

No. 22-7810

---

In The  
**SUPREME COURT OF THE UNITED STATES**

NEIMAN NIX,  
*Petitioner,*

v.

MAJOR LEAGUE BASEBALL, OFFICE OF THE COMMISSIONER OF  
BASEBALL; ROBERT D. MANFRED, JR.; MAJOR LEAGUE BASEBALL  
PLAYER ASSOCIATION, et al.,

*Respondents.*

---

On Petition for Writ of Certiorari to the United States Fifth Circuit Court of  
Appeals, New Orleans, Louisiana

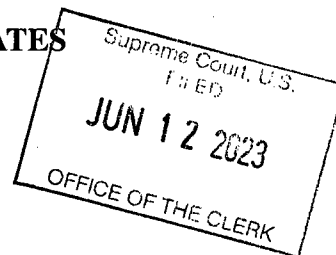
---

**PETITION FOR WRIT OF CERTIORARI**

---

Neiman Nix  
25560 Ramrock Dr.  
Porter, TX 77365  
Ph. 813-992-0788  
NNix9779@yahoo.com  
*Petitioner-Pro Se*

---



## QUESTIONS PRESENTED

1. Can Major League Baseball ban a natural substance that is required for humans to survive?
2. Can Major League Baseball selectively enforce its banned substance policy to allow certain parties to consume, promote, distribute, and/or sponsor the very same natural animal-derived product that they have represented to courts, the media, and in their banned substance policy as prohibited?
3. Did the lower courts err in deciding that a natural substance, commonly found in all animal products, be considered a drug?
4. Can a union ban a similarly situated individual from meeting with or communicating with union members in public or private settings?
5. Did the lower courts err in not allowing a Pro Se Plaintiff the ability to amend his Complaint even a single time?
6. Did the Fifth Circuit err in sanctioning a Pro Se Plaintiff where he had the right to appeal and matters were not clear to the lower court?

## LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Major League Baseball, Office of the Commissioner of Baseball; Robert D. Manfred Jr.; Timothy Maxey; Angels Baseball LP; Athletics Investment Group LLC d/b/a Oakland Athletics Baseball Company; Atlanta National League Baseball Club, LLC; AZPB Limited Partnership; Baltimore Orioles Limited Partnership; The Baseball Club of Seattle, LLLP; Boston Red Sox Baseball Club Limited Partnership; Chicago Cubs Baseball Club, LLC; Chicago White Sox, Ltd.; Cleveland Guardians Baseball Company, LLC; Colorado Rockies Baseball Club, Ltd.; Detroit Tigers, Inc.; Houston Astros, LLC; Kansas City Royals Baseball Club, LLC; Los Angeles Dodgers LLC; Marlins Teamco LLC; Milwaukee Brewers Baseball Club, Limited Partnership; Minnesota Twins, LLC; New York Yankees Partnership; Padres L.P.; Pittsburgh Associates; Rangers Baseball LLC; Rogers Blue Jays Baseball Partnership; San Francisco Giants Baseball Club LLC; St. Louis Cardinals, LLC; Sterling Mets L.P.; Rays Baseball Club, LLC; The Cincinnati Reds LLC; The Phillies; and Washington Nationals Baseball Club, LLC; Major League Baseball Players Association; Zachary Grant Antero Britton; The Gatorade Company; Cytosport, Inc.; NSF International; HVL LLC; LGC Science, Inc.; NFI Consumer Products; The Associated Press; Howie Rumberg; ESPN, Inc.; and USA Today, Inc.

ii  
**RELATED CASES**

*The Office of the Commissioner of Baseball v. Biogenesis of America, LLC, et. al.*, No. 2013-010479-CA-01 (Fla 11th Cir. Ct. filed Mar. 22, 2013)

*Nix v. Major League Baseball, et al.*, No. 14-004294-CA-01 (Fla 11th Cir. Ct. filed Feb. 18, 2014)

*Nix v. Major League Baseball, et al.*, No. 159953/2016 (N.Y. Sup. Ct. filed Nov. 28, 2016).

*Nix v. ESPN, Inc., et al.*, No. 18-cv-22208 (S.D. Fla. Filed June 4, 2018); dismissal affirmed by Eleventh Circuit (11th Cir. 2019).

*Nix v. Major League Baseball, et al.*, No. 2019-002611-CA-01 (Fla. 11th Cir. Ct. filed Jan. 25, 2019).

*DNA Sports Performance Lab, Inc. v. Major League Baseball et al.*, No. 3:20-cv-00546-WHA (N.D. Cal. filed January 23, 2020).

**TABLE OF CONTENTS**

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	i
RELATED CASES.....	ii
TABLE OF CONTENTS.....	ii
ABBREVIATIONS USED.....	iv
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE .....	2
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	17

**INDEX TO APPENDICES**

	Pages
APPENDIX A—Order of the United States Court of Appeals for the Fifth Circuit, dated March 16, 2023.....	A 1-25
APPENDIX B—Order of the United States District Court for the Southern District of Texas, dated June 13, 2022.....	B 1-48

**TABLE OF AUTHORITIES CITED**

CASES	Page
<i>Alexander v. Verizon Wireless Servs. L.L.C.</i> , 875 F.3d 243, 249 (5th Cir. 2017)...	16
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 678 (2009).....	15
<i>Barrera v. Major League Baseball et al.</i> , No. 7:20-cv-00198 US SDTX (2020)...	10
<i>Concepcion et. al. v. Office of Commissioner of Baseball et al.</i> , No. 3:2022-cv-01017 ....(US Puerto Rico 2022).....	18, 19
<i>CGC Holding Co., LLC v. Broad and Cassel</i> , 773 F.3d 1076, 1088 (10th Cir. 2014).....	17
<i>Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs</i> 259 U.S. 200 (1922).....	18
<i>Flood v. Kuhn</i> , 407 U.S. 258 (1972).....	18
<i>Goodyear Tire &amp; Rubber Co. v. Haeger</i> , 581 U.S. 137 S. Ct. 1178, 1186.....	18
<i>Hinojosa v. Livingston</i> , 807 F.3d 657, 684 (5th Cir. 2015).....	14
<i>International Dairy Foods Association v. Boggs</i> , 622 F.3d 628 No. 09-3515/3526, Sept. 30, 2010.....	6
<i>Janus v. AFSCME</i> , U.S. (2018).....	15
<i>Kelly v. Nichamoff</i> , 868 F.3d 243, 249 (5th Cir. 2017).....	15
<i>Marshall v. Jerico, Inc.</i> , U.S. 238, 242 (1980).....	7
<i>Metzger v. Sebek</i> , 892 S.W.2d 20, 37-38 (Tex. App. - Houston [1st Dist.] 1994).....	8
<i>NCAA v. Alston</i> 141 S. Ct. 2141 (2021).....	18
<i>Nix, and DNA Sports Performance Lab, Inc. v. ESPN, Inc., The Associated Press Inc., and USA Today</i> , SDFL Case No. 18-14107.....	3, 9
<i>Nix v. Luhnnow, et al.</i> , No. 50-2018-CA-003920 (Fla. 15th Cir. Ct. (2018).....	2
<i>Nix v. Major League Baseball, et al.</i> , No. 2019-002611-CA-01 (Fla. 11th Cir. Ct. (2019).....	11

<i>Nostalgic Partners, LLC et al. v. Office of the Commissioner of Baseball</i> , No. SDNY 1:2021-cv-10876; Second Circuit No. 22-2859 (2022).....	18, 19
<i>Pacqiao v. Mayweather</i> , 803 F. Supp. 2d 1208 (2011) USDC of Nevada, No. 2:09-cv-2448-LRH-RJJ.....	12
<i>Sorrell v. IMS Health Inc.</i> , 564 U. S. 552 (2011).....	15
<i>Steele v. Louisville &amp; Nashville R. Co.</i> , 323 U. S. 192, 202–203 (1944).....	14
<i>Toolson v. N.Y. Yankees, Inc.</i> , 346 U.S. 356 (1953).....	18
<i>The Office of the Commissioner of Baseball v. Biogenesis of America, LLC, et. al.</i> .....	11
<i>United States v. Godwin</i> , 765 F.3d 1306, 1324 (11th Cir. 2014).....	17
<i>United States v. Kamahale</i> , 748 F.3d 984, 1006 (10th Cir. 2014).....	17
<i>United States v. Zemlyansky</i> , 908 F.3d 1, 10 (2d Cir. 2018).....	17
<i>Zimmerman v. Al Jazeera Am. LLC</i> , No. 16-cv-0013 (KJB), opinion published Mar. 31, 2017, Citations 246 F. Supp. 3d 257 (D.D.C. 2017).....	12

## STATUTES AND RULES

Page

United States Constitution.....	1, 6, 7
28 U.S.C. § 2101 (c).....	1
28 U.S.C. § 1254 (1).....	1
Rule 12 (b) (6).....	5, 12, 15

## ABBREVIATIONS USED

1. “MLB” refers to Major League Baseball, Office of the Commissioner of Baseball and the 30 MLB Clubs.
2. “The League” refers to Major League Baseball, including the 30 Clubs.
3. “The Clubs” refers to the 30 MLB teams, which includes: Angels Baseball LP; Athletics Investment Group LLC d/b/a Oakland Athletics Baseball Company; Atlanta National League Baseball Club, LLC; AZPB Limited Partnership; Baltimore Orioles Limited Partnership; The Baseball Club of Seattle, LLLP;

Boston Red Sox Baseball Club Limited Partnership; Chicago Cubs Baseball Club, LLC; Chicago White Sox, Ltd.; Cleveland Guardians Baseball Company, LLC; Colorado Rockies Baseball Club, Ltd.; Detroit Tigers, Inc.; Houston Astros, LLC; Kansas City Royals Baseball Club, LLC; Los Angeles Dodgers LLC; Marlins Teamco LLC; Milwaukee Brewers Baseball Club, Limited Partnership; Minnesota Twins, LLC; New York Yankees Partnership; Padres L.P.; Pittsburgh Associates; Rangers Baseball LLC; Rogers Blue Jays Baseball Partnership; San Francisco Giants Baseball Club LLC; St. Louis Cardinals, LLC; Sterling Mets L.P.; Rays Baseball Club, LLC; The Cincinnati Reds LLC; The Phillies; and Washington Nationals Baseball Club, LLC.

4. “MLB Defendants” refers to Major League Baseball, Office of the Commissioner of Baseball; Robert D. Manfred Jr.; Timothy Maxey (Joint MLB and MLBPA Strength and Conditioning Coordinator—who oversees nutritional supplements); and the 30 MLB Clubs.

5. “MLBPA” refers to Major League Baseball Players Association.

6. “The Union” refers to Major League Baseball Players Association.

7. “MLBPA Defendants” refers to Major League Baseball Players Association; Zachary Grant Antero Britton.

8. “Nutritional Defendants” refers to The Gatorade Company; Cytosport, Inc. (“Muscle Milk”); NSF International; HVL LLC (“Klean Athlete”); LGC Science, Inc. (“Informed Choice”); NFI Consumer Products (“Blue-Emu”).

9. “Media Defendants” refers to The Associated Press (“AP”); Howie Rumberg; ESPN, Inc.; and USA Today, Inc.

10. “Nix” refers to Petitioner.

11. “MiLB” refers to Minor League Baseball.

12. “CBA” refers to collective bargaining agreement.

13. “IGF-1” refers to Insulin-like Growth Factor-1, a growth factor hormone naturally produced in the human body and in all mammals, similar in its molecular structure to insulin. It is called “insulin-like” because it has insulin-like properties, as the binding protein “1” molecule attaches to the insulin receptor cells. IGF-1 plays a crucial role in growth and development, particularly during childhood and adolescence. IGF-1 is a protein consisting of 70 amino acids, produced primarily by the liver and transported in the bloodstream throughout life. Protein intake increases IGF-1 levels in humans. IGF-1 is naturally found in all animal-derived foods including milk and meat.

## OPINIONS BELOW

The opinion for which review is sought is cited as *Neiman Nix v. Major League Baseball, Office of the Commissioner of Baseball; Robert D. Manfred, Jr.; Major League Baseball Players Association; Angels Baseball L.P.; Athletics Investment Group L.L.C., also known as Oakland Athletics Baseball Company; AZPB Limited Partnership; Associated Press, Incorporated; Howie Rumberg; ESPN, Incorporated; USA Today, Incorporated; NSF International; The Gatorade Company; NFI Consumer Products; Cytosport, Incorporated; Klean Athlete; Informed Choice; Zachary Grant Antero Britton; John and Jane Doe (1-10); et al.*, No. 22-20364 (United States Court of Appeals for the Fifth Circuit) dated March 16, 2023 and it is included in the appendix at A.

At the trial court level, the Southern District of Texas Houston Division opinion Case No. 4:21-cv-04180, dated June 13, 2022 is also included in the appendix at B.

## JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided the case was March 16, 2023.

The Fifth Circuit never issued a copy of the opinion to Nix, violating FRAP 36 (b).

No petition for rehearing was filed.

This petition for writ of certiorari is timely filed within ninety days after entry of the order by the United States Court of Appeals for the Fifth Circuit. This Court has jurisdiction under 28 U.S.C. § 2101 (c). The jurisdiction of this Court is further invoked under 28 U.S.C. § 1254 (1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### 1. United States Constitution, Fourteenth Amendment:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law\*\*\*.”

### 2. 28 U.S.C. § 2101 (c):

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or

decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

## STATEMENT OF THE CASE

### I. Nature of the Case:

This matter demonstrates that Major League Baseball and Major League Baseball Players Association have failed to comply with their own collectively bargained rules and with court orders related to the ban on the natural IGF-1 substance—commonly found in every animal-derived product that humans consume on a daily basis. The collective group of Respondents have shown they each knowingly engage in unfair business practices. But there cannot be different rules for different people in this country or in Baseball.

Neiman Nix was drafted out of high school to play professional baseball by the Cincinnati Reds. Nix later signed a free agent contract with the Milwaukee Brewers as a right handed pitcher. Nix was released due to arm injuries related to pitching, which required nine surgeries to his pitching arm. While rehabbing Nix developed a one-of-a-kind private baseball training program, called The American Baseball Institute (“ABI”), which revolutionized modern pitching (e.g. *Nix v. Luhnow, Houston Baseball Partners LLC, St. Louis Cardinals LLC, et al.*, (2018) 15th Cir. Palm Beach County, FL; currently set for trial in Nov. 2023— <https://drive.google.com/file/d/1l-9z9CV9CP4ID2qUYFaRQmBRgJODazYt/view?usp=sharing>). Major League Baseball wrongfully interfered with Nix’s ABI, as MLB assumed Nix was creating a union for minor league prospects. In 2012 Nix created a unique sports science center, called DNA Sports Performance Lab, Inc., which biometrically tested athletes including with natural sports nutritional supplements, and sold natural animal-derived products as a healthy alternative to performance-enhancing drugs. MLB wrongfully interfered with Nix’s DNA Sports Performance Lab during the 2013 Biogenesis Baseball Scandal, where MLB sent investigators into Nix’s place of business dressed as law enforcement and unlawfully hacked into his computers, WiFi, private materials, bank account, and wrongfully terminated his advertising platforms such as social media accounts. During Biogenesis in 2013, MLB sued a fake doctor and many involved with an illegally operated clinic not associated with Nix, but located in South Florida near Nix’s location (source: <https://mlb.nbcsports.com/2013/03/22/breaking-mlb-sues-biogeneis-anthony-bosch-claims-interference-with-contract/>). MLB would go on to suspend numerous players who were allegedly working with the fake doctor and admitted drug addict before paying the fake doctor/defendant over \$5 million dollars just before he was sent to prison for four years. The fake doctor was allegedly supplying banned substances to players and MLB strangely sued for interference claims while MLB’s real goal was simply to get subpoena power to investigate and apply pressure on numerous individuals. At least five MLB investigators were fired for cause relating to the Biogenesis investigation and MLB’s Commissioner Robert D. Manfred publicly stated to ESPN recently that:



“Asked whether he now regrets the way the inquiry was conducted with nearly a decade of hindsight, Manfred cited the bad behavior of some MLB investigators, including one who wooed the girlfriend of a potential witness with gifts. The league's investigative team was reorganized as a result.” “There were things that some of our investigators did that led to their ultimate departure from the organization,” Manfred says now. “I did not condone that behavior, nor did the organization -- it was completely and utterly unprofessional and inappropriate -- and that's why they were terminated.” (source: [https://www.espn.com/mlb/story/\\_/id/34130915/hate-baseball-wants-save-it](https://www.espn.com/mlb/story/_/id/34130915/hate-baseball-wants-save-it)). Nix filed suit in Feb. 2014 against MLB and known MLB investigators who caused great damage to his businesses, MLB then retaliated against Nix with multiple attempts to destroy his businesses and bankrupt Nix.

Nix brought defamation claims against MLB in 2016 and against the Media Defendants (AP, ESPN, and USA Today) in 2018 relating to statements and articles falsely labeling Nix as a seller of at least one banned substance, insulin like growth factor (IGF-1). Ironically, MLB did not ban the natural form of IGF-1 while investigating Nix during the Biogenesis scandal (2013-2014), but instead changed their drug policy in July 2015 to add a catch-all to IGF-1 and other peptides (i.e. amino acid protein chains—found in the human body and animal products such as eggs, milk, and meat proteins). MLB then told the courts and the media (in and around 2017/2018) that “all natural, synthetic and bioidentical versions of any prohibited substances—including, but not limited to, IGF-1—are considered banned.” Yet on March 18, 2020 MLB completely changed it's position in a filing with the NY Appellate Court, without changing the banned substance policy, stating: “MLB bans substances, not products, and it is the amount of IGF-1 ingested—not the natural or synthetic source—that matters.”

Upon losing both defamation cases to MLB and the Media Defendants, the Eleventh Circuit's decision on May 15, 2019, *Nix v. ESPN, et al*, Case No. 18-14107, made clear that IGF-1 is a prohibited substance in MLB, regardless of the source of the substance or if it is synthetic or natural IGF-1, as a matter of law. Nix then brought unfair competition claims against MLB and MLBPA in Northern California (Jan. 2020) as each endorsed animal-derived products such as protein from cow's milk, the same as Nix sold, which naturally contains IGF-1. Nix lost there too and was sanctioned, as the Court stated Nix sued the wrong parties and should have sued the nutritional supplement companies (who do business with MLB and MLBPA) and tested the items. Nix then tested the products of the Nutritional Defendants including the likes of Gatorade, MuscleMilk, Klean Athlete, and Blue-Emu—each product contained bioavailable levels of the prohibited substance IGF-1, and some were even endorsed as ‘safe for sport’ and ‘free of banned substances’ by MLB's third party testing company NSF International. Nix then brought conspiracy, fraud, false advertisement claims, etc, in this action and the SDTX dismissed the case and sanctioned Nix for allegedly failing to state a claim, but did not allow for even a single amendment of the Complaint. Nix appealed the matter to the Fifth Circuit and the Fifth Circuit found

that natural IGF-1 substance—found in animal products such as milk and meat—is banned in Baseball, but is required for humans to survive.

## II. Statement of the Facts:

On March 16, 2023 the Fifth Circuit of the United States Court of Appeals factually found the following (emphasis supplied):

*“The following core facts are taken from Nix's complaint except for the dispositions of his prior lawsuits, which are subject to judicial notice. Nix is a former professional baseball player whose defunct company, DNA Sports Performance Lab, Inc., sold and distributed natural animal substances.*

*In 2013, MLB and the MLBPA began an investigation into the sale and use of performance-enhancing drugs; Nix and his company were among those investigated. Since then, Nix has filed a series of lawsuits across the country against MLB, the MLBPA, their members and employees, and an increasing number of assorted defendants.*

*As of 2015, the Joint Drug and Prevention Treatment Program (“Joint Drug Agreement”), which defines impermissible drug usage by MLB players, has banned insulin-like growth factor (“IGF-1”) as a prohibited substance. The natural form of IGF-1 is required for human survival and occurs in detectable quantities in a wide variety of everyday food and drink, including meat and milk. The ban, per MLB, includes all-natural, synthetic, and bioidentical versions of IGF-1.*

*Nix claims that the ban is “fake” and selectively enforced. As the complaint interprets the ban, it is absolute: Despite that IGF-1 is necessary for survival, any player who consumes anything with even a quantum of IGF-1 violates the ban. Nix alleges that he is being unfairly targeted because MLB has not suspended every player who has consumed any natural or synthetic product that contains any “bio-available” level of IGF-1 and has targeted him for selling products containing IGF-1.*

*In 2016, Nix sued MLB and related defendants in the Southern District of New York for tortious interference with current and prospective business relationships. Various news agencies, including the Media Defendants, reported on the suits. An article originally published by the AP and republished by other Media Defendants stated that in his suit, Nix had admitted that his company sold products containing IGF-1.*

*Nix then sued the AP, ESPN, and USA Today in the Southern District of Florida, claiming that the published statement was defamatory. During that lawsuit, Nix was informed that MLB had confirmed to the AP that the ban on IGF-1 did not distinguish based on type (i.e., natural versus synthetic).*

*The district court dismissed the case. In response to that dismissal, an AP sports editor, Howie Rumberg, emailed an MLB employee and said, “Not sure you even remember helping me with a few things on a defamation case involving PED [i.e., performance-enhancing drug] producer Neiman Nix but wanted to let you know his suit was tossed out of court.” Nix alleges that statement was defamatory.*

*Nix then sued MLB and other defendants in several state and federal courts, including New York state court and California federal court. The court in California found that Nix failed to state any claim under Rule 12(b)(6) but allowed him to amend his complaint. Nix declined and dismissed with prejudice. The court then sanctioned Nix and his company; Nix has yet to pay the sanctions.*

*Throughout the years of litigation, MLB and the MLBPA have either continued or started sponsorship and promotional relationships with numerous Nutritional Defendants. For example, CytoSport advertises its Muscle Milk products using the likenesses of numerous MLBPA members and the trademarked logos of MLB clubs. Likewise, MLB announced a sponsorship agreement with Blue-Emu, which then marketed some of its products as the “official” ones of the MLB. Moreover, numerous products were tested and labeled “certified for sport” by defendant NSF.*

*We come to the lawsuit at issue here, which alleges nine causes of action: (i) civil RICO claims against all defendants; (ii) fraud claims against all defendants; (iii) defamation claims against the AP and Rumberg; (iv) aiding and abetting claims against ESPN, the AP, USA Today, Tim Maxey, Zackary Britton, Muscle Milk, and Klean Athlete; (v) Lanham Act claims against Gatorade, NSF, Blue-Emu, Informed Choice, and numerous MLB Clubs; (vi) vicarious liability claims against Gatorade, NSF, and Britton; (vii) tortious interference claims against MLB and the MLBPA; (viii) unjust enrichment claims against all defendants; and (ix) mental anguish claims against all defendants.*

*Nix's core legal theory is that the defendants have selectively enforced the “fake” IGF-1 ban against him and no one else. Thus, for example, MLB and the MLBPA are lying whenever they claim that IGF-1 is banned, and the Nutritional Defendants are lying when they claim that their products are “certified for sport,” because they contain some amount of IGF-1. Likewise, any media statements that he is a “PED producer” or sold banned substances are misleading or defamatory.”*

### **III. The Trial Court Proceedings:**

On December 27, 2021 Nix filed suit in the Southern District of Texas, see: [https://drive.google.com/file/d/1lrx0Jhpd1uEhVu9\\_vZxC8-\\_aY4NMv7P\\_/view?usp=sharing](https://drive.google.com/file/d/1lrx0Jhpd1uEhVu9_vZxC8-_aY4NMv7P_/view?usp=sharing). The SDTX dismissed the matter on June 13, 2022 without letting Plaintiff/Petitioner amend and issued sanctions but did not impose monetary sanctions, see Appendix B.

### **IV. The Appellate Court Proceedings:**

On March 16, 2023 the United States Court of Appeals for the Fifth Circuit affirmed dismissal and granted the defendants motion for sanctions. The Fifth Circuit failed to issue Pro Se Plaintiff/Appellant Nix a copy of the opinion, thus violating FRAP 36 (b) and rendering its order unenforceable.

## **REASONS FOR GRANTING THE WRIT**

Nix's petition should be granted because: (1) humans must consume the natural growth factor that is like insulin (IGF-1) to survive; and (2) the Fifth Circuit and the SDTX rendered judgments and opinions under circumstances that are in violation to due process rights under the Fourteenth Amendment to the United States Constitution.

MLB, Commissioner Manfred, MLBPA, and the 30 MLB Clubs have repeatedly represented to multiple courts across the country and the media that IGF-1 is banned in all forms, natural and synthetic. The Fifth Circuit has found—and Nix has presented expert reports and physical testing results demonstrating—that IGF-1 is commonly found in milk and meat, along with all animal products. The Respondents cannot have this both ways—natural IGF-1 derived from animals—is either banned or it is not. The Respondents have been inconsistent, misleading, and taken incorrect positions demonstrating that we need clarity from this Court to either allow natural IGF-1 or to ban MLB players/employees from consuming any animal product—which would sadly result in the end of Baseball as we know it.

Extensive testing and expert reports have proven that natural IGF-1 is found in the Nutritional Defendants' products such as the NSF approved products including MuscleMilk and Klean Athlete animal-derived protein products, namely whey protein—derived from cow's milk. Further tests concluded that non-NSF certified products which MLB, MLBPA, and MLB Clubs sponsor, endorse, and supply their logo to including Gatorade whey protein bars (labeled as MLB's 'Protein Bar Provider') and MLB's 'Official Pain Cream' Blue-Emu products also contain bioavailable IGF-1 at much higher, non-natural levels as compared to NSF approved animal-derived products. This is likely the result of Gatorade and Blue-Emu manufacturers injecting their animals with animal growth hormones such as Recombinant Bovine Growth Hormone (rBGH or rBST—recombinant somatotropin). The Sixth Circuit has found that: "a compositional difference does exist between milk from untreated cows and conventional milk ("conventional milk," as used throughout this opinion, refers to milk from cows treated with rbST). As detailed by the amici parties seeking to strike down the Rule, the use of rbST in milk production has been shown to elevate the levels of insulin-like growth factor 1 (IGF-1)" *International Dairy Foods Association v. Boggs*, 622 F. 3d 628 No. 09-3515/3526, Sept. 30, 2010. Regardless of the level and/or potency, MLB and MLBPA have represented that all forms of IGF-1 are banned and no level is mentioned in the MLB drug policies.

Major League Baseball has long had drug problems, especially in recent decades related to performance-enhancing substances. The League and the Union have even been called in front of Congress to explain how they planned on cleaning up what the media commonly calls the 'The Steroid Era' in Baseball. Paradoxically, it is not just the players injecting themselves, now it appears the MLB/MLBPA sponsored nutritional companies are injecting the animals to then provide the players with enhanced substances when players are asked to take only

NSF approved items, MLB endorses non-NSF approved items, and unfairly directs minor league players to *only* consume NSF certified products. **It is no wonder that MLB or MLBPA cannot even publish an updated banned substance policy for major or minor league players for the current 2023 season.**

On or about May 9, 2023 MLBPA posted their “new” collective bargaining agreement for the 2022 - 2026 term, (see: [https://www.mlbplayers.com/\\_files/ugd/4d23dc\\_88609b8210174cfa9fee95fc2be279af.pdf](https://www.mlbplayers.com/_files/ugd/4d23dc_88609b8210174cfa9fee95fc2be279af.pdf)). This new CBA took over 14 months to complete and has an effective date of March 10, 2022, which was during the same time period that the Respondents made claims to the SDTX and Fifth Circuit stating that IGF-1 was banned. This newly posted CBA refers to third party nutrition certifier “NSF” 11 times and states: “each Club shall be required to provide certain categories of NSF Certified for Sport nutritional supplements to all 26-man roster Players during the championship season (including while on the road), all 40-man roster Players during the off-season and Spring Training, its AAA affiliates during the championship season, and to any Player who becomes a free agent” and “all dietary supplements and functional foods (e.g., **protein bars** and shakes) made available at home and on the road **must be NSF Certified for Sport.**” “Spring Training. Clubs will be required to make available the NSF Certified for Sport supplements described in categories 1 – 10 of the attached list to all 40-man roster players in their organization during Spring Training, at no cost to those players.” “Minor League Players. Clubs will be required to make available at least one NSF Certified for Sport supplement in categories 1 – 5 of the attached list to all players on their Triple-A affiliate roster during the championship season, at no cost to the players.” “Required Nutritional Supplement Categories 1. Multi-Vitamin/ Antioxidant a. Food Form Multi-Vitamin/Antioxidant (at least one) b. Regular Multi-Vitamin/Antioxidant (at least one) 2. Omega 3/Fish Oil (at least two) 3. Pre/Probiotic (Enzyme/Digestive Aid) (at least two) **4. Protein a. Protein Powder (at least two) b. Protein Bar (at least one) c. Ready to Drink Shake (at least two)**”. The takeaway here is that each protein product (4 a-c) contains the banned substance IGF-1, just as other items related to sections 1 and 2 contain IGF-1 in some form according to medical experts/reports. Upon further review of the NSF website, no protein bars appear to be listed as certified, yet according to the new CBA, MLB Clubs **must provide** at least one, such as the Gatorade whey protein bar which is not NSF certified, but displays the MLB logo—as the official MLB protein bar, and contains a much higher level of IGF-1 as compared to other animal-derived protein products, such as whey protein derived from cow's milk naturally. This scenario creates a Hobson's Choice for all players—consume the banned substance IGF-1 or violate the MLB and MiLB drug agreement.

The Due Process clause of the United States Constitution entitles a person to an impartial and disinterested tribunal in civil cases. *Marshall v. Jerico, Inc.*, U.S. 238, 242 (1980). This requirement of neutrality in adjudicative processing safeguards the central concerns of procedural due process. *Id.* It preserves both the

appearance and reality of fairness, generating the feeling that justice has been done, by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Id.* The requirement of neutrality has been jealously guarded by this Court. *Id.*

The Fifth Circuit and the SDTX violated Nix's fundamental due process rights by issuing lengthy opinions each containing a great deal of errors, omissions, irregularities and distorted interpretations of the facts. More specifically, the Fifth Circuit and SDTX opinions (I) fail to allow a Pro Se Plaintiff/Appellant to amend prior to dismissal—holding Nix to a much higher standard than a represented party, (II) repeatedly transgresses the applicable standard of review, (III) contains numerous false assertions and implications about Nix's case, (IV) prejudicially omits a great deal of Nix's arguments, (V) fails to take the pled facts as true, (VI) time and again turns a blind eye to Nix's evidence—where new, never before claims were brought, (VII) construes case law and statutes in a distorted fashion, and (VIII) contains several other irregularities also indicating bias, prejudice or favoritism. If the SDTX and the Fifth Circuit's opinions stand unchanged, it will "breed skepticism and mistrust" of the judiciary. *Metzger v. Sebek*, 892 S.W.2d 20, 37-38 (Tex. App. - Houston [1st Dist.] 1994).

#### **I. MLB and MLBPA Have Represented That The Natural Growth Factor That Is Like Insulin (IGF-1), Commonly Present In All Animal Products, Is Banned In Baseball.**

In 2017 MLB, Commissioner Manfred, and Selig stated to The New York Supreme Court that MLB bans all forms of IGF-1, including natural and synthetic. In 2018 MLB stated to the Media Defendants, in relation to Nix's animal products, that MLB "bans all natural, synthetic, and bioidentical versions of any prohibited substances—including—but not limited to, IGF-1—are considered banned". In 2018 MLBPA stated that the Joint Drug Prevention and Treatment Program expressly lists IGF-1 as a banned Performance Enhancing Substance and does not distinguish between natural and other sources of IGF-1 in that listing.

#### **II. The Business Of Major League Baseball Engages In Arbitrary and Capricious Conduct In Relation To The MLB Drug Policies and Operates Like a Cartel With Mob-Like Behavior.**

MLBPA's Bob Lenaghan oversees the drug policy for the MLBPA members. Lenaghan had earlier informed Nix in 2016 that no animal product, including deer or elk antler, was ever banned in Baseball. Nix also spoke with MLB and MLBPA's Joint Strength and Conditioning Coordinator, Tim Maxey in 2018, and was informed that IGF-1 was present in MLB's third party nutritional supplement certifier (NSF International) products, in the form of protein powders and bars. Strangely, Maxey was completely unaware of MLB's ban on all forms of IGF-1, yet he is the actual joint point man representative for the league and the

union for any questions players have related to nutrition and dietary supplements.

Nix presented the league, the union, and the media defendants with numerous expert reports including: (I) UCLA's Dr. Stanley Korenman's report stating that IGF-1 is commonly found in foods such as milk and meat; (II) Dr. Douglas Kalman's report detailing how natural IGF-1 is present in numerous animal-derived MLB/MLBPA sponsored products—some of which are even NSF approved; (III) NSF's lead scientist John Travis's statement that IGF-1 is present in all mammals; and (IV) Dr. Oliver Rabin's (science director for World Anti-Doping Agency—whom MLB/MLBPA collectively contract for drug testing) deposition testimony that natural IGF-1 is naturally found in animal derived foods, deer antlers, colostrum (also known as milk).

Nix personally purchased, consumed, and lab tested MLB/MLBPA sponsored MuscleMilk, Klean Athlete whey protein (each NSF approved), Gatorade whey protein bars, MLBPA & MLB Club (Astros) sponsored ice cream, and Blue-Emu products. Lab tests concluded that each product contained bioavailable levels of IGF-1, with the ice cream, Gatorade, and Blue-Emu (each non-NSF approved) containing much higher IGF-1 levels, not consistent with natural occurring IGF-1 found in nature (i.e. non-hormone treated animals). See test results:

[https://drive.google.com/file/d/1v-\\_tUIDaB30iTm\\_1nA6ZrksnryS0QWUc/view](https://drive.google.com/file/d/1v-_tUIDaB30iTm_1nA6ZrksnryS0QWUc/view)

Third party testing companies such as NSF and Informed Choice claim the products they test and certify are 'safe for sport' and 'free of banned substances', but this is not true as every animal-derived product that they certify naturally contains bioavailable IGF-1.

MLB and MLBPA have attempted to state that they did not know what was in the approved products or even the unapproved products that they sponsor as early as 2018, but these representations were fraudulently constructed, as their own joint strength and conditioning coordinator Maxey even informed them that IGF-1 was commonly found in animal-derived products such as commonly consumed whey protein—derived from milk, which most athletes consume. MLB has even tried to hide Maxey's email communication, among numerous other similar communication, which MLB was ordered by a Miami, FL court to produce in January 2021 but has still failed to, subjecting MLB to sanctions at \$1,000 per day, now totaling near \$900,000.00 owed to Nix, plus the remaining outstanding discovery—which will no doubt subject MLB and others connected to massive criminal implications.

Based on MLB's extremely astonishing statement made in early 2018 to the Media Defendants that MLB bans all natural, synthetic, and bioidentical versions of any prohibited substances, the Media Defendants used this to prevail over Nix in the *Nix v. ESPN et al.* matter. MLB's statement also represented that other banned substances found in the natural form would then also be banned as

well. These items would include natural testosterone, like IGF-1, it is also present in all animal products, including red meat, fish, chicken, etc. Other natural items found on MLB's prohibited drug lists include hCG (human chorionic gonadotropin) and hGH (human growth hormone), as humans interact and are intimate with other humans these natural occurring substances are also constantly being transferred. Earlier precedents have already been set by MLB, where a player can be suspended based on 'non-analytical positives' or evidence uncovered through non-analytical measures. If a player/employee fails three tests they are forever banned from MLB per the collectively bargained rules. Based on MLB's bizarre representation to the Media Defendants and earlier Courts if a player were to consume eggs, bacon, sausage, and a glass of milk he would be evicted by the league before lunch on any given day.

MLB often bans players for even picogram levels (one trillionth of a gram —e.g. the average weight of the DNA in one cell of a hummingbird), such as the case for numerous suspensions in the picogram level of DHCMT (dehydrochloromethyltestosterone), see recent class action suit against MLB: *Barrera v. Major League Baseball et al.*, No. 7:20-cv-00198 US SDTX (2020). Following the *Barrera* matter, the current MLB player/plaintiff asked MLBPA if the natural IGF-1 commonly found in steak was banned and if NSF tests for DHCMT, MLBPA refused to respond even known they had a legal duty to. Oddly enough, NSF stated on their own website that they do not test for all MLB banned substances, yet falsely state that their approved products are 'safe for sport' and 'free of banned substances', which rings disturbingly Kafkaesque and is simply incorrect.

Dr. Kalman's expert report appropriately summed up MLB's faulty drug program stating: "If the MLB program were to be administered by the letter and spirit of the wording, then dairy foods, meats, milks and such would also have to be banned from being use, which is completely illogical. Nonetheless, I am told that the Defendants have taken this position, so accordingly, at a minimum, the accused products in this case contain natural IGF-1 and are therefore banned under the MLB's Drug Program."

The *Streisand effect*, a phenomenon in which attempts to hide a matter, yet has the opposite result, is now patently obvious in this proceeding. All of the Respondents are now subject to the IGF-1 provisions as a matter of law and cannot legally engage in business without violating their own rules—a clear poetic justice reminder to always be truthful and never compromise your integrity. It is no wonder why so many MLB Clubs have been up for sale in recent years but have not sold (i.e. Nationals, Angels, Rays, Orioles, among others). Based on the case law, the Clubs now appear worthless. The case law further provides that because MLB and the MLB Clubs have provided banned substances to their employees, each employee and/or player is subject to being declared a free agent due to the material breach of their contract and unsafe work environment. Similar instances of such a breach and interference with MLB contracts provide precedents, for



example, the March 2013 matter of *The Office of the Commissioner of Baseball v. Biogenesis of America, LLC, et. al.*—where MLB filed a lawsuit against a fake doctor who was supplying banned substances (i.e. actual drugs) to players. Coincidentally, the Nutrition Defendants and MLB Clubs engage in the exact same unlawful activity and a precedent has already been set. Ironically, during *Biogenesis*, MLB was represented by the same law firm present in this proceeding, Kobre and Kim, including attorney Adriana Riviere-Badell (also the lead attorney-in-charge for the Respondents in this matter), where MLB claimed that the “doctor” induced the players to breach their contractual obligations to MLB’s Drug Program—causing damages, including the loss of goodwill, loss of revenue and profits and injury to its reputation, image, strategic advantage and fan relationships. Any current or former player who has consumed NSF approved proteins, MuscleMilk, Klean Athlete, Gatorade, Blue-Emu, or any other IGF-1 based animal product could theoretically take legal action based on the same case law precedent MLB has already set. Based on the fact that MLB ended up paying the Defendant/fake doctor \$5 million dollars before he was sent to prison for four years there is no telling just how much the Nutrition Defendants were compensated to unlawfully collude with MLB.

This Court should take notice of the *Nix v. MLB* (2019) Miami-Dade case, where Nix was wrongfully accused of being involved in the Biogenesis Scandal, resulting in the firing of MLB investigators involved in Nix’s matters, many of whom were paid handsomely via golden parachute packages upon being sacked. During Nix’s matters, MLB investigator Ricardo Burnham posed as fake law enforcement officer upon entering Nix’s business and MLB Chief Security Officer Neil Boland and other MLB agents hacked into Nix’s computers, WiFi, online accounts/advertising platforms, and banking systems with the goal of first obtaining his private customer lists, then to later to destroy Nix’s ability to fund his legal battle. Nix has spent a great deal of time and money uncovering decades of corruption inside MLB, along with gaining first hand testimony from many parties, including former MLB investigator, Eddie Dominguez, who released a book in late 2018 titled *Baseball Cop: The Dark Side of America’s National Pastime*. Nix was even mentioned in the book in Chapter 12, aptly titled “Hacker”, describing Boland’s unlawful activity at the direction of MLB’s Labor Department/Commissioner Manfred who oversaw Biogenesis. These criminal acts are likely just some of the many reasons MLB has gone to such great lengths to try to coverup and dismiss Nix’s matters as MLB has no interest in ever being held accountable for their unlawful activities in Biogenesis and other unlawful investigations. See:

[https://drive.google.com/file/d/1c5tv8PW0JG87PA4cDO\\_qY3NrEGahPV\\_A/view](https://drive.google.com/file/d/1c5tv8PW0JG87PA4cDO_qY3NrEGahPV_A/view)

### **III. The Courts Below Have Incorrectly Found That A Natural Occurring Substance, Commonly Found In All Animal Products, Is Also Considered A Drug.**

Nix brought defamation and conspiracy claims related to statements made

by Media Defendants' representative and Associated Press employee Howie Rumberg. Rumberg stated in an email to MLB: "Not sure you even remember helping me with a few things on a defamation case involving PED producer Neiman Nix but wanted to let you know his suit was tossed out of court." PED stands for performance enhancing drug. Nix does not sell any form of any drug, but rather naturally-derived animal products from cows, deer, and emu. Nix had made this very clear to the AP/Media Defendants before Rumberg's false statement, as Nix's earlier suit stated he only deals in animal products and is against any drug or PED use, lives an ultra healthy lifestyle and has never even consumed alcohol. MLB had also publicly made it clear that Nix was never accused of selling any drug or any illegal substance.

The SDTX strangely found that "a reasonable reader would understand Rumberg's reference to Nix as a "PED producer" as a description for the federal court's finding that Nix had admitted to selling products that contained banned performance-enhancing substances, not for the defamatory reading that Nix contends. This claim too fails." The Fifth Circuit agreed with this position, but both courts are wrong here in multiple ways. First, there is a major difference in a drug and a natural animal product/substance. Drug dealers do not get sentenced for selling jugs of milk or for slinging hamburgers, but rather for selling actual illegal drugs. Second, natural IGF-1 is not truly banned, as MLB has even admitted in public filings in the NY Appellate Court in March 2020 that "MLB bans substances, not products, and it is the *amount* of IGF-1 ingested- not the natural or synthetic source- that matters". This statement was made after MLB made an earlier conflicting statement to the NY Court (2017) and the Media (2018) stating that MLB bans natural and synthetic IGF-1. No level/amount was ever even mentioned in any drug policy as to a banned IGF-1 level, yet a select few other banned substances / actual drugs do have banned levels listed.

A dispute where split opinions have occurred between courts in relation to the nature of PED defamation claims exists here. In 2017 Judge Kentanji Brown Jackson ruled on a similar case involving a PED defamation matter involving two MLB baseball players also defamed by the media in *Zimmerman v. Al Jazeera Am. LLC*, No. 16-cv-0013 (KJB), opinion published Mar. 31, 2017, Citations 246 F. Supp. 3d 257 (D.D.C. 2017). Judge Brown Jackson's Order also referred to another similar defamation matter in a pro boxing PED defamation matter, *Pacqiao v. Mayweather*, 803 F. Supp. 2d 1208 (2011) USDC of Nevada, No. 2:09-cv-2448-LRH-RJJ. Each of these matters survived motions to dismiss, unlike this matter, as Judge Brown Jackson correctly stated "When evaluating a Rule 12(b)(6) motion, the court must accept as true all of the allegation contained in a complaint"...and "grant plaintiff the benefit of all inferences that can be derived from the facts alleged".

The lower courts have erred in not allowing defamation, conspiracy, and fraud claims to go forward, as discovery is clearly needed as fact issues remain. MLB has taken no action to enforce its ban on natural IGF-1 commonly found in

animal products, but instead the entire Baseball ecosystem greatly profits from IGF-1 related commerce.

#### **IV. The Scope of Baseball's Ban on IGF-1 / Animal-Derived Products Is an Important Question That Needs To Be Settled.**

The parties do not dispute that the synthetic drug form of a synthetic injectable peptide with brand names such as Increlex (also known medically as Mecasermin), approved by the FDA to treat children with severe primary insulin-like growth factor deficiency (SPIDFG) is banned. As this drug is sometimes referred to by a slang-name such as "IGF-1" and contains a far greater unnatural level of IGF-1. The issue here is simply about animal products and the IGF-1 substance that naturally occurs in all animal-derived items to which the Fifth Circuit factually found to be present in milk and meat and is needed for humans to survive.

Many parties need clarity on this issue, including all current and future players, employees, agents, teams, testing companies, nutritional supplement companies, and even the media. MLB and MLBPA often fight over numerous business issues and have gone on to strike and/or locked each other out of numerous seasons due to labor disputes. The drug policy has been a major problem for years, sadly each side uses various issues in collective bargaining to gain an advantage and or trade up in other issues. The drug program should be run independently and clear standards are needed not just for IGF-1 but for all drug provisions surrounding the game. This Court should easily recognize this ongoing problem within Baseball and recommend Congress get involved to force Baseball to have an independent authority to oversee MLB's drug program so that it is fair to all parties and not selectively enforced. This Court should at the very least settle the question: Can MLB players/employees consume natural animal products? And if so, eliminate the ban on natural IGF-1 in Baseball.

#### **V. The MLBPA Union Representatives Have Interfered With Nix's Business Relations With MLBPA Members, Prospective Members, Agents, and Others Related.**

In early 2021 Nix's former attorneys received an email from MLBPA counsel forbidding Nix to speak with or attend any location where current MLBPA members or player representatives gather, including public areas. The reason for this was to block Nix's free speech as Nix informed a few current MLB players that MLBPA was sued and that the IGF-1 commonly found in animal products was said to be banned by the MLBPA union, but not communicated to any of the players. MLBPA was clearly conspiring with MLB and the 30 Clubs to keep this quiet as MLBPA attorneys had even asked Nix's former attorneys in early 2020 if Nix was trying to shut down Baseball, he was not. Instead Nix, also a former player, who has not retired from playing after nine arm surgeries has been attempting to regain his health and play or coach again. MLBPA never issued any

memos to any players about the banned substance being in NSF approved products or attempted to steer players away from consuming any banned IGF-1 items, which is telling. MLBPA had a duty to tell its members just what is banned and if they are being sued, yet MLBPA representatives (i.e. attorneys and executives) conspired to keep this from the very individuals they represent. Instead they tortiously interfered with Nix's relationships with other players and agents to whom Nix had decades of business dealings with previously.

Nix and his attorneys previously requested a declaration from MLBPA stating that MLBPA members and future members were allowed to consume natural animals products such as milk, meat, fish, deer, whey protein, NSF approved items, and other natural animal products which naturally contain IGF-1. MLBPA refused this stating that they would not supply a non-MLBPA member with any statement and had no duty to do so. This was strange as MLBPA has long bargained for minor league players and future MLBPA members rights during their collective bargaining agreements every five years with MLB. MLBPA even bargains for the MLB amateur draft. In Nix's response to MLBPA in SDTX in May 2022, Nix demonstrated that Courts have routinely ruled that CBA's also apply to non-union members and therefore a union (such as MLBPA) may not negotiate a CBA that discriminates against nonmembers (such as draft picks and/or minor league players—which Nix is and/or was both), see *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 202–203 (1944). In August of 2022, MLBPA, for the first time ever, sent authorization cards to minor leaguers and by September 2022 MLB voluntarily recognized a newly formed minor league players' union which MLBPA represents. Ironically, the people involved in assisting with the newly formed MiLB union were also directly aware of Nix's matters and upon information and belief it was Nix's matters and other related matters which pushed MLBPA to finally allow minor leaguers to join. MiLB members are now recognizing many internal issues with MLBPA, as just as the MLBPA members, such as MLBPA executive player representative Zack Britton, also saw in the form of the faulty drug program and MLBPA's legal malpractice. Britton and numerous other MLBPA members were shocked to learn that MLBPA did not inform them that the MLB Commissioners Office under the direction of Manfred instructed MLB Security Chief Neil Boland to set up a private will call ticket database for purposes of illegally spying on select players' friends and family upon investigative matters such as Biogenesis. Britton would go on to conspire with MLBPA and MLB and kept the IGF-1 issue quiet rather than informing all MLBPA members or his team, the New York Yankees, during their historic 2022 season where MLBPA member Aaron Judge would go on to break the American League home run record formerly held by Roger Maris and George Herman 'Babe' Ruth. Many baseball historians and sports media put asterisks by the all-time home run kings Barry Bonds and Mark McGwire due to their alleged performance-enhancing drug fueled records, while virtually every human would be in violation of the ban if natural IGF-1 was truly prohibited and or enforced.

MLBPA has failed in its efforts to educate its players of what is banned

and failed to deter the use of banned substances, namely IGF-1, to which they state is banned. MLBPA has interfered with Nix's business relationships with players and agents, as no business can take away a person's First Amendment right to free speech, see *Sorrell v. IMS Health Inc.*, 564 U. S. 552 (2011). "Speech is everywhere—a part of every human activity (employment, health care, securities trading, you name it)"... "almost all economic and regulatory policy affects or touches speech. So the majority's road runs long. And at every stop are black-robed rulers overriding citizens' choices. The First Amendment was meant for better things. It was meant not to undermine but to protect democratic governance—including over the role of public-sector unions", see *Janus v. AFSCME*, (2018) quoting *Sorrell*.

#### **VI. The Lower Courts Held Pro Se Plaintiff Nix To A Higher Standard Than A Represented Party, and Disallowed Amendment Of The Complaint.**

The SDTX's Order dated June 13, 2022 stated that some of Nix's allegations were unclear. Nix clarified each item individually in his Fifth Circuit appeal, yet neither court was willing to allow Plaintiff to amend his original complaint even once. The courts clearly held Nix to a higher standard than even a represented party, as Nix even requested a chance to amend and the SDTX did not allow.

Nix asserted claims of RICO Conspiracy, Fraud, Defamation, False Advertising, Aiding and Abetting, Tortious Interference, Unjust Enrichment, Vicarious Liability, and Mental Anguish. Each claim had good cause for moving forward, but the courts were severely misled by the collective Defendants/ Respondents, as they falsely stated most every claim was precluded. Even in Nix's appeal, Nix provided a time line to inform the Court how it was not possible to bring a number of the claims earlier because the cause of action had not happened yet or that Nix had no way of knowing the conspiring activity was continuing. Nix provided irrefutable evidence that IGF-1 was present in the Nutritional Defendants products and that MLB, MLBPA, and the MLB Clubs were not enforcing the IGF-1 ban except against Nix. Nix even demonstrated how he presented over 41 instances relating to RICO violations/unlawful predicate acts (e.g. wire/mail fraud, obstruction of justice, extortion, theft, witness tampering, and computer hacking) throughout his well-pled Complaint, but neither the SDTX or the Fifth Circuit accepted these facts as true. It is well settled that, in considering a motion to dismiss, the Court is to take all factual allegations as true and construe the facts in light most favorable to the plaintiff, citing *Kelly v. Nichamoff*, 868 F3d 243, 249 (5th Cir. 2017). A movant cannot circumvent the well-established rule by merely attaching past court orders they have obtained through fraud on previous courts which completely contradict their own positions and established precedents. Nix's Complaint easily established "enough facts to nudge his new claims across the line from conceivable to plausible." *Hinojosa v. Livingston*, 807. F3d 657, 684 (5th Cir. 2015) (quoting *Iqbal*, 556 U.S. at 680). When considering a motion to dismiss under Rule 12(b)(6), the Court should not affirm dismissal of a claim unless the

plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Alexander v. Verizon Wireless Servs. L.L.C.*, 875 F 3d 243, 249 (5th Cir. 2017). Nix demonstrated numerous factually pled claims in his opening brief that the District Court did not take as true, and erred in doing so. Furthermore, the District and Appellate Court did not adhere to the Pro Se Form's simple requirements in relation to (DE 1 page 4, section III) the Statement of Claim—which Nix certainly followed.

## **VII. The Fifth Circuit Decision Is Internally Contradictory**

The Fifth Circuit's factually found items, such as the core facts taken from Nix's complaint demonstrate numerous errors. First, it correctly states that Nix was investigated in 2013 by MLB, yet the Fifth Circuit found that it was not *until* 2015 that MLB banned the natural form of IGF-1. This raises the conspiracy claim as to why was MLB investigating Nix in the first place, as Nix sold animal products, not drugs like what MLB was uncovering in the nearby fake doctor/medical clinic known as Biogenesis. Second, the Appellate Court found that "the natural form of IGF-1 is required for human survival and occurs in detectable quantities in a wide variety of everyday food and drink, including meat and milk. The ban, per MLB, includes all-natural, synthetic, and bioidentical versions of IGF-1." Somehow both courts were convinced by the Respondents' many lawyers that Baseball can ban IGF-1 entirely and also provide IGF-1 to its players and this strangely was not a cause of action that required discovery. Not only did the Respondents mislead both courts they also had the gall to request sanctions while they clearly knew they were unlawfully acting in bad faith.

The collective Respondents likely went along with MLB and MLBPA attorneys in their unlawful game theory known as a 'prisoners' dilemma', where multiple guilty parties conspire to collaborate together. If the case would have moved into discovery some of the less guilty parties, would have likely defected from the conspiring collaboration, and MLB/MLBPA parties would have likely attempted to pay to make it all go away under their scheme. Such outcomes like this 'prisoners' dilemma' are injurious to Nix, to others associated within Baseball, and to society; as litigation is the time-honored method of seeking the truth, finding the truth, and doing justice. The Respondents have abandoned these basic principles in favor of their own interests.

## **VIII. The Lower Courts and The NY and CA Courts Unfairly Sanctioned Nix, as Respondents' Unlawful IGF-1 Conspiracy Continues.**

The age-old proverb that says "two wrongs don't make a right" is extremely applicable here as Nix brought claims in 2016 against MLB (and in 2018 against the Media Defendant Companies) after being defamed in relation to each stating that Nix was selling the banned substance IGF-1 (naturally derived from animals)—when in reality IGF-1 is found in all animal products. MLB stated to the courts and the media in 2017/2018 that IGF-1 was banned in all forms. After

losing those matters and being sanctioned by MLB Nix brought unfair competition claims in the Northern District of California relating to the fact that MLB and MLBPA endorse animal products which naturally contain IGF-1, Nix lost there too and was again sanctioned heavily. MLB and MLBPA committed massive fraud on the court in CA—as MLBPA repeatedly stated falsely—without any evidence or being at issue—that Nix was selling the drug hGH (human growth hormone) and MLB fraudulently stated that NSF animal products did *not* contain IGF-1. Based on these numerous unlawful fabrications MLB and MLBPA has stolen well over \$180,000 from Nix and his attorneys in the form of ill-gotten sanctions by bamboozling the court systems. Then in this matter, after testing each product of the Nutritional Defendants, Nix pled and factually presented that IGF-1 is not just present in all animal products, but also needed for human survival and presented newly discovered facts of admission on behalf of MLB (March 2020, see Complaint at 55-74) that they don't ban IGF-1—except in high amounts—yet never state any banned level. Somehow the SDTX Court also ruled against Nix as well and Nix was sanctioned twice again to which the collective Respondents sought nearly \$176,000 in even more sanctions—all the while engaging in furthering the IGF-1 conspiracy. Simply put, Baseball cannot legally say they ban the natural form of IGF-1, but then continue to provide and endorse natural IGF-1 (commonly found in animal products), to which (some) are labeled as 'safe for sport' and 'free of banned substances'. These inconsistent, misleading, and incorrect positions by the Respondents demonstrate that the court system has failed multiple times and that the Respondents have no interest in following the MLB Rules or the law as it relates to the ban on IGF-1.

The Respondents cannot have this both ways. A conspirator must simply intend to further an endeavor which, if completed, would satisfy all elements of a civil RICO claim. *Id.* at 65; see also *CGC Holding Co., LLC v. Broad and Cassel*, 773 F.3d 1076, 1088 (10th Cir. 2014) (one conspires to violate RICO by adopting the goal of furthering the enterprise, “even if the conspirator does not commit a predicate act”); *United States v. Godwin*, 765 F.3d 1306, 1324 (11th Cir. 2014); (“[i]n proving the existence of a single RICO conspiracy, the government does not need to prove that each conspirator agreed with every other conspirator, knew of his fellow conspirators, was aware of all of the details of the conspiracy, or contemplated participating in the same related crime”); *United States v. Kamahele*, 748 F.3d 984, 1006 (10th Cir. 2014) (stating that “the Government does not need to prove that each defendant personally committed two predicate acts to prove a RICO conspiracy” and that “[t]he focus of this element is on the particular Defendant’s agreement to participate in the objective of the enterprise to engage in a pattern of racketeering activity, and not on the particular Defendant’s agreement to commit the individual acts”); *United States v. Zemlyansky*, 908 F.3d 1, 10 (2d Cir. 2018) (stating that “a jury’s finding that a defendant did not commit certain substantive crimes does not necessarily preclude the government from later proving that he or she knowingly agree to facilitate the racketeering scheme involving, or intending to involve, the same substantive crimes”).

The collective group of Defendants/Respondents' entire course of conduct was unethical and part of a scheme to defeat Nix's valid claims in each IGF-1 related matter. Simply put, if the Respondents were to have behaved appropriately Nix's litigation would have never had to happen. Federal courts have broad inherent powers to sanction parties, counsel, and firms that engage in "conduct which abuses the judicial process." See *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 137 S. Ct. 1178, 1186 (2017).

#### **IX. Current and Future Baseball Players Face A Hobson's Choice.**

The result of the Fifth Circuit's opinion is that all current and future MLB-related employees face a Hobson's choice—ingest (distribute and/or market) natural IGF-1 commonly found in milk, meat and natural animal-derived supplements (like Nix sold in the same form as that sold by the Nutritional Defendants) and violate the MLB Drug Agreement, or forego IGF-1 and cause physical harm to one's well-being (Complaint/DE 1 at 119—demonstrating that — "*Plaintiff attempted to follow MLB Rules and Regulations per learning of the IGF-1 ban in and around 2018, and changed his diet to remove IGF-1 based animal products, unfortunately Plaintiff got very sick from not consuming IGF-1 and started consuming animal products again. Due to this selectively enforced rule against Plaintiff, he (nor other non-vegans) could not legally be employed by MLB, based on his knowledge of MLB Rules and Regulations in relation to all forms of IGF-1 being banned.*"). In either case, Nix would not be able to work in baseball, which is the sports career Nix entered upon being drafted into Major League Baseball as a teenager and has been associated with ever since.

#### **X. The Court Should Grant This Petition and Other Related Petitions Against MLB Because These Cases Present Distinctive Fact Patterns Of Unfair Practices Throughout Baseball.**

For over a century Baseball has relied on this Court's puzzling precedent related to the 1922 ruling in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, which held that the business of baseball was not subject to the Sherman Antitrust Act because the "exhibitions of base ball" were not considered interstate commerce. Even more peculiar, this Court upheld this opinion on two separate occasions on the basis of congressional intent and *stare decisis*. The reasoning within these opinions (*Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953) and *Flood v. Kuhn*, 407 U.S. 258 (1972)) bears virtually no resemblance to modern-day reality. The 'Baseball Trilogy' of cases have long been subject to criticism among the legal community and the recent ruling *NCAA v. Alston* is a telling indication that this Court is prepared to eliminate baseball's antitrust exemption. Two other Baseball related matters are on course to also reach this Court very soon: *Nostalgic Partners, LLC v. Office of the Commissioner of Baseball*—a case related to MLB unfairly contracting select Minor League Teams and *Concepcion et. al. v. Office of Commissioner of Baseball, Manfred, et. al.*—a case related to unfair wage and labor laws. The



upcoming *Nostalgic* and *Concepcion* matters, similar to *Nix*, each demonstrate MLB's unfair business practices and restraints on trade.

In a 19-page amicus brief filed on January 30, 2023, the United States Department of Justice told the U.S. Court of Appeals for the Second Circuit that the *Federal Baseball* antitrust exemption for Major League Baseball (MLB) "is of 'dubious validity' and should not be extended." The amicus brief—filed in the ongoing dispute between certain MiLB teams and MLB—represents the most vigorous statement to date of the government's skepticism towards judicially-created exemptions from the nation's antitrust laws for entities in the sports industry. U.S. District Judge Andrew L. Carter ruled on Oct. 26, 2022 that the minor league teams in *Nostalgic* had standing and "had pleaded sufficient facts to show an actual adverse effect on competition in the identified market." But he dismissed the suit because of the antitrust exemption. "Plaintiffs believe that the Supreme Court is poised to knock out the exemption, like a boxer waiting to launch a left hook after her opponent tosses out a torpid jab," Carter wrote. "It's possible. But until the Supreme Court or Congress takes action, the exemption survives; it shields MLB from plaintiffs' lawsuit."

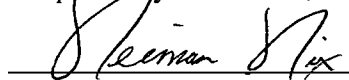
This Court should grant this petition and the upcoming petitions in *Nostalgic* and *Concepcion*, as all three cases present distinctive fact patterns in relation to Baseball's unfair practices, and therefore should be reviewed together.

### CONCLUSION

Based on the foregoing, Neiman Nix respectfully submits that this *Petition for Writ of Certiorari* be granted. For it is Petitioner Nix's prayer that this Court will clarify Baseball's drug policy provisions in relation to IGF-1 for all current and future players/employees, allowing for healthy competition and clear standards to make certain the rules are fair to all parties who carry on America's National Pastime. The Court may wish to consider summary reversal of the decision(s) and sanctions by the Fifth Circuit Court of Appeals and the Southern District of Texas, and remand of this matter to the lower court for further proceedings. Petitioner also requests such other relief in law or equity to which he may be justly entitled.

Dated: June 12, 2023

Respectfully submitted,



Neiman Nix  
25560 Ramrock Dr.  
Porter, TX 77365  
Ph. 813-992-0788  
NNix9779@yahoo.com  
***Petitioner - Pro Se***