

**COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____**

ZEDAN RACING STABLES, INC.

PLAINTIFF

vs.

**CHURCHILL DOWNS
INCORPORATED**

DEFENDANT

**VERIFIED COMPLAINT FOR A DECLARATION OF RIGHTS, A TEMPORARY
INJUNCTION, AND A PERMANENT INJUNCTION**

A484E7D2-9D6E-4488-BAC7-D727143946F7 : 000001 of 000760

Presiding Judge: HON. JENNIFER BRYANT WILCOX (630455)

COM : 000001 of 000085

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INTRODUCTION

1. This case is about whether a hallowed American institution, the Kentucky Derby (or just, the “Derby”), will continue denying entry to the best horses that have qualified to compete. Unfortunately, as of this filing, the Derby is closing its gates to Zedan Racing’s Muth, among the fastest of thoroughbred horses that are otherwise qualified and slated to race, fair and square, for this year’s crown. As the Derby’s 150th Anniversary approaches,¹ Defendant Churchill Downs Incorporated (“CDI”) is closing its gates to Muth along with other preeminent horses that are otherwise well positioned to win this year’s Derby—and possibly the even larger prize, the Triple Crown—simply because CDI and its CEO, Bill Carstanjen, are pursuing a crazed vendetta at the expense of letting fair, healthy competition run its course. Among the losers are CDI itself and its own shareholders, who should be welcoming, not banning, the best and fastest horses that have qualified for this year’s race. With this Complaint, Plaintiff Zedan Racing Stables, Inc. (“Zedan Racing”) respectfully seeks to hold CDI to its express commitments, to its legal obligations, and to the uniform standards that govern horseracing throughout the United States.

2. The Kentucky Derby is the “longest continually-run annual sporting event” in the United States. Dating back to 1875, this year marks its 150th Anniversary. The Derby is also one of three jewels that form the thoroughbred horseracing “Triple Crown” (the other two being the Preakness Stakes and the Belmont Stakes). If a horse wins all three races, it wins the Triple Crown—a feat so rare that it has happened just twice in the last 46 years.

3. As things currently stand, absent from this year’s Derby (and thus ineligible to win the Triple Crown) will be a preeminent horse owned by Zedan—Muth, which won the Arkansas Derby on March 30, 2024, is among the fastest in thoroughbred horseracing, *see infra* Section XII,

¹ The 150th running of the Kentucky Derby is scheduled for Saturday, May 4th, 2024.

and would be among the favorites to win the Kentucky Derby. More broadly, CDI is going rogue by banning all other three-year-old horses (constituting at least 15% of the would-be Derby field) trained by Bob Baffert, who is tied for the all-time most Derby wins (six) and is considered by many to be the greatest trainer ever, but certainly in modern history. Notably, Baffert trained both of the only two Triple Crown winners in the last 46 years.

4. Why, then, would Baffert-trained horses be banned? Because Defendant CDI—by edict of its CEO, Bill Carstanjen—banned Baffert-trained horses from its races for two years, including the Derby, and *then extended* the ban another year without any basis whatsoever other than Baffert’s perceived failure to kowtow to Carstanjen’s ego. Outside of CDI, no other racetrack in the United States is imposing a ban of any comparable duration.

5. The wrongful and unlawful extension of CDI’s Baffert ban—and the absence of his horses in this year’s Derby—is raising hackles across the industry. Take, for example, the perspective of 88-year-old D. Wayne Lukas, a living legend and revered icon when it comes to racing and training thoroughbreds. Lukas himself has fourteen wins in Triple Crown races, including four Derby wins. He is the inaugural recipient of the Lifetime Achievement Award by the Kentucky Derby Museum. And CDI has even named (and holds at Churchill Downs) a race after him—the Grade 2 Lukas Classic Stakes. After Muth ran away with the Arkansas Derby, Lukas was quoted as saying, “[Baffert’s] got great horses. He’s got Derby horses, but he’s going through a lot of things right now that shouldn’t be happening.”²

² Jennifer Hoyt, *Muth wins at Arkansas, leaves Kentucky Derby points on table*, Horse Racing Nation (Mar. 30, 2024), https://www.horseracingnation.com/news/Muth_wins_at_Arkansas_leaves_Kentucky_Derby_points_on_table_123.

6. CDI's ban against Baffert dates back to the 2021 Derby. There, the winning horse, Medina Spirit, which was trained by Baffert and owned by Plaintiff Zedan Racing, was later deemed disqualified for testing positive for trace amounts of a therapeutic substance. CDI and others maintained that, under then-applicable regulations, the substance at issue could not register in trace amounts on race day. Days after the positive result was leaked to the press, Baffert announced that he learned that the substance was in a topical ointment that had been applied in the weeks leading up to the race to treat a skin lesion on Medina Spirit.

7. Citing the Medina Spirit positive and prior positive results for certain Baffert-trained horses, on June 2, 2021, CDI released an official statement announcing a two-year ban of Baffert, which prohibited horses trained by him from racing in CDI races. The June 2, 2021 official statement provided in a standalone paragraph that "CDI reserves the right to extend Baffert's suspension *if there are additional violations in any racing jurisdiction.*" The preceding paragraph is a lengthy quote from Carstanjen that ends with, "we firmly believe that asserting our rights to impose these measures [i.e., the two-year ban] is our duty and responsibility."

8. Notably, Carstanjen is a lawyer by training, who graduated from an Ivy League law school, began his career with one of the top law firms in the country, and previously served as CDI's General Counsel. Carstanjen knows, therefore, that words can carry legal consequences. Here, Carstanjen invoked CDI's legal "rights to impose these measures" and then stated that CDI "reserves the right to extend Baffert's suspension" in one situation and one situation only: "if there are additional violations in any racing jurisdiction." As explained below, these words were relied upon by Zedan Racing and carry legal consequences.

9. Understanding that CDI would be true to its pledges, Zedan Racing relied upon this June 2, 2021 statement that Baffert's ban would be for two years, absent additional violations. In

particular, Zedan Racing purchased seven horses at a cost of over \$10 million from July 20, 2022 to May 8, 2023, and then paid over \$4 million to have those horses trained by Baffert with an eye towards having these horses qualify for and hopefully win the 2024 Derby.

10. From June 2, 2021 (the start of the ban) to the filing of this suit, Baffert has had 669 horses race without any violations.³ Baffert did, however, challenge CDI's suspension in federal court, where he sued CDI, Carstanjen, and CDI's Chairman of the Board to enjoin enforcement of the original two-year suspension. Throughout that lawsuit, which was dismissed in May 2023, CDI repeatedly represented to the court—without equivocation or qualification—that Baffert's suspension was for two years, just as CDI had previously said. In ruling upon issues presented in that lawsuit, the court relied upon those representations.

11. To be clear, Zedan Racing was being harmed then by CDI's ban of Baffert because its horses had trained with Baffert. Nevertheless, Zedan Racing took its lumps and refrained from using Baffert as its trainer for the 2022 or 2023 Derbies. The result was that Zedan Racing, despite owning some of the best horses in 2022 and 2023, had its successful training regimen disrupted: after only one Zedan horse qualified for the 2022 Derby, that horse underperformed there, and then none of its horses qualified for the 2023 Derby. Throughout those setbacks, Amr Zedan, the founder and owner of Zedan Racing, stayed above the fray and looked ahead to the 2024 Derby, knowing the suspension would expire in advance of this year's race, as CDI had represented.

12. But now CDI has broken its word and ventured beyond the pale. On the day Baffert's suspension was set to end, July 3, 2023, CDI announced without warning or prior notice that it was extending Baffert's suspension through the end of 2024 and that it would then "re-evaluate" Baffert's "status." The sum total of CDI's claimed reason for breaking its unequivocal

³ 55 of which were Zedan Racing horses.

promise that the ban would not be extended absent intervening violations was this: “Baffert continues to peddle a false narrative concerning the failed drug test of Medina Spirit at the 147th Kentucky Derby.” In CDI’s telling, Baffert’s “ongoing conduct reveals his continued disregard for the rules and regulations that ensure horse and jockey safety, as well as the integrity and fairness of the races conducted at our facilities,” such that Baffert “cannot be trusted to avoid future misconduct.” This high-handed pronouncement was made without specific reference to any offending word or deed by Baffert.

13. CDI’s extension of Baffert’s suspension has no basis in law or in fact. It can be explained only by Carstanjen’s inflated ego and personal vendetta, and by a desire to distract from CDI’s own safety crisis after a dozen horses died at Churchill Downs in a matter of weeks, resulting in CDI’s announcement on June 2, 2023 (one month before CDI announced it was extending the Baffert ban) of an unprecedented pause of all racing operations.

14. CDI’s July 3, 2023 statement that it was extending the ban on Baffert-trained horses unfairly defames the horses trained by Baffert and the owners who call upon Baffert to train their horses, by claiming they lack “integrity” and that they “cannot be trusted” to abide by “rules and regulations that ensure horse ... safety.”

15. Nor does CDI have any legal right to extend the suspension and oust Zedan Racing’s qualified horses from competing based on Carstanjen’s personal animus against Baffert. In prior litigation against Baffert, CDI argued that its legal right to suspend Baffert derived from two sources: (1) the 2021 agreements that Baffert entered into with CDI as a condition of the horses he trained racing in the 2021 Derby; and (2) Kentucky common law. But CDI’s 2021 contracts expired when Baffert’s horses left CDI’s property after the 2021 Derby, and no fair reading of that 2021 contract entitled CDI to discipline Baffert in 2023 because CDI took issue with a 2023

“narrative” (whatever that is). As for Kentucky’s common law, it authorizes businesses to exclude *patrons* as and if appropriate—but that is a far cry from a licensed racetrack excluding a licensed horse trainer from entering horses in a licensed horse race based on *ipse dixit* that departs from the established, uniform standards governing the sport nationwide.

16. In any event, by stating unequivocally that any extension of the ban would be dependent upon additional violations—not some public confession or acknowledgement by Baffert—CDI expressly waived any claimed right to extend the suspension for *other* reasons it might subsequently invent. Once Zedan Racing reasonably and foreseeably relied to its detriment upon CDI’s promise not to extend the suspension absent additional violations, CDI also became legally estopped from extending the suspension on any other basis, e.g., for Baffert offering a “narrative” that displeased CDI and Carstanjen. That result follows under Kentucky’s black-letter law of both promissory and judicial estoppel.

17. Last and not least, CDI is defying federal law that uniformly governs horseracing. In 2020, a bipartisan effort resulted in the passage of the Horseracing Integrity and Safety Act (“HISA”) to federalize regulation of thoroughbred horseracing. The defining purpose of HISA was to achieve uniform regulation nationwide and to displace the prior patchwork of state-by-state, and racetrack-by-racetrack, regulation. To accomplish that objective, the federal statute created a single entity that would “exercise *independent and exclusive* national authority over the safety, welfare, and integrity” of the sport.⁴

18. Under HISA, which became effective on May 22, 2023, racetracks no longer have authority over horseracing integrity and safety issues. This approach models other popular sports that adhere to uniform rules and regulations and are ultimately governed by a single body, e.g.,

⁴ 15 U.S.C. § 3054(a)(2) (emphasis added).

NASCAR, the National Basketball Association, the National Football League, Major League Baseball. CDI well knows this, considering that it publicly supported HISA and HISA's mission of ensuring uniform regulation and enforcement. CDI should also know that it is violating HISA by extending a ban in anomalous, and, indeed, *sui generis* fashion and by doing so under auspices of Kentucky law that has been expressly and impliedly preempted.

19. CDI's spurious, illegal extension of the suspension does not withstand scrutiny and imperils a host of interested stakeholders. Its CEO, Carstanjen, is indulging his ego at the expense of everyone else. HISA is being disregarded right out of the gate. Fans and bettors are losing the chance to see the best, fastest thoroughbreds compete at the Derby. The 150th Kentucky Derby is relegating the winning horse to having an asterisk next to its name—and subsequent Derbies may be rendered largely irrelevant as industry leaders transition elsewhere. The Commonwealth of Kentucky and its citizens are seeing tax revenue, jobs, tourism, and external investment put at risk, alongside their venerable institution. And CDI and its shareholders are seeing its most valuable asset sacrificed at the altar of Carstanjen's ego. Simply stated, Carstanjen is putting his own personal interests above those of all stakeholders.

20. In these circumstances and for the sake of the larger public interest, Zedan Racing here is respectfully seeking a temporary injunction that holds CDI within the bounds of its commitments and legal obligations and enables the upcoming Derby to proceed as it should, with all qualified horses racing and the very best horse winning.

PARTIES

21. Zedan Racing Stables, Inc. is a Kentucky corporation with its principal place of business at 2421 Members Way, Lexington, KY 40504. Founded in 2016, Zedan Racing is the thoroughbred racing venture of Saudi Arabian businessman and philanthropist Amr F. Zedan.

22. Churchill Downs Incorporated is a Kentucky for-profit corporation with its principal place of business at 600 N. Hurstbourne Pkwy, Suite 400, Louisville, KY, 40222. CDI is a licensed racing association under Kentucky law and a “covered person” as a “racetrack” under HISA. It owns or leases three of the major racetracks in Kentucky: Churchill Downs, Turfway Park, and Oak Grove. Churchill Downs is the host track for CDI’s annual flagship event, the Kentucky Derby.

JURISDICTION AND VENUE

23. This Court has jurisdiction over this action pursuant to KRS 23A.010 and KRS 418.040. Further, the amount in controversy at issue in this action exceeds the \$5,000 jurisdictional threshold of this Court.

24. This Court has personal jurisdiction over CDI because CDI is a Kentucky corporation and has its principal place of business in Louisville, Kentucky.

25. Venue is appropriate in this Court pursuant to KRS 452.450 because the primary offices of CDI are located in Louisville, Jefferson County, Kentucky.

26. Any attempt by CDI to remove this action on the basis of a federal question—because this case raises, in an alternative theory of relief, issues of federal law relating to HISA—would be in bad faith.

27. There is no federal jurisdiction based on a substantial federal question because here the federal questions raised by federal law arise only as an alternative theory of relief.⁵

⁵ See, e.g., *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 759–60 (6th Cir. 2000) (holding no federal question jurisdiction where the plaintiff’s “complaint put forth alternate bases [for relief] in state and federal law”) (citing *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800 (1988)); *Warthman v. Genoa Twp. Bd. Of Trustees*, 549 F.3d 1055, 1061–62 (6th Cir. 2008) (holding no federal question jurisdiction permissible where state law claim hinged upon the U.S. Constitution’s Due Process Clause but alternatively the Ohio Constitution’s parallel due process clause); see also *Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 153 (4th Cir. 1994) (“if

28. Nor is there federal question jurisdiction under the complete preemption doctrine. Complete preemption is “a jurisdictional doctrine under which a court could conclude that the preemptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.”⁶ The Supreme Court has recognized complete preemption under only three provisions of federal law: (1) §301 of the Labor Management Relations Act; (2) §502(a)(1)(B) of the Employee Retirement Income Security Act; and (3) §§ 85 and 86 of the National Bank Act.⁷ In each case, the provision at issue “provided the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action.”⁸ Here, HISA does not create a private federal right of action.⁹ Because a federal statute “will completely preempt only those state-law claims that fall within the scope of the federal cause of action[,]” there is no complete preemption.¹⁰

a claim is supported not only by a theory establishing federal subject matter jurisdiction but also by an alternative theory which would not establish such jurisdiction, then federal subject matter jurisdiction does not exist”).

⁶ *In re Fort Motor Co. F-150 and Ranger Truck Fuel Econ. Marketing and Sales Practices Litig.*, 65 F.4th 851, 859 n.5 (internal quotation marks omitted).

⁷ *See Hudak v. Elmcroft of Sagamore Hills*, 58 F.4th 845, 852 (6th Cir. 2023).

⁸ *Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 8 (2003); *see also* 29 U.S.C. § 1132 (identifying procedures and remedies for civil claims under ERISA); *id.* § 185 (identifying procedures and remedies for suits under the LMRA); 12 U.S.C. § 86 (setting forth cause of action for usury against national banks under the National Bank Act).

⁹ *See* 15 U.S.C. § 3054(j)(1)–(2) (providing the Authority the right to “commence a civil action,” including for injunctive relief, “against a covered person or racetrack that has engaged, is engaged, or is about to engage, in acts or practices constituting a violation of this chapter or any rule established under this chapter”); *see also Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 327–29 (2015) (holding statute “implicitly preclude[d] private enforcement” where text provided only for agency action).

¹⁰ *Hudak*, 58 F.4th at 853; *see also id.* at 854 (holding state law claims were not completely preempted where plaintiff “could not bring her claims under [the statute’s] federal cause of action”).

BACKGROUND AND FACTS

I. THE KENTUCKY DERBY AND THE TRIPLE CROWN: AMERICAN TRADITIONS AND THE PINNACLE OF HORSERACING

29. The Kentucky Derby is an American institution. With roots dating back to 1875, the first Derby was hosted by Meriwether Lewis Clark, the grandson of William Clark (the explorer who, together with Meriwether Lewis, explored the newly acquired western frontier of America after the historic Louisiana Purchase).¹¹ Since then, the Derby has become the “longest continually-run annual sporting event” in the United States, with the 150th Derby slated for May 4, 2024.¹² Known as the “Run for the Roses” or “The Most Exciting Two Minutes in Sports,” the Derby holds the record for being the most attended horse race in the nation.¹³

30. Winning the Derby is a crowning achievement that brings reputational, professional, and personal returns above and beyond the rich financial rewards that follow. Winners have christened it “the greatest race in the world” and the “center stage of the universe.”¹⁴ As aptly put by Bennie “Chip” Woolley Jr., trainer of 2009 Derby winner Mine That Bird, “If you don’t dream of winning the Derby, you have no business training Thoroughbreds.”¹⁵

31. The Derby’s field is traditionally one of the strongest in horse racing. The Derby calls itself “America’s Greatest Race” and “one of the most prestigious horse races in the world.”¹⁶

¹¹ *Churchill Downs Celebrates 150th Kentucky Derby at Royal Ascot*, CDI (Jun. 22, 2023), <https://ir.churchilldownsincorporated.com/news-releases/news-release-details/churchill-downs-celebrates-150th-kentucky-derby-royal-ascot>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Derby Quotes, Kentucky Derby Museum*, <https://www.derbymuseum.org/res/uploads/media/Derby-Quotes.pdf>.

¹⁵ *Id.*

¹⁶ *About: America’s Greatest Race, Kentucky Derby*, <https://www.kentuckyderby.com/about/>.

As John Sosby, former manager of the stables that bred and owned the 1939, 1947, and 1984 Derby winners, has said of it, winning the Derby is like “catch[ing] that lightning in a bottle” with “44,000 registered foals and only 16 or 18 of them make it to the Derby.”¹⁷ Or as the Pennsylvania Horse Racing Association estimates, out of the average 20,000 foals raised in the United States each year, “only twenty horse or 0.001% of each foal crop will have their chance to compete in the Run for the Roses.”¹⁸ Without the best horses, the Derby is simply not the Derby.

32. To qualify for the Derby, a prospective horse must “travel [or trot] along the Road to the Kentucky Derby, a series of designated races at tracks across the country and around the world.”¹⁹ The top five finishers of each race are awarded points, and the twenty horses with the most points at the end of the Road earn a starting spot in the Derby.²⁰ The Derby values the level of competition and the quality of the participating horses so highly that it has opened up “roads” to the Derby around the world in order to attract the best horses, including a “Japan Road to the Kentucky Derby” as well as an “European Road to the Kentucky Derby,” with each leading to a potential spot in the Derby.²¹

¹⁷ *Derby Quotes*, Kentucky Derby Museum, <https://www.derbymuseum.org/res/uploads/media/Derby-Quotes.pdf>.

¹⁸ Averie Levanti, *How Does a Horse Qualify for the Kentucky Derby?*, Pennsylvania Horseracing Association, <https://pennhorseracing.com/stories/how-does-a-horse-qualify-for-the-kentucky-derby/>.

¹⁹ *How It Works: About Road to the Kentucky Derby*, Kentucky Derby, <https://www.kentuckyderby.com/prep-races/how-it-works/>.

²⁰ *Id.*

²¹ Averie Levanti, *How Does a Horse Qualify for the Kentucky Derby?*, Pennsylvania Horseracing Association, <https://pennhorseracing.com/stories/how-does-a-horse-qualify-for-the-kentucky-derby/>. While only twenty horses race in the Derby, the Derby tracks a limited roster of “also-eligible” horses with the next highest amount of points which will race if any of the top twenty horses drop out. Kentucky Derby, *How It Works: How to Get into the Kentucky Derby Starting Gate*, <https://www.kentuckyderby.com/prep-races/how-it-works/#:~:..>

33. The Derby is also known for being the first leg of the ultimate horse racing triumvirate, the “Thoroughbred Triple Crown,” or just the “Triple Crown.” To win the Triple Crown, a three-year-old horse must win all three jewels, i.e., the Derby, the Preakness Stakes, and the Belmont Stakes, within a span of five weeks.

34. As the pinnacle of the sport, the Triple Crown races hold the highest grade in the sport—“Grade 1.” That is, races are given “Grades” by the American Graded Stakes Committee (the “Stakes Committee”), “[t]he purpose of [which] is to provide owners and breeders of Thoroughbred horses a reliable guide to the relative quality of Thoroughbred bloodstock by identifying those U.S. races whose recent renewals have consistently attracted the highest quality competition.”²² The Stakes Committee “meets annually to evaluate and affirm the relative quality of these races, and issues its collective opinion in the form of ranked Grades: Grade I, Grade II, Grade III, and Listed, with Grade I being the highest.”²³

35. Since the inception of the Triple Crown in 1875, only *thirteen horses* have accomplished the feat (with only *two* in this Century). Winning the Triple Crown is “horse racing’s greatest achievement” and “one of the most difficult things to do in sports.”²⁴ The elusiveness of the Triple Crown has been attributed to challenges ranging from the modern “brutal” schedule, both in training and in the spacing of the three races themselves, to the formidable endurance test

²² *Member Guide*, Thoroughbred Owners and Breeders Association, <https://toba.org/graded-stakes/>.

²³ *Id.*

²⁴ Carlos Torres, *Triple Crown Winners: Ranking the Best Horses of All-Time*, Bleacher Report (Jun. 4, 2012), <https://bleacherreport.com/articles/1206343-triple-crown-winners-ranking-the-best-horses-of-alltime>; Jennifer Calfas, *Why Justify’s Triple Crown Win Was Even More Impressive Than It Looked*, TIME Magazine (Jun. 9, 2018), <https://time.com/5304976/triple-crown-justify-belmont-stakes/>.

of the Belmont, the texture of the Belmont's racetrack, and even changes in how horses are bred.²⁵ Given the rarity of the ultimate achievement, winning brings "everlasting fame."²⁶

36. There is no better modern example of what the Triple Crown means to the sport and to the country than the story of the 2015 Triple Crown winner American Pharoah—the first Triple Crown winner in *37 years*.²⁷ Trained by Zedan Racing's trainer, Bob Baffert, American Pharoah captivated observers around the country at a time when pundits predicted there would never be another Triple Crown winner.²⁸ As late as 2014, when California Chrome was a potential contender for the Triple Crown, sports columnists doubted that horse would prevail where so many before it had failed, with famed analytics website FiveThirtyEight estimating its odds at "about 1 in 130."²⁹ They were right, as California Chrome indeed came up short in 2014.

²⁵ Joel Rose, *Why Is It So Hard For A Horse To Win The Triple Crown?*, NPR (Jun. 3, 2014), <https://www.npr.org/2014/06/03/318547656/why-is-it-so-hard-for-a-horse-to-win-the-triple-crown>; Edward McClelland, *Abolish the Triple Crown*, Slate.com (Jun. 8, 2012), <https://slate.com/culture/2012/06/ill-have-another-scratched-the-kentucky-derby-winners-retirement-confirms-that-the-triple-crown-should-be-abolished.html>.

²⁶ Jennifer Calfas, *Why Justify's Triple Crown Win Was Even More Impressive Than It Looked*, TIME Magazine (Jun. 9, 2018), <https://time.com/5304976/triple-crown-justify-belmont-stakes/>.

²⁷ Steve Almasy, *American Pharoah becomes first Triple Crown winner in 37 years*, CNN (Jun. 9, 2015), <https://www.cnn.com/2015/06/06/us/belmont-stakes-american-pharoah/index.html>.

²⁸ Benjamin Morris, *Don't Expect to See a Triple Crown Anytime Soon*, FiveThirtyEight (Jun. 9, 2014), <https://fivethirtyeight.com/features/dont-expect-to-see-a-triple-crown-anytime-soon>; *Will there ever be another Triple Crown winner? (Grandstanding debate)*, Yahoo! Sports (Apr. 28, 2015), <https://sports.yahoo.com/blogs/the-turnstile/will-there-ever-be-another-triple-crown-winner---grandstanding-debate-011315677.html>.

²⁹ Benjamin Morris, *The Triple Crown Slump Is Even Slumpier Than You Think*, FiveThirtyEight (May 23, 2014), <https://fivethirtyeight.com/features/the-triple-crown-slump-is-even-slumpier-than-you-think/>; see also Tom Weir, *Why We've Waited So Long for Another Triple Crown Winner*, Bleacher Report (Jun. 6, 2014), <https://bleacherreport.com/articles/2086324-why-weve-waited-so-long-for-another-triple-crown-winner>.

37. But then, merely a year later, Baffert-trained American Pharoah accomplished what had been thought to be nearly impossible, capturing the Derby, Preakness Stakes, and Belmont Stakes—thereby becoming the first Triple Crown winner in 37 years and an overnight sensation.

38. As recounted by USA Today:³⁰

[E]very human being there and perhaps millions who weren't remember the roar. It started to build from a nervous silence about 40 seconds before the finish of the Belmont Stakes, the turquoise and yellow silks of American Pharoah pulling clear from a pack of horses that were about to chase history for the final quarter-mile.

The decibels rose with each stride as horse racing's dispiriting, decades-long quest for another Triple Crown winner was about to be over, the grandstand of venerable Belmont Park shaking with noise as track announcer Larry Collmus' voice rose to declare, "The 37 year wait is over! American Pharoah is finally the one!"

For 10 solid minutes, the capacity crowd of 90,000 who witnessed history's 12th Triple Crown winner people kept clapping, screaming and weeping, a moment the sport had long awaited and arguably needed.

39. American Pharoah's rise to stardom was meteoric: "there is no horse in recent memory whose popularity can be even remotely compared with American Pharoah. Not California Chrome, last year's media darling. Not Funny Cide, who drew the current record attendance of 53,368 at the 2003 Haskell. Not the wondermare Zenyatta, who had an adoring cadre of loyal fans."³¹ Receiving a hero's homecoming, 30,000 fans greeted American Pharoah when the horse returned to Churchill Downs following his Triple Crown victory.³² American Pharoah was lauded

³⁰ Dan Wolken, *Three years after Triple Crown win, American Pharoah didn't turn around racing's fortunes*, USA Today (Jun. 4, 2018), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2018/06/04/american-pharoahs-triple-crown-win-didnt-save-horse-racing-after-all/667715002/>.

³¹ Matt Hegarty, *American Pharoah has no rival in terms of popularity*, DRF (Jun. 30, 2015), <https://www.drf.com/news/american-pharoah-has-no-rival-terms-popularity>.

³² Patrick Maks, *30,000 Fans Greet American Pharoah in Festive Return to Churchill Downs*, The New York Times (Jun. 13, 2015), <https://www.nytimes.com/2015/06/14/sports/30000-fans-greet-american-pharoah-in-festive-return-to-churchill-downs.html>.

across American pop-culture with features in publications including Vogue, People Magazine, and TMZ.³³ Indeed, the Washington Post questioned why LeBron James had won the Excellence in Sports Performance Yearly (ESPY) Award for “Best Championship Performance” of 2015, grumbling that American Pharoah “was robbed.”³⁴

40. Incredibly, just three years later, in one of the greatest feats in modern sports history, Zedan Racing’s trainer Bob Baffert made history once again when Justify won the 2018 Triple Crown. The media astutely picked up on the fact that the two horses shared the same preeminent trainer. As USA Today described it, “horse racing has been blessed with another burst from the cosmos. American Pharoah, it turned out, was not a one-off but rather a prelude to another big, brilliant chestnut colt.”³⁵ Baffert had placed the sport and the country “smack dab in the middle of another era like the 1970’s when there were a cluster of superstars appearing almost at once.”³⁶ As the New York Times captured the achievement, Justify, in front of a crowd of 90,000, closed out his Belmont Stakes run “[w]ith a white blaze, a sweeping stride and an unblemished record”

³³ Julia Roberts -- American Sweetheart Meets American Pharoah, TMZ (Jun. 18, 2015) <https://www.tMZ.com/2015/06/18/julia-roberts-american-sweetheart-meets-american-pharoah/>; KC Baker, *Richie Sambora Dedicates New Single to Triple Crown Winner American Pharoah*, People (Aug. 1, 2015), <https://people.com/celebrity/richie-sambora-dedicates-new-single-to-triple-crown-winner-american-pharoah/>; Robert Sullivan, *American Pharoah, the Historic Triple Crown Winner, Weighs His Options for One More Run for Glory*, Vogue (Jul. 21, 2015), <https://www.vogue.com/article/american-pharoah-triple-crown-winner>.

³⁴ Marissa Payne, *LeBron James, everyone wonders why he won ESPY for ‘best championship performance,’* The Washington Post (Jul. 16, 2015), <https://www.washingtonpost.com/news/early-lead/wp/2015/07/15/lebron-james-everyone-wonders-why-he-won-esp-y-for-best-championship-performance/>.

³⁵ Dan Wolken, *Justify’s Triple Crown shouldn’t be diminished because of American Pharoah*, USA Today (Jun. 10, 2018), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2018/06/09/justify-triple-crown-just-meaningful-american-pharoah/688053002/>.

³⁶ *Id.*

“where [American] Pharoah ended a 37-year Triple Crown drought, and, guided by the same trainer, took his own shot at history.”³⁷

41. Unfortunately, America is now being denied the opportunity potentially to see history unfold once again. Why? Because CDI is presently banning Baffert from having horses he trains compete in the Derby. This lawsuit seeks to rectify that injustice. It seeks to stop in his tracks Bill Carstanjen, the CEO of Defendant CDI, whose petty personal vendetta is otherwise standing in the way of the greatest horse trainer in modern history, Bob Baffert, and irreparably harming (among others) Plaintiff Zedan Racing, which has partnered with Baffert since 2019. Moreover, Carstanjen is robbing the sport and this country of the best shot at another Triple Crown winner and another distinctive entry in the chronicles of horseracing—Baffert is one win away from landing the most Derby wins of all time. As matters presently stand, the winner of the 150th Kentucky Derby will be relegated to having an asterisk next to its name. And CDI and its shareholders will be watching as Carstanjen runs amuck in trampling CDI’s most valuable property. Not only is CDI standing in the way of history and fair competition at the expense of numerous innocent stakeholders, but it is acting contrary to law and is violating the rights of Zedan Racing in particular.

II. THE DERBY IS BIG BUSINESS FOR OWNERS AND THE COMMONWEALTH OF KENTUCKY

42. Atop the prestige and glory that come from winning the Derby are rich financial rewards. CDI is unlawfully denying Zedan Racing its fair chance to pursue those rewards.

43. Each jewel in the Triple Crown offers a large monetary prize for the highest placing horses (known colloquially as the “purse”). And with growing popularity come increased purses:

³⁷ Melissa Hoppert, *Simply Perfect: Justify Wins the Triple Crown*, The New York Times (Jun. 9, 2018), <https://www.nytimes.com/2018/06/09/sports/belmont-stakes-justify.html>.

the 2024 Derby will be “the richest in history” with a record \$5 million purse (with \$3.1 million going to the winner).³⁸

44. Beyond the purse, winning the Derby typically yields an exponential increase in the value of the winning horse, its breeding rights, and its progeny.³⁹ For example, American Pharoah was acquired for \$300,000.⁴⁰ Its owner sold the horse’s breeding rights for an undisclosed amount after his 2015 Derby and Preakness wins, following several offers exceeding \$20 million.⁴¹ Although it is not publicly known whether the sale included a kicker clause triggering additional payment in the event of a Belmont win, experts estimated at the time that a Triple Crown win “might be worth another \$10 million to \$20 million.”⁴² The only other Triple Crown winner of this

³⁸ *Kentucky Derby increases purse to \$5M, with \$3.1M to winner*, ESPN (Jan. 10, 2024), https://www.espn.com/horse-racing/story/_/id/39280199/kentucky-derby-increases-purse-5m-31m-winner.

³⁹ Paul Sullivan, *Forget the Kentucky Derby Prize. The Big Return on Investment Is in Breeding*, *The New York Times* (May 4, 2018), <https://www.nytimes.com/2018/05/04/your-money/horse-breeding-kentucky-derby.html>.

⁴⁰ Evan Hammonds, *American Pharoah is Champion 2-Year-Old Male*, *BloodHorse* (Jan. 17, 2015), <https://www.bloodhorse.com/horse-racing/articles/109652/american-pharoah-is-champion-2-year-old-male>.

⁴¹ Darren Rovell, *American Pharoah breeding rights sold to Ashford Stud*, ESPN (May 19, 2015), https://www.espn.com/horseracing/story/_/id/12916711/american-pharoah-breeding-rights-sold-undisclosed-farm; Joe Drape, *Zayat Sells American Pharoah’s Breeding Rights*, *The New York Times* (May 20, 2015), <https://www.nytimes.com/2015/05/21/sports/zayat-sells-breeding-rights-to-american-pharoah.html>.

⁴² Darren Rovell, *American Pharoah breeding rights sold to undisclosed farm*, ESPN (May 19, 2015), https://www.espn.com/horseracing/story/_/id/12916711/american-pharoah-breeding-rights-sold-undisclosed-farm.

century, Justify, was first acquired for \$500,000.⁴³ After winning the Triple Crown in 2018, however, it then sold to an Irish thoroughbred program for \$75 million.⁴⁴

45. American Pharoah and Justify are far from alone. Authentic was originally acquired for \$350,000.⁴⁵ After Authentic won the 2020 Derby, a racehorse investment group sold its 12.5% stake for \$2.575 million.⁴⁶ Such returns are not unusual for winning horses and their owners. Animal Kingdom, winner of the 2011 Kentucky Derby, was originally acquired for \$100,000.⁴⁷ In April 2013, a 75% interest in Animal Kingdom sold to an Australian stud farm for a sales price of ~\$10 million.⁴⁸ One investor in the horse was set to receive over a 30,000% return.⁴⁹ I Have Another, winner of the 2012 Derby and Preakness, was acquired in 2011 for \$35,000 and later sold to Big Red Farm in Japan for \$10 million—an over 28,500% return.⁵⁰

⁴³ Thomas Leavy, *Justify becomes most valuable racehorse ever with \$75M breeding deal*, CBS News (Jun. 12, 2018), <https://www.cbsnews.com/news/justify-triple-crown-winner-most-valuable-racehorse-ever-with-75m-breeding-rights-deal/>.

⁴⁴ *Id.*

⁴⁵ John Cherwa, *Kentucky Derby and Breeders' Cup Classic winner Authentic retires from racing*, The Los Angeles Times (Nov. 9, 2020), <https://www.latimes.com/sports/story/2020-11-09/kentucky-derby-breeders-cup-winner-authentic-retires>.

⁴⁶ Bradley Calleja, *Making Sense of Authentic's Derby Win for Investors*, Altan Insights, <https://www.altaninsights.com/blog-posts/making-sense-of-authentics-derby-win-for-investors>.

⁴⁷ Teresa Genaro, *Animal Kingdom, 2011 Kentucky Derby Winner, Wins World's Richest Race And Gets Another Stud Deal*, Forbes (Apr. 5, 2013), <https://www.forbes.com/sites/teresagenaro/2013/04/05/animal-kingdom-2011-kentucky-derby-winner-wins-worlds-richest-race-and-gets-another-stud-deal>.

⁴⁸ *Id.*

⁴⁹ Piers Edwards, *Nags to Riches: The syndicate owner racing to a 30,000% return*, CNN (May 27, 2014), <https://www.cnn.com/2014/05/27/sport/winning-post-animal-kingdom-dave-dillon/index.html>.

⁵⁰ *Bought and sold for a pittance, I'll Have Another is a horse for the everyman*, Yahoo! Sports (Jun. 5, 2012), <https://sports.yahoo.com/news/bought-and-sold-for-a-pittance--i-ll-have-another-is-a-horse-for-the-everyman-.html>.

46. Thoroughbred horseracing is big business. And the business is especially big for the Commonwealth of Kentucky—the center of the horseracing world every first Saturday in May, when the Kentucky Derby happens.⁵¹ Last year, the Governor of Kentucky, Andy Beshear, proclaimed that Kentucky had “the best horse racing,” identifying it as one of three Kentucky industries that “help support our state’s booming economy” and coining Kentucky the “Horse Capital of the World.”⁵² Annually, “[t]he equine industry combines to generate \$6.5 billion in” “economic activity and a total of 60,494 jobs in Kentucky.”⁵³ Of that \$6.5 billion, approximately \$763,895,100 comes from the sale of thoroughbred horses—purchases prospective owners are eager to make.⁵⁴ And there may be something special in the Bluegrass: 113 out of 148 Kentucky Derby winners have been Kentucky-bred.⁵⁵ As explained herein, Carstanjen and CDI are gratuitously jeopardizing this entire industry and surrounding ecosystem in Kentucky—including Kentucky tax revenue, jobs, tourism, and external investment.

III. CARSTANJEN’S SELF-INTERESTED ACTIONS COME AT THE EXPENSE OF CDI’S SHAREHOLDERS AND WILL DEVALUE CDI’S PRINCIPAL ASSET, THE DERBY

47. CDI is a publicly traded company listed on the NASDAQ stock market index (CHDN). One of CDI’s two most-prized assets is the Churchill Downs Racetrack, “an

⁵¹ As CDI itself touts: “The First Saturday In May, the world’s mind is on Kentucky for the Fastest Two Minutes In Sports[.]” Jennifer Kelly, *Horsepower in the Bluegrass: The Economic Impact of Horse Racing, Kentucky Derby* (Apr. 27, 2023), [https://www.kentuckyderby.com/horses/news/horsepower-in-the-bluegrass-the-economic-impact-of-horse-racing/?](https://www.kentuckyderby.com/horses/news/horsepower-in-the-bluegrass-the-economic-impact-of-horse-racing/).

⁵² *Gov. Beshear: Kentucky Derby Celebrates Spirit of the Bluegrass – Horse Racing, Bourbon and Hospitality*, Office of the Kentucky Governor (May 4, 2023), kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=1774.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

internationally known thoroughbred racing operation best known as the home of [CDI's] iconic flagship event, the Kentucky Derby.”⁵⁶ The other is the Kentucky Derby itself. As the owner and operator of the Derby, CDI has established itself as a venerable American institution whose traditions are interwoven with our country's. And CDI has leveraged the Derby to turn itself into a corporate behemoth.

48. To be sure, the Derby is the defining asset of CDI. In the words of Carstanjen: “first, when you think about [CDI], always remember we have this special asset called the Kentucky Derby.”⁵⁷ In a recent investor call, Carstanjen began “with the highlights of 2023,” with the first one being “a very successful Kentucky Derby, setting once again records for virtually every material metric.”⁵⁸ And in a February 2024 investor presentation, CDI described the Derby as an “[i]conic and irreplaceable asset” which has “[c]onsistent high margin growth and significant free cash flow over the long-term form marquee asset.”⁵⁹ According to that presentation, the Derby is “NBC’s most watched program since Super Bowl LVII” with the 2023 edition having “16.6 million peak viewership,” “14.8 average viewership,” and brought in ticket buyers with an average net worth of \$1.64 million.⁶⁰ The 2023 Derby had more average viewers than the Masters Final Round, the Daytona 500, and Formula One Miami Grand Prix.⁶¹ And it brought in an estimated total of \$412 million in wagers for the 2023 Derby week.⁶²

⁵⁶ Ex. 3, Excerpts of CDI’s 2023 Annual Report (10-K) at 4.

⁵⁷ Ex. 4, Excerpts of Churchill Downs Incorporated (CHDN) Q4 2023 Earnings Call Transcript, (Feb. 22, 2024) at 5.

⁵⁸ *Id.* at 4.

⁵⁹ Ex. 5, Excerpts of CDI February 2024 Investor Presentation at 6.

⁶⁰ *Id.* at 20.

⁶¹ *Id.*

⁶² *Id.* at 21.

49. Per its obligations as a publicly-traded company, CDI warns that decreased interest in the Derby could decrease the value of the company: “Churchill Downs Racetrack and the Kentucky Derby may be adversely affected by changes in consumer preferences, attendance, wagering, and sponsorships.”⁶³ For example, “[i]f interest in horse racing is lower in the future, it may have a negative impact on revenue and profitability in our Live and Historical Racing segment. In addition, accidents and adverse events that may occur at our racetrack and any reputational damage as a result may negatively impact attendance at our live horse races. If attendance at and wagering on live horse racing declines, it could have a material adverse impact on our business.”⁶⁴

50. Recognizing that sponsorships for the Derby depend upon public interest in the Derby, CDI has also disclosed that any change to its “ability to retain sponsors, acquire new sponsors, and compete for sponsorships and advertising dollars could have a material adverse impact on our business.”⁶⁵ Because “[h]orse racing...depend[s] on the public perception of integrity and fairness in their operations,” any “lack or loss of confidence in the fairness of our industries could have a material adverse impact on [CDI’s] business.”⁶⁶

51. To the extent CDI veers astray from maintaining transparency and fair competition, the Derby will be devalued. And if the Derby is devalued, so is CDI. What CDI’s SEC filings have not disclosed—as they should—is that Carstanjen is elevating his personal agenda and self-interest over the best interests of CDI and its shareholders, to the point of gravely jeopardizing the value of the company. The SEC filings, for example, do not disclose that, as a result of a personal

⁶³ Ex. 3, Excerpts of CDI’s 2023 Annual Report (10-K) at 17.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 16.

vendetta, Carstanjen is ensuring that competition is *lessened*, which obviously stands to reduce interest in horseracing generally and in the Derby specifically. By analogy, it is as though the NBA disclosed to shareholders that a decline in the quality of its players could negatively impact its business without disclosing that the Commissioner of the NBA had banned University of Kentucky graduates from entering solely because he hates UK's coach, John Calipari.

IV. AFTER TEAMING WITH THE GREATEST TRAINER OF ALL TIME, ZEDAN RACING STABLES HAS BECOME A STAPLE OF HORSERACING

52. Founded in 2016, Zedan Racing is a thoroughbred racing venture headquartered in Lexington, Kentucky. Amr F. Zedan is Zedan Racing's owner and founder. Amr Zedan has had a passion for equine sports for more than 25 years. Before finding his way to thoroughbred ownership and racing, Zedan was an avid polo player. Over his decades in that sport, Zedan has owned over 200 polo ponies and founded his own team. Zedan himself—a national of the Kingdom of Saudi Arabia—has been appointed Chairman of the Saudi Polo Federation and a member of the Board of Directors for the Saudi Equestrian Authority.

53. Zedan Racing initially struggled to find success. Before enlisting Baffert, Zedan Racing teamed with a different trainer, which led to no wins in graded stakes races and over \$6.5 million in losses. The lack of success was so disheartening that Amr Zedan came close to shutting down Zedan Racing and exiting the sport. A chance run-in at the Dubai Airport with Bob Baffert, however, changed Amr Zedan's life.⁶⁷

54. Training thoroughbred racehorses is both an art and a science. Only a handful of trainers consistently produce winners at the highest level of the sport. Training requires delicate

⁶⁷ Laura King, *How a chance meeting with Bob Baffert set owner Amr Zedan on the path to Kentucky Derby glory*, Thoroughbred Racing Commentary (May 7, 2021), <https://www.thoroughbredracing.com/articles/5011/how-chance-meeting-bob-baffert-set-owner-amr-zedan-path-kentucky-derby-glory/>.

judgments surrounding variables including feeding and nutrition; analyzing bloodlines to evaluate genetic predispositions; managing the intensity and frequency of workouts; preventing and treating injuries; pairing the right jockeys with the right horses; adapting to track and environmental conditions during training and on race days; scheduling races so that the horse does enough to qualify for the top races without peaking in advance of them; and training horses behaviorally to achieve responsiveness to commands and focus on race days. If a horse is pushed too hard or an injury ignored or not detected, a horse can get permanently injured or worse. Or if the feed mix is not optimal, then a horse can become over- or under- weight, which could affect performance and cause preventable injuries. The job of any trainer is to balance these dizzying considerations so as consistently to achieve optimal outcomes. And no one in history has done this job better than Bob Baffert.

55. Few would deny that Bob Baffert is among the greatest trainers of all time, and certainly in modern history.⁶⁸ As chronicled above, Baffert became the first trainer in *37 years* to win the Triple Crown. Just three years later, Baffert won the Triple Crown *again*, joining the legendary “Sunny Jim” Fitzsimmons as the only trainers with two Triple Crown wins.

⁶⁸ Joe Drape, *Two Complicated Princes of the Sport of Kings*, The New York Times (Jun. 12, 2023), <https://www.nytimes.com/2023/06/09/sports/horse-racing/09baffert-pletcher-horse-racing.html> (describing Baffert as someone who has “continued to reign over the sport” of horse-racing since winning the Triple Crown in 2015); Steve Almasy, *Bob Baffert spent a lifetime getting to the top of the field in horse racing. Controversy now stalks him*, CNN (May 15, 2021), <https://www.cnn.com/2021/05/15/us/bob-baffert-medina-spirit-controversy-spt-intl-trnd/index.html> (characterizing Baffert as at “the top of the field in horse racing”); Katie Warren, *Legendary horse trainer Bob Baffert, who’s trained 5 Kentucky Derby winners and 2 Triple Crown champions, says he’s so successful because he never takes vacations*, Business Insider (Oct. 10, 2019), <https://www.businessinsider.com/horse-trainer-bob-baffert-the-take-vacation-success-2019-10> (describing Baffert as “one of the world’s most successful and prominent horse trainers” and “legendary”).

56. The accolades go on. Throughout his career, Baffert-trained horses have won 3,379 of their 14,521 races (in which ten to fourteen horses typically compete)—an incredible 23% win rate.⁶⁹ He is third on the list for most earnings of all time (\$352,959,994 and counting) and is tied for the most Derby wins of all time (six).⁷⁰ He earned the most wins in the Preakness Stakes (the second leg of the Triple Crown) when National Treasure (which could not run in the 2023 Derby due to CDI's ban) was victorious in 2023, and he has the most wins (seventeen) of any trainer in the three Triple Crown races.⁷¹ He was inducted into the National Racing Museum Hall of Fame in 2009 and has been labeled “the face of American horse racing for nearly 30 years” and the “King of the Sport of Kings.”⁷²

57. The Zedan Racing-Baffert tandem has become a staple of the industry. Zedan Racing first entrusted Baffert with a single horse in June 2019. After the serendipitous February 2020 meeting between Amr Zedan and Baffert, Zedan Racing expanded its relationship with Baffert in the summer of 2020. That pairing was a recipe for success. In September 2020, Zedan Racing scored its *first ever* wins in graded stakes races with the filly Princess Noor, which won the Grade 1 Del Mar Debutante and then the Grade 2 Chandelier Stakes. Months later, Zedan Racing “caught lightning in a bottle” when Medina Spirit visited the winner’s circle at the 2021 Derby. Unfortunately, this victory at the Derby was soon taken away, as explained below. Even

⁶⁹ *All-Time Thoroughbred Leaders – Top 100 Trainers by Earnings*, Equibase, <https://www.equibase.com/stats/ViewAllTime.cfm?tf=all-time&tb=trainer&vb=E>.

⁷⁰ *Id.*

⁷¹ *Bob Baffert*, National Museum of Racing and Hall of Fame, <https://www.racingmuseum.org/hall-of-fame/trainer/bob-baffert>.

⁷² *Why is famed trainer Bob Baffert not at this year’s Kentucky Derby? What to know.*, WLKY (May 7, 2022), <https://www.wlky.com/article/bob-baffert-kentucky-derby-ban-what-to-know/39933816>; Joe Drape, *Even in Exile, Bob Baffert Is the King of the Sport of Kings*, The New York Times (Apr. 11, 2023), <https://www.nytimes.com/2023/04/11/sports/horse-racing/bob-baffert-horse-racing.html>.

so, Medina Spirit went on to finish third in the Preakness Stakes, win the Grade 1 Awesome Again Stakes, and run second in the Grade 1 Longines Breeders' Cup Classic.

58. Competitive success has brought financial success: Zedan Racing's relationship with Baffert has netted over \$40 million.

59. Baffert has driven this incredible turnaround for Zedan Racing—from almost exiting the sport to owning a Derby winner, and from steep financial losses to impressive financial gains—and is *indispensable* to Zedan Racing's future success. But Carstanjen has made it his personal mission to sabotage this successful venture by extending CDI's ban of Baffert to a degree that is excessive, debilitating, and illegal.

V. THE MEDINA SPIRIT INCIDENT AND CDI'S (PURPORTED) TWO-YEAR SUSPENSION OF BAFFERT

60. This sad saga began on May 1, 2021, when Zedan Racing-owned and Baffert-trained Medina Spirit finished first in the 147th Kentucky Derby. Pursuant to Kentucky Horse Racing Commission ("KHRC") regulations, Medina Spirit had post-race blood and urine samples collected for testing.⁷³ On or around May 9, 2021, media members reported that one of Medina Spirit's blood samples had tested positive for a substance called betamethasone.⁷⁴ Later on May 9,

⁷³ 810 KAR 8:060, Section 2(3) (stating that "[f]or races with purses of \$100,000 or more" "[t]he horses finishing first, second, and third shall be sampled") (since amended to "[f]or races with purses of \$200,000" or more, in relevant part).

⁷⁴ Kevin Breuninger, *Medina Spirit's Kentucky Derby win invalidated if failed drug test upheld, Churchill Downs says*, CNBC (May 9, 2021), <https://www.cnbc.com/2021/05/09/medina-spirit-kentucky-derby-win-will-be-invalidated-if-failed-drug-test-is-upheld.html>; Arvind Sriram, *Horse racing-Kentucky Derby winner Medina Spirit fails drug test*, Reuters (May 9, 2021), <https://www.reuters.com/lifestyle/sports/horse-racing-kentucky-derby-winner-medina-spirit-fails-drugs-test-2021-05-09/>; *Trainer Suspended After Kentucky Derby Winner Fails Drug Test*, The New York Times (May 9, 2021), <https://www.nytimes.com/video/us/100000007753739/ketucky-derby-winner-fails-drug-test.html>.

2021, CDI issued a statement on Medina Spirit's positive test, indefinitely suspending Baffert from racing at Churchill Downs.⁷⁵

61. Betamethasone, a corticosteroid, was then generally legal under KHRC regulations as a medicinal treatment and is recognized by the Racing Medication Testing Consortium and Association of Racing Commissioners International as a therapeutic substance used in the routine care of thoroughbred racing horses.⁷⁶ That is how it had been properly used here. On May 11, 2021, Baffert issued a statement through his lawyer explaining that a skin lesion on Medina Spirit had been treated once a day leading up to the May 1, 2021 race with a topical antifungal ointment that contained betamethasone, and that an equine pharmacology expert had told him that this could explain the positive test result.⁷⁷ As the New York Racing Association found (after notice and a fair hearing) regarding the Medina Spirit positive, "the drugs for which use Baffert was cited ... are allowed and commonly used."⁷⁸

62. CDI and KHRC, however, have maintained that under then-applicable KHRC regulations, betamethasone could not be in a horse's bloodstream on race day. That historical position is dubious and hotly contested, but it also should be beside the point for purposes of the upcoming 2024 Derby. Since May 2023, federal regulations have supplanted KHRC regulations.

⁷⁵ Ex. 6, CDI's May 9, 2021 Official Statement.

⁷⁶ 810 KAR 8:020 Section 1(4) (classifying betamethasone as a "Class C drug[], medication[], [or] substance[]" which is either approved by the United States Food and Drug Administration or not approved, "but have pharmacologic effects similar to certain[] drugs, medications, or substances that are approved by the United States Food and Drug Administration"); Ex. 7, RMTC Controlled Therapeutic Substances Schedule at 1; Ex. 8, Excerpts of ARCI Uniform Classification of Foreign Substances – V.14.3 at 8, 16 (classifying betamethasone as a Drug Class 4 therapeutic substance).

⁷⁷ *Bob Baffert: Anti-fungal meds given to Derby winner had steroid*, NBC Sports (May 11, 2021) <https://www.nbcsports.com/betting/horse-racing/news/bob-baffert-anti-fungal-meds-given-to-derby-winner-had-steroid>.

⁷⁸ Ex. 9, NYRA June 23, 2022 Panel Decision at 12-13.

Under federal regulations, a trace level of betamethasone in a horse's urine (blood samples are not contemplated for betamethasone testing under federal regulations) on race day does not constitute a medication violation, even at a racetrack such as Churchill Downs.⁷⁹ In other words, if the 2021 Derby occurred today, the presence of betamethasone in Medina Spirit's blood stream would not violate the applicable anti-doping and medication control protocols.⁸⁰

63. Weeks later, and more than a month after the 2021 Derby, on June 2, 2021, CDI issued an official statement announcing to the world a two-year suspension of Baffert:⁸¹

Churchill Downs Incorporated ("CDI") announced today the suspension of Bob Baffert *for two years* effective immediately through the conclusion of the 2023 Spring Meet at Churchill Downs Racetrack. The suspension prohibits Baffert, or any trainer directly or indirectly employed by Bob Baffert Racing Stables, from entering horses in races or applying for stall occupancy at all CDI-owned racetracks. This decision follows the confirmation by attorneys representing Bob Baffert of the presence of betamethasone, a prohibited race-day substance, in Medina Spirit's bloodstream on the day of the 147th running of the Kentucky Derby in violation of the Commonwealth of Kentucky's equine medication protocols and CDI's terms and conditions for racing.

"CDI has consistently advocated for strict medication regulations so that we can confidently ensure that horses are fit to race and the races are conducted fairly," *said Bill Carstanjen, CEO of CDI*. "Reckless practices and substance violations that jeopardize the safety of our equine and human athletes or compromise the integrity of our sport are not acceptable and as a company we must take measures to demonstrate that they will not be tolerated. Mr. Baffert's record of testing failures threatens public confidence in thoroughbred racing and the reputation of the Kentucky Derby. Given these repeated failures over the last year, including the increasingly extraordinary explanations, *we firmly believe that asserting our rights to impose these measures is our duty and responsibility.*"

⁷⁹ Ex. 10, Excerpts of *HISA Prohibited Substances List, Controlled Medications*, (last updated Dec. 8, 2023) at 4 (designating the screening limit for betamethasone as 0.2 ng/mL in urine).

⁸⁰ Because federal regulations specify only a limit of detection for betamethasone for urine samples, and the only available data on the amount of betamethasone in Medina Spirit's system is based on a blood sample, it is difficult to understand how Medina Spirit's positive for betamethasone could violate existing federal regulations.

⁸¹ Ex. 1, CDI's June 2, 2021 Official Statement at 2 (emphases added).

CDI reserves the right to extend Baffert's suspension if there are additional violations in any racing jurisdiction.

The Kentucky Horse Racing Commission (“KHRC”) has the sole authority to disqualify Medina Spirt as the winner of Kentucky Derby 147. It is the understanding of CDI that the KHRC is pursuing the completion of its investigation of this matter in accordance with its rules and regulations.

64. Carstanjen stands out in this statement. By all indications, he was the driver and decision-maker behind the two-year suspension.⁸² The length of the suspension—which far exceeded that by *any* governing body as explained below—is a result of Carstanjen’s personal animus toward Baffert.

65. That animus has translated into inordinate amounts of time, energy, and capital Carstanjen and CDI have devoted to creating rules that target and harm Baffert in *sui generis* fashion. Prior to the ban against Baffert, a horse trained by a CDI-suspended trainer would be transferred to a non-suspended trainer for the Derby and then transferred back to the suspended trainer after the Derby. The disruption to the horse was thus minimized. But Carstanjen insisted on going further to get after Baffert and all the horses he trained.

66. A September 10, 2021 CDI rule provided that “points from any race in the ‘Road to the Kentucky Derby’ will not be awarded to any horse trained by any individual who is suspended from racing in the 2022 Kentucky Derby or any trainer directly or indirectly employed, supervised, or advised by a suspended trainer.”⁸³ This novel rule shook the industry, as it required

⁸² CDI President Mike Anderson testified that “ultimately it was [CDI’s] CEO, Mr. Bill Carstanjen, making [the] decision” to issue the initial indefinite suspension of “Mr. Baffert and all of his horses.” Ex. 11, *Baffert v. CDI*, No. 3:22-cv-123-RGJ (W.D. Ky.), Excerpts of Testimony of M. Anderson, Dkt. 71 at 96–97; *see also* Ex. 12, *Baffert v. CDI*, No. 3:22-cv-123-RGJ (W.D. Ky.), Excerpts of Carstanjen Depo. Tr. at 106 (Carstanjen testified “[f]or failed drug tests, yes” in response to the question “you’re the one that suspended [Baffert], aren’t you?”).

⁸³ *No Points for Suspended Trainers on Road to the Kentucky Derby*, TDN (Sep. 10, 2021), <https://www.thoroughbreddailynews.com/road-to-the-kentucky-derby-schedule-announced/>.

that a horse trained by Baffert be transferred not just for the Derby but before the horse could earn Derby qualifying points. Because no trainer other than Baffert was suspended for CDI races at the time, no one other than Baffert, and the owners whose horses were being trained by Baffert, e.g., Zedan Racing, were affected by this sudden change.⁸⁴ Notably, months prior, it was reported that CDI's senior director of communications stated that "track officials had not yet discussed whether Bob Baffert trainees would still be able to earn points on its Road to the Kentucky Derby qualifying series," confirming that the new rule was consciously adopted with an eye towards Baffert.⁸⁵

67. Carstanjen's ego-fueled fixation on Baffert did not end there. For the 2022 Derby, owners transferred their horses from Baffert to another trainer in the weeks before the 2022 Derby, so that the horses could earn qualifying points. To stop this, for the 2023 Derby, CDI instituted *another new rule* that required owners to transfer their horses by February 28, 2023, to be eligible for the 2023 Derby.⁸⁶ In 2024, CDI moved up the transfer deadline a month, to January 29, 2024.⁸⁷ All of this was calculated to further harm Baffert, and those owners who stuck by him.

68. Turning back to Carstanjen and CDI's June 2, 2021 statement, it was carefully crafted by the highest levels of CDI's management—including CDI's CEO (Carstanjen),

⁸⁴ John Cherwa, *Churchill Downs goes after suspended trainer Bob Baffert with new policy*, The Los Angeles Times (Sep. 10, 2021), https://www.latimes.com/sports/story/2021-29alifornirchill-downs-bob-baffert-horses-points-policy?_gl=1.

⁸⁵ Bob Ehalt and Byron King, *Kumin, Partners Vow to Stick With Baffert*, BloodHorse (Jun. 3, 2021), <https://www.bloodhorse.com/horse-racing/articles/250587/kumin-partners-vow-to-stick-with-baffert>.

⁸⁶ Ex. 13, 2023 Nomination Form at 3 ("Horses under the care of any suspended trainer or affiliates may be transferred to a non-suspended trainer and become eligible for earning points on a forward-looking basis so long as the transfer is complete by February 28, 2023."). In the 2022 Nomination Form for the Triple Crown, there was no transfer deadline or provisions regarding "Suspended Trainers." Ex. 14, 2022 Nomination Form.

⁸⁷ Ex. 15, The Triple Crown Terms and Conditions (Jan. 29, 2024) at 4; Ex. 16, CDI's 2024 Spring Meet Condition Book at 34.

President, and General Counsel. As CDI's President, Mike Anderson, explained: CDI "had group discussions, group meetings, primarily with that core team that I mentioned before, so we had talked about shorter terms of a year, we had talked about longer terms of five years, and even, you know, a lifetime ban. So there was -- there was a number of different consequences that we were trying to match with the severity of this -- these repeated drug violations. We decided to settle on two years 'cause we felt like it was a reasonable consequence to deter people from some actions in the future but not to prevent Mr. Baffert from continuing his business after that -- that two-year span and not to be a part of the future of horse racing."⁸⁸ The "core team" included CDI's "general manager, Mike Ziegler; our PR person, Darren Rogers; our CDI communications professional, Tonya Abeln; our CEO, Mr. Bill Carstanjen. And [] Mr. Brad Blackwell, our general counsel."⁸⁹

69. It was with great care and deliberation, then, that CDI's statement reserved any right that CDI may have had to *extend* the suspension as to one situation and one situation only: "*if there are additional violations in any racing jurisdiction.*"⁹⁰ It is also noteworthy that the preceding sentence is a direct quote from Carstanjen—an Ivy League law school graduate, former attorney at a top New York City (and United States) law firm, and CDI's former General Counsel—that, "we firmly believe that *asserting our rights* to impose these measures is our duty and responsibility."⁹¹ CDI therefore specifically invoked whatever legal rights it had to suspend Baffert and then knowingly and intentionally declared to all of the world in an official statement on CDI letterhead with extensive quotes from its top-executive and under a bright spotlight that

⁸⁸ Ex. 11, Excerpts of M. Anderson Hearing Testimony at 102.

⁸⁹ *Id.* at 92.

⁹⁰ Ex. 1, CDI's June 2, 2021 Official Statement at 2.

⁹¹ *Id.*

CDI's suspension of Baffert (however ill-advised and incommensurate with the offense) would be two years, unless there were "additional violations in any racing jurisdiction."

70. In the ensuing years, CDI confirmed that the suspension was for two years absent additional violations. In an interview with Mike Tirico of NBC Sports posted on May 7, 2022, Carstanjen stated regarding the two-year suspension: "[Baffert]'s got to complete his suspension and he has to behave during that suspension. It doesn't appear to be the case that that suspension will be something that every jurisdiction enforces to that period of time... certainly, it's the case that we will be watching his behavior in [other] races and certainly we hope that there aren't further drug violations and certainly we'll be paying attention if there are. But let's say there aren't and he completes his two-year suspension, well, then he's completed his suspension and then absent further facts, he should be free to race again here, if he chooses."⁹²

71. As set forth in Count Three below, further confirmation came via scores of representations to the United States District Court for the Western District of Kentucky, before which CDI repeatedly represented—without equivocation or qualification—that its Baffert ban was for two years.⁹³

⁹² See *Churchill Downs CEO looking forward to a smooth Kentucky Derby*, NBC Sports (May 7, 2022), <https://www.youtube.com/watch?v=3dqaSizoHv0> (beginning ~6:11).

⁹³ On February 28, 2022, Baffert and Bob Baffert Racing Stables, Inc., sued CDI, its CEO, Bill Carstanjen, and its Chairman, Alex Rankin. See generally *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 1. The plaintiffs claimed that: the defendants violated 42 U.S.C. § 1983 by suspending Baffert without due process; CDI unlawfully excluded Baffert from Churchill Downs in violation of Kentucky law; the defendants violated federal antitrust laws via an unlawful conspiracy and use of monopoly power; the defendants tortiously interfered with contracts and prospective business relations under Kentucky law; and the plaintiffs were entitled to a declaratory judgment against the defendants that would effectively prohibit the defendants from enforcing the suspension. *Id.* at 30-54. Zedan Racing was never a party to this lawsuit, which was dismissed on May 24, 2023. See *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 87.

72. Significantly, in ruling against Baffert, the federal district court in *Baffert v. CDI* accepted and relied upon CDI's representation that Baffert's suspension was for "two years."⁹⁴ Moreover, from the announcement of the two-year suspension on June 2, 2021, to the day it was set to expire on July 3, 2023, Baffert did not have (and has not since had) any additional violations of applicable racing rules or regulations in any racing jurisdiction.

73. Accordingly, CDI's later "extension" of the suspension, discussed below, violated its own terms for extending the suspension and contravened its representations to Baffert, owners with whom he trains, and a federal court. Although the arrogance and ego of Bill Carstanjen may have no limit, the law imposes limits on CDI, including based on its binding representations.

VI. CDI'S REACTION TO THE MEDINA SPIRIT INCIDENT WAS AN EXTREME OUTLIER

74. CDI's two-year suspension was an overreaction by any fair measure. That is, CDI's two-year suspension—irrespective of what was to come—is itself a stark outlier when measured against every other racing agency or organization in the world. This alone is telltale proof that the suspension was not based on principled reasoning, but on Carstanjen egomania.

75. To begin, the KHRC, which then had plenary control over the regulation of horseracing in Kentucky, suspended Baffert for 90 days—less than 15% of CDI's initial two-year

⁹⁴ See Ex. 17, *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 70 at 3 ("On June 2, 2021, CDI announced that Baffert, and any trainer directly or indirectly employed by Plaintiffs, was suspended from entering horses in races or applying for stall occupancy at all CDI-owned racetracks for two years."); *Id.* at 29 (finding that the plaintiffs would not suffer irreparable harm absent an injunction in part because "CDI's suspension is temporary and will expire in just a few months" and because there was "no indication that owners would not continue to use Plaintiffs' services after the 2023 Kentucky Derby even if the Court did not enjoin CDI's ban"); *Id.* at 29-30 ("[a]lthough horses are only eligible for the Kentucky Derby once, Baffert may enter horses again after CDI's suspension ends" such that the plaintiffs "have not demonstrated irreparable harm by losing their ability to compete in the 2023 Kentucky Derby"); *Id.* at 32, n.6 (finding that CDI's suspension of Baffert did not constitute action by the Commonwealth of Kentucky in part because "CDI suspended Baffert for two years" but the KHRC suspended him for 90 days).

suspension.⁹⁵ This decision was reached only after notice to Baffert and a hearing at which Baffert could present evidence and present his case as to what actually occurred and what would constitute appropriate discipline, if any.⁹⁶ This contrasts with the vendetta-fueled, high-handed approach of Carstanjen, who repeatedly refused Baffert's overtures to discuss the incident and the appropriateness of any ensuing discipline.⁹⁷

76. In an act of reciprocity, the California Horse Racing Board ("CHRB") also suspended Baffert for 90 days.⁹⁸ Pursuant to the CHRB suspension, horses that were not transferred from Baffert to another trainer were required to leave the grounds of Santa Anita Park, where Baffert trained many of Zedan Racing's horses.⁹⁹ Consequently, Baffert had under two days to vacate his barn at Santa Anita Park, including by removing all signage, colors, and training equipment.¹⁰⁰ Baffert had stabled thoroughbred horses at Santa Anita for more than 30 years.¹⁰¹ The Maryland Racing Commission ("MRC") likewise suspended Baffert for 90 days pursuant to

⁹⁵ Ex. 18, KHRC Steward Ruling 22-0009 (Feb. 21, 2022) (mislabelled as 21-0009).

⁹⁶ *Id.*; see also 810 KAR 8:010 Section 12(4)-(5) (requiring notice to the trainer in the event of a positive finding of a restricted or prohibited substance in a post-race sample and a hearing).

⁹⁷ Ex. 12, Excerpts of Carstanjen Depo. Tr. at 71–72 (Carstanjen testified that he “did not reach out to Mr. Baffert” despite receiving “the message” that “Bob [Baffert] was interested in having a man-to-man discussion with [Carstanjen]”).

⁹⁸ Claire Crosby, *California Upholds Reciprocity of Baffert Suspension*, BloodHorse (Apr. 2, 2022), <https://www.bloodhorse.com/horse-racing/articles/233alifornia-uholds-reciprocity-of-baffert-suspension>.

⁹⁹ *Bob Baffert Banned from Santa Anita Amid 90-Day Suspension*, NBC Los Angeles (Apr. 3, 2022), <https://www.nbclosangeles.com/news/local/bob-baffert-banned-from-santa-anita-amid-90-day-suspension/2861807/>.

¹⁰⁰ *Id.*; *1/ST Issues Statement on Baffert Suspension*, TDN (Apr. 2, 2022), <https://www.thoroughbreddailynews.com/1-st-issues-statement-on-baffert-suspension/>.

¹⁰¹ Steve Andersen, *LOS ALAMITOS: Baffert Gives Up His Quarter Horses*, The Los Angeles Times (Nov. 20, 1991), <https://www.latimes.com/archives/la-xpm-1991-11-20-sp-224-story.html>.

a reciprocity regulation.¹⁰² MRC’s suspension prevented Baffert from racing in the 2022 Preakness Stakes, but Baffert returned the next year, winning the 2023 edition. To be sure, Baffert and Zedan Racing suffered serious consequences from Medina Spirit’s positive test outside of CDI’s ban, but all such consequences, piled together, pale in comparison to those resulting from the personal-animus-fueled ban that Carstanjen and CDI alone have imposed.

77. Another governing body that disciplined Baffert in response to the Medina Spirit positive was the New York Racing Association (“NYRA”). It initially suspended Baffert from racing horses at NYRA-operated racetracks in New York.¹⁰³ Baffert successfully obtained an injunction from a federal court enjoining the NYRA from enforcing its suspension on the basis that the suspension violated his right to due process under the United States Constitution.¹⁰⁴ In response, the NYRA promulgated Hearing Rules and Procedures to comply with the United States Constitution.¹⁰⁵ After Baffert received the constitutionally required notice and hearing, an NYRA panel banned Baffert for one year.¹⁰⁶

78. In a thoroughly-reasoned decision, the NYRA expressly declined to institute a two-year suspension as CDI did, explaining that “there was no pre-suspension hearing which led to the suspension of Baffert by Churchill Downs and the Panel is *not persuaded that, had there been such a hearing in the Churchill Downs matter, a hearing officer would necessarily have imposed*

¹⁰² *Bob Baffert ineligible to participate in this year’s Preakness, per Maryland Racing Commission*, WBALTV (Apr. 11, 2022), <https://www.wbaltv.com/article/bob-baffert-ineligible-147-preakness-maryland-racing-commission/39691518>.

¹⁰³ Ex. 9, NYRA June 23, 2022 Decision at 1.

¹⁰⁴ *Id.* (citing *Baffert v. New York Racing Assn.*, No 21-CV-3329, Slip Op. (May 17, 2021)).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 14.

such a penalty.”¹⁰⁷ The NYRA Panel further found that there was “*scant support* in the record” that “Baffert has engaged in a pattern and practice of unlawful conduct that has no parallel in the modern history of Thoroughbred racing.”¹⁰⁸ The NYRA also described the distinction between “doping” and the use of performance enhancing drugs in clarifying that “Baffert was not charged with ‘doping’ in any jurisdiction.”¹⁰⁹ Specifically, “doping” is “the use of substances or methods which allow the athlete, human or equine, to perform beyond the normal level because it permits the body to build mass or increase endurance” whereas “the drugs for which use Baffert was cited ... are allowed and commonly used but are nevertheless performance enhancing in the sense that they may suppress injuries and may allow the horse to perform at a normal level in spite of the injury if they are found to be at a level above the allowable threshold.”¹¹⁰

79. In other words, after providing the constitutionally-required due process, a three-member panel of the NYRA explained—and substantiated—why CDI’s two-year suspension was objectively unreasonable, especially considering the lack of pre-suspension hearing.

80. Further underscoring the unreasonableness of the length of CDI’s initial two-year suspension (not to mention the expanded extension), is the fact that, so far as Zedan Racing is aware, *no other racing jurisdiction in the world disciplined Baffert* due to Medina Spirit’s positive test. Because all of the above punishments have been served, Baffert and his horses can race in any of these jurisdictions—and any other racing jurisdiction and racetrack—without restriction.

¹⁰⁷ *Id.* at 13 (emphasis added).

¹⁰⁸ *Id.* (emphasis added).

¹⁰⁹ *Id.* at 12.

¹¹⁰ *Id.* at 12-13.

81. Now-controlling federal regulations afford a final point of comparison: An overage for betamethasone, a Class C controlled substance, will not result in a trainer's suspension.¹¹¹ And if a trainer has a betamethasone overage after two or more prior Class C overages within a two-year period, the trainer will be suspended for only 30 days.¹¹²

VII. THE HORSERACING INTEGRITY AND SAFETY ACT BRINGS NATIONAL UNIFORMITY TO THE SPORT STRIPPING RACETRACKS OF ANY POWER TO DISCIPLINE TRAINERS FOR INTEGRITY AND SAFETY ISSUES

82. The events giving rise to this lawsuit unfolded as the seeds were being planted for the Horseracing Integrity and Safety Act, which marked a watershed and became effective as federal law on May 22, 2023.¹¹³

83. Before HISA, thoroughbred horseracing was governed by a patchwork of state regimes. That patchwork forced competitors to navigate different rules, regulations, and operating procedures across 38 racing jurisdictions, many of which permitted racetracks to have their own rules, regulations, and operating procedures. The upshot left the industry in chaos. This case exemplifies the problem. A horse trainer licensed by the Commonwealth of Kentucky could be disliked by a powerful racetrack CEO and excluded from the CEO's racetrack by that CEO—even if that racetrack hosts a fabled horserace that is part of a larger series, and even if the horse trainer is producing the greatest horses and results in the world and is being welcomed by every other jurisdiction and racetrack in the world. The circumstance is no more palatable or conducive to

¹¹¹ See HISA, Rule 3323(b), available at <https://hisaus.org/regulations>.

¹¹² *Id.*

¹¹³ See Ex. 19, Fed. Trade Comm'n, Order Approving the Anti-Doping and Medication Control Rule Proposed by the Horseracing Integrity and Safety Authority (Mar. 27, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf; Ex. 20, Horseracing Integrity and Safety Act: Anti-Doping and Medication Control Rule, 88 Fed. Reg. 27,894 (May 3, 2023) (extending effective date of the ADMC Rule until May 22, 2023).

uniform standards and fair competition industry-wide than it would be for, say, the Daytona International Speedway suddenly and singularly to ban the same NASCAR racecar that has been racing and winning at every other track on the circuit.

84. Such chaos and incoherence spawned HISA, which Congress enacted to ensure order, uniformity, and fairness. The prior, fragmented system made it nearly impossible for stakeholders to comply with every regime and undermined the safety and integrity of the sport by incentivizing a race to the bottom.¹¹⁴ In contrast, HISA brought federally-mandated, uniform safety and integrity standards for everyone’s benefit. No longer would governing standards depend upon the whims of any one racetrack or its powerful CEO—instead, they would be creatures of federal law, subject to uniform, transparent enforcement and compliant with due process under the United States Constitution.

85. Despite recognizing for decades the dangers of state-by-state (and racetrack-by-racetrack) regulation and trying to address them itself, the industry never managed to reform itself.¹¹⁵ For example, the Association of Racing Commissioners International (“ARCI”)

¹¹⁴ See *Jamgotchian v. Kentucky Horse Racing Comm’n*, 488 S.W.3d 594, 616 (Ky. 2016) (“This system has created a forum shopping practice of sorts intended to entice racing business, and has created little or no incentive for the states to dramatically change their rules.”); see also Lauren Stelly, *Uniform Drug Reform in Horseracing*, 6 Miss. Sports L. Rev. 71, 73 (2016) (noting that states “realize that more trainers will want to run their horses in the more lenient states”); Luke P. Breslin, *Reclaiming the Glory in the “Sport of Kings” - Uniformity Is the Answer*, 20 Seton Hall J. Sports & Ent. L. 297, 314 (2010) (“As a result of the lack of a centralized governing body in horse racing, the regulations in horse racing are drafted according to the specific state’s own interest.”).

¹¹⁵ See *Jamgotchian*, 488 S.W.3d at 616–17 (noting that “[e]ven when separate jurisdictions recognize the desirability of a uniform approach[,] . . . giving expression to that uniformity is cumbersome at best.”); Alexander M. Waldrop, Karl M. Nobert & John W. Polonis, *Horse Racing Regulatory Reform Through Constructive Engagement by Industry Stakeholders with State Regulators*, 4 Ky. J. Equine, Agric. & Nat. Resources L. 389, 397 (2012) (explaining that the lack of uniformity favored the “status quo” because of inter-state competition “whereby states compete for racing business from owners and trainers because they are capable of searching for the most favorable and least burdensome racing venues”).

developed model rules to support uniformity across jurisdictions, but states refused to surrender their power and largely declined to adopt the model rules.¹¹⁶ Similarly, when the Racing Medication and Testing Consortium (“RMTC”) developed a National Uniform Medication Program in 2012, some jurisdictions adopted components of it, but many did not adopt any.¹¹⁷

86. The lack of uniform standards and safety protocols attracted widespread public criticism, to a degree that imperiled the industry’s future.¹¹⁸ This public pressure reached a tipping point in 2019 following an alarming spate of equine fatalities at racetracks across the country, particularly at Churchill Downs.¹¹⁹ Many commentators specifically criticized the lack of overarching, uniform standards, pinpointing the lack of centralized regulation as posing a crisis for the sport.¹²⁰ This public outcry sent clear warning that the industry might not survive, let alone flourish, absent reform.¹²¹

¹¹⁶ *Jamgotchian*, 488 S.W.3d at 617.

¹¹⁷ *National Uniform Medication Program Adoption Review*, BloodHorse, (Dec. 11, 2017), <https://bit.ly/48yeVla>.

¹¹⁸ Walt Bogdanich, *et al.*, *Mangled Horses, Maimed Jockeys*, The New York Times (Mar. 24, 2012), <https://nyti.ms/3Intio4>.

¹¹⁹ The Times Editorial Board, *Will horses finally stop dying at Santa Anita in 2020?*, The Los Angeles Times (Jan. 2, 2020), <https://lat.ms/3S6bz86>; Tom Goldman, *23 Thoroughbred Deaths Force Santa Anita to Change the The Racing Industry Follow?*, NPR (Apr. 10, 2019), <https://n.pr/3UYFrXS>; *see also* Lucy McCormick, *It’s Time to End Horse Racing for Good*, Current Affairs, (May 26, 2019), <https://bit.ly/3TfWgMF>.

¹²⁰ Joe Drape and Hari Sreenivasan, *Why horses are dying at U.S. racetracks at an alarming rate*, PBS (Jun. 8, 2019), <https://to.pbs.org/3wD7QJ7> (“It’s not terribly effective and there’s 38 different jurisdictions and so there’s no uniform drug laws or punishments. So it’s kind of a patchwork of state by state . . . That’s obviously got to change”); Brief Amici Curiae of 30 Thoroughbred Industry Participants, *Oklahoma v. United States*, No. 22-5487, Dkt. 61 at 11–14 (6th Cir. 2023) (“The inconsistencies in regulation of medications and other substances are especially troubling.”).

¹²¹ Brief Amici Curiae of Senator Mitch McConnell and Representatives Paul Tonko and Andy Barr, *Oklahoma v. United States*, No. 22-5487, Dkt. 62 at 3 (6th Cir. 2023) (explaining that, in the face of the rising health and safety issues plaguing the decentralized horseracing industry, “Congress faced a stark decision: enact HISA or watch the sport disintegrate”); Joe Drape and Hari

87. Responding to this crisis, Congress worked to create a federal regulatory regime of uniform national standards for thoroughbred horseracing.¹²² In 2020, with bi-partisan support, Congress enacted HISA, 15 U.S.C. §§ 3051 *et seq.* The Act created the Horseracing Integrity and Safety Authority, a private, self-regulatory non-profit corporation, and charged it with “developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.”¹²³ Following the Act’s passage, former members of the KHRC lauded the watershed Act as “a means of uniform regulation on basic matters to ensure the safety and integrity of the sport nationwide instead of relying on a disjointed and ineffective system of purely state-level regulation that perversely incentivizes jurisdictions not to implement stricter safety and other regulations.”¹²⁴

Sreenivasan, *Why horses are dying at U.S. racetracks at an alarming rate*, PBS (Jun. 8, 2019), <https://to.pbs.org/3wD7QJ7> (“This moment is going to change the future of horse racing. And it is either going to change it to where it doesn’t exist anymore— . . . What needs to happen is real reform. And unless there’s more sort of model here I mean there’s too much racing with too few horses and they need to be rested.”); *see also* Daniel Ross, *‘The sport is at a tipping point’: Inside US horse racing’s deadly crisis*, *The Guardian* (Aug. 2, 2019), <https://bit.ly/49Anfs9> (“The sword of Damocles hanging over horse racing appears no idle threat.”); Joe Drape, *Horse Deaths Are Threatening the Racing Industry. Is the Sport Obsolete?*, *The New York Times* (Apr. 29, 2019), <https://nyti.ms/3UZvcT6> (asking whether “the sport is living on borrowed time” and stating that “[c]racking down on drugs is essential”).

¹²² H.R. Rep. No. 116–554, at 17–19 (2020) (“House Report”) (discussing the disproportionate fatality rate compared to international jurisdictions, acknowledging drugs and other substances as a primary driver of the health risks, and noting the lack of uniformity among jurisdictions despite past attempts at reform); *see also* Brief Amici Curiae of Senator Mitch McConnell and Representatives Paul Tonko and Andy Barr, *Oklahoma v. United States*, No. 22-5487, Dkt. 62 at 3, 8 (6th Cir. 2023) (emphasizing the need for uniform national standards in light of the challenges to the sport and explaining that the “HISA respond[ed] to this crisis by mandating adequate and uniform national standards for equine health and safety”).

¹²³ 15 U.S.C. § 3052(a).

¹²⁴ Brief Amici Curiae of Former Members of the Kentucky Horse Racing Commission and the Ohio State Racing Commission, and Former Executive Director of the Indiana Horse Racing Commission, *Oklahoma v. United States*, No. 5:21-cv-00104, Dkt. 85 at 7–8 (E.D. Ky. 2021).

VIII. CDI'S CLAIMED SUPPORT OF HISA FURTHER EVIDENCES THE PERSONAL ANIMUS BEHIND THE BAFFERT BAN

88. CDI reportedly was unsupportive of HISA out of the gate. “Sources point to the company’s chief executive officer, William Carstanjen, as the stumbling block.”¹²⁵ Those sources claimed that Carstanjen explained that “he is a cycling enthusiast who believes Lance Armstrong – the blood-doping cheater who was stripped of seven Tour de France titles – was treated unfairly by Travis Tygart, the CEO of USADA.”¹²⁶

89. Carstanjen and CDI later purported to come around, however, and announced their support of HISA. In August 2020, Carstanjen met with Senator McConnell and other power brokers in the Kentucky horseracing industry. Along with others who attended that meeting, Carstanjen released a statement supporting the Act: “It is critical to the future of Thoroughbred racing that the safety and integrity of our sport be governed by world-class, uniform standards across the United States. The leadership of Senator McConnell and Congressman Barr has been instrumental in our shared goal of bringing the Thoroughbred industry together to achieve this goal.”¹²⁷

90. After the Act’s passage, Carstanjen reiterated his support: “This is a pivotal moment for the future of horseracing, a sport that will now be governed by world class, uniform standards

¹²⁵ Ray Paulick, *Horseracing Integrity Act Gains Support Of 64 Trainers; Among Major Tracks, Churchill Downs Missing In Action*, Paulick Report (Feb. 26, 2018), <https://paulickreport.com/nl-art-1/horseracing-integrity-act-gains-support-64-trainers-among-major-tracks-churchill-downs-missing-action>.

¹²⁶ *Id.*

¹²⁷ *Majority Leader McConnell Announces Bill To Help Make Horseracing Safer, Fairer, And More Transparent*, Keeneland (Aug. 31, 2020), <https://www.keeneland.com/media/majority-leader-mcconnell-announces-bill-help-make-horseracing-safer-fairer-and-more>.

across the United States.”¹²⁸ As another example: “The establishment of an independent, diverse and knowledgeable national authority represents another milestone for horse racing and brings us one step closer to the implementation of world class uniform standards across the United States.”¹²⁹ Similarly, in a July 2023 investor presentation, CDI recognized that HISA was “[p]assed in 2020 to create an independent body to implement national standards for medication usage and racetrack safety” and was “a welcome change from the prior model where states had their own independent medication programs.”¹³⁰

91. Carstanjen specifically acknowledged that the Authority established by the Act would have jurisdiction over any alleged medication violations: “The crux of the bill is this new entity, the authority, will have jurisdiction over the design, implementation and enforcement of anti-doping and medication controls as well as racetrack safety protocols.”¹³¹

92. Yet, as explained next, Carstanjen and CDI unilaterally extended CDI’s two-year suspension of Baffert seemingly because of supposed safety and integrity concerns that they never meaningfully explained. This was a flagrant violation of the letter and spirit of HISA. CDI’s action is akin to the owner of an MLB stadium banning for years, including during the World Series, a star opposing player, after that player was suspended by MLB for only 90 days. Or it is akin to the

¹²⁸ Bill Finley, *Horseracing Integrity and Safety Act Passes in Congress*, TDN (Dec. 22, 2020), <https://bit.ly/3TjOXU9>.

¹²⁹ *Industry Segments Applaud Appointment to Horseracing Integrity and Safety Act Authority and Standing Committees*, National Thoroughbred Racing Association (May 5, 2021), <https://www.ntra.com/industry-segments-applaud-appointment-to-horseracing-integrity-and-safety-act-authority-and-standing-committees/>.

¹³⁰ Ex. 21, Excerpts of CDI July 2023 Investor Presentation at 58.

¹³¹ Charles Hayward, *Why it’s crucial we make sure the new Safety and Integrity Act really works*, Thoroughbred Racing Commentary (Sep. 9, 2020), <https://www.thoroughbredracing.com/articles/4737/why-its-crucial-we-make-sure-new-safety-and-integrity-act-really-works/>.

mayor of a city hosting an F1 race singling out a disfavored driver and banning him from the race by invoking claimed concerns about “safety” and “integrity.”

IX. CARSTANJEN AND CDI UNLAWFULLY EXTEND BAFFERT’S SUSPENSION

93. Since June 2, 2021, when CDI announced the two-year suspension, Baffert has not had “additional violations in any racing jurisdiction.”¹³² Per Carstanjen and CDI’s June 2, 2021 statement, Baffert’s suspension should have expired on July 3, 2023.¹³³

94. Nevertheless, on July 3, 2023, Carstanjen and CDI announced—without prior indication or notice—that CDI was extending Baffert’s suspension through 2024:¹³⁴

Mr. Baffert continues to peddle a false narrative concerning the failed drug test of Medina Spirit at the 147th Kentucky Derby from which his horse was disqualified by the Kentucky Horse Racing Commission in accordance with Kentucky law and regulations. Prior to that race, Mr. Baffert signed an agreement with Churchill Downs which stated that he was responsible for understanding the rules of racing in Kentucky and that he would abide by them.

The results of the tests clearly show that he did not comply, and his ongoing conduct reveals his continued disregard for the rules and regulations that ensure horse and jockey safety, as well as the integrity and fairness of the races conducted at our facilities.

A trainer who is unwilling to accept responsibility for multiple drug test failures in our highest-profile races cannot be trusted to avoid future misconduct. Mr. Baffert will remain suspended from entering horses at all racetracks owned by CDI through 2024. After such time, we will re-evaluate his status.

¹³² Ex. 1, CDI’s June 2, 2021 Official Statement at 2.

¹³³ *Id.* (stating “the suspension of Bob Baffert for two years” would run “through the conclusion of the 2023 Spring Meet at Churchill Downs Racetrack”); Ex. 22, CDI’s June 2, 2023 Official Statement at 2 (stating that CDI’s 2023 Spring Meet was “scheduled to run to July 3”); *see also* John Cherwa, *Bob Baffert’s return to Belmont Stakes highlights exciting close to Triple Crown Series*, The Los Angeles Times (Jun. 9, 2023), <https://www.latimes.com/sports/story/2023-06-09/bob-baffert-returns-belmont-stakes-first-time-since-2018> (stating that “Baffert’s Churchill ban is set to expire July 3”).

¹³⁴ Ex. 2, Doric Sam, *Bob Baffert’s Churchill Downs Suspension Extended Through 2024; Safety Concerns Cited*, Bleacher Report (Jul. 3, 2023), <https://bleacherreport.com/articles/10081574-bob-bafferts-churchill-downs-suspension-extended-through-2024-safety-concerns-cited> at 3.

95. Prior to July 3, 2023, Zedan Racing had reasonably and substantially relied upon CDI's June 2, 2021 pledge that Baffert's suspension would expire in two years absent additional violations. By all indications, nothing short of legal action can hold CDI to its promise.

96. To be clear, Amr Zedan and Zedan Racing did not want to go to these lengths in court. As Amr Zedan has previously stated, he has no ill feelings towards CDI.¹³⁵ As he specifically told the Los Angeles Times, Zedan holds no grudges against CDI and is ultimately focused on his horses, which "are a major part of [Zedan's] nature."¹³⁶ Zedan further explained that his "modus operandi is to fly at a higher altitude. Let the chips fall where they may. Focus and keep walking."¹³⁷ In an effort to reach an amicable resolution, in December 2023 and January 2024, Zedan privately reached out to Carstanjen via Carstanjen's direct phone line and Carstanjen's secretary. Carstanjen never answered that call, nor has he otherwise engaged with Zedan. Even before filing this lawsuit, Zedan again made concerted efforts to engage constructively with CDI about possible resolution, again to no avail.

¹³⁵ In fact, Zedan emphasized in the lead up to the 2022 Derby, he was going into the Derby "with absolutely no ill feelings toward anyone," and had taken no legal action against Churchill Downs. Bill Finley, "*No Grudges*": Zedan Returns to Ky Derby, TDN (Apr. 12, 2022), <https://www.thoroughbreddailynews.com/no-grudges-zedan-returns-to-ky-derby/>.

¹³⁶ John Cherwa, *Amr Zedan is back at Kentucky Derby after a year of extreme turmoil*, The Los Angeles Times (May 5, 2022), <https://www.latimes.com/sports/story/2022-05-05/amr-zedan-kentucky-derby-churchill-downs-bob-baffert-taiba-owner>.

¹³⁷ *Id.*

X. ZEDAN RACING RELIED UPON CDI'S PROMISE OF A TWO-YEAR SUSPENSION AND IS IRREPARABLY HARMED BY CDI'S EXTENSION

97. After teaming with Baffert in 2020, Amr Zedan and Zedan Racing have been all about the Derby. Every horse they have acquired has been purchased with an eye towards winning the Derby.

98. For the sake of attempting to win the 2024 Derby (and Triple Crown), the first after CDI's two-year Baffert ban was to expire, Zedan Racing specifically purchased and assigned to Baffert for training seven horses that would be age-eligible for the 2024 Derby:

Horse Name	Date Purchased	Cost at Auction (\$)	Purchase Commission (\$)	Total Cost (\$)	Purchased From
Dua	7/20/2022	400,000.00	20,000.00	420,000.00	Fasig Tipton July Yearling Sale
Nafisa	8/16/2022	1,800,000.00	45,000.00	1,845,000.00	Fasig Tipton Saratoga Yearling Sale
Coach Prime	9/30/2022	1,700,000.00	42,500.00	1,742,500.00	Keeneland September Yearling Sale
Muth	4/2/2023	2,000,000.00	50,000.00	2,050,000.00	OBS March Two-Year-Old Sale
Taif	5/8/2023	1,450,000.00	36,250.00	1,486,250.00	OBS April Two-Year-Old Sale
Maymun	5/8/2023	900,000.00	22,500.00	922,500.00	OBS April Two-Year-Old Sale
Coolmus	5/8/2023	2,200,000.00	55,000.00	2,255,000.00	OBS April Two-Year-Old Sale
Total		10,450,000.00	271,250.00	10,721,250.00	

99. As of July 3, 2023, Zedan Racing had incurred an additional \$4 million-plus in preparing these horses for the 2024 Derby. Zedan Racing would not have sunk this much money

(over \$15 million from June 2, 2021 to July 3, 2023, the date CDI announced its extension) into these Baffert-trained horses, had it known that Baffert's suspension would be extended.

100. CDI's extension of Baffert's suspension is irreparably harming Zedan Racing. As established above, winning the Derby predictably yields an exponential increase in the value of a horse and the horse's breeding rights and foals. Zedan Racing is being denied the opportunity to gain favorable exposure and potentially win at the Derby with Baffert-trained horses and realize the desired return in its investment in those horses. Indeed, as explained *infra* Section XII, Zedan Racing's Muth has emerged to be among the fastest of Derby-aged horses and a top Derby contender absent the ban at issue.

101. Nor would it be fair to expect owners in the position of Zedan Racing to have responded to the ban's extension by transferring their horses to a different trainer before the January 29, 2024 deadline that CDI imposed for any such decisions. Any such "solution" to the extension would have been illusory in practice and out of step with the law.

102. As explained above, training requires delicate judgments regarding a host of variables. When a horse is transferred to another trainer, the transfer "creates uncertainty in the training and potential health of the horse," which "must adjust to a new environment, a new routine, and training style."¹³⁸ These problems are at their zenith when scrambling to replace a trainer like Baffert—the greatest trainer in modern history—and knowing that the horses' performance is bound to suffer as a result.¹³⁹ And these problems are further compounded because the months leading into the Derby are the most important when training a horse to win the Derby.

¹³⁸ *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 42-62, Zedan Aff.

¹³⁹ *See, e.g., Id.* ("The likely consequence of transferring my horse to another trainer is that the horse will not reach the success it would have achieved under Bob Baffert" resulting in "a substantial negative impact on the investment in my horses for decades in the form of reduced fees

103. The Derby is unique, just as Baffert, tied for the most Derby wins of all time, is uniquely positioned to train horses for the Derby.¹⁴⁰ Horses must arrive a week before the race. During that week, horses have more interactions with strangers than they typically do before a race. There are more patrons and more media. The race itself has an audience of over 150,000. This translates to more noise, more cameras flashing, and more distractions surrounding the actual race. These environmental factors affect the horse and its performance, and Baffert knows exactly how best to guide horses through this challenging environment. Finally, the Derby has twenty horses in the field, far more than other races (which typically have ten to fourteen). The Derby thus requires a special strategy, and Baffert excels at that too.

104. Due to these factors, switching trainers three months prior to the 2024 Derby—as would be required under 2024 Derby rules for a formerly-Baffert-trained horse to become eligible—would result in diminished performances and heightened dangers, e.g., not qualifying for, performing poorly in, or even potentially getting injured at the Derby.¹⁴¹ Bearing this out,

and a reduced breeding value for my horses”); Jennifer Caldwell, *The art of training a racehorse*, Kentucky Derby (Feb. 10, 2018), <https://www.kentuckyderby.com/horses/news/the-art-of-training-a-racehorse/>. (stating “[a] great trainer will get to know the pupil, try to understand them, and design a training program around them”); *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 42-62, Sikura Aff. (stating that “the margins between a win and a loss are often small” in graded stake races and “[a] trainer’s experience, expertise, and diligence can raise a horse’s lifetime earnings by potentially millions of dollars”).

¹⁴⁰ With six wins (*not* including the vacated 2021 Derby win), Baffert has more wins at the Derby than any active trainer (and is tied for the most of all time).

¹⁴¹ Bill Finley, *Despite Churchill Ban, Key Owners Keep Their Horses With Baffert*, TDN (Jan. 24, 2024), <https://www.thoroughbreddailynews.com/despite-churchill-ban-key-owners-keep-their-horses-with-baffert/> (“It can be very destructive to these horses at this young age to go to a different barn and change conditions, change their feed, change everything.”); *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 42-64, Murphy Aff. (“Requiring transfers of our horses to a different trainer, potentially at a different training or racing facility would be contrary to the best management of our horses ... and significantly disruptive to SF Racing’s racing program”); *Change In Trainer*, FlatStats, <https://www.flatstats.co.uk/change-in-trainer.php> (statistical findings that “a change in trainer is negative”).

Zedan Racing and other owners who partner with Baffert experienced disappointing results after switching trainers prior to the 2022 Derby and the 2023 Derby, where their horses' performances materially declined. After returning to Baffert, most of these horses returned to form. For this reason, and because CDI's extension was unexpected, anomalous, and unlawful, Zedan Racing was neither equipped nor inclined to switch trainers for this year's Derby—and thus did not.

105. For example, Taiba, a Zedan Racing-owned horse and a Thoroughbred Daily News “Rising Star,”¹⁴² was a top prospect to win the 2022 Derby. Taiba was transferred from Baffert between April 1, 2022 and April 4, 2022, a month before the May 7, 2022 Derby. Approximately a week later, Taiba won the Grade 1 Santa Anita Derby, thereby qualifying for the 2022 Derby. But Taiba could not maintain its form and went from having a “serious chance[] to win the Derby” to placing twelfth.¹⁴³ Taiba was transferred back to Baffert by June 2022, after which, in the same year, Taiba placed second in the Grade 1 Haskell Stakes, first in the Grade 1 Pennsylvania Derby, third in the Grade 1 Breeders' Cup Classic, and first in the Grade 1 Malibu Stakes. As a three-year-old, the only race in which Taiba placed outside of the top three was the 2022 Derby.

106. Messier was a top prospect headed into the 2022 Derby and a Thoroughbred Daily News “Rising Star,”¹⁴⁴ but massively underperformed after being transferred away from Baffert. Prior to the transfer, Messier placed second in the 2021 Grade 2 Los Alamitos Futurity and first in

¹⁴² Brian DiDonato, *Taiba Tops Former Baffert Trainee Exacta in Santa Anita Derby*, TDN (Apr. 9, 2022), <https://www.thoroughbreddailynews.com/taiba-tops-former-baffert-trainee-exacta-in-santa-anita-derby/>.

¹⁴³ *Kentucky Derby pick: Taiba will rise above his inexperience*, Spectrum News (May 7, 2022), <https://spectrumnews1.com/ap-top-news/2022/05/07/kentucky-derby-pick-taiba-will-rise-above-his-inexperience>.

¹⁴⁴ Brian DiDonato, *Taiba Tops Former Baffert Trainee Exacta in Santa Anita Derby*, TDN (Apr. 9, 2022), <https://www.thoroughbreddailynews.com/taiba-tops-former-baffert-trainee-exacta-in-santa-anita-derby/>.

the 2022 Grade 3 Robert S. Lewis Stakes. Messier was transferred on or shortly before March 27, 2022. The transfer enabled Messier to qualify for the 2022 Derby in the Grade 1 Santa Anita Derby, where it placed second to Taiba. But Messier then went from having “the speed, stamina and running style to win the Kentucky Derby” to placing fifteenth in the Derby.¹⁴⁵

107. Horses transferred from Baffert prior to the 2023 Derby fared even worse—none qualified for that year’s Derby.

108. Arabian Knight was a Zedan Racing horse that was, as of March 1, 2023, the “current favorite to win the Derby at 5-1 odds, according to Caesar’s Sportsbook.”¹⁴⁶ It was transferred from Baffert by CDI’s February 28, 2023 deadline but did not qualify for the Derby. After being transferred back to Baffert, Arabian Knight placed third in the 2023 Grade 1 Haskell Stakes and won the 2023 Grade 1 Pacific Classic.

109. National Treasure, a recognized star and an early favorite for the 2023 Derby, placed second in the 2022 Grade 1 American Pharoah Stakes and third in the 2022 Grade 1 Breeders’ Cup Juvenile.¹⁴⁷ After its transfer, National Treasure failed to qualify for the 2023 Derby. Once returned to Baffert, National Treasure: (1) won the 2023 Grade 1 Preakness Stakes; (2) placed fifth in the 2023 Grade 1 Travers Stakes; and (3) placed sixth in the 2023 Grade 1 Belmont Stakes.

¹⁴⁵ Neil Greenberg, *Messier has the speed, stamina and running style to win the Kentucky Derby*, The Washington Post (May 5, 2022), <https://www.washingtonpost.com/sports/2022/05/05/kentucky-derby-pick/>.

¹⁴⁶ Jake Adams, *Bob Baffert transfers his top contenders for 2023 Kentucky Derby: Here's what to know*, Louisville Courier Journal (Mar. 1, 2023), <https://www.courier-journal.com/story/sports/racing/2023/03/01/2023-kentucky-derby-bob-baffert-transfers-top-horses-to-trainers/69960021007/>.

¹⁴⁷ Bob Wisener, *Former Baffert horse early favorite in Derby*, The Arkansas Democrat-Gazette (Mar. 27, 2023), <https://www.arkansasonline.com/news/2023/mar/27/former-baffert-horse-early-favorite-in-derby/>.

XI. CARSTANJEN AND CDI'S INDEFINITE BAN OF BAFFERT IS UNLAWFUL, OBJECTIVELY INDEFENSIBLE, AND FUELED BY PERSONAL ANIMUS

110. Carstanjen and CDI's indefinite extension of their ban of Baffert is indefensible. First, CDI had no legal right to extend the ban. Second, CDI's ban is objectively unreasonable as it is grossly incommensurate with any perceived offense and any external point of comparison. Indeed, it is best explained as a reflection of Carstanjen's personal animus.

A. CDI Had No Legal Right To Extend Its Suspension Of Baffert

111. On February 28, 2022, Baffert and his company, Bob Baffert Racing Stables, Inc., (together, for purposes of this section, "Baffert") sued CDI, its CEO, and its Chairman, seeking to (among other things) invalidate CDI's two-year suspension of Baffert.¹⁴⁸ The next day, Baffert moved for a preliminary injunction that sought to lift CDI's suspension of Baffert so that Baffert-trained horses could be eligible for the 2022 Derby.¹⁴⁹ CDI argued in response that CDI had a "common law right to exclude" Baffert, and a contractual "right to bar [Baffert] from entering CDI races for any reason."¹⁵⁰ Baffert withdrew his motion shortly thereafter.¹⁵¹

112. On December 15, 2022, Baffert renewed his motion for preliminary injunction, attempting to enjoin CDI's two-year suspension for the 2023 Derby.¹⁵² CDI again argued in

¹⁴⁸ See generally Complaint, *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 1.

¹⁴⁹ See generally Motion for Preliminary Injunction, *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 5.

¹⁵⁰ See Ex. 23, Defendants Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction, Mar. 29, 2022, *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 31 at 20–22.

¹⁵¹ See generally Plaintiff's Motion to Withdraw Motion for Preliminary Injunction Without Prejudice, Apr. 4, 2022, *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 33.

¹⁵² See generally Plaintiff's Renewed Motion for a Preliminary Injunction and Memorandum in Support, Dec. 15, 2022, *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 41.

opposition that it had a “common law right to exclude” Baffert and “a contractual right to suspend Baffert.”¹⁵³

113. Neither of these sources provided CDI a legal right in 2023 to extend CDI’s suspension of Baffert. The extension of the suspension was therefore void *ab initio*.

1. CDI did not have a contractual right to extend Baffert’s suspension

114. As to CDI’s purported contractual right, CDI invoked two agreements that Baffert entered into with CDI as a condition of having his horses race in the 2021 Derby—the 2021 Spring Meet Condition Book (the “Condition Book”) and 2021 Spring Meet Stall Application (the “Stall Application”).¹⁵⁴ Any contractual right that CDI may have had in 2021 expired along with the contract itself by July 2023, when CDI extended its Baffert ban.

115. Both agreements had terminated upon Baffert’s removal of the horses he trained from CDI’s grounds following the 2021 Derby, which removal occurred in the weeks following the 2021 Derby, well before CDI decided to extend Baffert’s suspension in 2023. As the 2021 Condition Book provided, “these Conditions shall be in effect from earliest date noted below and *for so long as Trainer has* horse(s) on CDRT, Trackside, or TWP Grounds.”¹⁵⁵ The 2021 Stall Application similarly provided, “This Agreement shall be effective with regard to Trainer’s stabling *during and/or participation in the race meeting* specified on the opposite side

¹⁵³ Ex. 24, Defendants’ Brief in Opposition to Plaintiffs’ Renewed Mtn for a Preliminary Injunction, Jan. 17, 2023, *Baffert v. CDI*, No. 3:22-cv-00123-RGJ (W.D. Ky.), Dkt. 50 at 19–21.

¹⁵⁴ *Id.* at 5. The 2021 Condition Book is a compilation of essential documents related to the 2021 “Spring Meet,” i.e., the collection of races held at Churchill Downs Racetrack from April 24 to June 26, 2021. *See generally* Ex. 25, 2021 Condition Book. The 2021 Stall Application governed the “grant of stall space by Churchill Downs.” Ex. 26, 2021 Stall Application.

¹⁵⁵ Ex. 25, 2021 Condition Book at 8 ¶ 14 (emphasis added).

hereof....”¹⁵⁶ Because these agreements were no longer in effect as of July 2023, CDI had no contractual authority to extend Baffert’s suspension.

116. In any event, CDI’s stated bases in 2023 for extending the suspension were divorced from the then-expired 2021 Spring Meeting agreements. CDI based the extension on a purported “narrative” by Baffert that he “continue[d] to peddle” as of July 2023.¹⁵⁷ The new suspension is thus based upon Baffert’s words and conduct *years* after and wholly outside the 2021 Derby. Simply stated, the expired 2021 Derby agreements have nothing to do with that.

2. CDI did not have a common law right to suspend Baffert

117. As to CDI’s purported common law right, each of the four cases CDI has cited for support addressed a racetrack’s right to exclude *patrons*.¹⁵⁸ CDI identified no authority that conferred upon it a common law right to suspend a trainer licensed by the Commonwealth (or to extend such a suspension). Excluding a patron is categorically different from excluding a licensed horse trainer from entering horses in licensed horseraces, in accordance with the operative licenses.

B. Promissory And Judicial Estoppel Estop CDI From Enforcing The Extension Of Baffert’s Suspension, And, Even If Not, Any Right To Extend The Suspension Has Been Expressly Waived By CDI

118. Even if CDI had a contractual or common law right to extend Baffert’s suspension, CDI would be estopped—pursuant to the doctrines of promissory and judicial estoppel—from asserting that right. Moreover, CDI expressly waived its right to extend Baffert’s suspension.

¹⁵⁶ Ex. 26, 2021 Stall Application ¶ 10 (emphasis added).

¹⁵⁷ Ex. 2, Doric Sam, *Bob Baffert’s Churchill Downs Suspension Extended Through 2024; Safety Concerns Cited*, Bleacher Report (Jul. 3, 2023), <https://bleacherreport.com/articles/10081574-bob-bafferts-churchill-downs-suspension-extended-through-2024-safety-concerns-cited>.

¹⁵⁸ Ex. 24, Dkt. 50 at 20 (citing *Jeffers v. Heavrin*, 701 F. Supp. 1316, 1323 (W.D. Ky. 1988); *James v. Churchill Downs, Inc.*, 620 S.W.2d 323, 324 (Ky. App. 1981); *Wilson v. Sorrell*, 2019 WL 3246498, at *3 (Ky. App. July 19, 2019); *Hughes v. Ky. Horse Racing Auth.*, 179 S.W.3d 865, 867 n.8 (Ky. App. 2004)).

119. The doctrine of promissory estoppel requires enforcement of CDI's promise. CDI promised that Baffert's suspension would end in two-years (absent additional violations), and CDI reasonably should have expected that owners of Baffert-trained horses would rely upon that promise, including by purchasing horses for Baffert to train and by paying for Baffert to train those horses with the goal of winning the 2024 Derby. Zedan Racing was such an owner, purchasing seven horses and paying for Baffert to train those horses all at a cost of over \$15 million. The only way to avoid injustice is by holding CDI to its promises.

120. Carstanjen and CDI's June 2, 2021 statement also constituted a waiver inasmuch as it unequivocally relinquished any legal right CDI may have otherwise had to extend Baffert's suspension absent additional violations. Carstanjen and CDI went out of their way to "reserve" CDI's rights in one and only one respect: "if there are additional violations in any racing jurisdiction." Having done so, they cannot now legally withdraw—to the detriment of Zedan Racing—that unequivocal relinquishment of any rights CDI might have had to unilaterally invent and assert some supposed intervening basis for extending the ban.

121. Further, under the doctrine of judicial estoppel, CDI cannot go back on representations that it made to a court and that the court relied upon. As relevant here, CDI repeatedly represented to the United States District Court for the Western District of Kentucky that CDI's suspension was for two years and two years only. That court then expressly relied upon that representation in ruling in Carstanjen and CDI's favor on issues before that court.

122. Finally, it bears noting that CDI's own Code of Conduct should stand in the way of what it is doing. That is, CDI is veering astray not only from law, from facts, from industry

practice, and from common sense by acting as it now is, but also from its own avowed commitments. Specifically, CDI's Code of Conduct provides:¹⁵⁹

- “Our Company’s reputation has been built on over a century of integrity. As a highly regulated Company, continuing to operate with integrity and in an ethical manner is critical to our continued success.”
- “Our Company is committed to complying with all applicable laws and regulations....”
- “Our Company is committed to maintaining the highest level of integrity in its business dealings with people, organizations, communities and governments wherever we operate.”
- “In order to preserve the global reputation that required more than a century to build, we must continue to maintain the highest ethical standards and respect for the law.”

123. The Code of Conduct even opens with a statement from Carstanjen himself: “This Code of Conduct states the corporate principles and defines the standards of conduct for team members who are the foundation of our business operations and stewards of our iconic brand. As a CDI team member, you are expected to use the Code to guide you as you carry out your job.”¹⁶⁰

C. CDI’s Extension Of Baffert’s Suspension Violates Federal Law

124. Even if CDI had contractual or state law rights to extend Baffert’s suspension, and even if CDI is not estopped from asserting those rights and has not waived those rights, CDI’s July 2023 decision to extend the suspension based on concerns of integrity and safety violates federal

¹⁵⁹ Ex. 27, Excerpts of CDI’s 2023 Code of Conduct at 4, 11-12.

¹⁶⁰ *Id.* at 4.

law as set forth by HISA and its implementing regulations, which became fully effective on May 22, 2023.¹⁶¹

D. CDI's Stated Reasons Are Objectively Spurious

125. Moreover, CDI's purported basis for extending its ban, i.e., to "ensure horse and jockey safety, as well as the integrity and fairness of the races conducted at our facilities,"¹⁶² is objectively spurious.

126. *First*, as CDI itself has recognized, it no longer has authority to pronounce for itself whether a covered trainer threatens the safety or integrity of horseracing. To reiterate what HISA says, the United States Congress has given HISA exclusive jurisdiction to address these issues as HISA sees fit. Because Baffert is and has been in compliance with HISA's comprehensive regulations, neither he nor his horses threaten "safety" or "integrity." Rather, it is CDI that is now assaulting, at its inception, the uniform federal regulation that is now in place—and thereby imperiling the assurance of industry-wide safety and integrity that HISA is meant to ensure.

127. *Second*, CDI's racetracks are the only tracks at which Baffert and the horses he trains cannot race. Of the few jurisdictions that disciplined Baffert for Medina Spirit's positive test, all but one limited Baffert's suspension to 90 days. And under HISA regulations, a betamethasone overage that follows two or more other betamethasone overages within a two-year period will result in only a 30-day suspension. All of this confirms that banning Baffert for three

¹⁶¹ See Ex. 19, Fed. Trade Comm'n, Order Approving the Anti-Doping and Medication Control Rule Proposed by the Horseracing Integrity and Safety Authority (Mar. 27, 2023); Ex. 20, Horseracing Integrity and Safety Act: Anti-Doping and Medication Control Rule, 88 Fed. Reg. 27,894 (May 3, 2023) (extending effective date of the ADMC Rule until May 22, 2023).

¹⁶² Ex. 2, Doric Sam, *Bob Baffert's Churchill Downs Suspension Extended Through 2024; Safety Concerns Cited*, Bleacher Report (Jul. 3, 2023), <https://bleacherreport.com/articles/10081574-bob-bafferts-churchill-downs-suspension-extended-through-2024-safety-concerns-cited> at 3.

plus years is far, far removed from any sober, good-faith effort to protect the safety and integrity of horseraces.

128. *Third*, since CDI's Baffert ban began on June 2, 2021, **669** Baffert-trained horses have raced without a violation;¹⁶³ 55 of those were Zedan Racing horses.¹⁶⁴

129. *Fourth*, owners who invest tens-of-millions of dollars in their horses entrust Baffert with the safety and welfare of their investments.¹⁶⁵ Those massive investments give the lie to any notion that Baffert is unworthy of trust, or at war with safety and integrity.

E. The Extension Was Based Solely On Carstanjen's Personal Animus Towards Baffert And To Deflect From CDI's Own Safety Crisis

130. CDI's true motivation for extending Baffert's suspension had nothing to do with Baffert jeopardizing safety or integrity. CDI is lashing out as it is because Baffert has not surrendered to CDI's preferred narrative and confessed to what CDI wants to paint as Baffert's past crimes. For CDI, it is not enough that Baffert served out the ban and steered clear of any subsequent violation; CDI wants to see him publicly admit that Medina Spirit's positive test violated then-applicable regulations and warranted extreme punishment of CDI's choosing.

¹⁶³ *Bob Baffert*, Horse Racing Nation, https://www.horseracingnation.com/person/Bob_Baffert.

¹⁶⁴ *Zedan Racing Stables*, Horse Racing Nation, https://www.horseracingnation.com/org/Zedan_Racing_Stables.

¹⁶⁵ *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 42-62, Zedan Aff. ("I trust Bob Baffert with my horses because he prioritizes safety, rules, compliance, and the welfare of horse"); *Baffert v. CDI*, Dkt. 42-63, Pegram Aff. ("Bob Baffert has no equal in ... caring for ... a young Thoroughbred"); *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 42-64, Murphy Aff. ("Requiring transfer of horses to a different trainer ... would be contrary to the best management of our horses" and "not in the best interests of our horses"); *see also* David Grening, *Kentucky Derby: Baffert owners take a stand; don't transfer horses by deadline*, DRF (Jan. 30, 2024), <https://www.drf.com/news/kentucky-derby-baffert-owners-take-stand-dont-transfer-horses-deadline> (listing owners who have entrusted Baffert with their horses have declined to transfer their horses, and quoting Zedan on his decision to not transfer horses away from Baffert: "[h]orses have a routine and an environment and we wouldn't want to disrupt their routine and move them from one stable to another stable, it's not good for the horses").

131. Just before Baffert filed his federal lawsuit against CDI and Carstanjen, in January 2022, Carstanjen emailed CDI personnel about “Baffert [] threatening to sue CDI regarding his two-year suspension.”¹⁶⁶ In that email, Carstanjen stated that Baffert would be “held accountable for the damage he has caused our company and brought to the sport at large.”¹⁶⁷ Carstanjen also stated, “I continue to hold out hope that Mr. Baffert will finally take responsibility for his actions.”¹⁶⁸

132. Weeks prior to CDI extending Baffert’s suspension, in May 2023, Baffert stated in an interview regarding Medina Spirit’s positive test: “‘I probably wouldn’t have done anything different because everything we were doing was legal,’ Baffert told Fox’s Tom Rinaldi. ‘We didn’t break any rules cause the rule was a 14-day corticosteroid injection (withdrawal period) and he wasn’t injected.’”¹⁶⁹ At that time, Baffert’s appeal of the KHRC ruling—that Medina Spirit’s positive test violated then-applicable regulations—was pending.

133. Shortly following this interview (and similar statements by Baffert), Carstanjen and CDI extended Baffert’s suspension. In its statement announcing the extension, CDI stated that

¹⁶⁶ Ex. 28, Eric Crawford (@EricCrawford), *Churchill Downs CEO Bill Carstanjen...*, X (Jan. 12, 2022) at 3.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 5.

¹⁶⁹ Tim Sullivan, *In Light Of An Extended Ban At Churchill Downs, Bob Baffert Still Hasn’t Apologized For Violations*, LEO Weekly (Jul. 7, 2023), <https://www.leoweekly.com/sports/in-light-of-an-extended-ban-at-churchill-downs-bob-baffert-still-hasnt-apologized-for-violations-15779083>; see also Dana O’Neil, *Bob Baffert talks Preakness return, accusations of doping: ‘They just hung me out to dry’*, The Athletic (May 15, 2023), <https://theathletic.com/4522004/2023/05/15/bob-baffert-return-prekness/> (“We throw the word ‘doping’ around so loosely,” Baffert said. “And no one corrects anyone. No one says anything. We don’t push back. We didn’t inject the horse. It was in an ointment. People in the industry understand but we use that word, and no one corrects them. They just hung me out to dry. But it’s like, once it’s out, it’s out. I think there should be a way to put the toothpaste back in the tube the right way. I just don’t know how to do it.”).

Baffert “continues to peddle a false narrative,” has a “continued disregard for the rules and regulations that ensure horse and jockey safety, as well as the integrity and fairness of the races conducted at” CDI, and “cannot be trusted to avoid future misconduct.”¹⁷⁰

134. The publicly-announced extension of Baffert’s suspension came mere weeks after CDI—in what has been described as an “unprecedented step”—suspended *all racing operations* at the Churchill Downs racetrack in the midst of that year’s Spring Meet.¹⁷¹ CDI took this unprecedented action in the wake of a dozen racehorse fatalities at Churchill Downs—in less than two months—and it came at the recommendation of HISA. Therefore, although CDI was purporting to extend its ban against Baffert under auspices of protecting racehorse safety, it was in fact doing so to scapegoat Baffert and redirect public scrutiny and outrage away from CDI’s own failings.

135. This past January, Baffert dropped his appeal of the KHRC ruling. In announcing that he was doing so, Baffert stated on social media: “Zedan Racing owner, Amr Zedan, and I have decided that it is best to positively focus on the present and future that our great sport offers. We thank the KHRC and Churchill Downs for listening and considering our point of view and we are grateful for the changes and clarity that HISA brings to our sport.”¹⁷² Still, CDI has refused to

¹⁷⁰ Ex. 2, Doric Sam, *Bob Baffert’s Churchill Downs Suspension Extended Through 2024; Safety Concerns Cited*, Bleacher Report (Jul. 3, 2023), <https://bleacherreport.com/articles/10081574-bob-bafferts-churchill-downs-suspension-extended-through-2024-safety-concerns-cited> at 3.

¹⁷¹ Bill Finley, *Churchill Downs to Suspend Meet, Move Racing to Ellis Park*, TDN (Jun. 2, 2023), <https://www.thoroughbreddailynews.com/rest-of-churchill-downs-meet-moved-to-ellis-park/>; see also Homero De la Fuente, *Churchill Downs to suspend all racing operations to further evaluate safety measures amid increase in horse deaths*, CNN (Jun. 2, 2023), <https://www.cnn.com/2023/06/02/sport/churchill-downs-suspension-horse-deaths/index.html>.

¹⁷² Ex. 29, Bob Baffert (@BobBaffert), *I have instructed my attorneys...*, X (Jan. 22, 2024).

dissolve its suspension.¹⁷³ As the legendary, revered trainer D. Wayne Lukas remarked after Muth’s Arkansas Derby win,¹⁷⁴ “[Baffert’s] got great horses. He’s got Derby horses, but he’s going through a lot of things right now that shouldn’t be happening.”¹⁷⁵

136. In January 2024, Amr Zedan and Zedan Racing likewise dropped their appeal of the KHRC ruling disqualifying Medina Spirit from the 2021 Derby. In the months prior, Amr Zedan had repeatedly called Carstanjen’s personal phone and Carstanjen’s secretary in an attempt to amicably and privately settle this matter. Carstanjen never answered nor returned any of Zedan’s calls, nor did he otherwise engage.

XII. CARSTANJEN RISKS PERMANENTLY DEVALUING THE DERBY AND CDI IN BREACH OF HIS DUTIES TO THE COMPANY AND ITS SHAREHOLDERS

137. Public sentiment is against CDI extending its suspension of Baffert.¹⁷⁶

¹⁷³ As told by one pundit:

Bob Baffert has done his time. And then some. He has finally capitulated to Churchill Downs, abandoning his ill-advised attempt to overturn Medina Spirit’s 2021 disqualification from the Kentucky Derby, and going so far as to grovel.

Tim Sullivan, *Time For Peace Between Bob Baffert And Churchill Downs*, LEO Weekly (Feb. 9, 2024), <https://www.leoweekly.com/sports/time-for-peace-between-bob-baffert-and-churchill-downs-15946402>.

¹⁷⁴ The 88-year-old D. Wayne Lukas is a longstanding fixture of the Kentucky Derby and venerated thoroughbred horse racing for his contributions and accomplishments. *See infra* Introduction.

¹⁷⁵ Jennifer Hoyt, *Muth wins at Arkansas, leaves Kentucky Derby points on table*, Horse Racing Nation (Mar. 30, 2024), https://www.horseracingnation.com/news/Muth_wins_at_Arkansas_leaves_Kentucky_Derby_points_on_table_123.

¹⁷⁶ *See, e.g.*, Jim O’Donnell, *Baffert going longer on Kentucky Derby battle of wills*, Daily Herald (Jul. 9 2023), <https://www.dailyherald.com/sports/20230709/jim-odonnell-carstanjen-baffert-going-longer-on-kentucky-derby-battle-of-wills/> (“THE IMPERIAL ATTITUDE CONTINUES to ooze out of the money-gulping halls of the burgoo kings at Churchill Downs Inc.”); John Cherwa, *Bob Baffert will not transfer any horses to other trainers for Kentucky Derby*, Yahoo! Sports (Jan. 29, 2024), <https://sports.yahoo.com/bob-baffert-not-transfer-horses-004754642.html> (“Baffert is in the midst of a two-year ban, that was inexplicably extended at least a year despite no rules violations.”); Art Wilson, *Bob Baffert’s extended punishment is horse racing’s latest*

138. Baffert continues to produce some of the best horses in thoroughbred racing. Due to CDI's indefinite suspension, these horses, many owned by Zedan Racing, are presently ineligible to qualify for and compete in the 2024 Derby. As things currently stand, there are four

unforced error, San Gabriel Valley Tribune (Jul. 7, 2023), <https://www.sgvtribune.com/2023/07/06/bob-bafferts-extended-punishment-is-horse-racings-latest-unforced-error/> (“CDI is upset that Baffert won’t beg forgiveness and holds a grudge against the Hall of Fame trainer because he cost the company money in attorney fees by fighting his case in court. ‘Vindictive. Personal attack. Three years for a legal medication overage is not justice,’ an industry insider told me via text this week.”); Eric Crawford, *In moving the finish line on Baffert suspension, Churchill risks crossing a line*, WDRB (Jul. 5, 2023), https://www.wdrb.com/sports/crawford-in-moving-the-finish-line-on-baffert-suspension-churchill-risks-crossing-a-line/article_92dc481e-1b60-11ee-a080-07ba6b2f5e44.html (“But after serving that sentence, Baffert watched Churchill Downs move the finish line on Monday. It was like Warden Norton telling Andy Dufrense that he’d get another month in the hole in *The Shawshank Redemption*.”); Dick Jerardi, *Triple Crown Nominations Are Out, But No Baffert In Derby Again*, Parx (Feb. 15, 2024), <https://letsgoracingparx.com/blog/triple-crown-nominations-are-out-but-no-baffert-in-derby-again/> (“If it was because Baffert continued to insist the positive was the result of the ointment and not an injection, that’s just silly.”); Bill Finley, *Op/Ed: In Extending Baffert Ban, Churchill Downs Has Gone Too Far*, TDN (Jul. 5, 2023), <https://www.thoroughbreddailynews.com/op-ed-in-extending-baffert-ban-churchill-downs-has-gone-too-far/> (“To extend the ban, based on what are best described as flimsy accusations, is overkill. Baffert served his time, his punishment was up and it was time for him to prepare for his return to the Kentucky Derby next year. Justice was not served here.”); Armen Antonian Ph.D, *Letter To The Editor: The Implications of Choosing Not To Run in This Year’s Derby*, TDN (Jan. 31, 2024), <https://www.thoroughbreddailynews.com/letter-to-the-editor-the-implications-of-choosing-not-to-run-in-this-years-derby/> (“Churchill, in arbitrarily extending the ban on their trainer and shortening the time for the required transfer of their horses from their chosen trainer to someone else (the transfer date was conspicuously set days before the Robert Lewis prep race at Santa Anita), had, apparently gone too far.”); Cameron Drummond, *2024 Kentucky Derby Watch: Get to know the early contenders for the 150th Run for the Roses*, Lexington Herald Leader (Mar. 2, 2024), <https://www.kentucky.com/sports/horses/kentucky-derby/article285942091.html> (“Baffert’s continued absence from the Kentucky Derby means that one of the most successful trainers in the race’s history won’t get a chance to win the historic 150th edition: Baffert is tied with Ben Jones for the most Derby wins in history with six. An unfortunate subplot given Baffert’s continued ban from the Derby is that the horse currently viewed as the best in the 3-year-old class won’t get a chance to make the starting gate.”).

Baffert-trained horses which, were it not for CDI's Baffert ban, would have either accrued enough points to qualify for the 2024 Kentucky Derby or are likely prospects for doing so.¹⁷⁷

139. In 2023, the horse with the fewest qualifying points to make the Derby had 40 points (excluding the European Road and Japan Road horses, which had distinct eligibility standards). For the 2022 Derby and the 2021 Derby, the qualifying points thresholds were 21 and ten points, respectively. Three Baffert-trained horses, Muth (a Zedan Racing Horse),¹⁷⁸ Imagination, and Wine Me Up, have accrued enough points, 125, 50, and 47, respectively, to qualify for the 2024 Kentucky Derby. If these points were recognized, these horses would be (as of this filing) ranked against the unrestricted field as follows:¹⁷⁹ tied for second, tied for thirteenth, and sixteenth, respectively, in the Road to the Kentucky Derby rankings. One other Zedan horse, Maymun, is a contender for accruing enough points to qualify when it races on April 6.

140. Twenty horses run in the Derby. Carstanjen and CDI are thus excluding up to 20% of the field (as compared to if there were no suspension) and almost certainly *at least 15%*.

¹⁷⁷ Because of CDI's ban, Baffert-trained horses have not earned Derby qualifying points and are ineligible to race in the 2024 Derby. These horses, however, can still race in non-CDI races that are part of the Road to the Kentucky Derby qualifying system. When Baffert-trained horses place in the top five in these designated races, and thus would earn qualifying points, CDI does not recognize those points. Notably, these points are not redistributed amongst other horses in each race. Accordingly, recognizing these points now would not result in points being retroactively redistributed.

¹⁷⁸ According to Equibase's Speed Figure, a horseracing statistics website, which Figure "tells you how fast a horse has been running in its past races with a single number" and even "equalize[s] for different tracks, distances and conditions," Muth ran at a 115 for the Arkansas Derby—*the fastest for any Derby-aged thoroughbred* this year. *Equibase Speed Figure*, <https://www.equibase.com/products/sf.cfm>; *Equibase Speed Figure Leaders List*, <https://www.equibase.com/static/statistics/eleaders.html>.

¹⁷⁹ These revised rankings assume the inclusion of other Baffert-trained horses (e.g., Muth and Imagination) as eligible for the Derby to the extent of their accumulated points.

141. Excluding a chunk of the qualified elite—including horses that could potentially outrace the best of the best head-to-head—does not square with the Derby being “America’s Greatest Race” and “one of the most prestigious horse races in the world.”¹⁸⁰ In fact, Carstanjen and CDI are risking the loss of the Derby’s Grade 1 status. To be eligible for grading, a race cannot be “restricted.” A race is restricted “if conditions for competing in them include restrictive provisions relative to which horses may enter, other than by sex or age.”¹⁸¹ The Derby’s anomalous insistence that a horse not be trained by Baffert in order to qualify renders it a restricted race that should lose its Grade 1 status. The same holds for other CDI-held Graded races, e.g., the Kentucky Oaks, a Grade 1 race; the Iroquois Stakes, a Grade 3 race. Separately, it follows from the lack of top competition that the Derby should be downgraded from rating as a top race, consistent with past precedent.¹⁸²

142. By putting at risk the Derby’s grading and stature, Carstanjen and CDI are playing with fire and courting a public firestorm. It is all too clear to informed observers across the industry that Carstanjen and CDI are elevating Carstainjen’s petty, personal vendetta above letting the fastest horses and top trainers compete on fair terms at this year’s historic 150th Derby. The 150th Kentucky Derby is relegating the winning horse to having an asterisk next to its name—and subsequent Derbies may be rendered largely irrelevant as industry leaders, the American public,

¹⁸⁰ *About: America’s Greatest Race*, Kentucky Derby, [https://www.kentuckyderby.com/about/..](https://www.kentuckyderby.com/about/)

¹⁸¹ *Member Guide*, Thoroughbred Owners and Breeders Association, <https://toba.org/graded-stakes/>.

¹⁸² Steve Dennis, ‘*The race has ceased to showcase G1 quality, and paid the price*’ - Steve Dennis sees the mighty Man o’ War on the downgrade, Thoroughbred Racing Commentary (Jan. 5, 2024), <https://www.thoroughbredracing.com/articles/6142/race-had-ceased-showcase-g1-quality-and-paid-price-steve-dennis-sees-mighty-man-o-war-downgrade/>; Thoroughbred Owners and Breeders Association, *Graded Stakes Committee Cuts Number of Graded Stakes*, BloodHorse (Dec. 16, 2023), <https://www.bloodhorse.com/horse-racing/articles/273982/graded-stakes-committee-cuts-number-of-graded-stakes>.

bettors, and sponsors transition elsewhere. And CDI and its shareholders are seeing CDI's most valuable property sacrificed at the altar of Carstanjen's insatiable ego. It is time for Carstanjen to stop indulging himself at the expense of all other stakeholders, including CDI's own shareholders.

143. Unless it corrects course, CDI's indefensible position will continue eroding the relevance and even the legitimacy of the Derby as a component of the Triple Crown, with the Derby and CDI suffering worse and worse financially as a result. The Derby will no longer be the preeminent race. Instead, the Preakness and Belmont Stakes, the races with the strongest fields, will become ascendant. The American public will rightly be drawn away to those other races, knowing that is where they can see the fastest horses and top trainers. And sponsors will follow the public as it migrates to other, better races.

144. In these circumstances and for the sake of the larger public interest, Zedan Racing is respectfully seeking a temporary injunction that holds CDI to its legally enforceable commitments and enables the upcoming Derby to proceed as it should: with all qualified horses racing, in accordance with the uniform standards that now govern horseracing everywhere else in the United States.

CLAIMS FOR RELIEF

COUNT ONE: PROMISSORY ESTOPPEL

145. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

146. Under the doctrine of promissory estoppel, a promise that the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and

that does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.¹⁸³

147. In its official statement on June 2, 2021, CDI announced a two-year suspension of Baffert, specifying in relevant part that regarding “the suspension of Bob Baffert for two years effective immediately CDI reserves the right to extend Baffert’s suspension *if there are additional violations in any racing jurisdiction.*”¹⁸⁴ The statement also quoted CDI’s CEO, Bill Carstanjen: “Given these repeated failures over the last year, including the increasingly extraordinary explanations, we firmly believe that asserting our rights to impose these measures is our duty and responsibility.”¹⁸⁵

148. In this official statement, CDI made clear that it would refrain from extending Baffert’s suspension absent additional violations by Baffert in any racing jurisdiction. Under the doctrine of promissory estoppel, this is a binding “promise.”

149. CDI should have reasonably expected that Zedan Racing, whose horses—including Medina Spirit—had trained with Baffert prior to the June 2, 2021 statement, would affirmatively rely upon CDI’s promise, including by purchasing horses and having Baffert train those horses with the goal of qualifying for and winning the 2024 Derby, the first Derby for which Baffert would be eligible after the two-year suspension. Moreover, given that CDI is a sophisticated member of the thoroughbred horseracing industry, it well understood that Zedan Racing’s purchase and training of horses for the 2024 Derby would need to play out well before July 3, 2023 (the day CDI reneged on its promise).

¹⁸³ *Sawyer v. Mills*, 295 S.W.3d 79, 89 (Ky. 2009).

¹⁸⁴ Ex. 1, CDI’s June 2, 2021 Official Statement at 2 (emphasis added).

¹⁸⁵ *Id.*

150. Zedan Racing relied upon CDI's June 2, 2021 promise by spending—prior to July 3, 2023—over \$15 million to purchase seven horses and have them trained by Baffert so that those horses could qualify for and potentially win the 2024 Derby with Baffert as their trainer.

151. Zedan Racing's reliance upon CDI's June 2, 2021 promise was reasonable. CDI is a respected and venerated American institution that publicly announced the conditions of Baffert's suspension on official CDI letterhead, after weeks of deliberating over what exactly to do with Medina Spirit's positive test. Especially given that the June 2, 2021 statement extensively quoted CDI's CEO, Zedan Racing had every indication that CDI's promise had been approved by the highest levels of CDI's management. And then over the ensuing years, CDI continued reiterating—without qualification or modification of its June 2, 2021 promise—that the suspension was limited to two years.

152. The only way to avoid injustice to Zedan Racing is to enforce the promise and permit Zedan Racing's Baffert-trained horses to accrue points for, and if they qualify, run in the 2024 Derby (and beyond) with Baffert as their trainer.

COUNT TWO: DEFAMATION

153. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

154. A defamation claim requires: “(1) defamatory language; (2) about the plaintiff; (3) which is published; and (4) which causes injury to reputation.”¹⁸⁶

155. On July 3, 2023, CDI publicly released—i.e., “published”—an official statement of the company, stating in relevant part:

Mr. Baffert continues to peddle a false narrative concerning the failed drug test of Medina Spirit at the 147th Kentucky Derby from which his horse was disqualified by the Kentucky

¹⁸⁶ *Columbia Sussex Corp. v. Hay*, 627 S.W.2d 270, 275 (Ky. App. 1981).

Horse Racing Commission in accordance with Kentucky law and regulations....The results of the tests clearly show that he did not comply, and his ongoing conduct reveals his continued disregard for the rules and regulations that ensure horse and jockey safety, as well as the integrity and fairness of the races conducted at our facilities. A trainer who is unwilling to accept responsibility for multiple drug test failures in our highest-profile races cannot be trusted to avoid future misconduct.¹⁸⁷

156. CDI's statements—which include CDI's conduct of banning Zedan Racing's Baffert-trained horses—defame Zedan Racing. CDI's statements are necessarily directed not only at Baffert but at those owners using Baffert to train their horses, which are, after all, the immediate objects of the ban. CDI has been announcing, therefore, that Zedan Racing's product, its horses, lack "integrity" and that their trainer "cannot be trusted" to abide by "rules and regulations that ensure horse ... safety." The quoted statements and conduct of banning Zedan Racing's Baffert-trained horses are defamatory per se as they tend to injure Zedan Racing in its business of buying, racing, and selling thoroughbred racehorses that are deserving of their achievements and valuable in all respects, including to spawn progeny.

157. CDI's statements about Zedan Racing's horses are also provably false. As set forth above, at the time of the July 3, 2023 defamatory statements, Baffert-trained horses could (and can) race properly at every racetrack except CDI's. Moreover, they had not (and have not) been found or accused of being in violation of HISA's comprehensive integrity and safety protocols. If Baffert and the horses he trains actually lack "integrity," "cannot be trusted," or do not abide by "rules and regulations that ensure horse ... safety," they would not be openly welcomed and competing as they are at racetracks all throughout the United States.

¹⁸⁷ Ex. 2, Doric Sam, *Bob Baffert's Churchill Downs Suspension Extended Through 2024; Safety Concerns Cited*, Bleacher Report (Jul. 3, 2023), <https://bleacherreport.com/articles/10081574-bob-bafferts-churchill-downs-suspension-extended-through-2024-safety-concerns-cited> at 3 (emphasis added).

158. CDI's false statements tend to injure Zedan Racing in its business and are defamatory per se, such that injury to Zedan Racing is presumed.

COUNT THREE: DECLARATION OF RIGHTS

159. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

160. KRS 418.040 provides:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.¹⁸⁸

161. Here, an actual controversy exists regarding the validity of CDI's suspension of Baffert as announced on June 2, 2021, and extended on July 3, 2023. CDI is presently enforcing the suspension against Zedan Racing's Baffert-trained horses, which are barred from racing in CDI-held races, including the 2024 Kentucky Derby, and are presently not able to accrue points toward qualifying for the 2024 Kentucky Derby.

162. Zedan Racing respectfully seeks a declaration of rights that CDI did not have a legal right to extend Baffert's suspension. Zedan Racing advances four independent and alternative grounds for its declaration of rights claim: (1) CDI did not have the right to extend Baffert's suspension, whether via contract or the common law, and the extension should therefore be declared void; (2) even if CDI had such a right, CDI expressly waived any right it had to extend the suspension absent additional violations by Baffert; (3) even if CDI had such a right and did not expressly waive any right to extend the suspension absent additional violations by Baffert, CDI is judicially estopped from maintaining here that Baffert's suspension lasts longer than the initially-

¹⁸⁸ KRS 418.040.

announced two years; and (4) even if CDI had a right to extend the suspension, did not expressly waive it, and is not judicially estopped, HISA has preempted any such right under Kentucky law and any such contractual right is void as against public policy for violating HISA.

A. CDI Had No Contractual Or Common Law Right To Extend Baffert's Suspension

163. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

164. CDI had no contractual or common law right to extend Baffert's suspension in 2023. The suspension is therefore legally invalid and was void *ab initio*.

1. No contractual right

165. Neither the 2021 Spring Meet Condition Book nor the 2021 Spring Meet Stall Application agreements that Baffert and CDI entered as part of the 2021 Derby contractually entitled CDI to extend Baffert's suspension in 2023.

166. Under the plain language of these agreements, each agreement governs only the 2021 Spring Meet and terminated upon the end of the 2021 Spring Meet and/or Baffert's removal of the horses he trained from CDI's grounds following the 2021 Derby, both of which occurred well before CDI made the decision to extend Baffert's suspension in 2023.

167. Because these agreements were not in effect in 2023, CDI had no contractual authority in 2023 to extend Baffert's suspension.

168. What is more, CDI's grounds for extending Baffert's suspension in 2023 were unrelated to the then-expired 2021 Spring Meeting agreements. CDI based the extension on a purported "narrative" by Baffert that he "continues to peddle" and on Baffert's purported failure to "take responsibility" in 2023 of the Medina Spirit incident that occurred during the 2021 Derby and for which he was already punished. In other words, the new suspension is based upon Baffert's

words and conduct *years* after the 2021 Derby concluded. Neither the 2021 Spring Meet Condition Book nor the 2021 Spring Meet Stall Application contemplated or authorized anything akin to the new suspension at issue.

2. *No common law right*

169. Neither does Kentucky common law authorize CDI to extend Baffert's suspension in 2023.

170. In *Baffert v. CDI*, CDI argued that it had a common law right to suspend Baffert but identified no authorities that would confer upon it the right to suspend a horse trainer, much less any authorities conferring the right arbitrarily to extend the suspension of a horse trainer because it finds fault with his public commentary.

171. CDI identified four cases to support its argument that it had a common law right to suspend Baffert, but each dealt with a right to exclude *patrons* as and if appropriate from a business's grounds. Excluding a patron from a business is categorically different from excluding a licensed horse trainer from entering horses that have qualified on established terms and standards to race in a licensed horserace.

172. Absent any Kentucky authority establishing a common law right for a licensed racetrack to suspend a licensed horse trainer, CDI had no common law right to extend Baffert's suspension.

B. In The Alternative, CDI Waived Any Purported Right To Extend Baffert's Suspension

173. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

174. Waiver “is a voluntary and intentional surrender or relinquishment of a known right, or an election to forego an advantage which the party at his option might have demanded or insisted upon.”¹⁸⁹

175. Even if CDI had a contractual or common law right to extend Baffert’s suspension, CDI expressly waived any such right.

176. CDI’s June 2, 2021 official statement provided that it “reserve[d] the right to extend Baffert’s suspension” under one circumstance and only one circumstance: “if there are additional violations in any racing jurisdiction.”¹⁹⁰ This statement reflected a voluntary and intentional relinquishment of any right CDI might otherwise claim to extend Baffert’s suspension based on anything other than additional violations by Baffert in any racing jurisdiction. No such violation has occurred as of July 3, 2023, when the suspension was extended (or at any time since).

177. CDI’s statement, made over a month after the May 1, 2021 Derby, was not an offhand comment by a low-level employee. It was a carefully-crafted, official statement by CDI itself—on CDI’s letterhead—announcing a two-year suspension of the greatest horse trainer in modern history in response to the historic disqualification of a winner of the Kentucky Derby. The statement included a lengthy quote from CDI’s CEO, an Ivy League law school graduate and CDI’s former General Counsel, that ended: “we firmly believe that asserting our rights to impose these measures is our duty and responsibility.” In the very next sentence, CDI stated that it “reserves the right to extend Baffert’s suspension if there are additional violations in any racing jurisdiction.” In sum, CDI spoke through its highest-ranking officer and former General Counsel in explicitly

¹⁸⁹ *Greathouse v. Shreve*, 891 S.W.2d 387, 390 (Ky. 1995).

¹⁹⁰ Ex. 1, CDI’s June 2, 2021 Official Statement at 2.

invoking its rights to suspend Baffert and in expressly conditioning the future exercise of those very same rights. The upshot was an express waiver.

178. CDI's conduct following its original suspension of Baffert confirms that it knew what it said and meant what it said. Despite having ample opportunity to clarify, withdraw, or modify its express waiver, CDI repeatedly affirmed that its suspension of Baffert was for two years only.

179. It follows that CDI unequivocally waived any purported right to extend Baffert's suspension absent additional violations. Because there were no additional violations, CDI had no legal right to extend Baffert's suspension, and the extension of the suspension should for this reason be declared null and void.

C. In The Alternative, CDI Is Judicially Estopped From Taking The Position That The Baffert Ban Is Longer Than Two Years

180. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

181. CDI is also estopped pursuant to the doctrine of judicial estoppel from maintaining here that its suspension of Baffert extended beyond the initial two-year period.

182. "The doctrine of judicial estoppel ... can be applied to prohibit a party from taking inconsistent positions in judicial proceedings."¹⁹¹ Judicial estoppel's "purpose is 'to protect the integrity of the judicial process' ... by 'prohibiting parties from deliberately changing positions according to the exigencies of the moment[.]'"¹⁹²

¹⁹¹ *Hisle v. Lexington-Fayette Urban Cty. Gov't*, 258 S.W.3d 422, 434 (Ky. App. 2008) (citing 28 Am. Jur. 2d *Estoppel and Waiver* § 74; *Colston Inv. Co. v. Home Supply Co.*, 74 S.W.3d 759 (Ky. App. 2001)).

¹⁹² *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001) (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 598 (6th Cir. 1982); *United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993)).

183. Judicial estoppel asks: “(1) whether the party’s later position is clearly inconsistent with its earlier position; (2) whether the party succeeded in persuading a court to accept the earlier position; and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.”¹⁹³

184. CDI repeatedly represented to the court in its lawsuit against Baffert that Baffert’s suspension was for “two years,” period and full stop:

- Ex. 30, March 29, 2022 Declaration of CDI President Michael Anderson filed in *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 31-67 ¶ 95 (“After Medina Spirit’s split sample confirmed the presence of betamethasone, *CDI decided to suspend Mr. Baffert for two years*. CDI’s decision was based on Mr. Baffert’s recent, high-profile drug violations and the resulting harm to CDI.” (emphasis added)); *id.* ¶ 99 (“Taking all of these facts into account, *CDI determined that two years would be an appropriate time period to suspend Mr. Baffert* from racing on CDI tracks. It would provide meaningful deterrence and protect the Kentucky Derby and Churchill Downs brands, but would not prohibit Mr. Baffert from participating in future races at CDI-owned race tracks. In short, *it was a reasoned balance that imposed a meaningful consequence while stopping short of a much longer—or even lifetime—ban.*” (emphasis added)); *id.* ¶ 100 (“After *CDI decided to suspend Mr. Baffert for two years*, I volunteered to notify him of the suspension....I told Mr. Baffert that CDI would shortly be issuing a statement suspending him for two years.” (emphasis added)); *id.* ¶ 102 (“*CDI reached its decision to suspend Mr. Baffert for two years* independently, without consulting with the KHRC or any state official.” (emphasis added)).

¹⁹³ *Parrish v. Schroering*, 636 S.W.3d 133, 143 (Ky. App. 2021).

- Ex. 31, CDI’s May 2, 2022 Motion to Dismiss in *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 36 at 1 (“Churchill Downs Incorporated (‘CDI’), a private company that hosts the Derby, exercised its right to suspend the horse’s trainer, Bob Baffert, from participating in races at its racetracks **for two years.**” (emphasis added)); *Id.* at 4.
- Ex. 24, CDI’s January 17, 2023 Response to Baffert’s Renewed Motion for Preliminary Injunction in *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 50 at 7 (“On June 2, 2021, after Baffert’s attorney admitted the presence of betamethasone in Medina Spirit’s blood—and a second test confirmed it—*CDI announced that Baffert’s suspension would last two years.*” (citing Anderson Decl. ¶¶ 99–107) (emphasis added)).
- Ex. 32, Statement of Tom Dupree, counsel for Defendants, to the court in *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), during the February 2, 2023 Preliminary Injunction Hearing, Excerpts of Dkt. 68 at 86 (“Now, *after Churchill Downs learned of what happened, we imposed a two-year suspension on Mr. Baffert.*” (emphasis added)).
- Ex. 11, Excerpts of Testimony of M. Anderson to the court in *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), during Feb. 3, 2023 Preliminary Injunction Hearing. Dkt. 71 at 102 (“*We decided to settle on two years* ‘cause we felt like it was a reasonable consequence to deter people from some actions in the future but not to prevent Mr. Baffert from continuing his business after that -- *that two-year span* and not to be a part of the future of horse racing.”); *id.* at 103 (“It was the same suspension. The May 9th was indefinite until we had more information; more facts. So that was temporar[y] until we got the second independent lab results or the split sample test results. And when we did receive those in June, *we further clarified or defined the suspension with a definitive time frame of two years* and made it for all of CDI-owned properties and other -- other facilities outside of just Churchill

Downs... in June I actually talked to Mr. Baffert directly on the telephone and informed him of our two-year suspension plans at that time.” (emphases added)); *id.* at 111 (“*A two-year suspension* was our way of showing a consequence for a horse racing participant with repeated drug violations.” (emphasis added)).

- Ex. 33, CDI’s March 14, 2023 Motion for Summary Judgment in *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 78 at 5 (“On June 2, 2021, after Baffert’s attorney admitted the presence of betamethasone in Medina Spirit’s blood—and a second test confirmed it—*CDI announced that Baffert’s suspension would last two years.*” (citing June 2, 2021 official statement) (emphasis added)).

185. In ruling on issues before it, the court in that lawsuit relied upon that representation.¹⁹⁴

186. CDI should be estopped from taking the contradictory position—to the detriment of Zedan Racing—in this action that the suspension was not in fact for two years but should continue to persist through the end of 2024 (and potentially beyond).

¹⁹⁴ See Ex. 17, *Baffert v. CDI*, No. 3:22-cv-123-RGJ (W.D. Ky.), Dkt. 70 at 3, (“On June 2, 2021, CDI announced that Baffert, and any trainer directly or indirectly employed by Plaintiffs, was suspended from entering horses in races or applying for stall occupancy at all CDI-owned racetracks for two years.”); *Id.* at 29 (finding that the plaintiffs would not suffer irreparable harm absent an injunction in part because “CDI’s suspension is temporary and will expire in just a few months” and also because there was “no indication that owners would not continue to use Plaintiffs’ services after the 2023 Kentucky Derby even if the Court did not enjoin CDI’s ban”); *Id.* at 29-30 (“[a]lthough horses are only eligible for the Kentucky Derby once, Baffert may enter horses again after CDI’s suspension ends” such that the plaintiffs “have not demonstrated irreparable harm by losing their ability to compete in the 2023 Kentucky Derby”); *Id.* at 32, n.6 (finding that CDI’s suspension of Baffert did not constitute action by the Commonwealth of Kentucky in part because “CDI suspended Baffert for two years” but the KHRC suspended him for 90 days).

D. In The Alternative, HISA Preempted Any Purported Right CDI Had To Extend Baffert's Suspension

187. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

188. CDI's decision to extend Baffert's suspension violates federal law as established by the Horseracing Integrity and Safety Act.¹⁹⁵ Accordingly, any contractual right CDI may have had pre-HISA to discipline a trainer covered under the Act based on alleged integrity or safety issues became void as against public policy once HISA became fully effective on May 22, 2023. Moreover, any state law right CDI may have had pre-HISA to discipline a trainer covered under the Act based on integrity or safety issues became preempted once HISA became fully effective on May 22, 2023.

189. In 2020, in a bi-partisan effort, Congress enacted HISA to nationalize regulatory authority over thoroughbred racing. The purpose of the Act was to create uniform guidelines across the country, displacing the patchwork of state regulation with universal requirements administered by a single entity—the Horseracing Integrity and Safety Authority—which would “exercise *independent and exclusive* national authority over the safety, welfare, and integrity” of the sport.¹⁹⁶

190. CDI's stated rationale for extending Baffert's suspension is based on protecting the safety, integrity, and welfare of its races, which is an area now within the exclusive purview of HISA. Referring back to the Medina Spirit betamethasone positive, in its July 3, 2023 official statement, CDI cited as bases for its extension Baffert's supposed “*continued* disregard for the

¹⁹⁵ 15 U.S.C. § 3051, *et seq.*

¹⁹⁶ 15 U.S.C. § 3054(a)(2).

rules and regulations that ensure horse and jockey *safety*, as well as the *integrity* and fairness of the races conducted at our facilities.”

191. CDI’s decision to extend Baffert’s suspension violates HISA for at least three reasons.

192. *First*, HISA expressly preempted any state law right (and thus made void as against Kentucky public policy any contractual right) to extend Baffert’s suspension. The Act expressly preempts state laws relating to “matters within the jurisdiction of the Authority.”¹⁹⁷ The Authority’s jurisdiction affords it “independent and exclusive national authority over” both “the safety, welfare, and integrity of covered horses, covered persons, and covered horseraces” and all “safety, performance, and anti-doping and medication control matters for covered horses, covered persons, and covered horseraces.”¹⁹⁸ Because that is the precise ground CDI is trespassing upon when purporting to justify its July 3, 2023 extension of its ban of Baffert, said ban cannot stand.

193. *Second*, HISA impliedly preempted any right (and makes void as against Kentucky public policy any contractual right) CDI might otherwise invoke to extend Baffert’s suspension because the extension “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” by undermining the Act’s intended scheme of uniform, consistent regulation across the United States.¹⁹⁹ HISA has not determined that Baffert or his horses pose any danger to the safety and integrity of horseraces. Interfering with HISA’s process would frustrate the purpose of the Act to achieve uniformity, predictability, and transparency as to horseracing integrity and safety issues.

¹⁹⁷ 15 U.S.C. § 3054(b).

¹⁹⁸ *Id.* § 3054(a)(2).

¹⁹⁹ *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015).

194. *Third*, HISA field preempted any state law right (and makes void as against Kentucky public policy any contractual right) CDI might otherwise invoke to extend Baffert’s suspension because HISA established a “scheme of federal regulation [] so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.”²⁰⁰ Although HISA may delegate certain tasks, such as sample collections, to the states, the ultimate standards for safety and integrity are determined by HISA alone (and overseen by the Horseracing Integrity and Welfare Unit). As the Sixth Circuit recently explained in considering a challenge to the Act, continued activities by state regulators in the field of horseracing safety and integrity are “contingent on following federal standards.”²⁰¹

COUNT FOUR: INJUNCTIVE RELIEF AGAINST CDI

195. Zedan Racing incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

196. Zedan Racing is entitled to injunctive relief, both temporary and permanent, enjoining CDI and its agents, representatives, and any other person in active concert or participation with it:

- a. from enforcing the suspension of Baffert announced in CDI’s July 3, 2023 official statement, including but not limited to, by considering Baffert a “Suspended Trainer” under the 2024 Triple Crown Terms and Conditions or future iterations thereof, denying horses trained by Baffert or Baffert himself stall occupancy at or entry into racetracks owned or races held by CDI, including the 2024 Kentucky

²⁰⁰ *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (cleaned up).

²⁰¹ *Oklahoma v. United States*, 62 F.4th 221, 234 (6th Cir. 2023).

Derby, or otherwise denying horses trained by Baffert points toward the 2024 Road to the Kentucky Derby or future iterations thereof;

- b. from refusing to recognize points in relation to the Road to the Kentucky Derby Point System for the 2024 Kentucky Derby that would have been earned by horses trained by Baffert but for CDI's extension of its suspension of Baffert.

197. By reason of the actions and violations described above, Zedan Racing has suffered immediate and irreparable injury and will continue to so suffer unless CDI is immediately restrained and permanently enjoined from enforcing the extension of CDI's suspension of Baffert announced in CDI's July 3, 2023 official statement.

198. Zedan Racing has no adequate remedy at law or otherwise to address this injury, save in a court of equity.

199. No court has refused a previous application for a restraining order or injunction in this matter.

RELIEF REQUESTED

WHEREFORE, Zedan Racing hereby respectfully requests that the Honorable Court award the following temporary injunctive relief against CDI:

- a. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from enforcing or otherwise recognizing a suspension of Baffert as announced in CDI's July 3, 2023 official statement;
- b. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from considering Baffert a "Suspended Trainer" under the 2024 Triple Crown Terms and Conditions or future iterations thereof;
- c. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from denying horses trained by Bob Baffert or denying Bob

Baffert himself stall occupancy at or entry into racetracks owned or races held by CDI, including the 2024 Kentucky Derby;

- d. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from denying horses trained by Baffert points toward the 2024 Road to the Kentucky Derby or future iterations thereof; and
- e. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from refusing to recognize points in relation to the Road to the Kentucky Derby Point System for the 2024 Kentucky Derby that would have been earned by horses trained by Baffert but for CDI's extension of its suspension of Baffert.

WHEREFORE, Zedan Racing hereby respectfully requests that the Honorable Court award the following permanent injunctive relief against CDI:

- a. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from enforcing the suspension of Baffert announced in CDI's July 3, 2023 official statement;
- b. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from considering Baffert a "Suspended Trainer" under the 2024 Triple Crown Terms and Conditions or future iterations thereof;
- c. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from denying horses trained by Baffert or denying Baffert himself stall occupancy at or entry into racetracks owned or races held by CDI, including the 2024 Kentucky Derby;

- d. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from denying horses trained by Baffert points toward the 2024 Road to the Kentucky Derby or future iterations thereof; and
- e. Prevent CDI and its agents, representatives, and any other person in active concert or participation with it from refusing to recognize points in relation to the Road to the Kentucky Derby Point System for the 2024 Kentucky Derby that would have been earned by horses trained by Baffert but for CDI's extension of its suspension of Baffert.

WHEREFORE, Zedan Racing hereby respectfully requests that the Honorable Court issue a declaration and order that:

- a. CDI did not have a legal right to extend Baffert's suspension, whether a contractual, common law, or other right, such that CDI's extension of Baffert's suspension was void *ab initio*;
- b. CDI is estopped based on the doctrine of judicial estoppel from enforcing the extension of Baffert's suspension that was announced by CDI in its June 2, 2021 official statement, such that CDI's extension of Baffert's suspension was void *ab initio*;
- c. Any right that CDI had to extend Baffert's suspension was expressly waived by CDI in its June 2, 2021 official statement such that CDI had no right to extend Baffert's suspension and cannot now enforce said extension, and that CDI's extension of Baffert's suspension was void *ab initio*; and
- d. Any contractual right CDI may have had to extend Baffert's suspension became void as against public policy after May 22, 2023, because such contractual right

then became in violation of the Horseracing Integrity and Safety Act, and any state law right CDI may have had to extend Baffert's suspension was preempted after May 22, 2023, by the Horseracing Integrity and Safety Act, such that CDI's extension of Baffert's suspension was void *ab initio*.

WHEREFORE, Zedan Racing hereby requests that the Honorable Court:

- a. Adjudge CDI estopped based on the doctrine of promissory estoppel from enforcing its extension of Baffert's suspension, such that CDI's extension of Baffert's suspension was void *ab initio*, and that the doctrine requires that to avoid injustice that CDI's extension of said suspension be enjoined as set forth above;
- b. Award Zedan Racing monetary damages;
- c. Award Zedan Racing its costs in this action, including attorneys' fees; and
- d. Award Zedan Racing any and all other relief to which it is entitled.

JURY DEMAND

Zedan Racing hereby demands a trial by jury of any issue triable of right by a jury.

Date: April 3, 2024

Respectfully submitted,

/s/ William H. Brammell, Jr.

William H. Brammell, Jr.
Kayla M. Campbell
Wicker/Brammell PLLC
323 W. Main Street, 11th Floor
Louisville, KY 40202
Phone: (502) 780-6185
bill@wickerbrammell.com
kayla@wickerbrammell.com

John B. Quinn, *pro hac vice*
forthcoming
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Phone: (213) 443 3000
johnquinn@quinnemanuel.com

Derek L. Shaffer, *pro hac vice*
forthcoming
1300 I Street NW, Suite 900
Washington, D.C. 20005
Phone: (202) 538-8000
derekshaffer@quinnemanuel.com

Ryan F. Swindall, *pro hac vice*
forthcoming
1200 Abernathy Road, Suite 1500
Atlanta, GA 30328
Phone: (404) 482-3502
ryanswindall@quinnemanuel.com

*Attorneys for Plaintiff Zedan Racing
Stables, Inc.*

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

ZEDAN RACING STABLES, INC.

PLAINTIFF

vs.

CHURCHILL DOWNS
INCORPORATED

DEFENDANT

VERIFICATION

I verify, under the penalty of perjury, that I have reviewed the foregoing and that the statements contained herein are true and accurate to the best of my knowledge and belief.

Troy Mulligan
President, Zedan Racing Stables, Inc.

Subscribed and sworn before me by Troy Mulligan on this 2nd day of April, 2024.

Notary Public



My Commission expires: 04/21/2025