No. _____

IN THE

Supreme Court of the United States

CONFEDERACIÓN HÍPICA DE PUERTO RICO, INC.; CAMARERO RACETRACK CORP.,

Petitioners,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC., ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the statutory labor exemption from the operation of the antitrust laws, which exempts "labor dispute[s]" that "concern[] terms or conditions of employment," 29 U.S.C. 113, encompasses concerted action by independent contractors that does not relate to an employer-employee relationship.

PARTIES TO THE PROCEEDING

Petitioners Confederación Hípica de Puerto Rico, Inc., and Camarero Racetrack Corp. were plaintiffs in the district court and plaintiffs-appellees in the court of appeals.

Respondents Confederación de Jinetes Puertorriqueños, Inc.; Abner Adorno; Carlos Quiñones; Cindy Soto; David Rosario; Edwin Castro; Héctor Berríos; Héctor Rivera; Jomar García; Kennel Pellot; Luis Negrón; Mario M. Sánchez; Pedro González; Sasha Ortiz; Steven Fret; Miguel A. Sánchez; Alexis Valdés; Anardis Rodríguez; David Ortiz; Erik Ramírez; Ismael Peréz; Israel O. Rodríguez; José A. Hernandez; Juan Carlos Díaz; Jorge G. Robles; Javier Santiago; Misael Molina; Kevin Navarro; Pablo Rodríguez; Alfonso Claudio; Jonathan Agosto; Yashira Tolentino; José M. Rivera; Alvin Colón; Jesús Guadalupe; Jan Carlos Suárez; Asociacion De Jinetes De Puerto Rico, Inc.; Ramón Sánchez; Conjugal Partnership Adorno-Doe; Conjugal Partnership Doe-Soto; Conjugal Partnership Ortiz-Doe; Conjugal Partnership H. Doe-Tolentino; Conjugal Partnership Adorno-Doe; Conjugal Partnership Valdés-Doe; Conjugal Partnership Claudio-Doe; Conjugal Partnership Colón-Doe; Conjugal Partnership Quinones-Doe; Conjugal Partnership Doe-Soto; Conjugal Partnership Ortiz-Doe; Conjugal Partnership Aleman-Doe; Conjugal Partnership Castro-Doe; Conjugal Partnership Delpino-Doe; Conjugal Partnership Berríos-Doe; Conjugal Partnership Rivera-Doe; Conjugal Partnership Cepeda-Doe; Conjugal Partnership Peréz-Doe; Conjugal Partnership Rodríguez-Doe; Conjugal Partnership Suárez-Doe; Conjugal Partnership Santiago-Doe; Conjugal Partnership Guadulupe; Conjugal Partnership García-Doe; Conjugal Partnership Davila-Doe; Conjugal Partnership Robles-Doe;

Conjugal Partnership Hernandez-Doe; Conjugal Partnership Cabreradoe; Conjugal Partnership Díaz-Doe; Conjugal Partnership Pellot-Doe; Conjugal Partnership Navarro-Doe; Conjugal Partnership Negrón-Doe; Conjugal Partnership Sánchez-Doe; Conjugal Partnership Sánchez-Doe 30; Conjugal Partnership Molina-Doe; Conjugal Partnership Rodríguez-Doe 24; Conjugal Partnership González-Doe; Conjugal Partnership Sánchez-Doe 29; Conjugal Partnership Ortiz-Doe 26; Conjugal Partnership Fret-Doe; Conjugal Partnership Doe-Tolentino; Jane Does; Jane Does 2-4; and 6-35 John Does 1-2 were defendants in the trial court and defendants-appellants in the court of appeals.

RULE 29.6 DISCLOSURE STATEMENT

Neither petitioner Confederación Hípica de Puerto Rico, Inc., nor petitioner Camarero Racetrack Corp. has a parent corporation, and no publicly held company owns 10% or more of either petitioner's stock. Petitioner Confederación Hípica de Puerto Rico, Inc. is a not-for-profit corporation.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

Confederacion Hipica de Puerto Rico, Inc., et al. v. *Confederacion de Jinetes Puertorriquenos, Inc., et al.*, Nos. 19-2201, 20-2172 (1st Cir. April 4, 2022)

Confederacion Hipica de Puerto Rico, Inc., et al. v. *Confederacion de Jinetes Puertorriquenos, Inc., et al.*, No. 3:16-CV-02256 (D.P.R. September 30, 2019)

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Petitioners Confederación Hípica de Puerto Rico, Inc., and Camarero Racetrack Corp. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The opinion of the court of appeals is published at 30 F.4th 306 (1st Cir. 2022). The relevant opinions of the district court appear at 296 F. Supp. 3d 416 (D.P.R. 2017), 419 F. Supp. 3d 305 (D.P.R. 2019), and 2019 WL 4899747 (D.P.R. Sept. 30, 2019).

JURISDICTION

The court of appeals entered its judgment on April 4, 2022, and denied a timely petition for panel rehearing or rehearing en banc on July 6, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the appendix to the petition. Pet. App. 101a.

INTRODUCTION

In this case, the First Circuit held that the labor exemption from the antitrust laws covers disputes that involve only independent contractors and do not relate to the terms or conditions of any employee's employment. That holding sharply conflicts with decisions of numerous other courts of appeals, which have held in no uncertain terms—including in a factual context highly similar to the one in this case—that disputes enjoy immunity from enforcement of the antitrust laws under the labor exemption only when some aspect of an employer-employee relationship is at stake. The First Circuit's holding also is irreconcilable with decisions from this Court, which have likewise made

clear that independent contractors such as physicians, engineers, dentists, attorneys, and real-estate agents are not protected by the labor exemption and that their collusion therefore enjoys no immunity from the antitrust laws.

The First Circuit has thus worked a fundamental change in antitrust law—and it has done so under the mistaken impression that this Court's precedent somehow compels that radical result. That decision is likely to give rise to great harm. Independent-contractor relationships are widespread and significant in the U.S. economy; approximately ten percent of U.S. workers are independent contractors. Federal labor law, which regulates and limits economic damage caused by employee-employer labor disputes, does not apply to independent contractors. Thus, without the constraints of federal antitrust law, which has been understood for nearly one hundred years to exclude independent contractors from the immunity conferred by the labor exemption, contractors would be free to take collusive and economically harmful action of exactly the sort that the United States has long sought to stamp out through antitrust enforcement actions.

Accordingly, the First Circuit's decision threatens to seriously disrupt critical working relationships into which businesses have entered in reliance on long-settled law. And across the country, the First Circuit's decision will unquestionably engender enormous confusion among businesses (particularly those with a nationwide presence) and independent contractors alike: none will be able to draw firm conclusions about whether contractors are subject to federal antitrust law, whether specific subsets of contractors are immune from that law, and what coordinated actions contractors may be legally entitled to take.

That disuniformity in antitrust law is intolerable. See *Pac. Bell Tel. Co.* v. *linkLine Commc'ns, Inc.*, 555 U.S. 438, 453 (2009) ("[A]ntitrust rules 'must be clear enough for lawyers to explain them to clients.'") (quoting *Town of Concord* v. *Boston Edison Co.*, 915 F.2d 17, 22 (1st Cir. 1990) (Breyer, J.)). This Court should restore uniformity by addressing, for the first time in many decades, the proper scope of the labor exemption.

STATEMENT

1. The Sherman Act makes illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." 15 U.S.C. 1. That statute "reflects a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services," and recognizes that "[t]he heart of our national economic policy long has been faith in the value of competition." *Nat'l Soc'y of Pro. Eng'rs* v. *United States*, 435 U.S. 679, 695 (1978) (citation omitted).

But there is some natural "tension between national antitrust policy, which seeks to maximize competition, and national labor policy," which permits employees to organize to "improve the conditions of employment." *H.A. Artists & Assocs., Inc.* v. *Actors' Equity Ass'n,* 451 U.S. 704, 713 (1981). To address that tension, Congress enacted provisions in the Clayton Act and the Norris-LaGuardia Act that together create a limited statutory immunity from antitrust law for certain labor-related activities (the "labor exemption"). See *Burlington N. R.R. Co.* v. *Bhd. of Maint. of Way Emps.*, 481 U.S. 429, 438-439 (1987); *H.A. Artists*, 451 U.S. at 714-715 & n.14. Those provisions generally forbid federal courts from enjoining under the antitrust laws specified activities arising from a "labor

dispute." 29 U.S.C. 101; see *ibid.* ("No court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute."); 29 U.S.C. 104, 106, 109 (similar restrictions relating to "labor dispute"); see also 15 U.S.C. 17; 29 U.S.C. 52.

The term "labor dispute" is defined in a provision of the Norris-LaGuardia Act that is codified in 29 U.S.C. 113. Section 113(c) provides that "labor dispute" includes "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. 113(c); see 29 U.S.C. 113(a)-(b) (discussing labor disputes, such as a dispute "between one or more employers or associations of employers and one or more employees or associations of employees," and the persons involved in them).

This Court addressed Section 113 in several mid-twentieth-century decisions. The Court has explained that "[t]he critical element in determining whether" the labor exemption applies "is whether 'the employer-employee relationship [is] the matrix of the controversy.' " *Jacksonville Bulk Terminals, Inc.* v. *Int'l Longshoremen's Ass'n*, 457 U.S. 702, 712-713 (1982) (quoting *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143, 147 (1942)).

2. This case arises from coordinated action by a group of jockeys in Puerto Rico, which gave rise to a suit against the jockeys by a racetrack owner (petitioner Camarero Racetrack Corp.) and an association of horse owners (petitioner Confederación Hípica de Puerto Rico, Inc.).

a. In Puerto Rico, jockeys are independent businesspeople who decide whether they want to participate in a particular horse race and team up with horse owners on a race-by-race basis. Pet. App. 4a. Under Puerto Rico regulations, jockeys whose horses finish in the top five in a race win a share of the purse, which can be substantial. Jockeys also receive a "mount" fee of $20 for each race in which they participate and a percentage of proceeds from video lottery machines used at the racetrack during their races. Pet. App. 4a, 86a. Here, it was "uncontested" in the district court "that the jockeys are not employees of" the racetrack or the horse owners. 296 F. Supp. 3d at 423-24; see *San Juan Racing Ass'n* v. *Asociacion De Jinetes De Puerto Rico*, 590 F.2d 31, 32 (1st Cir. 1979) (stating in case involving some of the same entities that jockeys are "independent businessmen" and "not 'employees'").

In 2016, a group of jockeys who were dissatisfied with certain race-related matters decided together to delay the start of a race, resulting in fines from race officials. Pet. App. 4a. Several trade associations, including Confederación de Jinetes Puertorriqueños (Jinetes), then sought to negotiate on the jockeys' behalf. Pet. App. 4a-5a. After those negotiations failed, the trade associations organized a concerted agreement among thirty-seven jockeys not to race unless they received more money. Pet. App. 5a. Because no jockeys registered to ride, the racetrack was forced to cancel races for three days and lost significant revenue. Pet. App. 5a.

b. Petitioners filed suit against the jockeys and Jinetes, who are respondents here, alleging that they had engaged in unlawful concerted action in violation of federal antitrust law. Pet. App. 5a; see 15 U.S.C. 1. The jockeys and Jinetes raised a defense under the Norris-LaGuardia Act's statutory exemption to the

federal antitrust laws for activities involving a "labor dispute" concerning the "terms or conditions of employment." 29 U.S.C. 113(c); see Pet. App. 6a-7a.

The district court rejected that defense. The court explained that the labor exemption applies only to collective action regarding an employer-employee relationship and does not encompass collective action regarding terms of work for independent contractors like the jockeys. Pet. App. 5a-6a, 41a-42a, 50a. The court found the jockeys and Jinetes liable under the Sherman Act, awarded petitioners damages, and permanently enjoined the work stoppage. Pet. App. 5a-6a.

c. A panel of the First Circuit reversed the district court's judgment, vacated the injunction, and directed that the case be dismissed on remand. Pet. App. 3a-4a, 15a, 18a.

The court of appeals concluded that petitioners "are legally precluded from prevailing on their antitrust claims" on the ground that "the jockeys' action fell within the labor-dispute exemption" to the antitrust laws as defined in 29 U.S.C. 113. Pet. App. 10a, 15a. The panel assumed that the jockeys are indeed independent contractors and concluded that such "independent-contractor status" does not make the jockeys "ineligible for the exemption." Pet. App. 10a; see Pet. App. 11a ("Whether or not the jockeys are independent contractors does not by itself determine whether this dispute is within the labor-dispute exemption.").

First, the panel focused on the language in Section 113(c) stating that a "labor dispute may exist 'regardless of whether or not the disputants stand in the proximate relation of employer and employee.'" Pet. App. 10a (quoting 29 U.S.C. 113(c)). According to the panel, that language "precludes an interpretation of the exemption limited to employees alone." Pet. App. 11a.

In reaching that conclusion, the panel pointed to this Court's decision in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), which the panel described as holding that the conduct of a "community association" that "encouraged a boycott of a grocery store in protest of the store's refusal to hire black employees" fell "within the labor-dispute exemption because the association sought to influence the store's terms of employment." Pet. App. 10a (citing 303 U.S. at 559-561).

Second, the panel asserted that "[t]he key question is not whether the jockeys are independent contractors or laborers but whether what is at issue is compensation for their labor." Pet. App. 11a. In the panel's view, the "critical distinction in applying the labor-dispute exemption" is that "disputes about wages for labor fall within the exemption," regardless of whether the work is that of independent contractors, "but those over prices for goods do not." Pet. App. 11a (citing *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143 (1942)).

Finally, the panel seemed to acknowledge that its decision was in tension with a decision of the Fourth Circuit holding that a dispute about the work of independent contractors—there, farriers who worked with horses and horse trainers—falls outside the scope of the labor exemption. See Pet. App. 12a & n.3 (discussing *Taylor* v. *Local No. 7, International Union of Journeymen Horseshoers*, 353 F.2d 593, 602-606 (4th Cir. 1965), which was cited in dicta in *San Juan Racing Association*, 590 F.2d at 32). The panel attempted to distinguish that decision, however, claiming that it turned on the fact that the independent contractors before the Fourth Circuit had supplied "not just labor but also a product * * * to their customers." Pet. App. 12a n.3.

Petitioners timely filed a petition for panel rehearing or rehearing en banc, which the First Circuit denied. Pet. App. 100a.

REASONS FOR GRANTING THE PETITION

The decision of the court of appeals raises an issue of exceptional importance that manifestly warrants this Court's review. That decision is in direct conflict not only with numerous decisions of other courts of appeals but also with decisions of this Court, all of which hold unequivocally that a dispute must involve an employer-employee relationship to fall within the scope of the labor exemption to the antitrust laws. If allowed to stand, the First Circuit's decision is likely to have extraordinarily harmful results, allowing independent contractors to undertake economically damaging collusive action without any constraint by federal antitrust law or federal labor law and creating substantial confusion on the part of businesses and contractors. Restoring national uniformity on the scope of immunity from the antitrust laws is imperative.

A. The First Circuit's Decision Directly Conflicts With The Decisions Of Numerous Other Courts Of Appeals And With This Court's Precedent

1. The decision below sharply and undeniably conflicts with decisions of the Second, Third, Fourth, Sixth, and Ninth Circuits. The First Circuit held that the labor exemption to the antitrust laws, as defined in Section 113, encompasses disputes solely involving independent contractors who have no employer-employee relationship with the entity for which they are carrying out work, so long as the contractors are not supplying goods. See Pet. App. 9a-12a. That holding definitively precluded petitioners from pressing anti-

trust claims against the independent-contractor jockeys or the association that aided them. See Pet. App. 15a. In contrast, each of those other circuits has held that the labor exemption applies only when the dispute at issue involves an employer-employee relationship, and each has directly rejected the argument that disputes involving only independent contractors can qualify for the exemption.

One such case arose in a factual context very similar to that at issue here: *Taylor* v. *Local No. 7, International Union of Journeymen Horseshoers of U.S. & Canada (AFL-CIO)*, 353 F.2d 593 (4th Cir. 1965), in which the Fourth Circuit ruled that farriers who had taken collective action against racehorse trainers and owners were not eligible for the labor exemption because they were independent contractors. The question before the Fourth Circuit was "whether an employer-employee relationship, as distinguished from that of employer-independent contractor, is necessary to constitute a 'labor dispute' within the meaning of" Section 113. *Id.* at 596. The court of appeals held that the answer to that question is yes. As the court explained, the farriers' collective activity could be "exempt from operation of the antitrust laws" only "(1) if the parties to [the] dispute stand in the relationship of employer and employee and dispute some aspect of that relationship, or (2) if the employer-employee relationship of others is the crux of the dispute between the parties." *Id.* at 605. But the dispute concerned only "the services of" farriers "who are independent contractors, not employees." *Id.* at 606. Accordingly, "[a]n employer-employee dispute" was "nowhere involved," the exemption was inapplicable, and the farriers enjoyed no immunity from antitrust liability. *Ibid.*; see *Dist. 29, United Mine Workers of Am.* v. *New Beckley Mining Corp.*, 895 F.2d 942, 946 (4th Cir.

1990) (explaining in case not involving independent contractors that "[t]he critical element" in determining whether the labor exemption applies is "whether the employer-employee relationship [is] the matrix of the controversy") (citation omitted).[1]

The First Circuit tacitly acknowledged the conflict with the Fourth Circuit's decision and attempted to distinguish it, but failed to do so. According to the First Circuit, the farriers in *Taylor*, whose job it was to trim and shoe horses' hooves, were outside the scope of the labor exemption because they supplied "not just labor but also a product—horseshoes—to their customers." Pet. App. 12a n.3. But *Taylor* says nothing of the kind. It discusses at some length, without any reference to the possibility that the farriers might supply horseshoes, whether the farriers were independent contractors or whether they were employees over whom horse trainers had significant control. *Taylor*, 353 F.2d at 596-602. Having concluded that the farriers were independent contractors, the Fourth Circuit deemed them outside the scope of the labor exemption on that basis alone, and never suggested that provision of horseshoes took place or was relevant in any way. See *id.* at 602-606. Notably, the First Circuit cited only the *dissenting* opinion in *Taylor* in support of the notion that the horseshoes had some relevance to the Fourth Circuit's analysis—and even that dissenting opinion concluded that the farriers' dispute concerned payment "for their labor" and that "[t]he

[1] District courts likewise have ruled that independent contractors working at racetracks, such as jockeys, trainers, and farriers, are not covered by the labor exemption and therefore may be subject to antitrust liability. See, *e.g.*, *Washington Trotting Ass'n, Inc.* v. *Penn. Harness Horsemen's Ass'n*, 428 F. Supp. 122, 125-126 (W.D. Pa. 1977) (citing *Taylor*).

value of the horseshoe" was not pertinent. *Id.* at 607 (Sobeloff, J., dissenting).

Numerous other courts of appeals have agreed with the Fourth Circuit, in stark conflict with the decision below, that disputes involving only independent contractors are not covered by the labor exemption. In *Conley Motor Express* v. *Russell*, 500 F.2d 124 (3d Cir. 1974), the Third Circuit held that truck drivers who were "independent contractors and not employees" were not protected by the labor exemption when they picketed a business that contracted with them for their driving services. *Id.* at 125; see *id.* at 126-127. The drivers made an argument similar to the one accepted by the First Circuit here, claiming that, "notwithstanding their independent contractor status," they were "seeking traditional labor objectives" and thus "should be exempt from the anti-trust laws." *Id.* at 126. The Third Circuit flatly rejected that argument, concluding that the drivers failed to show "the primary prerequisite for exemption from the antitrust laws, i.e., that their dispute with [the picketed business] involves an employer-employee relationship." *Ibid*; see *id.* at 126-127.

In addition, in *International Association of Heat & Frost Insulators & Asbestos Workers* v. *United Contractors Association, Inc. of Pittsburgh*, 483 F.2d 384 (3d Cir. 1973), *amended on other grounds*, 494 F.2d 1353 (3d Cir. 1974), the Third Circuit specifically disapproved the distinction that the First Circuit attempted to draw here between sale of labor and sale of goods. See Pet. App. 11a. As the Third Circuit explained, "the sale of commodities shades into the sale of personal services. Therefore the courts have sought to fashion the labor exemption" based on "analyses of the function of the work in its relevant economic relationships, rather than by applying a test of whether

commodities or services are being sold." 483 F.2d at 390-391. The question, then, is whether the dispute involves the work of independent contractors rather than employees—and if it does, the labor exemption does not apply. See *ibid.*; see also *In re Cont'l Airlines, Inc.*, 484 F.3d 173, 184 (3d Cir. 2007) (concluding in a case not involving independent contractors that the labor exemption did not apply because "[t]he 'matrix' of this controversy cannot fairly be considered the 'employer-employee relationship'").

The Ninth Circuit has likewise made clear that a dispute involving independent contractors that does not implicate any employer-employee relationship is outside the scope of the labor exemption. In *Local 36 of International Fishermen & Allied Workers of America* v. *United States*, 177 F.2d 320 (9th Cir. 1949), the government criminally prosecuted independent fishermen engaged in collective action against fish dealers. The Ninth Circuit approved of a trial court's jury instruction explaining that the labor exemption covers only disputes about an employer-employee relationship. The instruction provided that the fishermen could not be convicted of violating the antitrust laws unless they were found to be "'independent business men' catching and selling fish 'for their own account and profit' and not employees of the dealers." *Id.* at 336. And the Ninth Circuit agreed that the trial court had appropriately refused to give a jury instruction that inaccurately described the scope of the labor exemption by stating simply that a "'working producer,' who joins solely with other similar 'working producers to fix the price of articles produced by them,' is immune." *Id.* at 335-336. Because the jury ultimately found that the fishermen had no employer-employee

relationship with the dealers, the Ninth Circuit affirmed the fishermen's convictions. See *id.* at 336-337, 342.

The Sixth Circuit has similarly held, in a case involving collective action by independent truck operators against a steel company, that the labor exemption did not apply. As that court explained, the dispute did not fall "within the purview" of the exemption because the employer-employee relationship was not the "matrix of the dispute," given that the "independent operators are not the employees of [the steel company] or, for that matter, the employees of anyone." *Armco Steel Co.* v. *Tackett*, 1991 WL 21973, at *2 (6th Cir. Feb. 21, 1991) (per curiam) (unpublished opinion) (citing *Int'l Union United Auto., Aerospace & Agric. Implement Workers of Am., UAW* v. *Lester Eng'g Co.*, 718 F.2d 818, 823 (6th Cir. 1983)); see *Lester Eng'g Co.*, 718 F.2d. at 823 (stating in a case not involving independent contractors that a labor dispute "does not include controversies upon which the employer-employee relationship has no bearing").

Finally, the Second Circuit has agreed that a dispute is not covered by the labor exemption if no employer-employee relationship is at stake. In *Ring* v. *Spina*, 148 F.2d 647 (2d Cir. 1945), the Second Circuit held that "the exception will not apply unless an employer-employee relationship is the matrix of the controversy," while acknowledging that such a matrix can exist even where "the parties to the dispute" are not themselves the "employers and employees." *Id.* at 651 (citation omitted). The court of appeals therefore found the exemption "inapplicable" to a dispute involving a group of independent contractors who wrote plays and belonged to a playwrights' guild, explaining that "none of the parties affected [we]re in any true sense employees" and "no wages or working conditions

of any group of employees" were at stake. *Id.* at 651-652.[2]

In any of those other circuits, respondents would not have enjoyed the immunity afforded by the First Circuit. And although some of those cases are many decades old, they continue to reflect the rule of law that governs in each of the relevant circuits, which has not varied over time. See Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶¶ 255a, 255d (5th ed.) (stating without reservation that the labor exemption is "limited to 'employees'" and that "the parties on one side of the dispute or agreement in question must be employees or labor representatives, not independent contractors or entrepreneurs"). To the extent that more recent cases in those circuits do not exist, it is only because it has been well accepted for many years—including in decisions of this Court, see pp. 15-18, *infra*—that only disputes involving an employment relationship are covered by the labor exemption. The

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[2] Additional court of appeals decisions not involving independent contractors confirm that the labor exemption applies *only* to disputes that relate to an employer-employee relationship. For example, in *United Electric Coal Companies* v. *Rice*, 80 F.2d 1 (7th Cir. 1935), the Seventh Circuit ruled that the labor exemption did not apply because the dispute at hand was really "between two unions," *id.* at 2, and did not implicate an employer's relationship with its employees. The court of appeals explained that the "term 'labor disputes'" in Section 113 "infers employment—implies the existence of the relation of employer and employee." *Id.* at 5. The court thus found it "clear" that "the dispute referred to in the statute *must* be one between the employer and the employee or growing directly out of their relationship." *Ibid.* (emphasis in original); see, *e.g.*, *Loc. 1814, Int'l Longshoremen's Ass'n* v. *New York Shipping Ass'n*, 965 F.2d 1224, 1235 (2d Cir. 1992) ("Critical to whether a dispute is a 'labor dispute' is whether 'the employer-employee relationship [is] the matrix of the controversy.'") (citation omitted).

First Circuit's holding works a sea change in the law and, with that court's denial of en banc review, an intractable conflict now exists.

2. The First Circuit's decision also directly conflicts with decisions of this Court—which many of the court of appeals decisions discussed above cited and applied. See S. Ct. R. 10(c). As this Court has explained, "[t]he critical element in determining whether the provisions of the Norris-LaGuardia Act apply is whether 'the employer-employee relationship [is] the matrix of the controversy.'" *Jacksonville Bulk Terminals* v. *Int'l Longshoremen's Ass'n*, 457 U.S. 702, 712-713 (1982) (quoting *Columbia River Packers*, 315 U.S. at 147). Thus, contrary to what the First Circuit held here, under this Court's decisions a dispute affecting only the working relationships of independent contractors does not constitute a "labor dispute" within the meaning of Section 113 and therefore does not trigger the immunity afforded by the labor exemption.

In *Columbia River Packers Association* v. *Hinton*, 315 U.S. 143 (1942), for example, this Court held that a dispute between independent-contractor fishermen and a fish-processing plant did not constitute a "labor dispute" within the meaning of Section 113. See *id.* at 145-147 (citing 29 U.S.C. 113). The Court explained that the statutory text makes clear that "the attention of Congress was focussed upon disputes affecting the employer-employee relationship" and that Section 113 does not "include controversies upon which the employer-employee relationship has no bearing." *Id.* at 145, 146-147; see *id.* at 146-147. The Court concluded that because the fishermen were "not employees of the [plant] or of any other employer" and "operate[d] as independent businessmen, free from such controls as an employer might exercise," there was no labor dispute

within the meaning of Section 113. *Id.* at 147. Although some fishermen were employees of other fishermen, the Court found that fact irrelevant, because the dispute with the plant did "not place in controversy the wages or hours or other terms and conditions of employment of these employees." *Ibid.*; see, *e.g.*, *H.A. Artists*, 451 U.S. at 717 n.20 (citing *Columbia River Packers* and explaining that "a party seeking refuge in the statutory exemption must be a bona fide labor organization, and not an independent contractor or entrepreneur"); *United States* v. *Women's Sportswear Mfg. Ass'n*, 336 U.S. 460, 463-464 (1949) (citing *Columbia River Packers* and explaining that labor exemption did not apply where the dispute involved terms controlling "stitching contractor[s]," who were "entrepreneurs" and not employees even though they "furnishe[d] chiefly labor"); *Am. Fed'n of Musicians of U.S. & Canada* v. *Carroll*, 391 U.S. 99, 106 (1968).

Just one year after *Columbia River Packers*, the Court cited that decision in *American Medical Association* v. *United States*, 317 U.S. 519 (1943), and ruled that the labor exemption does not immunize collective activities by "association[s] of individual [medical] practitioners each exercising his calling as an independent unit." *Id.* at 536. The question before the Court was whether the dispute in which the associations were involved "concern[ed] terms and conditions of employment" under Section 113, which would render the associations "immune from prosecution under the Sherman Act." *Id.* at 528; see *id.* at 533-534. The Court concluded that the answer was no, because the associations were not "directly or indirectly interested" in any question relating to the employment of physicians as employees. *Id.* at 536. Rather, the dispute related to the physicians' status as independent contractors: the physicians "desired that they and all

others should practice independently on a fee for service basis where whatever arrangement for payment each had was a matter that lay between him and his patient," and thus did not form "an association of employes [sic] in any proper sense of the term." *Ibid.*

Similarly, in *United States* v. *National Association of Real Estate Boards*, 339 U.S. 485 (1950), this Court explained that the labor exemption does not apply to collective action regarding the work of real-estate agents, who are "entrepreneurs," because the challenged conduct involves no "aspect of the employee-employer relationship to which the antitrust laws have made special concessions." *Id.* at 489-490. In that case, the United States charged that members of the Washington Real Estate Board violated the Sherman Act by conspiring to fix commission rates for brokers' services in the District of Columbia. See *id.* at 487. The Court concluded that the conduct was not immune from the antitrust laws, reasoning that "[w]e do not have here any more than we did in *American Medical Ass'n* v. *United States* * * * an aspect of the employee-employer relationship." *Id.* at 490. That was so, the Court explained, because the agents all were independent contractors whose business was "the sale of personal services"—that is, they were not employees but rather were "entrepreneurs," each of whom was "in business on his own." *Ibid.*

It is also notable that this Court has frequently affirmed antitrust liability, without mentioning the labor exemption, in cases where there could be no liability if the First Circuit were correct here. Cases in that category have often involved professionals like physicians and real-estate agents—*i.e.*, attorneys, dentists, engineers, and the like. See, *e.g.*, *FTC* v. *Superior Ct. Trial Lawyers Ass'n*, 493 U.S. 411, 414 (1990) (holding that court-appointed counsel, who were independent

contractors, violated the antitrust laws when they organized to increase their compensation); *FTC* v. *Ind. Fed'n of Dentists*, 476 U.S. 447, 449-450, 466 (1986) (upholding FTC cease-and-desist order based on collective action by independent dentists); *Nat'l Soc'y of Prof'l Eng'rs* v. *United States*, 435 U.S. 679, 681-686, 698-699 (1978) (affirming antitrust liability for agreements by a society of independent engineers not to bid competitively).

The interpretation of Section 113 set forth in this Court's precedents is thus irreconcilable with the First Circuit's holding in this case that disputes over the terms and conditions of independent contractors' work fall within the scope of the labor exemption. Contrary to that holding, this Court has concluded that a dispute involving independent contractors falls within the scope of that exemption *only* if that dispute relates to *employees'* wages or conditions of employment. Accordingly, had the First Circuit correctly applied the rule of law set forth in this Court's decisions, the decision below would have come out the opposite way and the First Circuit would have affirmed the district court's judgment.

B. The First Circuit's Decision Is Wrong

The First Circuit's decision is flatly wrong as a matter of statutory interpretation. Under the Norris-LaGuardia Act, a dispute falls within the scope of the labor exemption *only* if that dispute implicates employees' terms or conditions of employment. The exemption does not cover disputes that are solely about the terms or conditions of the work done by independent contractors. In ruling otherwise, the First Circuit misconstrued Section 113(c) and several of this Court's decisions.

1. The key statutory provision is 29 U.S.C. 113, which defines the phrase "labor dispute"—a phrase that is used in various other provisions of the antitrust laws to describe situations in which the federal courts are barred from issuing injunctions. See, *e.g.*, 29 U.S.C. 101, 104, 106, 109. Section 113(c) provides that "[t]he term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. 113(c).

As that provision indicates, a dispute over the "terms or conditions of employment" that counts as a "labor dispute" for purposes of the antitrust laws is necessarily a dispute about how an "employer" should treat an "employee." 29 U.S.C. 113(c). There would have been no need for Congress to state in Section 113(c) that the disputants in a dispute over the terms and conditions of employment need not "stand in the *proximate* relation of employer and employee," *ibid.* (emphasis added), unless Congress understood that the dispute must be *about* the "relation" between "employer and employee"—even if some other entity is speaking for one side or the other in a dispute between them. *Ibid.*[3] Section 113(a) uses the terms "employers" and "employees" in laying out different possible types of labor disputes, such as a dispute "between one or more employers or associations of employers and one or more employees or associations of employees"

[3] Section 113's history reinforces that the "proximate relation" language does not expand the statute beyond employer-employee disputes. See pp. 24-25, *infra*.

or a dispute "between one or more employees or associations of employees and one or more employees or associations of employees." 29 U.S.C. 113(a). And other provisions of the Norris-LaGuardia Act, enacted at the same time as Section 113, also make clear that the Act is focused on "employment" and "employees." For instance, Section 103 declares unenforceable agreements between "any individual, firm, company, association, or corporation, and any employee or prospective employee of the same" relating to membership in "any labor organization" or "employer organization." 29 U.S.C. 103; see 29 U.S.C. 152(5) (under federal labor law, a "labor organization" is an organization "in which employees participate").

Congress's use of the word "employee" and associated words such as "employment" is properly understood to reflect the common-law understanding of those words—which do not encompass independent contractors. This Court has explained that "when Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood" under the common law. *Cmty. for Creative Non-Violence* v. *Reid*, 490 U.S. 730, 739-740 (1989) (interpreting Copyright Act of 1975); see *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U.S. 318, 323 (1992) (reaching same conclusion as to meaning of "employee" in ERISA); see generally *Sekhar* v. *United States*, 570 U.S. 729, 732 (2013) ("It is a settled principle of interpretation that, absent other indication, Congress intends to incorporate the well-settled meaning of the common-law terms it uses.") (citation omitted). Common law distinguishes between employees and independent contractors. See *Reid*, 490 U.S. at 751-753; see also *NLRB* v. *United Ins. Co. of Am.*, 390 U.S. 254, 256 (1968). Here, "[n]othing in the text of

the" Norris-LaGuardia Act "indicates that Congress used the words 'employee' and 'employment' to describe anything other than 'the conventional relation of employer and employé.'" *Reid*, 490 U.S. at 740 (citation omitted).

That conclusion is cemented by reading the Norris-LaGuardia Act consistently with the federal labor laws with which Congress intended that Act to harmonize. See *United Mine Workers of Am.* v. *Pennington*, 381 U.S. 657, 665 (1965); cf. *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 569 (1995) (reading statute as part of a "symmetrical and coherent regulatory scheme"). Congress exempted collective activity related to employment conditions from regulation under federal antitrust law so that the activity in question could be comprehensively regulated by federal labor laws instead. See *United Mine Workers*, 381 U.S. at 665; see also *id.* at 704 (Goldberg, J., dissenting in part). Critically, Congress used the same definition of "labor dispute" to define both when the National Labor Relations Act (NLRA) applies and when the federal antitrust laws do not, compare 29 U.S.C. 113(c) with 29 U.S.C. 152(9), and those definitions "have been construed consistently with one another," *Brady* v. *NFL*, 644 F.3d 661, 672 (8th Cir. 2011) (citation omitted). Thus, federal antitrust law essentially ends where the NLRA begins. And there is no question that "the NLRA does not apply" to "independent contractors." *Pennsylvania Interscholastic Athletic Ass'n* v. *NLRB*, 926 F.3d 837, 839 (D.C. Cir. 2019); see, *e.g.*, 29 U.S.C. 151 (NLRA intended to ensure "equality of bargaining power between employers and employees").

Indeed, the NLRA's definition of "employee" expressly *excludes* "any individual having the status of an independent contractor," 29 U.S.C. 152(3)—a provision that Congress added to the statute *after* this

Court interpreted the term "employee" as used in federal labor law to extend beyond its common-law definition, thereby thwarting Congress's aims. See *Darden*, 503 U.S. at 324-325 (explaining that "Congress amended the statute" to "demonstrate that the usual common-law principles were the keys to meaning") (citing *United Ins. Co. of Am.*, 390 U.S. at 256). Extending the terms "employment" and "employee" as used in the Norris-LaGuardia Act beyond their common-law meaning would replicate that error and, in doing so, would leave independent contractors like the jockeys in this case unregulated by federal antitrust law *or* federal labor law. That cannot be what Congress intended.

In light of the plain meaning of Section 113(c), it is not surprising that—until the decision below—the overwhelming weight of authority concluded that disputes solely involving independent contractors fall outside the scope of the labor exemption. The many decisions from various courts reaching that conclusion are detailed above. See pp. 8-18, *supra*. Notably, the United States has quite recently agreed with that understanding of the law. See Br. of U.S. DOJ at 4, 5 n.19, *Atlanta Opera, Inc.*, No. 10-RC-27692 (NLRB Feb. 10, 2022) (explaining to the NLRB that "courts have historically held that" the labor exemption "only protect[s] *employees* and their unions, not independent contractors" and that "concerted action by independent contractors traditionally has been subject to antitrust scrutiny"), https://www.justice.gov/atr/case-document/file/1470846/download; Br. for U.S. and FTC at 2, 8, *Chamber of Commerce* v. *Seattle*, No. 17-35640 (9th Cir. Nov. 3, 2017) ("Antitrust law forbids independent contractors from collectively negotiating the terms of their engagement. * * * Independent contractors, as horizontal competitors, may not collude to

set the price for their services."). The Areeda & Hovenkamp treatise is in accord. See p. 14, *supra*.

2. In reaching the conclusion that the labor exemption applies here even absent an employer-employee relationship, the First Circuit made two fundamental mistakes.

a. First, the court of appeals seriously misinterpreted Section 113(c)'s statement that a dispute regarding terms and conditions of employment is a "labor dispute" within the meaning of that provision "regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. 113(c). According to the First Circuit, that clause "precludes an interpretation of the exemption limited to employees alone" and therefore means that a dispute involving *only* independent contractors is not "ineligible for the exemption." Pet. App. 10a-11a.

But Section 113(c) does not say that the exemption applies even where, as here, no employer-employee relationship is at issue. The clause in question merely says that the exemption can apply to a dispute related to "terms or conditions of employment" even where the "disputants" are not *themselves* the employees or employer whose relationship is at issue, 29 U.S.C. 113(c), but rather are some other people or entities who are attempting to change the terms of that employer-employee relationship. In other words, the term doing the work in that clause is "proximate"; an employer-employee "relation" must exist and be the subject of the dispute, but the disputants may be standing outside that relationship while attempting to influence it.

Such situations abound. Someone other than an employee can be a "disputant" trying to change the terms and conditions of the employment of some particular group of employees—for instance, a non-profit

organization or other interest group that advocates for employees across industries. And employee or non-employee disputants might direct their displeasure toward someone other than the employees' employer. A classic example of such a dispute is a "secondary" boycott against a third party "to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employees' demands." *NLRB* v. *Loc. 254, Bldg. Serv. Emps. Int'l Union, AFL-CIO*, 359 F.2d 289, 291 (1st Cir. 1966). Indeed, one of the express purposes of the Norris-LaGuardia Act, of which Section 113 is a part, was to overrule a prior decision of this Court holding that secondary boycotts could be enjoined despite the antitrust laws' prohibition on injunctions in cases involving disputes "between an employer and employees." 29 U.S.C. 52 (Clayton Act); see *Milk Wagon Drivers' Union, Loc. No. 753* v. *Lake Valley Farm Prods.*, 311 U.S. 91, 102 (1940) (discussing *Duplex Printing Press* v. *Deering*, 254 U.S. 443 (1921)); see also Joseph L. Greenslade, *Labor Unions and the Sherman Act: Rethinking Labor's Nonstatutory Exemption*, 22 Loy. L.A. L. Rev. 151, 168-170 (1988). The "regardless" clause in Section 113 therefore reflects nothing more than "Congress' decision to abolis[h], for purposes of labor immunity, the distinction between primary activity between the 'immediate disputants' and secondary activity in which" the disputants—*while involved in a controversy about an employer-employee relationship*—do not themselves "stand in the proximate relation of employer and employee." *Burlington N. R.R. Co.* v. *Bhd. of Maint. of Way Emps.*, 481 U.S. 429, 438-439 (1987) (citation omitted).

Indeed, this Court said as much in interpreting Section 113(c) in *Columbia River Packers Association* v. *Hinton*, 315 U.S. 143 (1942). The Court acknowledged

that a "labor dispute" within the meaning of Section 113 may exist "where the disputants do not stand in the proximate relation of employer and employee." *Id.* at 146-147. But the Court explained that a dispute over an employer-employee relationship nevertheless remains an essential prerequisite of the labor exemption, stating that "the statutory classification, however broad, of parties and circumstances to which a 'labor dispute' may relate does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing." *Ibid.*

The First Circuit thought that this Court's earlier decision in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), somehow "precludes an interpretation of the [labor] exemption limited to employees alone." Pet. App. 10a-11a (quoting 303 U.S. at 560-561). But that decision does not support the First Circuit's holding. This Court held that the labor exemption precluded antitrust liability for an advocacy organization that picketed a grocery store chain seeking the hiring of Black employees for "managerial and sales positions" and the provision of "fair and equitable conditions of employment." 303 U.S. at 556, 561; see *id.* at 555-559. Accordingly, as *Columbia River Packers* correctly stated, the "decision[] in *New Negro Alliance*" was one in which "the employer-employee relationship was the matrix of the controversy," 315 U.S. at 147, even though the disputant was an organization that—while advocating for employees and prospective employees—was not an employee itself or even a union of employees.

b. Second, the First Circuit misread *Columbia River Packers* to say that any and all "disputes about wages for labor," regardless of whether they involve employees, fall within the scope of the labor exemption—in contrast to disputes over "prices for goods,"

which "do not." Pet. App. 11a. *Columbia River Packers* says no such thing. Certainly, disputes over "the sale of commodities" fall *outside* the exemption, 315 U.S. at 145, but this Court has never suggested that all "disputes about wages for labor," Pet. App. 11a, including those involving solely independent contractors, fall *within* the exemption. To the contrary, *Columbia River Packers* specifically states that "application of" Section 113(c) cannot be "expand[ed]" to "include controversies upon which the employer-employee relationship has no bearing." 315 U.S. at 146-147; see pp. 24-25, *supra*. That is why this Court has quoted *Columbia River Packers* in explaining that "[t]he critical element" for the exemption's application "is whether 'the employer-employee relationship [is] the matrix of the controversy.'" *Jacksonville Bulk Terminals*, 457 U.S. at 712-713. Accordingly, the fact that the dispute at issue in this case involved the jockeys' services, and not the sale of goods, does not support the First Circuit's erroneous ruling about the scope of the exemption.

C. The Question Presented Is Exceptionally Important

This case involves a small number of jockeys at a small race track in Puerto Rico. But the First Circuit's *holding* is a potentially revolutionary one. If allowed to stand, it could create in that Circuit a new category of independent service providers who are covered neither by federal antitrust law nor by federal labor law. Those providers would be free to collude, set prices, and abuse their collective market power. That would not only be inconsistent with the Sherman Act, the NLRA, and a century of accommodation between antitrust law and labor law but also could have very serious economic consequences. Moreover, the difference between the law in the First Circuit and the law in

other circuits on this issue would create unmanageable problems and uncertainty, particularly for the broad swath of American businesses that work with independent contractors and operate across multiple circuits.

1. a. In the First Circuit, as elsewhere, businesses in many sectors leverage the work of independent contractors. That is true, for instance, of entities operating in the medical field, the trucking industry, the legal industry, the construction industry, and the real-estate business. See, *e.g.*, Andrew Garin & Dmitri Koustas, *The Distribution of Independent Contractor Activity in the United States: Evidence from Tax Filings*, at 11-14, Figs. 5-8 (Aug. 30, 2021), https://www.irs.gov/pub/irs-soi/21-rp-independent-contractor-activity.pdf. In 2017, across the United States, between seven and ten percent of all American workers worked as independent contractors, and the number has almost certainly risen since then. See Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements* (June 7, 2018), https://www.bls.gov/news.release/pdf/conemp.pdf; Lawrence Katz & Alan Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015*, at 8 (June 18, 2017), https://scholar.harvard.edu/files/lkatz/files/katz_krueger_cws_resubmit_clean.pdf; see also Emilie Jackson, Adam Looney, & Shanthi Ramnath, *The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage*, Department of the Treasury Office of Tax Analysis Working Paper 114 (Jan. 2017), https://home.treasury.gov/system/files/131/WP-114.pdf.

b. Under the First Circuit's decision, disputes about the compensation or working conditions of those independent contractors fall into a federal regulatory gap. As discussed above, labor disputes involving *employees*

are exempted from the antitrust laws because collective activity by employees is regulated under the NLRA—but the NLRA does not apply to independent contractors. See pp. 21-22, *supra*; 29 U.S.C. 152(3). Under the First Circuit's interpretation, then, independent contractors who supply labor (and not goods) can engage in collective activity regarding their compensation or other terms of their work without being subject to either federal antitrust laws *or* federal labor laws.

In such a regime, collective actions by such independent contractors would be essentially unrestrained. No federal agency would regulate their actions. No federal statutory provision would place limits on their ability to undermine "free enterprise and economic competition"—the "fundamental national values" that the federal antitrust laws are designed to protect. *N.C. State Bd. of Dental Exam'rs* v. *FTC*, 574 U.S. 494, 504 (2015) (citation omitted); see, *e.g.*, *Nat'l Soc'y of Pro. Eng'rs*, 435 U.S. at 695. That would leave the way open for collusion, coercion, price-fixing, boycotts, and other damaging behavior. It is simply implausible to conclude that Congress enacted the NLRA to manage the disruption resulting from collective actions regarding an employer-employee relationship, see, *e.g.*, 29 U.S.C. 158(b) (listing unfair practices in which employees and their unions may not engage), but intended to give free rein to the same kind of disruption resulting from collective actions that involve no such relationship.

c. If independent contractors can combine, collectively set prices, and yet enjoy a statutory exemption from the antitrust laws in the First Circuit (while remaining unregulated by the labor laws), then numerous industries could be seriously disrupted, with severe economic and other consequences.

The medical industry provides a useful example. If the First Circuit's decision were to stand, then independent doctors across swaths of the Northeast could band together, insist that they all be paid a uniform and significantly higher rate, and refuse to contract with any health plan—including Medicare—that did not pay that inflated rate. The result would be to deprive patients of critically needed medical care—and, quite possibly, to bring the operation of various medical clinics and hospitals to a standstill. Indeed, the FTC has previously argued against legislation that would expand the labor exemption to independent professionals like doctors, contending that doing so would "cause serious harm to consumers, to employers, and to federal, state, and local governments." *Prepared Statement of the Federal Trade Commission Concerning H.R. 1304 the "Quality Health-Care Coalition Act of 1999"* (June 22, 1999) (*FTC Statement*), https://www.ftc.gov/news-events/news/speeches/prepared-statement-federal-trade-commission-concerning-hr-1304-quality-health-care-coalition-act.

As the FTC explained, the notion of medical practitioners colluding in that harmful way is far from hypothetical. See *FTC Statement*, *supra*. In fact, the government has brought "numerous actions challenging similar activities." *Ibid.* In one such landmark action, addressed by this Court in 1943, associations of independent-contractor physicians practicing in the District of Columbia were convicted of violating the Sherman Act when they conspired to "restrain [local] hospitals * * * from affording facilities for the care of patients of [a medical entity's] physicians" and attempted to coerce other physicians to refuse to work for that entity or consult with that entity's physicians. *Am. Med. Ass'n*, 317 U.S. at 527; see, *e.g.*, *N. Tex. Specialty Physicians* v. *FTC*, 528 F.3d 346, 352 (5th Cir.

2008) (holding that group of independent physicians who attempted to bargain collectively with insurers to obtain higher reimbursement rates violated the antitrust laws). More recently, in *United States* v. *Federation of Physicians & Dentists*, the Department of Justice challenged under the antitrust laws the activities of a group of independent contractors consisting of almost all the orthopedic surgeons in Delaware. Those surgeons attempted to bargain as a unit with Blue Cross of Delaware and, when Blue Cross declined to raise their reimbursement for surgical activities, refused *en masse* to participate in an insurance plan on which many of their patients relied. See *United States* v. *Fed'n of Physicians & Dentists, Inc.*, 2002 WL 31961452 (D. Del. Nov. 5, 2002) (consent decree); 2 *Health Care and Antitrust L.* § 15:5 (2022); see also, *e.g.*, *FTC Statement*, *supra* (citing *North Lake Tahoe Medical Group, Inc.*, FTC File No. 981-0261, 64 Fed. Reg. 14730 (Mar. 26, 1999)).

Under the First Circuit's decision, those collusive activities by independent contractors in the medical field, which involve labor rather than provision of goods, would not be subject to an antitrust challenge so long as the collusion occurred in Maine, Massachusetts, New Hampshire, Puerto Rico, or Rhode Island.[4] The resulting disruption could be severe. And it is easy to foresee the similarly serious implications of that decision for many other diverse and important industries in which independent contractors operating in that geographic region provide needed services. See

[4] Because the NLRA does not cover independent contractors, labor laws—for instance, the NLRA provision forbidding a union of employees to strike, picket, or refuse to work at "any health care institution" without giving meaningful advance written notice to the institution and the federal government, see 29 U.S.C. 158(g)—also would not apply.

Real Estate Bds., 339 U.S. at 489-490 (real estate); *Trial Lawyers*, 493 U.S. at 422-423 (law); *Conley*, 500 F.2d at 126 (trucking); p. 27, *supra*. Engineers, real-estate agents, dentists, lawyers, and various other professionals who have never been permitted to engage in collective action free from the strictures of antitrust law could collude to make damaging demands—for instance, independent-contractor real-estate agents in New Hampshire could all agree that they will charge a 5% commission, and independent-contractor lawyers in Massachusetts could band together and demand a large amount of additional compensation to take on court appointments.

Across all of the industries that deal with independent contractors in the First Circuit, the collective economic effect could be staggering. And given that economic disruptions in one State generally have effects in other States as well, such disruptions would not be confined within the First Circuit itself; rather, they would reverberate across the U.S. economy.

2. In addition to those negative effects, the clear conflict that currently exists between the treatment of the labor exemption in the First Circuit and the treatment of that exemption in other circuits is itself deeply harmful. Differing standards across the country about whether a dispute over an employer-employee relationship is necessary to trigger the exemption mean that businesses and workers alike face significant uncertainty about the risk of antitrust liability and the scope of antitrust enforcement authority. Cf. Br. of U.S. DOJ in *Atlanta Opera* 5-6.

Those differences could give rise to significant competitive unfairness. Businesses operating inside the First Circuit and working with independent contractors could well be forced, without recourse in the anti-

trust laws, to bear significant burdens on their operations—like the work stoppage that closed down the racetrack in this case—from which businesses in other parts of the country would be free.

The many businesses that work with independent contractors and operate not only in the First Circuit but also outside of that Circuit would face particularly difficult choices. Independent contractors who operate in certain states would be able to take action against the business, but otherwise identically situated independent contractors who operate outside the First Circuit would face antitrust liability for doing so. A business in that position would face profound dilemmas about how to balance the risks of working with independent contractors against the disadvantages of forgoing relationships with those contractors; about whether to enter into different arrangements with contractors in different parts of the country; about how to grapple with a situation in which a contractor operates both inside and outside the First Circuit; and about a host of other similar problems.

Plainly, this is an area in which clarity and national uniformity are especially critical. But this Court has not addressed the scope of the antitrust labor exemption directly in many decades. Given the First Circuit's stark and unprecedented departure from existing law, refusal to rehear this case en banc, and mistaken conviction that its damaging holding was compelled by this Court's existing decisions, only this Court can now supply that clarity and uniformity. This Court's review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDICES

APPENDIX A

Nos. 19-2201, 20-2172

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CONFEDERACIÓN HÍPICA DE PUERTO RICO, INC.; CAMARERO RACETRACK CORP.,

Plaintiffs, Appellees,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC.; ABNER ADORNO; CARLOS QUIÑONES; CINDY SOTO; DAVID ROSARIO; EDWIN CASTRO; HÉCTOR BERRÍOS; HÉCTOR RIVERA; JOMAR GARCÍA; KENNEL PELLOT; LUIS NEGRÓN; MARIO M. SÁNCHEZ; PEDRO GONZÁLEZ; SASHA ORTIZ; STEVEN FRET; MIGUEL A. SÁNCHEZ,

Defendants, Appellants,

ALEXIS VALDÉS; ANARDIS RODRÍGUEZ; DAVID ORTIZ; ERIK RAMÍREZ; ISMAEL PERÉZ; ISRAEL O. RODRÍGUEZ; JOSÉ A. HERNANDEZ; JUAN CARLOS DÍAZ; JORGE G. ROBLES; JAVIER SANTIAGO; MISAEL MOLINA; KEVIN NAVARRO; PABLO RODRÍGUEZ; ALFONSO CLAUDIO; JONATHAN AGOSTO; YASHIRA TOLENTINO; JOSÉ M. RIVERA; ALVIN COLÓN; JESÚS GUADALUPE; JAN CARLOS SUÁREZ; ASOCIACION DE JINETES DE PUERTO RICO, INC.; RAMÓN SÁNCHEZ; CONJUGAL PARTNERSHIP ADORNO-DOE; CONJUGAL PARTNERSHIP DOE-SOTO; CONJUGAL PARTNERSHIP ORTIZ-DOE; CONJUGAL PARTNERSHIP H. DOE-TOLENTINO; CONJUGAL PARTNERSHIP ADORNO-DOE; CONJUGAL

PARTNERSHIP VALDÉS-DOE; CONJUGAL
PARTNERSHIP CLAUDIO-DOE; CONJUGAL
PARTNERSHIP COLÓN-DOE; CONJUGAL
PARTNERSHIP QUINONES-DOE; CONJUGAL
PARTNERSHIP DOE-SOTO; CONJUGAL
PARTNERSHIP ORTIZ-DOE; CONJUGAL
PARTNERSHIP ALEMAN-DOE; CONJUGAL
PARTNERSHIP CASTRO-DOE; CONJUGAL
PARTNERSHIP DELPINO-DOE; CONJUGAL
PARTNERSHIP BERRÍOS-DOE; CONJUGAL
PARTNERSHIP RIVERA-DOE; CONJUGAL
PARTNERSHIP CEPEDA-DOE; CONJUGAL
PARTNERSHIP PERÉZ-DOE; CONJUGAL
PARTNERSHIP RODRÍGUEZ-DOE; CONJUGAL
PARTNERSHIP SUÁREZ-DOE; CONJUGAL
PARTNERSHIP SANTIAGO-DOE; CONJUGAL
PARTNERSHIP GUADULUPE; CONJUGAL
PARTNERSHIP GARCÍA-DOE; CONJUGAL
PARTNERSHIP DAVILA-DOE; CONJUGAL
PARTNERSHIP ROBLES-DOE; CONJUGAL
PARTNERSHIP HERNANDEZ-DOE; CONJUGAL
PARTNERSHIP CABRERADOE; CONJUGAL
PARTNERSHIP DÍAZ-DOE; CONJUGAL
PARTNERSHIP PELLOT-DOE; CONJUGAL
PARTNERSHIP NAVARRO-DOE; CONJUGAL
PARTNERSHIP NEGRÓN-DOE; CONJUGAL
PARTNERSHIP SÁNCHEZ-DOE; CONJUGAL
PARTNERSHIP SÁNCHEZ-DOE 30; CONJUGAL
PARTNERSHIP MOLINA-DOE; CONJUGAL
PARTNERSHIP RODRÍGUEZ-DOE 24; CONJUGAL
PARTNERSHIP GONZÁLEZ-DOE; CONJUGAL
PARTNERSHIP SÁNCHEZ-DOE 29; CONJUGAL
PARTNERSHIP ORTIZ-DOE 26; CONJUGAL
PARTNERSHIP FRET-DOE; CONJUGAL
PARTNERSHIP DOE-TOLENTINO; JANE DOES;
JANE DOES 2-4; 6-35 JOHN DOES 1-2,

Defendants.

FILED April 4, 2022

BEFORE Lynch and Kayatta, Circuit Judges, and Woodlock,[*] District Judge.

LYNCH, **Circuit Judge**. The Sherman Antitrust Act usually forbids would-be competitors from staging a group boycott. 15 U.S.C. § 1; see Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co., 472 U.S. 284, 290 (1985). Federal statutes and controlling Supreme Court case law create an exemption for certain conduct, commonly called the labor-dispute exemption. See 15 U.S.C. § 17; 29 U.S.C. §§ 52, 101, 104, 105, 113.

In this action, brought by an association of horse owners ("Hípica") and the owner of a racetrack ("Camerero") against a group of jockeys who demanded higher wages and refused to race, the district court erroneously determined that the labor-dispute exemption does not apply. The district court preliminarily and permanently enjoined the work stoppage, awarded summary judgment against the jockeys, their spouses and conjugal partnerships, and an association representing them ("Jinetes"), and imposed $1,190,685 in damages. Confederación Hípica de Puerto Rico v. Confederación de Jinetes Puertorriqueños, Inc., 419 F. Supp. 3d 305, 311, 313 (D.P.R. 2019); Confederación Hípica De Puerto Rico, Inc. v. Confederación De Jinetes Puertorriqueños, Inc., 296 F. Supp. 3d 416, 421, 423-26 (D.P.R. 2017).

We reverse the district court's entry of summary judgment against the jockeys and direct, on remand, dismissal of the case. We also vacate sanctions that the

[*] Of the District of Massachusetts, sitting by designation.

district court imposed against the defendants.

I.

We briefly recount the background to this dispute.

Puerto Rico is home to one horse-racing track, the Hipódromo Camarero in Canóvanas, which is operated by plaintiff Camarero. Horse owners hire jockeys on a race-by-race basis. Since 1989, the jockeys have been paid a $20 mount fee for each race they participate in. The fortunate jockeys who finish in the top five positions in each race share in the "purse" -- the prize money for the top five horses. A Puerto Rico government agency, established in its current form in 1987, regulates the sport. See P.R. Laws Ann. tit. 15, § 198e. It embodied the compensation structure we have described in regulations in 1989. See Confederación Hípica de Puerto Rico, No. JH-88-12 (P.R. Admin. Of the Racing Sport & Indus. Racing Bd. Mar. 28, 1989).

The jockeys have long chafed at their employment conditions. They object to the mount fee, which is about one-fifth what jockeys receive in the mainland United States. They also complain about pre-race weigh-in procedures and about the conduct of racing officials.

In early June 2016, those long-simmering grievances boiled over. On June 10, several jockeys delayed the start of a race to demand that racing officials discuss the weigh-in procedures. As a result of that delay, the officials fined those jockeys. The jockeys responded through a pair of associations: defendant Jinetes and a second smaller group ("AJP"). On behalf of dozens of jockeys, the associations disputed the fines and objected to jockey compensation. The associations then attempted to negotiate employment conditions with plaintiff Hípica,

the representative of the horse owners. Those negotiations resolved none of the issues, and the racing regulators declined the jockeys' request to mediate.

After negotiations failed, in pursuit of their demands for increased compensation, thirty-seven jockeys refused to race for three days. Jinetes claimed credit for organizing the work stoppage. As no jockeys had registered to ride on June 30, July 1, and July 2, 2016, Camerero canceled the races scheduled for those days.

Hípica and Camerero sued the jockeys, their spouses and conjugal partnerships, and Jinetes, alleging that the defendants engaged in a group boycott in violation of federal antitrust law.[1] See 15 U.S.C. § 1. The defendants counterclaimed, alleging that the plaintiffs violated federal civil rights and antitrust law. See id.; 42 U.S.C. §§ 1981, 1983.

The plaintiffs sought and the district court granted a temporary restraining order on July 1 to direct the jockeys back to work.[2] Although the order came too late to restore the July 2 racing calendar, the jockeys otherwise complied. The district court then held an extended preliminary and permanent injunction hearing. On the first day of the hearing, the district court sanctioned Jinetes, requiring the association to pay some of the plaintiffs' attorney's fees because it concluded sua sponte that defense counsel failed to

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[1] The plaintiffs also sued AJP, which represented a handful of jockeys. AJP settled and is not a party to this appeal.

[2] This appeal does not concern the propriety of the scope of the injunctions. But see Authenticom, Inc. v. CDK Glob., LLC, 874 F.3d 1019, 1026 (7th Cir. 2017) ("The proper remedy for a section 1 violation based on an agreement to restrain trade is to set the offending agreement aside."). Our opinion should not be read to endorse the scope of the relief the district court ordered.

meet and confer with plaintiffs' counsel as ordered. After the hearing, the district court granted a preliminary and permanent injunction, holding that the jockeys are independent contractors, that they had acted in concert to restrain trade, and that they could not benefit from the labor-dispute exemption because of their independent-contractor status. The district court reasoned that a 1979 decision of this court, San Juan Racing Ass'n, Inc. v. Asociacion de Jinetes de Puerto Rico, 590 F.2d 31 (1st Cir. 1979), controlled its determination.

Proceeding to the damages stage, the district court granted summary judgment to the plaintiffs. After trebling the plaintiffs' losses, it awarded $602,466 in damages to Camarero and $588,219 in damages to Hípica. The defendants appealed.

The defendants also moved to reconsider the judgment. They contended that the plaintiffs failed to join indispensable parties because they had never actually served the jockeys' wives and conjugal partnerships. The district court denied the motion, and the plaintiffs separately appealed from that denial.

II.

We start our analysis with the antitrust issues.

As this dispute turns on a question of law, we review de novo both the district court's grant of summary judgment and its issuance of the injunction. Spectrum Ne., LLC v. Frey, 22 F.4th 287, 291 (1st Cir. 2022) (citing Lawless v. Steward Health Care Sys., LLC, 894 F.3d 9, 21 (1st Cir. 2018)).

"[T]here is an inherent tension between national antitrust policy, which seeks to maximize competition, and national labor policy, which encourages

cooperation among workers to improve the conditions of employment." H. A. Artists & Assocs., Inc. v. Actors' Equity Ass'n, 451 U.S. 704, 713 (1981). Most of the time, antitrust law forbids would-be competitors from colluding to increase prices. When the price is a laborer's wage, however, a different set of rules apply. That must be so, lest antitrust law waylay ordinary collective bargaining. See Brown Pro Football, Inc., 518 U.S. 231, 236-37 (1996). Thus a pair of exemptions -- one statutory and one nonstatutory -- shield legitimate labor conduct from antitrust scrutiny. We deal here with the statutory exemption.

The statutory labor-dispute exemption flows from both the Clayton Act and the Norris-LaGuardia Act. H.A. Artists & Assocs., 451 U.S. at 706 n.2 (citing 15 U.S.C. § 17 and 29 U.S.C. §§ 52, 104, 105, 113). Through those two statutes, Congress exempted labor disputes from antitrust law. See Milk Wagon Drivers' Union, Loc. No. 753 v. Lake Valley Farm Prods., 311 U.S. 91, 101-03 (1940); Apex Hosiery Co. v. Leader, 310 U.S. 469, 503 (1940).

The Clayton Act declares that "[t]he labor of a human being is not a commodity or article of commerce," subject to antitrust law. 15 U.S.C. § 17. To implement that policy, the Norris-LaGuardia Act provides that "persons participating or interested in [a labor dispute]" may engage in an enumerated set of acts -- including entering agreement to "refus[e] to perform work" -- without falling afoul of the Sherman Act's prohibition on "engag[ing] in an unlawful combination or conspiracy." 29 U.S.C. §§ 104, 105; see Apex Hosiery Co., 310 U.S. at 503. The Norris-LaGuardia Act defines a "labor dispute" by specifically providing that:

> (a) A case shall be held to involve or to grow out of a labor dispute when the case involves

> persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein . . . when the case involves any conflicting or competing interests in a "labor dispute" . . . of "persons participating or interested" therein . . . .
>
> (b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry . . . in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry . . . .
>
> (c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

29 U.S.C. § 113.

The Supreme Court has explained that the statutory exemption applies when four conditions are met. See J. Bauer, et al., Kintner's Federal Antitrust Law § 72.3 (2021 update). First, the conduct must be undertaken by a "bona fide labor organization." H.A. Artists & Assocs., 451 U.S. at 717 n.20. Second, the conduct must actually arise from a labor dispute, as defined under the Norris-LaGuardia Act. 29 U.S.C. § 113. Once those two prerequisites are satisfied, we

apply a further "two-prong test": the organization must "act[] in its self-interest and . . . not combine with non-labor groups." See Am. Steel Erectors, Inc. v. Loc. Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers, 536 F.3d 68, 76 (1st Cir. 2008) (quoting United States v. Hutcheson, 312 U.S. 291, 232 (1941)). To summarize, then, the statutory labor-dispute exemption applies to conduct arising (1) out of the actions of a labor organization and undertaken (2) during a labor dispute, (3) unilaterally, and (4) out of the self-interest of the labor organization. See H.A. Artists & Assocs., 451 U.S. at 714-15; see also Bauer, supra § 72.3.

We discuss the elements of the exemption in turn. First, a labor organization is a "bona fide" group representing laborers. H.A. Artists & Assocs., 451 U.S. at 717 n.20. It need not be formally recognized as a union. See NLRB v. Wash. Aluminum Co., 370 U.S. 9, 14-15 (1962). Second, a labor dispute broadly encompasses "any controversy concerning terms or conditions of employment." See Jacksonville Bulk Terminals, Inc. v. Int'l Longshoremen's Ass'n, 457 U.S. 702, 709-12 (1982) (quoting 29 U.S.C. § 113(c)). Third, a labor group acts unilaterally unless it coordinates with a nonlabor group. Hutcheson, 312 U.S. at 232; see also Bauer, supra § 72.6. And fourth, a labor organization acts in its self-interest when its activities "bear a reasonable relationship to a legitimate union interest." Am. Steel Erectors, 533 F.3d at 76 (quoting Allied Int'l, Inc. v. Int'l Longshoremen's Ass'n, 640 F.2d 1368, 1379 (1st Cir. 1981)); see Am. Fed'n of Musicians v. Carroll, 391 U.S. 99, 110-13 (1968); see also Bauer, supra § 72.5.

We apply the statutory framework, emphasizing the first two elements, as the second pair are not seriously

disputed here. We conclude that the jockeys' action fell within the labor-dispute exemption. Jinetes, which advocates for the jockeys' terms of employment, is a labor organization. The defendants sought higher wages and safer working conditions, making this a core labor dispute. See Loc. Union No. 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 689 (1965). The plaintiffs make no assertion that the defendants coordinated with any nonlabor group. And the defendants acted to serve their own economic interests. Because the dispute meets the statutory criteria, the labor-dispute exemption applies.

The district court erred when it concluded that the jockeys' alleged independent-contractor status categorically meant they were ineligible for the exemption. We express no opinion on whether the jockeys are independent contractors, because, by the express text of the Norris-LaGuardia Act, a labor dispute may exist "regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 113(c). The Court interpreted that provision in New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938). There, a community association encouraged a boycott of a grocery store in protest of the store's refusal to hire black employees. Id. at 559. The Supreme Court held that the association's conduct fell within the labor-dispute exemption because the association sought to influence the store's terms of employment. Id. at 559-60; see also Columbia River Packers Ass'n v. Hinton, 315 U.S. 143, 146 (1942). It explained that the text of the Norris-LaGuardia Act was "intended to embrace controversies other than those between employers and employees; between labor unions seeking to represent employees and employers; and between persons seeking employment and employers." New Negro All.,

303 U.S. at 560-61. New Negro Alliance thus precludes an interpretation of the exemption limited to employees alone. See also Am. Fed'n of Musicians, 391 U.S. at 111-14; H.A. Artists & Assocs., 451 U.S. at 718, 721-22.

The key question is not whether the jockeys are independent contractors or laborers but whether what is at issue is compensation for their labor. We draw that principle from Columbia River Packers Ass'n v. Hinton, 315 U.S. 143 (1942). In that case, a group of fishermen tried to force exclusive contracts on the canneries to which they sold fish. Id. at 145. Relying on the fact that the fishermen were "independent entrepreneurs," the Supreme Court held that the labor-dispute exemption did not apply. Id. at 144-45, 147. Instead, it explained that the dispute "is altogether between fish sellers and fish buyers" and "relat[es] solely to the sale of fish," without implicating "wages or hours or other terms and conditions of employment." Id. At 147. From Columbia River Packers, thus, comes a critical distinction in applying the labor-dispute exemption: disputes about wages for labor fall within the exemption but those over prices for goods do not. See Allen Bradley Co. v. Loc. Union No. 3, Int'l Bhd. of Elec. Workers, 325 U.S. 797, 807 n.12 (1945) ("We do not have here, as we did in [Columbia River Packers], a dispute between groups of business men revolving solely around the price at which one group would sell commodities to another group. On the contrary, Local No. 3 is a labor union and its spur to action related to wages and working conditions."). Whether or not the jockeys are independent contractors does not by itself determine whether this dispute is within the labor-dispute exemption.

Nor, contrary to the district court's reasoning, does this court's decision in San Juan Racing mandate a

different outcome. In that case, a previous generation of jockeys went on strike to seek higher wages from a previous owner of the Hipódromo. 590 F.2d at 32. The district court entered a preliminary injunction, and we found no abuse of discretion in its conclusion that the plaintiffs were likely to succeed on the merits. Id. at 33; see Am. Eutectic Welding Alloys Sales Co. v. Rodriguez, 480 F.2d 223, 226 (1st Cir. 1973) (orders granting preliminary injunctions are reviewed for abuse of discretion). We held that the "sparse" record supported the district court's preliminary conclusion that the jockeys' "collective refusal to deal with plaintiff until their fees were increased constituted an illegal effort to control prices through concerted action." San Juan Racing, 590 F.2d at 32. The issue of concern in this case -- the labor-dispute exemption -- was expressly not considered by the San Juan Racing court.[3] Id. A decision cannot create a precedent on an issue unless the issue was actually decided. Gately v. Massachusetts, 2 F.3d 1221, 1228 (1st Cir. 1993). Thus, San Juan Racing does not preclude the jockeys from availing themselves of the labor-dispute exemption.

We also reject the plaintiffs' contention that the

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[3] In dicta, San Juan Racing referred to Taylor v. Loc. No. 7, Int'l Union of Journeymen Horseshoers, 353 F.2d 593 (4th Cir. 1965) (en banc). Assuming, for present purposes, that Taylor was decided correctly, the circumstances were materially different from this case. In Taylor, the Fourth Circuit, noting the defendants were independent contractors, held that a group of farriers was not entitled to use the labor dispute exemption to protect their strike in favor of higher rates. Id. at 602-06. Unlike the jockeys, however, and like the fishermen in Columbia River Packers, the farriers provided not just labor but also a product -- horseshoes -- to their customers. Id. at 607 (Sobeloff, J., dissenting). We do not interpret Taylor to apply to a labor-only case, such as we have here.

labor-dispute exemption does not apply because, in their view, it is the Puerto Rico government that controls the jockeys' wages. The argument fails both factually and legally.

The record shows that the plaintiffs have considerable influence with regulators and have direct ability to affect the jockeys' earnings. The plaintiffs admit that the horse owners could have paid the jockeys at least some of the money they sought, e.g., payment for exercising horses, without permission from racing regulators. The record also shows that, in 1989, the regulators set the jockeys' payment under the influence of both the jockeys and the owners. As the plaintiffs conceded at oral argument, the owners still can influence the jockeys' pay, but they never offered to ask the regulators to raise rates. Further, the plaintiffs agreed in 2007 to increase the jockeys' compensation by giving the jockeys a share of the revenue from simulcast races. Taken together, the evidence establishes that the plaintiffs have power to influence -- and in some cases to adjust unilaterally -- the jockeys' compensation.

The law also provides the plaintiffs with no support. Contrary to the plaintiffs' arguments, their dispute with the defendants is a labor dispute because it centers on the compensation they pay the jockeys for their labor. The labor-dispute exemption applies in regulated industries. See, e.g., Pittsburgh & Lake Erie R.R. Co. v. Ry. Lab Executives' Ass'n, 491 U.S. 490, 514 (1989). At oral argument, the plaintiffs also suggested that the defendants' work stoppage was an illegal secondary boycott. They did not plead that claim in their complaint, raise it before the district court, or argue it in their briefs. It is thus triply waived. See Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 29-30 (1st Cir. 2015). Nor, even had the plaintiffs

preserved it, would that argument have merit. The National Labor Relations Act prohibits "secondary boycotts" -- using a strike to influence the labor policies of a person other than the laborers' direct employer -- as an unfair trade practice. 29 U.S.C. § 158(b)(4)(i)(B); see Loc. Union No. 25, A/W Int'l Bhd. of Teamsters v. NLRB, 831 F.2d 1149, 1152 (1st Cir. 1987) (citing Nat'l Woodwork Mfrs.' Ass'n v. NLRB, 386 U.S. 612, 632 (1976)). If a labor group boycotts to obtain a concession that its "immediate employer is not in a position to award," it violates that prohibition. Id. at 1153 (quoting NLRB v. Enter. Ass'n of Steam, Hot Water, etc. Pipefitters, 429 U.S. 507, 525-26 (1977)). But that is not the case here. The defendants here sought to change the rates the plaintiffs paid them. The owners could have approved some increases themselves and could have influenced regulators to approve other fee increases across the industry. So the secondary boycott argument fails as well.

The plaintiffs also appear to advert to a line of cases holding unlawful private restraints of trade intended to influence government action. Yet they fare no better with that argument. Even if the jockeys ultimately sought to influence a political body through their work stoppage, their political activism would make no difference. As long as an employee-employer relationship -- broadly understood -- is at the core of the controversy, as here, then any political motivations for a work stoppage would not take a dispute out of the labor exemption. See Jacksonville Bulk Terminals, 457 U.S. at 711-19.[4]

[4] None of the Supreme Court's subsequent cases about politically motivated anticompetitive actions alter that rule. See Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 499-501 (1988) (curtailing politically motivated boycott rule for sale of goods); FTC v. Superior Ct. Trial Laws. Ass'n, 493 U.S. 411,

As the labor-dispute exemption applies, the district court erred in granting the plaintiffs an injunction and summary judgment. The plaintiffs are legally precluded from prevailing on their antitrust claims. See Apex Hosiery, 310 U.S. at 503. On remand, the district court must dismiss the complaint. See Bruns v. Mayhew, 750 F.3d 61, 71-73 (1st Cir. 2014) (explaining that when we hold that the plaintiff has failed to state a claim on which relief can be granted as a matter of law, the appropriate disposition is to remand the case with instructions to dismiss the complaint).

III.

We next turn to the sanctions the district court imposed regarding the conduct of Jinetes's attorneys.

We review an order imposing sanctions for abuse of discretion. In re Ames, 993 F.3d 27, 34 (1st Cir. 2021). A district court abuses its discretion to sanction misconduct when it ignores a material factor, relies on an improper factor, or "makes a serious mistake in weighing" the proper factors. Id. (quoting Anderson v. Beatrice Foods Co., 900 F.2d 388, 394 (1st Cir. 1990)).

At 2:44 p.m. on the afternoon before the first day of the preliminary injunction hearing, the district court ordered counsel to meet and attempt to agree on a joint stipulation of facts. It also ordered plaintiffs' counsel to provide notice of the order to defense counsel by phone or email. Opting for email, at 3:15 p.m., plaintiffs' counsel invited defense counsel to a meeting scheduled at 6:00 p.m. at the offices of plaintiffs' counsel. Defense counsel did not attend that meeting.

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425 (1990) (labor exemption not argued); see also Superior Ct. Trial Laws. Ass'n v. FTC, 856 F.2d 226, 230 n.6 (D.C. Cir. 1988).

At the hearing the next morning, the district court sua sponte raised concerns regarding defense counsel's failure to attend the previous evening's meeting. Defense counsel explained that they received insufficient notice, having not checked their email before 7:00 p.m. The district court sanctioned Jinetes's attorneys, requiring payment for one-half hour of plaintiffs' fees for their three attorneys (i.e., $600). The district court later raised that award to $2,848.75 without explanation.[5]

The district court failed to explain on what basis it rested its authority to sanction Jinetes or its attorneys. Since there was no relevant filing to bring sanctions under Rule 11(b) into play, see Balerna v. Gilberti, 708 F.3d 319, 323 (1st Cir. 2013), there are only three[6] potential sources of authority to consider: 28 U.S.C. § 1927; the district court's inherent authority to sanction litigation misconduct; and the district court's contempt

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[5] The district court, through its oral order at the hearing, appeared to sanction defense counsel and not Jinetes. Its written orders required the Jinetes to pay the attorneys' fees through its attorneys until Jinetes communicated to the court that the association "would be taking care of payment of the sanctions imposed by the Court." Thereafter the district court specifically directed its sanction order be paid by Jinetes.

[6] We note that the district court, some nine months after orally imposing the sanctions, issued a written order stating that it had done so under Fed. R. Civ. P. 37(b). We can find no authority under Rule 37(b) to impose a sanction for the failure by Jinetes's counsel to attend the meeting to discuss stipulations. Our case law is clear that "[s]anctions under Rule 37(b)(2) may not be levied without the issuance, and subsequent violation, of a formal order under Rule 37(a)." In re Williams, 156 F.3d 86, 89 n.1 (1st Cir. 1998) (citing R.W. Int'l Corp. v. Welch Foods, Inc., 937 F.2d 11, 18 (1st Cir. 1991)). No violation of any of the specified orders under Rule 37(a) was implicated by defense counsel's failure to attend the meeting.

power. See generally G. Joseph, Sanctions: The Federal Law of Litigation Abuse § 1 (6th ed., Dec. 2021 update). The district court could not, without a bad faith finding in this context, impose a sanction under either § 192, see Jensen v. Phillips Screw Co., 546 F.3d 59, 64 (1st Cir. 2008), or under its inherent power, see In re Charbono, 790 F.3d 80, 87-88 (1st Cir. 2015). Nor could the district have sanctioned Jinetes as a punishment for contempt because it never held contempt proceedings. See Int'l Union, United Mine Workers v. Bagwell, 512 U.S. 821, 833 (1994) (citing Cooke v. United States, 267 U.S. 517, 534 (1925)) (describing procedural requirements for civil contempt committed outside the presence of the court).

The record is barren of any findings to support the sanctions other than that defense counsel failed to meet and confer. Without a finding of bad faith or the deployment of contempt proceedings, we cannot sustain the district court's award of attorneys' fees. We thus vacate that sanction.

IV.

We need not reach any of the other issues the defendants raise on appeal.

The defendants contend that the district court erred when it effectively ignored their counterclaims in entering judgment. Defense counsel, however, informed us at oral argument that if the defendants prevailed on the labor-dispute exemption issue, they would drop their counterclaims on remand.

Finally, the defendants' challenge to the district court's denial of their motion to reconsider the judgment is moot. The challenge was rooted in the plaintiffs' alleged failure to join indispensable parties: the jockeys' spouses and conjugal partnerships. As no claims against any of those parties survive this appeal,

we do not reach the reconsideration issue.

V.

We reverse the district court's judgment, vacate the injunction and sanctions orders, and remand the case with instructions to dismiss the complaint and counterclaims.

APPENDIX B

No. 16-2256

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CONFEDERACIÓN HÍPICA DE PUERTO RICO, et al.,

Plaintiffs,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC., et al.,

Defendants.

FILED September 30, 2020

OPINION AND ORDER

DANIEL R. DOMINGUEZ, United States District Court

Pending before the Court is Defendants/Counter-Plaintiffs, Confederación de Jinetes Puertorriqueños, Inc. ("CJP") and its members' (collectively, the "Defendants") *Amended Motion to Dismiss for Failure to Join Indispensable Parties and/or Failure to Prosecute; Requesting the Court to Amend and/or to Alter Judgment Under Rule 59(e) of the [Federal] Rules of Civil Procedure*. *See* Docket No. 310. Plaintiffs, Confederación Hípica de Puerto Rico, Inc. and Camarero Racetrack Corp. (hereinafter, "CHPR" and "Camarero" respectively, and collectively, the "Plaintiffs") filed and *Opposition* thereto. *See* Docket No. 315. A *Reply* was subsequently filed by the Defendants. *See* Docket No. 317.

For the reasons stated herein, the Court **DENIES** the Defendants' *Amended Motion to Dismiss for Failure to Join Indispensable Parties and/or Failure to*

Prosecute; Requesting the Court to Amend and/or to Alter Judgment Under Rule 59(e) of the [Federal] Rules of Civil Procedure. *See* Docket No. 310.

I. FACTUAL AND PROCEDURAL BACKGROUND

The instant case arises out of a *Complaint* filed by Plaintiffs, CHPR and Camarero against Defendants, Asociación de Jinetes de Puerto Rico, Confederación de Jinetes Puertorriqueños, Inc. and a series of personally named individual jockeys for allegedly boycotting and cancelling horse races that were scheduled for June 30, July 1 and July 2, 2016 in violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, the Clayton Act, and other federal statutes, as the jockeys are not employees but independent contractors of CHPR. Accordingly, Plaintiffs requested a temporary restraining order, a Preliminary and Permanent Injunction as well as damages as a result thereof.

As a consequence of the arguments set forth by Plaintiffs, a temporary restraining order (hereinafter, "TRO") was issued by the Court. The Court found that a TRO was warranted pursuant to the allegations set forth and applicable law. Accordingly, the jockeys and their respective associations were ordered to immediately desist from any boycott against the Plaintiffs. The jockeys were further ordered to continue riding on horse racing days until otherwise ordered by the Court. *See* Docket No. 33 at 11.

Upon conducting several evidentiary hearings and a careful evaluation of memorandum of facts and law submitted by the parties, the Court granted Plaintiffs' *Injunction* request. *See* Docket No. 210. Subsequently, the Court entered an *Amended Opinion and Order* wherein the Preliminary and Permanent Injunction were granted in favor of Plaintiffs. Thereafter, the case

moved to the damages stage. *See* Docket No. 214.

The Court, however, conducted several settlement conferences in order to encourage the parties to engage in settlement negotiations that would put an end to the outstanding damages litigation. While Codefendant, Asociación de Jinetes de Puerto Rico settled all matters with Camarero and CHPR, Confederación de Jinetes Puertorriqueños and its members refused to settle and compensate for the damages suffered by Plaintiffs as a result of the illegal strike. *See* Docket Nos. 155 and 204, respectively. Accordingly, Plaintiffs filed *a Motion for Summary Judgment* that was ultimately granted by the Court. *See* Docket Nos. 248 and 279. The Summary Judgment was amended by way of *Plaintiffs' Supplemental Motion for Summary Judgment. See* Docket No. 272. An *Amended Judgment* of dismissal was accordingly entered on December 4, 2019. *See* Docket No. 306.

Pending before the Court is the Defendants' *Amended Motion to Dismiss for Failure to Join Indispensable Parties and/or Failure to Prosecute; Requesting the Court to Amend and/or Alter Judgment Under Rule 59(e) of Civil Procedure. See* Docket No. 310. The Defendants are essentially seeking a dismissal of the instant action as they allege that summons for CJP members and their individual wives were not executed. But, more importantly, "[t]he individual wives and/or the different individual CJP members' conjugal partnerships, and all other CJP individual and conjugal partnerships members not named in the complaint are indispensable parties in the case, whose outcome affects them directly and complete relief cannot be accorded among those already parties with their absence because they have a financial interest that will be adversely affected relating to the judgment issued by the Court in this

action, and, in that person's absence, the court cannot accord complete relief." *Id.* at 5. Additionally, the Defendants request clarification as to the responsibility of Codefendant, Asociación de Jinetes de Puerto Rico, Inc., and its individual members who were also found to be responsible for the damages awarded to Plaintiffs but entered a *Joint Stipulation Agreement* with CHPR but not with Camarero. *Id.* at 9.

Whereas CHPR and Camarero opposed to the Defendant's request for dismissal essentially arguing that "based upon the pleadings, the individual wives as well as their conjugal partnerships were, in fact, represented in this case by the attorneys who signed the pleadings on behalf of all 'Defendants' not just CJP." Docket No. 315 at 2. Moreover, Plaintiffs argue that including a counterclaim for damages in business, economic harm and deprivation of income and wages results in obtaining personal jurisdiction as to all defendants through voluntary appearance particularly since compensation for wages belongs to the conjugal partnerships pursuant to Puerto Rico law. *See* P.R. Laws Ann. Tit. 31, § 3641. Finally, Plaintiffs argue that "Defendants have not presented evidence to this Court that identifies which Plaintiffs are married, and of those that are married, which ones have a conjugal partnership." *Id.* at 6.

As several arguments were raised by the Defendants, the Court will discuss them *ad seriatim*.

II. LEGAL ANALYSIS

A. Motion to Amend and/or Alter Judgment under Fed. R. Civ. P. 59(e)

It is well recognized that "[a] motion for reconsideration . . . certainly does not allow a party to introduce new evidence or advance new arguments

that could or should have been presented to the district court prior to judgment." *Marks 3-Zet-Ernst Marks GMBH & Co. KG v. Presstek, Inc.*, 455 F.3d 7, 15-16 (1st Cir. 2006). Thus, a motion for reconsideration cannot be used as a vehicle to re-litigate matters previously adjudicated. *See Standard Quimica De Venezuela v. Cent. Hispano Int'l, Inc.*, 189 F.R.D. 202, n. 4 (D.P.R. 1999).

Motions for reconsideration are entertained by courts if they seek to correct manifest errors of law, present newly discovered evidence, or when there is an intervening change in law. *See Prescott v. Higgins*, 538 F.3d 32, 45 (1st Cir. 2008); *see also Rivera Surillo & Co. v. Falconer Glass Indus., Inc.*, 37 F.3d 25, 29 (1st Cir. 1994)(citing *F.D.I.C. Ins. Co. v. World University, Inc.*, 978 F.3d 10, 16 (1st Cir. 1992)). A motion for reconsideration is unavailable if said request simply brings forth a point of disagreement between the court and the litigant, or rehashes matters already properly disposed of by the Court. *See e.g., Waye v. First Citizen's Nat'l Bank*, 846 F. Supp. 310 (M.D. Pa. 1994).

Whereas, Rule 60 of the Federal Rules of Civil Procedure provides in its pertinent part that, "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceedings for the following reason[]: (1) mistake, inadvertence, surprise, or excusable neglect. . ." Fed. R. Civ. P. 60(b)(1). However, the First Circuit has consistently held that "[a] motion for reconsideration is not the venue to undo procedural snafus or permit a party to advance arguments it should have developed prior to judgment, ..., nor is it a mechanism to regurgitate old arguments previously considered and rejected …." *Fontanillas-Lopez v. Morel Bauza Cartagena & Dapena LLC*, 136 F. Supp. 3d 152, 159 (D.P.R. 2015), *aff'd sub nom. Fontanillas-Lopez v.*

Morell Bauza Cartagena & Dapena, LLC, 832 F.3d 50 (1st Cir. 2016) (quoting *Biltcliffe v. CitiMortgage, Inc.,* 772 F.3d 925, 930 (1st Cir. 2014).

The Defendants' motion does not present newly discovered evidence nor argues that there has been an intervening change in the law. *See Prescott*, 537 F.3d at 45. The Defendants' motion can only be entertained by the Court should the mover seek to correct a manifest error of law. *See Id.* However, "[Rule 59(e)] does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new evidence or advance arguments that could and should have been presented to the district court prior to the judgment." *Aybar v. Crispin-Reyes*, 118 F.3d 10, 16 (1st Cir. 1997) To that effect, the First Circuit has held that, "[t]he presentation of a previously unpled and undeveloped argument in a motion for reconsideration neither cures the original omission nor preserves the argument as a matter of right for appellate review." *Iverson v. City Of Bos.*, 452 F.3d 94, 104 (1st Cir. 2006).

The problematic with the Defendants' contention is that all arguments raised in their motion "could and should have been presented to the district court prior to judgment." *Aybar*, 118 F.3d at 16. The Court finds that the Defendants are only attempting to re-litigate issues properly disposed of by the Court and voicing their disagreement with the Court's prior ruling, while attempting to raise, for the first time, arguments that could have been raised during the three (3) years that the case at bar was pending before the Court. Therefore, the Court finds that a motion to alter or amend judgment is not the proper mechanism to address this issue.

B. Motion to Dismiss for Failure to Join Indispensable Parties & Conjugal

Partnerships in Puerto Rico

On a separate note, Defendants are requesting a dismissal under Fed. R. Civ. P. 12(b)(7) as they allege that Plaintiffs failed to join indispensable parties to the case at bar, to wit, wives and conjugal partnerships of CJP members. Rule 12 of Civil Procedure provides in its pertinent part that "[e]very defense for a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (7) failure to join a party under Rule 19 [of Civil Procedure]." Fed. R. Civ. P. 12(b)(7). When considering a motion to dismiss for failure to join indispensable parties, District Courts employ a two-step approach, to wit, the court analyses whether the person fits the definition of those who should be joined if feasible, and if the person is required, then the court ascertains whether the joinder is feasible. *Puerto Rico Medical Emergency Group, Inc. v. Iglesia Episcopal Puertorriqueña, Inc.*, 257 F.Supp. 3d 225 (D.P.R. 2017). Particularly, Federal Rule of Civil Procedure 19 provides that,

> [a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial

> risk of incurring double, multiple or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1)(Emphasis ours). Likewise, the First Circuit has explained that,

> [r]ule 19 addresses situations where a lawsuit is proceeding without a party whose interests are central to the suit. [citation omitted]. The Rule provides for joinder of required parties when feasible, Fed.R.Civ.P. 19(a), and for dismissal of suits when joinder of a required party is not feasible and that party is indispensable, Fed.R.Civ.P. 19(b). The Rule calls for courts to make pragmatic, practical judgments that are heavily influenced by the facts of each case. *See Picciotto v. Cont'l Cas. Co.,* 512 F.3d 9, 14–15 (1st Cir. 2008); *Travelers Indem. Co. v. Dingwell,* 884 F.2d 629, 635 (1st Cir.1989); *see also* 7 C. Wright & A. Miller, *Federal Practice & Procedure* § 1604 ("By its very nature Rule 19(a) calls for determinations that are heavily influenced by the facts and circumstances of individual cases.").

Bacardi Int'l Ltd. v. V. Suarez & Co., 719 F.3d 1, 9 (1st Cir. 2013). The Court must then determine "whether the absent person's interest in the litigation is sufficient to satisfy one or more of the tests set out in Rule 19(a)(1)." 7 Fed. Prac. & Proc. Civ. § 1604 (3d ed.). However, [t]he Rule calls for courts to make pragmatic, practical judgments that are heavily influenced by the facts of each case. *Bacardi Int'l Ltd. v. V. Suarez & Co.*, 719 F.3d 1, 9 (1st Cir. 2013). Therefore, "[b]y its very nature Rule 19(a) calls for determinations that are heavily influenced by the facts and circumstances of individual cases. 7 Wright & Miller, *Federal Practice and Procedure*, § 1604 (3d ed.)

Likewise, Rule 19(b) of Civil Procedure provides the elements to be considered in order for the Court to determine when joinder is not feasible, to wit,

> [i]f a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
>
> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
>
> (2) the extent to which any prejudice could be lessened or avoided by:
>
> (A) protective provisions in the judgment;
>
> (B) shaping the relief; or
>
> (C) other measures;
>
> (3) whether a judgment rendered in the person's absence would be adequate; and
>
> (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Fed. R. Civ. P. 19(b). However, "[t]he rule is that if the merits of the cause may be determined without prejudice to the rights of necessary parties, absent and beyond the jurisdiction of the court, it will be done; and a court of equity will strain hard to reach that result." *Bourdieu v. Pac. W. Oil Co.*, 299 U.S. 65, 70, 57 S. Ct. 51, 53, 81 L. Ed. 42 (1936). "Federal courts are extremely reluctant to grant motions to dismiss based on nonjoinder and, in general, dismissal will be ordered only when the defect cannot be cured and serious prejudice or inefficiency will result." 7 Fed.

Prac. & Proc. Civ. § 1609 (3d ed.). More importantly, "[i]t is well settled law that the party moving for dismissal for failure to join an indispensable party must show the need to join the absent party. *W. Auto Supply Co. v. Noblex Advert., Inc.*, 173 F.R.D. 338, 340 (D.P.R. 1997); *see McCann v. Ruiz*, 788 F.Supp. 109, 121 (D.P.R.1992).

Finally, the Federal Rules of Civil Procedure provide that motions for "failure . . . to join a person required by Rule 19(b), . . . may be raised: (A) in any pleading allowed or ordered under Rule 7(a); (B) by a motion under Rule 12(c); or (C) at trial." Fed. R. Civ. P. 12(h)(2). However, "Rule 21 of the Fed.R.Civ.P. allows the joinder of any party at any stage of the action, even after trial or on appeal, and or such terms that are just. Yet, it should be noted that "[j]oinder is a matter left to the sound discretion of the Court. *Hershey Foods Corp. v. Padilla*, 168 F.R.D. 7, 10 (D.P.R. 1996); *see Paredes Figueroa v. International Air Services of Puerto Rico, Inc.*, 662 F.Supp. 1202, 1204 (D.P.R. 1987); 7 Wright & Miller, *Federal Practice and Procedure*, 1986, § 1688.

Puerto Rico law governs conjugal partnerships. In essence, Article 1393 of the Puerto Rico Civil Code provides that "[t]he conjugal partnership shall always begin on the same day that the marriage is celebrated." P.R. Laws Ann. Tit. 31, § 3622. Among the property belonging to the conjugal partnership are "[property] acquired by the industry, salaries, or work of the spouses or of either of them" and "[t]he fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses." P.R. Laws Ann. Tit. 31, § 3641. "Thus, claims for damages such as loss of income, which substitute salary derived from work, belong to the conjugal

partnership." *Fraguada Rodriguez v. Plaza Las Americas*, 349 F. Supp. 2d 229, 232 (D.P.R. 2004).

Likewise, "[t]he conjugal partnership has a peculiar legal personality. It is regarded as a separate and distinct entity from the partners who constitute it and has a capacity to sue and be sued, but it cannot represent itself." *Cosme v. 419 Ponce De Leon, Inc.*, 1996 WL 406835, at *2 (D.P.R. May 24, 1996). It is important to note that there is a difference when a conjugal partnership is appearing as a plaintiff than when it appears as a defendant. To wit,

> ". . . significant differences still prevail when the partnership is using the sword as a plaintiff *vis a vis* when using the shield as a defendant. Some cases require the inclusion of both spouses and the conjugal partnership as parties in an action. Some, do not. When the conjugal partnership is a party defendant it 'faces a potential raid of the community property should a judgment be executed against it'. *Mercado–Vega v. Martínez,* 666, F.Supp. 3, 4–5. That is, the patrimony of the partnership might be detrimentally affected by a judgment and since the interests of each spouse may be incompatible with those of the other spouse, each must be afforded the opportunity to defend them individually. Thus, important concerns of notice and due process require that both spouses and the conjugal partnership be included as indispensable parties and each spouse be served with separate summons."

Cosme, Id. at *3; *see* J. Puig Brutau, *Fundamentos de Derecho Civil,* Bosch, Barcelona, 2nd ed., 1985, T. IV, p. 148. However, it is well settled that "[u]nder Article 1301 of the Civil Code any award belonging to the partnership or whatever joint benefits are gained

through the suit, will automatically become community property regardless of whether the conjugal partnership and both spouses were *vel non* named parties to the action." *Id.* The Puerto Rico Civil Code further provides that "either of the spouses may legally represent the conjugal community. Any unilateral administration act of one of the spouses shall bind the community property and shall be presumed valid to all legal effects." P.R. Laws Ann. Tit. 31, § 286.

The Court begins by noting that the instant case was under its consideration for more than three (3) years, that is, from June 30, 2016 until September 30, 2019, yet, the Defendants never raised an argument related to a lack of personal jurisdiction of the Court as to the wives and/or conjugal partnerships of any of the Defendants during the pendency of the proceedings. Most critical, the Defendants have failed to identify which members of the CJP, wives and/or conjugal partnerships were allegedly not properly summoned. However, as the Defendants have now raised this issue for the first time, the Court deems necessary to discuss it at length for the readers' benefit.

As previously mentioned, the genesis of the instant case is a *Complaint* filed by Plaintiffs, CHPR and Camarero against Asociación de Jinetes Puertorriqueños, CJP and a series of personally named individual jockeys for allegedly boycotting and cancelling horse races that were scheduled for June 30, July 1 and July 2, 2016 in violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, the Clayton Act, and other federal statutes, as the jockeys are not employees but independent contractors of CHPR. Injunctive relief was afforded to Plaintiffs, Asociación de Jinetes Puertorriqueños settled with Plaintiffs, and

eventually a Summary Judgment was entered against the Defendants as to the damages suffered by Plaintiffs as a result of the illegal strike.

On August 19, 2016, the Defendants filed their responsive pleading by way of *Answer to Complaint and Counter Claim* wherein by filing the *Counterclaim* on behalf of the Defendants they voluntarily and irrevocably submitted the Confederation, its members and its wives and/or conjugal partnerships to the Court's jurisdiction as follows:

> "Comes now Defendants and Counter-Plaintiffs Confederación de Jinetes Puertorriqueños, Inc. (CJP) and its members, represented by its President Axel A. Vizcarra Pellot, Esq., who respectfully answer[s] to[sic.] the complaint filed against the organization as follows"

Docket No. 82 at 11 (Emphasis added). Among the allegations set forth in the *Counterclaim*, the Defendants claimed economic harm, damages in business, deprivation of income and wages, all of which belong to the conjugal partnerships of the members of the CJP and whom were duly represented by Mr. Axel Vizcarra-Pellot throughout the instant proceedings. As previously mentioned, to the conjugal partnership belong property "obtained by the industry, salaries, or work of the spouses or of either of them." P.R. Laws Ann. Tit. 31 § 3641. By the Defendants answering the complaint and suing Plaintiffs by *Counterclaim* for damages that are property of the conjugal partnership, they were legally representing the conjugal community. *See* P.R. Laws Ann. Tit. 31, § 286.

Furthermore, it is hornbook law that "[t]he jurisdiction of the district court over parties is acquired only by a service of process, or their voluntary appearance." *Herndon v. Ridgway*, 58 U.S. 424, 425,

15 L. Ed. 100 (1854). "Once a party has waived its defense of lack of personal jurisdiction, the court may not, *sua sponte*, raise the issue in its ruling on a motion to dismiss. This is so because, since personal jurisdiction may be acquired through voluntary appearance and the filing of responsive pleadings without objection, the court has no independent reason to visit the issue." *Uffner v. La Reunion Francaise, S.A.*, 244 F.3d 38, 41 (1st Cir. 2001)(Internal citations omitted).

Not only did the Defendants appear by way of answer to complaint, they also appeared by way of a counterclaim for damages and deprivation of income and wages, among others, that properly belong to a conjugal partnership. Upon the Defendants' appearance in their defense by way of answering the complaint and filing a counterclaim, the Court is forced to conclude that jurisdiction was acquired as to all Defendants upon the Defendants' voluntary appearance, regardless of the fact that several Codefendants may have not been served process, thus, a dismissal for failure to join indispensable parties is unmerited. The Court will not entertain the Defendants' arguments as to lack of prosecution as it deems that all Defendants were either properly served process or voluntarily appeared before the Court by applicable responsive pleading.

Even if the Court were to assume for the sake of the argument that members of the CJP, their wives and conjugal partnerships were not properly served process, the Defendants would not prevail in its contention. The Court briefly explains. "Unlike subject-matter jurisdiction, which is a statutory and constitutional restriction on the power of the court, see U.S. Const. art. III, § 1, personal jurisdiction arises from the Due Process Clause and protects an

individual liberty interest. The ability to waive this right thus reflects the principle that 'the individual can subject himself to powers from which he may otherwise be protected.'" *Uffner*, 244 F.3d at 41 n. 1(quoting *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 n. 10, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982))(internal citations omitted). Accordingly, ". . . since personal jurisdiction may be acquired through voluntary appearance and the filing of responsive pleadings without objection, the court has no independent reason to revisit the issue." *Id.* at 41.

When appearing before the Court by answering the complaint and filing a counterclaim for damages and loss of income and wages, the Defendants failed to raise the alleged lack of personal jurisdiction as to several members, their wives and conjugal partnerships. By doing so, they voluntarily submitted to the Court's jurisdiction when appearing on behalf of the Defendants as a whole, and such argument is deemed waived. Finally, as previously stated, the Federal Rules of Civil Procedure provide that motions for "failure . . . to join a person required by Rule 19(b), . . . may be raised: (A) in any pleading allowed or ordered under Rule 7(a); (B) by a motion under Rule 12(c); or (C) at trial." Fed. R. Civ. P. 12(h)(2). Raising the issue for the first time after judgment seems unjust, untimely and highly prejudicial to Plaintiffs. Significantly, the Defendants refused to settle this case, against the Court's advice, and instead dragged the controversies for three (3) years until the Court ultimately ruled upon the dispositive motions.[1]

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[1] The Court notes that several settlement conferences were held in attempt to settle the instant case. Particularly, on September 19, 2019, a Status Conference was held, wherein "Camarero provided the Court the settlement offer that [was] currently on the

Thus, as a "[j]oinder is a matter left to the sound discretion of the Court. *Hershey Foods Corp. v. Padilla*, 168 F.R.D. 7, 10 (D.P.R. 1996); *see Paredes Figueroa v. International Air Services of Puerto Rico, Inc.*, 662 F.Supp. 1202, 1204 (D.P.R. 1987); 7 Wright & Miller, *Federal Practice and Procedure*, 1986, § 1688, when considering the totality of the circumstances, the Court deems that all Defendants appeared voluntarily before the Court by way of answer to the complaint and counterclaim and were properly represented by counsel throughout the proceedings. The Court finds that the Defendants are only attempting to raise arguments that should have been raised way before Judgment.

C. Confederación de Jinetes Puertorriqueños, Inc. and Asociación de Jinetes de Puerto Rico, Inc. as joint tortfeasors

On a final note, the Defendants request clarification as to the responsibility of Asociación de Jinetes de Puerto Rico, Inc. and its individual members as they were also held liable for the damages suffered by Plaintiffs but entered into a *Joint Settlement Stipulation and Consent O*rder with Camarero (Docket No. 155), and into a *Joint Stipulation Agreement* with CHPR (Docket No. 204). "It is generally agreed that when a plaintiff settles with one of several joint tortfeasors, the nonsettling defendants are entitled to a credit for that settlement." *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 208, 114 S. Ct. 1461, 1465, 128

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table. The Court consider[ed] the figure to be reasonable and encouraged the Defendants [CJP] to forward it to the jockeys as a 'good settlement.'" *See* Docket No. 271. However, CJP rejected the settlement demands proposed by Plaintiffs, although very reasonable in the Court's opinion. *See also* Minutes of Proceedings, Docket Nos. 254, 260 and 265.

L. Ed. 2d 148 (1994).

Therefore, as Camarero and CHPR settled all claims against Codefendant, Asociación de Jinetes de Puerto Rico, Inc., dismissing without prejudice all claims for damages, and upon the fact that Asociación de Jinetes de Puerto Rico, Inc. was found liable for the damages suffered by Plaintiffs, the Defendants are entitled to a credit for that settlement of a percent of the *Amended Judgment* entered on December 4, 2019. *See* Docket No. 306.

D. Confederación de Jinetes Puertorriqueños, Inc.'s Motion to Clarify the Record, In Compliance With Order

Considering the fact that Defendants CJP and Asociación de Jinetes de Puerto Rico, Inc. were brought to the instant civil suit as joint tortfeasors, the amount of damages could depend on the number of defendant jockeys that were members of each of the defendant institutions. Accordingly, on September 4, 2020 the Court entered the following Order requesting further detail from the parties, to wit,

> ORDER. It is hornbook law that "[it] is generally agreed that when a plaintiff settles with one of several joint tortfeasors, the nonsettling defendants are entitled to a credit for that settlement." McDermott, Inc. v. AmClyde, 511 U.S. 202, 208 (1994). Therefore, as Camarero and Confederación Hípica de Puerto Rico, Inc. settled all claims against Codefendant, Asociación de Jinetes de Puerto Rico, Inc., dismissing without prejudice all claims for damages, and upon the fact that Asociación de Jinetes de Puerto Rico, Inc. was also found liable for the damages suffered by Plaintiffs, the nonsettling Defendants are entitled to a

> credit for that settlement. As the amount of credit may depend on the number of the defendant jockeys that are members of each of the institutions and participated in the illegal strike that took place on June 30 and July 1 and 2, 2016, the parties are hereby ordered to advise the Court the defendant jockeys that are members of Asociación de Jinetes de Puerto Rico and those that are members of Confederación de Jinetes Puertorriqueños, Inc. **Motion in compliance with the instant Order is due by 9/14/2020.** Signed by Judge Daniel R. Dominguez on 9/4/2020.

Docket No. 322. As a result thereof, Plaintiffs filed an *Informative Motion and In Compliance with Order* (Docket No. 323) wherein they provided a list of the defendant jockeys that were members of each of the jockey's associations at the time the illegal boycott occurred. *See Id.*

In turn, CJP filed a *Motion to Clarify the Record, In Compliance with Order*. *See* Docket No. 327. Surprisingly, not only does the motion fail to comply with the Court's Order but CJP goes as far as trying to raise another reconsideration argument, this time, the legitimacy or lack thereof of a registration and existence of Asociación de Jinetes de Puerto Rico, Inc. in the Puerto Rico Department of State, and the legitimacy of said association's settlement with Plaintiffs. *See* Docket No. 327 at 5. CJP takes the opportunity to "inform the Court that it has recently founded, and is the legal owner of the Asociación de Jinetes de Puerto Rico, Inc. []. As such, any and all stipulation, agreement and/or document filed in this case by Mr. Alberto Ojeda and/or anyone acting on behalf of Asociación de Jinetes de Puerto Rico, Inc., is hereby declared to be null **ab initio**." *Id.* at 6.

The documents that were precisely produced by CJP prove otherwise. A careful review of the Exhibits produced by CJP forces the Court to conclude that Asociación de Jinetes de Puerto Rico, Inc. was registered and active on the dates in which the illegal strike took place, to wit, June 30, July 1 and 2, 2016. *See* Docket No. 327, Exhibit 2. More importantly, Mr. Alberto Ojeda, Resident Agent and President of the association at the time the events that are subject to the instant civil suit took place, declared under oath that,

> BY MR. VIZCARRA:
>
> Q. Okay. Mr. Ojeda, what is the correct name of the Asociación de Jinetes?
>
> A. Asociación de Jinetes de Puerto Rico, Inc.
>
> THE COURT: And the name then was what?
>
> THE WITNESS: Asociación de Jinetes de Puerto Rico, Inc.
>
> THE COURT: Okay. It's still the same association.
>
> THE WITNESS: It's the only association we have.
>
> THE COURT: All right. Okay. Thank you.

Transcript of Proceedings: Preliminary Injunction Hearing July 20, 2016, Docket No. 145 at 71-72. Thus, Mr. Ojeda clarified that the association was properly registered and active at the time the events occurred. More importantly, considering the documents produced by CJP, two (2) associations with similar names were registered and active during the illegal strike, to wit, Asociación de Jinetes, Inc. and Asociación Independiente de Jinetes de Puerto Rico, Inc. *See* Docket No. 327, Exhibits 1 and 2,

respectively. The fact that a new association has been incorporated under the name of Asociación de Jinetes de Puerto Rico, Inc. as recently as May 2020, and that counsel is the legal owner of said corporation, in no way invalidates a properly negotiated agreement between the President of the association at that given time and Plaintiffs. The Court finds that CJP is trying to mislead the Court as to the legitimacy of two agreements that was submitted and authorized by the Court back in 2017.

The Court once again orders CJP to provide the Court the number of jockeys that were members of each of the defendant organizations, enabling the Court to properly distribute the amount in damages as to Asociación de Jinetes de Puerto Rico, Inc. and CJP as they are joint tortfeasors and there was a settlement as to Asociación de Jinetes de Puerto Rico, Inc.. **Failure to strictly comply with the Court's instructions will result in determining the amount of damages solely based on the information provided by Plaintiffs.**

III. CONCLUSION

For the aforementioned reasons, the Court hereby **DENIES** the Defendants' *Amended Motion to Dismiss for Failure to Join Indispensable Parties and/or Failure to Prosecute; Requesting the Court to Amend and/or to Alter Judgment Under Rule 59(e) of the [Federal] [] Rules of Civil Procedure. See* Docket No. 310. CJP is to comply with the instant Order by October 19, 2020.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 30th day of September, 2020.

S/Daniel R. Domínguez

Daniel R. Domínguez
United States District Judge

APPENDIX C

No. 16-2256

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CONFEDERACIÓN HÍPICA DE PUERTO RICO, et al.,

Plaintiffs,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC., et al.,

Defendants.

Signed December 04, 2019

AMENDED OPINION AND ORDER

DANIEL R. DOMÍNGUEZ, United States District Judge

Pending before the Court is Plaintiffs, Camarero Racetrack Corp., and Confederación Hípica de Puerto Rico, Inc.'s *Motion for Summary Judgment*. *See* Docket No. 248. Defendants/Counter-Plaintiffs, Confederación de Jinetes Puertorriqueños, Inc. filed its respective opposition thereto. *See* Docket No. 258. Thereupon, a *Reply* and *Surreply* were filed by Plaintiffs and Defendants/Counter-Plaintiffs, respectively. *See* Docket Nos. 259 and 269. Subsequently, Plaintiffs filed a *Supplemental Motion for Summary Judgment* wherein they produced an updated account of the damages subject to a reduction as to three (3) additional days of races that were held to compensate for the races that were cancelled due to the jockeys' strike. *See* Docket No. 272. The Defendants then filed an *Opposition to Camarero and CHPR's Supplemental Motion for Summary Judgment* addressing Plaintiffs' updated

amounts and other unrelated matters.[1] *See* Docket No. 277.

For the reasons stated herein, the Court **GRANTS** Plaintiffs' *Motion for Summary Judgment* as amended by way of *Supplemental Motion for Summary Judgment. See* Docket Nos. 248 and 272.

I. FACTUAL AND PROCEDURAL BACKGROUND

The instant case arises of a Complaint filed by Plaintiffs, Confederación Hípica de Puerto Rico, Inc. (hereinafter, "CHPR") and Camarero Racetrack Corp. (hereinafter, "Camarero") against Confederación de Jinetes Puertorriqueños, Inc. and a series of personally named individual jockeys for allegedly boycotting and cancelling horse races that were scheduled for June 30, July 1 and July 2, 2016 in violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, the Clayton Act, and other federal statutes, as the jockeys are not employees but independent contractors of CHPR. Accordingly, Plaintiffs requested a temporary restraining order, a Preliminary and Permanent Injunction as well as damages as a result thereof.

As a result of the arguments set forth by Plaintiffs, a temporary restraining order (hereinafter, "TRO") was issued by the Court. The Court found that a TRO

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[1] The only issue that the Court is entertaining in the instant *Opinion and Order* is the damages phase of the Complaint filed by Plaintiffs Confederación Hípica de Puerto Rico and Camarero Racetrack, Corp. as a result of the alleged strike and boycott of horse races that were scheduled for June 30, July 1 and July 2, 2016 and the opposition thereto filed by Confederación de Jinetes Puertorriqueños, Inc. The Court is divested of jurisdiction as to all other matters, such as, mount fees and/or income of the jockeys. Thus, the Defendants are to set forth their claims before the other proper forums.

was warranted pursuant to the allegations set forth and applicable law. Accordingly, the jockeys and their respective associations were ordered to immediately desist from any boycott against the Plaintiffs. The jockeys were further ordered to continue riding on horse racing days until otherwise ordered by the Court. *See* Docket No. 33 at 11.

Upon conducting several evidentiary hearings and upon a careful evaluation of memorandum of facts and law submitted by the parties, the Court granted Plaintiffs' *Injunction* request. *See* Docket No. 210. Subsequently, the Court entered an *Amended Opinion and Order* wherein the Preliminary and Permanent Injunction were granted in favor of Plaintiffs. Thereafter, the case moved to the damages stage. *See* Docket No. 214.

The Court, however, conducted several settlement conferences in order to encourage the parties to engage in settlement negotiations that would put an end to the outstanding damages litigation. As the parties failed to reach a settlement agreement, Plaintiffs filed *a Motion for Summary Judgment* that is currently pending before the Court. *See* Docket No. 248. A *Supplemental Motion for Summary Judgment* was subsequently filed by Plaintiffs. *See* Docket No. 272.[2] Proper analysis of the parties' motions requires a careful scrutiny of the underlying legal framework.

II. FACTUAL FINDINGS

The following factual findings are taken from the parties' statements of undisputed facts, and supported documentation. Upon careful review of the record, the Court finds the following facts are undisputed:

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[2] Therein, Plaintiffs submitted an updated assessment of damages.

1. On June 30, July 1 and July 2, 2016 no races were held at the Camarero Racetrack due to the fact that 37 jockeys, members of the Confederación de Jinetes Puertorriqueños, Inc. (hereinafter, "CJP") and Asociación de Jinetes de Puerto Rico, Inc. (hereinafter, "Asociación), informed they would not participate prospectively in any scheduled races after June 24, 2016. (Docket No. 153 at ¶ U and V).

2. Plaintiffs CHPR and Camarero filed suit against CJP and Asociación[3] for the illegal antitrust violation of a concerted refusal to deal by the two defendants associations and the individual jockeys to said entities. (Uncontested).

3. On July 9, 2016, the Court issued a Temporary Restraining Order ("TRO"), based on the fact that jockey defendants have traditionally been considered to be independent contractors, who were engaged in a "concerted refusal to deal" in violation of a Sherman and Clayton Acts. Further, that they were not covered by the "labor dispute exception" as expressed in a similar situation of jockeys versus management of the racetrack and horse owners, *San Juan Racing Association, Inc. v. Asociación de Jinetes de Puerto Rico, Inc., et al.*, 590 F.2d 31, 32 (1st Cir. 1979)(confirming antitrust injunctive relief as to a "concerted refusal to deal" by the jockeys against management of the racetrack). *See* Docket Nos. 23, 33, 37, 41, 46 and 113. (Docket No. 33 at 11).

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[3] The Court notes that in the Complaint, Plaintiffs included individual jockeys and their conjugal partnerships as members of Confederación de Jinetes and Asociación de Jinetes de Puerto Rico. *See* Docket No. 1.

4. The only defendant active at this stage of the proceedings is CJP, as Asociación entered into a Settlement Agreement with Plaintiffs herein. Hence, Asociación is no longer a party in this case. (*Amended Judgment* dated August 18, 2017, Docket No. 207).[4]

5. After evidentiary hearings held and memorandums by all parties submitted, on November 8, 2017, this Court issued an *Amended Opinion and Order* granting the Preliminary and Permanent Injunction, and the case was moved to the damages stage. (Docket No. 214).

6. On March 27, 2018, Camarero sent CJP's counsel an updated summary of all damages to be claims in this case, showing total losses of $636,813.00 of which $338,266.00 were caused to Camarero and $298,547.00 to CHPR. (Docket No. 248-4 at 2).

7. During the Status Conference held on March 28, 2018, Plaintiffs informed the Court that they had submitted to CJP an assessment of the damages suffered during the three (3) days of the illegal boycott and Defendant acknowledged having been furnished with the damage report. (Docket No. 222).

8. On June 9, 2018, Camarero sent CJP an Answer to Interrogatory and Production of Documents. (Docket No. 248-2).

9. On May 30, 2018, CHPR also answered an Interrogatory and Production of Documents. (Docket No. 248-3).

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[4] *See supra* note 1.

10. Camarero expressed in the answers to interrogatory and production of documents that all the evidence regarding the damages suffered was produced on March 27, 2018. (Docket No. 248-2 at ¶ 15; Docket No. 248-4).

11. At the time the *Motion for Summary Judgment* was filed, Camarero and CHPR filed the damages pursuant to the answers of interrogatory and production of documents submitted on March 27, 2018. (Docket No. 248, Exhibits 2, 3 & 4).

12. On August 7, 2019, the Defendants filed an *Opposition to Plaintiffs' Request for Summary Judgment*. (Docket No. 258).

13. The Defendants, in their *Opposition*, adduced for the first time in this litigation past the discovery deadlines, that the computations of the damages claimed by Plaintiffs did not include the income received during the three (3) days wherein the races were held in substitution of the three (3) cancelled races. *Id.*

14. There are no motions in the Court's docketing system that discuss the matter of the substitution races prior thereto.

15. During the Status Conference held on September 19, 2019, Plaintiffs agreed to voluntarily recompute the losses crediting the Defendants with any recoveries received from those substitute races. (Docket No. 271).

16. The substitute dates for reassignment of races as granted by the Horse Racing Board in Case No. JH-15-47 were July 18, July 27 and August 1, 2016. *Id.* at ¶¶ 5-6.

17. After the recomputation of the losses, taking into consideration the recoveries that Plaintiffs received on account of the three (3) race days that the local Horseracing Board allowed, the losses have been adjusted pursuant to the Court's Order. (Docket Nos. 271; 272).

18. Camarero's loss from direct and continuing wagering was **$49,983.00** and **$146,160.00,** respectively. (Docket No. 272, Exhibit A at ¶¶ 24-28).[5]

19. Camarero's loss for programs sales was **$49.00**. *Id.* at ¶ 36.[6]

20. Camarero's loss for "servicios impresos" revenues was **$443.00**. *Id.* at ¶ 37.[7]

21. Camarero's loss for food commissions was **$7,430.00**. *Id.* at ¶ 54.[8]

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[5] Plaintiffs' initially claimed that the loss in commissions from direct and continuing wagering was $144,607.00 and $146,160.00 as to CHPR and Camarero. Upon filing the updated damages figures, the record reflects a deduction of $94,624.00 as to direct and continuing wagering. *See* Docket No. 248-1 at ¶ 11.

[6] The updated figure of Camarero's loss for programs sales reflects a deduction of $1,307.00 in comparison to the initial figure of $1,356.00 *See Id.* at ¶ 12.

[7] The updated figure of Camarero's loss for "servicios impresos" reflects a deduction of $1,601.00 in comparison to the initial figure of $2,044.00 *See Id.* at ¶ 13.

[8] The updated figure of Camarero's loss for food commission reflects a deduction of $436.00 in comparison to the initial figure of $7,866.00. *See Id.* at ¶ 15.

22. Camarero did not have a loss of VLT revenues. *Id.* at ¶ 54.[9]

23. CHPR's loss in commissions from direct and continuing wagering was **$49,983.00** and **$146,160.00**, respectively. *Id.* at ¶¶ 24-28.[10]

24. CHPR's loss for "servicios impresos" revenues was **$443.00**. *Id.* at ¶ 37.

25. CHPR did not incur in any loss for VLT revenues. *Id.* at ¶ 56.[11]

26. The total economic damages caused by the jockeys' boycott on June 30, July 1, and July 2, 2016 to Camarero were **$200,822.00**. *Id.* at ¶ 21.[12]

27. The total of economic damages caused by the jockeys' boycott on June 30, July 1 and July 2, 2016 to CHPR were **$196,073.00.** *Id.* at ¶ 56.[13]

III. LEGAL STANDARD

Motion for Summary Judgment Standard (Fed. R. Civ. P. 56)

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[9] As opposed to the initial figure of $36,214.00, the updated figure reflects Camarero suffered no losses related to VLT revenues. *See Id.* at ¶ 14.

[10] *See supra* note 5.

[11] As opposed to the initial figure of $5,736.00, the updated figure reflects CHPR suffered no losses related to VLT revenues.

[12] The updated figure of the total of economic damages caused by the jockeys' boycott to Camarero reflects a deduction of $137,404.00 in comparison to the initial figure of $338,266.00. *See Id.* at ¶ 16.

[13] The updated figure of the total of economic damages caused by the jockeys' boycott to CHPR reflects a deduction of $102,474.00 in comparison to the initial figure of $298,547.00. *See Id.* at ¶ 17.

A motion for summary judgment is governed by Rule 56 of the Federal Rules of Civil Procedure, which entitles a party to judgment if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute is 'genuine' if the evidence about the fact is such that a reasonable jury could resolve the point in favor of the non-moving party." See *Johnson v. Univ. of P.R.,* 714 F.3d 48, 52 (1st Cir. 2013); *Prescott v. Higgins*, 538 F.3d 32, 40 (1st Cir. 2008) (citing *Thompson v. Coca–Cola Co.*, 522 F.3d 168, 175 (1st Cir. 2008)); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Calero–Cerezo v. U.S. Dep't of Justice*, 355 F.3d 6, 19 (1st Cir. 2004). The analysis with respect to whether or not a "genuine" issue exists is directly related to the burden of proof that a non-movant would have in a trial. "[T]he determination of whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case." *Liberty Lobby, Inc.*, 477 U.S. at 255, 106 S.Ct. 2505 (applying the summary judgment standard while taking into account a higher burden of proof for cases of defamation against a public figure). In order for a disputed fact to be considered "material" it must have the potential "to affect the outcome of the suit under governing law." *Sands v. Ridefilm Corp.*, 212 F.3d 657, 660–661 (1st Cir. 2000) (citing *Liberty Lobby, Inc.*, 477 U.S. at 247–248, 106 S.Ct. 2505); *Prescott*, 538 F.3d at 40 (1st Cir. 2008) (citing *Maymí v. P.R. Ports Auth.*, 515 F.3d 20, 25 (1st Cir. 2008)).

The objective of the summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *DeNovellis v. Shalala*, 124 F.3d 298, 306 (1st Cir. 1997) (citing the

advisory committee note to the 1963 Amendment to Fed. R. Civ. P. 56(e)). The moving party must demonstrate the absence of a genuine issue as to any outcome-determinative fact on the record. *Shalala*, 124 F.3d at 306. Upon a showing by the moving party of an absence of a genuine issue of material fact, the burden shifts to the nonmoving party to demonstrate that a trier of fact could reasonably find in his favor. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). The non-movant may not defeat a "properly focused motion for summary judgment by relying upon mere allegations," but rather through definite and competent evidence. *Maldonado–Denis v. Castillo–Rodriguez*, 23 F.3d 576, 581 (1st Cir. 1994). The non-movant's burden thus encompasses a showing of "at least one fact issue which is both 'genuine' and 'material.' " *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 48 (1st Cir. 1990); *see also Suarez v. Pueblo Int'l.*, 229 F.3d 49, 53 (1st Cir. 2000) (stating that a non-movant may shut down a summary judgment motion only upon a showing that a trial-worthy issue exists). As a result, the mere existence of "some alleged factual dispute between the parties will not affect an otherwise properly supported motion for summary judgment." *Liberty Lobby, Inc.*, 477 U.S. at 247–248, 106 S.Ct. 2505. Similarly, summary judgment is appropriate where the nonmoving party rests solely upon "conclusory allegations, improbable inferences and unsupported speculation." *Ayala–Gerena v. Bristol Myers–Squibb Co.*, 95 F.3d 86, 95 (1st Cir. 1996); *Medina-Muñoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990).

When considering a motion for summary judgment, the Court must "draw all reasonable inferences in favor of the non-moving party while ignoring conclusory allegations, improbable inferences, and unsupported

speculation." *Smith v. Jenkins*, 732 F.3d 51, 76 (1st Cir. 2013) (reiterating *Shafmaster v. United States*, 707 F.3d 130, 135 (1st Cir. 2013)). The Court must review the record as a whole and refrain from engaging in the assessment of credibility or the gauging the weight of the evidence presented. *Reeves v. Sanderson Plumbing Products, Inc.,* 530 U.S. 133, 135, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Pina v. Children's Place*, 740 F.3d 785, 802 (1st Cir. 2014). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Reeves*, 530 U.S. at 150, 120 S.Ct. 2097 (quoting *Anderson*, 477 U.S. at 250–51, 106 S.Ct. 2505). Summarizing, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." (Emphasis provided). *See* Fed. R. Civ. P. 56(a).

Hence, in order to prevail, Plaintiffs must demonstrate that, even admitting well-pleaded allegations in light most favorable to Defendants, the applicable law compels a judgment in its favor.

IV. ANALYSIS

The Court has already determined that the jockeys, in effect, incurred in boycotting and cancelling horse races that were scheduled for June 30, July 1 and July 2, 2016 in violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, the Clayton Act, and other federal statutes, considering that the jockeys are not employees but independent contractors of CHPR. *See* Docket No. 214. In fact, the instant controversy stems of the decision of 37 jockeys of not participating in three (3) scheduled races after June 24, 2016. *Id.*

Plaintiffs filed a suit against CJP for the illegal antitrust violation of a concerted refusal to deal by the two defendants associations and the individual jockeys to said entities. The Court issued a TRO based on the fact that jockeys have been traditionally considered to be independent contractors, who were engaged in a "concerted refusal to deal" in violation of the Sherman and Clayton Acts. Accordingly, they are not covered by the "labor dispute exception" as expressed in other instances such as the First Circuit decision in *San Juan Racing Association, Inc. v. Asociación de Jinetes de Puerto Rico, Inc., et al.,* 590 F.2d 31, 32 (1st Cir. 1979). After evidentiary hearings were held and memorandums of law submitted by all parties, the Court ultimately entered a Preliminary and Permanent Injunction against the jockeys and the case was moved to the damages stage, thereafter. Thus, Camarero and CHPR suffered damages. At issue is determining the extent of the damages suffered by Plaintiffs.

On September 23, 2019, Camarero filed a *Supplemental Motion for Summary Judgment* wherein an updated assessment of damages was produced to the Defendants along with a *Sworn Statement Under Penalty of Perjury* subscribed by Mr. Stanley Pinkerton, Chief Financial Officer of Camarero Racetrack, Corp. *See* Docket No. 272, Exhibit A. Mr. Pinkerton's statement reflects total losses of $396,895.00 of which $200,822.00 were caused to Camarero and $196,073.00 to CHPR. *See Id.*

From the *Sworn Statement Under Penalty of Perjury* included in support of the *Supplemental Motion for Summary Judgment*, arises the fact that the Defendants breached their obligations with Plaintiffs by boycotting and cancelling horse races for the dates of June 30, July 1 and July 2, 2016, causing damages to Plaintiffs that are due and payable. It is undisputed

that the amounts due and payable to date are $200,822.00 as to Camarero and $196,073.00 as to CHPR. These amounts of losses include a mitigation of damages, by way of substitution races held on July 18, July 27 and August 1, 2016, that resulted in a deduction as to the earnings received by Plaintiffs in the substitution races. Furthermore, there is no genuine issue of material fact as to the Defendants' liability, as the Court has already granted Permanent Injunction in favor of Plaintiffs. *See* Docket No. 214. There is also no genuine issue of material fact as to Plaintiffs' right to seek judicial redress of payment on the outstanding debt for damages. Accordingly, Plaintiffs are entitled to judgment as a matter of law providing for the compensation for due and payable damages as described above.

On a final note, the Court finds that the Defendants failed to properly oppose to Plaintiffs' *Motion for Summary Judgment* pursuant to the Fed.R.Civ.P. 56 requirements. Particularly, the Defendants resorted in denying Plaintiffs' *Amended Declaration of Uncontested Facts in Support of Summary Judgment* by providing an *Unsworn Declaration Under Penalty of Perjury* of CJP's alleged Accountant-Attorney Olga Benítez in support thereof. *See* Docket No. 277-5. Yet, Ms. Benítez' *Declaration Under Penalty of Perjury* is untimely. At this time, it is unclear whether Ms. Benítez' intervention in the instant case is as a potential witness or expert witness. If she were retained as an expert witness, as implied in her Declaration, the Defendants failed to disclose prior hereto, the fact that

she was retained to declare on their behalf if the instant matter proceeds to trial. Said omission is in clear contravention to Fed.R.Civ.P. 26(A).[14]

The Defendants, thus, attempted to cure the deficiencies identified by the Court of their former *Opposition* (Docket No. 258) and *Surreply* (Docket No. 269), by presenting a potential expert witness without disclosing her identity prior thereto. The Court notes that by allowing the Defendants to submit an *Amended Surreply* upon Plaintiffs' filing of the updated damages demand, the Court was only allowing the Defendants an opportunity to properly submit their arguments pursuant to the applicable rules. It was not permission to attempt to reopen the discovery of the instant case which is long gone.

Most crucial and determinative, Defendants failed to comply with Rule 56's requirements when filing a declaration in support to the opposition to motion for summary judgment. Rule 56 clearly provides that, "[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed.R.Civ.P. 56(c)(4) (Emphasis ours). Defendants failed to establish Ms. Benítez' personal knowledge as to the facts surrounding the instant case, as well as her credentials to do so, but ultimately, the Court finds her observations and conclusions turned out to be baseless, incomprehensible and with no documents in support thereof. As previously discussed, the non-movant may not defeat a "properly

[14] Rule 26(a)(2)(A) provides in its pertinent part that "a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705."

focused motion for summary judgment by relying upon mere allegations," but rather through definite and competent evidence. *Maldonado-Denis*, 23 F.3d at 581. More importantly, Rule 56 of the Federal Rules of Civil Procedure clearly provides that

> "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it."

Fed.R.Civ.P. 56(e). Likewise, the Local Rules provide that when opposing to a statement of material facts, "[u]nless a fact is admitted, the opposing statement shall support each denial or qualification by a record citation as required by this rule." P.R.D. Local Rule 56(c). For the aforementioned reasons, the Court hereby discards Ms. Olga Benítez' *Declaration Under Penalty of Perjury*.

In the instant case, the statement of Ms. Benítez did not show in a comprehensive manner the mistake in Plaintiffs' damages as a result of the three (3) days in which no races were held. Yet, Plaintiffs provided an update as to the damages figure to deduct the earnings obtained as a result of the substitution races that were held as part of a mitigatory effort to recover the earnings lost in June 30, July 1, and July 2, 2016.

Finally, the Court finds that the major drawback on the Defendants failure to properly answer Plaintiffs' *Amended Declaration of Uncontested Material Facts in Support of Summary Judgment ("SUMF")* (Docket No. 272-1) is that a "statement of material facts ... shall be deemed admitted," but only "if supported by record ci-

tations" as required by Local Rule 56. Not properly answering and/or opposing a summary judgment request under Local Rule 56(c) is "at their own peril." *See* P.R.D. Local Rule 56(c) and (e); *see also Morales v. A.C. Orssleff's EFTF*, 246 F.3d 32, 33 (1st Cir. 2001). Accordingly, the Court deems the Defendants' failure to properly address the arguments set forth in Plaintiffs' request for summary judgment is fatal to their defense.

V. CONCLUSION

For the reasons set forth above, the Court hereby **GRANTS** Plaintiffs' *Motion for Summary Judgment* (Docket No. 248) as amended by way of *Supplemental Motion for Summary Judgment* (Docket No. 272). Thus, pursuant to Section 4 of the Clayton Act, which clearly provides that the aggrieved "shall recover threefold the damages", Camarero Racetrack Corp. is entitled to the reimbursement of **$602,466.00** in damages, and CHPR is entitled to **$588,219.00** in damages as a result of the jockeys' boycott.[15] *See* 15 U.S.C. § 15(a).[16] Judgment pursuant to the instant *Opinion and Order* is to be issued forthwith.

IT IS SO ORDERED.

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[15] The Court notes that as there were initially two entities that were named defendants as participants of the jockeys' boycott, those entities may be jointly or severally responsible for the damages stated herein.

[16] Section 4 of the Clayton Act provides in its pertinent part that "... any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and cost of suit, including a reasonable attorney's fee." (Emphasis ours).

APPENDIX D

No. 16-2256

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CONFEDERACIÓN HÍPICA DE PUERTO RICO, et al.,

Plaintiffs,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC., et al.,

Defendants.

Signed September 30, 2019

OPINION AND ORDER

DANIEL R. DOMÍNGUEZ, United States District Judge

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was warranted pursuant to the allegations set forth and applicable law. Accordingly, the jockeys and their respective associations were ordered to immediately desist from any boycott against the Plaintiffs. The jockeys were further ordered to continue riding on horse racing days until otherwise ordered by the Court. *See* Docket No. 33 at 11.

Upon conducting several evidentiary hearings and upon a careful evaluation of memorandum of facts and law submitted by the parties, the Court granted Plaintiffs' *Injunction* request. *See* Docket No. 210. Subsequently, the Court entered an *Amended Opinion and Order* wherein the Preliminary and Permanent Injunction were granted in favor of Plaintiffs. Thereafter, the case moved to the damages stage. *See* Docket No. 214.

The Court, however, conducted several settlement conferences in order to encourage the parties to engage in settlement negotiations that would put an end to the outstanding damages litigation. As the parties failed to reach a settlement agreement, Plaintiffs filed *a Motion for Summary Judgment* that is currently pending before the Court. *See* Docket No. 248. A *Supplemental Motion for Summary Judgment* was subsequently filed by Plaintiffs. *See* Docket No. 272.[2] Proper analysis of the parties' motions requires a careful scrutiny of the underlying legal framework.

II. FACTUAL FINDINGS

The following factual findings are taken from the parties' statements of undisputed facts, and supported documentation. Upon careful review of the record, the Court finds the following facts are undisputed:

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[2] Therein, Plaintiffs submitted an updated assessment of damages.

1. On June 30, July 1 and July 2, 2016 no races were held at the Camarero Racetrack due to the fact that 37 jockeys, members of the Confederación de Jinetes Puertorriqueños, Inc. (hereinafter, "CJP") and Asociación de Jinetes de Puerto Rico, Inc. (hereinafter, "Asociación), informed they would not participate prospectively in any scheduled races after June 24, 2016. (Docket No. 153 at ¶ U and V).

2. Plaintiffs CHPR and Camarero filed suit against CJP and Asociación[3] for the illegal antitrust violation of a concerted refusal to deal by the two defendants associations and the individual jockeys to said entities. (Uncontested).

3. On July 9, 2016, the Court issued a Temporary Restraining Order ("TRO"), based on the fact that jockey defendants have traditionally been considered to be independent contractors, who were engaged in a "concerted refusal to deal" in violation of a Sherman and Clayton Acts. Further, that they were not covered by the "labor dispute exception" as expressed in a similar situation of jockeys versus management of the racetrack and horse owners, *San Juan Racing Association, Inc. v. Asociación de Jinetes de Puerto Rico, Inc., et al.*, 590 F.2d 31, 32 (1st Cir. 1979)(confirming antitrust injunctive relief as to a "concerted refusal to deal" by the jockeys against management of the racetrack). *See* Docket Nos. 23, 33, 37, 41, 46 and 113. (Docket No. 33 at 11).

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[3] The Court notes that in the Complaint, Plaintiffs included individual jockeys and their conjugal partnerships as members of Confederación de Jinetes and Asociación de Jinetes de Puerto Rico. *See* Docket No. 1.

4. The only defendant active at this stage of the proceedings is CJP, as Asociación entered into a Settlement Agreement with Plaintiffs herein. Hence, Asociación is no longer a party in this case. (*Amended Judgment* dated August 18, 2017, Docket No. 207).[4]

5. After evidentiary hearings held and memorandums by all parties submitted, on November 8, 2017, this Court issued an *Amended Opinion and Order* granting the Preliminary and Permanent Injunction, and the case was moved to the damages stage. (Docket No. 214).

6. On March 27, 2018, Camarero sent CJP's counsel an updated summary of all damages to be claims in this case, showing total losses of $636,813.00 of which $338,266.00 were caused to Camarero and $298,547.00 to CHPR. (Docket No. 248-4 at 2).

7. During the Status Conference held on March 28, 2018, Plaintiffs informed the Court that they had submitted to CJP an assessment of the damages suffered during the three (3) days of the illegal boycott and Defendant acknowledged having been furnished with the damage report. (Docket No. 222).

8. On June 9, 2018, Camarero sent CJP an Answer to Interrogatory and Production of Documents. (Docket No. 248-2).

9. On May 30, 2018, CHPR also answered an Interrogatory and Production of Documents. (Docket No. 248-3).

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[4] *See supra* note 1.

10. Camarero expressed in the answers to interrogatory and production of documents that all the evidence regarding the damages suffered was produced on March 27, 2018. (Docket No. 248-2 at ¶ 15; Docket No. 248-4).

11. At the time the *Motion for Summary Judgment* was filed, Camarero and CHPR filed the damages pursuant to the answers of interrogatory and production of documents submitted on March 27, 2018. (Docket No. 248, Exhibits 2, 3 & 4).

12. On August 7, 2019, the Defendants filed an *Opposition to Plaintiffs' Request for Summary Judgment.* (Docket No. 258).

13. The Defendants, in their *Opposition*, adduced for the first time in this litigation past the discovery deadlines, that the computations of the damages claimed by Plaintiffs did not include the income received during the three (3) days wherein the races were held in substitution of the three (3) cancelled races. *Id.*

14. There are no motions in the Court's docketing system that discuss the matter of the substitution races prior thereto.

15. During the Status Conference held on September 19, 2019, Plaintiffs agreed to voluntarily recompute the losses crediting the Defendants with any recoveries received from those substitute races. (Docket No. 271).

16. The substitute dates for reassignment of races as granted by the Horse Racing Board in Case No. JH-15-47 were July 18, July 27 and August 1, 2016. *Id.* at ¶¶ 5-6.

17. After the recomputation of the losses, taking into consideration the recoveries that Plaintiffs received on account of the three (3) race days that the local Horseracing Board allowed, the losses have been adjusted pursuant to the Court's Order. (Docket Nos. 271; 272).

18. Camarero's loss from direct and continuing wagering was **$49,983.00** and **$146,160.00,** respectively. (Docket No. 272, Exhibit A at ¶¶ 24-28).[5]

19. Camarero's loss for programs sales was **$49.00**. *Id.* at ¶ 36.[6]

20. Camarero's loss for "servicios impresos" revenues was **$443.00**. *Id.* at ¶ 37.[7]

21. Camarero's loss for food commissions was **$7,430.00**. *Id.* at ¶ 54.[8]

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[5] Plaintiffs' initially claimed that the loss in commissions from direct and continuing wagering was $144,607.00 and $146,160.00 as to CHPR and Camarero. Upon filing the updated damages figures, the record reflects a deduction of $94,624.00 as to direct and continuing wagering. *See* Docket No. 248-1 at ¶ 11.

[6] The updated figure of Camarero's loss for programs sales reflects a deduction of $1,307.00 in comparison to the initial figure of $1,356.00 *See Id.* at ¶ 12.

[7] The updated figure of Camarero's loss for "servicios impresos" reflects a deduction of $1,601.00 in comparison to the initial figure of $2,044.00 *See Id.* at ¶ 13.

[8] The updated figure of Camarero's loss for food commission reflects a deduction of $436.00 in comparison to the initial figure of $7,866.00. *See Id.* at ¶ 15.

22. Camarero did not have a loss of VLT revenues. *Id.* at ¶ 54.[9]

23. CHPR's loss in commissions from direct and continuing wagering was **$49,983.00** and **$146,160.00**, respectively. *Id.* at ¶¶ 24-28.[10]

24. CHPR's loss for "servicios impresos" revenues was **$443.00**. *Id.* at ¶ 37.

25. CHPR did not incur in any loss for VLT revenues. *Id.* at ¶ 56.[11]

26. The total economic damages caused by the jockeys' boycott on June 30, July 1, and July 2, 2016 to Camarero were **$200,822.00**. *Id.* at ¶ 21.[12]

27. The total of economic damages caused by the jockeys' boycott on June 30, July 1 and July 2, 2016 to CHPR were **$196,073.00.** *Id.* at ¶ 56.[13]

III. LEGAL STANDARD

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[9] As opposed to the initial figure of $36,214.00, the updated figure reflects Camarero suffered no losses related to VLT revenues. *See Id.* at ¶ 14.

[10] *See supra* note 5.

[11] As opposed to the initial figure of $5,736.00, the updated figure reflects CHPR suffered no losses related to VLT revenues.

[12] The updated figure of the total of economic damages caused by the jockeys' boycott to Camarero reflects a deduction of $137,404.00 in comparison to the initial figure of $338,266.00. *See Id.* at ¶ 16.

[13] The updated figure of the total of economic damages caused by the jockeys' boycott to CHPR reflects a deduction of $102,474.00 in comparison to the initial figure of $298,547.00. *See Id.* at ¶ 17.

Motion for Summary Judgment Standard (Fed. R. Civ. P. 56)

A motion for summary judgment is governed by Rule 56 of the Federal Rules of Civil Procedure, which entitles a party to judgment if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute is 'genuine' if the evidence about the fact is such that a reasonable jury could resolve the point in favor of the non-moving party." See Johnson v. Univ. of P.R., 714 F.3d 48, 52 (1st Cir. 2013); *Prescott v. Higgins*, 538 F.3d 32, 40 (1st Cir. 2008) (citing *Thompson v. Coca–Cola Co.*, 522 F.3d 168, 175 (1st Cir. 2008)); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-250 (1986); *Calero–Cerezo v. U.S. Dep't of Justice*, 355 F.3d 6, 19 (1st Cir. 2004). The analysis with respect to whether or not a "genuine" issue exists is directly related to the burden of proof that a non-movant would have in a trial. "[T]he determination of whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case." *Liberty Lobby, Inc.*, 477 U.S. at 255 (applying the summary judgment standard while taking into account a higher burden of proof for cases of defamation against a public figure). In order for a disputed fact to be considered "material" it must have the potential "to affect the outcome of the suit under governing law." *Sands v. Ridefilm Corp.*, 212 F.3d 657, 660–661 (1st Cir. 2000) (citing *Liberty Lobby, Inc.*, 477 U.S. at 247–248); *Prescott*, 538 F.3d at 40 (1st Cir. 2008) (citing *Maymí v. P.R. Ports Auth.*, 515 F.3d 20, 25 (1st Cir. 2008)).

The objective of the summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *DeNovellis v. Shalala*, 124 F.3d 298, 306 (1st Cir. 1997) (citing the

advisory committee note to the 1963 Amendment to Fed. R. Civ. P. 56(e)). The moving party must demonstrate the absence of a genuine issue as to any outcome-determinative fact on the record. *Shalala*, 124 F.3d at 306. Upon a showing by the moving party of an absence of a genuine issue of material fact, the burden shifts to the nonmoving party to demonstrate that a trier of fact could reasonably find in his favor. Id. (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The non-movant may not defeat a "properly focused motion for summary judgment by relying upon mere allegations," but rather through definite and competent evidence. *Maldonado–Denis v. Castillo Rodriguez*, 23 F.3d 576, 581 (1st Cir. 1994). The non-movant's burden thus encompasses a showing of "at least one fact issue which is both 'genuine' and 'material.' " *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 48 (1st Cir. 1990); *see also Suarez v. Pueblo Int'l.*, 229 F.3d 49, 53 (1st Cir. 2000) (stating that a non-movant may shut down a summary judgment motion only upon a showing that a trial-worthy issue exists). As a result, the mere existence of "some alleged factual dispute between the parties will not affect an otherwise properly supported motion for summary judgment." *Liberty Lobby, Inc.*, 477 U.S. at 247–248. Similarly, summary judgment is appropriate where the nonmoving party rests solely upon "conclusory allegations, improbable inferences and unsupported speculation." *Ayala–Gerena v. Bristol Myers–Squibb Co.*, 95 F.3d 86, 95 (1st Cir. 1996); *Medina-Muñoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990).

When considering a motion for summary judgment, the Court must "draw all reasonable inferences in favor of the non-moving party while ignoring conclusory allegations, improbable inferences, and unsupported speculation." *Smith v. Jenkins*, 732 F.3d 51, 76 (1st

Cir. 2013) (reiterating *Shafmaster v. United States*, 707 F.3d 130, 135 (1st Cir. 2013)). The Court must review the record as a whole and refrain from engaging in the assessment of credibility or the gauging the weight of the evidence presented. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 135 (2000); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *see also Pina v. Children's Place*, 740 F.3d 785, 802 (1st Cir. 2014). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Reeves*, 530 U.S. at 150 (quoting *Anderson*, 477 U.S. at 250–51). Summarizing, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." (Emphasis provided). *See* Fed. R. Civ. P. 56(a).

Hence, in order to prevail, Plaintiffs must demonstrate that, even admitting well-pleaded allegations in light most favorable to Defendants, the applicable law compels a judgment in its favor.

IV. ANALYSIS

The Court has already determined that the jockeys, in effect, incurred in boycotting and cancelling horse races that were scheduled for June 30, July 1 and July 2, 2016 in violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, the Clayton Act, and other federal statutes, considering that the jockeys are not employees but independent contractors of CHPR. *See* Docket No. 214. In fact, the instant controversy stems of the decision of 37 jockeys of not participating in three (3) scheduled races after June 24, 2016. *Id.*

Plaintiffs filed a suit against CJP for the illegal antitrust violation of a concerted refusal to deal by the two defendants associations and the individual jockeys

to said entities. The Court issued a TRO based on the fact that jockeys have been traditionally considered to be independent contractors, who were engaged in a "concerted refusal to deal" in violation of the Sherman and Clayton Acts. Accordingly, they are not covered by the "labor dispute exception" as expressed in other instances such as the First Circuit decision in *San Juan Racing Association, Inc. v. Asociación de Jinetes de Puerto Rico, Inc., et al.,* 590 F.2d 31, 32 (1st Cir. 1979). After evidentiary hearings were held and memorandums of law submitted by all parties, the Court ultimately entered a Preliminary and Permanent Injunction against the jockeys and the case was moved to the damages stage, thereafter. Thus, Camarero and CHPR suffered damages. At issue is determining the extent of the damages suffered by Plaintiffs.

On September 23, 2019, Camarero filed a *Supplemental Motion for Summary Judgment* wherein an updated assessment of damages was produced to the Defendants along with a *Sworn Statement Under Penalty of Perjury* subscribed by Mr. Stanley Pinkerton, Chief Financial Officer of Camarero Racetrack, Corp. *See* Docket No. 272, Exhibit A. Mr. Pinkerton's statement reflects total losses of $396,895.00 of which $200,822.00 were caused to Camarero and $196,073.00 to CHPR. *See Id.*

From the *Sworn Statement Under Penalty of Perjury* included in support of the *Supplemental Motion for Summary Judgment*, arises the fact that the Defendants breached their obligations with Plaintiffs by boycotting and cancelling horse races for the dates of June 30, July 1 and July 2, 2016, causing damages to Plaintiffs that are due and payable. It is undisputed that the amounts due and payable to date are $200,822.00 as to Camarero and $196,073.00 as to CHPR. These amounts of losses include a mitigation of

damages, by way of substitution races held on July 18, July 27 and August 1, 2016, that resulted in a deduction as to the earnings received by Plaintiffs in the substitution races. Furthermore, there is no genuine issue of material fact as to the Defendants' liability, as the Court has already granted Permanent Injunction in favor of Plaintiffs. *See* Docket No. 214. There is also no genuine issue of material fact as to Plaintiffs' right to seek judicial redress of payment on the outstanding debt for damages. Accordingly, Plaintiffs are entitled to judgment as a matter of law providing for the compensation for due and payable damages as described above.

On a final note, the Court finds that the Defendants failed to properly oppose to Plaintiffs' *Motion for Summary Judgment* pursuant to the Fed.R.Civ.P. 56 requirements. Particularly, the Defendants resorted in denying Plaintiffs' *Amended Declaration of Uncontested Facts in Support of Summary Judgment* by providing an *Unsworn Declaration Under Penalty of Perjury* of CJP's alleged Accountant-Attorney Olga Benítez in support thereof. *See* Docket No. 277-5. Yet, Ms. Benítez' *Declaration Under Penalty of Perjury* is untimely. At this time, it is unclear whether Ms. Benítez' intervention in the instant case is as a potential witness or expert witness. If she were retained as an expert witness, as implied in her Declaration, the Defendants failed to disclose prior hereto, the fact that she was retained to declare on their behalf if the instant matter proceeds to trial. Said omission is in clear contravention to Fed.R.Civ.P. 26(A).[14]

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[14] Rule 26(a)(2)(A) provides in its pertinent part that "a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705."

The Defendants, thus, attempted to cure the deficiencies identified by the Court of their former *Opposition* (Docket No. 258) and *Surreply* (Docket No. 269), by presenting a potential expert witness without disclosing her identity prior thereto. The Court notes that by allowing the Defendants to submit an *Amended Surreply* upon Plaintiffs' filing of the updated damages demand, the Court was only allowing the Defendants an opportunity to properly submit their arguments pursuant to the applicable rules. It was not permission to attempt to reopen the discovery of the instant case which is long gone.

Most crucial and determinative, Defendants failed to comply with Rule 56's requirements when filing a declaration in support to the opposition to motion for summary judgment. Rule 56 clearly provides that, "[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed.R.Civ.P. 56(c)(4) (Emphasis ours). Defendants failed to establish Ms. Benítez' personal knowledge as to the facts surrounding the instant case, as well as her credentials to do so, but ultimately, the Court finds her observations and conclusions turned out to be baseless, incomprehensible and with no documents in support thereof. As previously discussed, the non-movant may not defeat a "properly focused motion for summary judgment by relying upon mere allegations," but rather through definite and competent evidence. *Maldonado-Denis*, 23 F.3d at 581. More importantly, Rule 56 of the Federal Rules of Civil Procedure clearly provides that

> "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule

> 56(c), the court may grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it."

Fed.R.Civ.P. 56(e). Likewise, the Local Rules provide that when opposing to a statement of material facts, "[u]nless a fact is admitted, the opposing statement shall support each denial or qualification by a record citation as required by this rule." P.R.D. Local Rule 56(c). For the aforementioned reasons, the Court hereby discards Ms. Olga Benítez' *Declaration Under Penalty of Perjury*.

In the instant case, the statement of Ms. Benítez did not show in a comprehensive manner the mistake in Plaintiffs' damages as a result of the three (3) days in which no races were held. Yet, Plaintiffs provided an update as to the damages figure to deduct the earnings obtained as a result of the substitution races that were held as part of a mitigatory effort to recover the earnings lost in June 30, July 1, and July 2, 2016.

Finally, the Court finds that the major drawback on the Defendants failure to properly answer Plaintiffs' *Amended Declaration of Uncontested Material Facts in Support of Summary Judgment ("SUMF")* (Docket No. 272-1) is that a "statement of material facts ... shall be deemed admitted," but only "if supported by record citations" as required by Local Rule 56. Not properly answering and/or opposing a summary judgment request under Local Rule 56(c) is "at their own peril." *See* P.R.D. Local Rule 56(c) and (e); *see also Morales v. A.C. Orssleff's EFTF*, 246 F.3d 32, 33 (1st Cir. 2001). Accordingly, the Court deems the Defendants' failure to properly address the arguments set forth in Plaintiffs' request for summary judgment is fatal to their defense.

V. CONCLUSION

For the reasons set forth above, the Court hereby **GRANTS** Plaintiffs' *Motion for Summary Judgment* (Docket No. 248) as amended by way of *Supplemental Motion for Summary Judgment* (Docket No. 272). Thus, Camarero Racetrack Corp. is entitled to the reimbursement of $200,822.00 in damages, and CHPR is entitled to $196,073.00 in damages as a result of the jockeys' boycott.[15] Judgment pursuant to the instant *Opinion and Order* is to be issued forthwith.

IT IS SO ORDERED.

[15] The Court notes that as there were initially two entities that were named defendants as participants of the jockeys' boycott, those entities may be jointly or severally responsible for the damages stated herein.

APPENDIX E

No. 16-2256

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CONFEDERACIÓN HÍPICA DE PUERTO RICO, et al.,

Plaintiffs,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC., et al.,

Defendants.

Signed November 8, 2017

AMENDED OPINION AND ORDER

DANIEL R. DOMINGUEZ, United States District Court

Pending before the Court are: (a) *Memorandum in Support of Preliminary Injunction* filed by defendant Confederacion Hipica de Puerto Rico, Inc. (hereinafter "CHPR"), at Docket No. 153; (b) *Co–Plaintiff Camarero Racetrack's Brief in Support of its Request for Injunctive Relief and Request for Attorney's Fees for Temerity Against Confederacion de Jinetes de Puerto Rico, Inc.*, filed by plaintiff Camarero Racetrack Corp. (hereinafter "Camarero"), at Docket No. 154; and (c) *Confederacion de Jinetes Puertorriquenos Brief, in Opposition to the Issuance of the Preliminary Injunction Requested by Camarero Race Track and Confederacion Hipica de Puerto Rico,* filed by defendant Confederacion de Jinetes Puertorriquenos. (hereinafter "CJP"), at Docket No. 173. For the reasons set forth below, the plaintiffs' request for the issuance of a preliminary injunction is granted.

Introduction

This action was filed on June 30, 2016 by CHPR and Camarero in response to *sua sponte* actions taken by certain jockeys associations, to wit, CJP, Inc. and Asociacion de Jinetes de Puerto Rico, Inc.[1] Plaintiffs alleges that the cancellation of the horse races scheduled for June 30, July 1 and July 2, 2016 due to certain jockeys' boycott and refusal to ride the horses in the scheduled races constitute a violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1–7, and the Clayton Act, as the jockeys are not employees of the CHPR, an association of the owners of racing horses. The CJP alleges that they are a union, hence, the jockeys, as employees, can legally call a boycott to plaintiffs and refuse to ride the horses, to force a payment increase for their horse mounts.

Issue

The core of this matter is whether the CJP, which is an independent jockeys' association, may also be considered a labor union, and as such, have a right to call strikes to force plaintiffs **to increase their horse mount fees**. It is important to note that CJP are currently not employees of CHPR and/or Camarero.[2] Notwithstanding, there are two additional issues

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[1] The Court wishes to clarify that the only defendant active at the time of this writing is CJP, as Asociacion de Jinetes de Puerto Rico, Inc. ("Asociacion") entered into a Settlement Agreement with plaintiffs herein. Hence, Asociacion is no longer a party in this case. *See Amended Judgment* of August 18, 2017, Docket No. 207.

[2] Until the CJP otherwise proves, they are independent contractors, as ruled by the United States of Court of Appeals for the First Circuit ("First Circuit"), in *San Juan Racing Association, Inc. v. Jinetes de Puerto Rico, Inc., et al.*, 590 F.2d 31 (1st Cir.1979). *See* Docket No. 46.

pending: whether the jockeys may call a strike to force plaintiffs to increase their horse mount fees, and other economic considerations, such as protection of their image in commercial advertising of the Camarero Race Track.

Factual and Procedural Background

The facts of this case are familiar to the Court, indeed this is not the first time that the jockeys have called a boycott against the scheduled races in an effort to force the San Juan Racing Association, Inc. to grant a payment increase. *See San Juan Racing Association, Inc. v. Jinetes de Puerto Rico, Inc., et al.*, 590 F.2d 31 (1st Cir.1979) (Coffin, J.).

In the instant case, the jockeys played a similar strategy, but this time the boycott was against the plaintiffs, that is the owners of the horses represented by CHPR, and the owner of the racetrack, Camarero. Both CHPR and Camarero have vehemently opposed to the demands of the jockeys members of the CJP. The Court held several long and extensive hearings, and allowed CJP sufficient opportunity to present their evidence, however, the Court was not persuaded by the legal arguments nor the evidence presented by the CJP to engage in a "concerted refusal to deal," as the Court granted a preliminary restraining order at Docket No. 46.[3] Our analysis follows.

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[3] The CJP presented confusing and contradictory arguments during the course of the evidentiary hearings, for example, the CJP argued that they are an organized union under the laws of Puerto Rico, but failed to cite the applicable local or federal statute in support of their argument, or to identify their union labor employment status. At times, CJP argued that they are plaintiffs' employees, as Camarero pay them their medical insurance; but as will be discussed *infra*, when the parties signed the agreement the legal status of the CJP was one of the independent contractors. The question remains as to what the

Preliminary Injunction Standard

The Court will revisit the *Second Amended Nunc Pro Tunc Opinion and Order Re: Temporary Restraining Order*, Docket No. 46, which addresses all the facets pending before the Court. The Court will include the analysis and discussion included therein, as the legal analysis remain the same after having reviewed all the evidence presented and admitted during all the evidentiary hearings held, to allow CJP an opportunity to show the Court why the injunctive relief requested by plaintiffs was not warranted.

Plaintiffs have requested a temporary injunctive relief under Fed.R.Civ.P. 65(b)(1)(A)(B), (b)(2) followed by a preliminary injunctive relief under Fed.R.Civ.P. 65(b)(3), including damages relief.

The First Circuit follows the quadripartite test, which the Court must examine and strictly comply:

(1) likelihood of prevailing in the merits;

(2) significant risk of irreparable harm;

(3) the balance of hardships weigh on the movant's favor; and

(4) whether the injunction will harm the public or third parties by granting the remedy.

New Comm. Wireless Inc. v. SprintCom Inc., 287 F.3d 1, 8–9 (1st Cir.2002); *Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 5 (1st Cir. 1991). *See also Arborjet, Inc. v. Rainbow Treecare Scientific Advancements, Inc.*, 794 F.3d 168, 171 (1st Cir.2015)

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jockeys of CJP really are: (a) a union; (b) Camarero's and/or CHPR's employees, or (c) are they independent contractors? Until the CJP otherwise prove, the jockeys are independent contractors under Puerto Rico law, and the Puerto Rico Racing Board, who governs and regulates the horse racing business in Puerto Rico.

(Souter, J.), wherein the Court citing *Narragansett*, held that "a party losing the battle on likelihood of success may nonetheless win the war at a succeeding trial on the merits." In the instant case, however, and after extensive evidentiary hearings, the Court finds that CJP was unsuccessful in convincing the Court that it has a legal right to call a strike to demand an increase in the horse mount fees.

In *Arborjet*, 794 F.3d at 171, the Court reaffirmed that:

> To grant a preliminary injunction, a district court must find the following four elements satisfied: (a) a likelihood of success on the merits, (2) a likelihood of irreparable harm absent interim relief, (3) a balance of equities in the plaintiff's favor, and (4) service of the public interest. *See Voice of the Arab world, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir.2011) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008)).

The probability of prevailing has been found to be the heaviest "furcula" of the TRO, and has been referred as the "sine qua non" of the injunctive relief, *Weaver v. Henderson*, 984 F.2d 11, 12 (1st Cir.1993) ... to succeed in the merits, *Narragansett*, 934 F.2d at 6. Further, should a party not be able to show likelihood of success, "the remaining factors become matters of idle curiosity." *New Comm. Wireless Inc.*, 287 F.3d 1, 9 (1st Cir.2002). Moreover, "of the four factors, the probability of success component in the past has been regarded by us as critical in determining the propriety of injunctive relief." *Lancor v. Lebanon Housing Authority*, 760 F.2d 361, 362 (1st Cir.1985). Hence, the factor of probability of prevailing constitutes the principal criteria to overpass, *Le Beau v. Spirito*, 703

F.2d 639, 645 (1st Cir.1983) (ending the court inquiry after concluding that plaintiffs were unlikely to prevail on the merits).

In 1979, the First Circuit determined that the jockeys are independent contractors when engaged in a "concerted refusal to deal" in violation of the Sherman and Clayton Acts. *See San Juan Racing Association, Inc. v. Asociacion de Jinetes de Puerto Rico, Inc., et al.*, 590 F.2d 31, 32 (1st Cir.1979) (confirming antitrust injunctive relief as to a "concerted refusal to deal" by the jockeys against management of the racetrack). Further, the jockeys are not covered by the "labor dispute exemption" as premised by *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1942), which is not applicable as expressed in a similar situation of jockeys versus management of the racetrack and horse owners under state law. In *San Juan Racing Association*, 590 F.2d at 31–32, the Court held:

> That they acted together, in combination, is a supportable finding on this record. (Citations omitted). Their openness does not immunize agreement. (Citations omitted). That defendants' collective refusal to deal with plaintiff until their fees were increased constituted an illegal effort to control prices through concerted action was also supportable on the pleadings and evidence before the court. (Citations omitted).
>
> ... [but] the rates of compensation [are] compelled by state law; their whole purpose [the jockeys] is to abolish such rates [the jockeys fees as payment to ride then for San Juan Racing Assoc.] and establish new ones." (Emphasis ours).

San Juan Racing Association, 590 F.2d at 32. The critical factor is that the remuneration of the jockeys is "compelled" by state regulation.

Further, the actions of "concerted refusal to deal" are unrelated to actions by the management of the racetrack nor the horse owners, but they are in fact related to the current regulation issued under the governmental authority of the Commonwealth of Puerto Rico relating to the distribution of the prize money of each race. *See San Juan Racing Association, Inc. v. Asociacion de Jinetes de Puerto Rico, Inc.*, 590 F.2d at 32. Hence, the dispute is not a "labor dispute" as defined under Section 13 of the Norris–La Guardia Act, 29 U.S.C. § 113, or under the "labor dispute" definition under the Sherman and Clayton Act, 15 U.S.C. §§ 1 and 17.

The Court understands that the probability of plaintiffs prevailing in the instant case is extremely high, as the jockeys herein do not receive deductions from their salary, such as, income tax; social security, unemployment. They have the ability to choose the race they want to run, and the particular horse they aspire to run, and they may run a different horse from a different owner creating a conflict with the horse owner of the previous or later race.[4] The jockeys also pay for all the equipment they may need.

Hence, the alleged "concerted activity of refusal to deal" constitutes a mirror image of the controversy as expressed by the court in *San Juan Racing Association, Inc. v. Asociacion de Jinetes de Puerto Rico, Inc.*, 590 F.2d at 32–33, a grievance as to the

[4] Whether the jockey mounts on any particular race or horse depends on whether the particular horse owner selects the jockey to ride the horse depending on the availability of the jockey to race in a particular race. *See* Docket No. 5, page 3, par. 14–15.

horse owners and the administrators of the racetrack, but against the "compelled" remuneration established by the Horse Racing Industry and Sport Administration, an administrative agency of the Commonwealth of Puerto Rico, which regulates the horse racing industry in Puerto Rico. In the instant case, the Horse Racing administrator was requested by the jockeys to terminate the steward who fined the jockeys for a work stoppage of two races, and also refused to accept the request of the jockeys to increase their racing fees and percentage per mount and per race. The matter is not a "labor dispute" but a "dispute against the Commonwealth of Puerto Rico," and the Horse Racing Board of Puerto Rico. Notwithstanding, plaintiff CHPR initially advised that they would lobby the request before the Horse Racing Board to be resolved within ninety days.[5] The jockeys, however, refused to wait. Hence, the "concerted refusal to deal" by the jockeys continued.

The Court considers the instant case to be an almost exact replica of *San Juan Racing Association, Inc. v. Asociacion de Jinetes de Puerto Rico, Inc.*, 590 F.2d 31, as to the facts and the law, as it fails to constitute a "labor dispute" against the CHPR or Camarero, but directed to the persons who are operating and regulating the agency and the Horse Racing Board of Puerto Rico, since the government agency constitutes the exclusive power to increase the compensation of the jockeys, as far as compensation is concerned per

[5] As stated above, there is no evidence presented to show that the jockeys who are associated to the CJP are employees of CHPR and/or Camarero. Indeed, it would be contrary to the provisions of law that governs the horse racing industry in Puerto Rico. *See* the Puerto Rican Horse Industry and Sport Administration, 15 L.P.R.A. § 198.

race for the winners and/or minimum compensation per race.

The record shows that, on June 16, 2016, the AJPR through its attorney Jorge A. Toro–McCown (hereinafter "Mr. Toro–McCown," the attorney for the Asociacion de Jinetes de Puerto Rico") sent a letter to the Office of the Racing Jury Panel, and the Horse Racing Administrator regarding a conflict with certain jockeys and the delay in racing day number 117 of June 10, 2016, and warning the Horse Racing Administrator that the jockeys could exercise their constitutional right to participate in a strike. *See* Docket No. 153, page 29. *See also* Plaintiffs' Exhibits 7 and 8 of July 19, 2016. Mr. Toro–McCown demanded that the conflict with the jockeys be resolved within 72 hours and declined the proposition made by Mr. Barrios, President of CHPR, to negotiate this matter within 90 days. "On June 20, 2016, the Horse Racing Administrator replied to the letter sent by the AJPR and declined its request to act as a mediator." *Id.* On June 21, 2016, the president of plaintiff CHPR sent a letter to the AJPR's attorney, "informing him that a boycott by the jockeys constituted a violation of the Sherman Antitrust Act." *Id. See also* Plaintiff's Exhibits 7, 8, 9 of July 19, 2016.

According to Stipulated Fact "V", "on June 24, 2016, the jockeys engaged in an illegal concerted activity, refused to register for the horses they would ride for the races scheduled for June 30 and July 1, 2016, in effect boycotting the racetrack operations and prompting the racetrack to suspend the racing operations for those two days." "The Administration for the Industry and Horse Racing Sports, an agency of the Commonwealth of Puerto Rico, issued a certification that evidenced that, for the inscriptions held that day, the inscription tickets [to race as

jockeys] were presented without any jockeys." *See* Docket No. 153, page 30. Furthermore, the record shows that "the races scheduled for Thursday, June 30, 2016, Friday, July 1, 2016, and Saturday, July 2, 2016 at Camarero Racetrack were cancelled due to the Defendants' refusal to ride the horses." *See* Stipulated Fact "U", and Docket No. 153, pages 30–31.

Thus, the controversy presented in the instant case is an identical controversy as in the case of *San Juan Racing Association, Inc. v. Asociacion de Jinetes de Puerto Rico, Inc., et al.*, 590 F.2d 31, wherein then Chief District Judge Jose V. Toledo decided that an injunction for a "concerted refusal to deal" was warranted under the federal antitrust laws. The First Circuit pellucidly affirmed the district court by also clearly determining that the matter failed to constitute a "labor dispute" at 590 F.2d at 32. (At that time the First Circuit determined that the record was not extensive, but now the record is more abundant).

As to irreparable harm, the Court understands that Camarero and CHPR are risking the permanent loss of a debilitating and dire market, as the fans of the racetrack may move to other types of sport activities or another types of gaming. Further, other gaming competitors may occupy the clients of CHPR, also individual horse owners with the racetrack closed will be unable to use the investments that they have in the horses nor effectively train the horses as the jockeys will be engaged in a "concerted refusal to deal."

The balance of equities between the parties favor the granting of the remedies under Fed.R.Civ.P. 65, as Camarero, the race track administrator, stands to potentially permanently lose market, which involves betting, and other gaming, as well as the horse owners stand to lose the use, and investment in their horses, as well as the potential race prize profits. Further, and

also critical, is that there are only thirty-six defendant jockeys, at the time of filing of the *Complaint*, and some may leave to other racetracks in other jurisdictions. However, the strike affects all the employers of the racetrack including those who provide: (a) maintenance to the racetrack; (b) those who are at the windows of the gaming; (c) the persons working for the food concessionaires: (d) the horse owners sub-contractors who hire grooms and other employees to safeguard, protect, feed and work with the horses; (e) the owners of the gaming agencies wherein betting is placed as to the "pool" of seven races, as well as individual races. Lastly, and most critical, the defendants' concerted refusal to deal constitutes a significant loss of revenue generated for the Commonwealth of Puerto Rico from this sport.

The public interest unequivocally also favors the granting of the injunctive relief, as the government stands to lose all the future revenues of the income generated by the use of the racetrack, as well as the revenues lost due to the cancellation of certain racing days. The fact is that the loss of revenues will be lost for good, as the racetrack nor the horse owners will be able to recuperate financially from the loss triggered by the forced closing of the racetrack operations due to the jockeys "concerted refusal to deal" on certain racing days. Moreover, an extended boycott may cost the Government of Puerto Rico millions of dollars to an Island that is currently in the verge of bankruptcy. Further, although jockeys are free to ride at other racetracks in the United States or other countries, the Camarero Racetrack can only operate in Puerto Rico, and the horse owners cannot run in other racetracks as Camarero is the only racetrack in Puerto Rico.

Finally, and above all, this type of boycott by the jockeys against the racetrack operations has already

been entertained by the First Circuit in an extremely similar case, as to a prior racetrack operating then in Puerto Rico, and an identical scenario wherein the jockeys attempted to boycott the horse owners and the administrator of the racetrack *San Juan Racing Association, Inc.*, 590 F.2d 31, in a "concerted effort to refuse to deal" unless the jockeys' fees were increased. The First Circuit ruled that the injunctive relief was warranted, as the "concerted refusal to deal" was not a "labor dispute," for the jockeys are independent contractors and lack an employment relationship with either the racetrack administrator and the horse owners. Furthermore, the increase in the amount of racing fees sought by the jockeys were then "compelled by the state" and currently are determined by the government's Horse Racing Board. *See Columbia River Packers Assoc. v. Hinton*, 315 U.S. 143, 146–147, 62 S.Ct. 520, 86 L.Ed. 750 (1942) (stating that injunctive antitrust relief was to be granted when "the employer-employee relationship has no bearing"). Hence, plaintiffs' request is strictly concerted to stop and unlawful refusal to deal of the jockeys, as independent contractors. "... [P]laintiff resort to the district court was not to determine [or evade] a new basis for compensation—something that may well be within the primary jurisdiction of the Horse Racing Board [the government agency], but to dissolve the concerted refusal to deal which defendants had engaged in." *See San Juan Racing Association, Inc. v. Asociacion de Jinetes de Puerto Rico, Inc.*, 590 F.2d at 33, citing *United States v. Radio Corporation of America*, 358 U.S. 334, 346–348, 79 S.Ct. 457, 3 L.Ed.2d 354 (1959).[6]

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[6] For identical rulings relating to racetracks, *see Taylor v. Local 7, International Union of Journeymen Horseshoers*, 353 F.2d 593, 602–606 (4th Cir.1965), (citing *Columbia River Packers Assoc.*,

In view of the fact that the evidence and the law favors the issuance of the preliminary injunction requested by plaintiffs, the same is granted in a *sine die* and continued fashion.

Applicable Law and Discussion

The Horse Racing Industry in Puerto Rico.

The horse racing industry in Puerto Rico is exclusively regulated by the Puerto Rican Horse Racing Industry and Sport Administration. *See* 15 L.P.R.A. § 198. Section 198a provides that: "The Puerto Rican Horse Racing Industry and Sport Administration is hereby created as a public instrumentality to regulate all facets connected with the horse racing sport in the Commonwealth of Puerto Rico, and its powers, functions and duties shall be exercised through a Racing Board and a Racing Administrator." Section 198b(2) defines Administrator, as the "Horse Racing Administrator." Section 198b(2) defines Administrator, as the "Horse Racing Administrator." Section 198b(2) defines Administrator, as the "Horse Racing Administrator." Section 198b(37) defines jockey, as "the person authorized to ride race horses through a license issued by the Administrator." Section 198c provides that the Horse Racing Board will be composed of five (5) persons to be "appointed by the Governor with the advice and consent of the Senate for a term of four (4) years."

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315 U.S. at 146–147, 62 S.Ct. 520), *cert. denied*, 384 U.S. 969, 86 S.Ct. 1857, 16 L.Ed.2d 681 (1966). As to lawyers working as individual counsel (as independent contractors for the government) representing indigents defendants engaged in a "concerted refusal to deal," the Court refers to *FTC v. Superior Court Trial Lawyers Association*, 493 U.S. 411, 110 S.Ct. 768, 107 L.Ed.2d 851 (1990).

Section 198e governs the Horse Racing Board powers. Section 198e(a) provides that the Horse Racing Board "is hereby empowered to regulate all matters concerning the horse racing sport."

Jockeys are independent contractors pursuant to 15 L.P.R.A. § 198b(37).

As stated above, jockey is the person authorized to ride race horses through a license issued by the Horse Racing Administrator. It is uncontested that the jockeys are not employees of Camarero or CHPR or trainers. *See* Docket No. 153, page 19. Moreover, "as independent contractors, jockeys are engaged by horse owners to participate in races at various tracks throughout the United States, including Camarero Racetrack." *Id. See also* Docket No. 153, page 9, ¶ 3, Joint Exhibit IV: "Jockeys are not employees but independent contractors. Counsel Axel Vizcarra, Esq., admitted in an 'urgent memorandum' to all jockeys dated July 2, 2016 that the jockeys are independent contractors."

Furthermore, "one of the facts that support that the jockeys are independent contractors is that they are not deducted income tax, unemployment or social security taxes." The record shows that this fact was admitted for the record by Mr. Axel Vizcarra, attorney for CJP. *See* Docket No. 153, page 10. "The jockeys are free to run in one race and mount a horse from one owner, and in the next race not mount a horse from the same owner." *Id.* at page 11. "**Whether a jockey rides a particular horse in a particular race depends solely on whether an owner and/or trainer selects him/her, and if selected, whether the jockey wants to ride that particular horse in that particular race.**" *Id.* (Emphasis ours). Hence, the final word to ride a horse lies on each individual jockey.

"Jockeys in Puerto Rico are contracted through a 'ticket' **which is signed by the jockey or the jockey's authorized agent and the horse owner or the horses' trainer**." (Emphasis ours). *See* Docket No. 153, page 12. "Said 'ticket' constitutes the agreement among the parties for each individual race that a jockey is to ride on a horse." *Id.* "The jockeys, as independent contractors, can accept or reject to mount the horse that is offered." *Id.* "The 'ticket' is only valid for one race." *Id.* "**As independent contractors, the jockeys provide their own equipment, and are free of any control by the horse owners and/or trainers to whom they contract their services**." *See* Docket No. 153, page 13. (Emphasis ours).

"The jockeys that ride horses in Puerto Rico get paid for their rides 10.25% of the purse received by the horse owner if their mounts arrive in the first 6 positions." *See* Docket No. 153, page 14. "Also, regardless of the position they arrived at during the race, they get paid at least $20.00 per mount." *Id.* "As an additional income, all the jockeys get 10.25% of the monies received by the horse owners that come from the video lottery terminals (VLT)." *Id.* "Horse owners pay the mount and other fees in accordance with the terms incorporated in an official racing regulation ('the Puerto Rico Horse Racing Board')." *See* Docket No. 153, page 15. "**The compensation that the jockeys receive per mount was not determined as a result of a negotiation between horse owners and the jockeys**." at page 16. (Emphasis ours).

Pursuant to 15 L.P.R.A. § 198e(9), the Horse Racing Board has the power "to issue orders, rules and resolutions and take the necessary measures leading to achieve the physical safety and financial and social security of natural and juridical persons related to the horse racing industry and sport, including the issue of

orders of cease and desist should the Board believe that a person is in violation of §§ 198, 198y of this title or of the rules, regulations, orders or license requirements promulgated pursuant thereto." *See also* Docket No. 153, page 17.

The Court has examined the "test" for independent contractor both under federal and Puerto Rico law.[7]

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[7] The determination of the employer/employee status in a racetrack is made by the National Labor Relations Board who has the original and exclusive jurisdiction to make such determination, but has statutory authority to decline jurisdiction as well as to retain and exercise jurisdiction. *See San Juan Racing Association Inc. v. Labor Relations of Puerto Rico*, 532 F.Supp. 51, 54–55 (D.P.R.1982). "In cases involving the horseracing industry the Board has consistently declined to exercise jurisdiction under Sections 8, 9 and 10 of the Act over the racetracks industry, as well as over labor disputes involving employers whose operations are an integral part of the said industry *American Totalisator Co.*, 101 L.R.R.M. 1403 (1979); *Los Angeles Turf Club, Inc.*, 26 L.R.R.M. 1154 (1950); *Jefferson Downs, Inc.*, 45 L.R.R.M. 1108 (1959); *Meadow Stub, Inc.*, 47 N.L.R.B. 1202 (1961); *Hialeah Race Course, Inc.*, 45 L.R.R.M. 1106 (1959); *Walter A. Kelley*, 51 L.R.R.M. 1375 (1962); *Centennial Turf Club, Inc.*, 77 L.R.R.M. 1894 (1971); *Yonkers Raceway, Inc.*, 79 L.R.R.M. 1697 (1972), and others." ... "Finally, it may be added that the Board's decision not to assert its jurisdiction over the horseracing industry is not irrevocable." *Id.* at page 55. "The limitations on the exercise of jurisdiction is self-imposed and it can exercise jurisdiction pursuant to the statute under any reasonable set of circumstances it deems appropriate. *International Union Progressive Mine Workers v. N.L.R.B.*, 319 F.2d 428, 435 (7th Cir.1963); *N.L.R.B. v. Okla–Inn*, 488 F.2d 498 (10th Cir.1973). "Thus, if the Board's expectations are not realized, the Board can reappraise its policy in this area taking into consideration the new developments in society and assert jurisdiction over the horseracing industry as long as its new construction is consistent with the Act. *N.L.R.B. v. Harrah's Club*, 362 F.2d 425 (9th Cir.1966); *Walter A. Kelley*, 51 L.R.R.M. 1375 (1962); *N.L.R.B. v. Wentworth Institute*, 515 F.2d 550 (1st Cir.1975)."

The following is a collection of cases which set forth the factors to be considered by the Court when determining whether an individual is an independent contractor. In *C.C. Eastern, Inc. v. N.L.R.B.*, 60 F.3d 855, 858 (D.C. Cir.1995), the Court held:

> Whether a worker is an independent contractor or an employee is a function of the amount of control that the company has over the way in which the worker performs his job. *Local 777, Democratic Union Organizing Committee, Seafarers International Union of North America v. N.L.R.B.*, 603 F.2d 862, 872–874 (D.C. Cir.1979) (*"Seafarers").* As the Board itself has explained:
>
> [A]n employer-employee relationship exists when the employer reserves not the right to control the result achieved, but also the means to be used in attaining the result. On the other hand, when the employer has reserved only the right to control the ends to be achieved, an independent relationship exists .... Supervision of the 'means and manner' of the workers' performance renders him an employee, while steps taken to 'monitor, evaluate, and improve the results' of his work, without supervision over the means by and manner in which he does his work, indicates that the worker is an independent contractor. *See City Cab of Orlando, Inc. v. N.L.R.B.*, 628 F.2d 261, 264 (D.C. Cir.1980).

In *J. Huizinga Cartage Company, Inc. v. N.L.R.B.*, 941 F.2d 616, 619–620 (7th Cir.1991), the Court held:

> The determination of an individual's status as an employee or independent contractor is a fact-based inquiry and focuses on "the employers

> ability to control the purported employee." *N.L.R.B. v. O'Hare–Midway Limousine Serv.*, 924 F.2d 692, 694 (7th Cir.1991). The key factor in evaluating employer control is whether the employer governs the manner and means by which the work is accomplished. *N.L.R.B. v. Sachs*, 503 F.2d 1229, 1233 (7th Cir.1974).
>
> The Company owned, maintained and insured the trucks driven by Richardson and Toles. The drivers' hours and routes were also controlled by the Company. In addition, when they were hired both Richardson and Toles completed standard employment application form. The Company stresses that it did not deduct income tax, social security tax, or unemployment compensation from Richardson's and Toles' paychecks as support for the proposition that they were independent contractors. However, as the General Counsel recognized, if an employer could confer independent contractor status through the absence of payroll deductions there would be few employees falling under the protection of the Act.
>
> ...
>
> Based upon substantial evidence of the control exerted by the Company over the manner and means by which Richardson and Toles performed their duties, we agree with the Board's conclusion that they were employees covered by the Act.

In *Fernandez v. Land Authority of Puerto Rico*, 104 D.P.R. 464, 1975 WL 38685, 4 P.R. Offic. Trans. 644 (1975), the Supreme Court of Puerto Rico, set forth the factors to be considered when determining whether an

individual is an employee or an independent contractor:

> **In this type of controversy there are usually characteristics traits in common to both categories, making it difficult to certainly establish sharp distinction between employee and independent contractor**. Therefore the case law has formulated several factors that should be taken into consideration upon determining the nature of the relationship between the parties mentioning, among others, the following: **1) nature, extent, and degree of control of the principal; 2) degree of initiative or judgment displayed by the truck driver; 3) ownership of equipment; 4) power to hire and the right to fire; 5) manner of remuneration; 6) opportunity for profit and risk of loss, and 7) tax withholding**. *Lendron v. Labor Relations Board*, 87 P.R.R. 87 (1963); *Sec. of Labor v. Pedro A. Piza, Inc.*, 86 P.R.R. 422 (1962); *Perez v. Hato Rey Bldg. Co.*, 100 P.R.R. 880 (1972), and *Nazario v. Gonzalez*, decided on September 4, 1973, 101 [D.P.R.] P.R.R. 569.
>
> The determination, however, does not depend on a specific factor but on the totality of the circumstances present in the relationship between the parties. We must examine, then, the factual situation which gave rise to the controversy, taking into consideration the above mentioned factors.
>
> In our opinion, and in view of the circumstances of this case the control exercised by the Authority over appellees is insufficient to conclude, as the trial court erroneously

> concluded, that the relationship between the parties was one of employee-employer. (Emphasis ours).

In the instant case, the jockeys, as independent contractors, are contracted by the horse owners and/or trainers at will. The jockey is free to accept or reject the offer made by the horse owner and/or trainer. There is no contract and/or employment application, merely the signature of the jockey on the ticket corresponding to the mount of a certain horse to be raced on a certain date, at the specific race number indicated in the ticket. The jockey has the ultimate authority to accept or reject the offer made by the horse owner and/or trainer. No further commitments from the jockey's side, except to train with the horse in preparation for the race, have his/her equipment ready, and run the race. Thereafter, the jockey will be compensated accordingly, but always between the compensation set forth by the Horse Racing regulations, and the regulations set forth by the government agencies. *See* Docket No. 153, page 14.

A Business Decision: The Right of Publicity Act.[8]

The CJP has claimed that there was a negotiation between the Horse Racing Association and the jockeys associations wherein the CJP "bargained" with management of both the horses' owners and the race track original and successor owners. The bargaining negotiation was simple. Both the owner of the race

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[8] Ley del Derecho sobre la Propia Imagen, 32 L.P.R.A. §§ 3151 *et seq*. Although the Right of Publicity Act was formally enacted on July 13, 2011, it clearly states in the Statement of Motives that the cause of action stems since the year 1982. *See Colon v. Romero Barcelo*, 112 D.P.R. 573 (1982), and the collection of cases cited therein.

track and the horses' owners, that is, Camarero and CHPR "agree[d] to fund on a 50/50 basis the monies necessary to pay [the jockeys]:

> a) The premium of the health plan for the Jockeys (medical plan, life insurance and accident insurance) and Trainers (medical plan only). Note: the Jockeys may substitute, on a dollar for dollar basis, the cost of valets in lieu of the cost of the Life Insurance.
>
> b) The State Insurance Fund policy for the jockeys.
>
> The Confederacion [CHPR] and CAMARERO herein establish as "Base Year Budgets" for Item A the following amounts of $251,000.00 for the jockeys' health plan and $272,000.00 for the trainers' health plan. The future Annual budgets for A will be considered maximum budgets and any cost over runs will be the responsibility of the respective Trainers and Jockeys Associations .... CAMARERO and/or The Confederacion [CHPR] will have the right to audit the records of the Jockeys Associations and Trainers Associations to insure compliance with payment of the Health Insurance Plans by these Associations. CAMARERO will have the right to request documentation from The Confederacion to show proof of payment for the State Insurance Fund Policy for the Jockeys.

See Plaintiffs' Exhibit No. 2 of July 19, 2016, a Contract executed on January 23, 2007, by Confederacion Hipica de Puerto Rico and Camarero Race Track Corp. This negotiation has been agreed to

by CHPR, Camarero, and the jockeys associations, to wit, CJP and AJPR.[9]

It is critical that the jockeys cannot be independent contractors for certain situations,[10] and employees for another. As stated in the collection of cases cited above, the determination of whether an individual is an independent contractor or an employee rests on control of the employer over the employee, as well as the totality of the circumstances.

In the instant case, the fact remains the plaintiffs made a decision to include the jockeys in their liability policies for the benefit of both plaintiffs and jockeys, but also the jockeys surrendered any rights that they may have as jockeys of their images taken during the course of the races in exchange for the payment of the health insurance plan; accident insurance plan; life insurance policy, and the policy of the Puerto Rico State Insurance Fund, which must be paid individually by all independent contractors.

If the jockeys were indeed employees of plaintiffs, they would not have been able to negotiate this benefits, as that would have been forced to accept

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[9] Asociacion de Jinetes de Puerto Rico (AJPR) is no longer part of this case, but indeed agreed to the provisions of the contract of January 23, 2007 entered into by Camarero and CHPR.

[10] "The jockeys are not employees but independent contractors." *See* Complaint, Docket No. 1, ¶ 15. "Camarero does not control a jockeys's work in any manner. Camarero does not hire or fire jockeys." *Id.*, ¶ 16. *See also* "Urgent Memorandum" from Atty. Axel Vizcarra Pellot—President, to "All Jockeys" dated July 2, 2017, and admitted and Joint Exhibit IV on August 16, 2016, which states: "The order issued by the Hon. Judge Dominguez does not affect your rights as independent contractors to accept or reject mounts when so determine, among others, as part of your individual professional practice." (Emphasis ours).

whatever terms and conditions the employer's contract provides.

Notwithstanding, it is now critical to review the applicable provisions of The Right of Publicity Act ("the Act"), 32 L.P.R.A. §§ 3151 *et seq*. The Act defines "accessory figure" as, "[a] person who is not the focus of a communication, but rather a part of a group or background figure." *See* 32 L.P.R.A. § 3151(g). Section 3154 of the Act provides: "The rights under this chapter shall be freely transferable and descendible property rights, in whole or in part, to any person or incorporated entity by written transfer, included but not limited to, a signed agreement among the parties, powers, licenses, donations, and wills, or by intestate succession." Most importantly are the exceptions provided by the Act, under Section 3157:

> This chapter shall not apply under the following circumstances:
>
> (a) When an individual's likeness is used in any medium as part of a news report, political expression, **sporting**, or artistic event transmission, **or presentation with a legitimate public interest**, and where said likeness is not used with commercial or publicity purposes.
>
> ...
>
> (d) When the likeness of an accessory figure is used. (Emphasis ours).

After having reviewed the provisions of the Act, it is clear that these provisions are inapplicable to an employer-employee relationship, as the employee in the ordinary course of business, do not have a bargaining power over its image with his/her

employer. Only an independent contractor may claim any rights or violations of rights under the Act.[11]

In the instant case, the jockeys first negotiated the use of their image with the original owner of the former El Comandante Race Track, and later with the successor owner and plaintiff herein, Camarero Race Track Corp. As stated above, plaintiffs herein, Camarero and CHPR, agreed to establish a fund to pay for certain benefits to the jockeys, such as, the payment of the health insurance plan; accident insurance plan; life insurance policy, and the policy of the Puerto Rico State Insurance Fund, which must be paid individually by all independent contractors, in exchange for the use of the image of a jockey or jockeys as "accessory figures" under Section 3151(g) the Act, and as an exception under Section 3157(a) and (d) of the Act.

In a nutshell, this matter was settled in a business decision fashion that was convenient for both the plaintiffs and the jockeys, and at the time frame wherein the jockeys were considered independent contractors under the law, as the image law in Puerto Rico was not yet enacted. The Court emphasizes that the core of this case is not the use of the image, but the jockeys' request for an increase on the horse mount, which is a matter of exclusive jurisdiction to the

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[11] The coverage of the jockeys under the local law constitutes a "mission impossible" task, not only because the jockeys are an "accessory figure" under the Right of Publicity Act, 32 L.P.R.A. § 3151(g), but also because they are explicitly exempted under Section 3157(a), when their image is used as part of a "sporting" event and/or when they are engaged in a "public interest activity," such as a gambling event which is highly regulated by the Puerto Rico Government, and wherein the Government enjoys a strict control, as to each race, as well as to gambling and betting at the Camarero race track in Puerto Rico, and the private agencies.

Puerto Rico Horse Racing Board, as thoroughly discusses above.[12]

Conclusion

For the reasons set forth above, the preliminary injunction and the memorandum in support of preliminary injunction requested by CHPR filed at Docket No. 153, is granted. Camarero's Memorandum in Support of Preliminary Injunction filed at Docket No. 154, is noted.

Defendants are, hence, enjoined permanently from engaging in any concerted refusal to deal, which may in any way affect any race or racing day.

Therefore, this case now moves to the damages stage.

The parties are granted ninety days to make discovery as to damages only. **A Discovery Status Conference is set for February 26, 2018 at 10:00 a.m.**

The request for lawyers' fees is denied at this time without prejudice, as plaintiffs have not placed the Court in a position to make a finding of temerity nor have plaintiffs complied with the jurisprudence as required to a request of this nature.[13]

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[12] Curiously, the plaintiffs have continued with the agreement entered into between Camarero and the CHPR on January 23, 2007. *See* Plaintiffs' Exhibit No. 2 of July 19, 2016, at pages 8–9. Notwithstanding that "sporting" ... events are not covered under the Right of Publicity Act, as well as, "legitimate public interest matters." 32 L.P.R.A. § 3157(a).

[13] Temerity request shall include a memorandum with sworn statements as to the amount per hour, per lawyer assigned to this case and working on this matter; the specific number of hours worked and the rate per hour per attorney, all pursuant to *Coutin*

IT IS SO ORDERED.

v. Young & Rubicam Puerto Rico, Inc., 124 F.3d 331 (1st Cir.1997); *Torres–Rivera v. O'Neil Cancel*, 524 F.3d 331, 335 (1st Cir. 2008); *De Jesus Nazario v. Morris Rodriguez*, 554 F.3d 196 (1st Cir. 2009). On the other hand, costs constitute a matter to be awarded to the prevailing party. *See* Local Rule 54.

APPENDIX F

Nos. 19-2201, 20-2172

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CONFEDERACIÓN HÍPICA DE PUERTO RICO, INC.; CAMARERO RACETRACK CORP.,

Plaintiffs-Appellees,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC.; ABNER ADORNO; CARLOS QUIÑONES; CINDY SOTO; DAVID ROSARIO; EDWIN CASTRO; HÉCTOR BERRÍOS; HÉCTOR RIVERA; JOMAR GARCÍA; KENNEL PELLOT; LUIS NEGRÓN; MARIO M. SÁNCHEZ; PEDRO GONZÁLEZ; SASHA ORTIZ; STEVEN FRET; MIGUEL A. SÁNCHEZ,

Defendants-Appellants,

ALEXIS VALDÉS; ANARDIS RODRÍGUEZ; DAVID ORTIZ; ERIK RAMÍREZ; ISMAEL PERÉZ; ISRAEL O. RODRÍGUEZ; JOSÉ A. HERNANDEZ; JUAN CARLOS DÍAZ; JORGE G. ROBLES; JAVIER SANTIAGO; MISAEL MOLINA; KEVIN NAVARRO; PABLO RODRÍGUEZ; ALFONSO CLAUDIO; JONATHAN AGOSTO; YASHIRA TOLENTINO; JOSÉ M. RIVERA; ALVIN COLÓN; JESÚS GUADALUPE; JAN CARLOS SUÁREZ; ASOCIACION DE JINETES DE PUERTO RICO, INC.; RAMÓN SÁNCHEZ; CONJUGAL PARTNERSHIP ADORNO-DOE; CONJUGAL PARTNERSHIP DOE-SOTO; CONJUGAL PARTNERSHIP ORTIZ-DOE; CONJUGAL PARTNERSHIP H. DOE-TOLENTINO; CONJUGAL PARTNERSHIP ADORNO-DOE; CONJUGAL

PARTNERSHIP VALDÉS-DOE; CONJUGAL
PARTNERSHIP CLAUDIO-DOE; CONJUGAL
PARTNERSHIP COLÓN-DOE; CONJUGAL
PARTNERSHIP QUINONES-DOE; CONJUGAL
PARTNERSHIP DOE-SOTO; CONJUGAL
PARTNERSHIP ORTIZ-DOE; CONJUGAL
PARTNERSHIP ALEMAN-DOE; CONJUGAL
PARTNERSHIP CASTRO-DOE; CONJUGAL
PARTNERSHIP DELPINO-DOE; CONJUGAL
PARTNERSHIP BERRÍOS-DOE; CONJUGAL
PARTNERSHIP RIVERA-DOE; CONJUGAL
PARTNERSHIP CEPEDA-DOE; CONJUGAL
PARTNERSHIP PERÉZ-DOE; CONJUGAL
PARTNERSHIP RODRÍGUEZ-DOE; CONJUGAL
PARTNERSHIP SUÁREZ- DOE; CONJUGAL
PARTNERSHIP SANTIAGO-DOE; CONJUGAL
PARTNERSHIP GUADULUPE; CONJUGAL
PARTNERSHIP GARCÍA-DOE; CONJUGAL
PARTNERSHIP DAVILA-DOE; CONJUGAL
PARTNERSHIP ROBLES-DOE; CONJUGAL
PARTNERSHIP HERNANDEZ-DOE; CONJUGAL
PARTNERSHIP CABRERADOE; CONJUGAL
PARTNERSHIP DÍAZ-DOE; CONJUGAL
PARTNERSHIP PELLOT-DOE; CONJUGAL
PARTNERSHIP NAVARRO-DOE; CONJUGAL
PARTNERSHIP NEGRÓN-DOE; CONJUGAL
PARTNERSHIP SÁNCHEZ-DOE; CONJUGAL
PARTNERSHIP SÁNCHEZ- DOE 30; CONJUGAL
PARTNERSHIP MOLINA-DOE; CONJUGAL
PARTNERSHIP RODRÍGUEZ-DOE 24; CONJUGAL
PARTNERSHIP GONZÁLEZ-DOE; CONJUGAL
PARTNERSHIP SÁNCHEZ-DOE 29; CONJUGAL
PARTNERSHIP ORTIZ-DOE 26; CONJUGAL
PARTNERSHIP FRET-DOE; CONJUGAL
PARTNERSHIP DOE-TOLENTINO; JANE DOES;
JANE DOES 2-4; 6-35 JOHN DOES 1-2,

Defendants.

FILED July 6, 2022

BEFORE Barron, Chief Judge, Lynch, Thompson, Kayatta, and Gelpí, Circuit Judges, and Woodlock,[*] District Judge.

ORDER OF COURT

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Peter John Porrata
Axel A. Vizcarra-Pellot
Pablo H. Montaner-Cordero
Roberto LeFranc-Morales
Manuel Porro-Vizcarra
Francisco J. Ramos-Martinez
Elaine Goldenberg
Justin Paul Raphael
Luz Yanix Vargas Perez

[*] Of the District of Massachusetts, sitting by designation.

APPENDIX G

NORRIS-LAGUARDIA ACT

1. 29 U.S.C. § 101 provides:

Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

2. 29 U.S.C. § 102 provides:

Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association,

self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are enacted.

3. 29 U.S.C. § 103 provides:

Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

4. 29 U.S.C. § 104 provides:

Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by

advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

5. 29 U.S.C. § 105 provides:

Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies

No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

6. 29 U.S.C. § 106 provides:

Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

7. 29 U.S.C. § 107 provides:

Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect--

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful

act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an

undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

8. 29 U.S.C. § 108 provides:

Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available

governmental machinery of mediation or voluntary arbitration.

9. 29 U.S.C. § 109 provides:

Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

10. 29 U.S.C. § 110 provides:

Review by court of appeals of issuance or denial of temporary injunctions; record

Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the

temporary injunctive order affirmed, modified, or set aside expeditiously[1]

11. 29 U.S.C. § 113 provides:

Definitions of terms and words used in chapter

When used in this chapter, and for the purposes of this chapter--

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member,

[1] So in original. Probably should be followed by a period.

officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

12. 29 U.S.C. § 114 provides:

Separability

If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of this chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

13. 29 U.S.C. § 115 provides:

Repeal of conflicting acts

All acts and parts of acts in conflict with the provisions of this chapter are repealed.

ADDITIONAL STATUTORY PROVISIONS

14. 15 U.S.C. § 1 provides:

Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

15. 15 U.S.C. § 17 provides:

Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

16. 29 U.S.C. § 52 provides:

Statutory restriction of injunctive relief

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be

considered or held to be violations of any law of the United States.