IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTICT OF KENTUCKY
FRANKFORT DIVISION

GARY AND MARY WEST,

Plaintiffs,

vs.

KENTUCKY HORSE RACING COMMISSION,
BARBARA BORDEN, Chief State Steward of Kentucky Horse Racing Commission,
BROOKS "BUTCH" BECRAFT, State Steward of Kentucky Horse Racing Commission,
TYLER PICKLESIMER, Churchill Downs Steward,
MARC A. GUILFOIL, Executive Director of Kentucky Horse Racing Commission,
FRANKLIN S. KLING, JR., Chairman of Kentucky Horse Racing Commission,
MARK SIMENDINGER, Vice-Chairman of Kentucky Horse Racing Commission,
J. GATEWOOD BELL, JR., Member of Kentucky Horse Racing Commission,
LARRY BISIG, Member of Kentucky Horse Racing Commission,
STUART E. BROWN II, D.V.M., Member of Kentucky Horse Racing Commission,
KERRY T. CAUTHEN, Member of Kentucky Horse Racing Commission,
KIKI COURTELIS, Member of Kentucky Horse Racing Commission,
PATRICK A. DAY, Member of Kentucky Horse Racing Commission,
DOUGLAS A. HENDRICKSON, Member of Kentucky Horse Racing Commission,
LESLEY ANN MAY HOWARD, Member of Kentucky Horse Racing Commission,
KENNETH A. JACKSON, Member of Kentucky Horse Racing Commission,
BRET JONES, Member of Kentucky Horse Racing Commission,
FOSTER NORTHROP, D.V.M., Member

COMPLAINT

Case No.: _____

of Kentucky Horse Racing Commission, :
J. DAVID RICHARDSON, M.D., Member :
of Kentucky Horse Racing Commission, :
:
Defendants. :
:

Plaintiffs Gary and Mary West ("Plaintiffs"), by and through their attorneys, hereby complain and allege against the Kentucky Horse Racing Commission (the "Commission"), Chief State Steward Barbara Borden ("Borden"), State Steward Brooks "Butch" Becraft ("Becraft"), Churchill Downs Steward Tyler Picklesimer ("Picklesimer," collectively with Borden and Becraft, the "Stewards"), Executive Director of the Commission Marc A. Guilfoil, Chairman of the Commission Franklin S. King, Vice Chairman of the Commission Mark Simendinger, Commission Member J. Gatewood Bell, Jr., Commission Member Larry Bisig, Commission Member Stuart E. Brown II, D.V.M, Commission Member Kerry T. Cauthen, Commission Member Kiki Courtelis, Commission Member Patrick A. Day, Commission Member Douglas A. Hendrickson, Commission Member Lesley Ann May Howard, Commission Member Kenneth A. Jackson, Commission Member Bret Jones, Commission Member Foster Northrop, D.V.M, and Commission Member J. David Richardson (collectively, "Defendants") as follows:

NATURE OF THE ACTION

1. The Kentucky Derby is the most prestigious horse race in the world. In 144 prior runnings of the Kentucky Derby no horse that crossed the finish line first had ever been disqualified because of a foul in the race. That changed when, in the 145th edition of the Kentucky Derby ("Derby"), number 7, Maximum Security, an undefeated three-year-old colt ridden by jockey Luis Saez and owned by Gary and Mary West, crossed the finish line first by 1 ¾ lengths only to be disqualified by the Stewards to seventeenth. The insubstantiality of the evidence relied on by the Stewards to disqualify Maximum Security, and the bizarre and unconstitutional process

to which Plaintiffs were subjected before and after the disqualification, are the subjects of this action.

2. The Stewards had the responsibility to supervise, control, and regulate the running of the Derby.

3. Either during the running of the Derby or after, the Stewards could have directed that a sign be flashed on the infield board informing the public that an inquiry into the running of the Derby was being conducted by them to determine whether a foul had been committed.

4. Having not observed any foul or interference, there was no inquiry by the Stewards into the running of the Derby.

5. The jockey (Flavien Prat) who finished on the horse who ran second (#20 Country House) to Maximum Security, despite the absence of any inquiry by the Stewards, lodged an objection against Maximum Security alleging interference.

6. The Stewards disallowed Prat's objection because it was meritless.

7. After Prat objected the jockey (Jon Court) on the horse who finished seventeenth in the Derby (#18 Long Range Toddy) lodged his objection against Maximum Security.

8. The Stewards sustained Court's objection even though that horse (Long Range Toddy) beat only two of the nineteen horses in the race.

9. As a result of Court's objection, Maximum Security was disqualified from first to seventeenth.

10. Country House was moved up from second to first as the result of the disqualification.

11. The Stewards announced their decision to disqualify Maximum Security in a room filled with representatives of the media and other persons.

12. The Stewards' statement was broadcast to millions of people around the world via television, the internet, and various streaming devices.

13. The statement said: "We interviewed affected riders" and "determined" that Maximum Security had "drifted out and impacted the progress of Number 1 (War of Will), in turn interfering with the 18 and 21 (Bodexpress)."

14. Bodexpress had finished fourteenth.

15. The Stewards said nothing as to whether the alleged foul altered the finish of the Derby or otherwise caused any horse to have been denied a better placement in the order of finish.

16. Neither the jockey (Tyler Gaffalione), owner, and trainer of War of Will, nor the jockey (Chris Landeros), owner, and trainer of Bodexpress, lodged any objection with the Stewards.

17. Neither Tyler Gaffalione, the rider of the horse the Stewards said was the most "affected" by Maximum Security, nor Chris Landeros, the jockey of Bodexpress, was interviewed by the Stewards.

18. When the Stewards said in their statement that they "interviewed affected riders," they were not truthful because neither Gaffalione nor Landeros was interviewed by the Stewards.

19. After announcing their statement, the Stewards refused to answer any questions.

20. Plaintiffs appealed the Stewards' decision to the Kentucky Horse Racing Commission in the hope of getting the Stewards' decision reviewed and reversed.

21. The Commission denied Plaintiffs' appeal telling them that "the law does not provide for an appeal" and "the stewards' findings of fact and determination" are "final" and not "subject to appeal."

22. As a result of the disqualification, Plaintiffs, the trainer, and the jockey of Maximum Security were denied any part of the $1,860,000 share of the Derby purse as well as a professional accomplishment that any horseman would cherish for life, plus the very substantial value that a Kentucky Derby winner has as a stallion.

23. The winner's share of the Derby purse was paid to the connections of Country House, even though Prat's objection was meritless, indeed frivolous.

24. Country House's connections received approximately $1.26 million more for being elevated to first than they would have received for second.

25. The betting public was adversely affected by the disqualification.

26. It is estimated that those who had wagered on Maximum Security to either win, place, or show, in exactas, trifectas, superfectas, doubles, pick 3s, pick 4s, pick 5s, or the Super High Five would have, but for the disqualification of Maximum Security, collected winnings estimated to be more than $100 million.

27. This action seeks to redress the Defendants' violations of Plaintiffs' Due Process Rights under Section 1 of the Fourteenth Amendment to the United States Constitution and to enforce their rights under the laws of the Commonwealth of Kentucky.

28. The remedy requested, *inter alia*, is a reversal of the decision disqualifying Maximum Security and reinstatement of the original order of finish confirming that Maximum Security is the official winner of the Derby who remains undefeated.

THE PARTIES

29. Plaintiffs are the owners of Maximum Security.

30. Plaintiffs are citizens of California.

31. Defendant Commission is an agency of the Commonwealth of Kentucky delegated the authority by Kentucky Revised Statutes ("KRS") Sections 230.215(2), 230.260(8), and 230.361(1) to regulate conditions under which horse racing is conducted in Kentucky, including prescribing and promulgating "necessary and reasonable administrative regulations."

32. The Commission's principal place of business is 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

33. Defendant State Steward Barbara Borden is the Chief Steward (as defined by the Kentucky Administrative Regulations ("KAR"), Title 810, Sections 1:001 and 1:004) of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Borden is sued in both her individual and official capacities.

34. At all times herein relevant Borden was one of three stewards who made the final order disqualifying Maximum Security ("Final Order").

35. Upon information and belief, Borden is a citizen of Kentucky.

36. Defendant State Steward Brooks "Butch" Becraft is a Steward (as defined by KAR, Title 810, Section 1:001) of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Becraft is sued in both his individual and official capacities.

37. At all times herein relevant Becraft was one of three stewards who made the Final Order.

38. Upon information and belief, Becraft is a citizen of Kentucky.

39. Defendant Churchill Downs Steward Tyler Picklesimer is a Steward (as defined by KAR, Title 810, Section 1:001) of Churchill Downs racetrack, which is located at 700 Central

Avenue, Louisville, Kentucky 40208. Picklesimer is sued in both his individual and official capacities.

40. At all times herein relevant Picklesimer was one of three stewards who made the Final Order.

41. Upon information and belief, Picklesimer is a citizen of Kentucky.

42. Defendant Marc A. Guilfoil ("Guilfoil") is the Executive Director of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Guilfoil is sued in both his individual and official capacities.

43. Upon information and belief, Guilfoil is a citizen of Kentucky.

44. Defendant Franklin S. Kling, Jr. ("Kling") is the Chairman of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Kling is sued in both his individual and official capacities.

45. Upon information and belief, Kling is a citizen of Kentucky.

46. Defendant Mark Simendinger ("Simendinger") is the Vice Chairman of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Simendinger is sued in both his individual and official capacities.

47. Upon information and belief, Simendinger is a citizen of Kentucky.

48. Defendant J. Gatewood Bell, Jr. ("Bell") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Bell is sued in both his individual and official capacities.

49. Upon information and belief, Bell is a citizen of Kentucky.

50. Defendant Larry Bisig ("Bisig") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Bisig is sued in both his individual and official capacities.

51. Upon information and belief, Bisig is a citizen of Kentucky.

52. Defendant Stuart E. Brown II, D.V.M ("Brown") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Brown is sued in both his individual and official capacities.

53. Upon information and belief, Brown is a citizen of Kentucky.

54. Defendant Kerry T. Cauthen ("Cauthen") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Cauthen is sued in both his individual and official capacities.

55. Upon information and belief, Cauthen is a citizen of Kentucky.

56. Defendant Kiki Courtelis ("Courtelis") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Courtelis is sued in both her individual and official capacities.

57. Upon information and belief, Courtelis is a citizen of Kentucky.

58. Defendant Patrick A. Day ("Day") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Day is sued in both his individual and official capacities.

59. Upon information and belief, Day is a citizen of Kentucky.

60. Defendant Douglas A. Hendrickson ("Hendrickson") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Hendrickson is sued in both his individual and official capacities.

61. Upon information and belief, Hendrickson is a citizen of Kentucky.

62. Defendant Lesley Ann May Howard ("Howard") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Howard is sued in both her individual and official capacities.

63. Upon information and belief, Howard is a citizen of Kentucky.

64. Defendant Kenneth A. Jackson ("Jackson") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Jackson is sued in both his individual and official capacities.

65. Upon information and belief, Jackson is a citizen of Kentucky.

66. Defendant Bret Jones ("Jones") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Jones is sued in both his individual and official capacities.

67. Upon information and belief, Jones is a citizen of Kentucky.

68. Defendant Foster Northrop, D.V.M. ("Northrop") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Northrop is sued in both his individual and official capacities.

69. Upon information and belief, Northrop is a citizen of Kentucky.

70. Defendant J. David Richardson, M.D. ("Richardson") is a Member of the Commission, which is located at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Richardson is sued in both his individual and official capacities.

71. Upon information and belief, Richardson is a citizen of Kentucky.

JURISDICTION AND VENUE

72. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 because there is complete diversity of citizenship between Plaintiffs, who are citizens of the State of California, and Defendants, who are citizens of the Commonwealth of Kentucky, and the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

73. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 because it arises under Section 1 of the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. §1983.

74. Pursuant to 28 U.S.C. 1367(a) there is supplemental jurisdiction because the state law claims asserted herein form part of the same controversy as the claims that are subject to this Court's original jurisdiction.

75. Venue is proper in this District pursuant to 28 U.S.C. §1391(b).

FACTUAL BACKGROUND

76. On May 4, 2019, nineteen horses competed against each other over a sloppy track in the 145th edition of the Derby ("Derby").

77. The original order of finish in the Derby was:

(1) Maximum Security;

(2) Country House;

(3) Code of Honor;

(4) Tacitus;

(5) Improbable;

(6) Game Winner;

(7) Master Fencer;

(8) War of Will;

(9) Plus Que Parfait;

(10) Win Win Win;

(11) Cutting Humor;

(12) By My Standards;

(13) Vekoma;

(14) Bodexpress;

(15) Tax;

(16) Roadster;

(17) Long Range Toddy;

(18) Spinoff;

(19) Gray Magician.

78. Shortly after the running of the Derby had concluded an objection was orally lodged with the Stewards by Flavien Prat, the jockey of second place finisher Country House ("Prat Objection"), against Maximum Security, the first place finisher.

79. The Stewards determined the Prat Objection was meritless.

80. At some point after the Prat Objection had been lodged, the circumstances of which have not been disclosed by Defendants to the public or Plaintiffs, a second objection was orally lodged with the Stewards against Maximum Security, and upon information and belief, also against War of Will, by the jockey of Long Range Toddy (Jon Court), even though the horse finished a badly beaten seventeenth ("Court Objection").

81. The public was not informed of the Court Objection prior to the announcement of the disqualification.

82. In two conversations with the Stewards that were initiated by the trainer of Maximum Security (Jason Servis), he was told of the Prat Objection, but he was not told of the Court Objection, though he was told that he had no right to appeal the Stewards' decision.

83. The original official chart of the Derby prepared by Equibase following the Derby did not report the Court Objection based on information received from the Stewards.

84. Based upon information and belief, approximately four days after Equibase posted the official Derby chart, the Stewards directed Equibase to change the chart to disclose the Court Objection.

85. Prior to the announcement of the disqualification, the public was informed only of the Prat Objection, not the Court Objection.

86. At no time did the Stewards disclose to the public that they would be conducting an inquiry into the running of the Derby.

87. At no time did the inquiry light on the infield tote board flash on.

88. During the deliberations the Stewards spoke directly with jockeys Prat and Court as well as with Luis Saez, the jockey of Maximum Security.

89. The Stewards did not speak directly or indirectly with jockey Tyler Gaffalione, the rider of War of Will, nor Chris Landeros, the jockey of Bodexpress.

90. During their deliberations the Stewards did not communicate, directly or indirectly, with any of the other jockeys who had ridden in the Derby.

91. After their deliberations the Stewards announced their Final Order disqualifying Maximum Security from first to seventeenth.

92. In announcing the disqualification of Maximum Security, Defendant Borden, accompanied by the other two Defendant Stewards, read a statement explaining why they had decided to disqualify Maximum Security:

> Hello, good evening. The riders of the 18 (Long Range Toddy) and 20 (Country House) horses in the Kentucky Derby lodged objections against the 7 (Maximum Security) horse, the winner, due to interference turning for home, leaving the 1/4 pole.
>
> We had a lengthy review of the race. We interviewed affected riders. We determined that the 7 horse drifted out and impacted the progress of Number 1 (War of Will), in turn, interfering with the 18 and 21 (Bodexpress). Those horses were all affected, we thought, by the interference.
>
> Therefore, we unanimously determined to disqualify Number 7 and place him behind the 18, the 18 being the lowest-placed horse that he bothered, which is our typical procedure.

93. The Stewards' statement is not supported by substantial evidence because, *inter alia*, it (a) does not cite to the rules governing fouls on which they relied; (b) fails to satisfy the essential elements under the rules governing fouls that need to be met as a precondition to a disqualification; (c) is materially false and misleading because the Stewards failed to disclose that they did not interview Tyler Gaffalione, the "affected" rider of War of Will, nor Chris Landeros, the "affected" rider of Bodexpress, and affirmatively misrepresented that they had "interviewed affected riders"; (d) fails to explain how, or whether, they had concluded that the order of finish of the Derby had been altered; and (e) fails to explain how, or whether, War of Will, Long Range

Toddy, or Bodexpress would have had a better placement in the final order of finish but for the alleged impact by Maximum Security.

94. After the brief moment of the alleged impact by Maximum Security leaving the 1/4 pole, the allegedly impacted horses had a lengthy and unobstructed running path throughout the entire length of the Churchill Downs stretch, which amounted to about 20% of the distance of the race.

95. During their stretch run War of Will faded to 8th, Long Range Toddy faded to 17th, and Bodexpress faded to 14th.

96. After reading their statement, the Stewards refused to answer any questions that might theoretically shed light on the evidence on which they relied, the reasoning behind their disqualification, how their decision to disqualify satisfied the rules governing fouls, and the deliberative process by which they unanimously came to the conclusion to disqualify Maximum Security.

97. In the prior 144 runnings of the Derby no horse that had crossed the finish line first had ever been disqualified because of alleged interference in the running of the race.

98. The disqualification of Maximum Security resulted in thousands of persons in the betting public who wagered either to win, place, or show, in doubles, exactas, trifectas, superfectas, pick 3s, pick 4s, pick 5s, or the Super High Five on Maximum Security being denied their right to collect more than an estimated $100 million in winnings they would have received had Maximum Security not been disqualified.

99. As a result of the disqualification, Plaintiffs were denied the winning owner's share of the $3 million Derby purse.

100. As a result of the disqualification, Maximum Security's trainer was denied approximately $186,000, representing the winning trainer's share of the $3 million Derby purse.

101. As a result of the disqualification, Maximum Security's jockey was denied approximately $186,000, representing the winning jockey's share of the $3 million Derby purse.

102. Even though the Stewards did not uphold the Prat Objection, Country House was elevated to first by virtue of Maximum Security's disqualification resulting in an approximately $1.26 million fortuitous increase in the purse award to the connections of Country House.

103. On May 6, 2019, Plaintiffs filed a complaint, protest, objection, and appeal (collectively "appeal") with the Commission requesting notice and an opportunity to be heard so that they could challenge the Stewards' Final Order.

104. Within a mere few hours after receiving the appeal, counsel for the Commission summarily notified Plaintiffs that "your request for an appeal is denied … because the law does not provide for an appeal" and because "the stewards' '[f]indings of fact and determination shall be final and shall not be subject to appeal.'" An attested copy of the Commission's May 6, 2019, letter denying the appeal is attached hereto as **Exhibit 1**.

105. The Commission's letter denying Plaintiffs' appeal attached the unpublished opinion in *March v. The Kentucky Horse Racing Commission*, No. 2013-CA-000900-MR, 2015 WL 3429763 (Ky. Ct. App. May 29, 2015) ("*March*").

106. *March* cites to and relies on KRS 13B.150, which confers judicial authority to review and reverse the Final Order disallowing Maximum Security in accordance with the standards set forth therein.

107. KRS 13B.150 provides as follows:

Conduct of judicial review.

(1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.

(2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Without support of substantial evidence on the whole record;

(d) Arbitrary, capricious, or characterized by abuse of discretion;

(e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;

(f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or

(g) Deficient as otherwise provided by law.

COUNT I

THE FINAL ORDER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

108. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

109. Pursuant to KRS 13B.150(2)(c) this Court has the power to reverse the Defendants' Final Order if it finds the Order is "[w]ithout support of substantial evidence on the whole record."

110. Section 12 of Title 810, Section 1:016 of the Kentucky Administrative Regulations ("KAR") provides:

> Section 12. Fouls. A leading horse if clear is entitled to any part of the track. If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul. … If in the opinion of the stewards a foul alters the finish of a race, an offending horse may be disqualified by the stewards.

111. At all times relevant during the running of the Derby Maximum Security was the "leading horse" "entitled to any part of the track" "if clear."

112. The Stewards' statement announcing to the public the entry of the Final Order disqualifying Maximum Security is not supported by substantial evidence because the Stewards did not follow or apply the elements and requirements of Section 12 that needed to be satisfied as a precondition to the disqualification of Maximum Security:

a. The record fails to provide substantial evidence, indeed any evidence at all, explaining whether and why the Stewards had concluded that Maximum Security as a "leading horse" was not "entitled to any part of the track" at the time of the alleged impact with War of Will;

b. The record fails to provide substantial evidence, indeed any evidence at all, explaining whether and why the Stewards had determined that Maximum Security was not "clear" of War of Will and, therefore, "entitled to any part of the track" at the time Maximum Security allegedly "drifted out and impacted the progress of" War of Will;

c. The record fails to provide substantial evidence, indeed any evidence at all, explaining why and how, in the absence of War of Will's owner, trainer, or jockey having lodged any objection with the Stewards, the Stewards determined that Maximum Security "drifted out" and "impacted the progress of" War of Will;

d. The record fails to provide substantial evidence, indeed any evidence at all, explaining why the Stewards did not communicate with the owner, trainer, or jockey of War of Will and Bodexpress to determine why they all failed, despite having standing to do so under 810 KAR 1:017 Section 1, to lodge any objection against Maximum Security;

e. The record fails to provide substantial evidence, indeed any evidence at all, explaining why the Stewards did not communicate with Tyler Gaffalione, the jockey of War of Will, and Chris Landeros, the jockey of Bodexpress, to determine whether Maximum Security was "clear" at the time the horse allegedly "drifted out and impacted the progress of" War of Will;

f. The fact that Court objected against War of Will's rider, Tyler Gaffalione, together with the video of the interference that was viewed by the Stewards provides clear and convincing evidence that the initiating factor of the

interference was the careless ride of Gaffalione and not the ride by Luis Saez on Maximum Security as follows:

i. Gaffalione repeatedly restrained War of Will for a significant length of time, causing the horse to resist the restraint by throwing his head while on the rail, down the backstretch, into the turn, and approaching the quarter pole;

ii. Near the quarter pole Gaffalione attempted to move War of Will from behind Maximum Security in the hope that an opening would materialize to the outside of Maximum Security, but which did not;

iii. In moving off the rail, Gaffalione bulled his way into Long Range Toddy, setting off a chain reaction of bumps by Long Range Toddy into Bodexpress and then, in turn, into Country House;

iv. In reaction to being bumped, Country House squeezed Bodexpress, causing Bodexpress to bump Long Range Toddy back into War of Will

v. Upon being bumped, War of Will, finding no opening to run through, bullied his way through horses, then interfered with the hindquarters of Maximum Security on five separate occasions, inflicting cuts and abrasions to Maximum Security's hind quarters;

vi. Throughout the bumping and striking incidents, all of which occurred behind him, Maximum Security was entitled as the leading horse to a path on the track of his choosing;

vii. After the exchange of bumps and strikes, none of which involved Maximum Security except as the victim of interference by War of Will, all of the affected horses had a clear and unobstructed run for the remaining 20% of

the race, during which time Country House tried to, but could not, pass Maximum Security, War of Will faded to 8th, Bodexpress dropped to 14th, and Long Range Toddy tired to 17th;

viii. It has been acknowledged by virtually everyone that Maximum Security's determined run in the remaining 20% of the race after having his hindquarters nearly taken out from under him by War of Will proved Maximum Security to be the best horse and deserving winner of the Derby and proves that there was no substantial evidence for Maximum Security to have been disqualified for interference he did not cause and which, in any event, did not alter the outcome of the race.

g. The record fails to provide substantial evidence, indeed any evidence at all, explaining why the Stewards did not communicate with Tyler Gaffalione, the jockey of War of Will, or Chris Landeros, the jockey of Bodexpress, to determine whether, because Maximum Security had allegedly drifted out into War of Will, it denied War of Will and Bodexpress what would have been a better finish in the Derby;

h. The record fails to provide substantial evidence, indeed any evidence at all, explaining why the foul allegedly committed by Maximum Security altered the order of finish of the Derby and/or that the three horses allegedly impacted by Maximum Security would have had a better placement in the order of finish than 8th for War of Will, 14th for Bodexpress, and 17th for Long Range Toddy;

i. The record fails to provide substantial evidence, indeed any evidence at all, explaining why, despite having the discretion under Section 12 not to disqualify

Maximum Security even if a race altering foul had occurred, the Stewards nonetheless decided to disqualify Maximum Security in spite of the fact that the Stewards did not flash the inquiry sign; in spite of the fact that in the 144 prior runnings of the Derby no winning horse had ever been disqualified under similar or more egregious circumstances that occurred during the running of the race; in spite of the fact that the Prat Objection had been disallowed; and in spite of a large field of nineteen horses competing over a sloppy track;

j. The record fails to provide substantial evidence, indeed any evidence at all, why the Stewards declined to answer any questions from either the media, public, or connections of Maximum Security concerning their deliberative process or their reasons and analysis for ordering the disqualification of Maximum Security including, but not limited to, any prior business or social relationships they may have had with any of the owners, trainers, or jockeys of any of the impacted horses, and any communications with third parties during their deliberations, such as legal counsel, Kentucky Commissioners, their agents or employees and/or others whom the betting and general public have the right to know about in the interest of transparency and integrity.

113. There is no substantial evidence to support the Stewards' conclusion that Maximum Security committed a foul during the running of the Derby.

114. There is no substantial evidence that even if Maximum Security had committed a foul, the foul altered the order of finish and/or denied any of the horses allegedly impacted by the alleged foul a better placement in the order of finish.

115. There is no substantial evidence to support the Stewards' exercise of discretion to deviate from the prior 144 years of Kentucky Derby races to disqualify Maximum Security as the result of a foul allegedly committed during the running of the race.

116. Because the record shows the Stewards failed to follow the requirements of KAR Title 810, Section 1:016, Section 12 governing fouls and because there is no substantial evidence to support the Final Order disqualifying Maximum Security the Final Order should be reversed.

COUNT II

THE DISQUALIFICATION OF MAXIMUM SECURITY VIOLATES PLAINTIFFS' FOURTEENTH AMENDMENT RIGHTS TO PROCEDURAL DUE PROCESS.

117. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

118. Pursuant to KRS 13B.150(2)(a) this Court has the power to reverse the Final Order of disqualification if it finds that the order is "[i]n violation of constitutional or statutory provisions."

119. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits "any State" from depriving "any person of life, liberty, or property, without due process of law."

120. The Commission members and Stewards are officials of Kentucky and state actors under the law.

121. As a result of Maximum Security crossing the finish line first in the Derby, Plaintiffs had a property interest based on their reasonable expectation and legitimate claim of entitlement to any and all of the financial and other benefits that they would otherwise have received as the result of Maximum Security winning the Derby.

122. Plaintiffs' reasonable expectation and legitimate claim of entitlement is based on the explicit mutual understanding that Plaintiffs' entitlement to all of the benefits of Maximum Security crossing the finish line first in the Derby could only be denied if Defendants first complied with (which they did not) all applicable statutes and regulations, especially KAR Title 810, Section 1:016, Section 12, to conclude that there was substantial evidence both that a foul had been committed by Maximum Security and that the foul proximately altered the outcome of the race and/or that the impacted horses would have had a better placement in the order of finish but for the foul.

123. Plaintiffs' reasonable expectation and legitimate claim of entitlement is further premised on the fact that in the 144 prior runnings of the Derby no horse that had crossed the finish line first had ever been disqualified by the Commission, the Stewards, or their predecessors as the result of a foul during the running of the race.

124. The process followed by the Stewards in disqualifying Maximum Security failed to comport with the minimum requirements of Procedural Due Process under the Fourteenth Amendment in the following ways:

a. Relying on 810 KAR 1:017, Section 4(1)(b) and (c), and Section 4(2) the Defendants refused to allow Plaintiffs to appeal the Stewards' Final Order to the Commission or in any other way to administratively challenge the Final Order disqualifying Maximum Security;

b. Despite the fact that no objection had been lodged by the owner, trainer, or jockey of War of Will or Bodexpress, the Stewards unilaterally determined that Maximum Security had committed a foul and then lied to the public that they interviewed the "affected riders" when they knew they did not interview

War of Will's jockey, Tyler Gaffalione, nor Chris Landeros, Bodexpress's rider;

c. The Stewards determined that Maximum Security had committed a foul on an *ex parte* basis by failing to give Luis Saez, the jockey of Maximum Security, notice that they were examining whether Maximum Security fouled War of Will and Bodexpress nor did they give him an opportunity to respond to the Stewards' secret deliberations into whether Maximum Security had fouled War of Will or Bodexpress;

d. The Stewards failed to notify the public of the Court Objection prior to the announcement of the disqualification, as a result of which the public interest was harmed and the integrity of the Derby's outcome was put under a cloud;

e. The Stewards failed to notify the public that it was conducting a general inquiry into the running of the Derby; and

f. The Stewards deprived Plaintiffs and the public of their right to know the reasons for the disqualification by falsely claiming to have interviewed the "affected riders" even though they did not interview either Tyler Gaffalione or Chris Landeros, by submitting a statement announcing the disqualification that was not supported by substantial evidence, and by refusing to answer any questions from the public or Plaintiffs about the reasons for the disqualification.

125. The acts and conduct of Defendants as aforesaid harmed the public and damaged the integrity of thoroughbred racing in the most visible and important horse race in the world.

126. The acts and conduct of Defendants as aforesaid deprived Plaintiffs of their Fourteenth Amendment right not to be deprived of their property without due process of law.

127. Title 810 KAR 1:017, Section 4(1)(b) and (c) and Section 4(2) are unconstitutional as being in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

COUNT III

THE FINAL ORDER DISQUALIFYING MAXIMUM SECURITY EXCEEDS THE STATUTORY AUTHORITY DELEGATED TO THE COMMISSION.

128. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

129. Pursuant to KRS 230.260(8) the Commission has been delegated "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state…."

130. Pursuant to the legislative authority delegated to the Commission to promulgate "necessary and reasonable administrative regulations" the Commission granted plenary and unreviewable powers to the Stewards to hear and decide "all matters occurring during and incident to the running of a race."

131. Section 4(1) and (2) of Title 810, Section 1:017, of the Kentucky Administrative Regulations provides:

(1) The stewards shall:

(a) Make all findings of fact as to all matters occurring during and incident to the running of a race;

(b)Determine all objections and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and

(c) Determine the extent of disqualification, if any, of horses in a race for a foul committed during the race.

(2) Findings of fact and determination shall be final and shall not be subject to appeal.

132. Pursuant to KRS 13.150(2)(b) this Court has the power to reverse the Final Order of disqualification if it finds the order is "in excess of the statutory authority" delegated to the Commission.

133. Section 4(1) and (2) of Title 810, Section 1:017 of the Kentucky Administrative Regulations exceeds the Commission's statutory authority because it is not a "necessary and reasonable" regulation.

134. Section 4(1) and (2) of Title 810, Section 1:017 of the Kentucky Administrative Regulations is neither "necessary" nor "reasonable" because it confers on the Stewards the absolute, unchecked, unreviewable, and non-appealable power to investigate, prosecute, and adjudicate "all matters occurring during and incident to the running of a race."

135. The Plaintiffs' appeal to the Commission of the Stewards' Final Order disqualifying Maximum Security was denied, according to the Commission, for the reason that "the law does not provide for an appeal" as "the stewards' '[f]indings of fact and determination shall be final and shall not be subject to appeal.'"

136. By the Commission promulgating Section 4(1) and (2) of Title 810, Section 1:017 of the Kentucky Administrative Regulations the Commission abdicated its delegated statutory authority by unreasonably, unnecessarily, and unconstitutionally merging in the Stewards the absolute, unchecked, unreviewable, non-appealable, and inherently conflicting power to investigate, prosecute, and judge "all matters occurring during and incident to the running of a race."

137. Section 4(1) and (2) of Title 810, Section 1:017 of the Kentucky Administrative Regulations is not only in excess of the Commission's statutory authority to promulgate "necessary and reasonable" regulations but it also violates the fundamental postulate of natural justice that "no-one should be a judge in his own case," derived from the ancient Latin phrase "Nemo judex in causa sua."

138. Section 4(1) and (2) of Title 810, Section 1:017 of the Kentucky Administrative Regulations both on its face and as applied, is unconstitutional because it violates the Due Process Clause of the Fourteenth Amendment.

COUNT IV

THE STEWARDS ABUSED THEIR DISCRETION BY ORDERING THE DISQUALIFICATION OF MAXIMUM SECURITY.

139. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

140. Pursuant to KRS 13B.150(2)(d) this Court has the power to reverse the Final Order of disqualification if it finds that Defendants "abused their discretion" by ordering the disqualification of Maximum Security.

141. Pursuant to Title 810, Section 1:016, Section 12 of the Kentucky Administrative Regulations, entitled "Fouls," the Stewards, upon concluding both that a foul has been committed and that the foul altered the finish of a race, "may" or may not in their discretion order the disqualification of the offending horse.

142. The Stewards abused their discretion in disqualifying Maximum Security, even if a foul had been committed that altered the finish of the Derby, for the following reasons:

a. No horse in the prior 144 year history of the Derby that had crossed the finish line first had ever been disqualified as the result of a foul during the running of

the race, even though some prior Kentucky Derby winners had adversely impacted the progress of other horses;

b. Throughout the running of the 145th Derby other horses running over the sloppy track had drifted out, were crowded, were checked, got taken up, and/or otherwise impacted the progress of horses but were not disqualified;

c. Maximum Security's entitlement as the leading horse to a path of the jockey's choosing was adversely impacted by War of Will's jockey (i) bulling his way through from behind Maximum Security; (ii) bumping Long Range Toddy and striking Maximum Security while Maximum Security stayed in his lane; (iii) engaging in an unsuccessful and highly risky effort to get out from behind horses and go through an anticipated opening that was not there and never materialized; (iv) interfering with Maximum Security's progress; and (v) causing Maximum Security to sustain cuts and bruises on his hindquarters;

d. Despite there being approximately 20% of the race remaining to be run immediately after the alleged foul occurred, each of the three horses allegedly impacted by Maximum Security not only failed to gain any ground on Maximum Security but were outrun by him to the point where each of the three horses lost positions, weakened and/or significantly tired to finish 8th, 14th, and 17th respectively; and

e. In exercising their discretion the Stewards failed to take into account the equitable maxim that where there is no harm there is no foul.

COUNT V

THE FINAL ORDER OF THE STEWARDS DISQUALIFYING MAXIMUM SECURITY IS DEFICIENT UNDER THE LAW.

143. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

144. Pursuant to KRS 13B.150(2)(g) this Court has the power to reverse the Final Order of disqualification if it finds that the Stewards' decision to disqualify Maximum Security was "[d]eficient as otherwise provided by law."

145. The acts and conduct of Defendants as aforesaid are "[d]eficient as otherwise provided by law."

COUNT VI

THE MEANING OF THE WORD "CLEAR" AS USED IN SECTION 12 OF KENTUCKY ADMINISTRATIVE REGULATION TITLE 810 SECTION 1:016 IS UNCONSTITUTIONALLY VAGUE AND, THEREFORE, VOID.

146. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

147. Vague words in a regulation are void and of no effect because vague regulations violate the Due Process Clause of the Fourteenth Amendment.

148. Section 12 of 810 KAR 1:016 is entitled "Fouls" and provides in its first sentence that "[a] leading horse if clear is entitled to any part of the track."

149. The first sentence of Section 12, when read in context with the remainder of Section 12, qualifies and overrides the remainder of Section 12's text in that if a "leading horse" is "clear" it cannot possibly commit a foul by drifting out or swerving for the reason that it is entitled to run on any path of its choosing from the rail to the outermost part of the track.

150. Despite the material significance of the word "clear" in relation to whether Maximum Security had committed a foul, "clear" is not defined anywhere in Title 810, even though Title 810 (Section 1:001) specifically defines 85 other words.

151. At the time Maximum Security allegedly "drifted out" and allegedly "impacted the progress of Number 1 (War of Will), in turn, interfering with the 18 and 21 (Bodexpress)" "leaving the 1/4 pole," he was the indisputably "leading horse" and, therefore, entitled under Section 12 "to any part of the track" "if clear."

152. Maximum Security, as the "leading horse" at the time of the alleged impact, could not possibly have committed a foul under Section 12 of 810 KAR 1:016 if, at the time he allegedly "drifted out" and allegedly "impacted the progress of Number 1 (War of Will), in turn, interfering with the 18 and 21 (Bodexpress)," he was determined by the Stewards to be "clear."

153. The Stewards' interpretation of the word "clear" in Section 12 is an essential precondition that is absolutely necessary in the decision-making process as to whether or not to disqualify Maximum Security on the basis of a foul having been committed.

154. The word "clear" on its face, and in the context in which it is used, and as applied to Plaintiffs is ambiguous.

155. The interpretation by the Stewards of the word "clear" in Section 12 was not explained by the Stewards when they disqualified Maximum Security and, therefore, no one knows how or whether the Stewards interpreted that pivotal word.

156. The word "clear" as used in Section 12 is vague as applied to Plaintiffs because its meaning is undefined and is left entirely to the subjective interpretation and whims of the Stewards; it has no limitations; it invites arbitrariness; it encourages secret deliberations; and it is otherwise standardless.

157. Section 12 is unconstitutional because it violates Plaintiffs' Fourteenth Amendment Due Process Liberty and Property rights.

COUNT VII

DEFENDANTS VIOLATED 42 U.S.C. §1983.

158. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

159. Pursuant to 42 U.S.C. §1983, "[e]very person who, under color of any statute, ordinance, [or] regulation … of any State … subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress … ."

160. As set forth above, Defendants "under color" of Kentucky statutes and/or regulations have deprived Plaintiffs of their "rights, privileges, or immunities secured by the Constitution and laws."

WHEREFORE, Plaintiffs respectfully request judgment as follows:

a. Reversing and vacating the Defendants' Final Order disqualifying Maximum Security;

b. Declaring and adjudicating that Maximum Security is the official winner of the 145th Kentucky Derby, instructing the Defendants to reinstate the original order of finish and revise the complete order of finish accordingly, and redistribute all purse monies in accordance with the revised order of finish;

c. Instructing Defendants to take any and all action that may be necessary to recognize and confirm Maximum Security as the official winner of the 145th Kentucky Derby;

d. Declaring Kentucky Administrative Regulation Title 810, Section 1:016, Section 12 (entitled "Fouls") unconstitutional as being in violation of the Due Process Clause of the Fourteenth Amendment;

e. Declaring Kentucky Administrative Regulation Title 810, Section 1:017, Sections 4(1) and (2) unconstitutional as being in violation of the Due Process Clause of the Fourteenth Amendment;

f. Awarding Plaintiffs counsel fees, costs of suit, and such other and further relief as the Court deems fair, just, and proper.

Pursuant to KRS 13B.150(1), Plaintiffs respectfully request oral argument and permission to submit a written brief consistent with the Court's schedule.

Dated: Lexington, Kentucky
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