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

ZEDAN RACING STABLES, INC. **PLAINTIFF**

vs.

CHURCHILL DOWNS INCORPORATED **DEFENDANT**

MOTION FOR TEMPORARY INJUNCTION

Pursuant to Kentucky Rules of Civil Procedure ("CR") 65.01 and 65.04, Plaintiff Zedan Racing Stables, Inc. ("Zedan") respectfully moves the Court to enter an Order temporarily enjoining Defendant Churchill Downs Incorporated ("CDI") from acting under, administering, or enforcing its suspension of thoroughbred racehorse trainer Bob Baffert, which suspension violates Kentucky and federal law. Specifically, Zedan 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;

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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.

In support of its Motion, Zedan adopts and incorporates the allegations set forth in its Verified Complaint. In further support of its Motion, Zedan submits the attached Memorandum of Law.

NOTICE OF HEARING

Let the parties take notice that, pursuant to the Local Rules, this Motion for a Temporary Injunction will be heard Monday, April 8, 2024, in Jefferson Circuit Court, 700 W. Jefferson Street, Louisville, KY 40202.

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Date: April 3, 2024

Respectfully submitted,

/s/ *William H. Brammel, Jr.*

William H. Brammell, Jr.
Kayla M. Campbell
WICKER / BRAMMELL PLLC
323 West Main Street, 11th Floor
Louisville, Kentucky 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.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed through the KCOJ eFiling system and/or sent by means of either electronic mail or U.S. mail this 3rd day of April, 2024 to the following:

Thomas H. Dupree Jr.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue NW
Washington, DC 20036-5306
(202) 955-8500
tdupree@gibsondunn.com

Brad Blackwell
Churchill Downs Incorporated
Executive Vice President and General Counsel
600 N Hurstbourne Pkwy, Ste 400
Louisville, KY 40222

/s/ *William H. Brammel, Jr.*
William H. Brammell, Jr.

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CHURCHILL DOWNS INCORPORATED **DEFENDANT**

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

Plaintiff Zedan Racing Stables, Inc. ("Zedan" or "Zedan Racing") respectfully submits the following memorandum of law in support of its Motion for Temporary Injunction.

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INTRODUCTION

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'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 action, Zedan 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. Because Zedan's horses will be excluded from the Derby on May 4 absent the requested relief, a temporary injunction should issue promptly to protect the rights and interests that hang in the balance.

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.

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

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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, 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.

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.

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." Verified Complaint ("VC") ¶ 5.

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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, was later 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.

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 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."

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 reasonably relied upon by Zedan and carry legal consequences.

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

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Zedan 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.

From June 2, 2021 (the start of the ban) to the filing of this suit, Baffert has had 669 horses race without any violation.[2] 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.

To be clear, Zedan was being harmed then by CDI's ban of Baffert because its horses had trained with Baffert. Nevertheless, Zedan took its lumps and refrained from using Baffert as its trainer for the 2022 or 2023 Derbies. The result was that Zedan, 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, stayed above the fray and looked ahead to the upcoming 2024 Derby, knowing the suspension would expire in advance of this year's race, as CDI had represented.

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 promise

[2] 55 of which were Zedan Racing horses.

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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.

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.

Nor does CDI have any legal right to extend the suspension and oust Zedan'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.

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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 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.

Last and not least, CDI is defying federal law that uniformly governs horseracing. In 2020, a bipartisan effort resulted in 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.[3]

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., 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

[3] 15 U.S.C. § 3054(a)(2).

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anomalous, and, indeed, *sui generis* fashion and by doing so under auspices of Kentucky law that has been expressly and impliedly preempted.

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.

In these circumstances and for the sake of the larger public interest, Zedan respectfully seeks 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.

STATEMENT OF FACTS

A. Churchill Downs, The Kentucky Derby, And The Triple Crown

Defendant CDI is a publicly traded company listed on the NASDAQ stock market index. VC ¶ 47. One of CDI's two most-prized assets is the Churchill Downs Racetrack, "an internationally known thoroughbred racing operation best known as the home of [CDI's] iconic

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flagship event, the Kentucky Derby." Ex. 3, Excerpts of CDI's 2023 Annual Report (10-K) at 4.[4] The other is the Kentucky Derby.

With its first edition in 1875, the Derby has become the "longest continually-run annual sporting event" in the United States, with the 150th Derby slated for May 4, 2024. VC ¶ 29. Known as the "Run for the Roses" or "The Most Exciting Two Minutes in Sports," the Derby is the highest attended horse race in the nation. *Id*. To qualify for the Derby, a prospective horse must "travel along the Road to the Kentucky Derby, a series of designated races at tracks across the country and around the world." *Id*. ¶ 32. The top five finishers at each designated race are awarded a predetermined amount of points, and the twenty horses with the most points at the end of the Road earn a starting spot in the Derby. *Id*.

The Derby is also the first leg of the ultimate horse racing triumvirate, the "Triple Crown." *Id*. ¶ 33. 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. *Id*.

As the pinnacle of the sport, the Triple Crown races hold the highest grade in the sport—"Grade 1." *Id*. ¶ 34. 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." *Id*. 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." *Id*.

The Derby offers a large monetary reward for the highest placing horses (the "purse"). The

[4] Exhibit citations are to the exhibits to the Verified Complaint.

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2024 Derby will be "the richest in history" with a record $5 million purse. *Id*. ¶ 43.

Beyond the purse, winning the Derby typically yields an exponential increase in the value of the horse, its breeding rights, and its progeny. *Id*. ¶ 44. For example, American Pharoah was acquired for $300,000. *Id*. 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. *Id*. 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." *Id*. The only other Triple Crown winner of this century, Justify, was first acquired for $500,000. *Id*. After winning the Triple Crown in 2018, it sold to a thoroughbred breeding program for $75 million. *Id*.

American Pharoah and Justify are far from alone. After Authentic, originally acquired for $350,000, won the 2020 Derby, a race-horse investment group sold its 12.5% stake for $2.575 million. *Id*. ¶ 45. Animal Kingdom, winner of the 2011 Kentucky Derby, was originally acquired for $100,000. *Id*. A 75% interest in Animal Kingdom was later sold to an Australian stud farm for ~$10 million. *Id*. One investor in the horse was set to receive over a 30,000% return. *Id*. I Have Another, winner of the 2012 Derby and Preakness, was acquired in 2011 for $35,000 and later sold for $10 million—an over 28,500% return. *Id*.

B. Zedan Teams With Bob Baffert Leading To Instant Success

Founded in 2016, Zedan is a thoroughbred racing venture based in Lexington, Kentucky. *Id*. ¶ 52. Amr F. Zedan is Zedan's owner and founder. *Id*. Amr Zedan has had a passion for equine sports for more than 25 years. *Id*. Before finding his way to thoroughbred ownership and racing, he was an avid polo player. *Id*. Over his decades in that sport, Amr Zedan has owned over 200 polo ponies and founded his own team. *Id*.

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

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. *Id*. ¶ 54. Training requires delicate 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. *Id*. The job of any trainer is to balance all of these dizzying considerations so as consistently to achieve optimal outcomes. *Id*. And no one in history has done this job better than Bob Baffert.

Few would deny that Bob Baffert is among the greatest trainers of all time, and certainly in modern history. *Id*. ¶ 55. In 2015, Baffert became the first trainer in ***37 years*** to win the Triple Crown. *Id*. Just three years later, Baffert won the Triple Crown again, joining the legendary "Sunny Jim" Fitzsimmons with two Triple Crown wins. *Id*.

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. *Id*. ¶ 56. He is third on the list for most earnings of all time ($352,959,994 and counting) and is tied

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for the most Derby wins of all time (six). *Id*. He has the most wins in the Preakness and the most wins (seventeen) of any trainer in the three Triple Crown races. *Id*.

The Zedan-Baffert tandem has become a staple of the industry. *Id*. ¶ 57. Zedan first entrusted Baffert with a single horse in June 2019. *Id*. After the serendipitous February 2020 meeting between Amr Zedan and Baffert, Zedan expanded its relationship with Baffert in the summer of 2020. *Id*. That pairing was a recipe for success. In September 2020, Zedan 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. *Id*. Months later, Zedan "caught lightning in a bottle" when Medina Spirit visited the winner's circle at the 2021 Derby. *Id*. Unfortunately, this victory at the Derby was soon taken away, as explained below. *Id*. Even 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. *Id*.

Baffert has driven this incredible turnaround for Zedan—from almost exiting the sport to owning a Derby winner, and from steep financial losses to impressive financial gains—and is ***indispensable*** to Zedan's future success. *Id*. ¶ 59. 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.

C. The Medina Spirit Incident And CDI's Two-Year Suspension Of Baffert—A Clear Outlier

On May 1, 2021, Zedan-owned and Baffert-trained Medina Spirit finished first in the 147th Derby. Pursuant to Kentucky Horse Racing Commission ("KHRC") regulations, Medina Spirit had post-race blood and urine samples collected for testing. 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

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part); *see also* VC ¶ 60. One of Medina Spirit's blood samples tested positive for a substance called betamethasone. VC ¶ 60. On May 9, 2021, CDI issued a statement on Medina Spirit's positive test, indefinitely suspending Baffert from racing at Churchill Downs. *Id*. Betamethasone, a corticosteroid, was generally legal as a medicinal treatment under then-applicable KHRC regulations. 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"); *see also* VC ¶ 61. On May 11, 2021, Baffert issued a statement explaining that a skin lesion on Medina Spirit had been treated once a day leading up to the Derby with a topical antifungal ointment that contained betamethasone. VC ¶ 61. As the New York Racing Association ("NYRA") found regarding Medina Spirit's positive test: "the drugs for which use Baffert was cited ... are allowed and commonly used." Ex. 9, NYRA June 23, 2022 Panel Decision at 12-13. CDI and KHRC have maintained that under then-applicable KHRC regulations, betamethasone could not be in a horse's bloodstream on race day. VC ¶ 62.

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

> 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.

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> "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***."
>
> ***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.

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

Carstanjen stands out in this statement. By all indications, he was the driver and decision-maker behind the two-year suspension. VC ¶ 64. 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. *Id*.

The statement was carefully crafted by the highest levels of CDI's management—including CDI's CEO (Carstanjen), President, and General Counsel. *Id*. ¶ 68. 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." Ex. 11,

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Excerpts of M. Anderson Hearing Testimony at 102. 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." *Id*. at 92.

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***." Ex. 1 at 2. 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 U.S.) law firm, and CDI's former General Counsel, VC ¶ 69—that, "we firmly believe that ***asserting our rights*** to impose these measures is our duty and responsibility." Ex. 1 at 2. 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 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."

Significantly, this two-year suspension was far greater than any other jurisdiction's punishment for Medina Spirit's positive test. Only four other racing bodies punished Baffert for that positive, the KHRC, the California Horse Racing Board ("CHRB"), the Maryland Racing Commission ("MRC"), and the NYRA. The KHRC instituted a 90-day suspension of Baffert, which the CHRB and MRC recognized in their respective jurisdictions based on reciprocity. VC ¶¶ 75, 76. After a notice and hearing, the NYRA instituted a one-year suspension. *Id*. ¶¶ 77, 78. Because all of these punishments have now been served, Baffert and his horses can race in any of these jurisdictions—and any other racing jurisdiction and racetrack—without restriction. *Id*. ¶ 80.

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D. CDI Enacts New Transfer Rules Targeting Baffert

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.

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. VC ¶ 65. The disruption to the horse was thus minimized. But Carstanjen insisted on going further to get after Baffert and all the horses he trained.

On September 10, 2021, CDI instituted a new rule which 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." *Id*. ¶ 66. For the 2022 Derby, owners transferred their horses from Baffert to another trainer in the weeks before that Derby so that the horses could earn qualifying points. *Id*. ¶ 67. For the 2023 Derby, however, CDI instituted another new rule that required owners to transfer their horses by February 28, 2023, to be eligible for that Derby. 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.").[5] In 2024, CDI set a deadline of January 29, 2024, to transfer horses from a suspended trainer to a non-suspended trainer for a horse to be eligible for that Derby. Ex. 15, The Triple Crown Terms and Conditions (Jan. 29, 2024) at 4; Ex. 16, CDI's 2024 Spring Meet Condition

[5] In the 2022 Nomination Form for the Triple Crown, there was no transfer deadline or provisions regarding "Suspended Trainers." Ex. 14, 2022 Nomination Form.

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Book at 34. As explained *infra* Part H, these novel rules—which specifically targeted Baffert—materially harmed owners that partnered with him because transferring horses causes a material decline in performance.

E. CDI Repeatedly Affirms And Represents To A Federal Court That Baffert's Suspension Was For Two Years

In the years after CDI's announcement of a two-year suspension, 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: "[Baffert]'s got to complete his suspension and he has to behave during that suspension.… [C]ertainly 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." VC ¶ 70.

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," period and full stop:[6]

- 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

[6] 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.

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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)).

- 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));

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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)).

In ruling against Baffert, the court in *Baffert v. CDI* relied upon CDI's representations that CDI's suspension of Baffert was for two years. *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).

F. The Horseracing Integrity And Safety Act (HISA) Brings National Uniformity To The Sport

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. VC ¶ 82.

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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. *Id*. ¶ 83. The upshot left the industry in chaos. *Id*. This case exemplifies the problem. A horse trainer licensed by the Commonwelath 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 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.

Such chaos and incoherence spawned HISA, which Congress enacted to ensure order, uniformity, and fairness. *Id*. ¶ 84. 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. *Id*. In contrast, HISA brought federally-mandated, uniform safety and integrity standards for everyone's benefit. *Id*. 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. *Id*.

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. *See Jamgotchian v. Kentucky Horse Racing Comm'n*, 488 S.W.3d 594, 616–17 (Ky. 2016) (noting that

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"[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"). For example, the Association of Racing Commissioners International ("ARCI") developed model rules to support uniformity across jurisdictions, but states refused to surrender their power and largely declined to adopt the model rules. VC ¶ 85. 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. *Id*.

The lack of uniform standards and safety protocols attracted widespread public criticism, to a degree that imperiled the industry's future. *Id*. ¶ 86. 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. *Id*. Many commentators specifically criticized the lack of overarching, uniform standards, pinpointing the lack of centralized regulation as posing a crisis for the sport. *Id*. This public outcry sent clear warning that the industry might not survive, let alone flourish, absent reform. *Id*.

Responding to this problem, in 2020, in a bipartisan effort, Congress enacted the Horseracing Integrity and Safety Act ("HISA" or the "Act"), 15 U.S.C. §§ 3051 *et seq*. 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 "exercis[ing]

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independent and exclusive national authority over the safety, welfare, and integrity" of the sport. 15 U.S.C. § 3054(a)(2); *see also* H.R. Rep. No. 116–554, at 17–19 (2020) ("House Report") (noting the lack of uniformity in horseracing regulation despite past attempts at reform). The Act created a Racetrack Safety program and an Anti-Doping and Medication Control ("ADMC") program, which came effective on July 1, 2022, and May 22, 2023, respectively, such that the Act was fully effective on May 22, 2023. *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).

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." 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).

CDI and its CEO, Bill Carstanjen, lauded the Act as a "pivotal moment for the future of horseracing, a sport that will not be governed by world class, uniform standards across the United States." VC ¶ 90; *see also Id*. ¶ 89 (Carstanjen statement: "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

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this goal."); *Id*. ¶ 90 (Carstanjen statement: "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."). And 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." *Id*. ¶ 91.

Under HISA's now-controlling regulations, a trace level of betamethasone in a horse's urine (blood samples are not contemplated for betamethasone testing) on race day does not constitute a medication violation, even at Churchill Downs. Ex. 10, Excerpts of *HISA Prohibited Substances List, Controlled Medications*, (last updated Dec. 8. 2023) at 4 (designating the screening limited for betamethasone as 0.2 ng/mL in urine). If there is an overage for betamethasone, a Class C controlled substance, that will not result in a trainer's suspension. *See* HISA, Rule 3323(b), available at https://hisaus.org/regulations. 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. *Id*.

Yet, as explained next, Carstanjen and CDI unilaterally extended CDI's two-year suspension of Baffert purportedly 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 mayor of a city hosting a NASCAR race singling out a disfavored driver and banning him from the race by invoking claimed concerns about "safety" and "integrity."

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G. Despite No Additional Violations, CDI Indefinitely Extends Its Suspension Of Baffert

Since CDI's June 2, 2021 announcement of a two-year suspension, Baffert has not violated applicable rules and regulations in any racing jurisdiction. VC ¶ 72. To the contrary, since CDI's Baffert ban began on June 2, 2021, ***669*** Baffert-trained horses have raced without a violation; 55 of those were Zedan horses. *Id*. ¶ 128. Despite this, without any prior notice or warning, on July 3, 2023, CDI announced that Baffert's suspension was extended through 2024 and that "[a]fter such time, we will re-evaluate his status."[7] CDI's stated basis for the extension was that Baffert "continues to peddle a false concerning the failed drug test of Medina Spirit," such that he had 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's] facilities." Ex. 2, Doric Sam, *Bob Baffert's Churchill Downs Suspension Extended Through 2024*; *Safety Concerns Cited*, Bleacher

[7] 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. CDI's full statement:

> 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.

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Report (Jul. 3, 2023), https://bleacherreport.com/articles/10081574-bob-bafferts-churchill-downs-suspension-extended-through-2024-safety-concerns-cited at 3.

Prior to July 3, 2023, Zedan had reasonably and substantially relied upon CDI's June 2, 2021 pledge that Baffert's suspension would expire in two years absent additional violations. VC ¶¶ 97-109. By all indications, nothing short of legal action can hold CDI to its promise.

To be clear, neither Amr Zedan nor Zedan wanted to go to these lengths in court. As Amr Zedan has previously stated, he has no ill feelings towards CDI.[8] *Id*. ¶ 96. As he specifically told the Los Angeles Times, Amr Zedan holds no grudges against CDI and is ultimately focused on his horses, which "are a major part of [Zedan's] nature." *Id*. Amr 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." *Id*. In an effort to reach an amicable resolution, in December 2023 and January 2024, Amr Zedan privately reached out to Carstanjen via Carstanjen's direct phone line and Carstanjen's secretary. *Id*. Carstanjen never answered that call, nor has he otherwise engaged with Amr Zedan. *Id*. Even before filing this lawsuit, Zedan again made concerted efforts to engage constructively with CDI about possible resolution, again to no avail. *Id*.

H. Zedan Relied Upon CDI's Promise Of A Two-Year Suspension And Is Now Being Irreparably Harmed

After teaming with Baffert and tasting early success in 2020 with two graded stakes wins, Amr Zedan and Zedan turned their sights to the Derby. *Id*. ¶ 97. From that point on, Zedan has been all about the Derby. Every horse they have acquired has been purchased with an eye towards winning the Derby. *Id*.

[8] In fact, Amr Zedan emphasized in the lead up to the 2022 Derby, he was going into Derby "with absolutely no ill feelings toward anyone," and had taken no legal action against Churchill Downs. VC ¶ 96, n.135.

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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, *id*. ¶ 98:

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	

Id. On top of the purchase price and commission of these horses, prior and up to July 3, 2023, Zedan had incurred an additional $4 million plus in preparing them for the 2024 Derby. *Id*. ¶ 99. Zedan 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. *Id*.

Zedan would have been especially disinclined to sink deeper investments into non-Baffert-trained horses following the disappointing results it experienced in the Baffert-less 2022 Derby and 2023 Derby. 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

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routine, and training style." *Id*. ¶ 102. 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. *Id*. 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. *Id*.

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

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. *Id*. ¶ 104. Bearing this out, Zedan 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. *Id*. After returning to Baffert, most of these horses returned to form. *Id*.

For the 2022 Derby, Zedan transferred its top horse from Baffert to another trainer so that it would be eligible for the Derby. *Id*. ¶ 105. That horse, Taiba, was a top prospect to win the

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Derby, but it underperformed, placing twelfth. *Id*. 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. *Id*. As a three-year-old, the only race in which Taiba placed outside of the top three was the 2022 Derby. *Id*.

For the 2023 Derby, Zedan again transferred its top horse from Baffert. *Id*. ¶ 108. For 2023, as set forth above, CDI instituted a transfer deadline of February 28, 2023. *See supra* Part D. This earlier deadline had a major effect as no Baffert-trained horse (whether a Zedan horse or otherwise) even qualified for the Derby. *Id*. ¶ 107. The most egregious example is Zedan's Arabian Knight, which as of March 1, 2023, was the "current favorite to win the Derby at 5-1 odds, according to Caesar's Sportsbook." *Id*. ¶ 108. 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. *Id*.

In 2024, Zedan and other owners did not transfer their horses from Baffert by the CDI-imposed deadline of January 29, 2024. *Id*. ¶ 104. Because of CDI's ban, Baffert-trained horses have not earned Derby qualifying points and are ineligible to race in the 2024 Derby. *Id*. ¶ 138. These horses, however, can still race in non-CDI races that are part of the Road to the Kentucky Derby qualifying system. *Id*. ¶ 138, n.177. 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. *Id*. Notably, these points are not redistributed amongst other horses in each race. *Id*. Accordingly, recognizing these points now would not result in points being retroactively redistributed. *Id*.

From racing in these non-CDI races that award Derby qualifying points, three Baffert-trained horses, Zedan-owned Muth, Imagination, and Wine Me Up have accrued enough points, 125, 50, and 47, respectively, to qualify for the 2024 Kentucky Derby, if not for the suspension.

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Id. ¶ 139. If these points were recognized, these horses would be (as of this filing) ranked against the unrestricted field as follows:[9] tied for second,[10] tied for thirteenth, and sixteenth, respectively, in the Road to the Kentucky Derby rankings. *Id*. One other Zedan horse, Maymun, is a contender for accruing enough points to qualify when it races on April 6. *Id*. Under Derby rules, to race in the 2024 Derby, hoses must be stabled at Churchill Downs Race Track by 11:00 a.m. Eastern on Saturday, April 27, 2024. Ex. 16, CDI's 2024 Spring Meet Condition Book at 34.

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

CDI's true motivation for extending Baffert's suspension had nothing to do with Baffert jeopardizing safety or integrity. Rather, 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 subsequent violations; 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.

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

[9] 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.

[10] 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. VC ¶ 139, n.178.

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Carstanjen also stated, "I continue to hold out hope that Mr. Baffert will finally take responsibility for his actions." *Id*. at 5.

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.'" VC ¶ 132. At that time, Baffert's appeal of the KHRC ruling—that Medina Spirit's positive test violated then-applicable regulations—was pending. *Id*.

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

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. VC ¶ 134. 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. *Id*. Therefore, although CDI was purporting to extend its ban against Baffert under auspices of protecting racehorse safety, it was

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in fact doing so to scapegoat Baffert and redirect public scrutiny and outrage away from CDI's own failings.

This past January, Baffert dropped his appeal of the KHRC ruling. *Id*. ¶ 135. 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." Ex. 29, Bob Baffert (@BobBaffert), *I have instructed my attorneys…*, X (Jan. 22, 2024). Still, CDI has refused to dissolve its suspension. VC ¶ 135. As the legendary, revered trainer D. Wayne Lukas remarked after Muth's Arkansas Derby win,[11] "[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." *Id*.

In January 2024, Amr Zedan and Zedan likewise dropped their appeal of the KHRC ruling disqualifying Medina Spirit from the 2021 Derby. *Id*. ¶ 136. 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. *Id*. Carstanjen never answered nor returned any of Amr Zedan's calls, nor did he otherwise engage. *Id*.

Because of CDI's unlawful, baseless ban that is irreparably harming Zedan, Zedan is respectfully seeking a temporary injunction that prohibits CDI from enforcing its suspension of Baffert, 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.

[11] 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* VC ¶ 5.

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LEGAL STANDARD

"A temporary injunction may be granted … if it is clearly shown . . . that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual." CR 65.04(1). To be entitled to injunctive relief, a movant must show: "(1) that the movant's position presents 'a substantial question' on the underlying merits of the case, *i.e.* that there is a substantial *possibility* that the movant will ultimately prevail; (2) that the movant's remedy will be irreparably impaired absent the extraordinary relief; and (3) that an injunction will not be inequitable, *i.e.* will not unduly harm other parties or disserve the public." *Price v. Paintsville Tourism Comm'n*, 261 S.W.3d 482, 484 (Ky. 2008) (emphasis added).

As to the first element, "one must [only] show that a substantial question exists that tends to create a 'substantial possibility' that the Appellant will ultimately prevail on the merits." *Norsworthy v. Kentucky Bd. of Med. Licensure*, 330 S.W.3d 58, 63 (Ky. 2009); *see also Eubanks & Marshall of Lexington, PSC v. Commonwealth ex rel. Cabinet for Health & Family Servs.*, 2016 WL 4555927, at *4 (Ky. Aug. 25, 2016) (stating that this factor requires the court "to handicap the [plaintiff's] chances of prevailing" and finding it satisfied where there was "enough substance to the [plaintiff's] underlying claim reasonably to foresee its success on the merits"). "It is important to remember that a motion for a temporary injunction does not call for, or justify, an adjudication of the ultimate rights of the parties." *Com. ex rel. Conway v. Thompson*, 300 S.W.3d 152, 161 (Ky. 2009) (cleaned up).

Because "the elements of CR 65.04 must often be tempered by the equities of any situation, injunctive relief is basically addressed to the sound discretion of the trial court." *Maupin v.*

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Stansbury, 575 S.W.2d 695, 697–98 (Ky. App. 1978) (citations omitted).

ARGUMENT

The relevant factors all favor Zedan. Zedan faithfully complied with the two-year ban that CDI itself imposed based on a perceived violation by Baffert in 2021. With the ban having expired and no additional violation having occurred, everyone benefits from seeing Zedan's horses return to the Derby and afforded a fair chance to compete. As to likelihood of success, Zedan's claims are strong—and at the very least present substantial questions—based on Kentucky's law governing promissory estoppel and declarations of rights.

It should speak volumes that CDI cannot get its story straight about the contours or rationale for its Baffert ban. To the extent the ban was in fact about a perceived violation in 2021, that ban expired by its terms in 2023. So why would Zedan's horses *still* be banned at the 202**4** Derby? The answer to that will not be found in any test result or any genuine concern about safety. In actuality, CDI is going back on its promises and breaking from uniform industry consensus solely in order to gratify the ego of its CEO and to scapegoat Baffert for a rash of equine deaths at Churchill Downs that had nothing to do with Baffert (who remained banned when they occurred at CDI's tracks). Such bases are not good bases for CDI to be acting as it is, and they are not good reasons, under law or equity, why this Court should not issue a temporary injunction that would best serve all relevant interests.

The Court should exercise its sound discretion and enjoin CDI from enforcing its indefensible and unsupported ban so that the Derby's 150th Anniversary can proceed as it should, with the best horse winning.

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I. Zedan Has Clearly Shown A Substantial Possibility That It Will Ultimately Prevail

A. Zedan Is Likely To Prevail On Its Promissory Estoppel Claim

"[T]he doctrine of promissory estoppel … is 'alive and well' in this Commonwealth." *Sawyer v. Mills*, 295 S.W.3d 79, 89 n.3 (Ky. 2009). To establish a claim, a promisee must show:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

Sawyer v. Mills, 295 S.W.3d 79, 89 (Ky. 2009) (citation omitted). Some Kentucky courts have additionally required that the promisee's reliance be "reasonable." *See, e.g.*, *Rivermont Inn v. Bass Hotels Resorts*, 113 S.W.3d 636, 642 (Ky. Ct. App. 2003) ("The circuit court correctly held that promissory estoppel cannot be invoked here because the element of reasonable reliance is missing."). Under the doctrine, "[a] promise is 'a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.'" *Fletcher v. Branch Banking & Tr. Corp.*, 2007 WL 2792186, at *3 (W.D. Ky. Sept. 21, 2007) (quoting Restatement (Second) of Contracts § 2(1) (1981)).

This is a paradigmatic case for promissory estoppel, given the clarity and deliberateness with which CDI announced its two-year ban, then repeatedly reconfirmed that it meant what it said, and given the reasonableness and depth of Zedan's reliance upon CDI's promise.

First, CDI made a clear and definite promise. On June 2, 2021, more than a month after the Derby, CDI released an official statement on CDI letterhead announcing a "suspension" "through the conclusion of the 2023 Spring Meet at Churchill Downs Racetrack" prohibiting "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." Ex. 1. In

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that same statement, CDI clarified that it "reserve[d] the right to extend Baffert's suspension if there are additional violations in any racing jurisdiction." *Id*. The statement also provided a lengthy quote from CDI's CEO—showing approval by its top executive. *Id*. With this statement, CDI made a clear "manifestation" that it would "refrain" from extending the suspension absent "additional violations," i.e., it made a "promise." 2007 WL 2792186, at *3 (citation omitted). Lest there be any doubt, CDI then continued to reiterate, and reiterate again, that the Baffert ban would last only for two years absent an additional violation, which never occurred. *See* Statement of Facts ("SOF") Part E.

Second, CDI should have reasonably expected to induce action or forbearance on the part of owners of horses that wished to train with Baffert, generally, and Zedan as such an owner, specifically. When it announced the suspension and promised it would not be extended absent additional violations, CDI knew of Baffert's successes, e.g., that Baffert was tied for the most Derby wins and had the most Triple Crown wins in history. CDI also well knew that owners invest millions upon millions of dollars in trainers like Baffert, together with the horses that train with them. And CDI had every reason to expect that owners of racehorses would rely upon CDI's promise that Baffert's suspension would only last two years (absent additional violations) by purchasing horses and having Baffert train those horses as part of a campaign to win the 2024 Derby, the first after the two-year ban.

As to Zedan specifically, CDI knew at the time it announced the two-year suspension that Baffert trained Zedan's horses. Indeed, CDI awarded the Kentucky Derby trophy to Amr Zedan a month prior. *See* Ex. 30, March 29, 2022 Declaration of CDI President Michael Anderson ¶ 75. As such, CDI should have reasonably expected that its announcement of a two-year suspension of Zedan's trainer, with whom Zedan had just finished first in the 2021 Derby, would induce action

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upon the part of Zedan, i.e., that Zedan would purchase horses and have Baffert train them in anticipation of the 2024 Derby. Moreover, given that CDI is a sophisticated player in the thoroughbred horseracing industry, it necessarily understood that Zedan's purchase and training of horses for the 2024 Derby would occur before July 3, 2023 (the day CDI reneged on its promise), and that millions of dollars in investment would have been sunk before then. VC ¶ 149.

Third, Zedan detrimentally relied upon CDI's promise. Prior to CDI's July 2023 reneging of its promise, Zedan had spent over $15 million to purchase and have Baffert train seven horses for the purpose of winning the 2024 Derby and Triple Crown. *See* SOF Part H. Zedan would never have invested such vast sums if CDI had not promised that Baffert's ban was for two years. *Id*.

Fourth, Zedan's reliance upon CDI's 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—a hot-button topic that commanded national attention. Especially given that the June 2, 2021 statement extensively quoted CDI's CEO, Zedan 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 repeatedly affirmed—without qualification or modification—that the suspension was limited to two years, in accordance with unbroken industry consensus that Baffert and the horses he trains are fit to be competing in racetracks all throughout the United States. *See* SOF Part E.

Fifth, since CDI's June 2021 promise, Baffert has not committed additional violations in any racing jurisdiction. *See* VC ¶ 72.

Finally, the only way to avoid injustice is by voiding CDI's expansion of the suspension. CDI's promised that Baffert's suspension would end on July 3, 2023, and, accordingly, that Zedan could thereafter enter its Baffert-trained horses in CDI races, including the 2024 Derby. By

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denying Zedan the opportunity to have his Baffert-trained horses enter the 2024 Derby (and other CDI races), CDI is unfairly denying Zedan the benefit of CDI's promise.[12] *See McCarthy v. Louisville Cartage Co., Inc.*, 796 S.W.2d 10, 12 (Ky. Ct. App. 1990) ("The whole theory of a promissory estoppel action is that detrimental reliance becomes a substitute for consideration under the facts of a given case.").

Notably, switching trainers in January 2024, prior to the arbitrary deadline instituted by CDI, would not only have deprived Zedan of the benefit of CDI's promise but injured Zedan and its horses. Baffert is irreplaceable as a trainer, and the most important months for training are those immediately preceding the Derby. *See* SOF Part B. Switching trainers is detrimental to a racehorse, especially where the original trainer is Baffert, the greatest in modern history. *See Id*. Parts B, H. The proof of this is in the pudding: horses that switched from Baffert in anticipation of the 2022 Derby and the 2023 Derby performed materially worse. *See Id*. Part H. Conversely, Baffert has trained Muth to be among the fastest Derby-aged horse in thoroughbred racing. *Id*.

B. Zedan Is Likely To Prevail On Its Alternative Declaration Of Rights Claim

In addition, Zedan is likely to succeed under four separate theories, each of which suffices for it to prevail on its claim for a declaration of rights under Kentucky law: (1) CDI did not have a legal right to extend Baffert's suspension, whether via contract or the common law; (2) in the alternative, CDI waived any rights it had to extend the suspension absent additional violations by Baffert; (3) in the alternative, CDI is judicially estopped from taking the position that its suspension of Baffert was for longer than two years; and (4) in all events, HISA preempted any rights CDI had under Kentucky law to extend Baffert's suspension and any contractual right CDI had is void

[12] Avoiding injustice likewise requires that CDI be prohibited from refusing to recognize Derby qualifying points that Zedan's horses have earned but that have not been recognized only because of CDI's unlawful extension of its Baffert ban.

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as against public policy for violating HISA.

There should be no question that Zedan is entitled to a declaration of rights as to whether its horses can properly compete in the upcoming Derby. Per Kentucky's governing statute: "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." KRS 418.040.

Persons having standing to seek a declaration of rights include "[a]ny person … whose rights are affected by statute … or other government regulation," "is concerned with any … status or relation," or is "interested … in a contract." KRS 418.045. The statute clarifies that KRS 418.045 "does not exclude other instances wherein a declaratory judgment may be prayed and granted under KRS 418.040, whether such other instance be of a similar or different character to those so enumerated list." *Id*. The Declaratory Judgment Act "is intended to be remedial in nature, and its purpose is to make courts more serviceable to the people by way of settling controversies and affording relief from uncertainty and insecurity with respect to rights, duties and relations." *Mammoth Med., Inc. v. Bunnell*, 265 S.W.3d 205, 209 (Ky. 2008). The "Act is broad, flexible, and almost unlimited in its scope." *Maas v. Maas*, 204 S.W.2d 798, 800 (Ky. 1947).

Even when a claimant has no underlying cause of action other than a declaration of rights claim, the statute provides a cause of action as long as there is a "justiciable controversy." *Board of Education of Boone County v. Bushee, Ky.*, 889 S.W.2d 809, 811 (1994) (quoting *Dravo v. Liberty Nat'l Bank Trust Co.*, 267 S.W.2d 95, 97 (Ky. 1954)); *see also Schell v. Young*, 640 S.W.3d 24, 34 (Ky. Ct. App. 2021) (holding that "the circuit court erred to the extent that it dismissed [the plaintiffs'] declaratory judgment claims based upon an erroneous conclusion that no private right

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of action may *ever* lie for alleged violations of ordinances" where the plaintiffs brought a declaration of rights claim); *Bituminous Cas. Corp. v. Estate of Bramble*, 2014 WL 685453, at *22 n.16 (Ky. Ct. App. Feb. 21, 2014) ("We also note that a declaration of rights claim itself stands alone as a complete and independent claim; this is why the statute states that it may be brought '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.'" (quoting KRS 418.040)).

Here, there is an actual, justiciable controversy 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 extended suspension at the direct and demonstrable expense of Zedan and its horses. In particular, Zedan's Baffert-trained horses are being denied qualifying points otherwise earned for the 2024 Derby and will not be able to race in the 2024 Derby. Whether CDI's suspension is valid turns on justiciable issues involving: CDI's purported contractual and Kentucky law rights; whether CDI waived such rights or is judicially estopped from asserting such rights; and whether the extension of the suspension violates HISA. These legal questions are all properly subject to a claim for declaration of rights. *See, e.g.*, *Samuel T. Isaac & Associates, Inc. v. Federal National Mortgage Ass'n*, 647 S.W.2d 495, 499 (Ky. Ct. App. 1983) (citations omitted) ("Also, once the court took jurisdiction of the case it had the authority to provide the parties with a binding declaration of their rights under the servicing contract. It is well settled in Kentucky that the entire contractual controversy may be determined in a declaratory judgment action."); *Eqt Prod. Co. v. Big Sandy Co.*, 590 S.W.3d 275, 284 (Ky. Ct. App. 2019) (addressing declaration of rights claims brought pursuant to land "deeds, [the] common law and the correlative rights doctrine"); *Marcum v. Marcum*, 377 S.W.2d 62, 64-65 (Ky. 1964) (adjudicating declaration of rights claim based on federal law that "govern[ed] the rights of the parties"); *Triplett v. Livingston Cnty. Bd. Of Educ.*,

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967 S.W.2d 25 (Ky. Ct. App. 1997) (adjudicating declaration of rights claim involving a federal statute and the U.S. Constitution); *Rhodes v. Rhodes*, 764 S.W.2d 641, 642 (Ky. Ct. App. 1989) (adjudicating declaration of rights claim involving "waiver language by a surviving widow contained in a property settlement agreement"); *Werner v. Crowe*, 2023 WL 128037, at *1 (Ky. Ct. App. Jan. 6, 2023) (adjudicating declaration of rights claim involving waiver issues).

1. CDI Did Not Have A Contractual Or Common Law Right To Suspend Baffert

To begin, the only bases CDI has claimed for extending the ban cannot withstand legal scrutiny. The existing judicial record so confirms.

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. VC ¶ 111. 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. *Id*. 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." *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. Baffert withdrew his motion shortly thereafter. VC ¶ 111.

On December 15, 2022, Baffert renewed his motion for preliminary injunction, attempting to enjoin CDI's two-year suspension for the 2023 Derby. *Id*. ¶ 112. CDI again argued in opposition that it had a "common law right to exclude" Baffert and "a contractual right to suspend Baffert." 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.

Neither of these cited sources provided CDI any legal right in 2023 to extend its suspension.

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

In analyzing CDI's contractual theory, the Court's "review must begin with an examination of the plain language of the instrument. In the absence of ambiguity, a written instrument will be enforced strictly according to its terms…." *Ky. Shakespeare Festival, Inc. v. Dunaway*, 490 S.W.3d 691, 695 (Ky. 2016) (cleaned up).

Applying these principles, CDI did not have a contractual right in 2023 to act under expired 2021 agreements. In *Baffert v. CDI*, CDI purported to derive a contractual right to ban Baffert from two clauses in two agreements related to the 2021 Derby—the 2021 Spring Meet Condition Book and 2021 Spring Meet Stall Application.[13] Ex. 24, *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 50 at 5; *Id*. at 19-20. Pursuant to their plain language, however, both of these agreements had terminated well before 2023. The 2021 Condition Book provided in its "Rules and Conditions" that the agreement would only be "in effect … for so long as Trainer has horse(s) on [Churchill Downs] … Grounds." Ex. 25, 2021 Condition Book at 8 ¶ 14. And the 2021 Stall Application was in effect only "with regard to Trainer's stabling during and/or participation in the race meeting specified on the opposite side hereof." Ex. 26, 2021 Stall Application ¶ 10. When Baffert removed his horses from CDI's grounds shortly after the May 1, 2021 Derby, *see* VC ¶ 115, both agreements terminated by their terms.

Because these 202**1** agreements were no longer in effect, CDI had no contractual authority in 202**3** to extend Baffert's suspension. *See, e.g.*, *R.J. Corman R.R. Co. v. Glob. Bio Res., Inc.*,

[13] The 2021 Condition Book is a compilation of essential documents related to the 2021 "Spring Meet" collection of races held at Churchill Downs Racetrack and related Turfway Park from April 24 to June 26, 2021, which included the 2021 Derby. *See generally* Ex. 25, 2021 Condition Book. The 92-page book includes the "Rules and Conditions for Racing and Training," defined as the "Conditions." The 2021 Spring Meet Stall Application governed the "grant of stall space by Churchill Downs." Ex. 26, 2021 Stall Application.

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2020 WL 7640118, at *3 (Ky. Ct. App. Dec. 23, 2020) ("When a contract is terminated, even wrongfully, there is no longer a contract, and therefore no duty to perform and no right to demand performance…." (citation omitted)); *City of Ludlow v. Union Light, Heat & Power Co.*, 22 S.W.2d 909, 910 (Ky. Ct. App. 1929) ("A contract expires according to its terms. … It is universally held that, when a [ ] contract terminates, the mutual rights and liabilities are at an end.").

Moreover, CDI's stated bases in 2023 for extending the suspension were substantively divorced from the 2021 agreements. CDI based the "extension" on a purported and unspecified "narrative" by Baffert that he allegedly "continue[d] to peddle" as of July 2023. Ex. 2, at 3. The extension was thus based on Baffert's conduct ***years*** after the 2021 Derby and far outside of its grounds. Construing the 2021 Derby agreements as governing Baffert's conduct years later and far afield would violate the canon that "[a] construction conferring a right in perpetuity will be avoided unless compelled by the unequivocal language of the contract." *Elec. & Water Plant Bd. of City of Frankfort, Ky. v. South Cent. Bell Telephone Co.*, 805 S.W.2d 141, 143 (Ky. Ct. App. 1990); *Mid-Southern Toyota, Ltd. v. Bug's Imports, Inc*., 453 S.W.2d 544, 549 (Ky. Ct. App. 1970) (same). Such a construction would also lead to absurd results, e.g., CDI could use the 2021 contracts to suspend Baffert in 2050 based on conduct in 2050. *See Mullen v. Hous.-Johnson, Inc.*, 2019 WL 1224622, at *5 (Ky. Ct. App. Mar. 15, 2019) ("Contracts must be construed consistent with common sense and in a manner that avoids absurd results." (citation omitted)).

Suffice it to say that Zedan has more than shown a substantial possibility that CDI did not have a contractual right in July 2023 to extend Baffert's suspension as it did.

b. CDI did not have a common law right to extend Baffert's suspension.

In *Baffert v. CDI*, CDI argued as its only other basis for suspending Baffert that it had a

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right to do so under Kentucky common law.[14] *See* Ex. 24, *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 50 at 20 ("CDI also has a common law right to exclude a trainer who has repeatedly violated its rules from competing in races it organizes and operates at its own racetracks."). For this, CDI cited three Kentucky cases and one federal case. *See Id*. (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. Ct. App. 1981); *Wilson v. Sorrell*, 2019 WL 3246498, at *3 (Ky. Ct. App. July 19, 2019); *Hughes v. Ky. Horse Racing Auth.*, 179 S.W.3d 865, 867 n.8 (Ky. Ct. App. 2004)). But these cases recognize no such right.

James and *Wilson* address only exclusion of ***patrons***. *See James*, 620 S.W.2d at 324 ("Appellants concede that for many years racetrack proprietors, such as appellee, have possessed a common law right to exclude a prospective patron…." (citations omitted)); *Wilson*, 2019 WL 3246498, at *3 (recognizing a "racetrack's common law right to exclude patrons" in rejecting a patron's claim). *Jeffers* is, in turn, a federal district court decision that relies upon *James* and likewise addresses an excluded *patron*. While *Jeffers* couches the right to exclude patrons in more expansive language—that a racetrack can "exclude whomever it desire[s] from the track," 701 F. Supp. at 1323—the federal trial court could not purport to expand Kentucky common law, let alone do so authoritatively. *See, e.g.*, *Hardy v. Jefferson Cmty. Coll.*, 2000 WL 34249107, at *1 (W.D.

[14] CDI also cited three KHRC regulations in support of its purported common law right. None support such a thing. The first, 810 KAR 3:020 § 23, merely affirms that the KHRC regulations do not affect racetrack's common law rights: "a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds." The second and third are inapplicable. *Id*. § 15(h) (listing reasons why a "license application" may be denied); 810 KAR 4:030 § 2 (providing that racetracks need not give notice or a reason for refusing or cancelling a horse's race entry). None of these empowered CDI to enforce KHRC regulations. *See, e.g.*, *Fitzgerald v. Mountain Laurel Racing, Inc.*, 607 F.2d 589, 598 (3d Cir. 1979) (recognizing that a stall agreement did not provide a racetrack a contractual right to suspend a horse trainer based on violations of a state racing commission's rules where the racetrack "was not empowered by the rule or statute to enforce the Commission Rules").

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Ky. Feb. 9, 2000) (declining to recognize Kentucky common law right that no Kentucky court had recognized); *McBride v. Acuity, a Mutual Insu. Co.*, 2011 WL 6130922, at *7 (W.D. Ky. Dec. 8, 2011) (declining to adopt common law rule where "Kentucky courts have not adopted such a rule"). Nor could any federal precedent be binding as a matter of Kentucky law. *See, e.g.*, *Unifund CCR Partners v. Harrell*, 509 S.W.3d 25, 28 (Ky. 2017) ("Kentucky courts are not bound by the holding of a federal court that construes state law in the course of a diversity action.") (citation omitted)); *Kindred Nursing Centers Limited Partnership v. Cox*, 486 S.W.3d 892, 896 (Ky. Ct. App. 2015).

The final case, *Hughes*, also addresses the exclusion of a patron. There, the issue was whether the circuit court's decision "to terminate [the plaintiff, a racing license inspector] trumps the conflicting decision by the state's Personnel Board" not to terminate plaintiff. 179 S.W.3d at 866, 871. Although the court noted that one racetrack had excluded the plaintiff (and that other racetracks reciprocated this), such exclusion occurred alongside the suspension of plaintiff's license to work as a racing license inspector. *Id*. at 867. Thus, at the time of the exclusions, the plaintiff was nothing more than a patron. In any event, the validity of the exclusions was simply not at issue in *Hughes*.

In sum, CDI has yet to cite any Kentucky case identifying a common law right for a racetrack to discipline a licensed horse trainer or bar the trainer's horses from racing. Nor has Zedan identified any such case. That absence of supporting precedent should itself establish that Zedan has raised a substantial question as to CDI's claimed rights. In this posture, this Court should find that Zedan has a substantial prospect of succeeding on its request that the Court declare that CDI had no legal right to extend Baffert's suspension and thus that the extension is void. *See, e.g.*, *Baker v. Fletcher*, 204 S.W.3d 589, 599 (Ky. 2006) (finding that action that the Governor did not

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have a legal right to undertake was "invalid *ab initio*"); *Bowling v. Natural Resources*, 891 S.W.2d 406, 411 (Ky. Ct. App. 1995) ("The result of the Board's ruling is that Alsip's promotion to administrative secretary was void *ab initio.* Alsip cannot claim legal entitlement to a promotion that was made illegally."); *Burns v. Peavler*, 721 S.W.2d 715, 719 (Ky. Ct. App. 1987) ("Lacking any lawful authority their acts were *ultra vires* and void, *ab initio.* ").

2. CDI Waived Any Right To Extend Baffert's Suspension

Even if CDI had a contractual or common law right to extend Baffert's suspension, CDI waived those and any other such right. "The common definition of a legal waiver is that it 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." *Greathouse v. Shreve*, 891 S.W.2d 387, 390 (Ky. 1995) (quoting *Barker v. Stearns Coal Lumber Co.*, 291 Ky. 184, 163 S.W.2d 466, 470 (1942)). "[W]aiver may be implied 'by a party's decisive, unequivocal conduct reasonably inferring the intent to waive,' as long as 'statements and supporting circumstances [are] equivalent to an express waiver.'"[15] *Moore v. Asente*, 110 S.W.3d 336, 360 (Ky. 2003) (citing *Greathouse*, 891 S.W.2d at 391). "[W]aiver is a question of law, not fact." *Louisville/Jefferson Cnty. Metro Gov't v. Abdullah*, 2022 WL 12122125, at *2 (Ky. Ct. App. Oct. 21, 2022); *Eaton v. Trautwein*, 288 Ky. 97, 104 (Ky. Ct. App. 1941) (same).

[15] Waiver, as relevant here, can be of contractual or common law rights. *See, e.g.*, *Water Mgmt. Servs., LLC v. City of Edmonton*, 2020 WL 5121402, at *4 (W.D. Ky. Aug. 31, 2020) ("A party may waive or relinquish rights to which he is entitled under a contract, and having done so may not reverse his position to the prejudice of another party to the contract." (quoting *Stamper v. Ford's Adm'x*, 260 S.W.2d 942, 943 (Ky. Ct. App. 1953)); *Unifund CCR Partners v. Harrell*, 509 S.W.3d 25, 31 (Ky. 2017) ("[B]y forgoing its right to collect contractual interest on Harrell's account, Citibank effectively waived its right to collect the contractual interest."); *Gov't Emps. Ins. Co. v. Sanders*, 569 S.W.3d 923, 929 (Ky. 2018) (recognizing that "the parties have waived their common-law tort remedies"); *Peters v. Radcliff Ready Mix Concrete Inc.*, 412 S.W.2d 854, 855 (Ky. Ct. App. 1967) (recognizing that an "employe, [sic] in electing to come under workmen's compensation, *waives* his common-law rights against his employer").

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CDI voluntarily and intentionally surrendered any right it had to extend Baffert's suspension. CDI disseminated a carefully-crafted, official statement announcing a suspension of two years (itself wildly excessive) of the greatest horse trainer in modern history alongside the historic disqualification of the winner of the Kentucky Derby. *See* Ex. 11, *Baffert v. CDI*, No. 3:22-cv-00123 (W.D. Ky.), Dkt. 71 at 92, 102 (testimony of CDI's President that the two-year suspension reflected a well-reasoned decision based upon "group discussions, [and] group meetings, primarily with [a] core team," consisting of CDI's general manager, CDI's "PR person," "CDI['s] communications professional," CDI's CEO, and CDI's "general counsel"). The statement included a lengthy quote from CDI's CEO, an Ivy League law school graduate, former attorney at a top New York City (and U.S.) law firm, and CDI's former General Counsel,[16] that ended: "we firmly believe that asserting our rights to impose these measures is our duty and responsibility." Ex. 1, CDI's June 2, 2021 Official Statement at 2. In the very next sentence, CDI "reserve[d] the right to extend Baffert's suspension" in one situation only: "if there are additional violations in any racing jurisdiction." *Id*. CDI's omission of any other circumstance that might trigger an extension is conspicuous and dipositive. *See also Fox v. Grayson*, 317 S.W.3d 1, 11 (Ky. 2010) (citation omitted) ("[T]here is generally an inference that omissions are intentional. This rule is based on logic and common sense. It expresses the concept that when people say one thing they do not mean something else.").

In essence, CDI invoked its rights and then immediately and unequivocally conditioned the future exercise of those rights.[17] *Cf. Edmondson v. Pa. Nat. Mut. Cas. Ins. Co.*, 781 S.W.2d 753, 756 (Ky. 1989) (finding no waiver where the defendant was "careful to specify that it expressly

[16] VC ¶ 69.

[17] Baffert has not had violations in any racing jurisdiction since the June 2, 2021 suspension was imposed. VC ¶ 72.

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reserves all rights and defenses, waives no such rights and defenses as it possesses under its [contract], and requires full compliance with all terms and conditions of the [contract]"). This unequivocal conduct amounts to an express waiver, and CDI therefore had no right to extend its Baffert ban. *See, e.g.*, *Unifund*, 509 S.W.3d at 31 (Ky. 2017) (where party "waived its [contractual and statutory] right to collect the [ ] interest", it and its assignee "ha[d] no legal right to collect [that] interest on [the defendant's] account, be it contractual or statutory").

Finally, as shown *supra* SOF Part H, CDI's attempted reversal of its waiver has prejudiced Zedan, which has already spent over $15 million in reliance upon CDI's express waiver and is being foreclosed from any prospect of realizing the ultimate fruits of its substantial investment because its horses cannot race in the 2024 Derby (or other CDI races) or win the Triple Crown.

Accordingly, Zedan has established at least a substantial possibility that it is entitled to a declaration of rights that CDI expressly waived any rights it had to extend its Baffert ban absent additional violations, such that the extension was void.

3. CDI Is Judicially Estopped from Extending the Suspension

Judicial estoppel also attaches here given the representations CDI has successfully relied upon in court. "The doctrine of judicial estoppel ... can be applied to prohibit a party from taking inconsistent positions in judicial proceedings." *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)). 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

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the opposing party if not estopped." *Parrish v. Schroering*, 636 S.W.3d 133, 143 (Ky. Ct. App. 2021). Zedan has shown a substantial possibility that the doctrine applies here.

As to the first factor, the inconsistency in CDI's positions is stark. In federal court, CDI repeatedly emphasized that its suspension would last for two years only. Here, it will be defending the suspension as rightfully extending for three years. Specifically, in fending off two injunction requests and seeking merits decisions in its favor, CDI repeatedly represented to a federal district court—unequivocally and without qualification—that its suspension of Baffert was for two years. *See* SOF Part E.

As to the second, CDI succeeded in persuading that court to accept its position. The court expressly relied upon CDI's representation in resolving issues in favor of CDI, particularly to deny the plaintiffs' request for an injunction for want of irreparable harm. The court reasoned 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." Ex. 17, *Baffert v. CDI*, No. 3:22-cv-123-RGJ (W.D. Ky.), Dkt. 70 at 29; *see also 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).

As to the third, CDI stands to derive an unfair advantage by having staved off earlier requests based on its "two years only" account of the ban and then defending here as though the

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ban extends to a third year, to cover the 2024 Derby. CDI will thus squarely contradict the position it took—and that the court accepted—in *Baffert v. CDI*. Moreover, CDI's inconsistent position is what places Zedan in an unfair, impossible position and inflicts the injury complained of here. *See Kotevska v. Fenton*, 2019 WL 1313410, at *5–7 (Ky. Ct. App. Mar. 22, 2019) (affirming application of judicial estoppel where party took inconsistent factual positions in separate actions, finding that the "fact that the two cases concerned different issues does not mean that judicial estoppel cannot apply and does not work to change inconsistent statements into consistent ones," and rejecting the argument that there must be mutuality of parties between the two actions).

Zedan has thus shown a substantial possibility that CDI is judicially estopped from taking the inconsistent position that CDI's suspension of Baffert properly extends beyond two years.

4. Any Contractual Right CDI Otherwise Held To Extend The Suspension Is Void As Against Public Policy, And Any Kentucky Law Right Is Preempted By HISA

Even if nothing else stood in the way of CDI's anomalous, unreasoned extension of its ban, HISA now should. "[T]he Supremacy Clause of the United States Constitution instructs that federal law is the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'" *Matthews v. Centrus Energy Corp*., 15 F.4th 714, 720 (6th Cir. 2021) (quoting U.S. Const. art. VI, cl. 2.). "This unequivocal command affords Congress the power to preempt state law." *Id*. Here, Congress has done precisely that with respect to racetracks disciplining thoroughbred horseracing trainers for issues related to the integrity of thoroughbred horseraces and the safety of thoroughbred racehorses. Thus, whatever Kentucky law rights—contractual or common law—CDI had prior to HISA to suspend Baffert based on concerns of anti-doping and horseracing integrity and safety necessarily expired once HISA became effective on May 22, 2023. Accordingly, CDI's July 2023 extension of its Baffert ban was void *ab initio*—or

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as relevant here, Zedan has shown a substantial possibility that it was. *See, e.g.*, *Antilles Cement Corp. v. Fortuño*, 670 F.3d 310, 323 (1st Cir. 2012) ("[S]tate laws that 'interfere with, or are contrary to the laws of Congress' are void ab initio." (citation omitted)); *Duke Energy Trading & Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1058–59 (9th Cir. 2001) (holding that state regulations were "void under the Supremacy Clause").

a. HISA expressly preempted any right to extend the suspension.

First, any Kentucky law right CDI had to suspend Baffert was expressly preempted when HISA became fully effective on May 22, 2023.

In any preemption inquiry, the "purpose of Congress is the ultimate touchstone," as "explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Cipollone v. Liggett Grp., Inc*., 505 U.S. 504, 516 (1992) (citations omitted).

Here, HISA and its implementing regulations expressly preempt state law rights permitting racetracks to discipline trainers for the use of betamethasone, or for other safety or integrity issues. The Act expressly preempts any state law that falls within the jurisdiction of HISA: "The rules of the Authority promulgated in accordance with this chapter shall preempt any provision of State law or regulation with respect to matters within the jurisdiction of the Authority under this chapter." 15 U.S.C. § 3054(b); *see also* HISA Rule 3010 ("[T]he rules of the Authority promulgated in accordance with the Act shall preempt any provision of State law or regulation with respect to matters within the jurisdiction of the Authority."). And the Act provides that all aspects of integrity and safety of horseracing fall within the Authority's jurisdiction. *See* 15 U.S.C. § 3054(a) (listing "safety, welfare, and integrity of covered horses, covered persons, and covered

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horseraces" as within HISA's "independent and exclusive national authority").[18] In accordance with this scheme, the HISA Authority has promulgated anti-doping regulations, including specifically as to betamethasone usage. *See* 15 U.S.C. § 3055(c) (describing the expansive scope of the anti-doping medication control program); HISA Rule[19] 3010(f)(8) (recognizing that the rules of the Authority set forth "sanctions that may be applied in case of violations of the Protocol"); HISA Rule 3223 (setting forth appropriate penalties for covered persons due to violation of the ADMC program); Ex. 10, Excerpts of *HISA Prohibited Substances List, Controlled Medications* (listing betamethasone as a Controlled Substance regulated by the ADMC program).

Under these provisions, any Kentucky law rights CDI possessed to extend Baffert's suspension were preempted. CDI stated that the extension was in relation to Baffert's purported "multiple drug test failures," ***including Medina Spirit's betamethasone positive***, and "disregard for the ***rules*** ***and*** ***regulations*** that ensure horse and jockey ***safety***, as well as the ***integrity*** and fairness of the races." Ex. 2, at 3 (emphases added). These issues fall squarely within the Authority's jurisdiction and its regulations. HISA's express preemption provision therefore applies, and CDI's extension was void *ab initio*. *See, e.g.*, *Wells v. Kentucky Airmotive, Inc.*, 2014

[18] CDI's Churchill Downs Racetrack is a covered person and racetrack under the Act. *See* 15 U.S.C. § 3051(6) (defining "covered persons" as "all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a State racing commission"); *Id*. § 3051(15) (defining a "racetrack" as "an organization licensed by a State racing commission to conduct covered horseraces"); *Id*. § 3051(5) (defining a "covered horserace" as "any horserace involving covered horses that has a substantial relation to interstate commerce"); *Id*. § 3051(4) (defining "covered horse" as "any Thoroughbred horse"); CDI's Annual Report (Form 10-K) (Dec. 31, 2023) available at https://www.sec.gov/ix?doc=/Archives/edgar/data/20212/000002021224000055/chdn-20231231.htm ("In Kentucky, horse racing racetracks … are subject to the licensing and regulation of the Kentucky Horse Racing Commission ('KHRC'). Licenses to conduct live thoroughbred and standardbred racing meets … are approved annually by the KHRC based upon applications submitted by the racetracks in Kentucky.").

[19] HISA's Rules are available at https://hisaus.org/regulations.

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WL 4049894 (Ky. Ct. App. Aug. 15, 2014) (affirming dismissal of state law claims based on plaintiff's asserted state law property rights allegedly violated by aircraft flying low over plaintiff's property, where the rights were expressly preempted by the Federal Aviation Act); *Williams v. Chase Bank USA, N.A.*, 390 S.W.3d 824, 826-28 (Ky. Ct. App. 2012) (affirming that the defendant could not defend against the plaintiff bank's claims based on the bank's alleged failure to follow state law where said state law was expressly preempted by federal law).

b. CDI's extension impermissibly encroached on the field of safety and integrity of thoroughbred horseracing occupied by HISA.

Second, CDI's extension of its Baffert ban encroached on a field—safety and integrity of thoroughbred horseracing—preempted by a comprehensive federal regulatory scheme.[20]

Even apart from its express preemption, 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." *Id*. (quoting *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992)). HISA's regulations are expansive within the fields of horseracing integrity and safety, including anti-doping and medication control and racetrack safety—from testing protocols to veterinary medicine, to substance classifications, to crop usage.[21] *See* 15 U.S.C. § 3057(a), (c)–(d) (directing

[20] The Act inclusion of an express preemption provision does not "bar the ordinary working of conflict pre-emption principles." *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 869 (2000); *see also Freightliner Corp. v. Myrick*, 514 U.S. 280, 288 (1995) (noting that express preemption provision does not "foreclose[] any possibility of implied pre-emption").

[21] As part of the ADMC program, Congress directed HISA and HIWU to: develop uniform standards for the administration of medication to covered horses by covered persons, 15 U.S.C. § 3055(c)(1)(A)(i); develop uniform standards for laboratory testing accreditation and protocols, *id*. § 3055(c)(1)(A)(ii); develop anti-doping and medication control rules, protocols, policies, and guidelines, *id.* § 3055(c)(4)(A); conduct and oversee anti-doping and medication control results management, including investigations, adjudications, and enforcement of civil sanctions subject to review by the FTC, *id.* § 3055(c)(4)(B); perform and manage in-competition and out-of-competition testing, *id.* § 3055(c)(4)(C); accredit testing laboratories and ensure their continuing compliance with accreditation standards, *id.* § 3055(c)(4)(D). As part of the racetrack safety

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the Authority to promulgate safety, performance, and anti-doping and medication control rule violations, establish a disciplinary process for violations, and establish "uniform rules" for imposing sanctions for violations). "Horseracing Integrity and Safety" is literally the Act's title. Because HISA's "federal statutory directives provide a full set of standards governing [horseracing safety and integrity], including the punishment for noncompliance," *Arizona v. United States*, 567 U.S. 387, 401 (2012), allowing individual racetracks "independent authority" to address matters of horseracing safety and integrity would "diminish[] the Federal Government's control over enforcement and detract[] from the integrated scheme of regulation created by Congress," *id*. at 402. Accordingly, HISA has occupied the field of the safety and integrity of thoroughbred horseracing.

Because CDI has justified its extension of the Baffert ban as preserving the safety and integrity of its races—a field that falls squarely and exclusively within the ambit of the federal regime—the extension is preempted. For this additional reason, Zedan has shown a substantial possibility that CDI's extension is void *ab initio*. *See, e.g.*, *Wright v. General Elec*, 242 S.W.3d 674, 679 (Ky. Ct. App. 2007) (holding that the plaintiff had no Kentucky law rights based on exposure to asbestos as a railroad worker where a federal statute occupied the field of "the design, the construction, and the material of every part of the locomotive and tender and of all appurtenances").

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program, Congress directed HISA to: establish uniform training and racing safety standards and protocols, *id.* 3056(b)(2); create a racing surface quality maintenance system, *id.* §3056(b)(3); establish uniform track safety standards and protocols, *id.* § 3056(b)(4); develop protocols for injury and fatality data analysis, *id*. § 3056(b)(5); undertake investigations related to safety violations, *id.* § 3056(b)(6); develop procedures for investigation, adjudication, and enforcement of civil sanctions for violations of the racetrack safety program, *id.* § 3056(b)(7)–(9); develop an evaluation and accreditation program for racetracks, *id.* § 3056(b)(12), (c)(1)–(2).

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c. CDI's suspension stands as an obstacle to HISA.

Third, conflict preemption also applies. A state law is preempted where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress—whether that obstacle goes by the name of conflicting; contrary to; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; interference, or the like." *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 873 (internal quotation marks omitted). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

Examining HISA as a whole, the purpose and intended effects of the statute are to vest *exclusive national authority* over thoroughbred horseracing safety and integrity in the Authority that creates "uniform" national regulations governing horseracing safety and integrity. *See, e.g.*, 15 U.S.C. § 3054(a)(2); *Id.* § 3055(b)(3); *Id.* § 3056(b)(2), (4); *Id.* § 3057(d)(1). By unilaterally imposing an indefinite ban on the basis of horseracing safety and integrity and involving issues of anti-doping and medication control, e.g., Medina Spirit's positive test, CDI would divest the Authority of its *exclusive* and *national* authority over the same and tear asunder the *uniformity* of regulations and enforcement—the defining purposes of HISA. The Supremacy Clause of the United States Constitution does not permit this. Accordingly, whatever Kentucky law rights CDI had to punish Baffert pre-HISA no longer persist post-HISA, particularly as of July 2023, when CDI "extended" Baffert's suspension. *See, e.g.*, *Wisc. Dep't of Indus., Labor and Human Relations v. Gould Inc.*, 475 U.S. 282, 288 (holding that state law rights permitting a "supplemental sanction" for violations of a federal statute "conflict[ed] with the Board's comprehensive regulation of industrial relations"); *In re. Ford Motor Co.*, 65 F.4th 851, 863 (6th Cir. 2023) (holding state law

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rights preempted where they would "rebalance the [agency's] objectives").

Notably, it makes no difference to the preemption analysis that CDI's actions were purportedly (albeit pretextually) aimed at the safety and integrity of races, ostensibly in accordance with HISA's mission. Divergence in actual enforcement, as is evident here, poses its own distinct evil. In *Arizona*, the Supreme Court considered a state law creating a criminal prohibition where no federal counterpart existed. 567 U.S. at 404. Although the state law at issue "attempt[ed] to achieve one of the same goals as federal law," the Supreme Court nevertheless held that it was preempted because "it involve[d] a conflict in the method of enforcement," which would "be inconsistent with federal policy and objectives" and upset Congress's "considered judgment." *Id.* at 406, 405; *see also Int'l Paper Co. v. Oullette*, 479 U.S. 481, 494 (1987) (holding that federal Clean Water Act preempted state common law rights even though they both had the same "ultimate goal," because the state common law "interfere[d] with the *methods* by which the federal statute was designed to reach this goal"); *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 348 (2001) (finding state law rights preempted where the federal scheme allowed the agency "to achieve a somewhat delicate balance of statutory objectives" that would be "skewed by allowing" enforcement under state law). Here, too, permitting CDI (and, by extension, all racetracks) to impose its own sanctions for its own determinations of what jeopardizes horse safety or race integrity would be incompatible with the Authority's purpose and upset Congress's considered pursuit of national uniformity.

d. Any contractual right is unenforceable.

Because Zedan has shown a substantial possibility that CDI's extension of the suspension contravenes HISA, there is a substantial possibility that any contractual right CDI had to extend Baffert's suspension is void as against public policy. *See, e.g.*, *S.J.L.S. v. T.L.S*, 265 S.W.3d 804,

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821 (Ky. Ct. App. 2008) ("Agreements that run contrary to law, or are designed to avoid the effect of a statute, are illegal." (citing *Commonwealth v. Whitworth*, 74 S.W.3d 695, 700 (Ky. 2002) ("[A] contract is void *ab initio* if it seriously offends law or public policy."); *Dodd v. Dodd*, 278 Ky. 655, 129 S.W.2d 166, 169 (1939) ("[T]he court *sua sponte* will refuse to enforce a contract against public policy."); *Said v. Lackey*, 731 S.W.2d 7, 8 (Ky. App. 1987) ("As the contract [of employment designed to avoid operation of KRS 441.055 and regulations promulgated thereunder] violates statutory law, it will not be enforced."))); *see also Yeager v. McLellan*, 177 S.W. 3d 807, 809 (Ky. 2005) ("[A] court may refuse to enforce a contract on grounds of illegality where the contract has a direct objective or purpose that violates the federal or a state Constitution, a statute, an ordinance, or the common law.").

II. Zedan Will Be Irreparably Injured Absent An Injunction

The impending irreparable harm to Zedan is clear, imminent, and momentous. Once the 150th Derby runs, it can never be re-run, and Zedan's horses will have forever been denied the fair chance to compete there—along with all the unique rewards that could ultimately follow, including, potentially, the chance to contend for the ultimate prize, the Triple Crown. It is difficult to imagine a more clearcut case in which "the injury resulting absent injunctive relief would be immediate and irreparable." *Price v. Paintsville Tourism Com'n*, 261 S.W.3d 482, 484 (Ky. 2008). "Historically, equitable remedies (injunctive relief, specific performance, reinstatement, etc.) arose almost always as substitutes for common law monetary damages in situations where monetary damages were inadequate, impossible to provide, or were otherwise unavailable." *Macglashan v. ABS Lincs KY, Inc.*, 448 S.W.3d 792, 794 (Ky. 2014). "An injury is irreparable if 'there exists no certain pecuniary standard for the measurement of the damages.'" *Cyprus Mountain Coal Corp. v. Brewer*, 828 S.W.2d 642, 645 (Ky. 1992) (citation omitted).

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First, Zedan has shown an immediate, non-speculative injury. It has purchased seven horses and paid to have those horses trained by the best trainer in modern history for the overriding purpose of winning the 2024 Derby (and Triple Crown), all at a cost of over $15 million. *See* SOF Part H. As of this filing, one of those horses has earned enough points to qualify for the 2024 Derby absent CDI's unlawful suspension of Baffert; unless this Court intervenes, Muth cannot race in the Derby. *Id*. Yet, ***this horse is among the fastest in horseracing*** and would be a top Derby contender. *Id*. Moreover, another Zedan horse is racing in Road to the Kentucky Derby qualifiers on April 6 and could also earn enough points to qualify but-for the extended suspension. Denying Zedan the ***opportunity*** to have its horses race in and win the 2024 Derby inflicts irreparable injury. *See, e.g.*, *Barry v. Barchi*, 443 U.S. 55, 73-74 (1979) (finding irreparable injury to trainer of harness racing horses from "even a temporary suspension" due to loss of opportunities to race); *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023) (finding irreparable harm where the plaintiff faced "the loss of opportunity to land multi-million-dollar electric transmission projects in Iowa. 'These sorts of injuries, i.e., deprivations of temporally isolated opportunities, are exactly what preliminary injunctions are intended to relieve'" (quoting *Xiong ex rel. D.M. v. Minn. State High Sch. League*, 917 F.3d 994, 1003 (8th Cir. 2019))); *Energistica, S.A. v. Mercury Petroleum*, 2008 WL 3271986 at *4 (W.D. Ky. Aug. 7, 2008) (finding irreparable harm where the plaintiffs "could forever lose the opportunity to enjoy [ ] revenues" from a pool of oil absent injunctive relief).

Second, this impending injury can never be adequately compensated via monetary damages and is therefore irreparable. If a Zedan horse were to win the Derby, then the value of the horse, its foal, and its breeding rights would sky-rocket. *See* SOF Part A. But calculating those damages requires projecting how a horse would finish in a horserace, something that is so speculative as to

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be incalculable.[22] *See, e.g.*, *Class Racing Stable, LLC v. Breeders' Cup Ltd.*, 2017 WL 562175, at *2 (E.D. Ky. Feb. 10, 2017) ("[T]here is no certainty in horse racing. . . . No one is certain to win today simply because he won before." (quoting *Funny Cide Ventures, LLC v. Miami Herald Pub. Co.*, 955 So. 2d 1241, 1247 (Fla. Dist. Ct. App. 2007)); *Fitzgerald v. Mountain Laurel Racing Inc.*, 464 F. Supp. 263, 265 (W.D. Pa. 1979) (finding irreparable harm where the plaintiff's damages would be "somewhat dependent upon plaintiff's success at the finish line," which "would be a highly speculative endeavor at best") *aff'd* 607 F.2d 589 (6th Cir. 1979) (finding irreparable injury where the plaintiff's "income was in large part directly related to his ability to race" horses at a specific race track); *see also Material Handling Sys., Inc. v. Cabrera*, 572 F. Supp. 3d 375, 397 (W.D. Ky. 2021) (finding irreparable harm where the "injury is not fully compensable by money damages [because] the nature of the plaintiff's loss would make the damages too difficult to calculate" (citation omitted)). When damages are too speculative to be quantified, they are irreparable. *See, e.g.*, *Revolution Resources, LLC v. Annecy, LLC*, 477 P.3d 1133, 1411 (Ok. 2020) ("An injury is irreparable … where the measure of damages is so speculative that it would be difficult if not impossible to correctly arrive at the amount of damages"); *Burt Dickens & Co. v. Bodi*, 144 Ill. App. 3d 875, 886 (Ill App. 1986) (finding that "the damages suggested by defendant are inadequate because they are speculative and impossible to measure"); *Keplinger v. Woolsey*, 93 N.W. 1008, 1009 (Neb. 1903) ("[W]here the facts are of such a nature as to render the measure of damages speculative, and impossible to ascertain with any degree of certainty, equitable relief is seldom denied…."). Even beyond the non-quantifiable monetary injury that Zedan would suffer, it would also suffer intangible losses that far transcend money—including the gratification,

[22] This Court should ignore any attempt by CDI to conflate—as it did in *Baffert v. CDI*—speculative *injury*, which cannot satisfy the irreparable harm standard, with the concrete, certain injury here, the *damages* for which are too speculative to permit precise quantification.

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goodwill and place in history that can come from performing and excelling at the Derby. *See, e.g.*, *Tom Doherty Associates, Inc. v. Saban Enter*, 60 F.3d 27, 38 (2d Cir. 1995) (holding that "a loss of prospective goodwill can constitute irreparable harm" where the defendant is denying "a truly unique opportunity for a company"); *MasterCard Int'l, Inc v Federation Internationale De Football Ass'n*, 464 F. Supp. 2d 246, 314 (S.D.N.Y. 2006) (finding irreparable harm to MasterCard over loss of ability to sponsor the FIFA soccer World Cup because MasterCard was losing out on, among other things, "an indeterminate amount of both existing and prospective goodwill") *vacated and remanded on other grounds by* 239 Fed. Appx. 625 (2d Cir. 2007).

Moreover, Zedan's horses have only this one window to win the Derby and Triple Crown, both of which are limited to three-year-old horses. Courts regularly find, due to an athlete's limited career window, irreparable harm in such circumstances where an athlete is barred or hampered from competing. *See, e.g.*, *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir. 1991) (forcing golfers not to use the club of their choice would cause irreparable harm because it would "have an immediately discernible but unquantifiable adverse impact on their earnings … and for endorsement contracts"); *Jackson v. NFL*, 802 F. Supp. 226, 231–35 (D. Minn. 1992) ("The existence of irreparable injury is underscored by the undisputed brevity and precariousness of the players' careers…."); *Z.H. v. Kentucky High School Athletic Association*, 359 F. Supp. 3d 514, 525 (W.D. Ky. 2019) ("[W]hile the injury may seem trivial—the inability to participate in varsity athletics. It is no doubt irreparable. Z cannot go back in time and participate in the games he misses. Nor can he be compensated for them."). Stated differently, Zedan will never have another chance to win the Derby or Triple Crown with *these* horses, at least one of which ranks among the fastest in horseracing. Such "deprivations of temporally isolated opportunities, are exactly what preliminary injunctions are intended to relieve." 917 F.3d at 1003.

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III. The Requested Relief Will Not Unduly Harm CDI Or Other Parties

For the same reasons that racetracks, competitors, fans, and all of horseracing benefit from robust competition, no cognizable harm results from welcoming the fastest horses into the Derby, as measured by the qualifying points the horses have accumulated. No equitable considerations should stand in the way of letting competition unfold among all qualified horses. Indeed, CDI itself has already announced its considered view that a two-year ban amply sufficed to address any perceived issues surrounding a single 2021 test of a single horse, Medina Spirit. Against that backdrop, CDI cannot plausibly claim it faces any appreciable injury from the prospect that Baffert-trained horses may return to racing on its racetracks (just as they do on all other racetracks) even as Baffert declines to recite CDI's preferred script. To the contrary, CDI is hurting itself, its shareholders, and all other stakeholders by denying entry to the fastest qualifying thoroughbreds—and thereby undermining the value of the Derby and even calling into question its continuing relevance. *See* VC ¶¶ 47-51; 137-44.

Courts have repeatedly agreed that lifting a racetrack's arbitrary ban against a trainer's horses does not harm the racetrack. For example, in *Fitzgerald v. Mountain Laurel Racing, Inc.*, the Third Circuit affirmed a preliminary injunction enjoining a racetrack from excluding a licensed horse trainer, noting "[t]here is no evidence that [the racetrack] will be adversely affected if [the trainer] is allowed to continue racing." 607 F.2d 589, 601 (3d Cir. 1979). Similarly, in *Moreno v. Penn Nat. Gaming, Inc.*, a racetrack was enjoined from denying a trainer's horses entry to their tracks; the court found that the racetrack had "presented no evidence of grave harm to [the racetrack] or to the public if [the trainer] continues activities at the track, aside from the stated desire to maintain a positive public perception" which was insufficient. 2012 WL 3637316, at *7 (M.D. Pa. Aug. 22, 2012) (vacated on other grounds); *see also Crissman v. Dover Downs*

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Entertainment Inc., 289 F.3d 231, 254 (3d Cir. 2002) (Rosenn, J., dissenting) (on issue not addressed by majority opinion, finding no evidence that owner of horse racing facility would be harmed if suspended horse owners and trainers were allowed to race).

Further, it likewise well settled that a party does not suffer any cognizable harm from being required to follow the law. *See Scalia v. KDE Equine, LLC*, 486 F. Supp. 3d 1089, 1113 (W.D. Ky. 2020) ("The imposition of an injunction is not punitive, nor does it impose a hardship on the [defendant] since it requires him to do what the Act requires anyway—to comply with the law." (citation omitted)); *AECOM Energy & Constr., Inc. v. Morrison Knudsen Corp.*, 748 F. App'x 115, 120 (9th Cir. 2018) (affirming preliminary injunction where defendant "will merely be required to cease [its] illegal activities"); *see also Deckers Outdoor Corp. v. Ozwear Connection Pty Ltd.*, 2014 WL 4679001, *13 (C.D. Cal. Sept. 18, 2014) ("There is no hardship to a defendant when a [temporary restraining order] would merely require the defendant to comply with law.").

Nor can CDI stand on its purported interest in maintaining the integrity and safety of its races, which funds no purchase on these facts. First, CDI has already made a considered judgment that the two-year ban sufficed to address any concerns surrounding the 2021 test of Medina Spirit. Baffert's unwillingness to kowtow publicly to CDI's preferred "narrative" may matter to someone's ego or PR agenda, but it cannot be mistaken for an intervening development that bears upon the safety or integrity of CDI's upcoming race.

Second, any issues of safety or integrity are properly and rightly left to HISA, which the U.S. Congress has singularly empowered to address these issues as HISA sees fit.[23] This Court

[23] HISA extensively regulates the safety and integrity of thoroughbred horseracing by, e.g., requiring the presence at races of a safety director, medical director, regulatory veterinarian, and racetrack safety officer. *See* HISA Rules 2131–36. HISA regulations also require veterinary inspections of horses, including assessments of racing soundness. HISA Rules 2141–42; *see also*

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should derive complete assurance from the incontestable fact that HISA sees no reason why Baffert-trained horses should not be racing at this point, and, for that matter, no reason why a betamethasone overage well exceeding anything detected in 2021 should result in anything more than a 30-day suspension. *See* SOF Part F (showing that under HISA Rules, 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 (citing HISA Rule 3323(b)). By contrast, the real risk to safety and integrity is posed by CDI, which is now assaulting, at its inception, the uniform federal regulation that is now in place to achieve safety, integrity, and fairness throughout the entire industry and country.

Finally, any invocation of integrity and safety issues is refuted by the facts that, since CDI's Baffert ban began on June 2, 2021, ***669*** Baffert-trained horses have raced without a violation (55 of those were Zedan Racing horses). *See* SOF Part G. As of today, Baffert's horses are in good standing at every other racetrack in the world apart from CDI's tracks. *Id*. Part C. Indeed, Zedan's horses are racing in—and one has won—the biggest 2024 Road to the Kentucky Derby races (with the largest purses and most Derby qualifying points). *Id*. Even looking backwards to prior years, the few jurisdictions that disciplined Baffert for Medina Spirit's positive test all limited Baffert's suspension to a year or less. *See* SOF Part C. HISA regulations provide yet another point of comparison: a betamethasone overage that follows two or more other betamethasone overages within a two-year period will result in only a ***30-day*** suspension. *See* SOF Part F.

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supra n.20 (showing the comprehensiveness of HISA rules and regulations). HISA covers all aspects of anti-doping and medication control issues. HISA Rules 3010-40; *see also* HISA Rule 4000 Series (Prohibited List), HISA Rule 5000 Series (Testing and Investigations Standards), HISA Rule 6000 Series (Laboratory Standards). And HISA even dictates standards for racetrack testing, facilities, surface monitoring, racetrack accreditation, and reporting. HISA Rules 2110–2121, 2152–2154.

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All of these proof points uniformly confirm that banning Baffert for three plus years is vastly removed from any sober, good-faith effort to protect the safety and integrity of races. As the legendary horse trainer D. Wayne Lukas stated after Muth's convincing Arkansas Derby victory, "[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." VC ¶ 135. To be sure, those things shouldn't be happening to Baffert-trained horses and to Zedan, but they also shouldn't be happening for the sake of CDI, which has long been in the business of celebrating, not banning, the world's fastest thoroughbreds.

IV. The Requested Relief Serves The Public Interest

Far from being disserved, the public interest will benefit profoundly from the requested injunction.

The public interest is served by letting the public watch and cheer the very best horses at the Derby—as opposed to having CDI arbitrarily exclude at least ***15%*** of the field—and potentially witness Baffert, who is one win short of the most Derby wins of all time, making history once again. *See, e.g.*, *Tisher v. California Horse Racing Bd.*, 231 Cal. App. 3d 349, 359 (Cal. Ct. App. 1991) ("And the public's interest, in the arena of sports, is in seeing the highest level of competition and the most talented of competitors. They more readily attend sporting events to see well-known and winning individuals and teams than they do to see unknowns and losers."); *Bowman v. National Football League*, 402 F. Supp. 754, 756 (D. Minn. 1975) ("The public interest is not harmed, and well may be advanced, by the grant of a preliminary injunction. Professional sports and the public are better served by open unfettered competition for playing positions. "); *Clarett v. Nat'l Football League*, 306 F. Supp. 2d 411, 414 (S.D.N.Y. 2004) ("[T]he overarching public interest lies in the fair and efficient operation of the marketplace and, in this case, open competition in the NFL.").

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Nor can the public be expected to doubt the safety and integrity of a race that HISA is regulating and safeguarding, just as HISA does for all other horseraces throughout the United States. An injunction would only benefit the public because it would secure equine safety and integrity as uniformly superintended by HISA, without permitting rogue deviations. *See, e.g.*, *Boone Creek Properties, LLC v. Lexington-Fayette Urban County Board of Adjustment*, 442 S.W.3d 36, 40 (Ky. 2014) (recognizing that a federal "statute's enactment constitutes Congress's implied finding that violations will harm the public and ought, if necessary, be restrained" (citation omitted)); *Strand Amusement Co. v. City of Owensboro*, 242 Ky. 772, 779 (Ky. Ct. App. 1932) ("The injunction was granted to further the policy of the law and not to frustrate it. The injunction was issued for the sake of the law and not to serve the plaintiffs in violating it."); *Kansas Hosp. Ass'n v. Whiteman*, 835 F. Supp. 1548, 1553 (D. Kan. 1993) (holding that "the injunction, if issued, would not be adverse to the public interest in that it is intended to enforce the public policy as expressed in federal statutes and regulations."). Having itself supported HISA, *see* SOF Part F; CDI cannot now take issue with an injunction that simply lets HISA do its job for the benefit of the larger public and industry.

Finally, larger interests throughout the Commonwealth of Kentucky and beyond are inextricably linked to and dependent upon the Derby's status as a race that features the world's elite thoroughbreds racing against one another. Absent the requested relief, that treasured status is imperiled. Not only Muth but some 15% of the eligible field would be excluded by virtue of the indefensible extension of Baffert's ban. That number could increase on April 6, as another Baffert-trained horse competes in a Road to the Kentucky Derby race. All who value the Derby should be dismayed to see the field, and thus the event itself, diminished in this way on its 150th Anniversary. The upshot imperils tourism, jobs, and revenues that stand to rise or fall with the Derby's long-

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term fortunes. The interests of these many stakeholders suffuse the public interest that is now implicated; all such stakeholders should cheer issuance of a temporary injunction.

CONCLUSION

Because Zedan has established the merits of its legal claims, because Zedan otherwise faces imminent irreparable harm, and because the equities and public interest support the requested relief, the Court should issue a temporary injunction as requested.

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Date: April 3, 2024

Respectfully submitted,

/s/ *William H. Brammel, Jr.*

William H. Brammell, Jr.
Kayla M. Campbell
WICKER / BRAMMELL PLLC
323 West Main Street, 11th Floor
Louisville, Kentucky 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.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed through the KCOJ eFiling system and/or sent by means of either electronic mail or U.S. mail this 3rd day of April, 2024 to the following:

Thomas H. Dupree Jr.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue NW
Washington, DC 20036-5306
(202) 955-8500
tdupree@gibsondunn.com

Brad Blackwell
Churchill Downs Incorporated
Executive Vice President and General Counsel
600 N Hurstbourne Pkwy, Ste 400
Louisville, KY 40222

/s/ *William H. Brammel, Jr.*
William H. Brammell, Jr.

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

ZEDAN RACING STABLES, INC. **PLAINTIFF**

vs.

CHURCHILL DOWNS INCORPORATED **DEFENDANT**

[PROPOSED] ORDER FOR TEMPORARY INJUNCTION

On the Motion of Plaintiff Zedan Racing Stables, Inc. ("Zedan"), by counsel and pursuant to CR 65.04, for a Temporary Injunction against Defendant Churchill Downs Incorporated ("CDI"), the Court having considered the Motion and supporting memorandum, and the Verified Complaint filed herein, and it appearing to the Court after due deliberation that CDI, its officers, agents, servants, employees, representatives, successors and assigns, and all other persons or entities in active concert or participation with CDI, should be enjoined as set forth below, and it further appearing to the Court that immediate and irreparable injury, loss, and/or damage will be sustained by Zedan if a Temporary Injunction is not issued:

IT IS ORDERED AND ADJUDGED that CDI is hereby temporarily enjoined, directly and indirectly, whether alone or in concert with others, including its officers, agents, servants, employees, representatives, successors and assigns, and all other persons or entities in active concert or participation with CDI, from:

a. enforcing or otherwise recognizing CDI's suspension of Bob Baffert, the trainer of Zedan's horses, announced in CDI's July 3, 2023 official statement;

b. considering Bob Baffert a "Suspended Trainer" under the 2024 Triple Crown Terms and Conditions or future iterations thereof;

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c. 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. denying horses trained by Bob Baffert points toward the 2024 Road to the Kentucky Derby or future iterations thereof; and

e. 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 Bob Baffert but for CDI's extension of its suspension of Bob Baffert.

IT IS FURTHER ORDERED AND ADJUDGED that this Order shall remain in full force and effect until such time as this Court specifically orders otherwise.

It is so Ordered this ____ day of April, 2024.

_____
JUDGE, JEFFERSON CIRCUIT COURT

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Tendered by,

/s/ *William H. Brammel, Jr.*

William H. Brammell, Jr.
Kayla M. Campbell
Wicker/Brammell PLLC
323 W. Main Street, 11th Floor
Louisville, KY 40202
(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.

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