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June 30, 2025

Proskauer Rose LLP
11 Times Square
New York, NY 10036
Attn.: Craig B. Whitney
Jeffrey Warshafsky
Nicole Sockett
Nicole Swanson

Re: Todd C. Bank v. NFL Properties LLC
Case 1:25-cv-03981-CM (S.D.N.Y.)

Counselors:

I am the plaintiff in the above-referenced matter. I hereby notify you, in accordance with Rule 11(c)(2) of the Federal Rules of Civil Procedure, that I intend to file a motion for sanctions (the "Sanctions Motion") against you and/or Defendant, NFL Properties LLC ("NFLP"). A notice of same is attached hereto.

The Sanctions Motion would be based upon NFLP's "Motion for Costs Pursuant to Fed. R. Civ. P. 41(d)" (the "NFLP Motion"; Doc. 29). Pursuant to Fed. R. Civ. P. 11(c), you have 21 days following service of this notice to withdraw the NFLP Motion to avoid the filing of the Sanctions Motion.

The NFLP Motion states that I "should be penalized by an award of costs and fees to NFLP for the time and money it expended on responding to [my] first attempt at litigating this case." Memorandum of Law in support of NFLP Motion ("NFLP Mem.") at 1, referring to *Bank v. NFL Properties LLC*, No. 1:24-cv-08814-CM (S.D.N.Y.) ("*Bank I*"). The question upon which a defendant's entitlement to relief under Rule 41(d) rests is whether, following the plaintiff's voluntarily dismissal of a prior action (here, *Bank I*), the plaintiff brings a second action that is *brought improperly vis-à-vis the first action*, such as by being brought vexatiously or in bad faith. *See Advanced Video Technologies LLC v. HTC Corp.*, No. 11-cv-06604-CM, 2019 WL 13214942, *3-*5 (S.D.N.Y. Jan. 31, 2019). Specifically, "[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." *Id.* at *4.

Although the NFLP Motion is sparse on detail, NFLP's argument is that, instead of withdrawing *Bank I* and commencing the present action ("*Bank II*"), I should have, in *Bank I*, either submitted "opposition to NFLP's motion to dismiss the amended complaint," NFLP Mem. at 5, or "sought leave to further amend his amended complaint to add the factual allegations [I] made in *Bank II*." *Id.* In *Bank I*, NFLP argued in its aforementioned dismissal motion that I did not have standing,

and that the Court therefore did not have subject-matter jurisdiction, because I did not allege to have made "at least some meaningful preparation to use the marks at issue such that [I am] 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).

Upon reviewing NFLP's standing argument and the cases upon which that argument was based, I concluded that NFLP was right. Thus, although I could have opposed the motion by distinguishing the factual scenarios at issue in the case law from the facts alleged in the amended complaint, I believed that any such distinctions that I might draw would not have rendered that case law inapplicable, thereby making those distinctions and their corresponding arguments disingenuous rather than in good faith. Accordingly, I filed a voluntary notice of dismissal on April 1, 2025, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure (*Bank I*, Doc. 24).

As to the notion that, in *Bank I*, I should have sought "leave to further amend [my] amended complaint to add the factual allegations [I] made in *Bank II*," NFLP Mem. at 5, *I could not have done so*, and you *know* that I could not have done so. That is because, as NFLP itself notes in its pending dismissal motion in the present case, the determination of subject-matter jurisdiction "must be made considering *only the facts and circumstances at the time the suit was filed*," Def. Mem. (Doc. 17) at 8 (emphasis added), such that I could not have relied upon the "add[itional] . . . factual allegations [I] made in *Bank II* to seek leave to amend," NFLP Mem. at 5, as the additional facts that I now allege did not exist at the time that *Bank I* was commenced, *i.e.*, they did not exist on November 19, 2024. *See Bank II*, Compl. (Doc. 1), ¶¶ 89-98.

Because, in *Bank I*, I rightly declined to disingenuously oppose NFLP's dismissal motion, and rightly declined to seek leave to file a second amended complaint, my commencement of the present action *did not improperly substitute for the continuation of Bank I*, *i.e.*, it was not brought improperly vis-à-vis *Bank I*. For these reasons alone, NFLP is so clearly not entitled to the relief that it seeks in the NFLP Motion as to render the NFLP Motion frivolous.

In light of the foregoing, please explain how the following shows either that *Bank II* was brought improperly vis-à-vis *Bank I*:

> (i) "Bank's arguments should have been presented instead as an opposition to NFLP's motion to dismiss the amended complaint in *Bank I*. Bank could have also sought leave to further amend his amended complaint to add the factual allegations he made in *Bank II*," NFLP Mem. at 5;
>
> (ii) "Bank's ulterior motive in dismissing and refiling his complaint [was] to have the benefit of an opposition to NFLP's motion to dismiss without the restrictions of a

deadline or page limit," NFLP Mem. at 5; and

(iii) "The *Bank II* complaint is considerably longer than either complaint in *Bank I*, but none of the additional content renders the *Bank II* complaint sufficiently distinct from the *Bank I* complaints. Virtually all the extra length is attributable to *thirty pages* of legal argument, which is inappropriate in a pleading and should be disregarded for purposes of the Rule 41(d) analysis," NFLP Mem. at 4-5 (emphasis by NFLP).

Please also explain how, if at all, NFLP was prejudiced by the legal explanations in the Complaint given the following facts, and why, if at all, you believe that such prejudice is relevant to the NFLP Motion:

> NFLP: (i) took the opportunity to address some of the Complaint's legal explanations, *see* Def. Mem. at 16-19, albeit while ignoring the various scholarly opinions that support Bank's position, including by an author who was in-house counsel for the National Football League from 1994 to 2007, and managed, *inter alia*, intellectual-property litigation, *see* Compl., ¶¶ 3, 33, 58; (ii) did not move to strike the legal explanations; (iii) did not ask Bank to withdraw the explanations, such as by stipulation or by filing an amended complaint; (iii) submitted a brief that is several pages under the maximum, and thus cannot complain that it was unable to address any of the explanations; and (iv) did not request permission to exceed the page limit so as to be able to address the explanations.

Pl. Mem. (Doc. 28) at 5.

Although the NFLP Motion claims that the steps I took between the commencement of *Bank I* and *Bank II* did not result in my having standing, you certainly know that this is untrue. NFLP's only argument is that I have not alleged (or shown) that I intend to go into the NFL-merchandise business in a long-term sense, but, as you know, you have not cited *any authority whatsoever* that supports the notion that such intent is required for standing (if you are aware of such authority, however, please provide it to me). Whether or not you might characterize our dispute as small on the basis that it involves only 33 items, the dispute is plainly concrete. To that end, your client's letter to me (*see* Compl., Exh. "D") threatens litigation for *any* action that your clients deems to violate its trademark rights; and, notably, you have not indicated that this threat only begins at a threshold above 33 items placed for sale, much less identified such threshold. You cannot have it both ways.

The NFLP Motion levies additional attacks against the *Bank II* Complaint, but those attacks are irrelevant for the reasons discussed above and should be addressed, if at all, directly rather than in relation to *Bank I*. In any event, each of those attacks, as discussed below, lacks merit.

The NFLP Motion states, in relation to Exhibit "C" of the Complaint, that "[I] wrote to the NFL explaining the legal theories underlying [my] complaint, where [I] purported to be writing on behalf of a 'John Doe' client, but was really writing on behalf of [my]self." NFLP Mem. at 2. What does this have to do with the question of whether *Bank II* was brought improperly vis-à-vis *Bank I*? I would appreciate your sharing of NFLP's point of view on this question, as I am unable to think of an answer.

The NFLP Motion states: "[t]he parties spent several hours conferring over e-mail and videoconference about potential schedules for briefing and discovery . . . ." NFLP Mem. at 2. First, our telephone call on December 20, 2024 (not a video conference), lasted just under one hour, and our "conferring over e-mail" was a brief exchange and obviously did not render the telephone call and time writing the emails a matter of "several hours" (not even close). Second, what does this have to do, in any event, with the question of whether *Bank II* was brought improperly vis-à-vis *Bank I*? I would appreciate your sharing of NFLP's point of view on this question, as I am unable to think of an answer.

The NFLP Motion states: "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," NFLP Mem. at 2, quoting *Bank I*, Doc. 16, and that, "[t]he Court acknowledged receipt of the letter that same day, and assured Bank of its competency to evaluate the complaint impartially." *Id.*, citing *Bank I*, Doc. 17. What does this have to do with the question of whether *Bank II* was brought improperly vis-à-vis *Bank I*? I would appreciate your sharing of NFLP's point of view on this question, as I am unable to think of an answer.

As reflected by the fact that I withdrew *Bank I* rather than engage in disingenuous litigation concerning the issue of standing, *I have maintained an open mind about the legal issues pertaining to our dispute*. I continue to do so, and, accordingly, I remain amenable to taking any appropriate actions that I believe the law requires. Therefore, *my questions and requests for explanations herein are not included for rhetorical purposes*. I believe that I have standing, and I believe that your client's trademark monopoly is "built on sand." Compl., ¶ 5 (citation and quotation marks omitted). If you convince me that I am wrong about my standing or wrong about the merits (in which event so, too would be Jodi S. Balsam, who served as the NFL's in-house counsel from 1994 to 2007 (*see* Compl., ¶¶ 3, 33, 58), as well as numerous other scholars and judges whose credentials are beyond reproach), I will respond appropriately. In the meantime, I cannot help thinking that you do not, in fact, disagree with me about my standing or the merits, much less believe that my allegations or arguments concerning either are frivolous (and that, therefore, the legal theory of the aforementioned scholars and judges is frivolous), as most of your efforts throughout our litigation, including the NFLP Motion, have had one purpose: avoiding a ruling on the merits.

Sincerely,

s/ *Todd C. Bank*

Todd C. Bank

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Todd C. Bank and Memorandum of Law, and all other pleadings and proceedings herein, Plaintiff, Todd C. Bank ("Bank"), will move before the United States District Court for the New York Southern District, 500 Pearl Street, Courtroom 24A, New York, New York 10007, at a date and time to be determined by the Court, for an Order imposing sanctions on Defendant, NFL Properties LLC ("NFLP"), and/or NFLP's counsel under Rule 11 of the Federal Rules of Civil Procedure, due to NFLP's filing of its motion "pursuant to Federal Rule of Civil Procedure 41(d) awarding NFLP its fees and expenses against plaintiff Todd C. Bank," NFLP's Notice of Motion (Doc. 29; filed on June 30, 2025, and incorrectly dated June 10, 2025 (the "NFLP Motion")), and such other and further relief as the Court deems just and proper.

The bases of the instant motion are that the NFLP Motion: (i) was made to harass Bank; (ii) was made for an improper purpose, *i.e.*, to encourage the Court to be prejudiced against Bank based on considerations that have no relevance to whether the NFLP Motion should be granted; and (iii) is based upon contentions that are neither warranted by existing law nor by any non-frivolous arguments for extending, modifying, or reversing existing law or for establishing new law.

Dated: July ___, 2025

Respectfully submitted,

s/ *Todd C. Bank*

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