Compl. pp. 8–9 ("*Negligence Summary Table*") (the NFL "[u]ndertook a duty to the general public to engage in non-negligent scientific study"), *and* ¶ 348 (Tort I ¶ (d)) ("Defendants' concealment caused Aaron to become exposed to repetitive subclinical and clinical blows to the head (or MTBI), which proximately caused Aaron's CTE") *with* Second Am. Master Administrative Long-Form Compl. ¶ 382, MDL 2323, ECF No. 8026 ("Defendant [NFL] voluntarily assumed a duty to the Plaintiffs as members of the general public not to allow those

incompetent persons it had hired within the MTBI Committee to continue to conduct incompetent and falsified studies and render incompetent opinions on the relationship between repetitive head impacts and brain injury") *and* ¶ 408 ("As a direct and proximate result of the Defendants' fraudulent concealment, Plaintiffs have suffered and continue to suffer serious injuries, including . . . the increased risk of developing one or more serious, latent, neurodegenerative diseases or conditions including, but not limited to, CTE . . . .").) Because of these common questions, and many others, and because this case has been brought by a Settlement Class Member over whom the MDL 2323 court has exclusive jurisdiction, the NFL Defendants filed their notice of potential tag-along action and expect that, consistent with all other such cases (including the very predecessor case to this one), this case will be transferred to MDL 2323.

ARGUMENT

The power to stay is well-established. This Court has broad discretion to issue a stay as part of its inherent power "to control . . . its docket" in the interest of "economy of time and effort for itself, for counsel, and for litigants." *Landis* v. *N. Am. Co.*, 299 U.S. 248, 254 (1936); *see also Clinton* v. *Jones*, 520 U.S. 681, 706 (1997). Moreover, the leading authority on managing complex litigation, the *Manual for Complex Litigation (Fourth)*, advises that "[t]he objective of transfer [through the MDL process] is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts." Manual for Complex Litigation (Fourth) § 20.131 (2004); *see also In re Wells Fargo Wage & Hour Emp't Practices Litig. (No. III)*, 804 F. Supp. 2d 1382, 1384 (J.P.M.L. 2011) ("Centralization under

Section 1407 is warranted in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.").

In deciding whether to stay proceedings pending a decision by the JPML, courts consider three factors: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the case is not stayed; and (3) whether judicial economy favors a stay. *See Alves* v. *Prospect Mortg, LLC*, No. 13-cv-10985-JLT, 2013 WL 5755465, at *2 (D. Mass. Oct. 22, 2013); *Good* v. *Altria Grp., Inc.*, 624 F. Supp. 2d 132, 134 (D. Me. 2009); *Ramos-Martir* v. *Astra Merck, Inc.*, No. Civ. 05-2038(PG), 2005 WL 3088372, at *1 (D.P.R. Nov. 17, 2005). Here, all three factors overwhelmingly favor issuance of a stay.

Indeed, "[c]ourts frequently grant stays pending a decision by the [JPML] regarding whether to transfer a case," and stays also are warranted where key threshold issues are pending before other courts or adjudicatory bodies. *Good*, 624 F. Supp. 2d at 134 (internal quotation marks omitted) (quoting *Good* v. *Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998)); *see, e.g.*, *Wittman* v. *Aetna Health, Inc.*, No. 14-cv-00322-JAW, 2014 WL 4772666, at *1 (D. Me. Sept. 24, 2014) (staying case pending a transfer decision by the JPML); *Alves*, 2013 WL 5755465, at *1–3 (same); *Automated Transactions, LLC* v. *Bath Sav. Inst.*, No. 12-cv-393-JAW, 2013 WL 1346470, at *1 (D. Me. Mar. 14, 2013) (same), *adopted by Automated Transactions, LLC* v. *Bath Sav. Inst.*, No 12-cv-00393-JAW, 2013 WL 1346409, at *1 (D. Me. Apr. 3, 2013); *Ramos-Martir*, 2005 WL 3088372, at *1 (same); *see also New Balance Athletic Shoe, Inc.* v. *Converse, Inc.*, 86 F. Supp. 3d 35, 37 (D. Mass. 2015) (staying case pending resolution by International Trade Commission of same trademark infringement issue raised in case at bar).

I.
PLAINTIFF WILL NOT BE PREJUDICED BY A STAY

A stay will not prejudice Plaintiff. Notably, Plaintiff has already submitted to the jurisdiction of the MDL transferee court and thus cannot possibly establish prejudice here. Specifically, Plaintiff is indisputably a Settlement Class Member in the Class Action Settlement that received final approval by the transferee court on April 22, 2015, as amended on May 8, 2015. *See* Final Order and J., MDL 2323, ECF No. 6510; Am. Final Order and J., MDL 2323, ECF No. 6534. That Settlement Class included all "living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order [July 7, 2014], retired, formally or informally, from playing professional football with the NFL or any Member Club . . . or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club ('Retired NFL Football Player')," and "[s]pouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player . . . ('Derivative Claimant')." Am. Final Order & J. ¶ 2, MDL 2323, ECF No. 6534.

Here, as noted above, Plaintiff is the daughter of the late Aaron Hernandez, who last played NFL football in 2012 and was released by the New England Patriots in 2013. *See Patriots Release Aaron Hernandez*, ESPN (June 27, 2013), http://www.espn.com/boston/nfl/story/_/id/9424845/aaron-hernandez-released-new-england-

patriots. As of July 7, 2014, Mr. Hernandez was incarcerated and awaiting trial on one set of murder charges, and he had been indicted in May 2014 on separate double murder charges. *See Aaron Hernandez Denied Bail*, ESPN (June 28, 2013), http://www.espn.com/boston/nfl/story/_/id/9428173/aaron-hernandez-case-judge-denies-hernandez-request-bail; Aaron Katersky, *Timeline of Aaron Hernandez's Legal Problems*, ABC News (Apr. 19, 2017), http://abcnews.go.com/US/timeline-aaron-hernandezs-legal-problems/story?id=46885159. As such, as of the date of the Preliminary Approval and Class Certification Order, Mr. Hernandez was not on any NFL roster, and he was unable to seek active employment as a player with any Member Club. Plaintiff, in turn, filed this action asserting her right to sue by reason of her familial relationship with Mr. Hernandez. (*See* Compl. ¶ 347 ("Plaintiff is the proper party to bring . . . a claim because [she] is the daughter of Aaron Hernandez . . . .").) Given these indisputable facts, it is clear that Plaintiff is a Settlement Class Member.

Settlement Class Members had the right to opt out of the class until October 14, 2014, *see* Order ¶ 4(g), MDL 2323 (July 7, 2014), ECF No. 6084,[4] but Plaintiff chose not to.[5] Pursuant to the Final Order and Judgment, Judge Brody retained "continuing

[4] Pursuant to the Settlement Agreement, any Settlement Class Members who did not opt out "waive[d] and release[d] . . . all past, present and future claims," whether "contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated," that related in any way to, among other claims, those (i) "arising out of, or relating to, head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events," (ii) "arising out of, or relating to, CTE," or (iii) "arising out of, or relating to, loss of support, services, consortium, companionship, society, or affection, or damage to familial relations." Settlement Agreement § 18.1, MDL 2323, ECF No. 6481-1.

[5] Of course, even if Plaintiff had opted out, her claims would be pending before Judge Brody along with those of the other opt-outs.

and exclusive jurisdiction over . . . *all Settlement Class Members*" and over the Settlement Agreement itself. Am. Final Order & J. ¶ 17, MDL 2323, ECF No. 6534 (emphasis added); Settlement Agreement § 27.1, MDL 2323, ECF No. 6481-1. Thus, beyond the fact that the filing of this lawsuit violates the clear terms of the Settlement Agreement and Judge Brody's Final Order and Judgment, Plaintiff has no argument, whatsoever, that she would be prejudiced by a stay here given that Judge Brody retains exclusive jurisdiction over her, and cannot proceed in this Court in any event.

Additionally, even on the remote chance that this case could possibly proceed in litigation, it is at its earliest stage for Plaintiff. Her right to seek discovery or file motions will not be lost; she can obtain the same discovery or file the same motions in the transferee court. *See Alves*, 2013 WL 5755465, at *3 (granting motion for stay of proceedings pending a decision by the JPML on transfer when "there has been very little activity in [the] matter thus far" and "[the] court has not issued any discovery orders or a Scheduling Order, and a Scheduling Conference has not been held"); *Ramos-Martir*, 2005 WL 3088372, at *1 (granting motion for stay of proceedings pending a decision by the JPML on transfer where, "given plaintiffs' few investments to date, the prejudice to them would be minimal"); *see also Milrot* v. *Apple Inc.,* No. 10-cv-61130, 2010 WL 3419699, at *1 (S.D. Fla. Aug. 27, 2010) (granting motion for stay of proceedings pending a decision by the JPML on transfer where "the instant action is not procedurally advanced" and "discovery has not yet begun and the case is less than 60 days old"); *Fuller* v. *Amerigas Propane, Inc.*, Nos. 09-cv-02493, 09-cv-02616, 2009 WL 2390358, at *1 (N.D. Cal. Aug. 3, 2009) (fact that case was in the "very early procedural stages" counsels in favor of a stay due to lack of prejudice). Indeed,

Plaintiff will benefit from having the transferee court—which is already familiar with the issues in this litigation—decide any pretrial motions.

For the foregoing reasons, Plaintiff clearly will not be prejudiced by the requested stay.

II.
THE NFL DEFENDANTS WILL SUFFER HARDSHIP WITHOUT A STAY

In the absence of a stay, the NFL Defendants would suffer hardship due to the potential for conflicting rulings and duplicative discovery and motion practice. As noted above, *see supra* pp. 7–8, it is clear from the face of the Complaint that this case involves questions of law and fact common to cases already transferred to the Eastern District of Pennsylvania. Courts recognize that "allowing independent litigation of factually identical claims in individual districts" would "seriously hamper defendant[s'] ability to engage in efficient and effective litigation," and thus routinely recognize that stays are appropriate in circumstances like those here. *Ramos-Martir*, 2005 WL 3088372, at *1; *see also Freisthler* v. *DePuy Orthopaedics, Inc.*, No. 11-cv-6580, 2011 WL 4469532, at *1 (C.D. Cal. Sept. 21, 2011) (noting concern over inconsistent decisions and explaining that "[d]eferring to the MDL is most appropriate where the motion raises issues likely to arise in other actions pending in the MDL transferee court" (internal quotation marks omitted)).

The prejudice to the NFL Defendants in the absence of a stay is even more acute here because, as noted above, *see supra* Part I, Plaintiff is a Settlement Class Member who—under the clear terms of the Settlement Agreement—released her litigation claims in MDL 2323 and agreed to the MDL court's exclusive jurisdiction. As such, the stay requested not only would eliminate the risk of the NFL Defendants being subjected to

multiple, inconsistent pleading and discovery requirements, and potentially conflicting or inconsistent rulings on pretrial matters, it more importantly would prevent Plaintiff from circumventing the terms of the Settlement Agreement that the NFL Defendants agreed upon with the Settlement Class, and to which Plaintiff is bound. Without a stay, the NFL Defendants will be forced to litigate a case that never should be filed in the first place.

Further, the prejudice to the NFL Defendants that would result if this case is not stayed is particularly significant because the NFL Defendants have moved to dismiss the claims in each of the actions pending in MDL 2323 as preempted under section 301 of the Labor Management Relations Act and for failure to state a claim. *See In re Practice of Naturopathy Litig.*, 434 F. Supp. 1240, 1243 (J.P.M.L. 1977) (holding that when defendants plan to challenge the sufficiency of the complaints, the "presentation of these matters to a single judge will further the purposes of Section 1407"). Those motions are still being briefed. Absent a stay, the NFL Defendants will face the possibility of inconsistent pretrial rulings on the same motion practice here. Indeed, consistency is particularly important with respect to the NFL Defendants' preemption motion, as the purpose of preemption under section 301 is "to insure the uniform interpretation of collective bargaining agreements throughout the nation." *Atwater* v. *Nat'l Football League Players Ass'n*, 626 F.3d 1170, 1176 (11th Cir. 2010); *see also Local 14, Teamsters, Chauffeurs, Warehousemen and Helpers of Am.* v. *Lucas Flour Co.*, 369 U.S. 95, 103–04 (1962) (holding that preemption under section 301 is necessary to apply federal labor law and interpret collective bargaining agreements uniformly); *Jackson* v. *Liquid Carbonic Corp.*, 863 F.2d 111, 114 (1st Cir. 1988)

(citing *Lucas Flour*); *Aciavatti* v. *Prof'l Servs. Grp.*, 982 F. Supp. 69, 74 (D. Mass. 1997) (citing *Lucas Flour*).

Additionally, requiring that the NFL Defendants engage in motion practice, participate in conferences and arguments, and produce discovery in substantially similar cases in multiple jurisdictions would impose undue hardship. *See Automated Transactions*, 2013 WL 1346470, at *2 (granting motion for stay of proceedings pending a decision by the JPML on transfer in part due to "the potential cost in time and money . . . inherent in repetitive and overlapping discovery"). Judge Brody has stayed all discovery in MDL 2323, and an "order staying all further proceedings" here will preserve the resources of "both parties involved while simultaneously allowing them to tailor discovery and avoid duplicative or unnecessary tasks." *Fuller*, 2009 WL 2390358, at *2; *see also Automated Transactions*, 2013 WL 1346470, at *1 (holding, contrary to plaintiff's argument that it would be harmed by a stay, that "some large portion of any discovery undertaken in this case would likely be duplicative of any discovery to be undertaken under the guidance of [the MDL transferee court], should the motion to transfer be granted").

Simply put, the stay requested will prevent significant hardship on the part of the NFL Defendants in being subjected to duplicative motion practice and discovery, with the potential for inconsistent rulings, in a case involving claims that the NFL Defendants have already settled and Plaintiff has released.

III.
DENIAL OF THE STAY WILL RESULT IN WASTED JUDICIAL RESOURCES AND DUPLICATIVE LITIGATION

As explained above, Judge Brody has exclusive jurisdiction over Settlement Class Members such as Plaintiff with respect to claims such as those asserted in this very litigation. To the extent that Plaintiff disputes whether she is a Settlement Class Member, and thus subject to the exclusive jurisdiction of the transferee court, it is for *Judge Brody* to decide that threshold issue. The terms of the Settlement Agreement are clear that "[a]ny disputes or controversies arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Settlement Agreement will be made by motion to [the MDL court]," and Judge Brody's Final Order and Judgment similarly states that "[i]n accordance with the terms of the Settlement Agreement, the Court retains continuing and exclusive jurisdiction to interpret, implement, administer and enforce the Settlement Agreement." Settlement Agreement § 27.1, MDL 2323, ECF No. 6481-1; Am. Final Order & J. ¶ 17, MDL 2323, ECF No. 6534. It is plain that Plaintiff's lawsuit violates the terms of the Settlement Agreement, and the MDL court—with exclusive jurisdiction to interpret and enforce that Agreement—is the proper forum (and indeed the only forum with jurisdiction) to address that issue. As noted above, the NFL Defendants intend to seek relief from the MDL court on that very basis.

In addition, the interests of both this Court and the transferee court in judicial economy weigh in favor of a stay. Without a stay, this matter would almost certainly result in wasted judicial resources because this Court and the Eastern District of Pennsylvania would be required to hear and decide substantially similar motions. The NFL Defendants

understand that Plaintiff will contest removal and seek remand, yet the very issue presented by such a motion—whether federal labor law preempts the concussion-related claims of former NFL players and their family members—is currently being briefed before Judge Brody in the remaining proceedings in MDL 2323. It thus appropriate for a transferee court to decide such motions, particularly where, as here, the NFL Defendants' position is that Plaintiff's claims are barred by the Settlement Agreement over which Judge Brody has exclusive jurisdiction. *See Grispino* v. *New England Mut. Life Ins. Co.*, 358 F.3d 16, 18 (1st Cir. 2004) (affirming transferee court's denial of opt-out plaintiff's remand motion initially filed before transferor court, which had stayed proceedings pending JPML decision on transfer to transferee court with continuing jurisdiction over issues relating to class action settlement); *In re W. States Wholesale Natural Gas Antitrust Litig.*, 290 F. Supp. 2d 1376, 1378 (J.P.M.L. 2003) (stating that pending motion to remand did not obviate need for transfer, as "such motions can be presented to and decided by the transferee judge [and s]uch an approach . . . has the additional advantage of streamlining treatment of the remand issue" (internal citation omitted)).

Courts frequently grant stays to avoid such duplicative pretrial proceedings. *See, e.g.*, *Wittman*, 2014 WL 4772666, at *2 (holding that a stay pending an MDL transfer motion "would avoid the possibility of duplication of discovery and certain court proceedings" and that "the interests of judicial economy militate in favor of a stay"); *Alves*, 2013 WL 5755465, at *2 (holding that a stay pending an MDL transfer motion "primarily for reasons of judicial economy, . . . is appropriate"); *Automated Transactions*, 2013 WL 1346470, at *2 (holding that "[a]lmost by definition, little or no judicial resources are

expended during the pendency" of a stay pending an MDL transfer motion); *Good*, 624 F. Supp. 2d at 135–36 (noting that MDL transfers are meant "to eliminate duplicative discovery . . . and conserve the resources of the parties, their counsel and the judiciary" and holding that "considerations of judicial economy weigh heavily in favor of imposing a brief stay"); *Ramos-Martir*, 2005 WL 3088372, at *1 ("Logic dictates that the Court's interest in preserving judicial and party resources should be more prominent when little if any resources have been expended.").

* * *

In sum, the balance of factors here heavily favors a stay of all proceedings pending the JPML's decision to transfer this action to the Eastern District of Pennsylvania or Judge Brody's decision on whether Plaintiff should be enjoined from proceeding with this litigation. In fact, even if the Court were to find that Plaintiff would be prejudiced by a stay (which Plaintiff would not be), any such prejudice would be minimal and would be outweighed by the other relevant factors that strongly counsel in favor of a stay here. *See Alves*, 2013 WL 5755465, at *3 ("Because this court finds there is little risk of prejudice to either party, its decision [to grant the motion to stay] is based largely on considerations of judicial economy."); *Good*, 624 F. Supp. 2d at 135–36 (holding that prejudice to the plaintiff "would not be significant," that the defendant "has not identified any specific prejudice to its defense that would likely occur," and that considerations of judicial economy were "the overriding consideration" "weigh[ing] heavily in favor of imposing a brief stay"); *Ramos-Martir*, 2005 WL 3088372, at *1 (holding that plaintiffs' prejudice would be minimal, and that denying a stay "would not only seriously hamper defendant's ability to engage in

efficient and effective litigation, but would also frustrate the Panel's primary goal of centralizing multitudinous actions in a single manageable and efficient litigation").

CONCLUSION

For the reasons set forth above, the NFL Defendants respectfully request a stay of all proceedings in this case pending the JPML's decision on whether to transfer this case to the Eastern District of Pennsylvania or a decision by the Honorable Anita B. Brody in MDL 2323 as to whether Plaintiff should be enjoined from proceeding with this litigation on the grounds that Plaintiff is a Settlement Class Member.

Dated: November 15, 2017

Respectfully submitted,

/s/ John D. Donovan, Jr.
John D. Donovan, Jr. (BBO# 130950)
ROPES & GRAY LLP
800 Boylston Street
Boston, Massachusetts 02199-3600
(617) 951-7566
John.Donovan@ropesgray.com

Brad S. Karp
Bruce Birenboim
Lynn B. Bayard
Pro hac vice motions to be filed
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

Attorneys for the National Football League, NFL Properties LLC, and the National Football League Foundation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record of each other party by email and first class mail on November 15, 2017.

/s/ John D. Donovan, Jr.
John D. Donovan, Jr.