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July 11, 2025

United States District Court  
Southern District of New York  
Attn.: Judge Colleen McMahon

**Re: Todd C. Bank v. NFL Properties LLC  
Case 1:25-cv-03981-CM**

Dear Judge McMahon:

I, the plaintiff in the above-referenced matter, respectfully request permission to submit a declaration and exhibit showing that the website at issue, [www.fairgamemerch.com](http://www.fairgamemerch.com) (the “FGM Website”), is capable of accepting orders (although, per the nature of this case, I have, of course, since disabled the ordering function).

On July 7, I emailed a letter to counsel for Defendant, NFL Properties LLC (“NFLP”), in which I stated, “I am easily able to assuage NFLP of its purported doubt regarding the operability of the FGM Website,” made two proposals as to how to do so, and concluded: “[i]f you have an alternative idea as to how I could show NFLP that I am able to operate the FGM Website, please let me know.” On July 9, I sent a follow-up email to NFLP’s counsel, to which NFLP’s counsel responded, also on July 9, stating: “NFLP does not believe a response is appropriate and stands by the position set forth in its pending motion to dismiss.”

On July 10, I emailed NFLP’s counsel, stating: “[a]s shown in the attachment to this letter, I made a test purchase through the FGM Website. Please let me know by tomorrow if you have a position on my forthcoming request to submit it, along with an explanatory declaration, to the Court. If you have any questions, or would like to see the declaration, please let me know.” Today, NFLP’s counsel responded by email, stating: “[t]he Court has denied your motion for a sur-reply. We believe any such submission is improper and sanctionable. If you insist on such a submission, please include our position.”

I responded to NFLP’s counsel by emailed letter stating: “[p]lease clarify whether you misread my letter, in which I did not state that I would submit a declaration or the attachment to my letter, but, rather, that I would *request permission* to submit them” (emphasis in original). NFLP’s counsel then sent an email to me, stating: “NFLP does not consent to your request and believes it is improper in light of the Court’s recent denial of your motion to file a sur-reply brief.” I then emailed a letter to NFLP’s counsel, stating:

Given that I am not seeking permission to submit a brief, but rather a declaration and exhibit that would show that the FGM Website is

Judge Colleen McMahon  
July 11, 2025

*Bank v. NFL Properties*  
Case 1:25-cv-03981-CM

capable of processing orders, please explain why you take the position that my mere request for submission would be “improper.” As an alternative to my request to make such submission, would NFLP consider entering into a stipulation stating that NFLP has reviewed the evidence that I provided to you regarding the capability of the FGM Website to process orders? Does NFLP dispute either the authenticity of the attachment that I provided with my letter to you yesterday or my description [o]f it, *i.e.*, that it “show[ed] . . . [that] I made a test purchase through the FGM Website”? Is there a particular reason why you do not wish the Court to know that the FGM Website is capable of processing orders? If you believe that it would be more appropriate for me to inform the Court of the site’s capability in some other way, please let me know.

As evidence may be considered in resolving the branch of NFLP’s dismissal motion that was made pursuant to Rule 12(b)(1), I respectfully request permission to submit the evidence described at the outset of this letter. If that evidence helps to establish that I have standing, it should be considered. If, as I imagine NFLP would argue (based upon its counsel’s above-quoted July 9 email), this evidence does not help to establish my standing, then NFLP is not in a position to object to my submission of it.

Thank you to the Court for its consideration.

Sincerely,

***s/ Todd C. Bank***

Todd C. Bank