

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball,

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCI, Executive Director of the New Jersey Racing Commission, NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. and NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Defendants.

Civil Action No. 3:14-cv-6450(MAS)(LHG)

BRIEF ON BEHALF OF NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. FOR JUDGMENT ON INJUNCTION BOND AND DAMAGES

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PRELIMINARY STATEMENT

For more than three and one-half years, in reliance on an unconstitutional federal statute (the Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701 *et seq.* (“PASPA”)) and ten false sworn statements, the National Football League (“NFL”), the National Basketball Association (“NBA”), the Office of the Commissioner of Baseball (“MLB”), the National Hockey League (“NHL”), and the National Collegiate Athletic Association (“NCAA”) (collectively “Plaintiffs” or “Leagues”) were able to prevent the New Jersey Thoroughbred Horsemen’s Association, Inc. (“NJTHA” or “Monmouth Park”) from doing what it had a legal right to do – accept bets on the Leagues’ games and on the games of other sports organizations, including golf, tennis, soccer, auto racing, boxing and ultimate fighting. In doing so, the Leagues knowingly caused tremendous damage to Monmouth Park. For example, lost estimated sportsbook win that Monmouth Park could have had during the period October 26, 2014 – May 14, 2018 is \$149,977,173. This sum does not include other damages Monmouth Park has suffered as the result of having been prevented from accepting sports bets.

On October 24, 2014, the Leagues obtained an injunction preventing Monmouth Park from conducting sports betting. Pursuant to Federal Rule of Civil Procedure 65(c), the Leagues were ordered to post a surety bond in the amount of \$3.4 million to be paid if it was later determined that Monmouth Park had been wrongfully enjoined. On May 14, 2018, the United States Supreme Court did just that when it held PASPA to be unconstitutional.

The NJTHA seeks the following relief: (1) judgment, jointly and severally, against the Leagues and their surety in the bond amount of \$3.4 million plus interest, (2) judgment declaring that the Leagues acted in bad faith by wrongfully blocking the NJTHA from operating a sports betting venue at Monmouth Park; and (3) ordering accelerated discovery and an evidentiary

hearing to determine the damages sustained by the NJTHA over and above the bond amount together with counsel fees and costs of suit as the result of the Leagues' bad faith.

The Leagues' quest to prevent Monmouth Park from accepting bets on the Leagues' games and the games of others first began in 2012 and did not stop until the Supreme Court's May 14, 2018 decision forced them to do so. During the intervening years the Leagues' actions nearly put Monmouth Park out of business, inflicted significant financial and emotional hardship on hundreds of innocent Monmouth Park workers, and jeopardized the continued viability of New Jersey's entire equine industry, including its many horse farms and related open spaces. The Leagues succeeded in blocking Monmouth Park from conducting sports betting by relying on what the Supreme Court decided is an unconstitutional statute and by submitting ten false sworn statements.

First, the Leagues submitted five false sworn Declarations to this Court from the Commissioners of the NFL, NBA, MLB, NHL, and the President of the NCAA (collectively, "Commissioners"). Certification of Ronald J. Riccio, dated May 24, 2018 ("Riccio Cert."), submitted herewith, Exhibits 2-6. Each of the Commissioners falsely described to this Court, under oath, a parade of horrors that they warned would result unless an immediate halt was put to the spread of sports betting. *Id.*

The Commissioners specifically swore that the spread of sports betting would result in match-fixing or the appearance thereof. Riccio Cert. Exhibits 2-6. They said it would undermine the integrity of the Leagues' games, would irreparably harm the Leagues' reputation, would erode public confidence in the Leagues' games, would cause a loss to their fan base, and would eliminate fan loyalty. *Id.* In the case of the NCAA, the Court was told by the NCAA's President that the spread of sports betting would jeopardize the welfare of student-athletes.

Riccio Cert. Ex. 6 ¶8. MLB Commissioner Selig went even further. He swore there was an urgent need to stop sports betting from spreading because it is an activity that is a “corruption” (Riccio Cert. Ex. 12 at 20:18), which threatens the “values and ideals that MLB makes every effort to guard and preserve” (Riccio Cert. Ex. 4 ¶9).

Second, the Leagues filed five false affidavits from in-house counsel for each of the Leagues swearing that the “factual information” in the Complaint was “true and correct” based on their “personal knowledge.” Riccio Cert. Exhibits 7-11. In paragraph 12 of the Complaint the Leagues’ in-house counsel falsely certified that in order to prevent the Leagues from suffering irreparable injury it was “imperative” that the spread of sports betting to Monmouth Park and “any[where] else” be immediately halted. Riccio Cert. Exhibit 1 ¶12.

At the very same time as the Leagues were convincing this Court of the “imperative” need to stop the spread of sports betting they were doing the exact opposite by actively fueling and profiting from the rapid expansion of sports betting throughout the United States and internationally. Behind this Court’s back, the Leagues have aggressively promoted and facilitated the spread of betting on both the outcome of the Leagues’ games as well as the statistical performances, via fantasy wagering, of the Leagues’ own players in the Leagues’ own games.

It is the epitome of bad faith for the Leagues in-house counsel to certify in a Verified Complaint, and for the Commissioners to falsely swear before this Court, that if sports betting is allowed to spread it would be disastrous for the Leagues, while at the same time outside this Court the Leagues and some of its team owners have hypocritically facilitated the spread of sports betting. Since the Leagues’ obviously knew that their two-faced bad faith conduct significantly harmed Monmouth Park and its workers, compensatory and punitive damages

together with counsel fees, costs of suit, and restitution by the Leagues should be awarded above the bond amount.

Most recently, despite a repudiation by a clear majority of the Supreme Court of all of the Leagues' legal arguments, they have had the audacity to lobby the State of New Jersey to enact a law that would compel Monmouth Park to share with the Leagues its sports betting revenues, as well as the sports betting revenues of others. The Leagues have the nerve to call this bid for a share of sports betting revenues an "integrity fee." The Leagues' conduct is shameless. Their hypocrisy has no limits.

STATEMENT OF FACTS

A. The Leagues' Verified Complaint

On October 20, 2014, the Leagues filed a Verified Complaint (the "Complaint") against the NJTHA and then Governor Chris Christie, two other New Jersey government officials (together, with Governor Christie, the "State Defendants"), and the New Jersey Sports and Exposition Authority, ("*Christie II*"). Riccio Cert. Ex. 1. The Verified Complaint alleged that stopping the spread of sports betting was "imperative to prevent [] irreparable injury." *Id.* ¶12. The Complaint demanded injunctive relief not only against the defendants but, also, against "*anyone else.*" *Id.* (emphasis added).¹ Supported by affidavits submitted by in-house counsel for each of the five Leagues (Riccio Cert. Exhibits 7-11), the Complaint alleged that unless injunctive relief is granted the Leagues will suffer "precisely the same harm ... this Court

¹ Under the 2014 Sports Wagering Law (the "2014 Repealer"), all laws, rules, and regulations concerning sports betting were repealed to the extent they may apply to Atlantic City casinos, current New Jersey racetracks, and former New Jersey racetrack racecourses. Riccio Cert. Ex. 13. The NJTHA, which operates Monmouth Park, had announced that on October 26, 2014, it would begin accepting sports bets at Monmouth Park.

already found sufficient to warrant injunctive relief when the same plaintiffs challenged the 2012 Sports Wagering Law” (Ricchio Cert. Ex. 1 ¶¶61, 65, 69, 74).²

B. On October 24, 2014, The Leagues Obtain A TRO And Are Ordered To Post A \$1.7 Million Injunction Bond.

On October 21, 2014, the Leagues filed an application seeking a temporary restraining order (“TRO”) to stop the NJTHA from commencing sports betting at Monmouth Park. Monmouth Park had previously announced that it would commence accepting sports bets on October 26, 2014. Ricchio Cert. Ex. 14. The Leagues argued that “no bond should be required” in connection with issuance of the TRO. Ricchio Cert. Ex. 15 at 27.

On October 22, 2014, the NJTHA responded with a brief and Certification of Dennis Drazin (“Drazin Cert.”). Ricchio Cert. Exhibits 16-17. The NJTHA wrote, *inter alia*, that in the event any injunction was granted a bond must be posted by the Leagues pursuant to Rule 65(c) of the Federal Rules of Civil Procedure. Ricchio Cert. Ex. 16 at 35-36. The Drazin Certification estimated that the lost revenue to Monmouth Park, in the event sports wagering was not permitted to commence on October 26, 2014, would be \$1,170,219 per week. Ricchio Cert. Ex. 17.

On October 23, 2014, the Leagues filed their Reply. Ricchio Cert. Ex. 18. They did not dispute anything in the Drazin Certification. The Leagues merely argued that any lost revenue that the NJTHA would suffer from the TRO were “self-inflicted.” *Id.* at 16.

² In a suit filed by the Leagues on August 7, 2012 (“*Christie I*”), the Leagues sought to invalidate a 2012 New Jersey law that would have licensed and regulated sports betting at Atlantic City casinos and New Jersey racetracks (the “2012 Sports Wagering Law”). As explained in detail *infra*, in *Christie I* the Leagues submitted false sworn Declarations from the Commissioners of the NFL, NBA, MLB, and NHL, and the President of the NCAA. Ricchio Cert. Exhibits 2-6.

On October 24, 2014, the Court granted the TRO. Riccio Cert. Ex. 19. It restrained the NJTHA from advertising, promoting, or operating sports wagering pursuant to the 2014 Repealer and from “conducting sports wagering at Monmouth Park.” *Id.* at 2. The TRO enjoined Monmouth Park from accepting bets not only on the Leagues’ games but, also, on the games of others, such as golf, tennis, soccer, auto racing, boxing, and ultimate fighting.

The Court ordered the Leagues, over the Leagues’ objection, to post a bond in the amount of \$1.7 million for the two weeks that the TRO would be in effect (from October 24, 2014 to November 7, 2014). The bond amount was \$850,000 per week, not the \$1,170,219 provided in the Drazin Certification. Riccio Cert. Ex. 20 at 18-19. The Court wrote:

“In their moving brief, plaintiffs assert that there is no cognizable harm to defendants from the issuance of a temporary restraining order. Therefore, they request the Court to exercise its discretion and dispense with the bond requirement. (Pls.’ Moving Br. 26, ECF No. 27.) NJTHA argues that plaintiffs ignore the plain language of Federal Rule of Civil Procedure 65 and that a court may only dispense with the bond requirement under narrowly drawn circumstances. In their reply brief, plaintiffs did not respond to NJTHA’s bond-related arguments.

Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.”

The law in this Circuit is clear – when a risk of financial harm exists for the party to be enjoined, the posting of a security bond is required. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010). “Although the amount of the bond is left to the discretion of the court, the posting requirement is much less discretionary,” and the requirement is almost mandatory. *Frank’s GMC Truck Center, Inc. v. General Motors Corp.*, 847 F.2d 100, 103 (3d Cir. 1988). An extremely narrow exception exists only “when complying with the preliminary injunction raises no risk of monetary loss to the defendant.” *Zambelli Fireworks Mfg. Co.*, 592 F.3d at 426.

Plaintiffs have not established, nor even argued, why this temporary restraining order raises no risk of monetary loss to the NJTHA. Here, the Court finds a bond appropriate. The amount of the bond is within the discretion of the court. *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 210 (3d Cir. 1990). In keeping with the policies of reimbursement and protection which underlie the

bond requirement, Rule 65(c) also provides that the bond is for the payment of costs and damages as may be incurred or suffered by a party wrongfully restrained. Federal Rule of Civil Procedure 65(c). In exercising its discretion, this Court finds it appropriate to set the bond on the high side to avoid any potential loss to defendants. Therefore, plaintiffs must post a bond in the amount of \$1,700,000.

If defendants assert they pose a risk of harm greater than the value of the bond currently set, they may make an application to this Court to increase the bond amount.”

Riccio Cert. Ex. 20 at 18-19.

C. On October 28, 2014, The Court Extends The TRO And, Over The Leagues’ Objection, Orders The Leagues To Double The Amount Of The Bond To \$3.4 Million.

On October 24, 2014, the Court issued a Scheduling Order. Riccio Cert. Ex. 21.

Pursuant to the Order, on October 27, 2014, the parties filed a joint letter. Riccio Cert. Ex. 22.

In its section of the joint letter, the NJTHA wrote that it

“cannot agree to the date of any oral argument that is after November 7 (the date the TRO entered on October 24, 2014 expires pursuant to the terms of Fed. R. Civ. P. 65), unless the bond set by the Court on October 24 – \$1.7 million – is increased by the same formula on which it was originally set, which we understand to be \$1.7 million for every two weeks the temporary restraining order is in effect. Thus, for example, if the Court would increase the bond from \$1.7 million to \$3.4 million, we have no objection to having oral argument on or before November 21, 2014.” *Id.* at 3.

On October 27, 2014, the Court issued another Scheduling Order that set a briefing schedule with oral argument on November 20, 2014. Riccio Cert. Ex. 23 at 1. The Order also directed that “the 14-day limitation period on the temporary restraining order is extended, for good cause, and by consent of all parties, for an additional 14 days pursuant to Federal Rule of Civil Procedure 65(b)(2) until November 21, 2014” and “the NJTHA’s request for an increase in security due to the fourteen day extension is granted, and Plaintiffs must post an additional \$1,700,000 bond, making the total bond \$3,400,000, by Monday, November 10, 2014.” *Id.* at 2.

On November 3, 2014, the NJTHA filed its Brief in Opposition to Plaintiffs' Application for a Preliminary Injunction. Riccio Cert. Ex. 24. The NJTHA argued, *inter alia*, that if a preliminary injunction is issued, it must be conditioned on a bond to protect the NJTHA for the entire period between its issuance and final judgment. *Id.* at 36-39. The NJTHA argued that the same formula of \$1.7 million per two weeks established by the Court when it issued the TRO should be used to set the amount of the bond. *Id.*

On November 5, 2014, the Leagues filed and posted a \$3.4 million bond with Aspen American Insurance Company as surety. Riccio Cert. Ex. 25.

On November 7, 2014, the Leagues filed their Reply in Support of their motion for a preliminary injunction. Riccio Cert. Ex. 26. In their Reply, the Leagues argued that the \$3.4 million bond would be fully adequate to secure any loss that the NJTHA may suffer during the term of any preliminary injunction. *Id.* at 16-18. In support of their argument the Leagues filed a Supplemental Declaration of Anthony Dreyer. Riccio Cert. Ex. 27.

D. On November 10, 2014, The Court, *Sua Sponte* And Over The NJTHA's Objection, Moots The Preliminary Injunction Hearing By Converting It Into A Final Summary Judgment Hearing.

The Leagues' request for a preliminary injunction was mooted when, on November 10, 2014, the Court entered a text order stating that the "Court intends to consolidate the application for a preliminary injunction with a decision on the merits" and that the "parties shall e-file correspondence with the Court by Monday, November 17, 2014, if there are any additional considerations or issues in connection with such consolidation." Riccio Cert. Ex. 28 at Entry No. 50.

On November 17, 2014, the NJTHA filed a letter with the Court stating that the NJTHA's "agreement to forego discovery and an evidentiary hearing on plaintiffs' request for a

preliminary injunction (where a plaintiff need only show a likelihood of success on the merits but not fully prove its case) was not meant to be, nor was it, a waiver of NJTHA's right to have a trial on the merits." Riccio Cert. Ex. 29 at 2. The NJTHA further wrote that to the extent the Court is considering summary judgment *sua sponte*, the NJTHA respectfully objects. *Id.* at 5.

The NJTHA explained that:

"[C]onverting the November 20 preliminary injunction hearing into a summary judgment hearing would be improper. For example, the NJTHA intends to assert plaintiffs' unclean hands as an affirmative defense, thereby barring plaintiffs from obtaining the equitable relief they seek in this action. To support the NJTHA's unclean hands defense, the NJTHA intends to seek document and deposition discovery from each of plaintiffs regarding their actions and statements that are completely inconsistent with their efforts to enjoin the NJTHA in this action.

The NJTHA intends to pursue depositions and documentary discovery regarding the relationship between the plaintiffs, the plaintiffs' individual teams, and the plaintiffs' individual players with professional gamblers, gambling business enterprises inside and outside the United States, and fantasy sports businesses. The NJTHA will also seek discovery regarding the fantasy sports businesses sponsored and/or owned by the plaintiffs, the plaintiffs' players who participate in fantasy sports wagering, as well as fantasy sports participants who have relationships with the plaintiffs, their teams, or the plaintiffs' players.

In particular, the NJTHA intends to seek discovery concerning the plaintiffs' investment and other involvement in daily and weekly fantasy betting on their respective sports, including that of the NFL, the NBA, the NHL, and Major League Baseball."

Riccio Cert. Ex. 29 at 5.

On November 19, 2014, the Court entered another text order that the "Court shall consolidate Plaintiffs' application for a preliminary injunction with a decision on the merits through summary judgment." Riccio Cert. Ex. 28 at Entry No. 56.

E. On November 20, 2014, The Court Permanently Enjoins The State Defendants But Does Not Enjoin The NJTHA.

On November 21, 2014, the Court issued an Opinion (Riccio Cert. Ex. 30) and Order (Riccio Cert. Ex. 31), granting summary judgment in favor of the Leagues on Count One of their

Complaint (that the 2014 Repealer is invalid and preempted by the Professional and Amateur Sports Protection Act of 1992 (“PASPA”)) and entering a permanent injunction enjoining the State Defendants from violating PASPA by giving operation or effect to the 2014 Repealer. Riccio Cert. Exhibits 30-31. In a footnote in its Opinion (Riccio Cert. Ex. 30 at n.7), the Court held that “no injunction is being entered against the NJTHA. Therefore, it is unnecessary for the Court to determine the validity of the NJTHA’s assertion of unclean hands.” *Id.*

F. The Court’s November 20, 2014 Permanent Injunction *De Facto* Blocked The NJTHA For More Than Three Years From Conducting Sports Betting At Monmouth Park.

Although the permanent injunction enjoined only the State Defendants, and not the NJTHA, from giving operation or effect to the 2014 Repealer, that injunction *de facto* blocked the NJTHA between November 21, 2014, and May 14, 2018, from conducting sports betting. This is so because the permanent injunction compelled the State to enforce New Jersey laws that prohibited sports gambling, even though those laws had been repealed by the 2014 Repealer. If state law enforcement officials refused to enforce the state prohibitions against sports gambling then the State Defendants would have been hauled into federal court by the Leagues for their failure to obey this Court’s injunction. Thus, the NJTHA was *de facto* blocked by this Court’s injunction against the State for almost forty-two months from operating a sports betting venue at Monmouth Park.

G. On December 2, 2014, The Court Denies The Leagues’ Request To Discharge The Injunction Bond.

On November 24, 2014, the Leagues moved to discharge the \$3.4 million bond. Riccio Cert. Ex. 32. They argued that in light of the Court’s grant of summary judgment and entering a permanent injunction, the bond was no longer necessary. *Id.* at 1.

On November 25, 2014, the NJTHA responded by objecting to the Leagues' request to discharge the bond. Riccio Cert. Ex. 33. On December 2, 2014, the Court entered a text order denying the Leagues' request to discharge the bond. Riccio Cert. Ex. 28 at Entry No. 72.

H. On May 14, 2018, The United States Supreme Court Holds That PASPA Is Unconstitutional.

On May 14, 2018, the Supreme Court, by a vote of 6-3, held that PASPA is unconstitutional. Riccio Cert. Ex. 34.

I. Damages Sustained By NJTHA And Monmouth Park Workers.

1. Monmouth Park's Sportsbook Win Between October 26, 2014-November 21, 2014 Is Estimated To Be \$10,227,331 And Far Exceeds The \$3.4 Million Bond Amount.

But for being enjoined on October 24, 2014, Monmouth Park would have commenced taking sports bets two days later on October 26, 2014. The Court has already fixed the bond amount for the October 26-November 21, 2014 time period at \$3.4 million. This amount was not arbitrarily determined but, rather, was litigated by the parties and determined by the Court after considering submissions from the NJTHA and the Leagues.³

The Certification of Chris Grove (an expert in the sports betting field), dated May 24, 2018 (the "Grove Certification"), submitted herewith and incorporated herein by reference, concludes that based on his knowledge, training, and experience Monmouth Park's sportsbook win between October 26, 2014-November 21, 2014 is estimated to be \$10,227,331. Grove Cert. ¶14.

³ Indeed, during the two-month period within which Monmouth Park was enjoined by the TRO, the monthly Nevada sportsbook win was \$27,596,000 in October, 2014, and \$32,394,000 in November, 2014. Riccio Cert. Ex. 35.

2. Monmouth Park's Estimated Sportsbook Win Between November 22, 2014-May 14, 2018 Is \$139,749,842.

As explained herein, Monmouth Park was *de facto* wrongfully prevented from conducting sports betting for three and a half years – November 22, 2014-May 14, 2018. The Grove Certification concludes that based on his knowledge, training, and experience Monmouth Park's sportsbook win between November 22, 2014–May 14, 2018 is estimated to be \$139,749,842. Grove Cert. ¶27.

Data provided from the Nevada Gaming Commission is probative. That data shows that sports betting venues in Nevada, during the period November 2014 to February 2018, had sportsbook wins of, on average, \$19,848,600 per month. Riccio Cert. Ex. 35.

3. Monmouth Park's Lost Racing Revenues.

See the Certification of James Jemas, dated May 24, 2018 (“Jemas Certification”), submitted herewith.

4. Monmouth Park's Inability To Develop Non Racing Revenues.

See the Jemas Certification submitted herewith.

5. Damages Sustained By Persons Dependent On New Jersey's Horse Racing Industry.

See the Jemas Certification and the Certification of William Anderson, dated May 24, 2018 (“Anderson Certification”), submitted herewith.

6. Financial And Emotional Distress Suffered By Monmouth Park's Workers.

See the Anderson Certification submitted herewith.

J. The Leagues' Sworn Statements Submitted To The Court About The Imperative Need To Stop The Spread Of Sports Betting Were Materially False.

The Leagues' Commissioners⁴ and the Leagues' in-house counsel have made false sworn statements to this Court about the evils of sports betting and the purported "imperative" need to stop it from spreading, not only to Monmouth Park but to "anyone else" presumably on planet Earth. Riccio Cert. Ex. 1 ¶12. These sworn statements are false. The indisputable proof of the material falsity of these sworn statements is the Leagues' out-of-court conduct aggressively promoting and facilitating for years the spread of betting on both the outcomes of the Leagues' games as well as, via fantasy betting, the statistical performances of the Leagues' players in the Leagues' games.

The Leagues' assertions about the "imperative" need to stop the spread of sports betting can only be seen as a hoax foisted on the Court by the Leagues' top executives and in-house counsel. This hoax supported the issuance of wrongful injunctive relief that nearly put Monmouth Park out of business, seriously hurt Monmouth Park workers, damaged New Jersey's entire horse racing industry, and effectively cleared the field of sports betting competitors. Below are excerpts from the Commissioners' false sworn statements and, in some cases, false

⁴ All of these statements made by the Commissioners in *Christie I* form the predicate for the Leagues' assertion of irreparable injury in *Christie II*. In *Christie I* the Commissioners submitted to the Court Declarations, under penalty of perjury, regarding how each league would suffer irreparable injury from the spread of sports betting. Limited expedited document and deposition discovery was also taken in 2012. On December 21, 2012, the Court in *Christie I* denied the State Defendants' motion to dismiss and cross-motion for summary judgment insofar as it sought a finding that the Leagues lacked standing. Riccio Cert. Ex. 36. In this *Christie II* litigation, the Leagues' Complaint was verified by affidavits submitted by representatives of each of the five Leagues certifying to the truth of the facts set forth in the Complaint with respect to each League. Riccio Cert. Exhibits 7-11. The Complaint in *Christie II* asserts the Leagues will suffer irreparable harm from the spread of sports betting to New Jersey racetracks, Atlantic City casinos, and anywhere else, and that such "harm will be precisely the same as the harm this Court already found sufficient to warrant injunctive relief when the same plaintiffs challenged the 2012 Sports Wagering Law." Riccio Cert. Ex. 1 ¶¶61, 65, 69, 74.

deposition testimony. Their entire sworn statements are attached as Exhibits 2-6 to the Riccio Certification.

1. NFL Commissioner Roger Goodell's False In-Court Sworn Statements Describing The Evils of Sports Betting And The Need To Stop It From Spreading.

NFL Commissioner Roger Goodell falsely swore in court to the truth of the following concerning the evils of sports betting and the need to stop it from spreading:

- a. "If gambling is freely permitted on sporting events, normal incidents of the game such as bad snaps, dropped passes, turnovers, penalties, and play calling inevitably will fuel speculation, distrust and accusations of point-shaving or game-fixing." Riccio Cert. Ex. 2 ¶5.
- b. "The core entertainment value of fair and honest competition between teams and athletes that is reflected in NFL games will be replaced by the bettor's interest, based not on team or player performance, but on the potential financial impact of each on-the-field event." *Id.* ¶6.
- c. "The NFL's Policy Manual for Administrative/Business Operations contains a policy entitled, 'NFL Owner Involvement in Gambling-Related Businesses.' This policy restates the strict separation between ownership of controlling interests in NFL teams and ownership of casinos, because, 'even though lawful and regulated by state authorities, [casinos may] conduct sports betting and, specifically, point spread betting on NFL games.' The policy sets forth detailed prohibitions regarding NFL owner involvement in the ownership or management of casinos, internet gambling enterprises, and other gambling-related enterprises, such as 'tout services.' The Policy rests on the premise that:
'no League interest will be served by even limited direct or indirect ownership of, or investment in . . . casinos or other gambling-related businesses by NFL owners. Instead, such ownership would likely damage League interests in the long term by, among other things, blurring the line between the absolute need for integrity in the playing and presentation of NFL games and the risk created by a misplaced perception that gambling and participation in the NFL are compatible.'"

Id. ¶10(e) (emphasis added).

Commissioner Goodell also falsely testified, under oath, at his deposition in *Christie I* as follows:

- a. “So we take that -- that's why we keep a distance from gambling and we oppose gambling and we think it's wrong for the game, because that is a threat that we want to make sure does not influence the outcome of our games.” Riccio Cert. Ex. 37 at 48:5-10.
 - b. “If you are allowed to have sports gambling at any one of your facilities, whether they be casinos or -- they will say that the NFL -- you can come here and gamble on the NFL. That will appear to the consumer, the average consumer, that we are sponsoring that. That is not in our best interest of the National Football League.” *Id.* at 66:19-67:2.
2. Conduct Out-Of-Court By The NFL, Under Commissioner Goodell, That Has Facilitated And Promoted The Spread Of Sports Betting.

At the same time as Commissioner Goodell was falsely swearing in court about the evils of sports betting and the urgent need to stop its spread, as well as bragging about the NFL’s purported “strict separation” Policy prohibiting NFL team owners from having “even limited direct or indirect ownership of or investment in casinos or other gambling related businesses,” outside this court the NFL and NFL team owners have been aggressively promoting and profiting from the spread of sports betting, including some team owners investing in “gambling-related businesses,” despite the NFL’s purported Policy prohibiting them from doing so.

Here are examples that are matters of public record that show the NFL’s hypocrisy and the falsity of Commissioner Goodell’s sworn statements.

a. The NFL Has Endorsed Fantasy Sports Betting On The Statistical Performance Of NFL Players.

Fantasy wagering is based on the actual performances of the NFL’s players in the NFL’s actual games. The only thing “fantasy” about the bet is the name. Betting on players’ performances is uniquely prone to “fixing” the outcome of the bets. Nonetheless, the NFL has (indeed all of the Leagues have) embraced fantasy wagering. It is obvious that the NFL does not fear any threat to the integrity of their games even though the public is making bets based on how the NFL’s players perform in NFL games.

Fantasy bets can easily be fixed.⁵ For example, an NFL player can forego a chance to score a touchdown if it might produce more fantasy points than the fantasy bettor may want. A quarterback can intentionally throw an errant pass or a receiver can intentionally drop a pass in order to control the fantasy points, and thus “fix” the outcome of who will win the fantasy bet. A head coach could decide to sit a player before or during a game to reduce that player’s fantasy points. A referee could throw a penalty flag to nullify a pass to reduce the fantasy points that the quarterback and receiver would otherwise receive. All of these possibilities, and countless more, can easily manipulate the fantasy bet in ways that are nearly impossible to detect, may not alter the outcome of a game or even the score, but go directly to producing the very sports betting evils that Commissioner Goodell railed against in his sworn statements.

Despite the ease with which a fantasy bet can be “fixed,” the NFL is fully invested in fantasy sports betting businesses. They’re “all in.” The “gold rush” has begun. Riccio Cert. Ex. 39. Practically every NFL team (91%) has entered into a sponsorship deal with either FanDuel or DraftKings. Riccio Cert. Ex. 40. Amazingly, the NFL appears to even permit its own players to engage in fantasy betting, the very sort of conduct that keeps Pete Rose out of the MLB Hall of Fame. Riccio Cert. Ex. 41.

b. NFL Team Owners Have Invested In Fantasy Sports Betting Businesses.

Two NFL team owners, Jerry Jones of the Dallas Cowboys and Robert Kraft of the New England Patriots, own equity stakes in DraftKings. Such ownership violates the NFL’s

⁵ Fantasy bettors wager real money in competition with other fantasy bettors. The winning fantasy bet can be based on player performances over an entire season or based on one-day player performances, which is called daily fantasy. Daily fantasy has become immensely popular (and lucrative) over the last several years. The two industry leaders in daily fantasy sports betting are FanDuel and DraftKings. Together they processed a combined \$3 billion in fees in 2015. *See* Riccio Cert. Ex. 38.

purported Policy prohibiting them from becoming involved with “Gambling-Related Businesses.” Riccio Cert. Ex. 43.

At least three NFL stadiums – New England Patriots’ Gillette Stadium, Kansas City Chiefs’ Arrowhead Stadium and Dallas Cowboys’ AT&T Stadium – have opened DraftKings fantasy sports lounges. These lounges permit fantasy gamblers to watch on multiple television screens every other NFL game being played at that time so that the gamblers can track players’ performances relevant to their bet on their favored players. Riccio Cert. Ex. 44.

c. The NFL Facilitates The Spread Of Betting On The Outcome Of NFL Games By Playing Games Where Gambling Is Legal.

The NFL has aggressively entered into the European and Mexican sports betting market by consistently increasing the scheduling of NFL games in London and Mexico, even though betting on their games is legal in those locations. *See* Riccio Cert. Ex. 45 ¶2; Ex. 46 at ¶46; *see also* Ex. 47. The NFL played one game per year in Wembley Stadium in London from 2007-2012, two games in 2013, and three games per year in 2014 and 2015. Riccio Cert. Ex. 48. In 2016, the NFL played two games in Wembley Stadium, one game in Twickenham Stadium in London, and one game in Mexico City (where sports betting on NFL games is also legal). *Id.* In 2017, the NFL played four games in London (two at Wembley Stadium and two at Twickenham Stadium) as well as one in Mexico City. *Id.*

The NFL obviously knew that its decision to play its games in locations where betting is legal would dramatically increase the amount bet on such games. For example, betting in London on the Indianapolis/Jacksonville game in early October 2016 was ten times as much as would have been expected if that game had been played in the United States. *See* Riccio Cert. Ex. 49.

Last year the NFL owners approved relocating the Oakland Raiders team to Las Vegas. Obviously, locating an NFL franchise to what is regarded as the sports betting capital of the world shows no concern about the so-called “imperative” need to stop the spread of betting on NFL games.⁶

d. The NFL Issues Injury Reports That Assist Gamblers And Oddsmakers.

The NFL mandates that injury reports be filed several days before every NFL game. These reports include participation in practices as well as which players have injuries. *See, e.g.*, Riccio Cert. Ex. 50. These injury reports are relied on by persons who gamble, legally and illegally, on NFL games as well as by oddsmakers who establish point spreads. All of this information is published in the print and electronic media with the NFL’s knowledge, consent, and approval.

3. Former NBA Commissioner David Stern’s In-Court False Sworn Statements Describing The Evils Of Sports Betting And The Need To Stop It From Spreading.

Like Commissioner Goodell, former NBA Commissioner David Stern falsely swore in court to the truth of the following concerning the evils of sports betting and the need to stop it from spreading:

- a. “If sports betting is permitted in New Jersey, for example, *the allegiance of certain fans will be turned from teams, players, and high-level competition, toward an interest first and foremost in winning a bet.* Players' missed baskets, coaches' strategic decisions, and referees' calls all will come to be viewed through the prism of the impact on the betting line, rather than whether the team won the game or its players performed well. Fans' interest — once unified toward the common goal of winning the game — will become fragmented, with spectators rooting for varied outcomes such as merely ‘covering the spread’ or scoring enough points to beat an ‘over/under’ bet.” Riccio Cert. Ex. 3 ¶4 (emphasis added).
- b. “New Jersey’s contemplated sports betting scheme threatens to harm irreparably not only the unique relationship that the NBA enjoys with its existing fans, but also the league’s potential relationship with future fans, who may never form allegiances to a

⁶ See Riccio Cert. Ex. 42 at pp.2-3.

particular team because they are drawn instead to the competing interest of the betting line and the money that can be made from it.” *Id.* ¶6.

4. Conduct Out-Of-Court By The NBA, Under Former Commissioner Stern And Current Commissioner Silver, That Has Facilitated And Promoted The Spread Of Sports Betting.

At the same time as former Commissioner Stern was falsely swearing in court about the evils of sports betting and the “imperative” need to stop its spread, outside court the NBA was actively promoting and profiting from the spread of sports betting. Here are examples.

a. **The NBA’s Endorsement Of Fantasy Betting On The Statistical Performance Of NBA Players.**

What is true about the ease with which a fantasy bet on the statistical performance of NFL players can be “fixed” is equally true about NBA players. For example, an NBA player can intentionally miss a shot in order to control his performance points and, thus, “fix” who wins a fantasy bet. There are countless other opportunities for an NBA player to easily “fix” a fantasy bet to alter performance statistics such as number of rebounds, assists, foul shots missed or made, three point field goals missed or made, blocked shots, etc. Similarly, a head coach could “fix” or “tank” a fantasy bet by playing certain players more or less. A referee can “fix” a fantasy bet by calling or not calling a foul on any play.

Despite the ease in which NBA players, head coaches, and referees can “fix” who will win a fantasy bet and the fact that fantasy bettors are interested in winning their bets and not on which team wins the game, on or about November 14, 2014, the NBA reached a four-year deal with daily fantasy sports site FanDuel. Displaying the height of hypocrisy, the NBA made this four-year deal *during the same four week period it convinced this Court to issue a TRO preventing the NJTHA from opening a sports betting venue at Monmouth Park.*

The NBA's fantasy deal establishes FanDuel as the NBA's official daily fantasy basketball outlet, in which the NBA becomes an investor in FanDuel. *See* Riccio Cert. Ex. 51; *see also* Riccio Cert. Ex. 52 (“Yesterday, NBA owners made the unprecedented decision to become equity investors in the daily fantasy sports business, FanDuel.”).

FanDuel and DraftKings have also entered into sponsorship deals with practically each NBA team. Riccio Cert. Ex. 40; *see also* Riccio Cert. Ex. 51. Contrary to his own sworn statement before this court, former Commissioner Stern has publicly admitted that daily fantasy sports betting is the equivalent of “gambling” on games. Riccio Cert. Ex. 53 (Stern stating “[o]nce daily fantasy became an acceptable exception to the law against gambling, I think that’s gambling.”). Former Commissioner Stern left no doubt about his view of fantasy gambling when he testified, under oath, at his deposition in *Christie I* as follows:

Q: “Commissioner, does the NBA endorse fantasy basketball?”

A: “Yes. Yes, we do.”

Riccio Cert. Ex. 54 at 35:23-25.

b. The NBA Facilitates The Spread Of Betting On The Outcome Of NBA Games.

Current NBA Commissioner Silver, in a New York Times op-ed, candidly acknowledged – *during the same four week period the NBA and the other Leagues obtained the TRO against the NJTHA* – the huge financial benefits to the NBA of betting on NBA games. Riccio Cert. Ex. 55. In fact, while the NBA was convincing this court to enjoin Monmouth Park from accepting sports bets, Commissioner Silver was on a campaign tour to have Congress repeal PASPA so that betting on NBA games could spread. Commissioner Silver even offered to partner with Governor Christie in his crusade to legalize sports betting not only in New Jersey, but throughout the country. Riccio Cert. Ex. 56. Governor Christie declined Commissioner Silver’s overture, calling it a “bait and switch.” Riccio Cert. Ex. 57.

Commissioner Silver's campaign to spread sports betting throughout the United States has been endorsed by Dallas Mavericks owner Mark Cuban (Ricchio Cert. Ex. 58) as well as Sacramento Kings owner Vivek Ranadive (Ricchio Cert. Ex. 59). Unlike Commissioner Silver, however, Mr. Cuban, to his credit, described the Leagues' efforts in this action to enjoin sports betting as "hypocritical." Ricchio Cert. Ex. 60. In a recent interview, Mr. Cuban, owner of the Dallas Mavericks, said that the Supreme Court's decision invalidating PASPA "will double the value of sports franchises overnight." Ricchio Cert. Ex. 61.

Commissioner Silver has unashamedly admitted that he sees "fans all the time . . . looking at their phones, looking at iPads other tablets, and you could see what they're doing and they're placing bets throughout the game." *See Adam Silver Exclusive One-on-One Interview with Bleacher Report* (Oct. 29, 2014), available at <https://www.youtube.com/watch?v=wuZo-RsBKO8> (at approximately 23 minute mark of interview). Commissioner Silver's remarks are startling, but true. Startling in the sense that the NBA does nothing to stop fans from placing bets, even while physically attending NBA games. True because what Commissioner Silver knows and understands is that more people will watch or attend an NBA game if they have a bet on it than if they don't.

In September 2016, the NBA entered into a six year partnership with sports data company Sportradar and advanced statistics firm Second Spectrum, reportedly worth in excess of \$250 million to the NBA. Ricchio Cert. Ex. 62. Under the agreement, Sportradar will distribute official NBA data to be used for betting purposes to gambling operators outside the United States. *Id.* "The NBA has thus made it clear that it understands the value of gambling activity abroad." *Id.*

The year before that – *during or just before the same four week period the NBA and the other Leagues obtained the TRO against the NJTHA* – three NBA team owners (Ted Leonsis (Washington Wizards owner), Mark Cuban (Dallas Mavericks owner), and Michael Jordan (Charlotte Hornets owner)) invested approximately \$44 million in Sportradar. Riccio Cert. Ex. 63. More recently, the NBA has sought a 1% “off the top cut” of any money bet on their games. The NBA euphemistically calls this an “integrity fee,” when, in reality, it’s a money grab for a piece of sports betting revenue. Riccio Cert. Ex. 64.

5. Former MLB Commissioner Allan H. (Bud) Selig’s False In-Court Sworn Statements Describing The Evils Of Sports Betting And The Need To Stop It From Spreading.

Former MLB Commissioner Bud Selig says the spread of sports betting needs to be stopped because it is nothing less than a “corruption.” Riccio Cert. Ex. 12 at 20:18. He falsely swore in court to the truth of the following concerning the immorality of sports betting and the need to stop it from spreading:

- a. *“The spread of sports betting, including the introduction of sports betting in New Jersey, would threaten to damage irreparably the integrity of and public confidence in, MLB.* Riccio Cert. Ex. 4 ¶6 (emphasis added).
- b. *“Beyond fostering increased suspicion of underhanded dealing, increased sports gambling also makes it more likely that people will actually attempt to ‘fix’ games or obtain inside information from people directly involved in the sport.”* *Id.* ¶7 (emphasis added).
- c. *“Another likely result of sports gambling is that fan loyalty would diminish, as many fans would focus less on their allegiance to certain teams, players, or cities and instead focus more on the outcomes of individual bets. The inevitable shifting ‘loyalties’ that would result from sports gambling could forever alter the relationship between teams and their fans. Players would not be viewed by fans as exceptionally skilled and talented competitors, but as mere assets to be exploited for ‘fast money.’”* *Id.* ¶8 (emphasis added).
- d. *“[P]ervasive sports gambling threatens the very values and ideals that baseball has come to represent — values and ideals that MLB makes every effort to guard and preserve.”* *Id.* ¶9 (emphasis added).

Selig also testified, under oath, at his deposition in *Christie I* as follows:

- a. “But gambling is so -- the threat of gambling and to create more threat is to me -- *I'm stunned*. When you told me I was going to do this and all this was going on, my first reaction is -- was and is, and again, I don't mean to be disrespectful, I know that people need sources of revenue, but you can't -- *this is corruption in my opinion*.” Riccio Cert. Ex. 12 at 20:12-18 (emphasis added).
 - b. “[W]e should be trying to reduce the risk of this, not increase the risk of it.” *Id.* at 21:11-13 (emphasis added).
 - c. “*I wouldn't put a team in Las Vegas just because I don't want our people around that kind of atmosphere*.” *Id.* at 21:20-22 (emphasis added).
6. Conduct Out-Of-Court By MLB, During Commissioner Selig's Tenure And Beyond, That Has Facilitated And Promoted The Spread Of Sports Betting.

At the same time as former Commissioner Selig was falsely swearing in court about the evils of sports betting and the need to stop this “corruption” from spreading, outside court MLB was actively promoting and profiting from the spread of sports betting. Here are a few examples that are matters of public record.

a. **MLB's Endorsement Of Fantasy Betting On The Statistical Performance Of MLB Players.**

It's as easy to “fix” a fantasy bet on MLB players' performances as it is to fix a bet on NFL and NBA players. An MLB batter can intentionally strike out, a fielder can make an intentional error, and a pitcher can groove a pitch for a batter. Similarly, an MLB manager could make any number of decisions (for example, when a player should play or sit, when a batter should be pinch hit for, when a pitcher should be relieved, and who that pinch hitter or reliever should be) that could “fix” a fantasy bet. Umpires as well could call a ball a strike or vice-versa to affect the fantasy points earned by the pitcher and batter to “fix” a fantasy bet. Even the official scorer of baseball games could “fix” a fantasy bet by deciding whether to credit a batter with a hit or a fielder with an error (which affects the pitcher's statistics as well).

Despite how easy it is to “fix” a fantasy bet and that fantasy bettors are interested in winning their bets and not on which team wins the game, MLB is heavily involved in relationships with fantasy sports betting businesses. Riccio Cert. Ex. 39. MLB has an equity stake in DraftKings (investing with the fantasy sports betting operator in 2013), and practically every MLB team has a sponsorship relationship with DraftKings. Riccio Cert. Ex. 40; *see also* Riccio Cert. Ex. 65 (“There’s a reason why the leagues won’t challenge the DFS laws. Three of them (NBA, NHL, Major League Baseball) have equity in either DraftKings or FanDuel.”).

Despite the many ways fantasy bets can be fixed, MLB obviously does not see those risks as being detrimental to the integrity of its games or its players’ performances. Nor, apparently, is betting on MLB players’ performances, in the words of Commissioner Selig, a “corruption” that threatens MLB “values and ideals.”

b. MLB Facilitates The Spread Of Betting On The Outcome Of MLB Games.

The current MLB Commissioner, Robert Manfred, has said that Las Vegas is a “viable market” for MLB and that he does not “think that the presence of legalized gambling in Las Vegas should necessarily disqualify that market as a potential major league city.” Riccio Cert. Ex. 66. It was recently announced that in June, 2019, the Yankees and Red Sox will play regular season games in London where gambling is legal. Riccio Cert. Ex. 67.

MLB has had a major league team (the Blue Jays) play in Toronto since 1977 (as well as in Montreal (the Expos) from 1969-2004) where sports betting is “allowed through multiple government approved sites.” Riccio Cert. Ex. 68. MLB has also had a triple-A club (the Las Vegas 51s, formerly the Las Vegas Stars) play in Las Vegas since 1983. Riccio Cert. Ex. 69.

More recently, MLB (along with the NBA) has sought a 1% “cut” of any money spent legally on sports wagering on their games, which they have euphemistically called an “integrity fee.” Riccio Cert. Ex. 70.

7. NHL Commissioner Gary Bettman’s False In-Court Sworn Statements Describing The Evils Of Sports Betting And The Need To Stop It From Spreading.

NHL Commissioner Gary Bettman falsely swore in court to the truth of the following concerning the evils of sports betting and the need to stop it from spreading:

- a. *“The proposition of expanded, government-sanctioned sports gambling threatens to compromise the NHL’s reputation and integrity, and undermines fans’ trust and confidence in honest competition. The NHL may be subject to allegations that its game is not completely legitimate, including charges of “point-shaving” and fake injuries.” Riccio Cert. Ex. 5 ¶6 (emphasis added).*
- b. *“By making sports gambling a widespread institution tied to the outcomes of NHL games, the very nature of the sport is likely to change for the worse.” Id. ¶7 (emphasis added).*

8. Conduct Out-Of-Court By The NHL, Under Commissioner Bettman, That Has Facilitated And Promoted The Spread Of Sports Betting.

At the same time as Commissioner Bettman was falsely swearing in court about the evils of sports betting and the need to stop it from spreading, outside court the NHL was actively promoting and profiting from the spread of sports betting. Here are a few examples that are matters of public record.

a. **The NHL’s Endorsement Of Fantasy Betting On The Statistical Performance Of NHL Players**

The NHL’s involvement with fantasy betting is equally as hypocritical as that of the NFL, NBA, and MLB. Fantasy bets on an NHL player can easily be “fixed.” A hockey player, for example, can forego a chance to score an easy goal if it might produce more fantasy points than the player’s favored fantasy bettor may want. A head coach could decide to double shift certain players, and to play certain players less to affect their statistics. A referee could call or

not call a penalty, which could increase or decrease the chances for players who play on the power play to score a goal.

Despite the ease in which hockey players, coaches, and referees can make decisions to alter player performances to “fix” who will win a fantasy bet, the NHL is heavily involved in relationships with fantasy sports betting businesses. Riccio Cert. Ex. 39. On or about November 10, 2014 – *during the same four week period of the TRO against the NJTHA issued at the Leagues’ request* – the NHL “announced a multi-year North-American partnership with DraftKings.” Riccio Cert. Ex. 71. The NHL thus acquired an equity stake in DraftKings. Riccio Cert. Ex. 40. Over ten NHL teams have sponsorship deals with DraftKings. *Id.* See also Riccio Cert. Ex. 65 (“There’s a reason why the leagues won’t challenge the DFS laws. Three of them (NBA, NHL, Major League Baseball) have equity in either DraftKings or FanDuel.”).

b. The NHL Facilitates The Spread Of Betting On The Outcome Of NHL Games.

In 2016 the NHL owners approved locating an expansion team in Las Vegas, where the wildly popular Vegas Golden Knights have been playing since 2017. Indeed, the NHL has had a presence in Las Vegas since 1991, when an outdoor game was held in Las Vegas, with the Los Angeles Kings facing the New York Rangers outside Caesars Palace. Riccio Cert. Ex. 72. Las Vegas has also hosted the Frozen Fury, a pre-season competition between the Los Angeles Kings and the Colorado Avalanche. *Id.* The NHL Awards ceremonies have been held in Las Vegas since 2009. *Id.*

The NHL has seven teams – Calgary Flames, Edmonton Oilers, Montreal Canadians, Ottawa Senators, Toronto Maple Leafs, Vancouver Canucks, and Winnipeg Jets – that play in Canada where sports betting is legal. The NHL’s New Jersey Devils also partner with an online gambling company. See Riccio Cert. Ex. 73.

9. NCAA President Mark Emmert's False In-Court Sworn Statements Describing The Evils Of Sports Betting And The Need To Stop It From Spreading.

NCAA President Mark Emmert falsely swore in court to the truth of the following concerning the evils of sports betting and the vital need to stop it from spreading:

- a. "The spread of betting on intercollegiate athletics, including the introduction of sports betting as proposed by the State of New Jersey, *threatens to damage irreparably the integrity of, and public confidence in, NCAA athletic competition.* Riccio Cert. Ex. 6 ¶5 (emphasis added).
- b. "The sports gambling scheme that New Jersey proposes would also greatly increase the likelihood that *the allegiance of certain fans will be turned from teams, players and high-level athletic competition, towards an interest first and foremost in winning a bet.* The core entertainment value of fair and honest competition that is reflected in NCAA competition could be replaced by the bettor's interests, based not on team or player performance, but on the potential financial impact of each NCAA athletic competition." *Id.* ¶7 (emphasis added).
- c. "*The Sports Wagering provision of the NCAA Employee Handbook . . . states that 'The NCAA opposes all forms of legal and illegal sports wagering. Sports wagering has the potential to undermine the integrity of sports contests and jeopardizes the welfare of student-athletes and the intercollegiate athletics with a message that is contrary to the purposes and meaning of 'sport.'* Sports competition should be appreciated for the inherent benefits related to participation of student-athletes, coaches and institutions in fair contests, not the amount of money wagered on the outcome of the competition.' The NCAA Employee Handbook also sets forth that NCAA employees may not participate in any form of sports wagering." *Id.* ¶13(b) (emphasis added).
- d. "In August of 2009, *the NCAA Executive Committee approved a policy under which no predetermined or non-predetermined session of an NCAA championship may be conducted in a state with legal wagering that is based on single-game betting on the out-come of any event (i.e., high school, college or professional) in a sport in which the NCAA conducts a championship. . . . If New Jersey allows for sports wagering, NCAA member institutions in New Jersey will not be able to host NCAA championships nor will any NCAA championships be held in the state of New Jersey.*" *Id.* ¶13(c) (emphasis added).

10. Conduct Out-Of-Court By The NCAA, Under President Emmert, That Has Facilitated And Promoted The Spread Of Sports Betting.

At the same time as President Emmert was falsely swearing in court about the evils of sports betting and the need to stop its spread, outside court the NCAA was actively promoting

and profiting from the proliferation of sports betting in contravention of their own lofty sounding rules set forth in their Employee Handbook and 2009 Executive Committee Policy.

a. The NCAA's Tacit Endorsement Of Fantasy Betting.

The NCAA encourages fantasy sports betting. “The Pac-12 Network and Big Ten Network, which are fully or jointly owned by the conferences and their universities, still air daily fantasy ads, although not ones that promote college games.” Riccio Cert. Ex. 74.

b. The NCAA Facilitates The Spread Of Betting On The Outcomes Of NCAA Games.

In direct violation of its 2009 Executive Committee Policy, the NCAA has permitted various Division I conferences, including the Pac-12, Mountain West Conference, Western Athletic Conference, and West Coast Conference, to hold basketball conference championships in Las Vegas and, in some cases, at venues inside casinos where legal wagering is allowed. *See* Riccio Cert. Ex. 45 ¶2; Ex. 46 ¶51; *see also* Riccio Cert. Ex. 75. The NCAA also has one of its football bowl games played annually in Las Vegas even though wagering on the game is legal. Riccio Cert. Ex. 76. The NCAA previously prohibited New Jersey from hosting any NCAA Championship games because the NCAA claims to prohibit championship games from being held “in states that provide for single-game sports wagering.” Riccio Cert. Ex. 77. However, following the release on May 14, 2018 of the Supreme Court’s opinion (Riccio Cert. Ex. 34), the NCAA issued a statement announcing that “the NCAA Board of Governors suspended the Association’s championships policy related to sports wagering. The board’s decision will ensure championship location continuity by temporarily allowing NCAA championship events to occur in states that offer sports wagering.” Riccio Cert. Ex. 78. What was once evil apparently no longer is.

Despite the sanctimonious statements in the NCAA's Employee Handbook and 2009 Executive Committee Policy about the need to send the message that betting on sports is "contrary to the purposes and meaning of 'sport,'" the NCAA has sent no message that would prevent or discourage betting on its ubiquitous March Madness brackets. *See, e.g.,* Riccio Cert. Ex. 79. Indeed, no sports event in the United States (and perhaps the world) has more money bet on it than does the NCAA's March Madness Tournament. Nonetheless, despite providing the stage and performers for the single largest sports betting event in the United States, the NCAA remains conspicuously silent when millions of people bet billions of dollars on NCAA games.

This past year, it has been estimated that \$10 billion was wagered on March Madness games, with only 3% bet legally. Riccio Cert. Ex. 80. Yet, there is no record of the NCAA making any attempts whatsoever to send any message that discourages, reduces, or attempts to put a stop to, March Madness betting. To the contrary, March Madness brackets have become a part of our Nation's culture, so much so that it is promoted by some of our own Presidents, much to the delight of the NCAA even though in conflict with President Emmert's sworn statement to this Court. *See* Riccio Decl. Ex. 81.

K. The Leagues' Hypocritical Selective Enforcement Of PASPA.

In addition to making blatantly false sworn statements to this Court in their Verified Complaint and Commissioners' Declarations, the Leagues have selectively enforced PASPA's prohibitions thereby securing for themselves a sports betting dual monopoly with Nevada. Absent from the Leagues' Complaint is any mention that PASPA prohibits not only state licensing or authorization by law of sports betting on "games" but also on "*one or more performances of such athletes in such games.*" 28 U.S.C. §3702 (emphasis added).

Even though betting on the “performances” of “athletes” was prohibited by PASPA, the Leagues did nothing to enforce PASPA’s prohibitions against fantasy bets being placed on their players’ “performances” in the Leagues’ games. To the contrary, the Leagues aggressively promoted – and even own – businesses that make millions from bets made on the “performances” of the Leagues’ “athletes” in the Leagues’ games.

Before they were stopped by the Supreme Court, what the Leagues successfully accomplished by selectively enforcing one prohibition of PASPA while ignoring another was to wrongfully block Monmouth Park and “anyone else” from accepting sports bets not only on their own games but all sports contests conducted by “anyone else,” anywhere. This secured for the Leagues, until stopped by the Supreme Court, a lucrative dual monopoly with Nevada on worldwide sports betting involving every sports contest anywhere. And, in the process, inflicted significant damage on Monmouth Park.

ARGUMENT

POINT I

THE NJTHA IS ENTITLED TO A JUDGMENT IN THE FULL AMOUNT OF THE \$3.4 MILLION BOND PLUS INTEREST.

A. Governing Legal Standards

Under Fed. R. Civ. P. 65(c), a party seeking an injunction is required to give security “for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” An injunction bond under Rule 65(c) “provides a fund to use to compensate incorrectly enjoined defendants.” *Sprint Communications Co. v. CAT Communications Int’l*, 335 F.3d 235, 239-40 (3d Cir. 2003) (quoting *Instant Air Freight Co. v. C.f. Air Freight, Inc.*, 882 F.2d 797, 805-06 n.9 (3d Cir. 1989)). As this Court noted when it required the Leagues to post the initial \$1.7 million bond: “Plaintiffs have not established, nor

even argued, why this temporary restraining order raises no risk of monetary loss to the NJTHA.” Riccio Cert. Ex. 20 at 19.

In *Instant Air Freight Co. v. C.f. Air Freight Inc.*, 882 F.2d 797 (3d Cir. 1989), the Court explained the purpose of an injunction bond. It wrote: “The bond deters rash applications for interlocutory orders; the bond premium and the chance of liability on it causes plaintiff to think carefully beforehand. An incorrect interlocutory order may harm defendant and a bond provides a fund to use to compensate incorrectly enjoined defendants.” *Id.* at 804 (quoting O. Fiss and D. Rendleman, *Injunctions* 383 (1984)).

Courts lack the power to interfere with a contract that gives the NJTHA the right to collect damages unjustly inflicted by the wrongful injunction. *Recovery for Wrongful Interlocutory Injunctions Under Rule 65(c)*, 99 Harv. L. Rev. 828, 846 (1986). To allow a party, such as the Leagues, to interfere with otherwise lawful conduct without being accountable for damages caused to the wrongfully enjoined party, is precisely the inequitable result avoided by the Rule 65(c) bond requirement.

That the NJTHA has been wrongfully enjoined cannot be disputed. “[A] party is wrongfully enjoined when it had a right all along to do what it was enjoined from doing.” *Latuszewski v. VALIC Fin. Advisors, Inc.*, 393 F. App'x 962, 966 (3d Cir. 2010) (quoting *Global Naps, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 22 (1st Cir. 2007)); *see also Fishkin v. Susquehanna Partners, G.P.*, No. 03-3766, 2010 U.S. Dist. LEXIS 11173, at *10 (E.D. Pa. Feb. 8, 2010) (“A party will have been wrongfully enjoined and entitled to recover against an injunction bond if it is ultimately determined that the enjoined party in fact had the right all along to pursue the enjoined conduct.” (internal quotations and citations omitted)).

Pursuant to the Supreme Court’s decision, the NJTHA was wrongfully blocked from offering sports betting at Monmouth Park. *Riccio Cert. Ex. 34*.

The procedure for obtaining judgment on an injunction bond is set forth in Fed. R. Civ. P. 65.1. It is a summary procedure. Although Rule 65.1 addresses the means by which a party may seek damages against the surety on the surety’s bond, Rule 65.1 is also the procedural vehicle for a wrongfully enjoined party to obtain damages against the surety’s principal, here, the Leagues. *See Coyne-Delany Co. v. Capital Dev. Bd.*, 717 F.2d 385, 391 (7th Cir. 1983) (“Rule 65.1’s summary procedure, which despite its wording is applicable to the principal as well as the surety on the bond”). Therefore, a judgment against the Leagues and their surety, jointly and severally, for \$3.4 million is specifically permitted under Rule 65.1.

In *Coyne-Delany*, Judge Posner analyzed the text of Rule 65(c). In determining the amount of damages sustained by a wrongfully enjoined party Judge Posner wrote that the court should consider “objective factors—such as the resources of the parties, the defendant's efforts or lack thereof to mitigate his damages, and the outcome of the underlying suit” *Coyne-Delany*, 717 F.2d at 392.

Injunction damages need not be proven with mathematical certainty. *Nokia Corp. v. Interdigital Inc.*, 645 F. 3d 553, 559 (2d Cir. 2011) (a “party’s proof of damages d[oes] not need to be to a mathematical certainty”); *Global NAPs, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 24 (1st Cir. 2007) (“proof did not need to be to a mathematical certainty”). Damages to the wrongfully enjoined party is based on the losses sustained by the unjustly restrained party (expectancy damages). Restitution may also be required by which the unjustly enriched party is directed to disgorge profits. *U.S.D.I.D. Corp. v. Windstream Communications, Inc.*, 775 F.3d 128, 143 (2d Cir. 2014).

Here, the Leagues well knew the financial risk they were assuming when they sought and succeeded in preventing the NJTHA from engaging in what was lawful activity under New Jersey law, namely, the operation of a sports betting venue at Monmouth Park Racetrack. This Court, after carefully considering submissions for and against both the need for a bond and the amount of the bond, as well as the Leagues' request to discharge the bond, required the Leagues to post a bond in the amount of \$1.7 million for every two weeks that the NJTHA was blocked from conducting sports betting at Monmouth Park Racetrack. The bond amount was doubled to \$3.4 million when the TRO was extended. This amount is \$1,280,876 less than the unrefuted Drazin Certification estimated the damages to Monmouth Park would be as the result of a wrongful injunction.

The Leagues had a choice to either abandon their request for an injunction against the NJTHA or run the risk of paying damages if the injunction proved to be improvidently granted. In essence, the Leagues and their surety made a \$3.4 million bet and confirmed it in a contract that the injunction would be sustained. The Leagues made a losing bet. It's time to pay up.

B. The NJTHA Has Proven Damages That Greatly Exceed The \$3.4 Million Bond Amount.

In this Point I we argue that the NJTHA has proven damages that greatly exceed the \$3.4 million bond amount and that judgment in the amount of \$3.4 million should be summarily entered in favor of the NJTHA and, jointly and severally, against the Leagues and their surety. (In Point II we argue that the NJTHA should be awarded damages, including restitution by the Leagues, against the Leagues over and above the \$3.4 million bond amount because of the Leagues' bad faith.)

This Court established a bond amount based on the determination that the NJTHA would suffer damages of \$1.7 million for every two weeks that it was enjoined from conducting sports

wagering at Monmouth Park Racetrack. This determination by the Court was carefully made after the Court received submissions from the NJTHA and Leagues both in support of and in opposition to what the bond amount should be and after reducing the estimated damages described in the Drazin Certification by \$1,280,876, even though the Drazin Certification was not refuted by the Leagues when the initial \$1.7 million bond was ordered. The Court should give deference to its prior determination, made only after the issue had been fully litigated, fixing the NJTHA's damages at \$1.7 million per two weeks. *See Global NAPs, Inc. v. Verizon New England Inc.*, 489 F.3d 13, 24 (1st Cir. 2007) ("We note that the issue of the amount of appropriate security was litigated when the District Court set the amount. That previously determined amount was the amount which the court released – not more, not less.").

On this motion, we supplement the Drazin Certification with the Declaration of Chris Grove, an expert in the sports betting field. Mr. Grove confirms that based on his knowledge, training, and experience, Monmouth Park is estimated to have had a sportsbook win of \$10,227,331 during the period between October 26, 2014-November 21, 2014.

POINT II

BECAUSE OF THE LEAGUES' BAD FAITH, THE NJTHA HAS THE LEGAL RIGHT TO DAMAGES IN EXCESS OF THE \$3.4 MILLION BOND AMOUNT TOGETHER WITH COUNSEL FEES AND COSTS OF SUIT.

We acknowledge that ordinarily a wrongfully enjoined party will not recover damages in excess of the bond amount. *See Sprint Communications Co. L.P. v. CAT Communications Int'l, Inc.*, 335 F.3d 235, 241 (3d Cir. 2003); *Instant Air Freight Co. v. C.f. Air Freight, Inc.*, 882 F.2d 797, 804 (3d Cir.1989). There is, however, a well-recognized exception to the ordinary rule. This exception is followed in the Third Circuit and many other Circuits. Under the exception a wrongfully enjoined party is entitled to damages that exceed the bond amount where

the party who obtained the injunction acted in bad faith. Two cases illustrate the application of the bad faith rule.

In *Don Post Studios, Inc. v. Cinema Secrets, Inc.*, 148 F. Supp. 2d 572 (E.D. Pa. 2001) the court, applying Third Circuit law, concluded that because plaintiffs had acted in bad faith in both bringing their action as well as wrongfully obtaining an injunction against defendants, the wrongfully enjoined defendant was permitted to recover damages in excess of the bond amount. The court directed that “[a] hearing be held to consider the amount of damages suffered by defendant in this case. In determining the amount of damages, the court will also consider evidence that plaintiffs have been unjustly enriched as a result of defendant being enjoined.” *Id.* at 576 n.5.

In *qad., Inc. v. ALN Associates, Inc.*, 781 F. Supp. 561 (N.D. Ill. 1992), the court recognized the right of a wrongfully enjoined party to recover damages in excess of the bond amount as the result of a party's bad faith in obtaining the injunction. The court held that the right to recover damages in excess of the bond was properly within the scope of a Rule 65 motion, “rather than to call for a separately-launched claim.” *Id.* at 563. “With qad having been found by this Court to have abused the system by its bad faith pursuit and obtaining of a preliminary injunction, it seems more than reasonable to treat the enforcement or the consequences of that action – the award of any damages that were suffered by ALN as the injured party – as a remedy that comes within this Court's inherent power.” *Id.* The court concluded: “This Court is therefore ready to make ALN whole – to proceed with the damages issues whenever the litigants are. It will await their early input on that score.” *Id.* at 564.

If ever there was a case in which the exception to the general rule is present, this is it. The Leagues have “abused the system” by relying on an unconstitutional statute and ten false

sworn statements to block the NJTHA for more than three years from conducting sports betting. And they did this even though they knew their actions would not merely harm Monmouth Park's business but, also, harm Monmouth Park's innocent workers.

The Commissioners falsely described to this Court in meticulous detail the catastrophic consequences they swore would follow from the spread of sports betting. None of this was close to being true. Behind this Court's back, each Commissioner's League and team owners made huge profits from the spread of sports betting, both on the outcome of their games and their players' performances in their games. While the Leagues and team owners prospered from the spread of sports betting, Monmouth Park and its workers as well as New Jersey's entire equine industry came perilously close to being destroyed. The Leagues should not be allowed to walk away without any consequences for their wrongdoing.

POINT III

ACCELERATED DISCOVERY AND AN EVIDENTIARY HEARING IS NEEDED TO DETERMINE THE AMOUNT OF DAMAGES TO THE NJTHA FROM THE LEAGUES' BAD FAITH CONDUCT.

As was done in *Don Post* and *qad* it is respectfully requested that the Court order an evidentiary hearing, preceded by accelerated discovery, to determine the amount of bad faith damages sustained by the NJTHA as the result of the Leagues' bad faith conduct, as well as the amount of restitution the Leagues should be ordered to pay.

When the Court, over the NJTHA's objection, converted the Leagues' application for a preliminary injunction into a decision on the merits (Ricchio Cert. Ex. 28 at Entry No. 56), the NJTHA was denied the opportunity to take any discovery to flesh out the conflict between the Leagues' false in court sworn statements concerning the "imperative" need to stop the spread of sports betting and the Leagues' out of court aggressive support for the prolific spread of sports

betting. Riccio Cert. Ex. 29 at 5. Now that the Supreme Court has determined that the NJTHA was wrongfully blocked since October 24, 2014, from operating a sports betting venue at Monmouth Park, the discovery previously denied to the NJTHA should be allowed.

The NJTHA should be permitted to see all of the documents produced by the Leagues as well as the complete unredacted transcripts of the depositions taken in discovery in *Christie I*, much of which was designated “confidential” by the Leagues. The NJTHA previously requested to see these documents and deposition transcripts after its motion for intervention was granted in *Christie I*. The Leagues objected to this request and refused to permit the NJTHA to see these materials. Riccio Cert. Ex. 82.

The discovery should be accelerated. It should include depositions of the Commissioners (as defined herein) as well as of 30(b)(6) League representatives. Upon completion of discovery there should be an evidentiary hearing to determine the full extent of the Leagues’ bad faith as well as the damages to the NJTHA resulting from the Leagues’ bad faith as well as the extent to which the Leagues have been unjustly enriched. As the Grove Certification shows, it is estimated that, apart from any other damages, Monmouth Park is estimated to have lost sportsbook wins of \$10,227,331 and \$139,749,842 during the periods October 26, 2014-November 21, 2014, and November 22, 2014-May 14, 2018, respectively.

Damages should be computed on the basis of both the damages sustained by the NJTHA (expectancy damages) and profits collected by the Leagues (restitutionary damages) from fantasy betting, proliferation of betting on the outcomes of their games, and the Leagues’ attempt to share with Nevada monopolistic control over the sports betting market. Counsel fees and costs of suit should be awarded to the NJTHA. *Perichak v. Int’l Union of Elec. Radio & Mach. Workers, Local 601*, 715 F.2d 78, 84 n. 9 (3d Cir. 1983) (reversing District Court’s order that

denied attorney's fees, finding defendants were entitled to fees under the bad faith exception to the American Rule, and noting that the plaintiff's "materially false statements made under oath" were "critical to the success of his case" and are "enough to support a finding of bad faith" (internal quotations omitted)).

CONCLUSION

For the foregoing reasons, the NJTHA seeks (a) Judgment, jointly and severally, against the Leagues and their surety in the bond amount of \$3.4 million plus interest, (b) Judgment declaring that the Leagues acted in bad faith by wrongfully blocking the NJTHA from operating a sports betting venue at Monmouth Park; and (c) an Order of accelerated discovery and an evidentiary hearing to determine the damages sustained by the NJTHA over and above the bond amount together with counsel fees and costs of suit as the result of the Leagues' bad faith.

Dated: Morristown, New Jersey
 May 24, 2018

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