

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ANTHONY MATTERA, individually and on
behalf of those similarly situated,

PLAINTIFFS,

v.

ROBERT A. BAFFERT; BOB BAFFERT RACING,
INC.; and CHURCHILL DOWNS INCORPORATED,

DEFENDANTS.

Case No. 3:21-cv-330-RGJ

Electronically filed

NOTICE OF REMOVAL

Defendant Churchill Downs Incorporated (CDI) gives notice pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453 of its removal to this Court of the action commenced against it in Jefferson Circuit Court in the Commonwealth of Kentucky, styled *Anthony Mattera, individually and on behalf of those similarly situated v. Robert A. Baffert, et al.*, Case No. 21-CI-2819. (Ex. A, Complaint.) For the reasons that follow, this removal is proper under the Class Action Fairness Act of 2005 (CAFA).

I. This Court has original jurisdiction based on CAFA.

1. Plaintiff Anthony Mattera filed a putative class action complaint against CDI, Robert A. Baffert, and Bob Baffert Racing, Inc. in connection with his and others' alleged wagering losses based on the official results of the 2021 Kentucky Derby. He asserts claims against CDI for negligence, violation of the Kentucky Consumer Protection Act, and unjust enrichment. (Compl. ¶¶ 118–45.) He seeks compensatory damages, punitive damages, (*id.* ¶¶ 123, 136, 145), and a permanent injunction against CDI “from further conducting Thoroughbred horse racing” unless CDI satisfies a number of his conditions, (*id.* ¶ 149). He asserts these

claims and seeks this relief on behalf of himself and a class of all others whom he claims to be similarly situated.

2. To be clear, Mattera is not entitled to any relief against CDI whatsoever under Kentucky law, and he is not entitled to class certification. But the standard for removal under CAFA does not depend on whether the proposed class is viable or whether the plaintiff is likely to recover a certain amount; the defendant must only show what the stakes of the litigation are based on what the plaintiff claims in his complaint. *See Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005). Indeed, a defendant may remove a case based on the pleadings even in cases such as this one where there is “a good chance that the plaintiff will fail and the judgment will be zero.” *See id.* at 448–49.

3. This Court has original jurisdiction over any class action in which: (a) the proposed class contains at least 100 members; (b) any class member is a citizen of a different state than any defendant; and (c) the amount in controversy, in the aggregate, exceeds \$5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2), (d)(5), (d)(6). All of these criteria are satisfied here.

4. Mattera’s complaint was filed as a class action, as defined in 28 U.S.C. § 1332(d)(1)(B).

5. The proposed plaintiff class exceeds 100 members, as required by 28 U.S.C. § 1332(d)(5)(B). (Compl. ¶¶ 102, 104.) The proposed class definition includes “[a]ll persons who placed pari-mutuel bets on the Kentucky Derby that would have been settled as winning bets but for Medina Spirit’s presence and finishing placement in the race.” (*Id.*) Though it may be impossible when Mattera ultimately moves for class certification for Mattera to identify *any* class members based on this definition (including Mattera himself) based on anything but pure

speculation, the plaintiff's allegation is nonetheless that he seeks to represent a class of more than 100 persons. *See* 28 U.S.C. § 1332(d)(5)(B) (removability based on size of "proposed plaintiff classes").

6. Minimal diversity of citizenship exists pursuant to 28 U.S.C. § 1332(d)(2)(A). The named plaintiff is a citizen of Florida.¹ (Compl. ¶ 1.) Though CAFA requires only minimal diversity, the citizenship of the parties here is completely diverse because none of the defendants resides in Florida. CDI is a citizen of Kentucky.² (*Id.* ¶ 4.) Robert A. Baffert is a citizen of California. (*Id.* ¶ 2.) Bob Baffert Racing, Inc. is a citizen of California.³ (*Id.* ¶ 3.)

7. The amount placed in controversy by Mattera's complaint exceeds \$5 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2). Mattera alleges that "CDI handled \$159,278,366 across all pools on the 147th running of the Kentucky Derby." (Compl. ¶ 56.) Contrary to the governing regulations, the complaint seeks to require the defendants to pay him and class members "damages under Kentucky law based on the pari-mutuel principles as defined and described in 810 KAR 6:020 and 810 KAR 6:030E when applied to and calculated upon the pools for the 147th running of the Kentucky Derby." (*Id.* ¶ 99.) The cited regulations govern the calculation of payouts for pari-mutuel wagers on horse races, but Mattera "does not seek a claw back or reversal of the pari-mutuel payments made by Defendant CDI to holders of incorrectly settled wagers." (*Id.* ¶ 97.) Instead, he appears to request that the defendants jointly and severally pay in damages the full cost of paying hypothetical winners in a hypothetical Derby race in which the horses that were declared to finish second, third, fourth, fifth, and sixth,

¹ Mattera claims in his complaint to have been a citizen of Florida on May 1, 2021. On information and belief, CDI asserts that Mattera remained a Florida citizen at the time he filed the complaint on May 14, 2021.

² Mattera correctly alleges that CDI was a citizen of Kentucky on May 1, 2021. CDI remains a citizen of Kentucky.

³ According to the California Secretary of State's website, Bob Baffert Racing, Inc. is a California corporation located in California.

actually finished first, second, third, fourth, and fifth. (*Id.* ¶ 95.) The proposed hypothetical redistribution, purportedly to be paid entirely as damages by the defendants, exceeds \$5 million. Mattera himself claims that he and his partners alone “would have collected at least \$1,000,000 in winnings.” (*Id.* ¶ 96.) In addition to the request for a redistribution of winning payouts based on nearly \$160 million in pools under the regulatory formula, Mattera seeks to require “CDI to disgorge the wagers and revenues . . . and return the money wagered to Mr. Mattera and the Plaintiff Class.” (*Id.* ¶ 143.) Mattera also seeks punitive damages, and seeks an injunction that would prevent CDI from offering thoroughbred horse racing until it could meet certain conditions that would also exceed \$5 million in value. (*Id.* ¶ 149 (requesting, among other things, no further racing without “creation of a fund to settle wagers that become correct following the disqualification of a horse in its races”).)

8. In sum, the nature of the claims asserted and damages alleged establish that the aggregate amount in controversy exceeds \$5 million regardless of whether Mattera’s claims have any merit (which they do not).

9. Based on the foregoing, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

II. Removal is proper based on CAFA.

10. “Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

11. There is no Act of Congress prohibiting or otherwise preventing CDI from removing Mattera’s complaint to federal court.

12. This Court is the proper venue for this action under 28 U.S.C. § 1441(a), as the state court action is pending in Jefferson County, Kentucky, and the United States District Court for the Western District of Kentucky, Louisville Division, is the United States District Court embracing the place where the state court action is pending.

13. This notice is being filed within thirty days of service of the complaint upon CDI. 28 U.S.C. § 1446(b)(3).

14. There is no need for a removing defendant to obtain consent from any other defendant. 28 U.S.C. § 1453(b). CAFA provides that only one defendant can remove an action.

15. The forum-defendant rule does not apply to cases like this one removed under CAFA. 28 U.S.C. § 1453(b) (class actions are removable “without regard to whether any defendant is a citizen of the State in which the action is brought”).

16. There are no other temporal or procedural bars to removal.

17. CDI is filing a removal notice with the Clerk of the Jefferson Circuit Court and will serve written notice upon all counsel of record in that action.

18. Pursuant to 28 U.S.C. § 1446(a), CDI has attached all process, pleadings, and orders served on them in the state court action. (Ex. B, Pleadings.)

CDI therefore requests that the Court assume jurisdiction over this action.

/s/ Philip W. Collier

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CERTIFICATE OF SERVICE

I certify that on May 21, 2021, I served this document by U.S. mail, postage prepaid, to the following:

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EXHIBIT A

NO. 21-CI-(TBD)

JEFFERSON CIRCUIT COURT
DIVISION (TBD)
ELECTRONICALLY FILED

ANTHONY MATTERA; individually; and on
behalf of those similarly situated

PLAINTIFF

v. **CLASS ACTION COMPLAINT**

ROBERT A. BAFFERT; BOB BAFFERT
RACING, INC.; and CHURCHILL
DOWNS, INC.

DEFENDANTS

* * * * *

Comes now the Plaintiff, by counsel, and for his Class Action Complaint against
the Defendants, states as follows:

PARTIES, JURISDICTION & VENUE

1. On or about May 1, 2021, the Plaintiff, Anthony Mattera (“Mr. Mattera”),
was a resident of Florida.
2. On or about May 1, 2021, Defendant Robert A. Baffert (“Defendant Baffert”)
was a resident of California.
3. On or about May 1, 2021, Defendant Bob Baffert Racing, Inc. (“Defendant
BBRI”) was a California business entity not duly licensed or authorized to do business in
the Commonwealth of Kentucky, but was doing business in Kentucky.
4. On or about May 1, 2021, Defendant Churchill Downs, Inc. (“Defendant
CDI”) was a Kentucky business entity and was doing business in the Commonwealth of
Kentucky.
5. Venue is proper because at the time of the actions or inactions giving rise
to the cause of action stated herein, one or more of the Defendants were located within

Jefferson County, Kentucky and/or the legal injuries to Mr. Mattera and the Plaintiff Class occurred there.

6. The claims of the Plaintiff and Plaintiff Class exceed the minimal jurisdictional amount of this Court.

FACTUAL AND LEGAL BACKGROUND

7. The Plaintiff incorporates by reference each of the paragraphs above as if fully set forth herein and further alleges as follows:

A. Defendant Baffert's Horse Racing Medication Regulation Violation History and Kentucky Thoroughbred Horse Trainer Regulations

8. According to an October 23, 2020 article in the Louisville Courier-Journal, "databases maintained by the Association of Racing Commissioners International (ARCI) and the Jockey Club" demonstrate "at least 30 previous medication violations during [Defendant Baffert's] career involving a dozen different drugs."¹

9. According to public records from various horse racing commissions in the United States, Defendant Baffert's historical medical violations include:

- a. **August 22, 1977**: Apomorphine administered to an unnamed horse at Sacramento.
- b. **March 30, 1985**: Excess of phenylbutazone administered to an unnamed horse at an unnamed track in California.
- c. **March 2, 1986**: Unspecified medication excess administered to an unnamed horse at an unnamed track in California.

¹ Tim Sullivan, *After another positive, Bob Baffert case will test racing's commitment to drug reform*, Louisville Courier-Journal, Oct. 23, 2020; <https://www.courier-journal.com/story/sports/horses/horse-racing/2020/10/23/another-positive-bob-baffert-horse-kentucky-oaks/3741772001/> (last visited May 12, 2021).

- d. **March 14, 1986**: A second unspecified medication excess administered to an unnamed horse at an unnamed track in California.
- e. **March 23, 1986**: Unspecified medication excess administered to an unnamed horse at an unnamed track in California.
- f. **August 26, 1987**: Excess of phenylbutazone administered to Tricheng at Hollywood Park.
- g. **December 8, 1987**: Excess of phenylbutazone administered to an unnamed horse at an unnamed track in California.
- h. **July 9, 1988**: Trimethoprim administered to an unnamed horse at Los Alamitos.
- i. **October 5, 1989**: Procaine administered to an unnamed horse at an unnamed track in California.
- j. **December 21, 1990**: Lasix security violation at an unnamed track in California.
- k. **February 7, 1992**: Glycopyrrolate administered to Gee Marcus at Santa Anita Park.
- l. **February 7, 1992**: Glycopyrrolate administered to an unnamed horse at Santa Anita Park.
- m. **January 7, 1994**: Phenylbutazone administered to Datsdawayitis at Santa Anita Park.
- n. **February 9, 1994**: Phenylbutazone administered to Northern Wool at an unnamed track in California.
- o. **May 7, 1998**: Excess phenylbutazone administered to an unnamed

- horse at Lone Star Park.
- p. **June 11, 1998**: Excess phenylbutazone administered to an unnamed horse at Lone Star Park.
- q. **August 31, 1998**: No Lasix given to an unnamed horse at Del Mar.
- r. **June 16, 2001**: Morphine administered to Nautical Look at Hollywood Park.
- s. **September 14, 2001**: Dexamethasone administered to Kinshasa at the Los Angeles County Fair (Fairplex).
- t. **March 27, 2002**: Phenylbutazone administered to Favorite Funtime at Santa Anita Park.
- u. **April, 12 2002**: Phenylbutazone administered to Officer at Santa Anita Park.
- v. **March 28, 2003**: Clenbuterol administered to Kafwain at Fair Grounds.
- w. **October 13, 2007**:

Regulatory Authority: California Horse Racing Board	Breed: Thoroughbred
Date: 10/13/2007	Fine: \$300.00
Medication 1: Furosemide	Medication 2:
Association: OAK TREE AT SANTA ANITA	Suspension Start:
Horse: Stormy Woods	Suspension End:

Website Updated:

- Description -

Trainer BOB BAFFERT is fined the sum of THREE HUNDRED DOLLARS (\$300.00)* pursuant to California Horse Racing Board rule #1629 (Penalty for Late Declaration) for failure to have the horse Stormy Woods treated with Lasix in a timely fashion necessitating a late scratch on Saturday October 13, 2007; a violation of California Horse Racing Board rule #1845 (Authorized Bleeder Medication).

x. January 7, 2010:

Regulatory Authority: California Horse Racing Board	Breed: Thoroughbred
Date: 1/7/2010	Fine: \$1,000.00
Medication 1: Flunixin	Medication 2:
Association: SANTA ANITA PARK	Suspension Start:
Horse: Mother Ruth	Suspension End:
Website Updated: 4/30/2019	

- Description -

Trainer ROBERT BOB BAFFERT, who started the horse Mother Ruth, the fifth place finisher in the third race at Santa Anita Race Track on January 7, 2010, is fined ONE THOUSAND DOLLARS (\$1,000.00)* pursuant to California Horse Racing Board rule #1887 (Trainer to Insure Condition of Horse) for violation of California Horse Racing Board rule #1844 (c) (2) (Authorized Medication Flunixin in excess of permitted level 1st offense).

y. October 23, 2016:

Regulatory Authority: California Horse Racing Board	Breed: Thoroughbred
Date: 10/23/2016	Fine: \$250.00
Medication 1: Phenylbutazone	Medication 2:
Association: SANTA ANITA PARK	Suspension Start:
Horse: American Gal	Suspension End:
Website Updated: 4/30/2019	

- Description -

Trainer ROBERT BAFFERT, who started the horse AMERICAN GAL which finished first in the third race at Santa Anita Race Track on October 23, 2016 is fined TWO HUNDRED FIFTY DOLLARS (\$250.00)* pursuant to California Horse Racing Board rule #1887 (Trainer to Insure Condition of Horse) for violation of California Horse Racing Board rule #1843(a)(d) (Medication, Drugs and Other Substances) and rule #1844(c)(1) (Authorized Medication, Phenylbutazone, in excess of permitted level 2.69 ug/ml Class 4).

z. July 2, 2017:

Regulatory Authority: California Horse Racing Board	Breed: Thoroughbred
Date: 7/2/2017	Fine: \$1,000.00
Medication 1: Phenylbutazone	Medication 2:
Association: SANTA ANITA PARK	Suspension Start:
Horse: Diamondsandpearls	Suspension End:
Website Updated: 4/30/2019	

- Description -

Trainer ROBERT BAFFERT, who started the horse DIAMONDSANDPEARLS first place finisher in the second race at Santa Anita Park on July 2, 2017 is fined ONE THOUSAND DOLLARS (\$1,000.00)* pursuant to California Horse Racing Board rule #1887 (Trainer to Insure Condition of Horse) for violation of California Horse Racing Board rule #1843(a)(d) (Medication, Drugs and Other Substances) and rule #1844(c)(1) (Authorized Medication Phenylbutazone in excess of permitted level 3.19 ug/ml Class 4).

aa. **April 2018**: Justify, first place finisher in the Santa Anita Derby (GI) on April 7, 2018, tested positive for scopolamine sometime thereafter and before Kentucky Derby 144.² Justify's test indicated 300 nanograms per milliliter of scopolamine, far in excess of the limit in California of 75 nanograms per milliliter.

bb. **July 27, 2019**:

Regulatory Authority: California Horse Racing Board	Breed: Thoroughbred
Date: 7/27/2019	Fine: \$500.00
Medication 1: Phenylbutazone	Medication 2:
Association: DEL MAR	Suspension Start:
Horse: Cruel Intention	Suspension End:
Website Updated: 11/27/2019	
- Description -	
Trainer ROBERT BAFFERT, who started the horse CRUEL INTENTION, third place finisher in the third race at Del Mar Race Track on July 27, 2019, is fined FIVE HUNDRED DOLLARS (\$500.00) pursuant to #1887 (Trainer or Owner to Insure Condition of Horse) for violation of California Horse Racing Board rule #1843(a)(b)(d) (Medication, Drugs and Other Substances), for violation of #1843.1 (Prohibited Drug Substances ? Phenylbutazone (Class 4)).	

cc. **August 3, 2019**:

Regulatory Authority: California Horse Racing Board	Breed: Thoroughbred
Date: 8/3/2019	Fine: \$1,500.00
Medication 1: Phenylbutazone	Medication 2:
Association: DEL MAR	Suspension Start:
Horse: Eclair	Suspension End:
Website Updated: 11/27/2019	
- Description -	
Trainer ROBERT BAFFERT, who started the horse ECLAIR, fourth place finisher in the first race at Del Mar Race Track on August 3, 2019, is fined ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)* pursuant to #1887 (Trainer or Owner to Insure Condition of Horse) for violation of California Horse Racing Board rule #1843(a)(b)(d) (Medication, Drugs and Other Substances), for violation of #1843.1 (Prohibited Drug Substances ? Phenylbutazone (Class 4) second offense in 365 days).	

² Joe Drape, *Justify Failed a Drug Test Before Winning a Triple Crown*, New York Times, Sept. 11, 2019; <https://www.nytimes.com/2019/09/11/sports/horse-racing/justify-drug-test-triple-crown-kentucky-derby.html> (last visited on May 12, 2021).

dd. **May 2, 2020**: Gamine, first place finisher in an allowance-level race at Oaklawn Park, and Charlatan, first place finisher of a division of the Arkansas Derby (GI), tested positive for lidocaine, a local anesthetic.³ Gamine tested more than nine times above the threshold set by Arkansas law and regulations, and Charlatan tested more than twice above the threshold.

ee. **July 25, 2020**:

Regulatory Authority: California Horse Racing Board	Breed: Thoroughbred
Date: 7/25/2020	Fine: \$2,500.00
Medication 1: Dextromethorphan	Medication 2:
Association: DEL MAR	Suspension Start:
Horse: Merneith	Suspension End:
Website Updated: 1/11/2021	
- Description -	
Pursuant to California Horse Racing Board rule #1887 (Trainer or Owner to Insure Condition of Horse), trainer BOB BAFFERT, who started the horse "Merneith", the second place finisher in the fourth race at Del Mar Race Track on July 25, 2020, is fined TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)* for violation of California Horse Racing Board rule #1843 (a & d) (Medication, Drugs, and Other Substances) and #1843.1 (a) (Prohibited Drug Substances- Dextromethorphan 5 ng/ml-class 4).	

ff. **September 4, 2020**:

Regulatory Authority: Kentucky Horse Racing Commission	Breed: Thoroughbred
Date: 9/4/2020	Fine: \$1,500.00
Medication 1: Betamethasone	Medication 2:
Association: TURFWAY PARK	Suspension Start:
Horse: Gamine	Suspension End:
Website Updated: 3/10/2021	
- Description -	
sample number E377808 fined \$1500 and Gamine is disqualified and all purse money is forfeited	

³ Frank Angst, *Baffert Suspended, Horses DQ'ed After Drug Positives*, Bloodhorse, July 15, 2020; <https://www.bloodhorse.com/horse-racing/articles/242346/baffert-suspended-horses-dqd-after-drug-positives> (last visited May 12, 2021).

10. Kentucky follows, maintains and applies the absolute insurer rule for trainers of Thoroughbred horses. 810 KAR 4:100 Sec. 3(1) and (2)(d).

11. Under the absolute insurer rule, “a licensed trainer shall bear primary responsibility for the proper care, health, training condition, safety, **and protection against the administration of prohibited drugs or medication** of horses in his or her charge.” 810 KAR 4:100 Sec. 3(1) (emphasis added).

12. Under the absolute insurer rule, a licensed trainer “shall bear primary responsibility for horses he or she enters as to. . .the. . .**absence of prohibited drugs or medications.** . . .” 810 KAR 4:100 Sec. 2(d) (emphasis added).

B. Defendant CDI’s Operations and Internal Rules and Kentucky Horse Racing Laws and Regulations

13. Defendant CDI owns and operates Churchill Downs Racetrack in Louisville, Kentucky.

14. Churchill Downs Racetrack is The World’s Most Legendary Racetrack® and conducts Thoroughbred horse racing, including the Kentucky Derby.⁴

15. The Kentucky Derby “is a top rank, Grade I stakes race for 3 year old Thoroughbred horses.”⁵

16. According to www.kentuckyderby.com:

The Kentucky Derby takes place on the first Saturday in May every year, and typically draws a crowd of 155,000 people. It is the longest continually held sporting event in America, and it is one of the most prestigious horse races in the world. Often called “The Most Exciting Two Minutes in Sports”, the Kentucky Derby receives this nickname from the approximate length of time it takes the winner to run from the starting gate to the finish line. The

⁴ <https://www.churchilldowns.com/visit/about/churchill-downs/> (last visited May 12, 2021).

⁵ <https://www.kentuckyderby.com/history/the-race> (last visited May 12, 2021).

Kentucky Derby is the first race within the Triple Crown of Thoroughbred Racing, where it is followed by the Preakness Stakes race and the Belmont Stakes race.⁶

17. The Kentucky Oaks is a Grade I stakes race for 3 year old female Thoroughbred horses.

18. The Kentucky Oaks is Defendant CDI's second most valuable, important and prestigious race at Churchill Downs Racetrack, behind only the Kentucky Derby.

19. In conducting Thoroughbred horse racing, Defendant CDI publishes a Condition Book.⁷ The Condition Book contains proposed races for each scheduled day of racing for the track meet. Each potential race contains conditions a horse must meet in order to be eligible to compete in the proposed race.

20. In order to compete in any of the proposed races in the Condition Book, the owner and/or trainer of a horse must submit an entry to Defendant CDI by a certain date and time. 810 KAR 4:030 Sec. 3 and 7.

21. Kentucky Administrative Regulations for Thoroughbred horse racing clearly provide that "[e]ntries or subscriptions for any horse. . . may be refused or cancelled by the association without notice or reason given." 810 KAR 4:030 Sec. 2. Kentucky law defines an "association" to include a racetrack. KRS 230.210(5); KRS 230.300.

22. Defendant CDI makes it clear to owners and trainers of horses wishing to compete in its races that it retains the absolute right of refusal on an entry for any reason:

⁶ *Id.*

⁷ <https://www.churchilldowns.com/horsemen/racing/condition-book/> (last visited May 12, 2021).

CONDITIONS

GENERAL: Entries to any race are received only upon the condition that the Applicant agrees to and will comply with the rules and regulations governing Thoroughbred horse races adopted by the Kentucky Horse Racing Commission (the "KHRC") and the rules and regulations of Churchill Downs Incorporated ("Churchill") (including these conditions) and will comply with and abide by any decision of the state racing officials and/or the Officers of Churchill regarding the interpretation and application of such rules and regulations. Applicant consents and agrees to all provisions of Churchill's current application and/or agreements regarding the use of stall space, the terms of which are specifically incorporated herein by reference, and shall execute all such applications and/or agreements before bringing any horse upon Churchill's grounds. In making this application to participate in thoroughbred racing, Applicant agrees and consents to Churchill and/or its agents making an investigation of Applicant whereby information may be requested from third parties as to character, general reputation, personal characteristics, mode of living, or such other information as may be relevant to the Applicant's integrity as a racing participant. Churchill reserves the right to cancel any race, without notice, at any time prior to the actual running thereof, without liability except for the return of all fees as required by the rules of racing. Churchill reserves the right to make all decisions regarding preferences and conditions and its decision shall be final. Nominations are received only with the understanding that Churchill reserves the right, in its sole and absolute discretion to refuse, cancel or revoke any nomination, entry or stall application or the transfer thereof and reserves the right to deny the right to start in a race without notice to the Applicant and for any reason, including but not limited to the Applicant's failure to fully perform or abide by all provisions and conditions hereof.

8

23. Thus, Defendant CDI makes the choice, and has the final say, to accept or refuse entries to any of its proposed races from those submitting entries or their horses to compete in the races, including the 147th running of the Kentucky Derby.

24. On or about April 27, 2021, Defendant CDI accepted entries for the 147th running of the Kentucky Derby.⁹

25. Defendants BBRI and Baffert submitted an entry for Medina Spirit to run in the 147th running of the Kentucky Derby.

⁸ *Id.* at p. 34. "'Applicant' shall mean and include the owners, trainers, jockeys of the horse being entered. . . ." *Id.* at p. 35.

⁹ *Id.* at p. 56.

26. Defendant CDI knew of Defendants BBRI and Baffert's history of medication violations prior to the submission of the entry of Medina Spirit into the 147th running of the Kentucky Derby.

27. Most significantly, Defendant CDI knew that the Kentucky Horse Racing Commission, less than two months prior to the 147th running of the Kentucky Derby, disqualified Defendants BBRI and Baffert's trainee Gamine from the 2020 running of the Kentucky Oaks at Churchill Downs Racetrack due to a positive test for betamethasone.

28. Under its own rules and pursuant to Kentucky law and regulations, Defendant CDI could have refused the entry of Medina Spirit into the 147th running of the Kentucky Derby.

29. Indeed, on May 9, 2021, Defendant CDI exercised its right under its own rules and Kentucky regulations governing Thoroughbred horse racing, and announced its refusal to accept entries from Defendants BBRI and Baffert:

Churchill Downs' Statement in Response to Medina Spirit's Post-Race Test Result Allegations

LOUISVILLE, KY. (Sunday, May 9, 2021) – It is our understanding that Kentucky Derby winner Medina Spirit's post-race blood sample indicated a violation of the Commonwealth of Kentucky's equine medication protocols. The connections of Medina Spirit have the right to request a test of a split sample and we understand they intend to do so. To be clear, if the findings are upheld, Medina Spirit's results in the Kentucky Derby will be invalidated and Mandaloun will be declared the winner.

Failure to comply with the rules and medication protocols jeopardizes the safety of the horses and jockeys, the integrity of our sport and the reputation of the Kentucky Derby and all who participate. Churchill Downs will not tolerate it. Given the seriousness of the alleged offense, Churchill Downs will immediately suspend Bob Baffert, the trainer of Medina Spirit, from entering any horses at Churchill Downs Racetrack. We will await the conclusion of the Kentucky Horse Racing Commissions' investigation before taking further steps.

30. Despite its knowledge of Defendants BBRI and Baffert's history of medication violations, which, in turn, results in ineligible horses competing in races, Defendant CDI made the choice to accept the entry of Medina Spirit into the 147th running of the Kentucky Derby.

C. Medina Spirit, Betamethasone and the 147th running of the Kentucky Derby

31. Defendants BBRI and Baffert train the Thoroughbred horse Medina Spirit.

32. Medina Spirit competed in the Santa Anita Derby on April 3, 2021.

33. Defendants BBRI and Baffert initially denied administering betamethasone to Medina Spirit.

34. Subsequent to the denial, according to Defendants BBRI and Baffert, following the Santa Anita Derby, Medina Spirit received betamethasone in treatment and/or therapy up until the day before the 147th running of the Kentucky Derby.

35. Betamethasone is a corticosteroid used to treat inflammation in horses.

36. Betamethasone is legal under Kentucky law and regulations for therapeutic purposes. However, betamethasone can enhance the performance of Thoroughbred horses in races as well act as a masking agent of inflammation, lameness and pain, thus jeopardizing the safety of the horse and any rider.

37. Kentucky law and regulations forbid any amount of betamethasone in Thoroughbred horses on race day because of its effects as a performance enhancer and masking agent and for the safety of the horse and any rider.

38. Medina Spirit raced in the 147th running of the Kentucky Derby crossing the finish line first ahead of entrants Mandaloun, Hot Rod Charlie, Essential Quality, O Besos and Midnight Bourbon, among others, in that order.

39. Following the race, Medina Spirit submitted to a mandatory post-race blood sample test.

40. Medina Spirit's post-race blood sample tested positive for betamethasone, which constitutes a violation of Kentucky laws and regulations governing horse racing.

41. Under Kentucky laws and regulations, a positive test for any amount of betamethasone results in a disqualification of the horse from the race. Thus, Defendants BBRI and Baffert entered an unqualified and ineligible horse in the 147th running of the Kentucky Derby.

42. When a disqualification due to a medication violation occurs, all horses placing behind the disqualified horse are promoted a placing and the disqualified horse is demoted to last place. Therefore, the new, complete and official order of finish of the first five horses of the 147th running of the Kentucky Derby is, with their program numbers, Mandaloun (7), Hot Rod Charlie (9), Essential Quality (14), O Besos (6) and Midnight Bourbon (10), in that order.

43. On May 9, 2021, Defendant CDI acknowledged this by stating as follows:

**Churchill Downs' Statement in Response to
Medina Spirit's Post-Race Test Result Allegations**

LOUISVILLE, KY. (Sunday, May 9, 2021) – It is our understanding that Kentucky Derby winner Medina Spirit's post-race blood sample indicated a violation of the Commonwealth of Kentucky's equine medication protocols. The connections of Medina Spirit have the right to request a test of a split sample and we understand they intend to do so. To be clear, if the findings are upheld, Medina Spirit's results in the Kentucky Derby will be invalidated and Mandaloun will be declared the winner.

D. Defendant CDI's Lack of Adequate Testing System

44. Nothing in Kentucky law or regulations prevents Defendant CDI from implementing pre-race testing of Thoroughbred horses nominated to compete in races it conducts.

45. Kentucky laws and regulations mandate out-of-competition testing of Thoroughbred horses, which occurs prior to a race.

46. The Kentucky Horse Racing Commission bears responsibility for collecting out-of-competition specimens.

47. Kentucky laws and regulations allow licensed associations, such as Defendant CDI, to request and receive split samples of specimens collected by the Kentucky Horse Racing Commission prior to the races Defendant CDI conducts.

48. Collecting samples of specimens, testing them and getting the results all within just a matter of days before a race is possible. In fact, the Maryland Racing Commission is doing just that prior to the Preakness Stakes to be held on May 15, 2021 regarding Medina Spirit's entry into that race.¹⁰

49. Defendant CDI failed to have any system in place for requesting, receiving and testing split samples of specimens and receiving the results prior to races it conducts, including the 147th running of the Kentucky Derby.

50. If Defendant CDI had a system in place for requesting, receiving and testing split samples of specimens and receiving the results prior to races it conducts,

¹⁰ HRN Staff, *Medina Spirit to run in Preakness after agreement reached*, May 11, 2021; https://www.horseracingnation.com/news/Medina_Spirit_to_run_in_Preakness_after_agreement_reached_123?utm_source=ActiveCampaign&utm_medium=email&utm_content=Preakness+Post+Positions%2C+ML+Odds+%2F+Baffert+Horses+Allowed+%2F+Drug+Culprit+Found%3F&utm_campaign=HRN+Newsletter+05-11-2021 (last visited on May 13, 2021).

including the 147th running of the Kentucky Derby, it would have discovered Medina Spirit's ineligibility, resulting in his scratch from the race.

51. Thus, allowing an ineligible horse to race is completely preventable.

E. Pari-mutuel Wagering

52. Defendant CDI offers pari-mutuel wagering to the public on the races it conducts at Churchill Downs Racetrack, including the 147th running of the Kentucky Derby.

53. Pari-mutuel wagering in Thoroughbred horse racing consists of a racetrack accepting, or booking, a number of different types of wagers (e.g. Win, Place, Show, Exacta, Trifecta, Superfecta, etc.). These different types of wagers each have their own separate "pool" where the money collects. For each wager, the racetrack will typically print a ticket that acts as a receipt indicating the bettor's wager. The racetrack collects a percentage of each pool as its fee for booking the bet, known as the takeout. After the race is run and declared official, the racetrack divides the money in each pool, after the takeout, by the number of winning tickets to produce payouts - ((total amount in pool – takeout percentage) / winning tickets). Racetracks typically publish payouts after the race is official in denominations ranging from \$.10 - \$2.00. Bettors then exchange their winning ticket for the money due to them – known as settlement of wagers.

54. The total amount in a pool, on a race, or in a day, is known as the "handle."

55. Defendant CDI accepted the following wagers on the 147th running of the Kentucky Derby:

a. Win;

- b. Place;
- c. Show;
- d. Exacta;
- e. Trifecta;
- f. Superfecta;
- g. Super High Five;
- h. Daily Double – multiple rolling;
- i. Pick 3 – multiple rolling;
- j. Pick 4 - multiple;
- k. Pick 5 - multiple;
- l. Pick 6;
- m. Pick 6 Jackpot; and
- n. Future Wager – multiple.

56. Defendant CDI handled \$159,278,366 across all pools on the 147th running of the Kentucky Derby¹¹:

¹¹ <https://www.equibase.com/premium/chartEmb.cfm?track=CD&raceDate=05/01/2021&cy=USA&rn=12> (last visited on May 12, 2021). The number includes Daily Double, Pick 3, Pick 4 and Pick 5 pools ending in races 13 and 14. The chart reflects wagers ending with the Kentucky Derby, which totals \$155,369,121.

Total WPS Pool: \$69,432,825

Pgm	Horse	Win	Place	Show	Wager Type	Winning Numbers	Payoff	Pool
8	Medina Spirit	26.20	12.00	7.60	\$0.50 Pick 3	4-3-8 (3 correct)	73.15	1,304,665
7	Mandaloun		23.00	13.40	\$0.50 Pick 3	4-5-8 (3 correct)	163.05	0
9	Hot Rod Charlie			5.20	\$0.50 Pick 3	OAKS/FRSTR/DERBY	51.85	0
					\$0.50 Pick 3	10-3-8 (3 correct)		
					\$0.50 Pick 4	OAKS/FRSTR/DERBY	109.10	631,903
					\$0.50 Pick 5	10-5-8 (3 correct)		
					\$2.00 Pick 6	5-4-3/5-8 (4 correct)	708.15	3,209,825
					\$0.20 Pick 6 Jackpot	2/3-5-4-3/5-8 (5 correct)	2,974.85	3,425,122
					\$1.00 Daily Double	OAKS/DERBY	2,143.80	640,315
					\$1.00 Daily Double	2-7-10-4-4-3/5-8 (6 correct)		
					\$2.00 Future Wager	OAKS/DERBY	22.20	0
					\$2.00 Future Wager	2-7-10-4-4-3/5-8 (5 correct)		
					\$2.00 Future Wager	4-2/3-5-4-3/5-8 (6 correct)	1,363.90	3,584,747
					\$2.00 Future Wager	3-8	26.40	1,223,340
					\$2.00 Future Wager	5-8	62.60	0
					\$2.00 Future Wager	OAKS/DERBY 10-8	47.90	2,792,122
					\$2.00 Future Wager	8-7	503.60	22,218,094
					\$2.00 Future Wager	EXACTA POOL 1 - 24-7	123.80	57,347
					\$2.00 Future Wager	EXACTA POOL 2 - 14-13	3,254.46	81,267
					\$2.00 Future Wager	EXACTA POOL 3 - 15-14	1,543.00	110,590
					\$2.00 Future Wager	EXACTA POOL 4 - 15-14	859.80	98,444
					\$2.00 Future Wager	EXACTA POOL 5 - 15-14	1,774.00	127,555
					\$2.00 Future Wager	POOL 1 - 24	4.60	191,984
					\$2.00 Future Wager	POOL 2 - 14	51.40	240,768
					\$2.00 Future Wager	POOL 3 - 15	53.00	278,397
					\$2.00 Future Wager	POOL 4 - 15	81.00	231,632
					\$2.00 Future Wager	POOL 5 - 15	28.80	242,140
					\$2.00 Future Wager	SIRE EXACTA 1 - 24-12	60.40	14,298
					\$2.00 Future Wager	SIRE POOL 1 - 24	12.00	33,264
					\$1.00 Superfecta	8-7-9-14	9,456.40	13,933,415
					\$1.00 Super High Five	8-7-9-14-6	296,769.60	763,496
					\$0.50 Trifecta	8-7-9	848.45	30,501,566

57. Because of the presence of betamethasone in Medina Spirit's system, he lacked eligibility to race in the 147th running of the Kentucky Derby and should never been entered or accepted as an entry.

58. Medina Spirit lacked eligibility and qualification to enter the 147th running of the Kentucky Derby due to the presence of betamethasone in his system on May 1, 2021.

59. Defendant CDI incorrectly and erroneously accepted Medina Spirit as an entrant and starter in the 147th running of the Kentucky Derby.

60. Medina Spirit crossed the finish line first in the 147th running of the Kentucky Derby.

61. Defendant CDI declared Medina Spirit as the first-place finisher in the 147th running of the Kentucky Derby.

62. Defendant CDI then calculated and paid wagers based on Medina Spirit finishing first in the 147th running of the Kentucky Derby.

63. Defendant CDI erred in declaring Medina Spirit as the first-place finisher of the 147th running of the Kentucky Derby and proceeded to calculate the payout of wagers on the race based on Medina Spirit finishing first in the 147th running of the Kentucky Derby.

64. Due to its error in declaring an ineligible horse as the official first-place finisher, Defendant CDI incorrectly calculated the payouts and incorrectly settled losing wagers.

65. Defendant CDI should have calculated the payouts based on the following order of the first five finishers in the 147th running of the Kentucky Derby: Mandaloun (7), Hot Rod Charlie (9), Essential Quality (14), O Besos (6) and Midnight Bourbon (10).

66. Defendant CDI should have settled any and all of the wagers it booked based on the following order of the first five finishers in the 147th running of the Kentucky Derby: Mandaloun (7), Hot Rod Charlie (9), Essential Quality (14), O Besos (6) and Midnight Bourbon (10).

F. Anthony Mattera and Horseplayers

67. Mr. Mattera is a horseplayer.

68. Horseplayers approach Thoroughbred wagering as a game of skill.

69. Thoroughbred wagering is a market, much the same as a stock or commodities market.

70. Horseplayers, like participants in other markets, retrieve, review and analyze data in an attempt to determine the outcome of some thing or some event in the future, in this case the results of a horse race.

71. Horseplayers place wagers on their predictions about the outcome of races, much like a person purchases a stock.

72. Many horseplayers use sophisticated technology that rivals that of any Wall Street investor.

73. Many horseplayers develop and utilize computer models to select what wagers they place.¹²

74. Racetracks, like Churchill Downs Racetrack, attempt to entice owners and trainers of Thoroughbred horses to enter their races with purse money. Defendant CDI publishes the amount of purse money available to attempt to earn in each of its races in its Condition Book.

75. Defendant CDI distributes purse money to entrants of its races according to their finishing placement.

76. In turn, Defendant CDI handles wagering on its races, and the more entrants it receives, the bigger handle it can expect.

77. Defendant CDI funds its purses through wagering on its races.

78. Thus, wagers by horseplayers fund the purse money that owners and trainers of Thoroughbred horses attempt to earn.

¹² Kit Chellel, *The Gambler Who Cracked the Horse-Racing Code*, Bloomberg Businessweek, May 3, 2018; <https://www.bloomberg.com/news/features/2018-05-03/the-gambler-who-cracked-the-horse-racing-code> (last visited May 14, 2021).

79. Wagers by horseplayers also account for a racetrack's revenue through the takeout of the wagers handled.

80. Despite their important place in the ecosystem of Thoroughbred horse racing, Kentucky laws and regulations specific to Thoroughbred horse racing and pari-mutuel wagering provide almost no protection to horseplayers while affording racetracks, owners and trainers with all-encompassing protections.

81. For example, after declaration of a race as official on the day of a race, if a disqualification of an entrant occurs, Kentucky laws and regulations specific to Thoroughbred horse racing and pari-mutuel wagering provide no recourse for horseplayers who hold winning wagers but for the disqualification. Kentucky law and regulations specific to Thoroughbred horse racing and pari-mutuel wagering do not require racetracks to reverse payouts and/or redistribute money based on the new, official result.

82. After declaration of a race as official on the day of the race, if a disqualification of an entrant occurs, Kentucky laws and regulations specific to Thoroughbred horse racing and pari-mutuel wagering *do* allow for, and mandate, the redistribution of purse money to the owners of the entrants. Thus, on race day, races are really only official as it concerns horseplayers who wager, but not for trainers and owners racing for purse money.

83. Kentucky laws and regulations specific to Thoroughbred horse racing and pari-mutuel wagering provide for precisely no penalties, sanctions or consequences for racetracks, including Defendant CDI, who accept entries from trainers and/or owners it knows, or should know, enter unqualified and ineligible horses in races.

84. Racetracks, including Defendant CDI, continue to take entries of Thoroughbred horses from trainers and/or owners it knows, or should know, enter unqualified and ineligible horses in races.

85. Without any downside to their actions, racetracks, including Defendant CDI, can accept entries of unqualified and ineligible horses with impunity from Kentucky laws and regulations specific to Thoroughbred horse racing and pari-mutuel wagering, escape any consequences for their actions, or inactions, and leave horseplayers with no recourse under Kentucky laws and regulations specific to Thoroughbred horse racing and pari-mutuel wagering.

86. However, racetracks, including Defendant CDI, are subject to Kentucky laws other than those just specific to Thoroughbred horse racing and pari-mutuel wagering.

87. Mr. Mattera was born in Atlantic City, New Jersey and has been around Thoroughbred horse racing his entire life. He currently works as a legal consultant in Florida.

88. Mr. Mattera uses a very sophisticated computer program along with many different commercial services in analyzing data and selecting wagers to place on races.

89. In 2017, Mr. Mattera won the Borgata season series handicapping challenge along with numerous other contest wins.

90. Mr. Mattera has qualified for the National Horseplayers Championship (f/k/a the National Handicapping Championship) from 2017-2020.

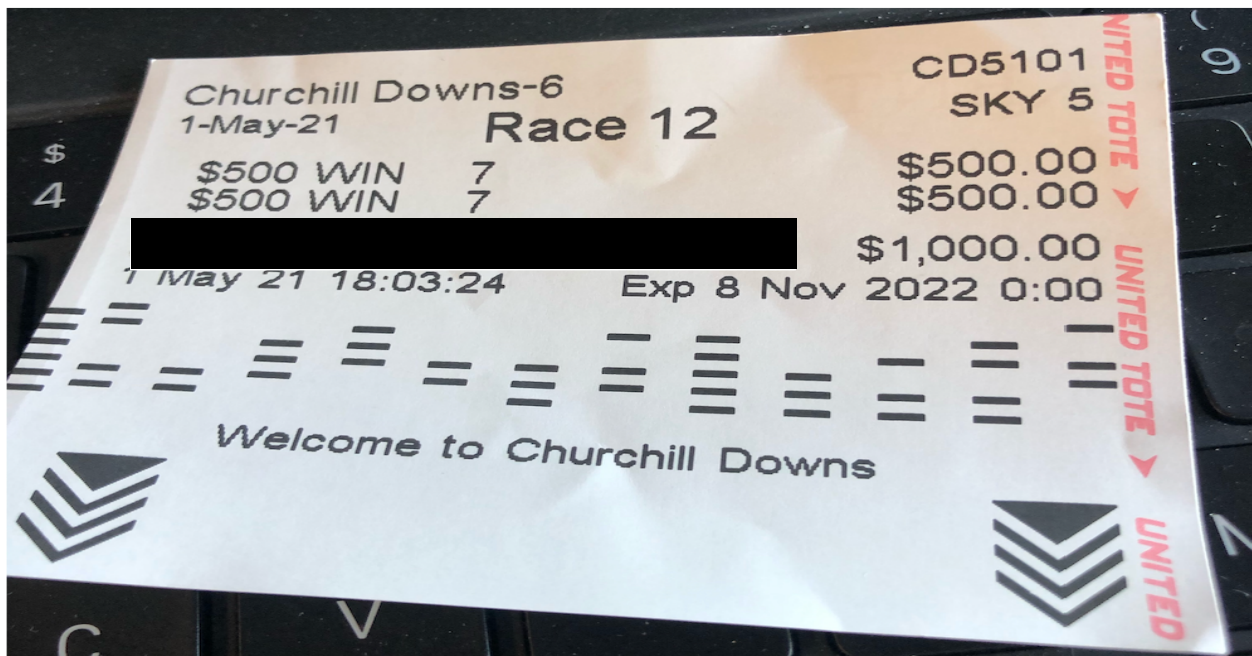
91. Mr. Mattera has contested the Breeders' Cup Betting Championship and most other major contests since 2018.

92. Mr. Mattera attended the 147th running of the Kentucky Derby.

93. Mr. Mattera, in partnership with others, placed the following winning wagers on the 147th running of the Kentucky Derby that remain unsettled due to Defendant CDI's error in declaring an ineligible horse as the official first place finisher, incorrectly calculating the payouts and incorrectly settling losing wagers:

- a. \$1,000 to Win;
- b. Multiple Exactas;
- c. Multiple Trifectas;
- d. Multiple Superfectas;
- e. Multiple Pick 4s;
- f. Multiple Pick 5s;
- g. \$.20 Pick 6; and
- h. \$2 Two-day Pick 6.

94. Mr. Mattera's Win wager is reflected below:



95. Defendant CDI should have settled any and all of the wagers it booked from Mr. Mattera based on the following order of the first five finishers in the 147th running of the Kentucky Derby: Mandaloun (7), Hot Rod Charlie (9), Essential Quality (14), O Besos (6) and Midnight Bourbon (10).

96. Mr. Mattera estimates that had Defendant CDI not declared Medina Spirit as the official first-place finisher of the 147th running of the Kentucky Derby in error, thereby incorrectly calculating the payouts and incorrectly settled losing wagers, he, and his partners, would have collected at least \$1,000,000 in winnings.

97. Mr. Mattera does not seek a claw back or reversal of the pari-mutuel payments made by Defendant CDI to holders of incorrectly settled wagers.

98. Mr. Mattera does not seek a pari-mutuel payout as defined and described in 810 KAR 6:020 and 810 KAR 6:030E.

99. Mr. Mattera seeks damages under Kentucky law based on the pari-mutuel principles as defined and described in 810 KAR 6:020 and 810 KAR 6:030E when applied to and calculated upon the pools for the 147th running of the Kentucky Derby.

CLASS ALLEGATIONS

100. The Plaintiff incorporates by reference each of the paragraphs above as if fully set forth herein and further alleges as follows:

101. The Plaintiff Class includes all persons similarly situated to Plaintiff, as more fully described below, who placed winning pari-mutuel bets on the Kentucky Derby but for Medina Spirit's presence and finishing placement in the race, and who have not filed a civil action and/or do not have a civil action pending asserting the same claims against the same Defendants as asserted herein.

102. Plaintiff seeks to represent the following class of individuals:

- All persons who placed pari-mutuel bets on the Kentucky Derby that would have been settled as winning bets but for Medina Spirit's presence and finishing placement in the race.
- Excluded from the Class are those persons or representatives of estates that have filed and have pending a civil action in any state or federal court that asserts the same claims against the same Defendants as asserted herein.

103. Plaintiffs, and all others similarly situated, are entitled to have this case maintained as a class action pursuant to Kentucky Rules of Civil Procedure.

104. The Plaintiff Class is so numerous that joinder of all persons is impracticable and inefficient.

105. There are common issues of law and fact applicable to the Plaintiff Class' claims and Defendants' individual and collective liability thereunder. The same facts, the same law, and the same issues are at issue—concerning the Defendants' individual and collective negligence as described herein.

106. Resolution of the common question(s) will advance resolution of the Plaintiff Class' claims. Defendants' individual and collective conduct presents common factual questions that predominate. As such, the Plaintiff Class is necessarily bound together by the common factual questions relating to whether the Defendants' individual and collective conduct violated Kentucky law.

107. The Plaintiff Class' claims are typical. Each putative class member experienced the same outcome and corresponding damages as the direct and consequential result of the Defendants individual and collective negligence as described herein. The Plaintiff Class' claims are subject to the same facts, law and defenses.

108. The Plaintiff Class' interests are directly aligned amongst themselves and, as such, they will fairly and adequately represent and protect the interests of the Class members. Further, the Plaintiff Class has retained counsel experienced in the prosecution of class action litigation who will adequately represent the interests of the Plaintiff Class and its members. The Plaintiff Class further is unaware of any conflicts of interests between the Plaintiffs and the absent Plaintiff Class members.

109. The Plaintiff Class further have, or can acquire, adequate financial resources to assure that the interests of Plaintiff Class members will be protected. Further, the Plaintiff Class representative is knowledgeable concerning the subject matter of this action and will assist counsel in the prosecution of this litigation.

110. The prosecution of the Plaintiff Class' claims on an individual ad hoc basis would create a substantial risk of inconsistent and/or varying legal outcomes that would establish incompatible standards of conduct. Similarly, such an ad hoc litigation process would create a further substantial risk of a single legal outcome that would as a practical matter be dispositive of other Plaintiff Class members thereby substantially prejudicing their respective interests. Class certification would alleviate these issues and provide for an orderly and efficient resolution for all parties and the Court.

111. Finally, the Plaintiff Class' claims present common questions of law and fact that predominate over all alleged questions affecting individual class members. The same facts and the same law will dictate the extent and the scope of the Defendants' individual and collective liability to the Plaintiff Class—thus making the procedural class action mechanism the fairest and, more importantly, efficient means for timely and expeditiously resolving the Plaintiff Class' claims.

112. Given that Plaintiff Class is limited to individuals who placed winning pari-mutuel wagers on Kentucky Derby 147 but for Medina Spirit's presence and finishing placement in the race, and there is little interest in absent class members pursuing separate individual actions, hence the definition carve-out for the any persons that previously elected to pursue a civil action, the class action procedural mechanism is appropriate and a superior means of resolution.

COUNT I – NEGLIGENCE
(BAFFERT DEFENDANTS)

113. The Plaintiff incorporates by reference each of the paragraphs above as if fully set forth herein and further alleges as follows:

114. On and before May 1, 2021, Defendants BBRI and Baffert, individually, and/or by and through their agents, representatives, employees, vendors, ostensible agents, operators, owners, members, managers, officers and/or partners, were negligent in their care of Medina Spirit and his entry into the 147th running of the Kentucky Derby.

115. As a direct and proximate result of Defendants' negligence, Mr. Mattera and the Plaintiff Class suffered legal injuries and damages in the form of unsettled pari-mutuel wagers.

116. The actions, inactions, failures and omissions of Defendants BBRI and Baffert as described herein constitute intentional, reckless, malicious, wanton, grossly negligent, oppressive and/or fraudulent conduct and exhibited a reckless disregard for Mr. Mattera, the Plaintiff Class and other bettors on 147th running of the Kentucky Derby.

117. This conduct rises to a level that warrants the imposition of punitive damages pursuant to KRS 411.184 and 411.186.

COUNT II – NEGLIGENCE (DEFENDANT CDI)

118. The Plaintiff incorporates by reference each of the paragraphs above as if fully set forth herein and further alleges as follows:

119. On or about May 1, 2021, Defendant CDI by and through its agents, representatives, employees, vendors, ostensible agents, operators, owners, members, managers, officers and/or partners, were negligent in choosing to accept the entry of Medina Spirit for the Kentucky Derby from Defendants BBRI and Baffert and allowing Medina Spirit to race in the 147th running of the Kentucky Derby.

120. Defendant CDI by and through its agents, representatives, employees, vendors, ostensible agents, operators, owners, members, managers, officers and/or partners, was negligent in failing to maintain an adequate system for detecting and scratching ineligible horses prior to them competing in races it conducts, including Medina Spirit.

121. As a direct and proximate result of Defendant CDI's negligence, Mr. Mattera and the Plaintiff Class suffered legal injuries and damages in the form of unsettled pari-mutuel wagers.

122. The actions, inactions, failures and omissions of Defendant CDI as described herein constitute intentional, reckless, malicious, wanton, grossly negligent, oppressive and/or fraudulent conduct and exhibited a reckless disregard for Mr. Mattera, the Plaintiff Class and other bettors on the 147th running of the Kentucky Derby.

123. This conduct rises to a level that warrants the imposition of punitive damages pursuant to KRS 411.184 and 411.186.

**COUNT III – KENTUCKY CONSUMER PROTECTION
ACT VIOLATION (DEFENDANT CDI)**

124. The Plaintiff incorporates by reference each of the paragraphs above as if fully set forth herein and further alleges as follows:

125. The Kentucky Consumer Protection Act, KRS 367.110, *et seq.*, was enacted upon the finding “that the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services. . . .” KRS 377.120.

126. Defendant CDI conducts trade and/or commerce as defined in KRS 367.110 by advertising, offering and distributing wagers on Thoroughbred horse racing.

127. KRS 367.170 prohibits unfair, false, misleading or deceptive acts and/or practices in the conduct of any trade or commerce, including any unconscionable activities.

128. Defendant CDI’s actions and practices as described in this Complaint are unfair, false, misleading, deceptive and/or unconscionable, in violation of the Kentucky Consumer Protection Act.

129. KRS 367.220(1) allows any person who suffers any ascertainable loss of money or property as a result of unfair, false, misleading or deceptive acts and/or practices to bring an action to recover actual damages and equitable relief.

130. KRS 367.220(3) provides for attorney’s fees and costs.

131. As a direct and proximate result of Defendant CDI's violation of the Kentucky Consumer Protection Act, Mr. Mattera and the Plaintiff Class suffered ascertainable loss of money or property.

132. As a result, Mr. Mattera and the Plaintiff Class are entitled to recover actual damages including, but not limited to:

- a. Wagers made by them based on the following order of the first five finishers in the 147th running of the Kentucky Derby: Mandaloun (7), Hot Rod Charlie (9), Essential Quality (14), O Besos (6) and Midnight Bourbon (10), and based on the pari-mutuel principles as defined and described in 810 KAR 6:020 and 810 KAR 6:030E when applied to and calculated upon the pools for the 147th running of the Kentucky Derby; and
- b. Other equitable relief pursuant to the Kentucky Consumer Protection Act.

133. Mr. Mattera and the Plaintiff Class are further entitled to interest, attorney's fees and costs pursuant to the Kentucky Consumer Protection Act.

134. KRS 367.220(1) specifically does not limit a person's right to seek punitive damages where appropriate.

135. The actions, inactions, failures and omissions of Defendant CDI as described herein constitute intentional, reckless, malicious, wanton, grossly negligent, oppressive and/or fraudulent conduct and exhibited a reckless disregard for Mr. Mattera, the Plaintiff Class and other bettors on 147th running of the Kentucky Derby.

136. This conduct rises to a level that warrants the imposition of punitive

damages pursuant to KRS 411.184 and 411.186.

COUNT IV - UNJUST ENRICHMENT (DEFENDANT CDI)

137. The Plaintiff incorporates by reference each of the paragraphs above as if fully set forth herein and further alleges as follows:

138. Mr. Mattera and the Plaintiff Class conferred a benefit on Defendant CDI by making wagers on the 147th running of the Kentucky Derby.

139. Defendant CDI appreciated the benefit by receiving the wagers and retaining the revenues derived from them.

140. Retention of the money wagered and revenues derived constitutes an inequitable retention of the benefit without payment for its value.

141. The remedy for unjust enrichment is restitution.

142. Kentucky law entitles Mr. Mattera and the Plaintiff Class to restitution in the form restoration from Defendant CDI of the benefit conferred upon it.

143. Kentucky law requires Defendant CDI to disgorge the wagers and revenues, including interest, and return the money wagered to Mr. Mattera and the Plaintiff Class.

144. The actions, inactions, failures and omissions of Defendant CDI as described herein constitute intentional, reckless, malicious, wanton, grossly negligent, oppressive and/or fraudulent conduct and exhibited a reckless disregard for Mr. Mattera, the Plaintiff Class and other bettors on 147th running of the Kentucky Derby.

145. This conduct rises to a level that warrants the imposition of punitive damages pursuant to KRS 411.184 and 411.186.

COUNT V – PERMANENT INJUNCTIVE RELIEF (DEFENDANT CDI)

146. The Plaintiff incorporates by reference each of the paragraphs above as if fully set forth herein and further alleges as follows:

147. Defendant CDI by and through its agents, representatives, employees, vendors, ostensible agents, operators, owners, members, managers, officers and/or partners, failed to maintain an adequate system for detecting and scratching ineligible horses prior to them competing in races it conducts.

148. Defendant CDI's actions and practices as described in this Complaint are unfair, false, misleading, deceptive and/or unconscionable, in violation of the Kentucky Consumer Protection Act.

149. Mr. Mattera seeks to permanently enjoin Defendant CDI in a final judgment from further conducting Thoroughbred horse racing as follows:

- a. Without an adequate system for detecting and scratching ineligible horses prior to them competing in races it conducts;
- b. Without enforcing its own internal rule to refuse entries to trainers and owners that it knows or should know enter unqualified and ineligible horses into Thoroughbred horse races;
- c. Creation of a fund to settle wagers that become correct following the disqualification of a horse in its races;
- d. Maintenance and public disclosure of all veterinarian records of entrants in its races within 48 hours of the scheduled post time;
- e. Maintenance and public disclosure of records of medication violations of trainers who enter horses in its races within 48 hours of the

scheduled post time; and

- f. Removal of forced arbitration provisions as it relates to wagering customers.

WHEREFORE, the Plaintiff, individually, and on behalf of those similarly situated, respectfully requests and prays for the following relief:

1. The Court certify the Plaintiff's claims as a Kentucky class action pursuant to the applicable Kentucky Rules of Civil Procedure, names Plaintiff as the Lead Class Plaintiff and appoint Plaintiff's undersigned counsel as Class Counsel;

2. Judgment against the Defendants, jointly and severally, in an amount that will fully, justly, fairly and reasonably compensate Plaintiff and the Plaintiff class for the harm suffered and damage caused by Defendants.

3. Judgment against Defendants, jointly and severally, in an amount representing the payout of the winning pari-mutuel wagers as calculated but for Medina Spirit's presence and finishing placement in the race;

4. For a permanent injunction against Defendant CDI;

5. For a trial by jury;

6. For pre-judgment and post-judgment interest from the date of the damages incurred until paid;

7. For costs herein expended;

8. For the right to amend this Complaint to add other claims and parties as the proof allows; and

9. For all other necessary and proper relief to which Plaintiff may be entitled.

Respectfully submitted,

BAHE COOK CANTLEY & NEFZGER PLC

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Counsel for Plaintiff and Putative Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bettor Alleges Churchill Downs Erred in Allowing Medina Spirit into 2021 Kentucky Derby in Light of Trainer's Violation History](#)
