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11 Attorneys for Defendant PGA TOUR, INC.

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 PHIL MICKELSON; TALOR GOOCH;
 HUDSON SWAFFORD; MATT JONES;
 17 BRYSON DECHAMBEAU; ABRAHAM
 ANCER; CARLOS ORTIZ; IAN POULTER;
 18 PAT PEREZ; JASON KOKRAK; and PETER
 UIHLEIN,

19 Plaintiffs,

20 v.

21 PGA TOUR, INC.,

22 Defendant.

Case No. 5:22-cv-04486-BLF

**DECLARATION OF ELLIOT R. PETERS
 IN SUPPORT OF DEFENDANT PGA
 TOUR, INC.'S OPPOSITION TO
 PLAINTIFFS' MOTION FOR A
 TEMPORARY RESTRAINING ORDER**

Judge: Hon. Beth Labson Freeman
 Date: August 9, 2022
 Time: 1:00 p.m.
 Dept: Courtroom 1, 5th Floor

Date Filed: August 3, 2022

Trial Date: None Set

1 I, Elliot R. Peters, declare as follows:

2 1. I am a partner at Kecker, Van Nest & Peters LLP, an attorney licensed to practice
3 law in the State of California, and a member of the Bar of this Court. I make this declaration in
4 support of Defendant PGA TOUR, INC.’s (“the TOUR”) Opposition to Plaintiffs’ Motion for a
5 Temporary Restraining Order. Except where otherwise stated, I have personal knowledge of the
6 facts set forth in this declaration and, if called as a witness, could testify competently as to their
7 truth.

8 2. On Wednesday, August 3, 2020, Plaintiffs filed the above-captioned lawsuit in this
9 Court, naming the TOUR as the defendant (Dkt. 1). Plaintiffs Talor Gooch, Hudson Swafford,
10 and Matt Jones (“TRO Plaintiffs”) also filed a motion for a temporary restraining order (Dkt. 2).
11 On the same day, I contacted counsel for TRO Plaintiffs to request “any written agreements
12 between the plaintiffs and LIV Golf, including any documents incorporated into those agreements
13 by reference[.]” **Ex. 1** at pages 1.002-1.003. **Exhibit 1** is a true and correct copy of email
14 correspondence between counsel for TRO Plaintiffs and me related to the production of these
15 agreements.¹

16 3. TRO Plaintiffs’ counsel did not immediately respond. The day after Plaintiffs
17 filed their motion for a temporary restraining order, August 4, 2022, I again emailed counsel for
18 TRO Plaintiffs, noting that the pleadings “contain countless characterizations of these players’
19 relationship with LIV Golf” and “renew[ing] our request” that TRO Plaintiffs “provide those
20 agreements.” *See id.* at p. 1.002.

21 4. On August 5, 2022, counsel for TRO Plaintiffs indicated by email that they were
22 willing to produce the TRO Plaintiffs’ agreements with LIV Golf “if we keep them to outside
23 counsel until we work out protective order arrangements.” *See id.* at p. 1.001.

24 5. Faced with the choice of treating these run-of-the-mill agreements as Highly
25 Confidential – Outside Counsel’s Eyes Only materials or not reviewing them at all, the TOUR
26

27 ¹ Exhibit 1 includes multiple copies of similar, but slightly different, email threads.
28

1 acquiesced to TRO Plaintiffs’ conditions. On August 5, 2022, I replied to counsel for TRO
2 Plaintiffs and indicated that the TOUR would agree to treat the agreements with LIV Golf as
3 confidential. *Id.* at 1.005. I further indicated that the TOUR would likely submit these materials
4 as part of its opposition to TRO Plaintiffs’ motion, and that the TOUR would file an appropriate
5 administrative sealing motion under Local Rule 79-5(f). *Id.*

6 6. The TRO Plaintiffs produced their agreements with LIV Golf on August 5, 2022,
7 approximately an hour after my reply.

8 7. Attached as **Exhibit 2** is a true and correct copy of the “Player Participation
9 Agreement” between LIV Golf Holdings Ltd., LIV Golf Inc., LIV Golf Ltd., and Talor Gooch,
10 dated May 28, 2022, produced to the TOUR on August 5, 2022. Pursuant to the TOUR’s
11 agreement to treat this material as having been designated Highly Confidential – Outside
12 Counsel’s Eyes Only, this exhibit is submitted conditionally under seal pursuant to Civil L.R. 79-
13 5(f). The TOUR is contemporaneously filing an Administrative Motion to Consider Whether
14 Another Party’s Material Should be Sealed.

15 8. Attached as **Exhibit 3** is a true and correct copy of the “LIV Golf Player
16 Agreement” between LIV Golf Holdings Ltd., LIV Golf Inc., LIV Golf Ltd., Hudson Swafford
17 Golf, LLC, and Hudson Swafford, dated May 29, 2022, produced to the TOUR on August 5,
18 2022. Pursuant to the TOUR’s agreement to treat this material as having been designated Highly
19 Confidential – Outside Counsel’s Eyes Only, this exhibit is submitted conditionally under seal
20 pursuant to Civil L.R. 79-5(f). The TOUR is contemporaneously filing an Administrative Motion
21 to Consider Whether Another Party’s Material Should be Sealed.

22 9. Attached as **Exhibit 4** is a true and correct copy of the “LIV Golf Player
23 Agreement” between LIV Golf Holdings Ltd., LIV Golf Inc., LIV Golf Ltd., and Matt Jones,
24 dated May 31, 2022, produced to the TOUR on August 5, 2022. Pursuant to the TOUR’s
25 agreement to treat this material as having been designated Highly Confidential – Outside
26 Counsel’s Eyes Only, this exhibit is submitted conditionally under seal pursuant to Civil L.R. 79-
27 5(f). The TOUR is contemporaneously filing an Administrative Motion to Consider Whether
28 Another Party’s Material Should be Sealed.

