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VIA ECF

Hon. Gabriel W. Gorenstein
Chief U.S. Magistrate Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
Courtroom 6B
New York, New York 10007-1312

Re: *Angel Hernandez v. The Office of the Commissioner of Baseball, et al.*
18 Civ. 9035 (JPO) (GWG)

Dear Judge Gorenstein,

Pursuant to ¶ 2.A of the Court's Individual Practices, we write on behalf of Angel Hernandez ("Plaintiff") regarding a subpoena *duces tecum* recently issued to the Major League Baseball Umpires Association (the "Union") by the Defendants The Office of the Commissioner of Baseball and Major League Baseball Blue, Inc. (the "Defendants"). The subpoena *duces tecum* at issue (the "Subpoena") requests the production of documents concerning, among other things, the Union's internal communications and the Union's communications with Plaintiff as it relates to a number of topics, including "any grievance or potential grievance on behalf of [Plaintiff]" and "any allegations or claims of discrimination, disparate treatment or retaliation against [Plaintiff]." See Exhibit A (copy of the Subpoena as provided by counsel for the Defendants).

Plaintiff's counsel spoke with Defendants' counsel about this and other matters on the evening of June 4, 2019. The phone call lasted approximately 10 minutes. Kevin Murphy participated on behalf of Plaintiff, and Adam Lupion participated on behalf of the Defendants. Plaintiff's counsel requested that the Defendants withdraw the Subpoena. Counsel for the Defendants declined to withdraw the Subpoena. Plaintiff's counsel informed Defendants' counsel both during the phone call and in subsequent communications that Plaintiff would be filing the instant letter.

Plaintiff respectfully requests that the Court stay enforcement of the Subpoena and/or quash the Subpoena on the basis that the Subpoena seeks documents that are protected by a union relations privilege. As the Court knows, the Defendants filed a letter with the Court on May 23, 2019 regarding discovery propounded to Plaintiff seeking Plaintiff's communications with the Union and Plaintiff's withholding of that information on the basis that it is protected by a union relations privilege. See Dkt. 66. Plaintiff's counsel filed a response to the Defendants' May 23,

2019 letter on May 28, 2019.¹ See Dkt. 70; see also *Seelig v. Shepard*, 578 N.Y.S.2d 965 (Sup. Ct. 1991); *City of Newburgh v. Newman*, 421 N.Y.S.2d 673 (3d Dep't 1979). Those letters detail the parties' positions regarding Plaintiff's assertion of a union relations privilege as to information relating to his communications with the Union. There is currently a conference regarding that very issue scheduled for June 12, 2019. See Dkt. 69.

The Subpoena served by the Defendants now seeks to obtain information on many of these same topics from Plaintiff's union. The union relations privilege against employer discovery applies with equal force whether the employer seeks production of the privileged information through a Fed. R. Civ. P. 34 document request addressed to its employee or a Fed. R. Civ. P. 45 subpoena addressed to the union itself. Neither the employer's attempt to obtain the privileged information from the employee nor the employer's attempt to obtain the privileged information via a subpoena to the union should be permitted.

Since the existence and application of the union relations privilege will be discussed with the Court on June 12, 2019, a week from the filing of this letter, Plaintiff requests that the Court stay enforcement of the Subpoena at least until such time as the Court has rendered a decision on Plaintiff's assertion of a union relations privilege and/or quash the Subpoena to the extent it seeks the production of information protected by the union relations privilege directly from the Union in an attempt to circumvent Plaintiff's own assertion of a union relations privilege.

Respectfully submitted,

/s/ Kevin L. Murphy
Kevin L. Murphy

cc: All counsel of record (via CM/ECF)

¹ Plaintiff incorporates by reference herein his May 28, 2019 letter to the Court (Dkt. 70).