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FRANKLIN CIRCUIT COURT  
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COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION 2  
CIVIL ACTION NO. 21-CV-456

**FILED**  
JUN 07 2021 *B*  
FRANKLIN CIRCUIT COURT  
AMY FELDMAN, CLERK

BOB BAFFERT  
AND ZEDAN RACING STABLES, INC

PLAINTIFFS

v.

KENTUCKY HORSE RACING  
COMMISSION

DEFENDANT

Serve:

Marc A. Guilfoil, Executive Director  
Kentucky Horse Racing Commission  
4063 Iron Works Parkway  
Building B  
Lexington, KY 40511

and

Daniel Cameron  
Kentucky Attorney General  
700 Capital Avenue  
Suite 118  
Frankfort, KY 40601

**COMPLAINT FOR INJUNCTIVE RELIEF**

Come the Plaintiffs, Bob Baffert (“Baffert”) and Zedan Racing Stables (“Zedan”), and for their Complaint for Injunctive Relief against the Defendant, the Kentucky Horse Racing Commission (the “KHRC”), hereby state as follows:

## INTRODUCTION

1. This is an action for injunctive relief pursuant to CR 65.04 seeking an injunction to prohibit the KHRC from violating the Plaintiffs substantive and procedural due process rights with regard to the analysis of the split biological urine sample taken from the thoroughbred, MEDINA SPIRIT, following his victory in the 147<sup>th</sup> Kentucky Derby.

## PARTIES

2. Plaintiff, Bob Baffert (“Baffert”), is an individual and resident of the State of California, and is a well-respected and successful trainer of Thoroughbred racehorses.

3. Baffert is presently licensed as a Thoroughbred Trainer by the KHRC. Baffert is similarly licensed in numerous other states. Baffert trains the thoroughbred horse, MEDINA SPIRIT.

4. Plaintiff, Zedan Racing Stables, Inc., is a Kentucky Corporation whose owner is Amr Zedan, an individual who resides in the Kingdom Jordan (“Zedan”), and is the owner of MEDINA SPIRIT. Zedan is duly licensed as a Thoroughbred Owner by the KHRC, and regularly transacts business in the Commonwealth of Kentucky.

5. Defendant, the Kentucky Horse Racing Commission (the “KHRC”), is an agency of the Commonwealth of Kentucky created under Chapter 230 of the Kentucky Revised Statutes. The KHRC is statutorily authorized through enabling legislation to enact rules through notice and hearing and has limited agency adjudicative authority with express constitutional duties of notice, hearing and fairness in enforcement of rules and laws governing horse racing in the Commonwealth of Kentucky.

**JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action pursuant to the common law of Kentucky, KRS 13B, KRS 23A.10, KRS Chapter 230 and Kentucky Rule of Procedure 65.

7. This Court has personal jurisdiction over the Defendant because the KHRC resides in the state and is statutorily authorized to oversee all aspects of horse racing in the Commonwealth, including MEDINA SPIRIT's split sample at issue in this case.

8. Venue is proper in this Court pursuant to KRS 230.330 and KRS 452.505.

**FACTS**

9. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 8 of this Verified Complaint as if set forth fully herein.

10. The KHRC has issued a valid trainer's license to Baffert that entitles him to train and race thoroughbreds in Kentucky.

11. The KHRC has issued a valid owner's license to Zedan that entitles him to own and race thoroughbreds in Kentucky.

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

13. Following the Kentucky Derby, blood and urine samples were collected from MEDINA SPIRIT in accordance Kentucky's post-race sampling and testing procedures that are set forth in 810 KAR §§ 8:010 to 8:060.

14. Like all owners and trainers, Plaintiffs, as well as the KRHC itself, are subject to the procedures for post-race sampling and testing.

15. 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 KAR § 8.060, Section 2(3).

16. 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 KAR § 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).

17. After the race, the primary sample should be promptly tested. The split sample, however, remains in the KHRC’s possession and is not tested unless the primary sample is preliminarily reported for a substance listed under the Kentucky medication and substances schedule . 810 KAR § 8:010, Section 11(3). The primary sample consists of separate containers of blood and urine. The split sample similarly consists of separate containers of blood and urine.

18. On May 8, 2021, Plaintiffs were informed by the KHRC that MEDINA SPIRIT’s primary blood sample allegedly tested positive for 21 picograms of Betamethasone, a lawful, commonly used therapeutic anti-inflammatory medication.

19. A picogram is one-trillionth of a gram (1,000,000,000,000/gram) This amount of reported positive is routinely disputed by labs with the same or superior testing capability with significant variances reported in quantifications. The trace amounts of this lawful medication allegedly detected in MEDINA SPIRIT’s primary blood sample would have had no pharmacological effect on the horse and would have had zero impact on the race.

20. Betamethasone itself is not a performance-enhancing drug. Rather, it is a substance that can aid in reducing inflammation, much like similar corticosteroids such as hydrocortisone and prednisone.



21. The Kentucky Horse Racing Commission lists Betamethasone (BetaVet) as a Class C substance in reliance upon studies and empirical data related to an intra-articular joint injection to reduce inflammation. 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 importantly the KHRC has an express protocol setting forth timing and dose related criteria for BetaVet use all of which is set forth in conjunction with the Controlled Therapeutic Medication Schedule. Betamethasone is neither performance-enhancing nor pain masking.

22. Betamethasone (BetaVet) is used as an intra-articular joint injection given by a licensed and experienced veterinarian. The KHRC has never promulgated regulations addressing Betmethasone in any other fashion. Medina Spirit never received a joint injection of BetaVet.

23. While the KHRC's regulations address Betamethasone injections, they do not discuss or include any reference to the use of Betamethasone as a component of a topical ointment or cream.

24. Veterinary records for MEDINA SPIRIT do show that, in the weeks leading up to the Kentucky Derby, the horse was being treated by a veterinarian for a dermatological condition using a topical anti-bacterial, anti-fungal and anti-inflammatory cream known as OTOMAX. Such treatment was reasonable, humane and necessary veterinary care to palitively treat and cure the observed skin condition.

25. OTOMAX contains three primary substances: Clotrimazole, Gentamicin, and Betamethasone Valerate. This is different from Betamethasone Acetate which is found in the

injectable. The alleged finding of 21 picograms of Betamethasone in MEDINA SPIRIT is consistent with the fact that OTOMAX was applied to the skin of the horse at least once a day, for several weeks, and was applied to the skin the day before the Derby.

26. Despite all of the foregoing, there has been an absolute firestorm surrounding MEDINA SPIRIT and the alleged test results. Specifically, Baffert has been excoriated by some members of the press and public who have accused him of “injecting” MEDINA SPIRIT with Betamethasone in an effort to cheat to win the Kentucky Derby. This public discourse has frequently suggested that Betamethasone is a “banned” substance and that MEDINA SPIRIT was subjected to “doping.” Neither are remotely true.

27. Upon notification of the alleged finding of Betamethasone in MEDINA SPIRIT’s primary blood sample, Plaintiffs requested split sample testing as is their right pursuant to 810 KAR § 8: 010, Section 11(3).

28. Plaintiffs are wholly responsible for the cost of testing the split sample, including the cost of shipping the specimen(s) to the testing laboratory. *See* 810 KAR § 8:010, Section 11(4). Plaintiffs have agreed to absorb all of these costs.

29. Plaintiffs have emphatically and repeatedly denied any wrongdoing, and believe that the trace amounts of Betamethasone in MEDINA SPIRIT’s primary blood sample came from the topical ointment OTOMAX that was prescribed by MEDINA SPIRIT’s veterinarian to treat dermatitis.

30. The manner in which the Betamethasone found its way into MEDINA SPIRIT is critical. There is a huge difference in a Betamethasone finding due to an interarticular joint injection versus one from a topical ointment – from both a regulatory and public relations standpoint. The testing the plaintiffs seek would provide empirical and scientific reasonable

certainty that the miniscule and materially irrelevant reported positive in Medina Spirit's post race sample was innocuously sourced from the topical Otomax.

31. It is likely that specific testing of the split urine sample can determine whether any finding of Betamethasone is the result of an interarticular joint injection or a topical ointment. This is because the topical ointment contains other compounds not found in a Betamethasone injection that can be detected more readily in the urine. Thus, proper and thorough analysis of the split urine sample of MEDINA SPIRIT will likely establish if the Betamethasone was injected directly into the horse or found its way into the horse's system through the topical ointment.

32. The KHRC's own regulations entitle Plaintiffs to the opportunity to present mitigating and/or exculpatory evidence, which includes, but is not limited to, the manner in which Betamethasone found its way into the horse.

33. On May 14, 2021, Plaintiffs notified the KHRC, through the undersigned, of the following demands related to the testing of MEDINA SPIRIT's split sample:

- a. That Plaintiffs be permitted to send an expert to observe the split sample analysis at the laboratory. Said expert would only observe and not be permitted to either interfere with the analysis in any way;
- b. That both MEDINA SPIRIT's blood and urine split samples be tested; and
- c. That the split sample analysis of both samples include a complete analysis to the Limits of Detection ("LOD"), of not only Betamethasone, but the other compounds contained in the topical ointment OTOMAX – Clotrimazole, Gentamicin, and Betamethasone Valerate.

34. The KHRC refused, and the Plaintiffs made the same request in writing on May 19, 2021, this time with the rationale for their demands and accompanying legal support.



35. On or about May 21, 2021, the KHRC denied Plaintiffs' reasonable requests related to the split sample for a second time.

36. On or about May 24, 2021, the parties reached a compromise whereby the KHRC agreed to allow the Plaintiffs to send the "remnants" of what remained from the primary samples to an accredited lab for testing. The KHRC represented to the Plaintiffs that these "remnants" were in good condition and in sufficient quantity to allow scientific testing.

37. On or about June 1, 2021, the KHRC informed the Plaintiffs that the "remnant" samples had been damaged/contaminated during transport to the agreed upon testing lab. This has created doubt over whether those samples will be sufficient to allow Plaintiffs to test them for the compounds in OTOMAX to prove that the Betamethasone in MEDINA SPIRIT did not come from an injection.

38. There currently sits in the KHRC freezer an unopened, untested and hopefully pristine split sample of MEDINA SPIRIT's urine. Given the foregoing, the Plaintiffs requested that said urine be immediately shipped to the agreed upon lab for testing for all the compounds in OTOMAX. The KHRC has refused this reasonable request and indicated it has no intention of allowing that urine split sample to be tested in any way. The split urine sample is the best evidence available to determine whether the Betamethasone in MEDINA SPIRIT was present due to an injection or the topical cream OTOMAX. This is because the compounds Clotrimazole, Gentamicin, and Betamethasone Valerate are most readily detectible in the urine. Plaintiffs must be allowed to send MEDINA SPIRIT's split urine sample to an accredited lab for testing for those compounds.

39. Time is of the essence as biologic samples degrade with each passing day. Without intervention from this Court, Plaintiffs will forever lose the opportunity to test, analyze and cross-



examine the only evidence that purports to establish a violation of the KHRC's regulations – MEDINA SPIRIT's biological urine sample that was split from the primary sample following the race.

**CLAIM FOR INJUNCTIVE RELIEF**

40. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 39 of this Verified Complaint as if set forth fully at length herein.

41. The KHRC has unreasonably and unlawfully violated Plaintiffs' due process rights by refusing to allow a complete analysis of MEDINA SPIRIT's split urine sample to the Limit of Detection ("LOD"), including a chemical analysis and LOD identification of each compound present in OTOMAX – specifically Clotrimazole, Gentamicin, and Betamethasone Valerate.

42. Plaintiffs face immediate and irreparable harm since the KHRC's planned actions will result in permanent loss of the opportunity to test, analyze and cross-examine the only evidence that purports to establish a violation of the KHRC's regulations – MEDINA SPIRIT's biological urine sample that was split from the primary sample following the race.

43. By virtue of the foregoing, Plaintiffs have demonstrated a substantial question as to the underlying merits of the case, and that there is a substantial likelihood that they will ultimately prevail since due process and the KHRC's rules on mitigating circumstances require the type of protections that the KHRC has refused to provide.

44. The equities are in favor of issuance of an injunction in this case given the grave and irreparable harm and due process violation that will result if the KHRC is permitted to test MEDINA SPIRIT's split sample without the protections requested by Plaintiffs. Not only that, but the KHRC will not suffer any prejudice if it is required to comply with the Plaintiffs' requested

procedures. Absent this testing being done now, the opportunity to do so will be lost forever and the evidence will be permanently spoiled.

45. The public interest in regulating and maintain the safety, honesty and integrity of horse racing in the Commonwealth will be served by ensuring the most comprehensive, accurate and equitable analysis of MEDINA SPIRIT's split urine sample that can be relied upon to determine whether or not Plaintiffs violated any Kentucky law or regulation. All parties in the matter, and the public, should be in search of, and are entitled to, as much scientific evidence as possible to determine the truth.

46. Plaintiffs are entitled to injunctive relief that prohibits the KHRC from violating their due process rights by failing to allow Plaintiffs to send the split urine sample to an accredited laboratory for a LOD chemical analysis of Clotrimazole, Gentamicin, and Betamethasone Valerate.

**WHEREFORE**, Plaintiffs pray for the following relief:

- a) A Temporary Injunction, and thereafter a Permanent Injunction, enjoining the KHRC from violating their due process rights with regard to the testing of MEDINA SPIRIT's urine split sample.
- b) For their costs herein expended, including reasonable attorney fees; and
- c) Any and all other relief to which they may appear entitled.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

This is to certify that on this the 7<sup>th</sup> day of June, 2021 I served the foregoing upon the following by email per agreement:

Jennifer Wolsing, General Counsel  
Kentucky Horse Racing Commission  
4063 Iron Works Parkway  
Building B  
Lexington, KY 40511



Counsel for Plaintiffs