

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ILLINOIS THOROUGHBRED
HORSEMEN’S ASSOCIATION, INC.,

Plaintiff,

v.

ILLINOIS THOROUGHBRED BREEDERS
AND OWNERS FOUNDATION,
ARLINGTON INTERNATIONAL
RACECOURSE, LLC, and ILLINOIS
RACING BOARD,

Defendants.

)
) **IMMEDIATE INJUNCTIVE**
) **RELIEF REQUESTED**
)
)
) Case No. 16-cv-4394
)
) **JURY DEMAND REQUESTED**
)
)

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff, the Illinois Thoroughbred Horsemen’s Association, Inc. (“ITHA”), by its undersigned attorneys, and for its Verified Complaint against Defendants Illinois Thoroughbred Breeders and Owners Foundation, Arlington International Racecourse, LLC, and the Illinois Racing Board (collectively, “Defendants”), states as follows:

INTRODUCTION

1. This case involves the protection of owners and trainers of thoroughbred horses throughout the state of Illinois. For the past 20 years, the ITHA has represented owners and trainers of thoroughbred horses (collectively, “horsemen”) in northern Illinois, and in this capacity has negotiated and executed contracts with Chicago-area racetracks that protect the collective interests of Illinois horsemen.

2. Despite the ITHA’s established history of representing horsemen in contract negotiations with Arlington International Racecourse, Defendant Illinois Thoroughbred Breeders

and Owners Foundation (“ITBOF”), in collusion with Arlington International Racecourse, LLC (“Arlington”) and the Illinois Racing Board (“IRB”), has unlawfully and backhandedly attempted to usurp the ITHA as the horsemen’s lawful representative body.

3. The Defendants have colluded to unlawfully replace the ITHA with a “sweetheart” organization, the ITBOF, which will demand less of the racetracks at the bargaining table and neglect to adequately protect the interests of horsemen before the IRB and in the Illinois legislature, to the benefit of racetracks like Arlington and to the detriment of horsemen.

4. Earlier this year, as has been done for the past two decades, the ITHA and Arlington began negotiating a contract for the upcoming 2016 summer racing season at Arlington. Negotiations were initially unsuccessful.

5. The IRB ordered ITHA and Arlington to submit to mediation in an attempt to work out a contract. The IRB Chairman, Jeffrey Brincat, appointed himself as the mediator. After two attempts at mediation, the ITHA and Arlington were unable to come to agreement. Despite the ITHA’s efforts to continue negotiating with Arlington, Arlington has refused to engage in reasonable, good-faith negotiations with the ITHA.

6. Meanwhile, the Defendants have colluded among themselves to have the ITBOF usurp the ITHA’s role in negotiating with Arlington in order to undermine horsemen and advance Arlington’s agenda.

7. On April 7, 2016, the ITBOF Board of Directors held a meeting. Despite the purportedly ongoing mediation with the ITHA, representatives from Arlington were in attendance. Mr. Brincat, the supposed mediator, was also in attendance.

8. Upon information and belief, during this meeting, through an engineered vote by secret ballot endorsed and facilitated by Defendants, the ITBOF passed a resolution stating that it would indeed attempt to supplant ITHA and take over negotiations on behalf of the horsemen with Arlington.

9. The 2016 summer racing season at Arlington begins May 6, 2016. Upon information and belief, the ITBOF and Arlington, with the IRB's blessing, intend to execute a contract before the summer season begins.

10. The Defendants' collusive action constitutes an unlawful attempt to usurp the ITHA as the horsemen's group supported by the horsemen and authorized under state and federal law to contract with Arlington. The ITHA brings this action to prevent such attempt and ensure that the interests of thoroughbred horsemen in Illinois are adequately protected, as they have been by the ITHA for the past two decades.

PARTIES

11. Plaintiff ITHA is an Illinois not-for-profit corporation with its registered address at 7301 W. 25th St. #321, North Riverside, Illinois 60546.

12. Defendant Illinois Thoroughbred Breeders and Owners Foundation is an Illinois not-for-profit corporation with its principal place of business at 120 W. 22nd Street, Ste. 100, Oak Brook, Illinois 60523.

13. Defendant Arlington International Racecourse, LLC is a limited liability company organized and existing under the laws of the state of Illinois with its principal place of business at 2200 W. Euclid, Arlington Heights, Illinois 60007. Arlington operates the Arlington International Racecourse and is licensed by the state to conduct live horseracing and pari-mutuel wagering at Arlington Park.

14. Defendant Illinois Racing Board (“IRB”) is an Illinois state agency created in 1933 that enforces the Illinois Horse Racing Act and promulgates rules that govern horseracing in Illinois. The IRB does not have regulatory jurisdiction over the ITHA or ITBOF.

JURISDICTION AND VENUE

15. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over those claims herein that arise under the Interstate Horseracing Act of 1978, 15 U.S.C. § 3001 *et seq* and 42 U.S.C. § 1983.

16. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over those claims herein that arise under state law, as those state law claims form part of the same case or controversy as the federal claims arising under the Interstate Horseracing Act and § 1983.

17. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) because the Defendants reside within this District and a substantial part of the events giving rise to the claims herein occurred in this District.

FACTUAL BACKGROUND

Thoroughbred Horseracing in Illinois

18. Thoroughbred horseracing is a critical part of Illinois’ tourism and agribusiness industries, producing substantial revenue for racetracks, horse owners, trainers, and the state itself. Horse owners and trainers are known as “horsemen.”

19. The principal source of revenue for the horseracing industry derives from pari-mutuel¹ wagering at in-state racetracks, out-of-state racetracks, and off-track betting sites, including legal betting on live races on the internet and through advanced-deposit wagering

¹ Pari-mutuel wagering is a “system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator.” 15 U.S.C. § 3002(13).

companies. Bettors can place wagers on races occurring at Illinois racetracks from out-of-state sites to which the Illinois races are simulcasted, *i.e.* broadcasted from the Illinois track to the out-of-state sites.

20. In 2015, the total handle, *i.e.* the amount wagered on horse races, for Illinois thoroughbred racing amounted to approximately \$340 million. Approximately \$285 million of that handle came from simulcasting.²

21. Pursuant to Illinois law, a percentage of the total handle is set aside for the “purse account,” which is the prize money paid to winning owners. The purse account is then divided between the owners of the horses placing in the top five of any given race and their horsemen’s organization. The percentage of the purse that goes to the horsemen’s organization is agreed upon by contract between the horsemen’s organization and the racetrack.

22. The horsemen’s organization, in turn, uses its funding to protect horsemen’s interests (legally and legislatively) as well as to promote and support philanthropy for horsemen. In Illinois, the ITHA does not collect dues from its members and its share of the purse account is its sole source of funding. Limiting the funds to the horsemen’s organization would limit horsemen’s ability to effectively protect horsemen’s interests.

Horsemen and the IHA

23. Horsemen are a vital part of the industry. They have the biggest capital investment in the horseracing industry and employ many people in their “backstretch family,” including grooms, veterinarians, hotwalkers, farriers, and jockeys. These people depend upon horsemen and the revenue they derive from the handle for their livelihood. The horsemen produce the daily races on which betting is conducted.

² See Illinois Racing Board 2015 Annual Report, p. 8, available at <http://www.illinois.gov/irb/Documents/AnnualReports/AR2015.pdf>

24. Indeed, horsemen's prominent stature in the industry is evidenced by the protections afforded them by Illinois state and federal law.

25. For example, the Interstate Horseracing Act ("IHA") is a federal law that regulates interstate off-track wagering on horseraces. Before a racetrack may simulcast its live races to out-of-state locations so that its races can be wagered on by out-of-staters, it must have an agreement with its "horsemen's group" in which the horsemen's group provides consent to such simulcasting and interstate wagering. *See* 15 U.S.C. § 3004(a).

26. The IHA defines "horsemen's group" as "the group which represents the majority of owners and trainers racing [at a given racetrack], for the races subject to the interstate off-track wager on any racing day." For the past two decades, the ITHA has been the recognized horsemen's group for the Chicago-area racetracks.

27. Given the lucrative nature of out-of-state simulcast wagering for the racetracks, the racetracks' agreements with horsemen's groups are essential to the success of the racetrack, the horsemen and their employees, and, indeed, the industry.

The ITHA

28. The ITHA is a not-for-profit corporation that represents thoroughbred owners and trainers in the state of Illinois.

29. For more than 20 years, the ITHA, in its capacity as the exclusive representative of horsemen in northern Illinois, has negotiated and entered into contracts with Arlington. These contracts cover, among other things, the percentage of the purse account distributed to the ITHA and provide the ITHA's consent to simulcasting and interstate wagering. ITHA's current contract with Arlington ends on April 22, 2016.

30. The ITHA, as the Illinois horsemen's representative, has also negotiated and executed such contracts with Hawthorne Racecourse, which is a racetrack operating in Cicero, Illinois. The ITHA is under contract with Hawthorne for the current spring racing season as well as the fall 2016 season.

31. The ITHA maintains approximately 2,000 membership cards signed by Illinois trainers and owners that certify that the signatory is a member of the ITHA and appoints the ITHA to act as the sole and exclusive agent and representative for the purpose of negotiating and executing contracts with thoroughbred racetracks in the Chicago area. *See, e.g., Exhibit 1.*

32. In addition to negotiating and executing contracts with the Illinois racetracks, the ITHA provides several other benefits to the horsemen of Illinois, including:

- a. Lobbying for horsemen's interests in the Illinois legislature;
- b. Representing the horsemen's collective interests before the IRB;
- c. Providing college scholarships;
- d. Providing assistance with healthcare and dental insurance;
- e. Funding and administrating the Galloping Out program, which rescues, rehabilitates, retrains, and re-homes retired racing thoroughbreds;
- f. Reimbursing burial costs for needy backstretch workers; and
- g. Representing the interests of Illinois horsemen among national industry groups and organizations and Congress.

33. To provide these important benefits to Illinois horsemen, as noted above, the ITHA receives all of its funding from its negotiated share of the purse account and its statutory share of the handle.

34. The ITHA's Board of Directors is fully comprised of Illinois-licensed thoroughbred owners and trainers.

35. For more than 20 years, the ITHA has represented all licensed horsemen who race in Hawthorne and Arlington Park. Because all licensed horsemen are members of the ITHA, they all are entitled to the benefits and services provided by the ITHA.

36. The ITHA has been the exclusive thoroughbred horsemen's group responsible for contracting with the two Illinois racetracks in northern Illinois—Arlington and Hawthorne—for more than two decades.

The ITBOF

37. The ITBOF is a not-for-profit corporation that represents horse breeders in the state of Illinois. The breeders produce the animals that the owners purchase for racing purposes. Under the Illinois Horse Racing Act (discussed further below), the ITBOF is responsible for activities focused on horse breeding, including verifying and distributing Breeders Awards earned at racetracks throughout Illinois.

38. The ITBOF offers “premium memberships” for approximately \$100. Premium members receive benefits including subscriptions to breeding-related magazines, discounts on breeding-related products, and the right to vote in annual ITBOF board elections. Upon information and belief, there are approximately 150 premium ITBOF members. One does not have to be licensed by the Illinois Racing Board to be a premium member of the ITBOF. In contrast, each member of the ITHA is licensed by the Racing Board.

39. Though the ITBOF purports to represent all Illinois horsemen pursuant to a recent amendment in its bylaws, this amendment is effectively meaningless. The ITBOF is not a horsemen's group, and it has *never* contracted on behalf of horsemen at Arlington, Hawthorne, or anywhere else.

40. The ITBOF does not provide nearly the amount of services and benefits to its members as the ITHA does, either. Indeed, Daniel Sullivan, the ITBOF president, has stated that funding for the ITBOF would be “appreciably” less than that of the ITHA.³

41. The ITBOF’s Board of Directors is not elected by horsemen. Rather, only those who pay the \$100 for a premium membership may vote for ITBOF Directors.

42. Further, the ITBOF’s Board of Directors is mainly comprised of breeders. Not all of the ITBOF’s Directors are licensed horsemen, either. Thus, the ITBOF’s Board is not exemplary of the horsemen it purports to represent.

Illinois Law Recognizes the ITHA as the Horsemen’s Representative

43. In 1975, the Illinois legislature enacted the Illinois Horse Racing Act (230 ILCS § 5/1 *et seq.*).

44. The Illinois Horse Racing Act created the IRB to regulate the Illinois horseracing industry.

45. Horseracing is a highly regulated industry. In addition to the Illinois Horse Racing Act’s detailed provisions regarding many minute aspects of the horseracing industry, the IRB promulgates numerous regulations.

46. The Illinois Horse Racing Act implicitly recognizes the ITHA’s predecessor organization, the Chicago Division - Horsemen’s Benevolent Protective Association, as the authorized horsemen’s group in Illinois. In doing so, it mirrors the requirements of federal law as set out in the IHA. For instance, in appointing members to the Illinois Thoroughbred Breeders Fund Advisory Board, the Act states that the Board shall consist of, among others: “2 representatives of the Horsemen’s Benevolent Protective Association *or any successor*

³ See Marcus Hersh, *Horsemen groups vie for control at Arlington*, DAILY RACING FORUM, April 8, 2016, available at <http://www.drf.com/news/horsemen-groups-vie-control-arlington>

organization established in Illinois comprised of the largest number of owners and trainers.” 230 ILCS § 5/30(f) (emphasis added).

47. In 2014, the IRB, in keeping with the highly regulated nature of the horseracing industry and instigated by Arlington’s desire to bargain with an organization more likely to accede to Arlington’s demands, endeavored to develop rules to determine which organization would serve as the horsemen’s representative for purposes of contracting with racetracks in the event of a challenge to the ITHA.⁴

48. This effort was not influenced by any horsemen unsatisfied with the ITHA. Rather, it was the result of Arlington’s desire to use more of the purse account for race awards and less for a horsemen’s organization. The ITBOF has been willingly coopted by Arlington, as supplanting the ITHA will mean more money, prestige and influence for the ITBOF.

49. Before the IRB officially adopted any such rules (as has been done in many other states), the IRB recognized the ITHA as the incumbent horsemen’s organization in northern Illinois and tabled the matter. The ITHA negotiated and secured contracts with Arlington and Hawthorne that year.

Current ITHA-Arlington Contract and Negotiations for the Summer 2016 Contract

50. On or about April 23, 2015, Arlington and the ITHA entered into an agreement covering all races at Arlington Park for the 2015 summer season (“2015 Agreement”). A true and correct copy of the 2015 Agreement is attached as Exhibit 2.

51. The 2015 Agreement provides that “ITHA represents the majority of the owners and trainers of thoroughbred horses competing” during that season. *See* Exhibit 2.

⁴ *See* Bob Kieckhefer, *Illinois Horsemen Representation Discussed*, BLOOD HORSE, Aug. 14, 2014, available at <http://www.bloodhorse.com/horse-racing/articles/112541/illinois-horsemen-representation-discussed>.

52. The 2015 Agreement also provides that Arlington “recognizes ITHA as the exclusive authorized representative of HORSEMEN at [Arlington] during the term of this Agreement.” Exhibit 2, § 3.

53. The 2015 Agreement is set to expire on April 22, 2016.

54. In or around February 2016, Arlington and the ITHA began negotiating a contract for the 2016 summer racing season. Negotiations soon broke down.

55. If a racetrack does not have a contract in place with the horsemen’s organization 60 days prior to the beginning of the racing season, the IRB requires that the racetrack and horsemen’s organization submit to mediation to resolve the dispute before an IRB-appointed mediator.

56. In March of 2016, the Chairman of the IRB, Jeffrey Brincat, ordered Arlington and the ITHA to submit to mediation and sent formal notice of such to Arlington and the ITHA. Mr. Brincat, in a highly unusual and unprecedented move, appointed himself as the mediator and scheduled the mediation for March 6, 2016. The ITBOF was not ordered to attend nor was it listed on the formal notice.

57. After mediating on March 6, 2016, Arlington and the ITHA failed to resolve their dispute. The parties met one week later to continue the mediation, but again no agreement resulted.

58. Despite ITHA’s attempts to continue to negotiate in good faith with Arlington, Arlington has refused. Arlington has unreasonably demanded that the ITHA take less of the purse account, which would result in the ITHA being significantly underfunded.

59. At the end of the second and final mediation session between Arlington and the ITHA, Mr. Brincat, in his capacity as Chairman of the IRB, warned the ITHA against making

unspecified “harmful” communications to the ITHA’s members regarding the mediation process, effectively chilling the ITHA’s ability to keep its members (the horsemen bringing their horses to race at Arlington) informed about the status and progress of negotiating an agreement for the May to September race meet.

ITBOF’S Unlawful Attempt to Usurp ITHA as the Horsemen’s Group Contracting with Arlington

60. As the ITHA was attempting to negotiate in good faith with Arlington, ITBOF’s president, Daniel Sullivan, sent a letter to the ITBOF’s Board of Directors stating that he was calling a board meeting. In that letter, Mr. Sullivan indicated that the purpose of the board meeting was to pass a resolution so that the ITBOF could formally pursue a contract with Arlington for the 2016 summer season and purport to act as representative of the Illinois thoroughbred horsemen.

61. This outraged many people familiar with the situation, including at least two ITBOF Directors who eventually resigned due to Mr. Sullivan’s proposed course of action.

62. On April 7, 2016, the ITBOF held its Board of Directors meeting.

63. Upon information and belief, the purpose of the meeting was threefold: (1) to amend the ITBOF bylaws to transform the ITBOF into a horsemen’s group; (2) to announce the ITBOF’s intent to supplant the ITHA as the bargaining agent of the horsemen with Arlington; and (3) to resolve to have Arlington indemnify ITBOF for the risks of taking over negotiations with Arlington.

64. Despite the fact that ITHA and Arlington are still formally engaged in mediation, Richard L. Duchossois, Arlington’s Chairman, and Tony Petrillo, Arlington’s General Manager, attended the ITBOF Board meeting. Upon information and belief, Messrs. Duchossois and Petrillo made a presentation to the ITBOF Board and supported the ITBOF resolution.

65. Shockingly, Mr. Brincat also attended the ITBOF Board meeting, *despite, inter alia, currently serving as the mediator of the Arlington-ITHA negotiations* as Chairman of the IRB.

66. Upon information and belief, at the Board meeting, Mr. Sullivan unilaterally decided that the vote on the resolution would be by secret ballot. Mr. Sullivan ordered that the secret balloting process be carried out via Mr. Brincat individually calling each ITBOF Director to collect their votes.

67. Upon information and belief, one of the last ITBOF directors to be called by Mr. Brincat for his vote was known as an outspoken critic of the proposed resolution. When Mr. Brincat called this Director, Mr. Brincat indicated that the Director's vote was meaningless as it had already been decided that the resolution would pass.

68. Not surprisingly given the collusion between Messrs. Sullivan, Brincat, Duchossois, and Petrillo, the resolution passed.

69. Specifically, the resolution states:

Resolved: That the [ITBOF] give notice to [Arlington] that [ITBOF] is an organization that includes thoroughbred owners and trainers and is qualified to contract with [Arlington] under the Illinois Horse Racing Act of 1975 as amended and requests they so contract for 2016.

See ITBOF April 7, 2016 Resolution, attached as Exhibit 3.

70. Recognizing its shaky legal standing to contract with Arlington on behalf of the horsemen, ITBOF stated that Arlington would indemnify ITBOF for any risks of contracting. In pertinent part, the resolution states: "Further Resolved: That [Arlington] be provided notice that all costs and risks of contracting with the [ITBOF] shall be the costs and risks of [Arlington]." *See* Exhibit 3.

71. This is not the first time that Arlington and the ITBOF have attempted to unlawfully supplant the ITHA as the horsemen's bargaining agent. In fact, in 2013, Arlington and the ITBOF engaged in similar tactics to undercut the ITHA as the authorized horsemen's organization.⁵

72. Upon information and belief, with the resolution passed, Arlington and ITBOF will attempt to enter into a contract for the 2016 summer racing season to the exclusion of ITHA.

Collusion to Weaken Horsemen's Interests and Strengthen Arlington

73. The ITBOF, Arlington, and the IRB have colluded to unlawfully replace the ITHA with the ITBOF as the horsemen's group authorized to contract with Arlington. The Defendants have so colluded to enrich Arlington and the ITBOF at the expense of Illinois horsemen.

74. Despite what its bylaws might say, the ITBOF does little to serve Illinois trainers and owners. As the ITBOF's President, Mr. Sullivan, has stated, the ITBOF would require "appreciably" less funding from the purse account. That is, the ITBOF anticipates using significantly fewer funds to benefit the horsemen it purports to represent.

75. If the ITBOF will accept less funding, it will require a much smaller distribution of the purse account. This would benefit Arlington, both by giving it bigger race awards (allowing it potentially to attract more competitive horses and commensurately larger crowds) and from a weaker horsemen's group with less funding to pursue horsemen's interests, which are often at odds with those of the racetrack.

76. Decreased funding for the horsemen's group results in less money to fund lobbying and lawyers to protect horsemen's interests. Horsemen's and racetracks' interests are

⁵ Matt Hegarty, *Arlington's disagreement with horsemen escalates*, DAILY RACING FORUM (Mar. 28, 2013), available at <http://www.drforum.com/news/arlington-disagreement-horsemen-escalates>.

often at odds, and horsemen rely on a strong lobbying presence to secure adequate protection of their interests in the Illinois legislature. If the ITHA is usurped by the ITBOF, which admittedly would spend significantly less money on such services, horsemen's interests across the state would be significantly weakened to the benefit of racetracks like Arlington.

77. The Defendants' collusion to oust the ITHA as the horsemen's authorized representative in contract negotiations with Arlington violates federal law and must be immediately enjoined.

COUNT I – DECLARATORY JUDGMENT
Pursuant to 28 U.S.C. § 2201(a) and the IHA

78. The ITHA incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 77 as if fully stated here.

79. Congress enacted the IHA to, *inter alia*, protect the horsemen, who produce the product upon which wagering is conducted, and the revenues they derive therefrom from monopolistic and more powerful track owners who would deprive horsemen of their fair share of such revenues and from other off-track wagering abuses.

80. The IHA provides that:

An interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from—

(1) the host racing association [i.e., the racetrack], except that—

(A) as a condition precedent to such consent, said racing association ... must have a written agreement with the horsemen's group, under which said racing association may give such consent, setting forth the terms and conditions relating thereto.

81. As a result, the IHA does not permit a host racing association to grant its consent to interstate off-track wagering on the host racing association's live races unless it has a written agreement with its horsemen's group providing for the horsemen's consent.

82. If the horsemen's group refuses to sign a written agreement with the host racing association, no interstate wagering on its races may occur. Accordingly, in practical effect, the IHA requires the consent of the horsemen's group. This is known as the "horsemen's veto."

83. The IHA defines a "horsemen's group" as "the group which represents the majority of owners and trainers racing [at a given racetrack], for the races subject to the interstate off-track wager on any racing day."

84. Pursuant to the IHA, the ITHA is the "horsemen's group" for purposes of contracting with Arlington. This is established by facts including, but not limited to:

- a. ITHA's more than 20 years of contracting with Arlington in its capacity as the horsemen's group representing thoroughbred owners and trainers in northern Illinois;
- b. The ongoing efforts between the ITHA and Arlington to execute a contract for the 2016 summer season;
- c. Recognition by the only other thoroughbred racetrack in the Chicagoland area, Hawthorne Racecourse, as the authorized horsemen's group in light of the ITHA's current and fall 2016 contracts with Hawthorne;
- d. The approximately 2,000 membership cards signed by Illinois trainers and owners that certify that the signatory is a member of the ITHA and appoints the ITHA to act as the sole and exclusive agent and representative for the purpose of negotiating and executing contracts with thoroughbred racetracks in the Chicago area;
- e. Resolutions and proclamations by the Illinois Senate, Illinois House of Representatives, and Illinois Governor Pat Quin recognizing the ITHA's "25th

year representing the nearly 2,500 thoroughbred horse owners and trainers who work at Arlington International Racecourse and Hawthorne Race Course,”⁶

- f. An agreement between the ITHA and Arlington signed as recently as April, 11, 2016, regarding racing rules to go into effect at the start of the 2016 summer season (*See* 2016 Agreement, attached as Exhibit 4); and
- g. Recognition in the Illinois Horseracing Act of 1975 as the authorized horsemen group.

85. The ITBOF does not meet the IHA’s definition of horsemen’s group. It is a breeder’s organization and does not represent owners and trainers in northern Illinois. Further, because the ITBOF does not adequately represent Illinois horsemen, it would be repugnant to the IHA to allow the ITBOF to contract with Arlington as the thoroughbred horsemen’s authorized representative.

WHEREFORE, Plaintiff ITHA respectfully requests that this Court enter a declaratory judgment that:

- a. The ITHA is the sole and exclusive horsemen’s group authorized to enter into contract with Arlington for the 2016 summer season;
- b. The ITBOF is not authorized to enter into contract with Arlington for the 2016 Summer season;
- c. That if the ITBOF and Arlington enter into a contract for the 2016 summer season, Arlington would be in violation of the IHA by permitting the

⁶ *See* S. Res. SR1269, 99th Gen. Assem. (Ill. 2014); H.R. Res. HR 1170, 98th Gen. Assemb. (Ill. 2014); and Gov. Pat Quin, Proclamation (June 24, 2014), which is attached as Exhibit 5.

acceptance of interstate off-track wagers on Arlington's live races without consent of the ITHA as the authorized horsemen's group; and

- d. That the ITHA remains the horsemen's group authorized to enter into contracts with racetracks in northern Illinois unless and until the state of Illinois adopts rules and procedures to determine which organizations qualify as the horsemen's association authorized to contract with racetracks and a legitimate horsemen's group petitions the IRB for recognition as the group that represents the horsemen.

**COUNT II – TORTIOUS INTERFERENCE
WITH PROSPECTIVE BUSINESS ADVANTAGE
Against Defendants ITBOF and IRB**

86. ITHA incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 84 as if fully stated here.

87. ITHA has a reasonable expectation of entering into a valid business relationship with Arlington, by reason of its negotiations with Arlington for the 2016 summer racing season, the previous 20 years of contracts negotiated and executed between ITHA and Arlington, and the parties' contract that is currently in effect.

88. Both the ITBOF and the IRB have knowledge of ITHA's expectation of entering into a valid business relationship with Arlington.

89. The ITBOF, acting in collusion with the IRB, has intentionally pursued a course of conduct to unlawfully usurp the ITHA as the horsemen's group authorized to contract with Arlington for the 2016 summer season. Such conduct constitutes an intentional interference that prevents or imminently threatens to prevent the ITHA's legitimate expectancy of a valid business relationship with Arlington to come to fruition on behalf of the horsemen it represents.

90. Further, in so colluding, Defendants aim to create an impression that there is a legitimate dispute as to what organization is the authorized horsemen's group, when in fact there can be no legitimate dispute.

91. If the ITBOF's and IRB's conduct is successful in preventing ITHA from contracting with Arlington for the 2016 summer racing season, ITHA will be damaged by:

- a. the loss of the ITHA's share of the purse account for the 2016 summer season at Arlington, which would total hundreds of thousands of dollars;
- b. the inability to use such purse funds to provide the very important benefits and services it has historically provided to horsemen in Illinois;
- c. loss of reputation and goodwill among the horsemen it represents and in the horseracing industry generally; and
- d. the threat of destroying the ITHA as an organization that represents Illinois horsemen's interest in Illinois.

92. Further, the ITBOF's and IRB's conduct will damage the ITHA's constituency, the Illinois horsemen, by dramatically weakening the organization representing them. As Mr. Sullivan has said, the ITBOF will have "appreciably" less funding to secure the benefits and services the Illinois horsemen depend on. Accordingly, the ITBOF's and IRB's conduct interferes with Illinois horsemen's reasonable expectations of receiving the benefits of ITHA membership.

WHEREFORE, Plaintiff ITHA respectfully requests that this Court enter a judgment in favor of ITHA and against the ITBOF and the IRB, enjoin the ITBOF from contracting with Arlington for the 2016 summer season, award ITHA its damages, pre- and post-judgment interest and costs, and grant ITHA such further relief this Court deems just and appropriate.

**COUNT III – TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION
Against Defendants ITBOF, Arlington, and IRB**

93. ITHA incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 91 as if fully stated here.

94. As set forth above, the ITHA, and not the ITBOF, is the exclusive horsemen's group authorized to contract with Arlington for the 2016 summer season pursuant to the IHA.

95. The Defendants have colluded so that the ITBOF will unlawfully usurp the ITHA as the horsemen's group contracting with Arlington for the 2016 summer season.

96. The 2016 summer season at Arlington begins May 6, 2016. Arlington must be under contract with an authorized horsemen's group before the season begins in order to transmit its simulcast for interstate wagering.

97. Based on the recent conduct of the ITBOF, Arlington, and the IRB, it is substantially likely that the ITBOF and Arlington, with approval from the IRB, will execute a contract for the 2016 summer season under which the ITBOF purports to be the horsemen's group as defined by the IHA. Because the 2016 summer season commences in mere weeks, such unlawful contracting is imminent.

98. Because of the Defendants' conduct, the ITHA has suffered and will continue to suffer immediate and irreparable harm. For instance, if the ITBOF and Arlington enter into contract for the 2016 summer season, ITHA will be irreparably harmed by, including, but not limited to:

- a. the loss of the ITHA's share of the purse account for the 2016 Summer season at Arlington, which would total hundreds of thousands of dollars;

- b. the inability to use such purse funds to provide the very important benefits and services it has historically provided to horsemen in Illinois;
- c. loss of reputation and goodwill among the horsemen it represents and in the horseracing industry generally; and
- d. the threat of destroying the ITHA as an organization that represents Illinois horsemen's interest in Illinois.

99. Further, the ITBOF's and IRB's conduct will damage the ITHA's constituency, the Illinois horsemen, by dramatically weakening the organization representing them. As Mr. Sullivan has said, the ITBOF will have "appreciably" less funding to secure the benefits and services the Illinois horsemen depend on. Illinois horsemen will thereby be irreparably harmed.

100. ITHA has a substantial likelihood of succeeding on the merits of this case.

101. The harm to ITHA substantially outweighs any harm to the ITBOF, Arlington, and the IRB. The ITHA has demonstrated a desire to continue its good-faith negotiations with Arlington and, just as it has done for the past two decades, intends to enter into contract with Arlington for the 2016 summer season.

102. The public interest will be served by enjoining and restraining the ITBOF and Arlington from entering into a contract for the 2016 summer season. The ITHA is the exclusive horsemen's group authorized by the IHA to contract with Arlington and offers benefits and services to Illinois horsemen far in excess of those offered by the ITBOF, which primarily serves breeders and will accept significantly less funds to provide services to horsemen. Protecting ITHA's right will not only benefit the ITHA, it will benefit the interests of horsemen throughout the state whom ITHA has faithfully served for over two decades.

WHEREFORE, Plaintiff ITHA respectfully requests that this Court enter a temporary restraining order and preliminary injunction enjoining the ITBOF and Arlington from unlawfully contracting for the 2016 summer season and order that Arlington and the ITHA continue to engage in reasonable, good-faith negotiations regarding the 2016 summer season contract.

COUNT IV – DEFAMATION
Against all Defendants

103. ITHA incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 76 as if fully stated here.

104. Upon information and belief, the Defendants have communicated statements regarding the ITHA's and its Directors' misuse of ITHA funds.

105. Specifically, Defendants have represented that the ITHA and its Directors have mismanaged ITHA funds, used ITHA funds for personal gain, and have "raided purses" at the expense of the horsemen it represents.

106. These statements are patently false. Indeed, the ITHA's financial records have been audited and there is no evidence of financial malfeasance.

107. These statements indicate that the ITHA and its Directors lack integrity in their official capacity and are *per se* defamatory.

108. The ITHA has been and continues to be damaged by Defendants' defamatory remarks. For instance, the IRB demanded ITHA President Mike Campbell to appear before the IRB for an unwarranted inquiry regarding misuse of ITHA funds and threatened Mr. Campbell's occupational license as an owner and trainer if he did not comply, despite the IRB having no jurisdiction over the ITHA in this regard.

109. Upon information and belief, this inquiry was instigated by Arlington and the ITBOF.

110. Further, Defendants' defamatory remarks create the impression of financial irregularity where there is none. This insinuation significantly harms the reputation of the ITHA with the horsemen it represents and has weakened the ITHA in its negotiations with Arlington.

WHEREFORE, Plaintiff ITHA respectfully requests that this Court enter a judgment in favor of ITHA and against the Defendants, enjoin the ITBOF from contracting with Arlington for the 2016 summer season, award ITHA its damages, pre- and post-judgment interest and costs, and grant ITHA such further relief this Court deems just and appropriate.

COUNT V – VIOLATION OF INTERSTATE HORSERACING ACT
Pursuant to 15 U.S.C. § 3006
Against Defendant Arlington

111. ITHA incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 84 as if fully stated here.

112. Upon information and belief, Arlington has coerced thoroughbred owners and trainers seeking access to Arlington's backstretch area, i.e. where horses are stabled, trained and maintained, to sign a document which, among other things, purports to give the owners' and trainers' consent to Arlington to simulcast its live races and interstate wagering for the 2016 summer season.

113. Upon information and belief, Arlington has conditioned access to its backstretch area on the owners' and trainers' signing such a document. A true and correct copy of that document is attached as Exhibit 6.

114. Upon information and belief, Arlington is also conditioning access to its backstretch area upon owners and trainers agreeing to verbally renounce their membership in the ITHA.

115. Upon information and belief, Arlington's conduct is designed to avoid the IHA's mandate of contracting with a "horsemen's group" under which the horsemen give their consent to simulcast live Arlington races and interstate wagering.

116. By coercing horse owners and trainers into signing a document purporting to give such consent rather than contracting with the ITHA, Arlington is violating the IHA.

WHEREFORE, Plaintiff ITHA respectfully requests that this Court enter a judgment in favor of ITHA and against Arlington, enjoin Arlington from violating the IHA as specified, order that Arlington contract with the ITHA for the 2016 summer season before it may simulcast its races and accept interstate wagers, award ITHA its damages, pre- and post-judgment interest and costs, and grant ITHA such further relief this Court deems just and appropriate.

COUNT VI – FREEDOM OF ASSOCIATION
Pursuant to 42 U.S.C. § 1983
Against Defendant Arlington

117. The ITHA incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 84 and 111-115 as if fully stated here.

118. The ITHA and the horsemen it represents have a right to freely associate pursuant to the First and Fourteenth Amendments to the United States Constitution.

119. Upon information and belief, Arlington has adopted an official policy of coercing horse owners and trainers into signing a document certifying that they are "independent" trainers and consenting to interstate wagering on Arlington races for the 2016 summer season.

120. Upon information and belief, Arlington has adopted an official policy of coercing horse owners and trainers to verbally renounce their membership in the ITHA as a condition to accessing Arlington's backstretch area.

121. Arlington's conduct constitutes a violation of the ITHA's and its horsemen members' constitutional right to freely associate.

122. At all relevant times, Arlington was acting under color of state law. Arlington depends upon state licensing to conduct horseracing and pari-mutuel wagering and is extensively regulated by the state.

123. Further, upon information and belief, Arlington's conduct has been condoned and encouraged by the IRB.

124. As a result of Arlington's unconstitutional conduct, the ITHA has suffered and will continue to suffer damages, including, but not limited to:

- a. the loss of the ITHA's share of the purse account for the 2016 Summer season at Arlington, which would total hundreds of thousands of dollars;
- b. the inability to use such purse funds to provide the very important benefits and services it has historically provided to horsemen in Illinois;
- c. loss of reputation and goodwill among the horsemen it represents and in the horseracing industry generally; and
- d. the threat of destroying the ITHA as an organization that represents Illinois horsemen's interest in Illinois.

WHEREFORE, Plaintiff ITHA respectfully requests that this Court enter a judgment in favor of ITHA and against Arlington, enjoin Arlington from violating the ITHA's First and Fourteenth Amendment rights as specified, order that Arlington contract with the ITHA for the 2016 summer season before it may simulcast its races and accept interstate wagers, award ITHA its damages, pre- and post-judgment interest, costs and attorneys' fees, and grant ITHA such further relief this Court deems just and appropriate.

REQUEST FOR JURY DEMAND

Plaintiff ITHA respectfully requests a jury trial on issues so triable.

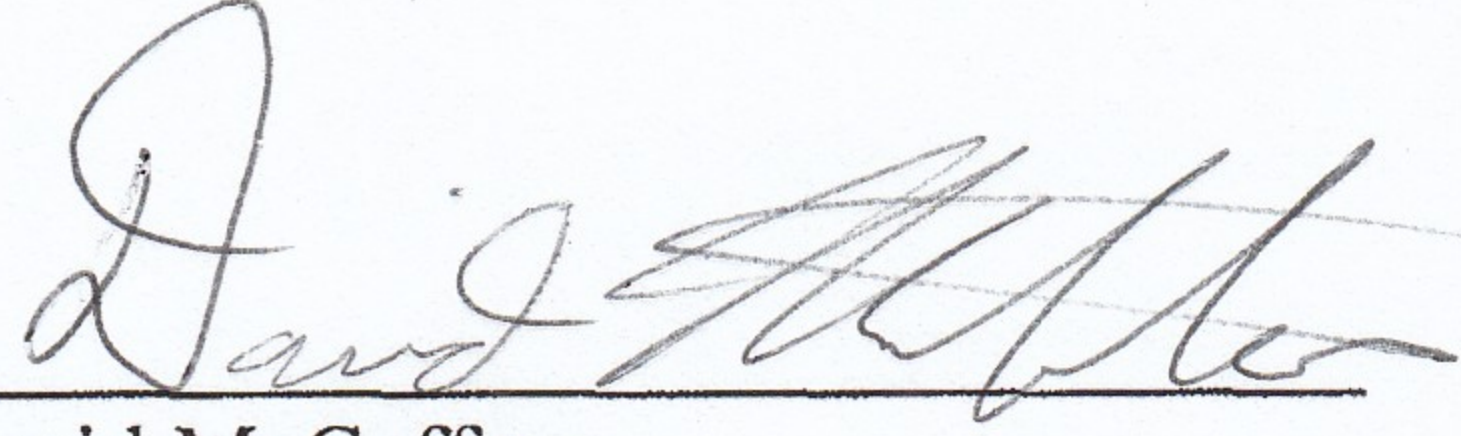
Dated: April 18, 2016

Respectfully submitted,

s/ Vincent P. (Trace) Schmeltz III
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VERIFICATION

Under penalty of perjury, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



David McCaffrey