UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TODD C. BANK, *Plaintiff*, -against- NFL PROPERTIES LLC, *Defendant*.	1:25-cv-03981-CM

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SANCTIONS AGAINST DEFENDANT AND/OR ITS COUNSEL PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE

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DEFENDANT, IN MOVING FOR COSTS AND ATTORNEYS' FEES PURSUANT TO RULE 41(d) OF THE FEDERAL RULES OF CIVIL PROCEDURE, PLAINLY SOUGHT TO MISLEAD THE COURT WITH RESPECT TO THE APPLICABLE LAW AND PLAINLY SOUGHT TO PREJUDICE THE COURT AGAINST PLAINTIFF BY CALLING ATTENTION TO IRRELEVANT MATTERS

A. Defendant Plainly Sought to Mislead the Court with Respect to the Applicable Law

Defendant, NFL Properties LLC ("NFLP"), in its motion pursuant to Rule 41(d) of the Federal Rules of Civil Procedure (the "NFLP Motion"; Doc. 29), asserted that the Court should award, to NFLP, costs and attorneys' fees because "[t]he content of the . . . complaint demonstrates," on the part of Plaintiff, Todd C. Bank ("Bank"), "[an] attempt to manipulate the litigation process to his benefit." Defendant's memorandum of law in chief in support of NFLP Motion ("Def. Ch. Mem."; Doc. 30) at 5. That the present action ("*Bank II*") constituted "procedural gamesmanship [that] should be discouraged," *id.* at 6, such as to warrant the granting of the requested costs and attorneys' fees was, according to NFLP, shown by three assertions: first, Bank, instead of commencing *Bank II*, should have submitted "opposition to NFLP's motion to dismiss the amended complaint" in *Bank v. NFL Properties LLC*, No. 1:24-cv-08814-CM ("*Bank I*"), *id.* at 5; second, alternatively, Bank should have "sought leave to further amend his amended complaint to add the factual allegations he made in *Bank II*," *id.*; and, third, "the content added to the *Bank II* complaint consists predominantly of legal, not factual, assertions," *id.*; *see also id.* at 5 ("Bank's bad faith is also apparent on the face of his complaint in *Bank II*, which remains legally deficient. The complaint contains thirty pages of improper legal argument that Bank filed in avoidance of the page limit and due date applicable to an opposition brief"). Based upon these three factors, Bank, according to NFLP, engaged in a "protracted and vexatious litigation strategy." *Id.* at 6.

In *Bank I*, NFLP, in moving to dismiss the amended complaint, argued that Bank did not have

standing, and that the Court therefore did not have subject-matter jurisdiction, because Bank had not alleged "at least some meaningful preparation to use the marks at issue such that he is actively preparing to produce the article in question," *Bank I*, Def. Mem. (Doc. 23) at 7 (citation and quotation marks omitted); *see also id.* at 9 ("[b]eyond conducting undisclosed 'research,' Plaintiff simply identified some very basic steps that he is allegedly 'willing and able' to take towards creating and selling an unauthorized product bearing an NFL Mark, but has not actually done or even attempted to do," citing *Bank I* Am. Compl., ¶¶ 31-37).

Bank, upon reviewing NFLP's standing argument, concluded that NFLP was right. Thus, Bank could not have opposed the motion in good faith.

As to the second option, *i.e.*, the alternative of seeking "leave to further amend his amended complaint to add the factual allegations he made in *Bank II*," Def. Mem. at 5, NFLP sought to disavow the argument that it had previously, and correctly, made, which showed that this option could not have been chosen. That argument, which NFLP made in *Bank I* and *again in its pending dismissal motion*, is that the determination of subject-matter jurisdiction "must be made considering *only the facts and circumstances at the time the suit was filed*." Def. Dismissal Mem. (Doc. 17) at 8, citing *Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 126 (2d Cir. 2020) (emphasis added); *see also Bank I*, Defendant's memorandum of law in support of motion to dismiss amended complaint (Doc. 23) at 7 (same). Therefore, Bank could not have relied upon the "add[itional] . . . factual allegations he made in *Bank II* to seek leave to amend," Def. Ch. Mem. at 5, as those additional facts, *see Bank II* Compl., ¶¶ 89-99, did not exist at the time that *Bank I* was commenced.

NFLP, in trying to convince the Court that Bank should be required to pay NFLP's costs and attorneys' fees incurred in *Bank I*, had an interest in backtracking from its correct argument regarding the determination of subject-matter jurisdiction. Accordingly, given NFLP's repeatedly demonstrated

penchant for making dishonest win-at-all-costs arguments, it backtracked exactly as might have been expected. Thus, its pending dismissal-motion argument notwithstanding, NFLP contended, in its reply memorandum of law in support of the NFLP Motion ("Def. Reply Mem."; Doc. 37), that, perhaps after all, the determination of subject-matter jurisdiction need *not* "be made considering only the facts and circumstances at the time the suit was filed." That is, NFLP contended that, "[Bank] could have petitioned the court for leave to file a supplemental complaint," Def. Reply Mem. at 4, because, in *Duffy v. Illinois Tool Works, Inc.*, No. 15-cv-7407, 2021 WL 9471902 (E.D.N.Y. Sept. 30, 2021), the court "suggest[ed] that Second Circuit authority permits plaintiffs to cure standing defects by filing supplemental pleadings pursuant to Rule 15." Def. Reply Mem. at 4, citing *Duffy*, 2021 WL 9471902 at *3, n.2. However, NFLP, aside from not addressing how this argument fits in with its still-pending one, omitted all relevant context (insofar as NFLP might claim that Bank is using the instant motion as a sur-reply, the instant motion does, in effect, unavoidably constitute a part sur-reply; however, Bank's intent is based upon the nature of the motion, *i.e.*, seeking sanctions not for mere disagreements between the parties but for NFLP's statements that are false, misleading, or prejudicial).

First, *Duffy* cited *Fund Liquidation Holdings LLC v. Bank of America Corp.*, 991 F.3d 370, 390-391 (2d Cir. 2021), wherein the court stated that, "it is plainly the more practical approach to permit parties to circumvent the needless formality and expense of instituting a new action simply to correct a technical error in the original pleading's caption," *Fund Liquidation*, 991 F.3d at 391, specifically, "where an assignee with standing seeks to join an action under Rule 17." *Id.* Clearly, NFLP's argument in *Bank I* regarding standing did not concern a mere "technical error"; and, is there any doubt that, if Bank had invoked *Duffy* (or *Fund Liquidation*) in order to try to overcome the principal that the determination of subject-matter jurisdiction "must be made considering only the facts and circumstances at the time the suit was filed," NFLP would have argued not only that Bank's

attempt must fail, but that it was frivolous?

Second, NFLP, which is apt to note when it believes that Bank is relying on *dicta*, *see*, *e.g.*, Def. Dismissal Mem. (Doc. 17) at 17, and Def. Dismissal Reply Mem. (Doc. 31) at 6, declined to note that it cited *Duffy* for *dicta*. That is, in *Duffy*, the court found that the plaintiff had had standing at the time that the action was commenced even though the plaintiff "filed the original complaint before incurring out-of-pocket costs to repair [the item at issue]," *Duffy*, 2021 WL 9471902 at *3, explaining, "Defendants' argument conjures a pecuniary harm element not required by Article III standing." *Id.* In the cited footnote, the court prefaced its discussion of whether an amended pleading may cure a lack of standing by noting that, "[i]n his amended complaint, Plaintiff alleges a monetary harm of $[] resulting from his . . . repair." *Id.* at 3, n.2, but, because the court had already found that the plaintiff already had had standing without this allegation, the court's discussion is a perfect example of *dicta*.

Third, just as NFLP surely knew of, but kept quiet about, the fact that it was citing *Duffy* for *dicta* (apparently, it is only worth knowing that a party is citing *dicta* when that party is Bank), it is difficult to believe that NFLP, in its preparation of the NFLP Motion, did not come across the post-*Duffy*, and post-*Fund Liquidation*, case of *Carlone v. Lamont*, No. 21-871, 2021 WL 5049455 (2d Cir. Nov. 1, 2021), wherein the court reiterated: "'we evaluate whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed.' *Fed. Defs. of New York*[], 954 F.3d [at] 126 []; *see also City of Hartford v. Towns of Glastonbury*, 561 F.2d 1032, 1051 n.3 (2d Cir. 1976) (*en banc*) ('Events occurring after the filing of the complaint cannot operate so as to create standing where none previously existed.')," *id.* at *3, n.3; *see also Sookul v. Fresh Clean Threads, Inc.*, 754 F. Supp. 3d 395, 403, n.5 (S.D.N.Y. 2024) ("standing is based on 'whether the party invoking jurisdiction had the requisite stake in the outcome *when the suit was filed*.' *Fed. Defs. of New York, Inc.*[], 954 F.3d [at] 126 [] (emphasis in original); *see also Sharehold Representative*

Servs. LLC v. Sandoz Inc., No. 12 CIV. 6154 DLC, 2013 WL 4015901, at *7–*8 (S.D.N.Y. Aug. 7, 2013) (explaining that amended complaint could not cure standing defects in existence when suit was filed).”). Again, it is not difficult to imagine NFLP’s reaction if Bank had sought to file a second amended Complaint in *Bank I* and argued that standing could arise *after* the commencement of an action; but, why be consistent or straightforward when going to the ends of the earth to avoid a ruling on the merits?

Insofar as NFLP contended that the *Bank II* Complaint improperly contained legal argument, *see* Def. Ch. Mem. at 4-5, that contention should be addressed with respect to the Complaint on its own terms, rather than in relation to *Bank I*; and, indeed, NFLP has done so. *See* Def. Dismissal Mem (Doc. 17) at 5-6; Bank’s memorandum of law in opposition to NFLP’s motion to dismiss the Complaint (“Pl. Opp. Dismissal Mem.”; Doc. 28), Point I.

NFLP stated: “[r]egardless, what Bank *did* do—withdraw his amended complaint and refile it while adding 30 pages of legal argument—amplifies the impropriety of his initial course of conduct and underscores the need for an award of costs here.” Def. Reply Mem. at 4 (emphasis by NFLP). If, by “his initial course of conduct,” NFLP is referring to *Bank I*, how does the *Bank II* Complaint’s inclusion of legal explanations retroactively “amplif[y] the impropriety” of anything Bank did in *Bank I*? Obviously, NFLP was not suggesting that Bank should have included “30 pages of legal argument” in *Bank I*, so what does NFLP mean by its assertion? Instead, it seems that NFLP is yet again carefully employing language to mislead the Court rather than to make a logical point.

NFLP did much the same in stating: “Bank, in fact, is personally familiar with the standing requirements in trademark cases because he was ordered to pay the defendant’s costs and fees the last time he sought to invalidate a trademark where he lacked standing,” Def. Reply Mem. at 5, citing *Bank v. Al Johnson’s Swedish Rest. & Butik, Inc.*, 795 F. App’x. 822, 823-25 (Fed. Cir. 2019). Leaving aside the objective nature of bad faith under Rule 41(d), *see Ortega v. American Honda*

Motor Co., Inc., No. 22-cv-04276, 2023 WL 5207504, *2 (C.D. Calif. Mar. 24, 2023), NFLP did not explain how the issue of standing in *Al Johnson's* was related to the issue of standing in *Bank I*; and, indeed, it was not. Instead, NFLP was clearly hoping to play on the emotions of the Court, *i.e.*, "Bank was sanctioned once in a trademark case, so the Court should really stick it to him."

NFLP stated that Bank "invented" an "incorrect standard" in stating that "'[t]he question . . . is whether, following the plaintiff's voluntarily dismissal of a prior action . . ., the plaintiff brings a second action that, *vis-à-vis* the first action, is brought improperly,'" Def. Reply Mem. at 1, quoting Bank's memorandum of law in opposition to NFLP Motion ("Pl. Opp. Mem."; Doc. 36) at 1 (ellipses by NFLP), and that, "Bank cites no case law that supports the application of this made-up test." *Id.* In support of this critique, NFLP contended that *Advanced Video Technologies LLC v. HTC Corp.*, No. 11-cv-06604, 2019 WL 13214942 (S.D.N.Y. Jan. 31, 2019) (McMahon, *J.*), upon which Bank relied, *see* Pl. Opp. Mem. at 1, "does not say this. In that case, this Court determined that an award under Rule 41(d) was not available where the earlier-filed action had been dismissed by the Court, rather than voluntarily by the plaintiff." However, the Court *did* say that. *See Advanced Video Tech.*, 2019 WL 13214942 at *4 ("[t]he purpose of [] [R]ule [41(d)] is to serve as a deterrent to forum shopping and vexatious litigation by preventing plaintiffs from voluntarily dismissing *and re-filing cases*" (emphasis added) (NFLP itself quoted this, *see* Def. Reply Mem. at 4); *see also id.* at *5 ("if Rule 41(d) applied only where the prior action was voluntarily dismissed, it would not allow a court to award costs against a plaintiff whose first action was involuntarily dismissed and yet, despite this clear adjudication of her claim, *nonetheless filed a second unmeritorious action against the same defendant*" (emphasis added; citation and quotation marks omitted)); *id.* ("[t]he Second Actions were certainly not brought in bad faith – AVT went to great lengths to right the wrong that caused the dismissal of the First Actions the year earlier. Nor did AVT engage in forum shopping, negating Rule 41(d)'s other rationale").

NFLP also contended, in regard to a case that Bank did not cite, that, "*Loubier* [*v. Mod. Acoustics*, 178 F.R.D. 17 (D. Conn. 1998)] [does not]—nor [does] any case Bank cites—appl[y] Bank's invented standard for assessing the applicability of Rule 41(d)." Def. Reply Mem. at 3. Rather, *Loubier* did not address that issue one way or another. As for the cases that Bank cited (none of which NFLP identifies), he did so accurately.

NFLP contended: "in *Loubier* [], the plaintiffs voluntarily dismissed a suit based on lack of standing upon realizing they inadvertently failed to add all necessary parties to the suit. Much like Bank, the plaintiffs argued that 'they should be "applauded" for voluntarily dismissing the prior action, thus promoting the interests of judicial economy.'" Def. Reply Mem. at 2, quoting *Loubier*, 178 F.R.D. at 22. However, Bank never stated that he should be "applauded" for dismissing *Bank I* (nor did Bank use any similar term). Rather, Bank merely, and accurately, explained that the options that NFLP claimed to have preferred, *i.e.*, opposing NFLP's dismissal motion or seeking leave to replead, would have been improper; but, why should Bank make a fuss about NFLP's dishonesty when NFLP is simply trying to win at all costs? (naturally, NFLP omitted to note that *Loubier* began by noting that, "[t]he instant case is the fifth in a succession of lawsuits," *Loubier*, 178 F.R.D. at 18).

NFLP stated: "[s]imilarly, *Horowitz v. 148 S. Emerson Assocs. LLC*, 888 F.3d 13 (2d Cir. 2018), does not utilize Bank's proposed test for Rule 41(d) either, and the factual distinctions he raises between this case and *Horowitz* are irrelevant. " Def. Reply Mem. at 3. First, NFLP did not explain why the factual distinctions, *see* Pl. Opp. Mem. at 3-5, are irrelevant. Second, *Horowitz* made perfectly clear that "Bank's proposed test for Rule 41(d)" is not a "proposed" test at all, but, rather, the standard that applies to Rule 41(d):

> [The plaintiff] *could have asserted a Lanham Act violation in the Georgia state action by simply amending its complaint*. *Rather*, [the plaintiff] chose instead to voluntarily dismiss the Georgia state action *and file its Lanham Act claims in federal court* in another state. Moreover, it did so immediately after the Georgia state court stated

> its belief that the action was meritless and that its filing likely contravened an order of another court, which was itself addressing substantially related claims. *This* is the precise type of litigation tactic that Rule 41(d) is meant to deter. *See Andrews v. America's Living Ctrs., LLC*, 827 F.3d 306, 309 (4th Cir. 2016) ("[T]he purpose of Rule 41(d) is to serve as a deterrent to forum shopping and vexatious litigation."

Horowitz, 888 F.3d at 23 (emphases added). *See also Advanced Video Tech.*, 2019 WL 13214942 at *3-*5; *Iberia Foods Corp. v. Latinfood U.S. Corp.*, No. 20-cv-300, 2021 WL 1616916, *3 (E.D.N.Y. Apr. 26, 2021). Thus, NFLP's statement that, "[Bank] does not dispute that Rule 41(d) allows an award of fees even where bad faith or vexatious litigation is not present," Def. Reply Mem. at 1, did not reflect the case law.

NFLP also claimed that, "[Bank] also does not dispute that an award of costs includes attorneys' fees in the Second Circuit," Def. Reply Mem. at 1, and thus falsely implied that where a court awards costs under Rule 41(d), attorneys fees are automatically included. NFLP would undoubtedly deny that this statement was intended to be misleading, but, as NFLP has shown throughout this litigation, it chooses its words with care and deliberation.

As set forth herein and in Bank's opposition to NFLP's dismissal motion, it has been NFLP's *modus operandi* to mislead the Court, which, as Bank sees it, is due to NFLP's implicit recognition that Bank clearly has standing and is right on the merits. If Bank had truly lacked standing and had been wrong on the merits, not only would NFLP surely not feel the need to make one misleading assertion after another, but would surely have refrained from doing so lest it raise the ire of the Court. NFLP is free to try to write off Bank's foregoing assertions as "bluster," as it did in its reply memorandum of law in support of its dismissal motion (*see* Doc. 31 at 5), but the indisputable facts are that Bank, gadfly that he is according to NFLP (a pejorative but not unreasonable description given that Bank has brought this action as a matter of principle), has been honest and straightforward with the Court in the various motion papers and that NFLP has been the opposite.

B. Defendant Plainly Sought to Prejudice the Court Against Plaintiff by Calling Attention to Irrelevant Matters

NFLP stated:

> On January 6, 2025, the parties sought an extension of the response and briefing deadlines due to health issues experienced by NFLP's counsel. [*Bank I*], ECF 14. The Court granted the request. ECF 15. In its order doing so, the Court noted that, after reading the complaint, it "assume[d] the response will be a motion to dismiss, and possibly for sanctions[.]" *Id.*, ECF 15. It also suspended the initial conference until after the motion to dismiss was decided, "if at that point any conference is necessary." *Id.*
>
> Bank responded via letter the next day, January 8, 2025, admonishing the Court for "giving legal advice to a party," accusing it of partiality, and demanding recission of its suggestion regarding sanctions. *Id.*, ECF No. 16. The Court acknowledged receipt of the letter that same day, and assured Bank of its competency to evaluate the complaint impartially. *Id.*, ECF No. 17.

Def. Ch. Mem. at 2. NFLP did not explain how this exchange had anything to do with the NFLP Motion. Instead, as is plainly transparent, NFLP was seeking to prejudice the Court against Bank. Indeed, there is little doubt that NFLP carefully chose the word "admonishing," for it is acceptable for judges to "admonish" counsel, but not the other way around. NFLP did not address this exchange in its reply, but stated, more generally:

> Bank also accuses NFLP of citing to his prior conduct and legal actions to "prejudice the court against Bank." Opp. at 8. NFLP raised these points to identify Bank's pattern of filing meritless, frivolous suits that waste courts' and parties' time and resources. Preventing vexatious litigation is a core purpose of Rule 41(d). *Horowitz*, 888 F.3d at 23. Therefore, although a showing of bad faith is not required, understanding Bank's prior acts is relevant to the Court's analysis of whether it should exercise its discretion to award costs. The *Bank I* case history and the other Bank cases NFLP has cited show the time, money, and effort that parties, including NFLP, have unnecessarily expended in responding to blatantly deficient claims put forth by Bank—which he now concedes.

Def. Reply Mem. at 6. First, NFLP did not even attempt to explain how the exchange between Bank and the Court bears on the NFLP Motion.

Second, NFLP, in referring to "[t]he *Bank I* case history *and the other Bank cases NFLP has cited*," Def. Reply Mem. at 6 (emphasis added), apparently was making an inadvertent allusion to its dismissal motion, in which it sought to prejudice this Court by referring to other cases. *See* Pl. Opp. Dismissal Mem. at 1-2.

NFLP stated that Bank, in *Bank I*, "attached[,] [to the Complaint[,] a letter he wrote to the NFL explaining the legal theories underlying his complaint, where he purported to be writing on behalf of a 'John Doe' client, but was really writing on behalf of himself." Def. Ch. Mem. at 1-2, citing *Bank I* Compl., Exh. "A." NFLP did not explain how this had anything to do with the NFLP Motion.

NFLP stated that, in *Bank I*, "the parties spent several hours conferring over e-mail and videoconference about potential schedules for briefing and discovery, but ultimately could not agree on a joint submission," Def. Ch. Mem. at 2, but did not explain how this had anything to do with the NFLP Motion (in any event, the parties' telephone call on December 20, 2024 (not a video conference), lasted just under one hour, and their "conferring over e-mail," together with the telephone call, surely did not take "several hours").

NFLP noted that the parties had entered into a briefing schedule in *Bank I*, *see* Def. Ch. Mem. at 2, but did not explain how this had anything to do with the NFLP Motion.

NFLP stated: "Bank's vexatious approach to litigation is further apparent from his recent 40-page opposition brief, his denied request for a 27-page sur-reply, and the multiple letters he has sent NFLP's counsel and the Court [sic (one letter to the Court (Doc. 35))] in just the last two weeks—after the Court denied his sur-reply request—seeking further submissions [sic] in addition to his prior three complaints and 40-page opposition." Def. Reply Mem. at 5-6. However, *Bank II* is relevant to the NFLP Motion only with respect to its commencement. In any event, NFLP's accusation is wrong. First, the Court *granted* Bank's request to submit a 40-page brief. *See* Order

dated June 20, 2025 (Doc. 26).

Second, why is it vexatious merely to request permission to submit a sur-reply? Moreover, how could NFLP claim that this was "vexatious" without having read the proposed sur-reply?

Third, as to the "multiple letters" and Bank's request to make "further submissions [sic] in addition to his prior three complaints and 40-page opposition," NFLP again implied that merely asking to make a submission, without considering the reason for the request or the contents of the submission, is somehow "vexatious." In any event, Bank, as NFLP knows, had a very good reason for making his request, in which the "multiple letters" are quoted. *See* Letter Request dated July 11, 2025 (Doc. 35 (pending)). Bank could have made the requested submission along with his opposition to NFLP's dismissal motion. However, he had not anticipated the depths to which NFLP would go in its reply to try to mislead the Court, and thus had not anticipated the need for that submission. That is: per the very nature of this case, Bank, of course, is not currently selling the FGM T-Shirts. However, NFLP, to Bank's surprise, sought to use this fact *against* Bank, even though NFLP would obviously have claimed trademark infringement if Bank *had* been selling the shirts. Specifically, NFLP described "the uniform resource locator and domain name of www.fairgamemerch.com (the 'FGM Website')," Compl., ¶ 92, as a "password-protected, non-functioning website." Def. Dismissal Reply Mem. (Doc. 31) at 2, citing Pl. Dismissal Opp. Mem. (Doc. 28) at 6. However, the commercial pages of the FGM Website are password-protected because, per the very nature of this case, Bank is not yet selling the FGM T-Shirts. Apparently, this is what NFLP meant by describing the website as "non-functioning." *Id.* at 2.

Whereas NFLP stated that "[t]he remainder of the website is similarly underdeveloped," Def. Dismissal Reply Mem. at 4, this claim is simply boilerplate falsity. *See* www.fairgamemerch.com using, for the commercial pages, the password "fgmprivateview," which would show that the website is functioning in all respects but one: per the very nature of this case, it does not currently accept

orders.

NFLP stated: "[t]he website's purchasing features do not work, as an attempt to buy a shirt from the password-protected 'Products' page returns an error message: 'We can't accept online orders right now.'" *Id.* at 4. Of course, this was not "an error message," as though Bank had tried to sell the FGM T-Shirts but could not figure out how to do so. Rather, that message is simply the result of the fact that the website is fully designed to sell the FGM T-Shirts but is not yet selling them. Of course, if "[t]he website's purchasing features [*did*] work," *that*, according to NFLP, "would thereby constitute trademark infringement, dilution, and/or unfair competition, and also will misappropriate the goodwill and reputation of the NFL and/or its Member Clubs," Compl., Exh. "D" at 1-2, in which event NFLP would "treat any unauthorized use of the NFL Marks . . . as intentional and willful, which would entitle NFLP to enhanced damages and reimbursement of its attorneys' fees." *Id.* at 2. Thus, according to NFLP, Bank *may not* sell the FGM T-Shirts, and yet, in order to have standing, *must* sell them.

In sum, Bank's request to submit evidence showing that the FGM Website is capable of processing orders, far from having been made in bad faith, was the result of *NFLP*'s bad-faith argument that the site's current inability to sell the FGM T-Shirts undermine's Bank's standing.

[continued on next page]

CONCLUSION

Plaintiff respectfully requests that this Court issue an order: (i) imposing sanctions on NFLP and/or NFLP's counsel under Rule 11 of the Federal Rules of Civil Procedure; and (ii) grant, to Plaintiff, any lawful and proper relief.

Dated: July 22, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(c)

This memorandum of law contains 4,288 words.

Dated: July 22, 2025

s/ Todd C. Bank
Todd C. Bank

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2025, a true and accurate copy of the foregoing is being filed electronically via the Court's electronic-filing (ECF) system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and copies will be mailed to those parties, if any, who are not served via the Court's ECF system.

Dated: July 22, 2025

s/ Todd C. Bank
Todd C. Bank