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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DNA SPORTS PERFORMANCE LAB,  
INC. and NEIMAN NIX,

No. C 20-00546 WHA

Plaintiffs,

v.

**ORDER GRANTING MOTION  
FOR ATTORNEY’S FEES**

MAJOR LEAGUE BASEBALL;  
MLB ADVANCED MEDIA LP; MAJOR  
LEAGUE BASEBALL PLAYERS  
ASSOCIATION; and MAJOR LEAGUE  
BASEBALL ENTERPRISES, INC,

Defendants.

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**INTRODUCTION**

Following plaintiffs’ voluntary dismissal in this false-advertising and unfair competition action, defendants baseball league and players union move for attorney’s fees under FRCP 11 and the Court’s inherent authority. To the following extent, the motions for fees are **GRANTED**.

**STATEMENT**

Plaintiffs, Neiman Nix and his company DNA Sports Performance Lab, Inc. (together “DNA Sports”), sell health supplements “extracted from the shed tissue of elk antlers,” which contain a “naturally occurring, bio-identical form of IGF-1,” a performance-enhancing substance. Major League Baseball (“the league”) and the Major League Baseball Players Association (“the union”) have banned players from using both natural and synthetic IGF-1

1 under their Joint Drug Prevention and Treatment Program. Following the banning of its  
2 supplements, DNA Sports sued *seriatum* in several federal and state courts against the league  
3 and its affiliates, loosely defined (Compl. ¶¶ 3–4, 16, 18, 25; Dkt. No. 19 at 3). DNA Sports’  
4 string of suits against the league and others is characterized by a dismissal followed by a new  
5 suit in a different venue with a slightly new cause of action challenging the ban (Dkt. No. 53).  
6 DNA Sports eventually made its way to our district. Though this was its first actual suit against  
7 the union, the union had followed DNA Sports’ litigation history and, promptly upon being  
8 served, filed this motion for sanctions seeking fees and dismissal. The league did likewise. A  
9 prior order dismissed the complaint. No amendment was sought. Now, the union and the  
10 league renew their requests for sanctions.

11 On a Rule 11 motion, we consider all the circumstances, not just the allegations in the  
12 complaint. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401 (1990).

13 **1. DNA SPORTS’ HARASSMENT OF THE BASEBALL LEAGUE.**

14 As detailed in the league’s motion for sanctions, DNA Sports and its attorneys have  
15 pursued the league, well before the instant suit, for the past nine years (Dkt. No. 42 at 4–5).  
16 Our tale begins with an October 2012 shakedown letter. Following two league investigations  
17 into DNA Sports’ former business venture, DNA Sports sent the letter accusing the league of  
18 character defamation, alleged \$30,000,000 in damages, and threatened to sue unless the league  
19 promptly paid \$6,000,000. DNA Sports, though, conceded that its products contained a banned  
20 substance under the Joint Drug Prevention and Treatment Program (Dkt. 42-2, Exh. A at 3).

21 In 2013, the league launched another investigation into the illegal sale of performance-  
22 enhancing drugs to players. Investigators targeted “anti-aging” clinics in Florida, including  
23 DNA Sports (Dkt. No. 19 at 5; Compl. ¶¶ 19–20).

24 In February 2014, DNA Sports sued the league in Florida state court, challenging the  
25 league’s investigation as unfair and discriminatory. But plaintiff missed several case  
26 management conferences and failed to perfect service until October, resulting in a November  
27 2014 dismissal for failure to prosecute. *Nix and DNA Sports Performance Lab, Inc. v. Major*  
28

1 *League Baseball, etc., et al.*, No. 3D14-2967, 2015 WL 1930327 (Fla. 3d Dist. Ct. App. Apr.  
2 27, 2015).

3 In July 2016, following the league’s rejection of another letter, this time demanding  
4 \$40,000,000, DNA Sports sued the Office of the Commissioner of Baseball and several league  
5 employees in the Southern District of New York challenging the same league investigation,  
6 alleging tortious interference with prospective economic advantage (Dkt. 42-2, Exh. D). After a  
7 pre-motion conference to discuss the league’s intent to file motions for dismissal under Rule  
8 12(b)(1) and for sanctions, DNA Sports voluntarily dismissed that action in November 2016.  
9 *Nix and DNA Sports Performance Lab, Inc. v. Office of Comm’r of Baseball*, No. 16-CV-5604  
10 (S.D.N.Y. July 14, 2016).

11 In late November 2016, less than a month after the dismissal, DNA Sports sued the  
12 league, the commissioner, and several league employees in New York state court for hacking  
13 DNA Sports’ social media accounts, tortious interference with economic advantage, and  
14 defamation of Nix — all in the course of the league investigation. Defendants removed to  
15 federal district court based on the hacking claim. Rather than move to remand or amend its  
16 complaint to satisfy federal pleading standards, DNA Sports voluntarily dismissed its federal  
17 hacking claim and proceeded with the state suit. The New York state court then dismissed the  
18 complaint in June 2018 as *res judicata* under FRCP 41’s two-dismissal rule, barred by statute of  
19 limitations issues, and for failure to state a claim. In December 2018, the state court denied  
20 DNA Sports’ motion to reargue the dismissal as frivolous and imposed attorney’s fees against  
21 DNA Sports and its counsel — fees which remained outstanding as of briefing here. *Nix and*  
22 *DNA Sports Performance Lab, Inc. v. Major League Baseball, et al.*, No. 159953/2016, 2018  
23 WL 2739433 (N.Y. Sup. Ct. June 7, 2018).

24 In April 2018, while litigating the third action, Neiman Nix — acting *pro se* — sued  
25 Kobre & Kim LLP and three attorneys (the league’s counsel), several MLB coaches and general  
26 managers, and over a dozen MLB clubs in Florida state court, alleging RICO, trade secret, and  
27 computer abuse violations. In December 2018, Mr. Nix voluntarily dismissed claims against  
28 the majority of the baseball clubs as well as Kobre & Kim and its lawyers. The action currently

1 remains pending, however, against two remaining clubs and league personnel. *Nix v. Luhnow,*  
2 *et al.*, No. 2018CA003920 (15th Fla. Cir. Ct., Palm Beach Cnty.).

3 In January 2019, DNA Sports sued the Office of the Commissioner of Baseball, current  
4 and former MLB commissioners, and several MLB employees in Florida state court for  
5 unlawful hacking and computer abuse violations in the course of the 2013 MLB investigation.  
6 After DNA Sports amended its complaint in response to a motion to dismiss, the court  
7 dismissed the claims against the commissioners but allowed DNA Sports to proceed with the  
8 remaining claims. Though that case pertained to the leagues' alleged hacking of DNA Sports'  
9 social media accounts during the 2013 investigation, DNA Sports sought discovery on the  
10 league's stance and communications regarding IGF-1. *Neiman Nix and DNA Sports*  
11 *Performance Lab, Inc. v. Major League Baseball, et al.*, No. 2019CA002611 (11th Fla. Cir. Ct.,  
12 Miami-Dade Cnty.).

13 In March 2018, DNA Sports also sued ESPN, the Associated Press, and USA Today in the  
14 Southern District of Florida in March 2018, alleging that each had defamed plaintiffs by  
15 publishing or republishing a statement from the league that DNA Sports' July 2016 tortious  
16 interference lawsuit "admit[ed] Nix and his company used bioidentical insulin-like growth  
17 factor (IGF-1), which is derived from elk antlers and is on baseball's list of banned substances."  
18 *Nix and DNA Sports Performance Lab, Inc. v. ESPN, Inc., et al.*, No. 1:18-CV-22208-UU, 2018  
19 WL 8802885, at \*1-2 (S.D. Fla. Aug. 30, 2018). Plaintiff called the statement defamatory  
20 because it did not differentiate between natural and synthetic IGF-1, giving readers the  
21 impression that DNA Sports had engaged in illegal or legal-but-banned drug sales. The  
22 Southern District of Florida, however, held that the statement at issue was substantially correct  
23 and the omission did not render the report untrue, thus it was not defamatory. The district court  
24 dismissed the complaint with prejudice in August 2018. The Eleventh Circuit affirmed, ruling  
25 that league regulations banned all forms of IGF-1 — whether synthetic or natural. *Nix and*  
26 *DNA Sports Performance Lab, Inc. v. ESPN, Inc., et al.*, 772 Fed. Appx. 807, 814 (11th Cir.  
27 2019).  
28

1           The instant action descends from the March 2018 suit. After the Eleventh Circuit’s  
2 decision, DNA Sports began to investigate the presence of natural IGF-1 in animal-derived  
3 protein products. Specifically, DNA Sports “consulted with several experts” about whether  
4 whey-protein products endorsed by the league would contain natural IGF-1 (allegedly, they  
5 would) (Reich Decl., Dkt. No. 31-1 at ¶¶ 9–10). DNA Sports did not test these products for  
6 IGF-1 but instead relied on what it and its experts deemed “common sense” (*id.* at ¶ 11; Opp.  
7 Br., Dkt. No. 46 at ¶ 6).

8           In June 2019, DNA Sports’ current attorney, Lance Reich, contacted the league’s general  
9 counsel inquiring about “the unfair competition and conduct by [the league] in maligning [DNA  
10 Sports] in public for selling products containing natural IGF-1” while the league and the union  
11 endorsed and profited “from the sale of other nutritional products that contain[ed] natural IGF-  
12 1.” As DNA Sports admits, Reich demanded that the league “cease its sponsorship and  
13 partnerships with all companies and entities that sell natural protein products that contain  
14 natural IGF-1,” and “publicly announce that all nutritional supplement products that contain  
15 natural IGF-1 are banned performance-enhancing substances,” or face a new suit (Reich Decl.,  
16 Dkt. 31-1 at ¶ 12 & Exh. A). The league refused.

17           **2. DNA SPORTS’ PURSUIT OF THE BASEBALL UNION.**

18           Meanwhile, DNA Sports and its attorneys began pursuit of the union in the summer of  
19 2016. The union swears, but provides no further documentation, that from July 2016 to  
20 November 2016 DNA Sports offered to provide the union information about the league’s  
21 wrongdoing — first for payment, then in exchange for an internal 2011 union memo that  
22 referred to deer antler spray, which is similar to DNA Sports’ product (Dkt. No. 19-1 ¶ 5). The  
23 union declined each offer. In its declaration, the union further swears that, in March 2017,  
24 DNA Sports contacted it to warn that “an unnamed plaintiff was about to file an ‘explosive’  
25 RICO lawsuit against MLB and MLBPA” and the union would be spared if it would give a  
26 copy of the 2011 deer-antler-spray memo to DNA Sports (Dkt. No. 19-1 ¶ 6). The union  
27 declined, yet no suit materialized.  
28

1           After over a year of silence, DNA Sports and its new counsel contacted the union in July  
2           2018, seeking a sworn statement corroborating an alleged July 2016 phone call between DNA  
3           Sports’ counsel and the union’s in-house counsel, Robert Lenaghan (Compl. ¶ 21; Dkt. No. 19-  
4           1, Exh. A). Attorney Lenaghan had, allegedly, informed DNA Sports’ counsel that deer antler  
5           “was not and has never been banned in baseball and that no animal products are banned.” DNA  
6           Sports wanted confirmation of its statement for its still-pending, March 2018 suit against ESPN,  
7           the Associated Press, and USA Today. *Nix and DNA Sports Performance Lab, Inc. v. ESPN,*  
8           *Inc., et al.*, No. 1:18-CV-22208-UU, 2018 WL 8802885, at \*1-2 (S.D. Fla. Aug. 30, 2018). The  
9           union refused to confirm the alleged conversation with Attorney Lenaghan, maintaining that the  
10          Joint Drug Prevention and Treatment Program banned both natural and other sources of IGF-1  
11          as a performance-enhancing substance.

12          Throughout August and September 2018, DNA Sports repeated its demands for an  
13          affidavit regarding the permissibility of IGF-1 (Dkt. No. 19-1 Exhs. B–D). DNA Sports  
14          threatened legal action. DNA Sports apparently believed that the union’s failure to provide the  
15          requested memo breached its obligations to Mr. Nix as a former player under the collective  
16          bargaining agreement. In August, DNA Sports wrote, “Before commencing legal action against  
17          the MLBPA, Mr. Nix is giving the organization one final opportunity to provide him with [the  
18          requested] affidavit . . .” and gave the union five days to supply the document before filing a  
19          related complaint (Dkt. No. 19-1, Exh. B). The union refused to comply, asserting that it did  
20          not owe Mr. Nix a duty to provide the requested document and that any action against the union  
21          would be frivolous and sanctionable (Dkt. No. 19-1, Exh. C).

22          In September 2018, DNA Sports tried again with more specificity, writing that if the  
23          union refused to provide the affidavit, DNA Sports would “pursue an action against the  
24          MLBPA for breach of contract, breach of the covenant of good faith and fair dealing, and  
25          Florida’s Unfair and Deceptive Practices Act . . .” (Dkt. No. 19-1, Exh. D). After repeating  
26          why the union did not owe Mr. Nix a duty to comply and that any legal action on the matter  
27          would draw a sanctions demand, DNA Sports ceased its demands for a time (Dkt. No. 19, Exh.  
28          E at 2).

1           In February 2019, DNA Sports abandoned its theory that the baseball union owed a duty  
2 to Mr. Nix as a former player and again demanded a declaration regarding deer antler spray, this  
3 time pursuant to the New York Freedom of Information Law. The union again refused,  
4 explaining that law did not apply to private entities and that the union would pursue sanctions  
5 for “baseless” factual assertions and frivolous legal action (Dkt. No. 19 at 18).

6           In July 2019, after the Eleventh Circuit had ruled for ESPN and company on appeal, DNA  
7 Sports and its next lawyer, Attorney Lance Reich, contacted the union and insisted that it justify  
8 its past licensing of Klean Athlete protein supplements, which allegedly contained IGF-1 and  
9 yet were deemed “certified for sport” by NSF International (“NSFI”) (Rubin Decl ¶ 15). The  
10 licensing agreement allowed Klean Athlete to use the union’s trademark on licensed products  
11 (Dkt. No. 19 at 3, 11). Klean Athlete publicized its official partnership with the union in an  
12 April 2016 press release that also announced each MLB club received shipments of its “NSF  
13 Certified for Sport” supplements (Compl. Exh. 4). The union repeatedly refused to provide a  
14 “factual position with respect to the presence of IGF-1 in the accused products” while DNA  
15 Sports repeatedly threatened legal action. The parties exchanged numerous emails about the  
16 union’s involvement in this alleged false advertising (Dkt. No 19, Exhs. B–L). On several  
17 occasions, including after reviewing an advance copy of a complaint DNA Sports intended to  
18 file at the International Trade Commission (a version of which plaintiffs eventually filed here),  
19 the union explained DNA Sports’ claims lacked legal standing and sufficiency. DNA Sports  
20 proposed that it might forego litigation against the union if the latter identified the responsible  
21 parties. In September 2019, DNA Sports inquired into the union’s “potential” willingness to  
22 avoid any further litigation by:

23                   Publicly retract[ing] MLBPA’s . . . statement [that] ‘the Joint Drug  
24                   Prevent and Treatment Program expressly lists IGF-1 as a banned  
25                   Performance Enhancing Substance and does not distinguish  
26                   between nature and other sources of IGF-1 in that listing’ . . . and  
27                   publicly announce that natural IGF-1 as it occurs in the form of  
28                   animal products are not considered banned by MLBPA.

(Dkt. No. 19-1 at 7). At each juncture, though, the union stood on its rights.

1           The union implored DNA Sports to identify evidence proving the union had engaged in  
2 actionable wrongful conduct. DNA Sports ignored these requests for clarification.

3           **3. THE PRESENT SUIT.**

4           In January 2020, DNA Sports filed the present suit based on the league’s licensing  
5 agreements dealing with Gatorade “Recover” whey protein bars, Cytosport’s Muscle Milk  
6 protein shakes, and Eyepromise nutritional supplements and the union’s former licensing  
7 agreement with Klean Athlete (Compl. ¶¶ 35–38).

8           After DNA Sports filed its complaint, the union offered to stipulate that it had no current  
9 agreement with Klean Athlete and that its only agreement with Klean Athlete ended December  
10 2017. Attorney Reich agreed that DNA Sports might dismiss the complaint in exchange for that  
11 sworn declaration. The union followed up five times on this matter. Attorney Reich explained  
12 that he and DNA Sports were considering the language necessary for the declaration and stalled  
13 until April (Dkt. No. 19-1 ¶ 22, Exh. O).

14           In April, after the union repeatedly sought DNA Sports’ voluntary dismissal, Attorney  
15 Reich explained DNA Sports would not drop the complaint because it had video evidence  
16 proving that the union knew Klean Athlete’s supplements contained banned substances (Dkt.  
17 No. 19-1, Exh. P). As Attorney Reich explained, the video proved that “[the union] had an  
18 independent program administrator that oversees the testing done under the Joint Drug  
19 Program,” but proved nothing else (Dkt. No. 19-1, Exh. P). Upon receiving the non-  
20 incriminating video, the union asked, once again, for any evidence of wrongful conduct. DNA  
21 Sports did not answer until May 4 when Attorney Reich acknowledged that the union would be  
22 seeking sanctions (Dkt. No. 19-1, Exh. R).

23           As promised, the union moved for sanctions, seeking dismissal and attorney’s fees.  
24 Following the union’s motion, the league also moved for dismissal and sanctions. Before the  
25 league’s motion could be heard, however, an August 1 order dismissed the complaint against  
26 the union and, though it permitted a motion for leave to amend, recommended DNA Sports  
27 walk away. In response, DNA Sports dismissed its entire action against both the league and the  
28 union *with prejudice* (Dkt. Nos. 53, 54). Following an August 4 order’s request for updated



1 motions, the union moved to recover fees incurred by its two attorneys for 162.5 hours of work  
2 conducted from January 2020 through August 2020. The motion requests \$104,039.08 (Dkt.  
3 No. 59). The league moved to recover fees incurred by one attorney for 39.5 hours of work  
4 conducted from April 2020 through July 2020. The league’s motion requests \$33,407.17 (Dkt.  
5 No. 56).

6 This order follows full briefing and argument (held telephonically due to COVID-19).

7 **ANALYSIS**

8 The union and the league request monetary sanctions against Attorney Reich under Rule  
9 11 and against DNA Sports under the Court’s inherent authority, seeking to hold DNA Sports,  
10 Nix, and their latest counsel, Attorney Lance Reich, jointly and severally liable for fees and  
11 expenses (Dkt. No. 59 at 1).

12 Under FRCP 11(b), an attorney must verify to the best of his knowledge, information, and  
13 belief that:

14 (1) [the pleading] is not being presented for any improper purpose,  
15 such as to harass, cause unnecessary delay, or needlessly increase  
the cost of litigation;

16 (2) the claims, defenses, and other legal contentions are warranted  
17 by existing law or by a nonfrivolous argument for extending,  
modifying, or reversing existing law or for establishing new law.

18 Frivolous filings, or filings made for improper purpose, undermine this certification. *Estate of*  
19 *Blue v. County of Los Angeles*, 120 F.3d 982, 985 (9th Cir. 1997); *Townsend v. Holman*  
20 *Consulting Corp.*, 929 F.2d 1358, 1362–63 (9th Cir. 1990). Frivolous filings are both (1)  
21 objectively legally or factually baseless; and (2) made without a reasonable and competent  
22 inquiry. *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir. 1997). Similarly, improper purpose  
23 is judged objectively. *Townsend*, 929 F.2d at 1362. If an attorney violates Rule 11(b), courts  
24 may impose appropriate sanctions under Rule 11(c)(1). Sanctions do not require a finding of  
25 bad faith, but under Rule 11(c)(4) they are limited to what is sufficient to deter repetition of the  
26 sanctioned conduct.

27 In addition to Rule 11, federal courts have broad inherent powers to sanction parties,  
28 counsel, and firms that engage in “conduct which abuses the judicial process.” *See Goodyear*

1 *Tire & Rubber Co. v. Haeger*, 581 U.S. \_\_\_, 137 S. Ct. 1178, 1186 (2017); *see also B.K.B.*, 276  
2 F.3d 1091, 1108 (9th Cir. 2002) (discussing inherent sanctions against parties). Sanctions  
3 imposed under a district court's inherent powers require a bad faith finding, since they are  
4 intended to compensate. *Lahiri v. Universal Music & Video Distribution Corp.*, 606 F.3d 1216,  
5 1219 (9th Cir. 2010). District courts wield significant discretion in determining appropriate  
6 sanctions.

7 This order finds DNA Sports' complaint baseless. That, along with finding Reich failed  
8 to conduct an adequate investigation, supports Rule 11 sanctions. And, such baselessness in  
9 addition to bad faith supports inherent authority sanction of DNA Sports itself.

10 *First*, this order finds DNA Sports' complaint baseless. A prior order found glaring holes  
11 in the allegations against the union (Dkt. No. 53). Exhausted of defamation and other tort  
12 claims, plaintiffs sought relief under inapplicable statutes. To allege Lanham Act violations,  
13 plaintiffs must show that defendants made a false statement of fact in a commercial  
14 advertisement about its own or another's product, that the statement actually and materially  
15 deceived its audience, and that plaintiff has been or is likely to be injured as a result of the false  
16 statement in the form of diverted sales or loss of goodwill. *Southland Sod Farms v. Stover Seed*  
17 *Co. Eyeglasses*, 108 F.3d 1134, 1139 (9th Cir. 1997). False advertising claims brought under  
18 state law require showing that defendants participated in or had control over the untrue or  
19 misleading advertisements. *In re First Alliance Mortg. Co.*, 471 F.3d 977, 995–96 (9th Cir.  
20 2006). Yet, DNA Sports admit that their products contain naturally-occurring IGF-1. They  
21 concede that the league and the union have banned IGF-1 in its natural and synthetic forms  
22 under their Joint Drug Prevention and Treatment Program. And they acknowledge that NSF  
23 International, an independent product-testing organization, certifies products as “safe for sport”  
24 after testing for banned substances enumerated in the drug program (Compl. at ¶¶ 8, 18, 29).  
25 So, DNA Sports brought false advertising and unfair competition claims, contesting the  
26 “certified for sport” declaration on several products that allegedly contained IGF-1, without  
27 ensuring they sued the right defendants (*i.e.*, that defendants made, caused, or induced the  
28 allegedly false statement), showing requisite harm (*i.e.*, that plaintiffs suffered injuries like

1 diverted sales or loss of goodwill), or requesting appropriate relief (*i.e.*, courts cannot enjoin  
2 action that has already ceased on its own accord) (Dkt. No. 53). Such baselessness supports an  
3 inference of improper motive. *See Townsend*, 929 F.2d at 1365.

4 The league’s prior motion for sanctions would have been granted for similar reasons. The  
5 majority of DNA Sports’ complaint rehashed prior suits against the league and relied on  
6 conclusory statements to baselessly allege Lanham Act, false advertising, and unfair  
7 competition claims. The complaint recapitulated the misdeeds of the league’s investigations  
8 that inspired DNA Sports’ February 2015, July 2016, November 2016, and January 2019 suits  
9 which were all settled by prior rulings (Compl. at ¶¶ 15, 19–20). It then invoked the press  
10 release that was the subject of the March 2018 suit to maintain that though it is true DNA  
11 Sports’ supplements contain banned IGF-1, the league publicly maligned plaintiffs and  
12 “essentially bann[ed] [them] from ever working again in any” league-related capacity (*Id.* at ¶  
13 24). This after admitting that DNA Sports *never sold its supplements to league players* on  
14 account of a non-competition agreement (*Id.* at ¶ 18). Finally, DNA Sports alleges that league  
15 players and coaches consume products with IGF-1 and have never been disciplined and several  
16 league-endorsed products that compete with DNA Sports contain IGF-1. All this lending itself  
17 to false advertising and unfair competition.

18 Recall that these claims require, among others, both a false statement and harm, such as  
19 lost goodwill or diverted sales. *See Southland*, 108 F.3d at 1139; *First Alliance*, 471 F.3d at  
20 995–96. Yet DNA Sports’ complaint failed to show how the targeted products (the league-  
21 licensed Gatorade “Recover” whey protein bars, Cytosport Muscle Milk protein shakes, and  
22 Eyepromise nutritional supplements) compete with DNA Sports’ own products, which cost  
23 hundreds of dollars more and contain a banned substance. Further, plaintiffs failed to show how  
24 the use of the logo or the press release — the alleged commercial speech here — diverted sales  
25 from DNA Sports to these specific products and how this speech was false. Without these  
26 elements, their allegations against the league are baseless.

27 *Second*, given the obvious pitfalls in DNA Sports’ complaint, this order finds Attorney  
28 Reich failed to reasonably investigate these claims. To assess whether an attorney has

1 conducted an adequate pre-filing investigation, courts must consider factual questions regarding  
2 the nature of the inquiry and must determine whether the legal issues raised were warranted.  
3 *Cooter & Gell*, 496 U.S. at 399. DNA Sports and Attorney Reich alleged that they “consulted  
4 with several experts” about whether whey-protein products endorsed by the league would  
5 contain natural IGF-1 (allegedly, they would) (Reich Decl. at ¶¶ 9–10). DNA Sports did not  
6 test these products for IGF-1 but instead relied on what it and its experts deemed “common  
7 sense” to determine that all these certified for sport products contained IGF-1 (*id.* at ¶ 11; Opp.  
8 Br. at ¶ 6). Beyond this, a cursory investigation into Lanham Act, false advertising, and unfair  
9 competition claims would have revealed the commercial speaker, material-deception, and injury  
10 elements which could have saved DNA Sports’ complaint or at least, saved the league and the  
11 union the trouble of motion practice. Attorney Reich failed in this regard.

12 *Third*, this order finds DNA Sports filed its complaint to harass the league and the union.  
13 DNA Sports’ history of litigation demonstrates both that this suit is brought in bad faith to vex  
14 and that dismissal alone will not dissuade DNA Sports from trying again. Though this is only  
15 the first suit against the union, it is the *sixth* suit arising out of the *same original circumstances*  
16 against the league. As detailed in the prior order, prior dismissals and sanctions have not  
17 tempered DNA Sports’ vendetta against the league. It has repeatedly dismissed its cases against  
18 the league and companies, either voluntarily or in response to court orders. Yet, true to its  
19 reliable pattern, after dismissal, DNA Sports has simply developed a different theory in a  
20 different court based on the same facts and continued its pursuit of the league. In 2018, after  
21 several these dismissals, a New York state court imposed monetary sanctions on DNA Sports  
22 and its previous counsel for frivolous and harassing conduct against the league. *Nix and DNA*  
23 *Sports Performance Lab, Inc. v. Major League Baseball, et al.*, No. 159953/2016, 2018 WL  
24 2739433 (N.Y. Sup. Ct. June 7, 2018). As DNA Sports’ litigation history demonstrates,  
25 however, these sanctions have not fazed DNA Sports. Rather, it has continued to sue the  
26 league, affiliated entities, and now the union, this despite outstanding monetary sanctions for  
27 troublesome lawyering. Considering this prior misconduct, dismissal alone will not deter DNA  
28 Sports from filing further baseless and harassing suits.

1           Indeed DNA Sports and Attorney Reich refuse to dismiss outstanding cases against the  
 2 league, proving that DNA Sports does not intend to change its course of conduct. After the  
 3 August 1 order, the league offered to withdraw its motion for sanctions “if Plaintiffs [would]  
 4 dismiss with prejudice all outstanding litigation against the MLB defendants and agree to bring  
 5 no further litigation against the MLB defendants” (Dkt. No. 60 at 14). Although plaintiffs  
 6 dismissed the instant action *with prejudice*, DNA Sports still has outstanding litigation against  
 7 some of the league’s clubs and commissioner. These remain intact despite the league’s offer to  
 8 withdraw their sanctions motion entirely.

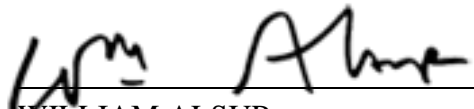
9           Given DNA Sports’ persistence, it may be that no amount of sanctions will deter it from  
 10 continuing its crusade. The requested amount of fees, however, will at least compensate the  
 11 union and the league for the harm done here. As this is the sixth case against the league (at  
 12 least), a full award is appropriate. Though this is the first suit against the union, a full award is  
 13 justified because it is part of an entrenched campaign of harassment.

14   **CONCLUSION**

15           For the reasons stated herein, defendant baseball union and defendant baseball league’s  
 16 motions for attorney’s fees are **GRANTED**. Plaintiffs, DNA Sports Performance Lab, Inc. and  
 17 Neiman Nix, jointly, shall pay the Major League Baseball Players Association’s attorney’s fees  
 18 for this suit, **\$104,039.08**. DNA Sports Performance Lab, Inc. and Neiman Nix, jointly, shall  
 19 pay Major League Baseball **\$33,407.17**. The sums are due **NOVEMBER 20 AT 5:00 P.M.**  
 20 Inasmuch as this appears to be Attorney Reich’s first appearance before the undersigned, and  
 21 given the importance of not dissuading representation of difficult clients, the motion as to  
 22 Attorney Reich will be held in abeyance to see the extent to which he engages in ongoing  
 23 harassment. The Court retains jurisdiction for this limited purpose.

24   **IT IS SO ORDERED.**

25           Dated: October 27, 2020.

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 WILLIAM ALSUP  
 UNITED STATES DISTRICT JUDGE