UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CORRECT ERRORS OF THE *DECISION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION*, DATED NOVEMBER 5, 2025**

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## BACKGROUND

Plaintiff, Todd C. Bank ("Bank"), who commenced this declaratory-judgment action on May 12, 2025, seeks a judgment declaring that his prospective sale, without the approval of Defendant, NFL Properties LLC ("NFLP"), of 33 t-shirts, each of which bears a trademarked symbol of a National Football League ("NFL") team or the NFL, would not violate certain provisions of the Lanham Act, 15 U.S.C. §§ 1051 - 1141, *i.e.*, Sections 1114(1)(a), 1114(1)(b), 1125(a)(1)(A), and 1125(c). *See* Compl. (Doc. 1), Prayer for Relief, ¶ (a). Bank's legal theory is that the trademarks are functional and that Bank is therefore free to use them commercially. *See* Compl., *passim*.

On October 20, 2025, the Court issued a *Decision and Order Granting NFLP's Motion to Dismiss the Complaint; Denying NFLP's Motion for Costs; and Denying Bank's Motion for Sanctions* (the "Dismissal Decision," Doc. 47), wherein the Court, *inter alia*: (i) found that the action is justiciable, but declined to exercise jurisdiction over it; and (ii) denied Bank's motion for sanctions against NFLP and/or it counsel.

On November 5, 2025, the Court issued a *Decision and Order Denying Plaintiff's Motion for Reconsideration* (the "Reconsideration Decision," Doc. 51), which contains errors for which Bank seeks correction in the form of a new Decision that does not contain those errors.

## ARGUMENT

### POINT I

### PLAINTIFF, IN MOVING FOR RECONSIDERATION, CITED A CONTROLLING DECISION THAT SHOULD HAVE CAUSED THE RECONSIDERATION DECISION TO GRANT THE MOTION

The Reconsideration Decision states: "Bank has not pointed to any controlling decisions or factual matters the court overlooked that might reasonably be expected to alter the court's conclusion. Rather, Bank merely regurgitates the arguments that this court previously rejected." Reconsideration Decision at 2 (altered; citation and quotation marks omitted). However, Bank had

cited a controlling decision that the Dismissal Decision had "overlooked that might reasonably be expected to alter the court's conclusion":

> [E]ach of the "six factors that 'should inform a district court's exercise of [declaratory-judgment] discretion,'" [Decision ('D') at] 12, quoting *Admiral Ins. Co. v. Niagara Transformer Corp.*, 57 F.4th 85, 99-100 (2d Cir. 2023), indisputably weighs in favor of the exercise of jurisdiction in the present action. *See* D.12 (listing the six factors). Moreover, "[t]he two principal criteria guiding the policy in favor of rendering declaratory judgments[,] [which] are [the first two of the six factors, *i.e.*,] (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding," *Admiral*, 57 F.4th at 96 (citation and quotation marks omitted), are indisputably present; that is, according to the Decision's own finding, *i.e.*, that, "reaching the merits on the question of the 'functionality' of the marks in connection with their use on tee shirts would bring this matter to a definitive end." D.15. Indeed, "[i]t follows as a general corollary to this rule that if *either* of these objectives can be achieved[,] the action *should* be entertained and *the failure to do is error*." *Id.* (citation and quotation marks omitted).

Plaintiff's Memorandum of Law in Support of Motion for Reconsideration ("Pl. Reconsideration Mem."; Doc. 50) at 11-12 (emphases in original).

## POINT II

## PLAINTIFF, IN MOVING FOR RECONSIDERATION, DID NOT "REGURGITATE" ANY ARGUMENTS

The "regurgitation" charge was directed at Point I of Bank's Reconsideration Memorandum of Law, as the paragraph that levied this charge concluded: "[i]f Bank wants to argue that this court abused its discretion under the Declaratory Judgment Act by declining to exercise jurisdiction, he can do so on appeal." Point I, however, did not "merely regurgitate[] the arguments that this court previously rejected." In Point I, which was titled, "The [Dismissal] Decision's Declination of Jurisdiction was a Clear Abuse of Discretion as Reflected by the Fact That it was Based Upon 180-Degree Out-of-Context Quotations From the Case Caw, and Because Every Factor That is to Guide

the Question of Declaratory-Judgment Discretionary Jurisdiction Indisputably Favors its Exercise," Pl. Reconsideration Mem. at 1 (original in all caps), Bank made *one* argument, which was that the Dismissal Decision's anticipatory-defense explanation was entirely backwards. However, Bank had not made any anticipatory-defense argument when opposing NFLP's dismissal motion, nor at any other time; indeed, NFLP had never even mentioned the anticipatory-defense issue. Thus, far from the Dismissal Decision's having "previously rejected" the anticipatory-defense argument, the Reconsideration Decision apparently used the patently false boilerplate "regurgitation" charge as an excuse for not addressing the argument that Bank *first* made in his Motion for Reconsideration.

## POINT III

## THE RECONSIDERATION DECISION DID NOT ADDRESS POINT II OF PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION

As to the other Point of Bank's Memorandum of Law, *i.e.*, Point II, which was titled, "The [Dismissal] Decision's Denial of Plaintiff's Motion for Sanctions Did Not Address Any of the Reasons for That Motion, Which Show That the Motion Should Have Been Granted," Pl. Reconsideration Mem. at 12 (original in all caps), the Reconsideration Decision did not address it. If the Reconsideration Decision ignored this Point because "Bank's motion for reconsideration fail[ed] to comply with Local Rule 6.3, which states that, unless otherwise provided by the court, a motion prepared by an attorney may not exceed 3,500 words[,] [whereas] Bank's motion contains 4,358 words, which is well above the limit," Reconsideration Decision at 3, which seems possible because the word limit had been reached before Point II began, the Reconsideration Decision should have stated that; otherwise, the Reconsideration Decision erred by ignoring Point II (which, like Point I, did not "regurgitate" any argument; indeed, as reflected in its heading, it did not make any substantive argument at all).

## CONCLUSION

Plaintiff respectfully requests that this Court: (i) grant Plaintiff's motion; and (ii) grant, to Plaintiff, all additional lawful and proper relief.

Dated: November 12, 2025

Respectfully submitted,

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

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**CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.1(c)**

I hereby certify that this memorandum of law contains 932 words.

Dated: November 12, 2025

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

**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 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: November 12, 2025

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