

Commission, thereby preventing Baffert from practicing in his chosen profession or using his state issued license on state owned property.

2. In this action, Baffert seeks, among other things, a declaration pursuant to 28 U.S.C. § 2201, *et seq.*, that NYRA is prohibited from: (a) denying racehorses owned and/or trained by Baffert entry into races contested at New York racetracks, including, but not limited to, Belmont Park, Aqueduct Racetrack and Saratoga Race Course; (b) denying Baffert the privileges of the grounds of the foregoing New York racetracks; and (c) denying Baffert stall space at New York racetracks.

3. Baffert also seeks, among other things, entry of a preliminary and permanent injunction enjoining NYRA from further barring him from training and entering horses in his care, custody, and control into races contested at New York race tracks, including but not limited to Belmont Park, Aqueduct Racetrack and Saratoga Race Course. If NYRA is not immediately enjoined, Baffert will suffer immediate and irreparable harm.

JURISDICTION

4. This Court has jurisdiction over this matter pursuant to its original jurisdiction as set forth in 28 U.S.C. § 1331 and 1343, and 42 U.S.C. § 1983 in that Baffert alleges a violation of his rights protected under the Fourteenth Amendment to the United States Constitution by an entity acting under the color of New York State law. This is a civil action seeking relief and damages to defend and protect Baffert's constitutional rights. Additionally, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because it involves parties of diverse citizenship and an amount in controversy in excess of \$75,000, exclusive of interest and costs.

5. This Court has supplemental jurisdiction over Baffert's state and common law claims by virtue of the provisions of 28 U.S.C. § 1367(a) because those claims form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Baffert's claims, set forth herein, have occurred and continue to occur within this district.

PARTIES

7. Baffert is an individual and resident of the State of California, and is a well-respected and successful trainer of Thoroughbred racehorses. He has been a trainer for over 46 years and the horses he has trained have won races at the highest level of the sport. His horses have won the Kentucky Derby seven times; the Preakness Stakes seven times; the Belmont Stakes three times (contested over NYRA operated Belmont Park); and seventeen Breeders Cup Races. Of the thirteen American Triple Crown Winners in history, Baffert has trained two of them: AMERICAN PHAROAH in 2015 and JUSTIFY in 2018. Baffert was elected to the National Thoroughbred Hall of Fame in 2009.

8. Baffert is presently licensed as a Thoroughbred Trainer by the Gaming Commission. Additionally, Baffert is licensed in a similar capacity in numerous other states.

9. NYRA is a New York not-for-profit corporation with a principal place of business located at 110-00 Rockaway Blvd., Jamaica, New York 11417.

10. NYRA is a not-for-profit franchised corporation created by the State of New York. However, unlike other state created not-for-profit corporations, the existence and operation of NYRA is specifically governed by the New York law that grants it the exclusive franchise to

conduct live thoroughbred racing and simulcasting at the state-owned racetracks on behalf of the state, from which the state derives substantial revenue.

11. By statute, only NYRA can conduct thoroughbred racing at the New York state-owned franchise thoroughbred racetracks. In fact, NYRA has no other purpose; by statute its existence is coterminous with its franchise to conduct thoroughbred racing at the New York state-owned tracks.

12. A number of the Board of Directors of NYRA are appointed by the New York State Governor, Senate and Assembly. Moreover, NYRA is subject to the edicts of a state-created and controlled franchise oversight board, the sole purpose of which is to oversee NYRA's franchise. Such is the importance of New York thoroughbred racing to the State of New York and the symbiotic nature of the state and the entity it has chosen to oversee NYRA. The oversight board's mission is defined as "ensuring the continuation of high quality thoroughbred racing at the thoroughbred racing facilities located within the state, raising revenue for or in aid or support of education in this state from video lottery gaming at facilities of the state racing franchise, and maximizing revenue for governments from pari-mutuel wagering on races at facilities of the state racing franchise."

13. NYRA controls, for all practical purposes, all licensed Thoroughbred race tracks in the State of New York,² including Belmont Park, which is the host of the Belmont Stakes—the third and final leg of the Triple Crown. Under New York law, NYRA has the exclusive franchise to conduct horseracing and to provide pari-mutuel wagering on live Thoroughbred racing and

² The state-owned racetracks in New York are Aqueduct Racetrack in Queens County, Belmont Park in Nassau County, and Saratoga Race Course in Saratoga County. NYRA relinquished any property ownership in these facilities to the State of New York in exchange for its franchise. Racing, Pari-Mutuel Wagering and Breeding Law Section 208 (2). These three racetracks conduct "world-class" racing year-round. A fourth facility, Finger Lakes Race Track in Canandaigua, New York, is a private facility that conducts seasonal race cards offering a purse structure that is infinitesimal when compared to the NYRA circuit. Finger Lakes essentially exists as a facility for horses that are not competitive on the NYRA circuit.

simulcast Thoroughbred racing at all New York race tracks. NYRA is a state franchisee, operating thoroughbred racing on state-owned properties, that derives substantial revenue from the state's Video Lottery Terminal ("VLT") program. Specifically, VLTs are located at Aqueduct Racetrack in Jamaica, Queens. NYRA administration, management and operation, receives substantial funding from the VLTs at Aqueduct Racetrack through statutorily mandated payments.

14. NYRA operates subject to the rules mandated by the Gaming Commission and only operates because the Gaming Commission has granted it a license to conduct pari-mutuel racing dates annually at various locations across the State of New York. Through its franchise agreement, and other relevant portions of New York Racing Law, the relationship between NYRA is extremely intertwined with the State. As previously stated: (a) the State maintains a financial oversight board over NYRA and NYRA obtains a significant portion of its revenue from state owned and operated VLT's; (b) in exchange for financial assistance, NYRA conveyed to the State all rights, titles, and interests in the racetrack properties – thus NYRA operates exclusively on State owned property; (c) the State is empowered to borrow funds on behalf of NYRA for capital improvements; (d) the State retains authority to audit the books and accounts of NYRA at its discretion; and (e) the NYRA Board of Directors are partially appointed directly by the Governor and the New York State Legislature.

15. The Gaming Commission is the state agency statutorily empowered to oversee all aspects of horseracing in the State of New York, including the issuance of occupational racing licenses and the qualifications of horses racing in New York races. *See* N.Y. Racing Law § 104. The authority over occupational racing licenses is exclusive to the Gaming Commission and does not rest with NYRA in any way, shape or form.

FACTS

16. Baffert repeats and realleges the allegations in paragraphs 1 through 15 of this Complaint as set forth fully at length herein.

17. Baffert is the trainer of the Thoroughbred racehorse MEDINA SPIRIT. On May 1, 2021, MEDINA SPIRIT won the 147th running of the Kentucky Derby at Churchill Downs race track in Louisville, Kentucky.

18. Following the Kentucky Derby, blood and urine samples were collected from MEDINA SPIRIT according to Kentucky state laws and procedures. Kentucky's protocols are consistent with uniform standards throughout all racing jurisdictions, including New York. *See* 9 NYCRR § 4012.3.

19. Kentucky's post-race sampling and testing procedures are governed by administrative regulations set forth by the Kentucky Horse Racing Commission. *See* 810 Ky. Admin. Regs. §§ 8:010 to 8:060.

20. Those regulations provide that for races with purses of \$100,000 or more, the horse finishing first and at least one other horse shall be sampled. *See* 810 Ky. Admin. Regs. § 8.060, Section 2(3).

21. Two samples are taken: a primary sample and a split sample. The "primary sample" is the "primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory." 810 Ky. Admin. Regs. § 8.010(6). The "split sample" is the "split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory." *Id.* at § 8:010(7).

22. After the race, the primary sample is immediately tested. The split sample, however, remains in the commission's possession and is not tested unless the primary sample is positive for a substance in violation of Kentucky's rules. 810 Ky. Admin. Regs. § 8:010, Section 11(3).

23. Under Kentucky's rules, there is no formal calling of a positive result until both the primary and split samples confirm the same finding. Thereafter, the matter is set for a hearing before the Kentucky Racing Stewards. Any adverse action related to a disqualification of a horse, or a suspension of a license, only occurs after the foregoing steps have been followed and a hearing is completed before the Stewards. 810 Ky. Admin. Regs. § 9:010.

24. On May 8, 2021, Baffert was informed by the Kentucky Horse Racing Commission that MEDINA SPIRIT's primary sample tested positive for 21 picograms of betamethasone, a lawful, commonly used therapeutic anti-inflammatory medication.

25. A picogram is one-trillionth of a gram. This is the rough equivalent of one drop of water in an Olympic sized swimming pool.

26. Betamethasone itself is not a performance-enhancing drug. Rather, it is a substance that can suppress inflammation, much like similar corticosteroids such as hydrocortisone and prednisone. It is commonly administered in horses to reduce inflammation.

27. Betamethasone is labeled by the Kentucky Horse Racing Commission as a Class C substance. Class A and B substances are the most highly regulated and deemed to possess the most potential to alter the outcome of a race. Class C substances, however, are considered much more benign. Betamethasone is approved for use by the United States Food and Drug Administration, and recognized by the Racing Medication Testing Consortium and Association of Racing Commissioners International as a valuable therapeutic substance, and is included on their

Controlled Therapeutic Medication Schedule. It is neither performance-enhancing nor pain masking.

28. Betamethasone is most commonly given to horses through injection. If a horse is treated with this drug by injection, Kentucky's regulations require a 14-day withdrawal period to give the substance time to dissipate from the horse's system prior to race day. 810 Ky. Admin. Regs. § 8:025, Section 1(k)(i). There are, however, other methods in which betamethasone may unintentionally enter a horse's system.

29. Scientific studies have proven that environmental and/or innocent contamination can lead to substances such as betamethasone being detected in the blood of a horse up to levels of 100 picograms. This risk of environmental or inadvertent contamination has become magnified as technology improves and tests employed by various racing jurisdictions become more and more sensitive and capable of detecting increasingly more minute levels of substances.

30. There are several ways a horse may be contaminated by betamethasone. Wound sprays often contain betamethasone. Ointments for treatment of dermatitis in a horse may contain betamethasone. Psoriasis creams for humans can contain betamethasone. Any of these external sources can be responsible for inadvertent contamination or transfer.

31. There is ongoing testing related to both the blood and urine primary and split samples of MEDINA SPIRIT. This testing is to determine whether the presence of betamethasone in MEDINA SPIRIT was the result of an injection, topical ointment or otherwise. The Kentucky Horse Racing Commission has not made any final decision concerning either Baffert or MEDINA SPIRIT. Put simply, MEDINA SPIRIT has not been disqualified as the winner of the Kentucky Derby and Baffert's Kentucky training license has not been suspended. Under Kentucky's rules,

any consideration of those issues must wait until there is a formal hearing before the Kentucky Racing Stewards, which has not yet taken place.

32. There has, nonetheless, been a media frenzy surrounding Baffert and MEDINA SPIRIT.

33. On May 17, 2021, as a result of the media frenzy and the ongoing Kentucky investigation, NYRA announced that Baffert was “immediately” and “temporarily suspended from entering horses” at any NYRA track, namely Belmont Park, Saratoga Race Course, and Aqueduct Racetrack. *See* NYRA May 17, 2021 Letter, attached hereto as **Exhibit A**. NYRA provided no indication as to the duration or the terms of its “suspension” other than that it will be “based on information revealed during the course of the ongoing investigation in Kentucky.”

34. The adjudicative process in Kentucky is comprehensive, and Baffert is entitled not only to an administrative adjudicatory proceeding before the Kentucky Horse Racing Commission, but also appeals to courts of law prior to any final determination concerning his Kentucky license or the status of MEDINA SPIRIT as the winner of the Kentucky Derby.

35. For context, only one other Kentucky Derby winner has been subsequently disqualified for a finding in a post-race blood sample. That matter was adjudicated for nearly *four years* before any final determination was reached.

36. Even if Baffert is found in violation of Kentucky’s rules and regulations, the likely maximum penalty he may face under Kentucky law is a thirty day suspension. 810 Ky. Admin. Reg. § 8:030, Section 4(3)(b).

37. NYRA controls the operation of *all* major Thoroughbred race tracks within the State of New York and operates as an effective monopoly. NYRA does not have the legal authority to suspend Baffert – that rests solely with the Gaming Commission as the entity that issued his

occupational license – a license that affords Baffert a property interest under state law sufficient to invoke due process protections. Despite this fact, by purporting to summarily and indefinitely suspend Baffert from all NYRA tracks, NYRA has essentially barred Baffert from exercising his professional and State-issued trainer’s license anywhere in the State of New York. Additionally, NYRA has purported to suspend Baffert and the use of his license without any notice or opportunity to be heard in violation of due process. Lastly, by connecting Baffert’s “suspension” to the Kentucky investigation, which is likely to go on for years, NYRA has correspondingly banned Baffert from participating in New York racing for *several years*.

38. Under New York State law, the Gaming Commission is the entity with “general jurisdiction over all gaming activities within the state and over the corporations, associations and person engaged therein.” N.Y. Racing Law § 104(1).

39. NYRA is governed entirely by the Gaming Commission and its duly-enacted regulations. The Gaming Commission’s regulations provide that “[a]ll provisions in this Subchapter affecting licensed racing associations shall be applicable also to franchised racing associations, racing corporations, and franchised racing corporations except as may be otherwise provided by law.” *Id.* at § 4003.2.

40. The Gaming Commission has exclusive authority under New York law to license individuals associated with horse racing. The New York rules of racing make clear that “[n]o person shall participate in the affairs of any association or corporation licensed or franchised by the commission ... unless such person shall have received an occupational license from the commission.” 9 NYCRR § 4002.1(a); *see also id.* at § 4002.1(b). The Gaming Commission similarly has exclusive authority over whether to suspend or revoke a horseracing license issued under New York law. Every licensee of the Gaming Commission must “comply with this

Subchapter and that violation thereof may be punished by suspension or revocation of such license.” *Id.* at § 4002.1(c).

41. The Gaming Commission has the sole statutory and regulatory authority to issue or refuse to issue a license or to suspend or revoke a license in connection with horseracing in the State of New York. Only the Gaming Commission may “exclude” or “suspend the license of such person” and only if that person is found to be in violation of the Gaming Commissions regulations pertaining to horseracing. *See* 9 NYCRR § 4022.12.

42. By law, the Gaming Commission may only deny, suspend, or revoke an occupational license under certain scenarios, including:

- If an applicant has been convicted of a crime in any jurisdiction;
- Is consorting or associating with or has consorted or associated with bookmakers;
- Is financially irresponsible;
- Has been guilty of or attempted any fraud or misrepresentation in connection with racing;
- Has violated or attempted to violate any law with respect to racing in any jurisdiction or any rule, regulation or order of the commission;
- Has violated any rule of racing that shall have been approved or adopted by the commission;
- If the denial, suspension, or revocation of the license is determined by the Commission to be necessary to protect the public health, safety or welfare.

Id. at § 4002.9(a). Again, only the Gaming Commission – not NYRA - is empowered to make these assessments and license adjudications under New York law.

43. Further, there are due process requirements before a licensee can be suspended. New York State law provides that “[n]o license shall be revoked unless such revocation is at a meeting of the commission on notice to the licensee, who shall be entitled to a hearing in respect

of such revocation.” *Id.* at § 4002.10. Any action in “refusing, suspending or in revoking a license shall be reviewable by the Supreme Court in the manner provided by and subject to the provisions of article 78 of the Civil Practice Law and Rules.”

44. State law and regulations detail the processes by which an accused licensee is entitled to an administrative hearing prior to the Gaming Commission taking action. The Gaming Commission must conduct an “adjudicatory proceeding,” meaning “any activity in which a determination of legal rights, duties or privileges of named parties thereto is required by law to be made, only on a record and after an opportunity for a hearing.” 9 NYCRR § 4550.2(b).

45. New York adjudicatory hearings are required to be “commenced by service of a notice of hearing or order to show cause,” and a “hearing in any matter as to which the commission is required to hold an adjudicatory hearing or otherwise determine to do so shall be held upon reasonable notice to each party and shall be conducted at such place as the commission shall determine.” *Id.* at § 4550.3(a). All hearings are to be “conducted by a hearing officer who shall have the powers and authority of presiding officers or hearing officers as defined by section 303 of the State Administrative Procedure Act (SAPA).” *Id.* at § 4550.6(b).

46. State regulations further detail what a formal notice or show cause order must contain: (a) a statement of the time, place and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular section of the statutes and rules involved; (d) a short and plain statement of matters asserted; (e) a statement that interpreter services shall be made available to deaf persons at no charge; (f) information concerning circumstances under which an adjournment may be granted; (g) the consequence of a failure to appear for a scheduled hearing or proceeding; and (h) a statement informing the parties of the right of each party to be represented by counsel, to testify, to produce

witnesses, to present documentary evidence, and to examine opposing witnesses and evidence. *See id.* at § 4550.3(b)(1). When represented by counsel, the rules require a notice of appearance by any attorney representing the accused party, and a written answer to the charges must be filed within five days of the scheduled hearing. *Id.* at § 4550.3(3).

47. In instances when “the hearing seeks the revocation of a license previously granted by the commission,” New York racing rules provide that “either the commission or any party may, upon written demand at least seven days prior to the hearing, require disclosure of the evidence that the other party intends to introduce at the hearing, including documentary evidence and identification of witnesses.” *Id.* at § 4550.4(a).

48. In reaching a determination, New York rules mandate that “[a]ll orders, decisions and determinations of the commission shall be in writing or stated in the record and shall include such findings of fact, conclusions of law, reasons for the decision or determination, as may be made by the commission, and when appropriate, such direction of specific action as may be ordered by the commission.” *Id.* at § 4550.8(a). To be sure, “[t]he commission may not order or otherwise direct a hearing officer to make any specific findings of fact, to reach any specific conclusions of law, or to make or recommend any specific disposition of a charge, allegation, question or issue, except by remand, reversal, or other decision on the record of the proceeding. The commission may confirm, modify, or reject any recommendation of the hearing officer.” *Id.* at 4550.8(c). In short, the due process requirements of the Gaming Commission are thorough and detailed. In addition to the fact that NRYA had no authority to suspend Baffert, none of the due process procedures in this case were followed.

49. Thoroughbred horseracing is a highly regulated industry, and all New York tracks are required to follow the State racing statutes and the Gaming Commission’s regulations.

50. Baffert is an occupational licensee in good standing with the Gaming Commission. Baffert faces no allegations concerning any misconduct associated with any racing activity within the State of New York, and Baffert has **no history of any prior misconduct associated with his New York license**, including no instances of horses he trained violating New York's prohibited-substances regulations.

51. The United States Supreme Court has held that an occupational racing licensee possesses a property interest in his or her license under state law sufficient to invoke due process protections under the Fourteenth Amendment. *See Barry v. Barchi*, 443 U.S. 55 (1979).

52. NYRA's impulsive decision to deprive Baffert of his professional livelihood within the State of New York is one that it had no legal authority to make. NYRA cannot usurp the Gaming Commission's sole authority to adjudicate matters concerning Baffert's license and his ability to participate in New York races. Further, NYRA's decision rests entirely upon an accusation in a separate jurisdiction, which has not yet made any conclusive determination.

53. Indeed, MEDINA SPIRIT has not been disqualified as the winner of the Kentucky Derby. Likewise, Baffert has not been suspended by the Kentucky Horse Racing Commission. Neither has Baffert been presented with any formal allegations from the Gaming Commission concerning violation of any New York State statute or regulation.

54. Baffert has not been informed of his right to, nor has he received an administrative hearing concerning his license to enter and race horses at New York race tracks, and has received no notice of allegations *prior to* the action taken against him.

55. As a direct result of NYRA's unlawful suspension, Baffert will have suffered and will continue to suffer irreparable harm, including his ability to pursue his chosen profession and enjoy the fruits of his labor through the exercise of his state issued occupational license, in addition

to having his reputation tarnished by mere allegations. With each passing day that Baffert is not allowed to enter horses at racetracks in New York, the irreparable harm to him increases. The owners of the horses Baffert trains, many of whom are at the pinnacle of the global thoroughbred racing industry, are currently making decisions to protect their ability to race at the lucrative Championship meet at Belmont and the storied summer meet at Saratoga. Given NYRA's "suspension" of Baffert, and his corresponding inability to enter horses in those meets, Baffert is being negatively impacted by those decisions and irreparably harmed.

COUNT I
(Preliminary and Permanent Injunction)

56. Baffert repeats and realleges the allegations in paragraphs 1 through 55 of this Complaint as set forth fully at length herein.

57. Despite the irrefutable fact that Baffert is currently, and at all times relevant hereto has been, duly licensed by the Gaming Commission and remains in good standing, NYRA has improperly suspended him from participating in Thoroughbred racing at all New York race tracks.

58. This "suspension" allegedly imposed by NYRA is tantamount to a formal suspension or revocation of his license, which was duly issued and remains in good standing with the Gaming Commission, without due process of law and in violation of New York State law. NYRA's actions limit Baffert's opportunity to pursue his chosen profession and deprive him of a recognized property right for an indefinite period of time—potentially several years.

59. NYRA is without any power or authority to summarily suspend or revoke Baffert's license. That power rests solely with the Gaming Commission. Further, NYRA's suspension was issued without any of the due procedures mandated by New York State law.

60. Baffert will likely succeed on the merits of his claims. By unlawfully barring Baffert from NYRA race tracks, NYRA acted and continues to act as a State actor under the color

of State law. NYRA is a State actor for purposes of the Fourteenth Amendment and 42 U.S.C. § 1983 because it is engaged in what is demonstrably a joint venture with the State of New York as a Thoroughbred racetrack operator and it solely derives its authority from its association with the State of New York as the exclusive operator of thoroughbred racing facilities on property owned by the state itself. A majority of NYRA's Board of Directors is appointed by the leaders of the executive and legislative branches of government. It further derives substantial revenue from the state's VLT program. Moreover, NYRA is subject to continuous scrutiny by a government board that oversees virtually every aspect of its existence. NYRA's unlawful conduct in indefinitely suspending Baffert took place and continues to take place at facilities that maintain a sufficiently close nexus with the State so as to create a "symbiotic relationship to the State."

61. NYRA is not "purely private" because it cannot conduct any Thoroughbred horseracing, and any activities directly related to horseracing, without the explicit approval and joint partnership with the State of New York.

62. The State of New York and NYRA are so interdependent that they must be recognized as joint participants in the challenged activity. NYRA is undeniably the alter ego of the state such that NYRA's actions in suspending Baffert without a scintilla of due process are unlawful.

63. Specifically, the area of horseracing that the State of New York is most involved in is the testing and sanctioning of Thoroughbred horses and their owners and trainers for what it has determined to be unlawful substances. The state provides the exclusive means related to the rights, remedies, and sanctions NYRA is purporting to carry out. These are the very actions Baffert now challenges.

64. At a minimum, the State of New York's participation in Thoroughbred horseracing and NYRA's actions suspending Baffert indefinitely are actions of the State itself. NYRA's actions can be directly and specifically linked to the enforcement of the State of New York's statutory mandates.

65. Prohibiting Baffert from all New York race tracks came only after internal discussions regarding the ongoing Kentucky investigation. In doing so, NYRA acted outside of its legal authority, but under the cloak of authority granted it from the State of New York.

66. If NYRA is permitted to indefinitely ban Baffert from all race tracks in New York, Baffert will suffer irreparable harm to, among other things, his reputation and his right to rely upon the license duly issued to him by the Gaming Commission, along with the loss of his ability to pursue and practice in his chosen profession and livelihood. With each passing day that Baffert is denied the right to enter horses in races in New York, the irreparable harm to him increases. Such harm cannot be adequately compensated by monetary damages.

67. Given the unique nature of the industry, any prolonged suspension of Baffert will have the effect of destroying his business for a period of time much longer than the suspension itself. This is because any suspension will necessarily precipitate a mass exodus from his care of horses worth tens of millions of dollars as owners cannot allow themselves to be excluded from participation in the lucrative Belmont/Saratoga race meets. Instead, they will transfer their horses to other trainers, effectively putting Baffert out of business.

68. Baffert does not have an adequate remedy at law or otherwise for the continuing damage and irreparable harm caused by NYRA to his reputation and his ability to pursue his chosen career and livelihood through his property interest in his State-issued license.

69. As Baffert is a licensee in good standing with the Gaming Commission, and has an unblemished record in New York, neither the public nor NYRA would be harmed if Baffert were allowed to continue to participate in New York races while the Kentucky investigation remains pending; in fact, the public interest favors the preservation and protection of Baffert's constitutional rights.

COUNT II
(Violation of 42 U.S.C. § 1983)

70. Baffert repeats and realleges the allegations in paragraphs 1 through 69 of this Complaint as set forth fully at length herein.

71. NYRA's actions were taken under the color of State law.

72. NYRA deprived Baffert of his constitutionally protected rights and interests, specifically his professional Thoroughbred racing license duly issued to him without restriction by the State licensing authority.

73. Baffert's deprivation of his right to rely on his license in order to participate in New York racing and to pursue his chosen profession without due process of law (and in direct conflict with State statutes and regulations) is in violation of the Fourteenth Amendment to the United States Constitution.

74. NYRA's actions taken under the color of State law deprived Baffert and will continue to deprive Baffert of his protected liberty interests, including, but not limited to, his reputation as a well-respected Thoroughbred horse trainer cultivated over the course of his life without due process of law in violation of the Fourteenth Amendment.

75. NYRA's unlawful suspension despite Baffert's valid license will cause Baffert to lose valuable opportunities to earn purse monies and will unnecessarily tarnish his reputation as an elite Thoroughbred horse trainer.

76. NYRA has not provided Baffert with any authority or explanation of its power to indefinitely suspend him nor has it provided Baffert with any justification, adjudication, or formal notification concerning any legal basis for indefinitely banning him from all tracks within the State of New York.

77. NYRA possesses neither the statutory nor regulatory authority to suspend, revoke, or otherwise limit Baffert's license.

78. NYRA's unlawful and unjustified conduct was knowing and intentional.

79. As a result of this conduct, Baffert has been damaged and has suffered, and will continue to suffer, irreparable harm for which there is no remedy at law.

COUNT III
(Declaratory Judgment)

80. Baffert repeats and realleges the allegations in paragraphs 1 through 79 of the Complaint as set forth fully at length herein.

81. An actual case or controversy exists between Baffert and NYRA with regard to whether NYRA may lawfully suspend Baffert indefinitely from NYRA race tracks.

82. This Court should enter a Declaratory Judgment that NYRA is prohibited from: (a) denying racehorses owned and/or trained by Baffert entry into races contested at New York racetracks, including, but not limited to, Belmont Park, Aqueduct Racetrack and Saratoga Race Course; (b) denying Baffert the privileges of the grounds of the foregoing New York racetracks; and (c) denying Baffert stall space at New York racetracks.

COUNT IV
(Tortious Interference)

83. Baffert repeats and realleges paragraphs 1 through 82 of this Complaint as if set forth fully at length herein.

84. NYRA knows that Baffert has a reasonable expectation of economic advantage from his racing activities at NYRA race tracks.

85. By overtly denying a duly licensed trainer from any participation in any New York races, NYRA is intentionally and unjustifiably interfering with Baffert's reasonable expectation of obtaining the advantages he would have derived as a trainer racing at Belmont, Saratoga, or Aqueduct.

86. As a result of this interference, Baffert is entitled to damages exceeding \$75,000 due to NYRA's interference with his reasonable expectation of economic advantages and depriving him of the opportunities other similarly situated licensed trainers have to participate and earn monies from purses at NYRA tracks.

COUNT V
(Violation of New York State Law)

87. Baffert repeats and realleges the allegations in paragraphs 1 through 86 of this Complaint as set forth fully herein.

88. Under New York State law, only the Gaming Commission possesses authority to suspend or revoke an individual's duly-issued racing license. *See* N.Y. Racing Law § 104; 9 NYCRR §§ 4002.1(a), 4022.12. Any such suspension or revocation can only occur after all of the comprehensive due-process requirements specified in the Gaming Commission regulations have been satisfied.

89. Gaming Commission regulations are applicable and enforceable to all New York licensees and franchised racing corporations, including NYRA. 9 NYCRR § 4003.2.

90. New York State law is clear that only the Gaming Commission may suspend licensed trainers in accordance with its own rules. NYRA has no power or authority to issue any

suspensions and thus, NYRA's actions indefinitely suspending Baffert from New York tracks violated State law.

91. Even if NYRA had the power to suspend Baffert (and it does not), its actions were still contrary to New York's rules and regulations. New York State law is clear that "[n]o license shall be revoked unless such revocation is at a meeting of the commission on notice to the licensee, who shall be entitled to a hearing in respect of such revocation." *Id.* at § 4002.10.

92. New York law further requires a comprehensive process prior to taking any action on a trainer's license. This consists of an adjudicatory hearing before a hearing officer and prior notice that includes traditional safeguards of due process of law such as information concerning the hearing, the precise authority and jurisdiction under which the hearing is to be held, reference to rules and statutes involved, and information concerning a licensee's right to counsel and the presentation of evidence. *See id.* at §§ 4550.2(b), 4550.3(a), 4550.3(b)(1), 4550.3(3).

93. None of these procedures were followed. Baffert received no notice prior to NYRA's suspension, NYRA provided no legal basis for its alleged authority to suspend him, NYRA did not reference any New York rule or statute for which Baffert is in violation, and it deprived Baffert of any hearing or adjudicative process. By indefinitely suspending Baffert from New York race tracks, NYRA violated New York State law.

94. As a result of these actions, Baffert has been denied the ability to use his State-issued racing license anywhere in the State of New York, denied the right to engage in his chosen profession, suffered irreparable injury to his reputation and business, and suffered damages in excess of \$75,000.00.

WHEREFORE, Baffert seeks judgment in his favor as follows:

A. Immediate temporary restraints, a preliminary injunction, and thereafter a permanent injunction enjoining NYRA from (i) suspending Baffert from NYRA tracks and races, (2) denying him the privilege of the grounds at NYRA tracks, and (3) denying him stall space at NYRA tracks;

B. Declaratory judgment under 28 U.S.C. § 2201, *et seq.*, and an order from the Court declaring that NYRA violated Baffert's constitutional right to due process of law and further ordering that NYRA is prohibited from unilaterally suspending or revoking Baffert's license;

C. Damages in an amount to be proven at a later date;

D. Costs incurred herein, including reasonable attorney's fees; and

E. Any further relief to which he may be entitled.

Dated: New York, New York
June 14, 2021

Respectfully submitted,

STEPTOE & JOHNSON LLP

By: /s/ Charles Michael

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(*pro hac vice* application forthcoming)

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