

1 MORGAN, LEWIS & BOCKIUS LLP
2 KATHLEEN A. WATERS, SBN 194892
3 BRIAN M. HOM, SBN 240055
4 300 South Grand Avenue, 22nd Floor
5 Los Angeles, CA 90071-3132
6 Tel: 213.612.2500
7 Fax: 213.612.2501
8 kwaters@morganlewis.com
9 bhom@morganlewis.com

6 MORGAN, LEWIS & BOCKIUS LLP
7 WILLIAM P. QUINN, *pro hac vice*
8 1701 Market Street
9 Philadelphia, PA 19103-2921
10 Tel: 215.963.5000
11 Fax: 215.963.5601
12 wquinn@morganlewis.com

10 MORGAN, LEWIS & BOCKIUS LLP
11 DAVID W. MARSTON, *pro hac vice*
12 200 South Biscayne Boulevard, Suite 5300
13 Miami, FL 33131-2339
14 Tel: 305.415.3000
15 Fax: 305.415.3001
16 dmarston@morganlewis.com

14 Attorneys for Respondent & Cross-Petitioner,
15 DESEAN JACKSON

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

17 DREW ROSENHAUS, an individual,
18
19 Petitioner,
20 vs.
21 DESEAN JACKSON, an individual,
22
23 Respondent.

Case No. 2:14-cv-03154 MWF (JCGx)

**RESPONDENT'S ANSWER TO
PETITION TO CONFIRM
ARBITRATION AWARD AND
CROSS-PETITION TO VACATE
ARBITRATION AWARD**

22 DESEAN JACKSON, an individual,
23
24 Cross-Petitioner,
25 vs.
26 DREW ROSENHAUS, an individual,
27 JASON ROSENHAUS, an individual,
28 ROSENHAUS SPORTS
REPRESENTATION, INC., a Florida
Corporation,

Cross-Respondents.

1 Pursuant to the Federal Arbitration Act, Respondent/Cross-Petitioner
2 DESEAN JACKSON (“Jackson”), by his undersigned counsel, hereby (a) opposes
3 Petitioner Drew Rosenhaus’ Petition to Confirm the April 10, 2014 Arbitration
4 Award Rendered by Roger P. Kaplan in favor of Rosenhaus and Cross-Respondent
5 Jason Rosenhaus and against Jackson (“Arbitration Award”), and (b) cross-petitions
6 the Court for an Order vacating the Arbitration Award.
7

8 **Nature of the Proceeding**

9 This proceeding arises out of an arbitration (the “Arbitration”) conducted
10 before Arbitrator Roger Kaplan (“Arbitrator Kaplan”) under the auspices of the
11 National Football League Players Association (“NFLPA”). In the Arbitration,
12 sports agent Drew Rosenhaus (“Rosenhaus”) and his brother, Jason Rosenhaus,
13 asserted claims against DeSean Jackson, a professional football player, for fees
14 allegedly earned by Rosenhaus under a sports representation contract (known as an
15 “SRA”) pursuant to which Rosenhaus negotiated a 2012 contract with the
16 Philadelphia Eagles on Jackson’s behalf. The Rosenhauses also sought repayment
17 of amounts advanced to Jackson by their sports management agency, Rosenhaus
18 Sports Representation, Inc. (“RSR”), pursuant to three side agreements.

19 Jackson defended the Arbitration primarily on the ground that Rosenhaus and
20 RSR had forfeited the right to the payments being sought by violating NFLPA
21 regulations prohibiting inducements intended to lure players into signing contracts
22 with agents. Specifically, in exchange for Jackson’s agreement to retain Rosenhaus
23 as his agent, Rosenhaus agreed to enter into a confidential side agreement with
24 Jackson. The side agreement provided that Rosenhaus would give Jackson
25 \$175,000 and a \$200,000 loan. It further provided that, if Jackson allowed
26 Rosenhaus to negotiate Jackson’s next NFL contract, Jackson would have no
27 obligation to either repay the \$175,000 or pay any interest on the \$200,000 loan.
28

1
2 By offering this side agreement, Rosenhaus violated an NFLPA prohibition
3 against “[p]roviding or offering money or any other thing of value to any player or
4 prospective player to induce or encourage that player to utilize his/her services.” As
5 Rosenhaus himself has publicly admitted, this prohibition is unqualified. The
6 regulations contain no exception for *de minimis* inducements or inducements that
7 one might characterize as “proper” or “customary.” An NFL agent found to have
8 violated this regulation forfeits, among other things, the right to fees the player
9 would otherwise owe the agent and must disgorge any fees already paid by the
10 player.

11 During the arbitration hearing before Arbitrator Kaplan, Jackson presented
12 uncontradicted evidence that Jackson’s agreement to sign the Rosenhaus SRA and
13 Rosenhaus’ agreement to enter into the side agreement were inextricably
14 intertwined and that each represented consideration for the other. He also presented
15 uncontested evidence that Rosenhaus improperly withheld the side agreement from
16 the NFLPA, apparently to avoid detection of his violation of the anti-inducement
17 rule.

18 Nevertheless, Arbitrator Kaplan rejected Jackson’s defense, finding that the
19 means through which Rosenhaus compensated Jackson for using his services did
20 not, in Arbitrator Kaplan’s opinion, amount to an “*improper*” inducement.
21 Arbitrator Kaplan thus effectively modified the NFLPA’s prohibition against *all*
22 inducements by engrafting on it an exception for inducements that he regards as
23 “proper.”

24 In doing so, Arbitrator Kaplan exceeded his authority as an arbitrator. The
25 Regulations governing NFLPA arbitrations explicitly state that an NFLPA
26 arbitrator lacks “the jurisdiction or authority to add to, subtract from, or alter in any
27 way the provisions of these Regulations or any other applicable document.” For
28 that reason, Jackson respectfully requests that the Court vacate the Arbitration

1 Award pursuant to Section 10(a)(4) of the Federal Arbitration Act, 9 U.S.C. §
2 10(a)(4), which empowers this Court to vacate an arbitration award that rests on an
3 exercise of power the arbitrator did not have.
4

5 The Arbitration Award should also be vacated pursuant to Section 10(a)(2) of
6 the Federal Arbitration Act, which empowers courts to vacate an arbitral award
7 “where there was evident partiality or corruption in the arbitrators, or either of
8 them.” 9 U.S.C. § 10(a)(2). For the reasons addressed below, Jackson was denied
9 a fair and impartial adjudication of his rights. There is abundant credible evidence
10 that Rosenhaus exercises extraordinary and undue influence over the key NFLPA
11 decision-makers. The evidence includes the widely publicized and well
12 substantiated fact that Rosenhaus, although frequently the target of credible
13 allegations of blatant violations of NFLPA regulations, has never been sanctioned
14 or even seriously investigated by the NFLPA.

15 The sway Rosenhaus holds over the NFLPA necessarily taints the fairness of
16 Jackson’s having to arbitrate his dispute with Rosenhaus under the NFLPA’s
17 auspices. This problem is compounded by the fact that Arbitrator Kaplan, although
18 ostensibly serving as an “outside impartial Arbitrator,” is not truly independent of
19 the NFLPA. He has served as the NFLPA’s exclusive arbitrator for two decades.
20 Throughout that period, he has depended on the NFLPA for a substantial part of his
21 income. Indeed, these circumstances, among others, triggered a congressional
22 inquiry into the adequacy, propriety and fundamental fairness (or lack thereof) of
23 the NFLPA arbitration process. Moreover, as shown below, the reasoning that led
24 Arbitrator Kaplan to the key findings at issue, although not the central focus of the
25 motion to vacate an arbitration award, strongly corroborates the other evidence that
26 Jackson was denied basic due process.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Response To Petition To Confirm Arbitration Award

Jackson answers the Petition, in accordance with the numbered paragraphs thereof. Jackson denies all allegations in the Petition not specifically admitted herein and further responds as follows:

1. Admitted.
2. Admitted.
3. Admitted that this is an action between citizens of different states and that the amount in controversy exceeds \$75,000, exclusive of costs, interest and attorney’s fees. Further admitted that this Court has subject matter over this proceeding pursuant to 28 U.S.C. § 1332. The remaining allegations of this paragraph are conclusions of law to which no response is required and they are therefore deemed denied.
4. Admitted that the Arbitration Award is based in part on certain loan agreements. Those agreements are documents which speak for themselves; accordingly, Petitioner’s characterizations thereof are denied. The remaining allegations of this paragraph are conclusions of law to which no response is required and they are therefore deemed denied.
5. Jackson incorporates herein his answers to Paragraphs 1 through 4 of the Petition.
6. Admitted that Rosenhaus filed a grievance against Jackson asserting a claim for monies allegedly owed to Rosenhaus. The grievance is a document which speaks for itself; accordingly, Petitioner’s characterizations thereof are denied. The remaining allegations of this paragraph are conclusions of law to which no response is required and they are therefore deemed denied.
7. Admitted that the grievance was filed with the NFLPA pursuant to the NFLPA Regulations Governing Contract Advisors. The remaining allegations of

1 this paragraph are conclusions of law to which no response is required and they are
2 therefore deemed denied.

3 8. Admitted.

4 9. Admitted.

5 10. Admitted.

6 11. Admitted, except that the Arbitration Award is a document which
7 speaks for itself; accordingly, Petitioner's characterizations thereof are denied.

8 12. The Regulations are set forth in a document which speaks for itself;
9 accordingly, Petitioner's characterizations thereof are denied. The remaining
10 allegations of this paragraph are conclusions of law to which no response is
11 required and they are therefore deemed denied.

12 13. Denied that Jackson is required to pay Rosenhaus the amount alleged
13 in this paragraph. Otherwise admitted.

14 14. Admitted that disclosure of the Arbitration Award and pertinent parts
15 of the arbitration record is necessary in order to allow adjudication of the issues
16 raised in this proceeding. Otherwise denied.

17 15. The allegations of this paragraph are conclusions of law to which no
18 response is required and they are therefore deemed denied.

19 16. Denied.

20 17. Denied. To the contrary, the Arbitration Award should be vacated for
21 the reasons set forth in Jackson's Cross-Petition to Vacate, the allegations of which
22 are incorporated herein by reference.

23 18. Denied.

24 19. To the extent that the allegations of this paragraph are conclusions of
25 law to which no response is required, they are deemed denied. The allegations of
26 this paragraph are otherwise denied.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Cross-Petitioner DeSean Jackson respectfully requests that the Court enter an Order:

- a) denying the Petition to Confirm;
- b) vacating the Arbitration Award; and
- c) awarding such other relief as the Court deems just and proper

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CROSS-PETITION TO VACATE ARBITRATION AWARD

As grounds for his Cross-Petition to Vacate Arbitration Award, Jackson alleges as follows:

I. THE PARTIES

1. Respondent/Cross-Petitioner DeSean Jackson is an adult individual who resides in Los Angeles, California.

2. Petitioner/Cross-Respondent Drew Rosenhaus (“Rosenhaus”) is an adult individual who resides in Miami, Florida.

3. Cross-Respondent Jason Rosenhaus is an adult individual who resides in Miami, Florida.

4. Cross-Respondent Rosenhaus Sports Representation, Inc. (“RSR”) is a Florida corporation with a principal place of business located in Miami, Florida.

II. JURISDICTION AND VENUE

5. The Federal Arbitration Act governs this proceeding because the transaction and events giving rise to it involve “commerce among the several States” as defined in 9 U.S.C. § 1.

6. This Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship between Petitioner and Respondent/Cross-Petitioner, as well as between Respondent/Cross-Petitioner and Cross-Respondents, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

7. Venue in this District is proper at least because one of the agreements on which the Arbitration Award is predicated provides that this dispute is properly venued in this District. *See* Exhibit A to Petition to Confirm Arbitration Award.

1
2 **III. FACTUAL BACKGROUND**

3 8. Jackson is a professional football player who is currently under
4 contract with the Washington Redskins, one of thirty-two clubs that are part of the
5 National Football League (“NFL”). Jackson’s professional career began when the
6 Philadelphia Eagles drafted him in the second round of the 2008 NFL draft. He
7 played for the Eagles as a wide-receiver and return specialist for six seasons.

8 9. From November 10, 2009 through May 20, 2013, Rosenhaus was
9 Jackson’s agent and was responsible for negotiating employment and endorsement
10 contracts on Jackson’s behalf.

11 10. Rosenhaus is owner and Chairman of RSR, a sports management
12 agency located in Miami Beach, Florida. RSR holds itself out as “a leader in NFL
13 Athlete Representation and “the premier dealmaker in the NFL.”
14 <http://rosenhausports.com/services/contract-negotiation>.

15 11. Jason Rosenhaus, Drew Rosenhaus’ brother, is a Vice-Chairman of
16 RSR. Drew and Jason Rosenhaus are lawyers. Jason Rosenhaus is currently a
17 member of the Florida bar and is a certified public accountant.

18 **A. The NFLPA**

19 12. The legal relationship between sports agents and NFL players is
20 governed in part by the NFLPA, a labor union headquartered in Washington, D.C.

21 13. The NFLPA’s Executive Director is DeMaurice Smith (“Smith”).
22 Smith is the principal administrative officer of the NFLPA and is responsible for
23 managing the affairs of the NFLPA on a day-to-day basis. The President of the
24 NFLPA is Eric Winston, an offensive tackle who played most recently for the
25 Arizona Cardinals. Winston is one of Rosenhaus’ clients.

1 **B. The Rules Governing The Legal Relationship Between NFL**
2 **Players And Agents**

3 14. The NFLPA has adopted regulations (the “Regulations”) governing
4 sports agents who seek to represent NFL players in contract negotiations with NFL
5 teams (referred to in the Regulations as “Contract Advisors”).¹

6 15. The need for meaningful oversight of sports agents is well recognized,
7 especially if the agent is a lawyer. “Problems associated with sports agency in the
8 United States have resulted in sports agents earning the reputation of sleazy, money
9 hungry ‘serpents . . . poised to strike at the wealth professional athletes earn in such
10 plenty.’ Intentional abuses in representation are not the only problems plaguing the
11 athlete-agent relationship in the United States; examples of outright incompetence
12 also permeate the profession.” Darren A. Heitner, et al., *Football v. Football: A*
13 *Comparison of Agent Regulation in France’s Ligue 1 and the National Football*
14 *League*, 2 PACE INTELL. PROP. SPORTS & ENT. L.J. 1, at 2 (2012) (internal citations
15 omitted); *see also, e.g.*, Stacy B. Evans, *Sports Agents: Ethical Representatives or*
16 *Overly Aggressive Adversaries?*, 17 VILL. SPORTS & ENT. L.J. 91 (2010) (hereafter
17 “Evans”), at 133 (“Players and owners generally agree that there is a problem in the
18 player representation business. ‘Lack of competence, client stealing, and overly
19 aggressive negotiating tactics are all common....[E]veryone, including players,
20 heads of the players associations, and even many agents, universally agrees that
21 such behavior is a problem.”) (internal citations omitted).

22 16. Section 1(A) of the NFLPA Regulations prohibits any person from
23 negotiating with an NFL team on behalf of a player unless he or she is certified as a
24 Contract Advisor pursuant to the NFLPA Regulations. The Regulations also require
25

26
27 ¹ The NFLPA adopted the Regulations pursuant to its authority as the exclusive
28 collective bargaining representative of NFL players and pursuant to Section 9(a) of
the National Labor Relations Act.

1 Contract Advisors to represent players pursuant to a signed Standard
2 Representation Agreement (“SRA”) in a form approved by the NFLPA.

3
4 17. Among the most important rules governing Contract Advisors is
5 Section 3(B)(2) of the NFLPA Regulations (the “Anti-Inducement Rule”). It
6 prohibits Contract Advisors from “[p]roviding or offering money or any other thing
7 of value to any player or prospective player to induce or encourage that player to
8 utilize his/her services.”

9
10 18. Section 3(B)(2)’s prohibition against a Contract Advisor’s providing
11 anything of value to a player is unqualified. There is no exception for inducements
12 that a Contract Advisor (or anyone else) might try to characterize as “proper,”
13 commonplace, or a “customary” aspect of the sports representation business.

14
15 19. Drew Rosenhaus has acknowledged that the Anti-Inducement Rule is
16 absolute and unqualified. During a July 25, 2010 appearance on WSVN-TV, a
17 Miami television station, he described the prohibition against inducements as “a
18 very simple rule. You cannot accept anything of benefit from an agent, period. A
19 ride, money, dinner, gifts for your family — out.” He added that, if “the agent is
20 caught, and there’s evidence that shows that he gave a benefit to a player, he should
21 be suspended. In my opinion, I think he should be kicked out of the business.”
22 [http://blogs.sun-sentinel.com/sports_football_dolphins/2010/07/drew-rosenhaus-
23 speaks-out-on-dirty-business.html](http://blogs.sun-sentinel.com/sports_football_dolphins/2010/07/drew-rosenhaus-speaks-out-on-dirty-business.html)

24
25 20. In addition to prohibiting agents from offering players inducements to
26 sign an SRA, the Anti-Inducement Rule forbids agents who have already entered
27 into an SRA with a player from providing the player with “money or other things of
28 value” to induce him to continue using the agent’s services. Abuses in the form of
post-signing inducements are an important problem. Because, under the NFLPA
Regulations, players have the right to terminate SRAs at will on five days written

1 notice, an agent's motivation to pay a player for the right to represent him does not
2 diminish once an SRA has been signed.

3
4 21. A Contract Advisor who violates the Anti-Inducement Rule is subject
5 to serious penalties, including forfeiture of the right to future fees under an SRA
6 and compulsory disgorgement of any fees already received. Section 4(B)(5) of the
7 NFLPA Regulations provides that a Contract Advisor found to have violated
8 Section 3(B)(2) "shall not be entitled to a fee for services provided to a player who
9 was the subject of an improper inducement..." It further provides that a Contract
10 Advisor who has collected fees from the player before being found to have violated
11 the Anti-Inducement Rule "shall be required to reimburse the player for such fees."
12 Under Section 4(B)(5), if a Contract Advisor loans money to a player in order to
13 induce him to use the Contract Advisor's services, "the money [loaned] . . . need
14 not be repaid . . . by the player who was the subject of the improper inducement..."

15 22. In order to facilitate the NFLPA's policing and enforcement of the
16 Anti-Inducement Rule, the NFLPA Regulations require a Contract Advisor who has
17 entered into an SRA with a player to file the SRA with the NFLPA within ten days
18 of its execution, along with any other agreements that the Contract Advisor and
19 player have entered into. Regulations, at Sec. 3(A)(6). Such side agreements must
20 be filed irrespective of whether they are signed contemporaneously with the SRA or
21 at some later date. *Id.*

22 23. The filing requirement is not a purely technical one. The Regulations
23 explicitly ban a Contract Advisor from representing a player in contract
24 negotiations unless he or she has filed with the NFLPA the signed SRA "along with
25 any other contract(s) or agreement(s) between the player and the Contract Advisor."
26 *Id.*, at Secs. 1(A), 3(B)(1)(iii). If a Contract Advisor enters into a contract with a
27 player but fails to file it with the NFLPA on a timely basis, that contract is
28 unenforceable against the player. *Id.* at Sec. 4(A).

1 **C. The Rules Governing Enforcement Of Contract Advisor**
2 **Regulations**

3 24. The NFLPA Regulations contain two distinct mechanisms for
4 enforcing the rules governing Contract Advisors.

5 25. First, Section 5 of the Regulations provides for arbitration of specified
6 categories of disputes, among them disputes between an NFL player and his
7 Contract Advisor over the “meaning, interpretation or enforcement of a fee
8 agreement” and any “other activities of a Contract Advisor within the scope of
9 these Regulations.”

10 26. Second, Section 6 of the NFLPA Regulations empowers an NFLPA-
11 appointed committee known as the “Committee on Agent Regulation and
12 Discipline” (“CARD”) to initiate and prosecute disciplinary proceedings against
13 Contract Advisors suspected of violating NFLPA Regulations. Among the
14 disciplinary available measures are revocation of Contract Advisor certification,
15 fines and reprimands.

16 **D. The NFLPA’s Refusal To Enforce Its Regulations Against**
17 **Rosenhaus.**

18 27. By letter dated March 6, 2014, Jackson asked the NFLPA to
19 investigate Rosenhaus’ dealings with Jackson and, in particular, the money and
20 other benefits Rosenhaus gave Jackson in order to induce him to sign the
21 Rosenhaus SRA. The NFLPA never responded to Jackson’s letter.

22 28. The NFLPA’s failure to act on Jackson’s request is not surprising. Its
23 enforcement of the Regulations governing Contract Advisors has been widely
24 criticized as ineffective, biased and subject to undue influence by individuals with
25 close ties to the NFLPA’s leadership. The NFLPA has also ignored repeated calls
26 for investigations into Rosenhaus’ conduct in particular, even when presented with
27 compelling evidence that Rosenhaus had flouted NFLPA Regulations.

1
2 29. The NFPLA’s failure to consistently and meaningfully enforce its own
3 regulations has led commentators to call for legislation that would more effectively
4 protect professional athletes from predatory sports agents. *See, e.g.*, James
5 Masteralexis, Lisa Masteralexis and Kevin Snyder, *Enough Is Enough: The Case*
6 *for Federal Regulation of Sport Agents*, 20 JEFFREY S. MOORAD SPORTS L.J. 69
7 (2013) (hereafter “Masteralexis et al.”), at 96 (noting that, “[d]espite the NFPLA’s
8 regulations, designed to protect their players against agent misconduct, scandals
9 continue to arise every season”); Ryan Becker, *No Enforcement, No Problem. How*
10 *Inefficient Regulatory Statutes Have Demonstrated the Need for a Federal*
11 *Registration of National Football League Player Agents*, 2.2 MISS. SPORTS L. REV.
12 391 (2012) (hereafter “Becker”), at 392-94 (noting that “[Drew] Rosenhaus and
13 other NFPLA agents have allegedly defied NFPLA rules for decades because of the
14 lack of enforcement,” and calling for federal regulation of NFL player agents to
15 address in part “the inability and unwillingness of...the NFPLA to enforce the
16 current rules and regulations”).

17 30. The NFPLA’s unwillingness to enforce its own regulations to protect
18 its players – at least as to certain agents – is perhaps nowhere more evident than in
19 the case of Drew Rosenhaus.

20 31. Because Rosenhaus represents an unusually large roster of NFL
21 players, he enjoys considerable influence over those in leadership positions at the
22 union. He has, moreover, carefully cultivated his relationship with senior NFLPA
23 executives, especially its Executive Director, DeMaurice Smith, of whom
24 Rosenhaus has been very supportive. Among other things, Rosenhaus has invited
25 senior NFLPA executives to one or more elaborate Super Bowl parties hosted by
26 RSR, including Mark Levin, the Director of Salary Cap And Agent Administration.
27 Levin is responsible for overseeing Contract Advisor compliance with NFLPA
28 Regulations.

1
2 32. Smith is highly motivated to maintain Rosenhaus' support. Without it,
3 Smith's tenure as the NFLPA Executive Director could be short-lived. Smith's
4 current contract will expire in March 2015 and will not be renewed unless a
5 majority of the thirty two members of the Board of Player Representatives vote in
6 favor of renewal. Many of those players (whose votes typically align with the
7 views of their agents), are clients of Rosenhaus.

8 33. Evidence of the close bond between Smith and Rosenhaus is not hard
9 to find. For example, when a former RSR employee, Danny Martoe, asserted a
10 claim against Rosenhaus arising out of Martoe's employment with RSR, the
11 NFLPA consented to Rosenhaus' request to have Martoe's claims arbitrated under
12 the auspices of the NFLPA (and therefore before Roger Kaplan, who has served as
13 the NFLPA's exclusive arbitrator for twenty years) even though disputes between
14 sports agencies and their employees are outside the scope of the NFLPA's
15 regulations and arbitration process.

16 34. Moreover, Smith further assisted Rosenhaus in defending against
17 Martoe's claims by referring Rosenhaus to Danny Onarato, a Washington DC
18 lawyer who previously worked with Smith's colleagues in the U.S. Attorney's
19 Office and whose law firm served as counsel to the NFLPA during Smith's tenure
20 as its Executive Director. At least one unnamed agent has been reported as saying
21 that "[i]t's a major conflict of interest for the executive director of the NFLPA to be
22 referring attorneys to Rosenhaus." [http://sports.yahoo.com/blogs/not-for-](http://sports.yahoo.com/blogs/not-for-attribution/drew-rosenhaus-went-nflpa-arbitration-armed-lawyers-referred-000422605.html)
23 [attribution/drew-rosenhaus-went-nflpa-arbitration-armed-lawyers-referred-](http://sports.yahoo.com/blogs/not-for-attribution/drew-rosenhaus-went-nflpa-arbitration-armed-lawyers-referred-000422605.html)
24 [000422605.html](http://sports.yahoo.com/blogs/not-for-attribution/drew-rosenhaus-went-nflpa-arbitration-armed-lawyers-referred-000422605.html) Another has said "there is no question that it's an out-of-bounds
25 move given [Smith's] position as union president." *Id.*

26 35. Not coincidentally, Mr. Onarato's law firm also represented
27 Rosenhaus in the arbitration at issue in this case.

1
2 36. Rosenhaus' ties to and influence over the NFLPA are so substantial
3 that he evidently feels there is no risk of meaningful NFLPA scrutiny of the
4 propriety of his conduct as a Contract Advisor. Commentators routinely cite
5 Rosenhaus as one of the most brazen violators of NFPLA Regulations, breaking
6 NFPLA rules openly and with impunity. In the words of one commentator:

7 Drew Rosenhaus has been and continues to be one of the
8 most disliked agents in the [NFL]....Despite public
9 opinion, many NFL agents view Rosenhaus as an
10 unethical, corrupt rule breaker. Continuous chatter about
11 alleged violations of the [NFPLA] rules governing agents
12 surrounds Rosenhaus, but there has never been a citation
13 or even an investigation by the NFPLA into his behavior
14 as an NFL agent.

15 Becker, 2.2 MISS. SPORTS L. REV., at 392. *See also, e.g.*, Evans, 17 VILL. SPORTS
16 LAW & ENT. L.J., at 120.

17 37. At least one commentator has singled out Rosenhaus' egregious
18 misconduct – and the NFLPA's failure to address it – as evidence of the need for
19 federal legislation regulating athlete agents. *See* Becker, 2.2 MISS. SPORTS L. REV.
20 391, at 392-94.

21 38. By their nature, player association disciplinary proceedings and
22 arbitration disputes are private. It is therefore quite possible that many allegations
23 directed towards Rosenhaus have never been publicly disclosed. However, there
24 have been a number of publicly reported examples of Rosenhaus' flagrant
25 violations of NFLPA Regulations – and the NFLPA's consistent failure to address
26 them. Some, but not all, are noted below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Dez Bryant

39. In 2012, Rosenhaus was the subject of well-substantiated allegations that he violated the Anti-Inducement Rule in 2010 while pursuing Dez Bryant, then a highly touted wide receiver with the Dallas Cowboys.

40. David Wells, an advisor to Bryant, reported that Rosenhaus offered him cash and a trip to Miami as a means of inducing Bryant to engage Rosenhaus as his agent. The allegations were corroborated with text messages apparently sent from Rosenhaus’ phone, including one from Rosenhaus saying “Also will have 10K for you to give to your community center..” and another telling Wells “Dnt [sic] mean to put pressure but we want this bad ! Were ready to put u on a private jet and get this done.. Miami’s callllinnnnnggggg!!!”

41. When questioned about these allegations during a press conference, Rosenhaus said “no comment” eleven times. Despite the publicity this incident generated, the NFLPA never disciplined or, so far as Jackson is aware, even investigated Rosenhaus with respect to it.

2. Pinkow Kickback Accusations

42. In May 2013, Christopher Pinkow, the owner of South Florida luxury car dealer Icon Auto (“Icon”), asserted that Icon paid RSR employees “tens of thousands of dollars in kickbacks or services for steering players to purchase or rent vehicles from” Icon. <http://www.miaminewtimes.com/2013-05-23/news/sports-agent-drew-rosenhaus-luther-campbell/>. According to a report in the Miami New Times, “Pinkow alleged some Rosenhaus employees directed him to inflate prices on purchases and luxury rentals by NFL players. To bolster his case, Pilkow showed bank deposit slips, a cashier’s check, and an automobile transaction record that allegedly showed more than \$40,000 paid to RSR employees.” *Id.*

43. The facts alleged by Pinkow, if true, would constitute a clear violation of Sections 3(B)(8) and (14) of the NFLPA Regulations. The Miami New Times

1 noted that this was not “the first time Rosenhaus has been accused of cheating
2 clients for personal gain.” It also observed that “[f]or too long, the league has
3 looked the other way when it comes to Rosenhaus’ shady business tactics and
4 questionable representation of his clients....Rosenhaus relentlessly skirts the rules,
5 but no one calls him out....If the NFLPA won’t investigate him, law enforcement
6 should.” *Id.* Despite this clear call to action, it does not appear that the NFPLA has
7 taken any steps to investigate Pinkow’s allegations.
8

9 **3. Jeff Rubin Investigation**

10 44. In 2012, an investigative journalist reported on allegations that
11 Rosenhaus had breached his fiduciary duty to his client’s by persuading them to
12 retain financial adviser Jeff Rubin, who led them to lose millions through their
13 investment in a failed bingo casino in Alabama. *See*
14 [http://sports.yahoo.com/news/nfl--prominent-nfl-agent-drew-rosenhaus-scrutinized-](http://sports.yahoo.com/news/nfl--prominent-nfl-agent-drew-rosenhaus-scrutinized-for-relationship-with-former-financial-adviser-.html)
15 [for-relationship-with-former-financial-adviser-.html](http://sports.yahoo.com/news/nfl--prominent-nfl-agent-drew-rosenhaus-scrutinized-for-relationship-with-former-financial-adviser-.html).

16 45. According to the report, Rosenhaus maintained an “extensive
17 recruiting and referral relationship” with Rubin. *Id.* Indeed, Rosenhaus’ “client
18 base grew to more than 100 players during the seven years Rosenhaus and Rubin
19 were associated.” *Id.* At various times during their relationship, Rosenhaus and
20 Rubin “shared at least 26 clients.” *Id.* Several players described joint presentations
21 given by Rosenhaus and Rubin, as well as Rosenhaus’ enthusiastic endorsement of
22 Rubin as a financial advisor. *See id.*

23 46. According to Green, who retained Rubin as his financial advisor on
24 Rosenhaus’ recommendation, Rosenhaus knew at least as early as 2003 that Rubin
25 was mismanaging client funds. *Id.* Green hired Danny Martoe, then a wealth
26 manager at UBS, to help determine why funds were missing from his account with
27 Rubin. *Id.* They ultimately discovered that two of Green’s paychecks had been
28 diverted into the accounts of two other Rubin clients. *Id.*

1
2 47. Martoe attests that Green considered firing Rosenhaus, who had
3 steered him to Rubin, as his agent, and that Martoe specifically discussed Rubin's
4 mishandling of Green's funds with Rosenhaus on several occasions. *Id.* In the
5 course of those discussions, Rosenhaus invited Martoe to join RSR, and Martoe
6 accepted. *Id.* According to Martoe, once hired by Rosenhaus, he was instructed to
7 make peace with Rubin given Rubin's importance to RSR. *Id.*

8 48. In the words of Rosenhaus' own counsel of record in this matter:

9 A sports agent has a duty to discover and disclose to his
10 clients material information that is reasonably obtainable,
11 unless the information is so clearly obvious and apparent
12 to the athlete that, as a matter of law, the sports agent
13 would not be negligent in failing to disclose it. ...

14 Athletes are not always aware of all events concerning
15 their affairs outside of the field of play, and rely on their
16 agents to provide assistance when necessary, including
17 the disclosure of all information holding importance for
18 the athletes.

19 *Id.* (quoting Darren Heitner, *Duties of Sports Agents to Athletes and Statutory*
20 *Regulation Thereof*, 7 DARTMOUTH L.J. 246, at 247-48 (2009)).

21 49. Nevertheless, Rosenhaus reportedly continued to partner with Rubin
22 and encourage his player clients to invest with Rubin, despite his apparent direct
23 knowledge that Rubin had mishandled Barrett Green's funds (among other red flags
24 readily discoverable in publicly available documents). *Id.* In the end, at least
25 eighteen of Rosenhaus' player clients invested through Rubin in the doomed
26 Alabama business casino. *Id.*

27 50. The consequences of Rubin's misconduct were severe for everyone
28 involved – except Rosenhaus. The Financial Industry Regulatory Authority

1 (“FINRA”) investigated Rubin and determined that he had made “unsuitable
2 investment recommendations” in advising his clients, including the eighteen
3 Rosenhaus player clients, to invest in the “illegal” bingo casino. *See*
4 [http://sports.yahoo.com/news/nfl--document--terrell-owens--former-financial-](http://sports.yahoo.com/news/nfl--document--terrell-owens--former-financial-adviser-made-unsuitable-investment-recommendations-234429939.html)
5 [adviser-made-unsuitable-investment-recommendations-234429939.html](http://sports.yahoo.com/news/nfl--document--terrell-owens--former-financial-adviser-made-unsuitable-investment-recommendations-234429939.html). Rubin
6 accepted that finding and has been “barred for life from working in a FINRA
7 member firm in any capacity.” *Id.*

8
9 51. Rosenhaus’ player clients who invested with Rubin lost at least \$25
10 million when the bingo casino filed for bankruptcy. *Id.* As for Rosenhaus,
11 although the NFLPA was reported to have opened an investigation, nothing appears
12 to have come from it. *See id.* (noting that “[t]he NFL Players Association had been
13 investigating the relationship between Rubin and Rosenhaus at one point, but it is
14 unclear if that investigation is ongoing”); *See also*
15 [http://www.nationalfootballpost.com/Attorney-David-Cornwell-rips-Rosenhaus-](http://www.nationalfootballpost.com/Attorney-David-Cornwell-rips-Rosenhaus-NFLPA.html)
16 [NFLPA.html](http://www.nationalfootballpost.com/Attorney-David-Cornwell-rips-Rosenhaus-NFLPA.html) (noting that sources involved in the Rubin matter “have said that
17 union has never talked to them”).

18 **4. University of North Carolina Scandal**

19 52. In 2010, the University of North Carolina (“UNC”) was confronted
20 with allegations that at least three of its football players, including Greg Little, had
21 accepted benefits, “including hotel rooms, meals and access to a pool party,” from
22 athlete agents. *See, e.g.,* [http://www.newsobserver.com/2010/10/22/755808/unc-](http://www.newsobserver.com/2010/10/22/755808/unc-documents-identify-three-who.html)
23 [documents-identify-three-who.html](http://www.newsobserver.com/2010/10/22/755808/unc-documents-identify-three-who.html). The University initially refused to identify the
24 agents who had, in violation of NCAA regulations, offered illicit benefits to its
25 athlete players (inducements that resulted in several UNC players losing their
26 collegiate eligibility, among other sanctions). Eventually, however, under
27 mounting pressure, UNC revealed that Michael Katz, the director of marketing and
28 client services for Rosenhaus/RSR, was one of the three accused agents. *Id.*

1
2 53. The NFLPA inexplicably abandoned its investigation of Rosenhaus in
3 connection with the UNC scandal. The CARD Investigator who had initiated the
4 investigation subsequently resigned from the NFLPA.

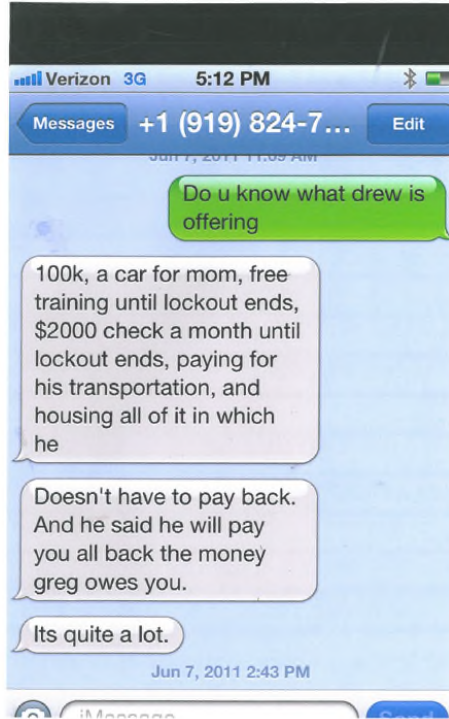
5 **5. Greg Little**

6 54. One of the players involved in the UNC affair, Greg Little, attested in
7 the UNC investigation that an RSR employee, Michael Katz, had given him a
8 wristband to enter the pool area of the Fontainebleau Hotel.

9 55. In his January 18, 2011 response to CARD's inquiry regarding the
10 matter, Rosenhaus scathingly accused Little of having made "false," "dishonest"
11 and "inconsistent" statements regarding his interactions with Katz.

12 56. Just a few months later, however, Rosenhaus appears to have offered
13 Little considerable inducements to sign with RSR – including one hundred
14 thousand dollars, a car for Little's mother, and free training plus \$2000 per month
15 during the NFL lockout, none of which would have to be repaid. A screenshot of
16 what has been represented to be a June 2011 text exchange between Little's long-
17 time friend, Michael Johnson (whom Rosenhaus is believed to have hired in part to
18 help sign Little) and the agent that Little eventually fired to sign with Rosenhaus,
19 confirming the inducements, is set out below:
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



6. Danny Martoe

57. In 2012, Danny Martoe commenced an NFLPA arbitration accusing Drew and Jason Rosenhaus of fraud and breach of contract. At the outset, the matter involved a dispute as to whether RSR had paid Martoe the full commissions to which he claimed to be entitled. *See, e.g.*, <http://sports.yahoo.com/news/nfl--arbitration-filing--rosenhaus-sports-vp-seeks--1m-from-firm.html>.

58. The dispute grew far more troubling, however, when Martoe’s counsel accused the Rosenhaus brothers and Adam Swickle, the Rosenhaus brothers’ attorney in the pending arbitration (and their brother in law), of offering inducements to third parties in hopes of getting them to provide false testimony against Martoe in the case.

59. In August 2012, it was reported that Martoe’s attorney, David Cornwell, had petitioned the NFPLA for immediate assistance to prevent the Rosenhaus brothers from improperly influencing the Martoe arbitration proceedings. Cornwell was reported to have specifically accused Swickle of having

1 offered “to compromise RSR’s claims against Chris Pinkow and his car leasing
2 company in exchange for Mr. Pinkow making false accusations that Danny had
3 accepted kickbacks from Mr. Pinkow.” [https://sports.yahoo.com/news/nfl--agent-](https://sports.yahoo.com/news/nfl--agent-drew-rosenhaus-accused-of-breach-of-contract--fraud-by-employee-in-arbitration-filing.html)
4 [drew-rosenhaus-accused-of-breach-of-contract--fraud-by-employee-in-arbitration-](https://sports.yahoo.com/news/nfl--agent-drew-rosenhaus-accused-of-breach-of-contract--fraud-by-employee-in-arbitration-filing.html)
5 [filing.html](https://sports.yahoo.com/news/nfl--agent-drew-rosenhaus-accused-of-breach-of-contract--fraud-by-employee-in-arbitration-filing.html).

6 60. Despite Cornwell’s direct plea for the NFPLA’s support in addressing
7 what, if true, would be suborning perjury, there is no record of the NFPLA having
8 even acknowledged, much less responded to, Cornwell’s submission.

9
10 **E. The NFPLA Arbitral Process Is Inadequate And Unfair To**
11 **Players In Jackson’s Position**

12 61. Although the NFLPA’s arbitration mechanism ostensibly is intended
13 to provide NFL players with an impartial forum for adjudicating disputes with their
14 agents, it does not. It is instead encumbered by political, economic and other undue
15 influences that deny players like Jackson a fair and unbiased adjudication of their
16 rights.

17 62. Section 5(D) of the Regulations requires the NFLPA to “select a
18 skilled and experienced person to serve as the outside impartial Arbitrator for all
19 cases arising” under the Regulations. In practice, that provision gives the NFLPA
20 essentially unfettered discretion to appoint anyone it deems qualified to arbitrate
21 disputes within the scope of the Regulations. Unlike many private and voluntary
22 arbitral regimes, parties to NFLPA arbitrations have no say in the selection of the
23 “impartial” arbitrator who decides their rights.

24 63. For the past twenty years, the NFLPA has appointed just one person to
25 serve as arbitrator in virtually all of its proceedings – Roger Kaplan. Having served
26 as the NFLPA’s arbitrator for roughly twenty years, Arbitrator Kaplan derives
27 considerable income from the NFLPA and therefore has a strong incentive to
28 ensure that his decisions are consistent with what he perceives to be the desires of

1 the NFLPA. In addition, the duration and exclusivity of Arbitrator Kaplan's ties to
2 the NFLPA raise legitimate doubts about his ability to make decisions untainted by
3 the perspectives and agenda of the NFLPA's leadership.

4
5 64. As he has with the NFLPA's senior executives, Rosenhaus has sought
6 to curry favor with Arbitrator Kaplan. In addition to inviting Kaplan to lavish
7 parties, Rosenhaus has arranged to have Kaplan arbitrate other disputes to which
8 Rosenhaus is a party – including some that are not governed by the NFPLA
9 Regulations.

10 65. Players (including, Jackson and Terrell Owens) have asked Kaplan to
11 recuse himself from hearing their disputes (specifically including their disputes
12 with Rosenhaus). Kaplan, with the NFLPA's support, has refused. *See, e.g.*,
13 [http://sports.yahoo.com/blogs/not-for-attribution/desean-jackson-terrell-owens-](http://sports.yahoo.com/blogs/not-for-attribution/desean-jackson-terrell-owens-nflpa-arbitration-procedures-160408996.html)
14 [nflpa-arbitration-procedures-160408996.html](http://sports.yahoo.com/blogs/not-for-attribution/desean-jackson-terrell-owens-nflpa-arbitration-procedures-160408996.html) (quoting Owens' counsel as saying
15 that Kaplan "is essentially on Rosenhaus' payroll at this point").

16 66. Questions about Kaplan's independence have troubled even the United
17 States Congress, which opened an investigation into that issue in 2006. *See*
18 http://commdocs.house.gov/committees/judiciary/hju31311.000/hju31311_of.htm
19 (Report of December 7, 2006 Hearing of the U.S. House of Representatives
20 Committee on the Judiciary) (the "House Committee Report").

21 67. At a Congressional hearing to assess the fairness of the NFLPA's
22 arbitration process, U.S. Rep. Howard Coble observed that "a flawed process is
23 more harmful than no process at all." House Committee Report, at 10.
24 Congressman Coble further cautioned that, "if this [NFLPA arbitration] process is
25 indeed flawed it is a serious problem because it undermines all that has been done
26 to protect the rights of professional football players, which should be no different
27 than any other citizen or profession." *Id.*

1
2 68. Evidence presented at the Congressional hearing demonstrated that
3 Rep. Coble’s concerns were well-founded. It included testimony that NFLPA
4 employees offered to “help out” agents by having their disputes heard in NFLPA
5 arbitration proceedings, and that the NFLPA selectively and unfairly decided to
6 pursue some grievances and not others. *Id.* at 15-16 (testimony of Prof. Richard
7 Karcher), 29 (testimony of Larry Friedman, Esq.).

8 69. U.S. Rep. William D. Delahunt and several of his colleagues
9 questioned whether any arbitrator could remain truly impartial after serving as the
10 exclusive arbitrator for an organization for more than a decade. Rep. Delahunt
11 questioned the NFLPA’s then General Counsel, Richard Berthelsen, as follows:

12 I have a bit of a problem; you know, there is an assertion
13 by some that [Roger Kaplan] — and I know nothing about
14 him — might not fit the definition of ‘neutral arbitrator.
15 Has the NFLPA considered, as these cases come
16 individually, rotating arbitrators?

17 ...

18 I am looking at it in a systemic way, to ensure that there is
19 a random quality, if you will, to ... the process of
20 arbitration, as opposed to reliance on a single individual
21 over an extended period of time. Because clearly, after 13
22 years, you know, you can be Mother Teresa, but you are
23 going to start to develop an attitude on different issues, I
24 mean, that is just human nature. And I wonder if there is a
25 better system in terms of ensuring that the individual
26 selected is a neutral—underscore ‘‘neutral’’—arbitrator

1 and doesn't have a certain preordained view of
2 individuals ...because that does happen.
3

4 House Committee Report, at 34-35.

5 70. Mr. Berthelsen's answer provides compelling evidence of Arbitrator
6 Kaplan's bias in favor of agents and against the players in deciding fee disputes.
7 Mr. Berthelsen admitted that Arbitrator Kaplan "decides disputes between players
8 and agents, usually over fees. And this is a thing that the agents think is extremely
9 good and they think it is working extremely well because in *over 80 percent of the*
10 *cases*, the arbitrator rules for the agent over the player." *Id.* (emphasis added).
11 Upon hearing that, LaVar Arrington, an NFL linebacker who also testified at the
12 hearing, sharply observed "Does that make it correct? That is the question there.
13 You are very accurate in what you are saying now. That is loyalty is what you are
14 saying; 13-year-period of time the man is serving as your arbitrator, there is a
15 loyalty there; whether he wants to acknowledge that or not, there is a loyalty. It
16 doesn't matter what his background is or not, it is loyalty." *Id.* at 36.

17 71. U.S. Rep. Sheila Jackson Lee expressed grave concern about the
18 apparent "hand in glove" relationship between the NFL and the NFPLA, as
19 reflected in the flawed arbitration process that failed to offer players any
20 meaningful protection or means for redress, and described the matter as a "situation
21 that begs for legislative relief." *Id.* at 45-47.

22 72. In closing the hearing, Rep. Lee and several of her colleagues
23 admonished Mr. Berthelsen to communicate to the NFPLA their concerns about the
24 apparent unfairness of the NFPLA arbitration process and to encourage the NFLPA
25 to remedy the problem so as to avoid further Congressional scrutiny. *Id.* at 61-63.
26 Rather than avail itself of that opportunity, the NFLPA has continued to refer all of
27 its arbitration matters to Arbitrator Kaplan.

1 **F. The Events Leading To Jackson’s Execution Of The Rosenhaus**
2 **SRA**

3 73. Jackson signed his first professional contract with the Eagles on July
4 20, 2008. It was to remain in effect through the end of the 2011 NFL season.
5 Jackson was represented in the negotiations leading to the contract by DeBartolo
6 Sports and Entertainment, LLC (“DeBartolo”).

7 74. In his first year with the Eagles, Jackson’s performance on the field far
8 exceeded even the lofty expectations for a second round draft pick. He was the first
9 NFL rookie in more than seventy years to start his career with two consecutive 100-
10 yard games. *See* [http://espn.go.com/blog/nfceast/post/_/id/387/no-stage-fright-for-](http://espn.go.com/blog/nfceast/post/_/id/387/no-stage-fright-for-nfc-east-rookies)
11 [nfc-east-rookies](http://espn.go.com/blog/nfceast/post/_/id/387/no-stage-fright-for-nfc-east-rookies). Jackson also set a new Eagles rookie record for receiving yards
12 (912) and set a team record for receptions (62). *See*
13 http://en.wikipedia.org/wiki/DeSean_Jackson.

14 75. Jackson had his first playoff appearance that same year and again
15 made his mark, with a 34-yard catch and 62-yard punt return for the Eagles against
16 the Minnesota Vikings, both of which put the Eagles in scoring position and helped
17 secure a team victory. *See* http://en.wikipedia.org/wiki/DeSean_Jackson.

18 76. ESPN ranked Jackson the 6th top rated rookie in the NFL for 2008,
19 and the highest ranked rookie in the NFC East, describing him as “an explosive
20 player who finally gives the Eagles’ perimeter a third-level dimension.”
21 <http://sports.espn.go.com/nfl/news/story?id=3715267>.

22 77. Jackson continued to excel in his second season with the Eagles. In a
23 game against the New York Giants, Jackson scored his eighth touchdown of over
24 fifty yards in a single season, tying an NFL record. For his performance in that
25 game, Jackson was named NFC Special Teams Player of the Week. The following
26 week, in a game against the San Francisco 49ers, Jackson helped the Eagles clinch
27 a playoff berth with 140 receiving yards, which put him over the 1,000 yard mark
28 for the season. Jackson ended his second NFL season as the Eagles’ leading

1 receiver with 1,167 yards, and was selected for the *Sporting News*' All-Pro team as
2 a punt returner for the 2009 season, having led the league in punt returns with an
3 average of 15.2 yards per return. See http://en.wikipedia.org/wiki/DeSean_Jackson.

4
5 78. In 2010, Jackson was selected for the Pro Bowl as both a wide receiver
6 and a return specialist. He was the first player in NFL history to be selected at two
7 different positions in the same year. *Id.* In all, Jackson has been selected to play in
8 the Pro Bowl three times. *Id.*

9
10 79. Because Jackson's performance and value as a player during his first
11 two years with the Eagles greatly exceeded expectations, and because the
12 compensation Jackson was earning under his initial four-year contract with Eagles
13 was far below what other players of the same caliber and impact were receiving,
14 Jackson's friends and advisors encouraged him during the 2009 season to pursue
15 renegotiation of his contract.

16
17 80. Jackson, however, had doubts about whether the sports agency then
18 representing him, DeBartolo, could persuade the Eagles to renegotiate. He decided
19 his chances of success would be enhanced if he were to hire a new agent with a
20 reputation as an aggressive negotiator.

21
22 81. To that end, Jackson enlisted the assistance of Michael Ladge
23 ("Ladge") in his search for a new agent. Ladge is a Senior Vice President with a
24 financial services firm and is registered with the NFLPA as a Certified Financial
25 Advisor. Jackson and Ladge had preliminary communications with several agents,
26 including Rosenhaus.

27
28 82. Jackson's first meeting with Rosenhaus took place at Jackson's home
in New Jersey. Rosenhaus assured Jackson during that meeting that Rosenhaus had
close ties to Eagles management and that, if Jackson were to hire Rosenhaus,
Rosenhaus would be able to persuade the Eagles to renegotiate Jackson's contract
before or during the 2010 NFL season – two years before the expiration of

1 Jackson's then-current contract. Rosenhaus told Jackson during the meeting that he
2 would do whatever it took to get Jackson to sign an SRA with Rosenhaus.

3 Rosenhaus also said that he would take care of Jackson's family members as well.
4

5 83. Impressed by Rosenhaus' assurances, Jackson asked Ladge to pursue
6 the possibility of hiring Rosenhaus as Jackson's agent. Ladge thereafter engaged in
7 extensive discussions with Drew and Jason Rosenhaus in an attempt to reach an
8 agreement that would be sufficiently attractive to Jackson to justify replacing
9 DeBartolo with Rosenhaus.

10 84. In the course of those discussions, Ladge pointed out that signing a
11 player with Jackson's prominence and promise would have considerable value to
12 Rosenhaus and RSR (even taking into account the large roster of NFL players
13 already under contract with them). Ladge said that Jackson would have to be
14 compensated in some way for the value he would bring to RSR. Rosenhaus
15 responded positively, making clear to Ladge that he was willing to pay Jackson a
16 substantial amount to land him as a client.

17 85. Ultimately, Rosenhaus agreed to offer Jackson a compensation
18 package that included two primary components. The first was a payment of
19 \$175,000 to be disbursed as follows: \$50,000 in cash and \$90,000 via check, both
20 upon signing Jackson's signing of an SRA with Rosenhaus, with the balance paid
21 out over a six-month period. The second component was a \$200,000 interest-free
22 loan.

23 86. Rosenhaus' offer, however, was subject to conditions in addition to
24 Jackson's agreement to hire Rosenhaus. The most important condition was that
25 Jackson allow Rosenhaus to negotiate Jackson's next NFL contract; if Jackson
26 terminated his SRA with Rosenhaus before a new contract was in place, Jackson
27 would be required to return the \$175,000 and pay interest on the \$200,000 loan.
28

1
2 87. In addition, according to Rosenhaus, Jackson would be required to
3 sign an Agreement prepared by RSR (the “2009 Agreement”) that documented the
4 \$175,000 payment, the \$200,000 interest-free loan and the condition that Jackson
5 return the \$175,000 and pay interest on the loan unless Rosenhaus, as Jackson’s
6 Contract Advisor, negotiated Jackson’s next NFL contract.

7 88. Consistent with the fact that Jackson could not receive the agreed-upon
8 compensation unless he hired Rosenhaus, the 2009 Agreement contained a recital
9 stating that, at the time the parties executed the 2009 Agreement, Jackson had
10 already hired Rosenhaus by entering into a “Standard Representation Agreement”
11 with him.

12 89. Although Rosenhaus included in the 2009 Agreement a boilerplate
13 (and false) recital that the Standard Representation Agreement “was not
14 conditioned upon this or any other agreement,” it was clear to all involved that
15 Rosenhaus’ agreement to pay Jackson \$175,000 and give him an interest-free loan
16 (via the 2009 Agreement) was conditioned on Jackson’s agreement to hire
17 Rosenhaus as his agent.

18 90. The 2009 Agreement stated that Jackson was required to keep its terms
19 confidential.

20 91. Rosenhaus’ promise to give Jackson \$175,000 and a \$200,000 interest-
21 free loan, together with Rosenhaus’ assurances that he could achieve Jackson’s goal
22 of renegotiating his contract with the Eagles in the near term, persuaded Jackson to
23 terminate his relationship with DeBartolo and hire Rosenhaus.

24 92. Jackson terminated his SRA with DeBartolo on November 4, 2009.
25 Because the NFLPA prohibits agents from contracting with players already
26 represented by other agents until at least five days after the previous agent has been
27 terminated, Rosenhaus was required to wait until November 10, 2009 before
28 entering into an SRA with Jackson.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

93. On the evening of November 9, 2009, Rosenhaus arrived at Jackson’s home in New Jersey with the execution versions of the SRA and 2009 Agreement. He also brought \$50,000 in cash in a Louis Vuitton travel bag and a check for \$90,000.

94. At approximately 11:15 PM that night, Jackson, accompanied by Ladge and two other companions, left for New York City. Rosenhaus followed them in another car.

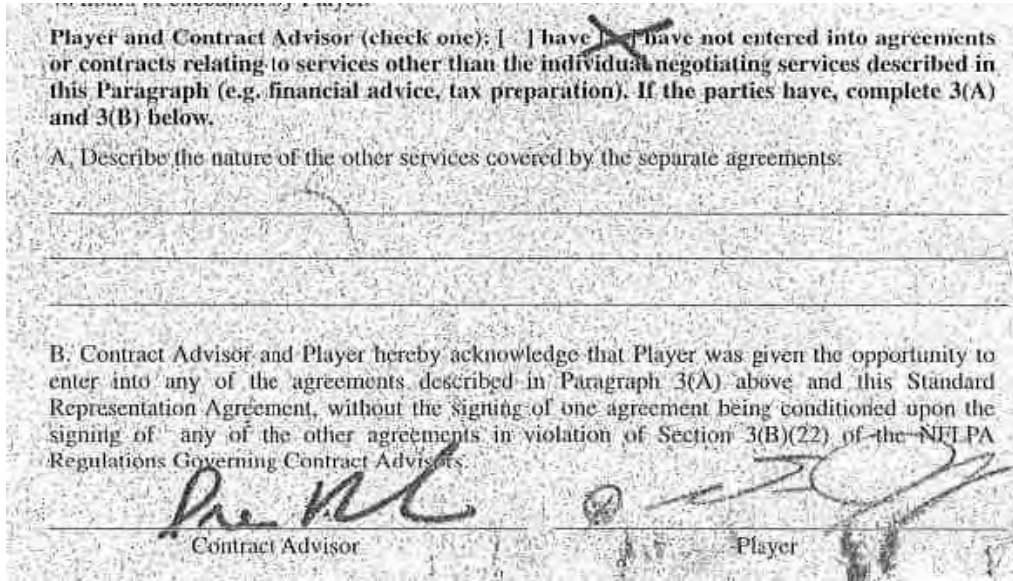
95. Shortly before midnight and while Jackson was still en route to New York City, Jackson received a phone call from Rosenhaus asking him to pull off the road so that Jackson could sign the SRA and the 2009 Agreement and get his money.

96. According to Rosenhaus, Jackson signed both agreements a few seconds after midnight and Rosenhaus then handed Jackson the Louis Vuitton travel bag containing \$50,000 in cash, representing the first installment of the agreed \$175,000 payment.

97. The parties to the 2009 Agreement were Drew Rosenhaus and RSR as lenders and Jackson as borrower.

98. The SRA that Jackson signed was on a pre-printed form approved by the NFLPA, which was filled out by Drew or Jason Rosenhaus. That form requires the Contract Advisor to identify in Section 3 of the form any “agreements or contracts relating to services other than the individual negotiating services” to be performed pursuant to the SRA. Nevertheless, Rosenhaus did not disclose in the SRA the existence of the 2009 Agreement as required. Instead, he represented that no such agreements existed, as shown in the following except of the SRA:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



99. Rosenhaus was required by the NFLPA Regulations to file with the NFLPA both the SRA and the 2009 Agreement within ten days after their execution. He did not comply with that requirement. Instead, only the SRA – which contained the false representation that the SRA was the only agreement between Jackson and Rosenhaus – was timely filed with the NFLPA. Rosenhaus withheld the 2009 Agreement for the obvious purpose of concealing that he had violated the Anti-Inducement Rule by offering and executing the 2009 Agreement.

G. Rosenhaus’ Inducements To Prevent Jackson from Terminating the SRA

100. Despite Rosenhaus’ pre-signing optimism and assurances that he would secure a new Eagles contract for Jackson during 2010, he was unable to engage the Eagles in productive negotiations. As time passed, Rosenhaus’ inability to make any meaningful progress towards a new contract placed considerable strain on the relationship between Rosenhaus and Jackson.

101. In a high risk gamble that Rosenhaus hoped would force Eagles management to capitulate to Rosenhaus’ demands, he urged Jackson not to report to Eagles training camp in the summer of 2011, shortly before the start of the 2011

1 NFL season. This strategy backfired badly. The Eagles did not capitulate and
2 Jackson, faced with the prospect of continuing a costly holdout that would have
3 resulted in a loss of a year of service towards free agency, had no choice but to
4 rejoin the team without receiving anything in return. In the end, the holdout served
5 only to embarrass Jackson, undermine his credibility and diminish his negotiating
6 leverage with Eagles' management. The 2011 holdout debacle angered Jackson
7 and greatly exacerbated the tensions in his relationship with Rosenhaus.
8

9 102. Throughout this period, Jackson came close to terminating his SRA
10 with Rosenhaus on numerous occasions and communicated that fact to Rosenhaus.
11 Rosenhaus knew that, to avoid being terminated before he could secure a new
12 contract for Jackson (and earn the fees that would come with it, he would have to
13 sweeten the deal he had previously made with Jackson.

14 103. Rosenhaus therefore agreed on two separate occasions to amend the
15 2009 Agreement, first in 2010 to accelerate the advances he had promised Jackson,
16 and again in 2011 to increase the amount of money Rosenhaus loaned to Jackson on
17 an interest-free basis – always subject to the same condition that Jackson agree not
18 to terminate the SRA until after Rosenhaus secured a new contract for him.

19 104. The 2009 Agreement was thus first amended and superseded by an
20 agreement dated June 14, 2010 between, Rosenhaus, RSR and Jackson (“2010
21 Agreement”). This agreement accelerated the timing of the remaining advances
22 required under the 2009 Agreement. As was true of the 2009 Agreement, the 2010
23 Agreement contained a provision requiring Jackson to keep its terms confidential.

24 105. As of October 2011, RSR had advanced Jackson the full amount
25 contemplated by the 2010 Agreement. RSR had also given Jackson an additional
26 \$122,205 over and above what Jackson was to have received under the terms of the
27 2010 Agreement.
28

1
2 106. On October 10, 2011, RSR and Jackson signed a third agreement
3 (“2011 Agreement”) which purported to supersede the 2009 and 2010 Agreements.
4 Drew Rosenhaus is not a party to the 2011 Agreement. Pursuant to the 2011
5 Agreement, Jackson agreed to repay the \$200,000 previously advanced to him
6 under the 2009 and 2010 Agreements, as well as the additional \$122,205 RSR gave
7 him outside the scope of those agreements. As with the prior agreements, however,
8 the 2011 Agreement provided that Jackson would have no obligation to repay
9 \$175,000 out of the total amount advanced to him – or any interest on the
10 remaining amounts – so long as Jackson refrained from terminating Rosenhaus
11 before Rosenhaus could negotiate a new contract for Jackson.

12 107. As a further inducement to retain Rosenhaus as his agent, Rosenhaus
13 also paid travel expenses for Jackson’s friends and family totaling \$20,883.

14 108. Rosenhaus finally succeeded in negotiating a new contract with the
15 Eagles on Jackson’s behalf in March 2012, almost two and one-half years after
16 Jackson hired him to accomplish that goal. As a result, under the terms of the 2011
17 Agreement, Jackson was relieved of any obligation to return the \$175,000 that
18 Rosenhaus had paid him to enter into the SRA, as well as the obligation to pay
19 interest on the other advances he received under the 2009, 2010 and 2011
20 Agreements.

21 109. On May 20, 2013, Jackson terminated his SRA with Rosenhaus. The
22 next day, Drew Rosenhaus commenced arbitration pursuant to the NFLPA rules by
23 filing a grievance against Jackson.

1 **H. Rosenhaus' Multiple Violations Of The NFLPA Regulations In**
 2 **Connection With His Representation Of Jackson**

3 **1. Violations of the Anti-Inducement Rule**²

4 110. As noted above, Section 3(B)(2) of the NFLPA Regulations prohibits
 5 Contract Advisors from “[p]roviding or offering money or any other thing of value
 6 to any player or prospective player to induce or encourage that player to utilize
 7 his/her services.”

8 111. The economic benefits Jackson obtained from the 2009 Agreement
 9 were substantial. Because he complied with the Agreement’s requirement that he
 10 utilize Rosenhaus’ services through execution of an NFL Player Contract, Jackson
 11 was relieved of his obligation to repay the \$175,000 and interest on the \$200,000
 12 loan once Rosenhaus ultimately succeeded in negotiating a new contract with the
 13 Eagles.

14 112. It is indisputable that Rosenhaus would not have agreed to enter into
 15 the 2009 Agreement unless Jackson in turn agreed to enter into an SRA with
 16 Rosenhaus. The 2009 Agreement cost Rosenhaus (or RSR) \$175,000 plus a
 17 substantial amount of interest he could otherwise have earned on the \$200,000
 18 loaned to Jackson. There is no evidence (nor has Rosenhaus ever argued) that, in
 19 exchange for these losses, Rosenhaus received any consideration other than
 20 Jackson’s agreement to sign the SRA and to refrain from terminating it until
 21 Rosenhaus negotiated a new contract for Jackson.

22 113. Even if Rosenhaus had offered to enter into the 2009 Agreement
 23 without requiring Jackson to sign the SRA, that offer, standing alone, would have
 24 been a clear violation of the Anti-Inducement Rule. The 2009 Agreement states *on*
 25

26 ² Drew and Jason Rosenhaus have been certified NFLPA Contract Advisors since
 27 1988 and 1993, respectively. They are well familiar with the NFLPA’s Regulations
 28 Governing The Conduct Of Contract Advisors, their obligations to the NFLPA and
 their obligations to the players they represent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

its face that the quid pro quo for Rosenhaus' forgiveness of Jackson's obligation to repay the \$175,000 and pay interest on the \$200,000 loan is Jackson's agreement to allow Rosenhaus to negotiate a new player contract for Jackson. At the time Drew and Jason Rosenhaus confirmed to Ladge that they were willing to enter into the 2009 Agreement, Jackson was still under contract with DeBartolo. Because the NFLPA Regulations prohibit anyone from negotiating a player contract other than pursuant to a signed SRA, the only way Jackson could avoid having to repay the \$175,000 and pay interest on the loan was to fire DeBartolo and enter into an SRA with Rosenhaus.

114. The conditions imposed by the 2009 Agreement induced Jackson not just to sign an SRA with Rosenhaus, but also to continue using Rosenhaus' services for as long as necessary to enable Rosenhaus to negotiate a new contract for Jackson (which, as things turned out, was almost two and one-half years). Players have the right to terminate SRAs at will and at any time on five days' written notice. The terms of the 2009 Agreement necessarily induced Jackson to forgo that right by continuing to using Rosenhaus' services longer than Jackson would have preferred in order to keep the \$175,000 and avoid paying interest on the loan.

115. Rosenhaus admitted in the Arbitration that the terms of the 2009 Agreement were intended to induce Jackson to continue using Rosenhaus' services after he signed the SRA. His Post-Hearing Brief described the compensation Jackson received under the 2009 Agreement as "*incentives to remain* an RSR client after the SRA was signed." Claimants' Post Hearing Brief, at 28. (emphasis in original).

116. As noted above, the Anti-Inducement Rule does not merely prohibit agents from offering a player inducements to *begin* using the agent's services by signing an SRA with the agent. By its terms, it equally forbids providing players with money or other things of value in order to induce them to *continue* using the

1 agent's services. *See* Regulation 3(B)(2) (barring agents from “[p]roviding or
 2 offering money or any other thing of value to any player or prospective player *to*
 3 *induce or encourage that player to utilize his/her services*” (emphasis added).
 4 Consequently, Rosenhaus' admission that the \$175,000 conditional payment and
 5 the \$200,000 interest-free loan were “incentives to remain an RSR client after the
 6 SRA was signed” conclusively establishes that, by offering the 2009 Agreement to
 7 Jackson, Rosenhaus violated the Anti-Inducement Rule.³

8
 9 117. There was also uncontroverted evidence that, at a time when
 10 Rosenhaus' relationship with Jackson was rapidly deteriorating, Rosenhaus made
 11 additional payments to, or on behalf of, Jackson in order to secure Jackson's
 12 commitment to remain with Rosenhaus until Rosenhaus succeeded in negotiating a
 13 new contract for Jackson. These included, among other things, advances that
 14 exceeded Rosenhaus' initial investment in Jackson by more than \$120,000 as well
 15 as more than \$20,000 in travel and entertainment expenses for Jackson's family and
 16 friends.

17 **2. Rosenhaus' Violations of Sections 1(A), 3(A)(6), 3(B)(1)(iii)**
and 3(B)(14)

18 118. Section 3(A)(6) of the NFLPA Regulations required Rosenhaus to file
 19 the 2009 Agreement with the NFLPA within ten days after its execution.
 20 Rosenhaus failed to do so. Worse, in Section 3 of the SRA he falsely represented to
 21 the NFLPA that Rosenhaus and Jackson had not entered into any such agreement.

22 119. By serving as Jackson's agent without having filed the 2009
 23 Agreement with the NFLPA, Rosenhaus also violated Sections 1(A) and
 24

25 ³ *See also* Regulation B3(22) (prohibiting a Contract Advisor's “[c]onditioning the
 26 signing of a Standard Representation Agreement upon the signing of a contract for
 27 other services or the performance of other services by the Contract Advisor or any
 28 affiliated entity; or conditioning the signing of a contract for other services or the
 performance of other services by the Contract Advisor or any affiliated entity upon
 the signing of a Standard Representation Agreement”).

1 3(B)(1)(iii) of the Regulations, which ban any person who has not complied with
2 the filing requirement from serving as an NFL Contract Advisor.

3 120. By concealing the existence of the 2009 Agreement from the NFLPA,
4 Rosenhaus further violated Section 3(B)(14) of the Regulations, which prohibits
5 Contract Advisors from “[e]ngaging in unlawful conduct and/or conduct involving
6 dishonesty, fraud, deceit, misrepresentation, or other activity which reflects
7 adversely on his/her fitness as a Contract Advisor....”

8 **3. Rosenhaus’ Violation of Section 3(B)(23)**

9
10 121. Section 3(B)(23) of the NFLPA Regulations prohibits Contract
11 Advisors from “[a]ttempting to circumvent or circumventing” relevant portions of
12 Section 4(B)(5). Section 4(B)(5) provides that a Contract Advisor found to have
13 violated the Anti-Inducement Rule forfeits the right to any fees that would
14 otherwise be due under an SRA as well as the right to repayment of any loan used
15 as an inducement.

16 122. In knowing violation of Section 3(B)(23), Rosenhaus attempted to
17 circumvent forfeiture under Section 4(B)(5) in at least three ways.

18 123. First, as noted above, in an attempt to avoid detection of the violations
19 of the Anti-Inducement Rule embodied in the 2009 Agreement, Rosenhaus violated
20 the requirement that he file the 2009 Agreement with the NFLPA within ten days
21 after its execution. He also affirmatively represented in Section 3 of the SRA that
22 no such agreement existed.

23 124. Second, Rosenhaus insisted that the 2009 Agreement contain a false
24 representation that Jackson’s signing of the SRA was “was not conditioned upon
25 this or any other agreement.” Jackson’s acceptance of that representation was
26 another condition to his receiving the economic benefits of 2009 Agreement.

27 125. Although Rosenhaus knew this representation was false, he included it
28 in the 2009 Agreement in anticipation of the possibility that he might be accused of

1 violating the Anti-Inducement Rule and thus face the risk of forfeiture under
2 Section 4(B)(5). Rosenhaus' purpose was to lay a foundation for defending against
3 such an accusation by denying that the 2009 Agreement was an inducement to
4 Jackson's execution of the SRA.

5
6 126. Third, in the Arbitration, Rosenhaus relied on the 2009 Agreement's
7 false representation that Jackson's signing of the SRA was "was not conditioned
8 upon" the 2009 Agreement in order to defeat Jackson's claim that Rosenhaus
9 violated the Anti-Inducement Rule and is therefore subject to the sanction of
10 forfeiture under Section 4(B)(5).

11 **I. The Arbitration of Rosenhaus' Claims Against Jackson**

12 127. Rosenhaus asserted in the arbitration that Jackson had breached his
13 contractual obligations to (a) pay fees due under the SRA and (b) fully repay the
14 2009, 2010 and 2011 Agreements. Jason Rosenhaus also asserted breach of
15 contract claims against Jackson, even though Jason Rosenhaus is not a party to the
16 SRA, the loan agreements or any other contract entered into by Jackson.

17 128. RSR was not a party to the arbitration and has not asserted any claims
18 against Jackson, even though RSR is a party to each of the loans – and, indeed, is
19 the only Rosenhaus-related party to the 2011 Agreement (which superseded the
20 prior loans).

21 129. On June 21, 2013, Jackson filed a response to the grievance in which
22 he asserted that Rosenhaus and RSR were guilty of numerous violations of the
23 NFLPA's Regulations, including the Anti-Inducement Rule. He further asserted
24 that these violations warranted the sanction of forfeiture pursuant to Section 4(B)(5)
25 of the Regulations.

26 130. The NFLPA appointed Arbitrator Kaplan to adjudicate the parties'
27 claims and defenses. Kaplan presided over a one-day hearing in Philadelphia on
28 September 24, 2013.

1
2 131. During the hearing, Jackson testified that he would not have hired
3 Rosenhaus as his agent but for the fact that Rosenhaus promised in advance to
4 provide Jackson with a \$175,000 conditional gift and \$200,000 interest-free loan.
5 Arbitration Hearing Transcript (“Hearing Tr.”), at 162.

6 132. Jackson further testified that, during his initial exploratory meeting
7 with Rosenhaus in New Jersey, Rosenhaus said he “was going to give [Jackson]
8 money to sign with him, and whatever else [Jackson] needed, it was going to be
9 taken care of.” *Id.* at 161. Jackson also testified that Rosenhaus promised at the
10 time to take care of Jackson’s family. *Id.* at 160.

11 133. Rosenhaus was present when Jackson testified to this account of their
12 initial meeting. Although Rosenhaus gave his own testimony shortly after hearing
13 it, he neither denied making these promises to Jackson nor disputed any aspect of
14 Jackson’s testimony about the meeting. Nor did Rosenhaus present any other
15 evidence contradicting Jackson’s account.

16 134. Michael Ladge, the financial advisor who negotiated the SRA and
17 2009 Agreement on Jackson’s behalf, also testified that Jackson would not have
18 signed the Rosenhaus SRA but for Rosenhaus’ promise to make the \$175,000
19 conditional payment and loan Jackson \$200,000 on an interest-free basis. *Id.*, at 81-
20 83. Ladge further testified that he clearly understood that the \$175,000 conditional
21 gift was an “inducement” and an “incentive” to Jackson’s execution of the SRA.

22 135. Ladge explained the genesis of these inducements and why Rosenhaus
23 offered them. Ladge testified that, during his negotiations with Jason and Drew
24 Rosenhaus, he told them that Jackson would not engage Rosenhaus as his agent
25 without receiving substantial compensation from Rosenhaus in exchange. In
26 Ladge’s words:

27 . . . I do remember this conversation really well. And
28 what I had said to Drew and Jason to – as I was

1 presenting my case on why DeSean should be getting paid
 2 something by going with an agency, including them, and
 3 in their particular case, I felt that [RSR clients] Terrell
 4 Owens and Chad [Johnson] were getting up there, and
 5 DeSean [Jackson] was this young buck. And I thought
 6 that he would have to consider getting a guy like DeSean,
 7 not that he didn't have enough other players, but by
 8 adding DeSean to his arsenal of clients would be a very –
 9 would be a good thing for him. And it would certainly
 10 be some value added to Rosenhaus Sports by having
 11 DeSean at that time; ***and that I felt that DeSean needed***
 12 ***to be compensated in some capacity to get him on board.***
 13 And that was where the discussions came into as far as
 14 getting him that advance over the loan, because I knew
 15 that money would be needed, you know, in the event of a
 16 lockout or other things that were coming in. So that's the
 17 answer to that. . .

18
 19 *Id.* at 77 (emphasis added).

20 136. Ladge also testified that he discussed with Rosenhaus the fact that the
 21 \$175,000 Jackson was to receive under the 2009 Agreement represented
 22 Rosenhaus' "payment [to Jackson] for joining the firm." *Id.* at 76.⁴

23 137. Although both Drew and Jason Rosenhaus were present when Ladge
 24 gave this testimony and had an opportunity to respond, neither of them disputed any
 25 aspect of Ladge's account of the genesis of the 2009 Agreement or the reason why

26
 27 ⁴ Ladge also testified that he understood during the negotiations that Rosenhaus'
 28 offer to loan Jackson \$200,000 on an interest-free basis was a "significant benefit"
 to Jackson. *Id.* at 80.

1
2 Rosenhaus agreed to it. Nor did Rosenhaus argue that he or RSR received any
3 consideration for giving these benefits to Jackson other than Jackson's agreement to
4 sign the SRA and refrain from terminating it until after Rosenhaus succeeded in
5 negotiating a new player contract for Jackson. Consistent with Ladge's testimony,
6 Jason Rosenhaus admitted during his testimony that he and Rosenhaus agreed to
7 enter into the 2009 Agreement providing Jackson the \$175,000 conditional
8 payment and the \$200,000 interest free-loan *before* Jackson signed the SRA. *Id.* at
9 26.

10 138. Ladge further testified that Rosenhaus refused to give Jackson the
11 initial \$50,000 cash payment required under the 2009 Agreement until *after*
12 Jackson signed the SRA. Hearing Tr., at 238 (testimony that Jackson and
13 Rosenhaus "signed everything that needed to be signed. And that's when we were
14 able to get the money, because Drew is essentially not going to be essentially
15 handing out money to us and sign later."). This testimony, too, was uncontroverted.
16 Indeed, the Rosenhauses specifically *adopted* it in their Post-hearing brief. *See*
17 Claimants' Post-Hearing Brief, at 26-27.

18 139. Rosenhaus himself testified that he withheld the \$50,000 cash payment
19 due under the 2009 Agreement from Jackson until *after* Jackson signed the SRA.
20 *See* Hearing Tr., at 235 ("We went over the contract on the car. I waited until I saw
21 on my phone that it was after midnight. We proceeded to execute the contract.
22 After executing the contract, I then gave DeSean the money that we agreed to give
23 him. I gave it to him in the bag.").

24 140. In the face of the overwhelming evidence that the 2009 Agreement
25 represented compensation by Rosenhaus for Jackson's agreement to sign the SRA,
26 Rosenhaus argued that the NFLPA Regulations permit inducements of the type
27 Jackson obtained through the 2009 Agreement. He asserted that that, under the
28 Anti-Inducement Rule, the issue is not whether a player was given valuable

1 inducements to enter into an SRA, but rather whether the inducements were
2 “improper.” Claimants’ Post Hearing Brief, at 28 (“The appropriate question is
3 whether the loans were an “improper” inducement and the answer to that is “no” . .
4 .).
5

6 141. Rosenhaus further argued in the Arbitration that his tender to Jackson
7 of a \$175,000 conditional gift and a \$200,000 interest-free loan were not
8 “improper” inducements. He urged Arbitrator Kaplan to find that, “so long as the
9 agent does not violate Rule 3(B)(21)(a) regarding initiating communication with the
10 player and so long as the agent does not violate the Five Day Period Rule, the agent
11 is permitted to give rookies or veterans loans, stipends, marketing advances, a
12 discounted agent fee, pay for training expenses, housing etc.” Claimant’s Post
13 Hearing Brief, at 22.

14 142. As support for this argument, Rosenhaus cited testimony from his
15 brother, Jason, that:

16 In this business it is standard, standard for agents, when
17 they sign a veteran or a rookie, to — after they sign the
18 SRA to sign another agreement which could be for a
19 stipend, for training expenses, for living expenses, a
20 marketing advance, a loan. This is standard ordinary
21 course of business being an agent.

22 Hearing Tr., at 139.

23 143. Although denying that the \$175,000 conditional gift and the \$200,000
24 interest-free loan were intended to induce Jackson to enter into the Rosenhaus SRA,
25 Rosenhaus admitted that they were intended to induce Jackson to continue using
26 Rosenhaus’ services until he succeeded in negotiating a new player contract for
27 Jackson. In his Post-Hearing Brief, Rosenhaus asserted that:

1 Jackson's additional argument that the proposal to forgive
2 the \$175,000 loan and the proposal for an interest-free
3 loan were improper inducements to sign is logically
4 flawed: these terms were not offered to *induce* the signing
5 of the SRA, but were *incentives to remain* an RSR client
6 after the SRA was signed. All of the Loan Agreements
7 are clear that upon termination of the SRA, interest at the
8 annual rate of 7% is triggered so when Jackson terminated
9 the SRA, the interest became due and there was not in fact
10 an interest free loan provided. Regarding the waived
11 \$175,000 loan amount, which occurred once Drew
12 negotiated Jackson's NFL Eagles Contract, that was a
13 benefit provided to Jackson to stay with RSR during the
14 negotiation period, not to sign an SRA with RSR in 2009.

15
16 Claimant's Post-Hearing Brief at 28 (emphasis in original).

17 **J. The Arbitration Award**

18 144. In an Award issued on April 10, 2014, Arbitrator Kaplan found that
19 Jackson failed to prove that Rosenhaus violated the Anti-Inducement Rule. Award,
20 at 34-35. In doing so, he adopted Rosenhaus' argument that monetary inducements
21 to use a Contract Advisor's services do not violate the NFLPA Regulations unless
22 they are, in Kaplan's view, "improper" inducements. Kaplan opined that the "mere
23 existence of the [2009 Agreement] and/or the possibility that some or all of it might
24 be interest free or forgiven entirely does not render it an *improper* inducement."
25 *Id.* at 34 (emphasis added).

26 145. In an observation that is dictum given his finding that the \$175,000
27 and interest-free loan Rosenhaus gave Jackson were not "improper" inducements,
28 Arbitrator Kaplan also said that "neither the 2009 Loan Agreement nor the SRA

1 was conditioned on signing the other.” Award, at 32. He based that observation on
 2 the fact that the 2009 Agreement states that “Rosenhaus and Jackson have entered
 3 into a Standard Representation Agreement (hereinafter “SRA”) which was not
 4 conditioned upon this or any other Agreement.” *Id.* at 33. He also relied on the
 5 following statement in Section 3(B) of the SRA:

6
 7 Contract Advisor and Player hereby acknowledge that
 8 Player was given the opportunity to enter into *any of the*
 9 *agreements described in Paragraph 3(A)* above and this
 10 Standard Representation Agreement, without the signing
 11 of one agreement being conditioned upon the signing of
 12 any of the other agreements in violation of Section
 13 3(B)(22) of the NFLPA Regulations Governing Contract
 14 Advisors.

15 SRA, § 3(B)(emphasis added). Arbitrator Kaplan’s reliance on the latter statement
 16 is puzzling because neither the 2009 Agreement nor any other agreement is
 17 described in Paragraph 3(A) of the SRA.

18 **K. The Award Should Be Vacated.**

19 **1. The Arbitration Award Should Be Vacated Pursuant To 9**
 20 **U.S.C. § 10(A)(4) Because The Arbitrator Exceeded His**
 21 **Powers.**

22 146. Section 10(a)(4) of the Federal Arbitration Act provides that an arbitral
 23 award may be vacated if the arbitrator exceeds his powers. 9 U.S.C. § 10(a)(4). An
 24 arbitrator exceeds his powers by entering an award that is “‘completely irrational’
 25 or ‘constitutes manifest disregard of the law.’” *See, e.g., Comedy Club, Inc. v.*
 26 *Improv West Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009) (quoting *Poweragent Inc.*
 27 *v. Elec. Data Sys. Corp.*, 358 F.3d 1187, 1193 (9th Cir. 2004)). *See also, e.g., id.* at

1 1290 (confirming that this standard was unchanged by the U.S. Supreme Court’s
2 decision in *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008)).

3 147. In rendering the Award, Arbitrator Kaplan exceeded his power in
4 several important and outcome-determinative respects.

5 148. First, in rejecting Jackson’s claim that Rosenhaus violated the Anti-
6 Inducement Rule, Arbitrator Kaplan went beyond the boundary that the NFLPA
7 Regulations explicitly impose on his authority. Rather than faithfully apply the
8 Anti-Inducement Rule to the facts presented, he changed the rule to reach the
9 outcome he preferred.

10 149. The Anti-Inducement Rule is straightforward. Section 3(B)(2) of the
11 NFLPA Regulations categorically bars agents from “[p]roviding or offering money
12 or any other thing of value to any player or prospective player to induce or
13 encourage that player to utilize his/her services.”⁵ By its terms, it prohibits *all*
14 inducements that involve giving a player “*money or any other thing of value.*” It
15 does not exempt inducements that, in Arbitrator Kaplan’s judgment, do not rise to
16 the level of “improper” inducements. Notably, in a different context, Rosenhaus
17 himself acknowledged the absence of any such exception, saying that Section
18 3(B)(2) is “a very simple rule” that prohibits an agent from giving an NFL player
19 “anything of benefit . . . Not even a “ride, money, dinner, gifts for your family.”
20 [http://blogs.sun-sentinel.com/sports_football_dolphins/2010/07/drew-rosenhaus-
21 speaks-out-on-dirty-business.html](http://blogs.sun-sentinel.com/sports_football_dolphins/2010/07/drew-rosenhaus-speaks-out-on-dirty-business.html)

22 150. In deciding whether Rosenhaus complied with this rule, Arbitrator
23 Kaplan was bound by Section 5(E) of the Regulations, which states that he lacks

24 _____
25 ⁵ Section 3(B)(22) further prohibits “[c]onditioning the signing of a Standard
26 Representation Agreement upon the signing of a contract for other services or the
27 performance of other services by the Contract Advisor or any affiliated entity; or
28 conditioning the signing of a contract for other services or the performance of other
services by the Contract Advisor or any affiliated entity upon the signing of a
Standard Representation Agreement.”

1 “the jurisdiction or authority to add to, subtract from, or alter in any way the
2 provisions of these Regulations or any other applicable document.” He was thus
3 obligated to apply the Anti-Inducement Rule faithfully and as written, without
4 deviation.

5
6 151. On the evidence presented, Section 5(E) gave Arbitrator Kaplan no
7 choice but to find that Rosenhaus violated the Anti-Inducement Rule because
8 Rosenhaus did not deny that he gave Jackson “money or any other thing of value”
9 in connection with Jackson’s decision to sign the Rosenhaus SRA. Instead,
10 Arbitrator Kaplan changed the Anti-Inducement Rule. He engrafted onto it an
11 exemption for inducements in the form of money or other things of value that
12 Arbitrator Kaplan does not regard as “improper.” In Arbitrator Kaplan’s words,
13 “the mere existence of the loan and/or the possibility that some or all of it might be
14 interest free or forgiven entirely does not render it an *improper* inducement.”
15 Award, at 34 (emphasis added).

16 152. In short, Arbitrator Kaplan did the very thing that Section 5(E) of the
17 NFLPA Regulations denies him the power to do: “add to, subtract from, or alter in
18 any way the provisions of these Regulations or any other applicable document.” In
19 doing so, he unquestionably exceeded his power and demonstrated a manifest
20 disregard for the applicable legal principles.

21 153. As noted above, Arbitrator Kaplan stated in the Award that “neither
22 the 2009 Loan Agreement nor the SRA was conditioned on signing the other.”
23 Award, at 32. That statement is dictum in light of his finding that the benefits
24 Jackson received from the 2009 Agreement do not constitute “improper”
25 inducements. If, however, one could reasonably construe the Award as finding that
26 there was no connection between Jackson’s agreement to sign the SRA and
27 Rosenhaus’ agreement to enter into the 2000 Agreement, vacatur would still be
28 warranted because such a finding would be “completely irrational” and would

1 therefore exceed Arbitrator Kaplan's power under applicable law. *See, e.g.,*
 2 *Comedy Club*, 553 F.3d at 1288.

3
 4 154. No evidence or argument was presented to suggest that Rosenhaus or
 5 RSR received any consideration for entering into the loss-making 2009 Agreement
 6 *other than* Jackson's agreement to sign the Rosenhaus SRA. Moreover, Arbitrator
 7 Kaplan repeatedly acknowledged that the SRA and 2009 Loan Agreement were
 8 executed as part of what was in effect a single transaction. *See, e.g.,* Award at 13
 9 (finding that "[a]fter Jackson and Drew Rosenhaus signed the SRA, they signed the
 10 2009 Loan Agreement"); *id.* at 15 (finding that "Jackson received the \$50,000 in
 11 cash and the \$90,000 check after signing the SRA and the 2009 Loan Agreement in
 12 the early minutes of November 10, 2009"); *id.* at 31-32 (finding that Rosenhaus and
 13 Jackson "went to great efforts to wait until just after midnight at the start of
 14 November 10, 2009 before they signed a new SRA and the 2009 Loan Agreement,"
 15 and that they "waited until after the start of November 10th to transfer any of the
 16 monies (by cash or check) to Jackson").⁶

17 155. Furthermore, the reasons Arbitrator Kaplan gave for his conclusion
 18 that "neither the 2009 Agreement nor the SRA was conditioned on signing the
 19 other" are themselves irrational.

20 156. First, while he was correct in noting that Section 3(B) of the SRA
 21 contained an acknowledgment that "none of the agreements described in Paragraph
 22 3(A) of the SRA" was conditioned on Jackson's signing of the SRA, he
 23 inexplicably ignored the fact that neither the 2009 Agreement nor any other
 24 agreement is identified in Paragraph 3(A) of the SRA.

25 ⁶ Arbitrator Kaplan tangentially found that, "[f]or all of these reasons... Jackson did
 26 not prove that Drew Rosenhaus violated the Five Day Rule." *Id.* at 31-32. The
 27 issue of whether Rosenhaus had violated the Five-Day Rule, however, was not one
 28 of the stipulated issues presented for Arbitrator Kaplan's decision and is irrelevant
 to the question of whether Rosenhaus violated the Anti-Inducement Rule and/or
 Section 3(B)(22). *See* Award, at 2-3 (stating stipulated issues for consideration).

1
2 157. Second, Arbitrator Kaplan’s reliance on the 2009 Agreement’s recital
3 that “Rosenhaus and Jackson have entered into a Standard Representation
4 Agreement (hereinafter ‘SRA’) which was not conditioned upon this or any other
5 Agreement” was entirely unreasonable. In the context of all of the other
6 uncontroverted evidence presented in the Arbitration, that statement is not probative
7 of whether one agreement was conditioned on the other. Instead, it is merely
8 evidence of the fact that, in addition to the other conditions Jackson had to satisfy to
9 obtain the SRA-related inducements Rosenhaus offered, he had to go along with
10 Rosenhaus’ transparent attempt to conceal the obvious connection between the
11 2009 Agreement and the SRA.

12 158. Arbitrator Kaplan purported to change the Anti-Inducement Rule in
13 another material respect. Despite Rosenhaus’ implausible denial that the 2009
14 Agreement induced Jackson to sign the SRA, he *admitted* that 2009 Agreement was
15 intended to induce Jackson “to remain an RSR client after the SRA was signed.”
16 Claimants’ Post Hearing Brief, at 28. That admission by itself proves that
17 Rosenhaus violated the Anti-Inducement Rule. That rule does not just prohibit
18 agents from compensating a player for entering into an SRA. It also bars
19 inducements intended to dissuade a player from terminating an SRA. Therefore, in
20 finding that Rosenhaus did not violate the Anti-Inducement Rule, Arbitrator Kaplan
21 implicitly and improperly narrowed the reach of the rule to inducements directed to
22 execution of an SRA rather than any inducement to the use of an agent’s services.

23 159. Arbitrator Kaplan was presented with unequivocal, unrebutted
24 evidence that Rosenhaus offered Jackson money and other things of value to use his
25 services. That evidence mandated a finding that Rosenhaus had violated the Anti-
26 Inducement Rule. By purporting to read that rule to forbid only the offer of
27 “improper” inducements, Arbitrator Kaplan exceeded his powers by seeking to
28 enforce his own subjective policy judgments rather than the governing Regulations

1 by which he was bound. His award should consequently be vacated pursuant to 9
2 U.S.C. § 10(a)(4).

3
4 **2. The Award Should Be Vacated Pursuant to 9 U.S.C. §10(a)(2) Because of Arbitrator Kaplan’s Partiality**

5 160. Section 10(a)(2) of the Federal Arbitration Act empowers this Court to
6 vacate an arbitral award “where there was evident partiality or corruption in the
7 arbitrators, or either of them.” 9 U.S.C. § 10(a)(2). Here, there is overwhelming
8 evidence that Jackson was denied the benefit of a level playing field.

9 161. Rosenhaus’ relationship with the NFLPA, including its most senior
10 executives, is anything but arm’s-length, a fact that is well-known and well-
11 established. The extraordinary influence he has over the NFLPA is the only
12 plausible explanation for the NFLPA’s persistent refusal to act on Rosenhaus’ serial
13 violations of its Regulations. That influence would be more than enough to require
14 recusal of Arbitrator Kaplan if he were technically an NFLPA executive.

15 162. Given the harsh realities about the NFLPA and the way that it
16 operates, the fact that Arbitrator Kaplan is not an NFLPA executive makes no
17 practical difference. Although the NFLPA has designated him an “outside
18 impartial Arbitrator, using the parlance of Section 5 of the NFLPA Regulations,
19 Arbitrator Kaplan is not an “outside” arbitrator in any true sense. The extraordinary
20 duration of his service as the exclusive NFLPA Arbitrator, and the importance of
21 the NFLPA to his livelihood, deny him sufficient independence from the union to
22 be deemed either an outsider or impartial.

23 163. Arbitrator Kaplan’s lack of independence is a particular problem for
24 NFL players embroiled in fee disputes with agents. His partiality in favor of agents
25 in such disputes is not just evident, it is a matter of Congressional record. As the
26 NFLPA’s former General Counsel admitted when testifying before Congress,
27 Arbitrator Kaplan’s longevity as the exclusive NFLPA Arbitrator “is a thing that
28

1 the agents think is extremely good and they think it is working extremely well
2 because in *over 80 percent* of the cases, [Arbitrator Kaplan] rules for the agent over
3 the player.” House Committee Report, at 34-35 (emphasis added).

4
5 164. Moreover, in the specific context of the Jackson arbitration, Arbitrator
6 Kaplan reinforced his appearance of partiality by failing to disclose to Jackson that
7 he was simultaneously serving as a privately retained arbitrator for Rosenhaus in
8 another matter – a dispute between Rosenhaus and Danny Martoe, a former RSR
9 employee who claimed that RSR had failed to pay commissions owed to him. *Cf.*
10 *supra* at Section D.6 (summary of Martoe dispute).

11 165. Jackson discovered Arbitrator Kaplan’s concurrent representation after
12 the evidentiary hearing in his arbitration with Rosenhaus but before Arbitrator
13 Kaplan entered his award. Jackson further discovered that, although Rosenhaus’
14 dispute with Martoe was not subject to the NFLPA arbitration process, Rosenhaus
15 had arranged with the NFPLA to have Kaplan serve as his arbitrator and was
16 paying half of Arbitrator Kaplan’s fees.

17 166. Promptly upon learning of Arbitrator Kaplan’s role in the Rosenhaus-
18 Martoe dispute, Jackson asked that Arbitrator Kaplan recuse himself from further
19 service as arbitrator in the Rosenhaus-Jackson dispute, as Arbitrator Kaplan’s
20 failure to disclose his retention by Rosenhaus in the Martoe matter created an
21 appearance of bias.

22 167. Arbitrator Kaplan refused to recuse himself, and over Jackson’s protest
23 ultimately entered a “completely irrational” award in favor of Rosenhaus and
24 against Jackson, as described above.

25 168. Although Jackson, like other players, was powerless to keep Arbitrator
26 Kaplan from hearing his dispute with Rosenhaus, this Court can, and should, vacate
27 the award that Arbitrator Kaplan entered in Rosenhaus’ favor pursuant to 9 U.S.C.
28 §10(a)(2).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Respondent/Cross-Petitioner DeSean Jackson respectfully requests that this Court deny Petitioner’s Petition to Confirm Arbitration Award, grant Respondent’s Cross-Petition to Vacate Arbitration Award, and award Respondent such other and further relief as this Court may deem proper.

Dated: June 5, 2014

Respectfully submitted,

By /s/ William P. Quinn
WILLIAM P. QUINN
Attorneys for Respondent & Cross-Petitioner, DESEAN JACKSON