

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION FOUR
CIVIL ACTION NO. 11-CI-2982

JENNIFER WASSERZUG

PLAINTIFF

V.

PLAINTIFF'S RESPONSE TO DEFENDANTS'
MOTIONS TO DISMISS

AMERICAN SADDLEBRED REGISTRY, INC.;
AMERICAN SADDLEBRED HORSE ASSOCIATION, INC.;
JUDY WERNER; and BARBARA MOLLAND

DEFENDANTS

* * * * *

Comes the Plaintiff, Jennifer Wasserzug, by counsel, and for her Response to the Motions to Dismiss filed by the Defendants, American Saddlebred Registry, Inc., Judy Werner and Barbara Molland, submits as follows:

INTRODUCTION

Plaintiff, Jennifer Wasserzug, filed this action in connection with events surrounding the termination of her employment. Plaintiff contends that she was terminated in retaliation for her good faith reporting of alleged misconduct by the Defendants' former Executive Secretary and Registrar, Alan F. Balch, who was subsequently terminated. Plaintiff named as Defendants American Saddlebred Horse Association, Inc. ("ASHA"), which issued her paychecks; American Saddlebred Registry, Inc. (the "Registry"), an affiliate of ASHA for which Plaintiff primarily worked day to day; Judy Werner, a director and president of ASHA, and also a director of the Registry, who ordered her termination; and Barbara Molland, a director and first vice president

of ASHA, and also a director and President of the Registry, who also ordered her termination.

Plaintiff's original Complaint alleged that her termination and the actions undertaken in connection with her termination constituted a breach of contract, in that the Defendants violated ASHA and the Registry's identical policies protecting whistleblowers; constituted wrongful termination; and constituted intentional infliction of emotional distress.

Three of the Defendants—the Registry and Defendants Werner and Molland—have filed motions to dismiss. These motions assert fundamentally two arguments: 1) that ASHA, not the Registry, was Plaintiff's employer, and thus the Registry should be dismissed; and 2) that the individual defendants, Judy Werner and Barbara Molland, cannot be held liable for the claims Plaintiff has asserted herein.

Plaintiff has filed herewith a Motion to File an Amended Complaint. The Amended Complaint, if allowed, will clarify that Plaintiff's breach of contract and wrongful termination claims are asserted against ASHA and the Registry only, and not against Defendants Werner and Molland. To that extent, the Amended Complaint would render those portions of Defendants Werner and Molland's motions to dismiss moot. The Amended Complaint, like the original Complaint, asserts claims for intentional infliction of emotional distress against all defendants. In addition, the Amended Complaint adds the additional count of intentional interference with contract against Defendants Werner and Molland and, pleading in the alternative, ASHA and the Registry. The Amended Complaint also adds a count asserting that Defendants Werner and Molland violated their duty of good faith as directors and officers of a non-profit corporation as required under KRS §§ 273.215 and 273.229.

As the Defendants obviously have not yet had an opportunity to address Plaintiff's additional counts set forth in the Amended Complaint, this Response primarily addresses the

validity of Plaintiff's claims as set forth in the original Complaint. The Amended Complaint is addressed only as relevant to consideration of the Defendants' present Motions to Dismiss.

STANDARD

A motion to dismiss should be granted only where "it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Pari-Mutuel Clerks' Union of Kentucky v. Kentucky Jockey Club, Ky.*, 551 S.W.2d 801 (1977). When considering the motion, the allegations contained in the pleading are to be treated as true and must be construed in a light most favorable to the pleading party. *See Gall v. Scroggy, Ky. App.*, 725 S.W.2d 867 (1987). The test is whether the pleading sets forth any set of facts which if proven-would entitle the party to relief.

PLAINTIFF'S ALLEGATIONS

Plaintiff's original Complaint alleges, in substance, the following:

- Plaintiff was employed by Defendants ASHA and the Registry for nearly ten years, and had an exemplary employment record;
- Plaintiff, in reliance on her employers' written "whistleblower" policies, made a good faith report of what she believed was serious and potentially unlawful misconduct by her superior, Alan F. Balch;
- The investigation prompted by Plaintiff's report, on information and belief, ultimately led to Mr. Balch's termination;
- Plaintiff was herself thereafter terminated in retaliation for making her report, in direct violation of the whistleblower policy, and the asserted basis for her termination—a purported "reorganization"—was pretextual; and
- Plaintiff suffered severe emotional distress as a result of the conduct of the

Defendants, which she contends was extreme and outrageous.

The Amended Complaint sets forth the same underlying facts, but adds counts asserting that Defendants Werner and Molland, and in the alternative ASHA or the Registry, intentionally interfered with Plaintiff's contract with ASHA and/or the Registry, and that Defendants Werner and Molland also violated their duty of good faith as directors and officers of a non-profit corporation as required under KRS §§ 273.215 and 273.229.

ARGUMENT

1. PLAINTIFF'S COMPLAINT VALIDLY STATES CLAIMS FOR WRONGFUL DISCHARGE, BREACH OF CONTRACT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST BOTH ASHA AND THE REGISTRY

a. The Proper Identity of Plaintiff's Employer Raises Genuine Issues of Fact

The Registry seeks dismissal from this action *in toto* based upon a single and unsubstantiated factual assertion: that ASHA, and not the Registry, should be deemed to have been Plaintiff's employer.

Plaintiff's complaint alleges that she was employed by the Defendants ASHA and the Registry, and was granted contractual protection against retaliation under each entity's identical whistleblower policy (the "Whistleblower Policies"), copies of which are attached hereto and made a part hereof as Exhibits 1 and 2, respectively. Plaintiff alleges employment by both ASHA and the Registry because at the time of her termination, Plaintiff was working almost exclusively for the Registry on Registry matters, but was in other respects also considered a part of the ASHA staff. Indeed, as described in her Affidavit, attached hereto and made a part hereof as Exhibit 3, Plaintiff worked for ASHA prior to the creation of the Registry to house the activities on which she worked, at which time her function fell clearly under the auspices of the newly formed Registry.

Further, as set forth in Plaintiff's Affidavit and the Affidavit of ASHA member Simon Fredricks, MD, attached hereto and made a part hereof as Exhibit 4, the entities were so closely intertwined as to blur their roles with respect to the operation of the enterprise generally, and with respect to the employment of Plaintiff specifically. While ASHA and the Registry may be structured as separate entities, their actual operations suggest that they are in fact "alter egos" and subject to the liabilities of one another. See *White v. Winchester Dev. Corp.*, 584 S.W.2d 56, 61-62 (Ky. Ct. App. 1979).

Needless to say, there is significant ambiguity as to which of two affiliated entities was Plaintiff's employer, or indeed if both were. Was it the one that issued her paychecks, the one for which she actually worked? Or, in accordance with *White v. Winchester Dev. Corp.*, was it both? Under the facts as alleged, Defendants might well have opted to claim that Plaintiff was an employee of the Registry, and not ASHA, as either argument could be made.

The Defendants will be entitled to show that one or the other entities is the proper employer, but for purposes of this Motion, Plaintiff's allegation that she worked for both entities must be accepted. As such, the Motion to Dismiss the Registry must be DENIED.

b. If Either ASHA or the Registry Is Found Not to be Plaintiff's Employer, Such Entity Will Still be Subject to Liability for Its Tortious Acts

If it is ultimately determined that either ASHA or the Registry is not Plaintiff's proper employer, Plaintiff's intentional infliction of emotional distress claim against that entity will remain viable. If ASHA and the Registry are deemed separate entities, it follows, *ipso facto*, that each is subject to liability for its own actions. Plaintiff alleges that each entity intentionally inflicted emotional distress, and, as is further discussed below, the original Complaint states a claim on this basis against all Defendants herein.

2. PLAINTIFF'S COMPLAINT VALIDLY ALLEGES CLAIMS AGAINST EACH OF THE DEFENDANTS FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Defendants Werner and Molland assert two separate arguments with respect to Plaintiff's claims for intentional infliction of emotional distress (IIED). First, Defendants assert that they cannot be held individually liable for such conduct, and argue that any such claims lie exclusively against ASHA or the Registry. Second, Defendants assert that Plaintiff fails to state a claim for IIED. Neither argument entitles these Defendants to dismissal of Plaintiff's IIED claim against them.

a. Defendants Werner and Molland Are Individually Liable for their Tortious Acts

While individual officers and directors are shielded from certain liabilities when they act within the scope of their employment, Kentucky law has long held that such parties remain individually liable for their tortious acts. *Small v. Bailey*, 356 S.W.2d 756 (Ky. 1962). Further, where, as is alleged here, directors act in direct contravention of their employer's policies, they appear to enjoy no such protection at all. *See, e.g., Harstad v. Whiteman*, 338 S.W.3d 804, 814 (Ky. Ct. App. 2011) ("Agents of a party to a contract *who act within the scope of their employment* cannot interfere with that party's contract.")(emphasis added).

Taken as true, and construing them in a light most favorable to Plaintiff, the Complaint alleges that defendants Werner and Molland orchestrated Plaintiff's termination in retaliation for her good faith report of serious transgressions by Mr. Balch, and lied to Plaintiff about the basis for her termination. Further, Plaintiff alleges that Defendants Werner and Molland revealed Plaintiff's identity during the course of their investigation, also in violation of the Whistleblower Policies, which provide in relevant part:

Confidentiality: The employee reporting the allegations of wrongdoing has a right to confidentiality, and his or her name will not be disclosed during the internal investigation. ...

Retaliation: Retaliation by the Association against any employee who brings an allegation of wrongdoing, as long as that employee believes the allegation is true and accurate, is specifically prohibited, and will result in immediate termination of employment if engaged in by an employee, and dismissal from the Board of Directors if engaged in by a Director.

ASHA Whistleblower Policy; Registry Whistleblower Policy (Exhibits 1 and 2).

Clearly, if Defendants Werner and Molland took the actions Plaintiff has alleged, they did so in direct violation of the policies of ASHA and the Registry. As such, they are individually liable for their tortious conduct. *Small v. Bailey*, 356 S.W.2d 756 (Ky. 1962).

b. The Complaint States a Claim for IIED

Defendants Werner and Molland cite, in total, eight cases in support of their assertion that Plaintiff's allegations do not, as a matter of law, rise to the level of IIED in Kentucky. (Molland Memo, pp. 9-11; Werner Memo, pp. 7-8). Significantly, in each of these cases, the sufficiency of the Plaintiff's claim for IIED was assessed after discovery, and in some cases after trial; not a single case involved dismissal at the pleading stage.

Every IIED case turns on its facts. *Stringer v. Wal-Mart Stores, Inc.*, 151 S.W.3d 781 (Ky. 2004), cited by both Defendants, is instructive on this point. In *Stringer*, the Court provided a historical review of some 20 prior IIED cases, offering examples of claims for IIED that had satisfied Kentucky's standards, and those that had not. Throughout this discussion, the Court discussed the "proof" and "evidence" in each case, rather than the pleadings. *Id.* at 789-93.

Stringer also demonstrates that IIED is an evolving tort, the contours of which continue to be defined. Kentucky courts have been adamant that extreme conduct is required, but have resisted categorical definitions in favor of case-by-case assessments. Here, Plaintiff alleges that

she was a whistleblower, terminated in bad faith by the very directors who adopted the Whistleblower Policies, who then lied about the basis for the termination. Defendants may argue that Kentucky law countenances such conduct, but Plaintiff respectfully submits that the question of whether such actions rise to the level of “outrage” should be decided on a fully developed record.

Defendants also place great reliance on *Miracle v. Bell Co.*, 237 S.W.2d 555, 560 (Ky. Ct. App. 2007), which found, after discovery, that “mere” termination of employment did not constitute outrageous conduct. The case certainly did not hold that no terminated Plaintiff can pursue a claim for IIED, but merely that termination, standing alone, would not suffice. *Id.* If Plaintiff proves only that she was terminated and nothing further, *Miracle v. Bell* may warrant summary judgment on Plaintiff’s IIED claim. But for purposes of the present Motion, *Miracle v. Bell* is inapposite.

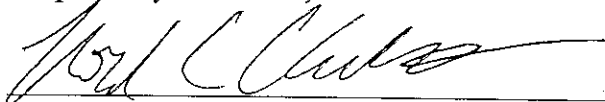
In light of the foregoing, Plaintiff respectfully submits that she has stated a claim for IIED against all defendants herein.

CONCLUSION

Plaintiff has asserted valid claims against the Defendants herein. These claims raise important questions regarding the liability of those who terminate whistleblowers, as well as the rights of those who act in accordance with explicit policies protecting them. The Defendants will be free in due course to claim that employment at will entitles them to take the actions alleged herein with impunity. At this stage in the proceedings, however, Plaintiff has stated valid claims, and respectfully requests that this Court deny the Motions to Dismiss and allow the validity of Plaintiff’s claims to be evaluated on a fully developed record.

Respectfully submitted,

By:



LLOYD C. CHATFIELD II
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CERTIFICATE OF SERVICE

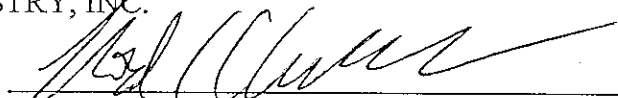
I hereby certify that a copy of Plaintiff's Response to Defendants' Motions to Dismiss was served by United States First Class Mail, postage prepaid, on the 8 day of September, 2011, upon:

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REGISTRY, INC.

By:



LLOYD C. CHATFIELD II
COUNSEL FOR PLAINTIFF

EXHIBIT 1

AMERICAN SADDLEBRED HORSE ASSOCIATION

Employee Protection ("Whistleblower") Policy

Adopted July 6, 2009

It is the intent of the American Saddlebred Horse Association to adhere to all laws and regulations that apply to the organization and the underlying purpose of this policy is to support the organization's goals of legal compliance. The support of all employees is necessary to achieving compliance with various laws and regulations.

Procedure: Any employee who believes the American Saddlebred Horse Association, or another individual or entity with whom the Association has a business relationship, is violating any federal or state laws, is violating its conflict of interest statement or policy, is engaging in self-dealing, is falsifying the Association's financial audit and/or federal tax return, or is engaging in discrimination or harassment, is encouraged to report the alleged illegal or improper activities to the Executive Secretary or President of the Board of Directors.

The Executive Secretary or President of the Board of Directors will immediately notify such members of the Board of Directors as are not alleged to be involved in the reported misconduct, and an investigation shall immediately be conducted.

After conducting the internal investigation, a determination will be made whether the allegations have merit and whether the allegations should be referred to law enforcement officers or other appropriate officials.

Confidentiality: The employee reporting the allegations of wrongdoing has a right to confidentiality, and his or her name will not be disclosed during the internal investigation. Persons reporting allegations of wrongdoing must understand that protecting the identity of the reporting employee cannot be guaranteed if the allegation of wrongdoing results in a public investigation.

Retaliation: Retaliation by the Association against any employee who brings an allegation of wrongdoing, as long as that employee believes the allegation is true and accurate, is specifically prohibited, and will result in immediate termination of employment if engaged in by an employee, and dismissal from the Board of Directors if engaged in by a Director.

My signature below indicates my receipt and understanding of this policy. By signing, the employee also verifies that he or she has been provided with an opportunity to ask questions about the policy.

Employee Signature

Date

Source: NonprofitRisk.org, as customized and revised.

EXHIBIT 2

AMERICAN SADDLEBRED REGISTRY

Employee Protection ("Whistleblower") Policy Adopted July 6, 2009

It is the intent of the American Saddlebred Registry to adhere to all laws and regulations that apply to the organization and the underlying purpose of this policy is to support the organization's goals of legal compliance. The support of all employees is necessary to achieving compliance with various laws and regulations.

Procedure: Any employee who believes the American Saddlebred Registry, or another individual or entity with whom the Association has a business relationship, is violating any federal or state laws, is violating its conflict of interest statement or policy, is engaging in self-dealing, is falsifying the Association's financial audit and/or federal tax return, or is engaging in discrimination or harassment, is encouraged to report the alleged illegal or improper activities to the Executive Secretary or President of the Board of Directors.

The Executive Secretary or President of the Board of Directors will immediately notify such members of the Board of Directors as are not alleged to be involved in the reported misconduct, and an investigation shall immediately be conducted.

After conducting the internal investigation, a determination will be made whether the allegations have merit and whether the allegations should be referred to law enforcement officers or other appropriate officials.

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Retaliation: Retaliation by the Association against any employee who brings an allegation of wrongdoing, as long as that employee believes the allegation is true and accurate, is specifically prohibited, and will result in immediate termination of employment if engaged in by an employee, and dismissal from the Board of Directors if engaged in by a Director.

My signature below indicates my receipt and understanding of this policy. By signing, the employee also verifies that he or she has been provided with an opportunity to ask questions about the policy.

Employee Signature

Date

Source: Nonprofitrisk.org, as customized and revised.

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION 4
CIVIL ACTION NO. 11-CI-2982

JENNIFER WASSERZUG

PLAINTIFF

V. AFFIDAVIT OF JENNIFER WASSERZUG

AMERICAN SADDLEBRED REGISTRY, INC.;
AMERICAN SADDLEBRED HORSE
ASSOCIATION, INC.;
JUDY WERNER; and BARBARA MOLLAND

DEFENDANTS

* * * * *

Comes the affiant, Jennifer Wasserzug, and after having been duly sworn states as follows:

1. That affiant brought this action in connection with events surrounding the termination of her employment from the American Saddlebred Horse Association ("ASHA") and the American Saddlebred Registry, Inc. (the "Registry"), where affiant worked for almost ten years until her termination on June 11, 2010.
2. That affiant has personal knowledge of the matters described herein based on her knowledge and observations as an employee of ASHA and the Registry and by virtue of her work in processing transactions and related functions performed on behalf of ASHA and the Registry.
4. That when affiant first began working for ASHA in 2000, the Registry did not exist as a separate entity, and all registry and transfer functions related to registered American Saddlebred horses that are now performed by the Registry were performed by ASHA.

5. That during 2004 and 2005, ASHA was reorganized to take advantage of tax and other benefits. As a result of this reorganization, ASHA became the breed's membership organization, and the Registry was created to assume responsibilities for the registry and transfer functions related to registered American Saddlebred horses. Among the affiant's primary responsibilities throughout her employment with ASHA was assisting with registration and transfer functions.
6. That although the affiant's paychecks were issued by ASHA, the affiant's assigned duties were predominately concerned Registry matters. However, affiant also had substantial direct involvement with ASHA matters, as ASHA membership was required of any party seeking registration through the Registry. As a practical matter, this distinction was not of particular importance, as the entities were commonly controlled and operated, and were both overseen by a single individual: the Executive Secretary of ASHA, who also served as Registrar of the Registry.
7. That during the period immediately prior to my termination, ASHA and the Registry were collectively overseen by Judy Werner and Barbara Molland. Ms. Werner was a director and president of ASHA, and a director of the Registry. Ms. Molland was a director and first vice president of ASHA, and a director and President of the Registry.
8. Throughout my employment with the Registry and ASHA, the entities shared common control, policies and infrastructure; utilized the same office location, member information databases and email servers; shared employees, officers and directors; shared legal and accounting firms; and were for all intents and purposes two affiliated divisions of a common enterprise.
9. That on or about June 11, 2010, affiant was advised by Mr. Fred Sarver, a former officer and director of ASHA, that he had been instructed by Ms. Werner and Ms. Molland to terminate affiant's employment.
10. That prior to the time of her termination, the affiant had been a highly valued member of the ASHA and Registry staff, and prior to that time had received no indication that affiant's performance was unsatisfactory.

11. That the only explanation provided to affiant by Mr. Sarver regarding affiant's termination was that the ASHA and Registry staff was being "reorganized". However, it appears that affiant was the only full-time employee terminated as a result of this "reorganization."

12. That prior to affiant's termination, she had recently become embroiled in controversy as a result of her reporting, pursuant to Registry and ASHA policy, certain alleged misconduct by ASHA's former Executive Director and the Registry's former Registrar, Alan F. Balch. On information and belief, affiant's reporting of the alleged misconduct ultimately led to the termination of Mr. Balch.

13. That affiant does not believe that any significant reorganization occurred at ASHA or the Registry, and that Ms. Werner and Ms. Molland in fact terminated affiant because she had reported alleged misconduct and thereby created an embarrassing and inconvenient situation for ASHA and the Registry.

Further, the affiant sayeth naught.

By: *Jennifer Wasserzug*
 JENNIFER WASSERZUG, AFFIANT

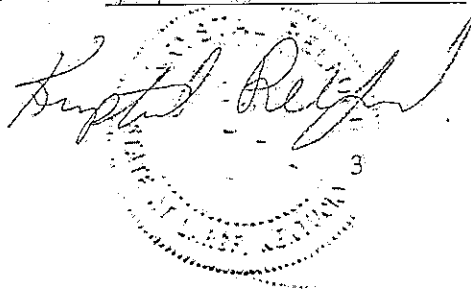
State of Kentucky)

County of Scott)

Subscribed and sworn to before me JENNIFER WASSERZUG on this 7 day of September, 2011.

My commission expires 2/23/12

Notary Public, State of KY



COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION 4
CIVIL ACTION NO. 11-CI-2982

JENNIFER WASSERZUG

PLAINTIFF

V. AFFIDAVIT OF SIMON FREDRICKS, MD

AMERICAN SADDLEBRED REGISTRY, INC.;
AMERICAN SADDLEBRED HORSE
ASSOCIATION, INC.;
JUDY WERNER; and BARBARA MOLLAND

DEFENDANTS

* * * * *

Comes the affiant, Simon Fredricks, MD, and after having been duly sworn states as follows:

1. That affiant is a member of the American Saddlebred Horse Association and its predecessor entities ("ASHA") from 1977 until the present, including terms on ASHA's Board of Directors and as a Vice President.
2. That affiant has personal knowledge of the matters described herein based on his knowledge and observations as a member, director and officer of ASHA.
3. That ASHA controls and operates its affiliated entity, the American Saddlebred Registry, Inc. (the "Registry"), in that the Registry's corporate Bylaws provide that at all times a majority of the Registry's Board must be comprised of ASHA Board members. Registry Bylaws, Art. III, Part I, Section 1 (copy attached as Exhibit A).

4. That the Registry's Bylaws further provide that the office of Registrar of the Registry shall be held by the Executive Director of ASHA. Registry Bylaws, Art. III, Part II, Section 2 (Exhibit A).
5. That in addition to the formal control ASHA exercises over the Registry as described above, ASHA and the Registry share facilities, personnel and infrastructure on an informal basis, and for all intents and purposes are two divisions of a common enterprise.
4. That the registry and transfer functions related to registered American Saddlebred horses, including those previously performed by Jennifer Wasserzug, are formally performed by the Registry, but in many respects are performed by persons who are purported to be employees of ASHA.
5. That in or around June of 2010, the affiant learned that Fred Sarver, at the time a former Board member and officer of ASHA, had terminated the employment of Jennifer Wasserzug.
6. That the affiant was aware from his years of working with ASHA and the Registry that Ms. Wasserzug was considered to be a conscientious, effective member of the staff of ASHA and the Registry, but had recently become embroiled in controversy as a result of her reporting certain alleged misconduct by ASHA's former Executive Director and the Registry's former Registrar, Alan Balch.
7. That the affiant, as a concerned member of ASHA, contacted Mr. Sarver to inquire about the basis for Ms. Wasserzug's termination and to question him regarding his authority to take such action, given that he was neither a director nor an officer of either ASHA or the Registry at that time.
8. That Mr. Sarver advised the affiant only that he had been instructed by Judy Werner, President of ASHA, to terminate Ms. Wasserzug, and that he was doing so "as a favor" to Ms. Werner.
9. That Mr. Sarver refused to provide any information regarding the basis for the termination of Ms. Wasserzug.

Further, the affiant sayeth naught.

By: Simon Fredricks MD
SIMON FREDRICKS, MD, AFFIANT

State of TEXAS)

County of HARRIS)

Subscribed and sworn to before me by SIMON FREDRICKS, MD, on this 31st
day of August, 2011.

My commission expires



Carol A. Lupo

Notary Public, State of TEXAS

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION FOUR
CIVIL ACTION NO. 11-CI-2982

JENNIFER WASSERZUG

PLAINTIFF

V.

AMENDED COMPLAINT

AMERICAN SADDLEBRED REGISTRY, INC.;
AMERICAN SADDLEBRED HORSE ASSOCIATION, INC.;
JUDY WERNER; and BARBARA MOLLAND

DEFENDANTS

* * * * *

Comes the Plaintiff, Jennifer Wasserzug, by counsel, and for her Amended Complaint against the Defendants, American Saddlebred Registry, Inc., American Saddlebred Horse Association, Inc., Judy Werner and Barbara Molland, submits as follows:

PARTIES, VENUE AND JURISDICTION

1. Plaintiff, Jennifer Wasserzug, is a resident of Georgetown, Scott County, Kentucky.
2. Defendant, American Saddlebred Registry, Inc. (the "Registry"), is and at all times relevant hereto has been a Kentucky Corporation with its principal place of business located in Lexington, Fayette County, Kentucky.
3. Defendant, American Saddlebred Horse Association, Inc. ("ASHA"), is and at all times relevant hereto has been a Kentucky Corporation with its principal place of business located in Lexington, Fayette County, Kentucky.
4. Defendant, Judy Werner, is President of ASHA and member of the Board of Directors of both ASHA and the Registry.

5. Defendant, Barbara Molland, is former President of the Registry and member of the Board of Directors of both ASHA and the Registry.
6. All of the events alleged herein occurred in Lexington, Fayette County, Kentucky.
7. Venue and jurisdiction over the parties and the subject matter of this dispute are proper in this Court.

FACTS COMMON TO ALL COUNTS

8. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 7 above.
9. The Registry and ASHA are affiliated organizations under common management, which, respectively, act as the official registrar for registered American Saddlebred horses and as a non-profit organization representing the American Saddlebred horse industry.
10. Plaintiff was employed by the Defendants from November 7, 2000, until June 11, 2010, when she was informed that she was being terminated, purportedly due to a reorganization of the Defendants' office staff.
11. During her tenure working for the Defendants, where she last worked as Senior Registry Associate for Transfers, Plaintiff was an exemplary employee, received favorable evaluations throughout the term of her employment and made substantial contributions to the Defendants' business activities.
12. Among Plaintiff's primary employment responsibilities was the oversight of the registration transfer of ownership process for registered American Saddlebred horses, which is among the core functions of the Registry.
13. Consistent with her job function, Plaintiff was diligent in ensuring proper procedures were followed at all times in connection with the transfer of registered American

Saddlebred horses to ensure the integrity of the transfer process and that the ASHA/Registry rules were followed.

14. On July 6, 2009, both the Registry and ASHA adopted substantially identical Employee Protection (“Whistleblower”) Policies (“Whistleblower Policies”) which, *inter alia*, purport to protect employees from retaliation in the event an employee reports misconduct on the part of the organization or any individual, and to ensure confidential treatment of any report made by an employee pursuant to the Whistleblower Policies. The ASHA and Registry Whistleblower Policies are attached hereto and made a part hereof as Exhibits 1 and 2, respectively.
15. Following the adoption of the Whistleblower Policies, and in reliance thereon, on or about November 17, 2009, Plaintiff duly reported an incident in which Alan F. Balch, then the Executive Secretary/Registrar of AHSA and the Registry, had ordered Plaintiff and others to violate Registry policy in order to facilitate the transfer of a registered American Saddlebred mare, “Mother Mary,” when the Registry lacked the necessary documentation to validly process such transfer (the “Mother Mary Incident”).
16. Plaintiff reasonably believed that the Mother Mary Incident constituted a material violation of Registry policies and, because the purported transfer was communicated to certain third parties whom she expected would rely on such representations, potentially constituted fraud, Plaintiff followed the procedures outlined in the Whistleblower Policies and reported the Mother Mary Incident.
17. Following her reporting of the Mother Mary Incident pursuant to the Whistleblower Policies, Plaintiff met with members of the ASHA Board of Directors on or about December 20, 2009, in support of their investigation of the incident, but was never

informed of the results of the investigation.

18. Following Plaintiff's report, on or about January 12, 2010, ASHA announced that Mr. Balch was leaving his position.
19. During the course of the investigation of the Mother Mary Incident, Defendants divulged Plaintiff's identity and the nature of her report to certain persons who were not part of the investigation, notwithstanding the confidentiality provisions of the Whistleblower Policies.
20. The Mother Mary Incident later became a subject of contention in connection with litigation between ASHA and certain of its members; Plaintiff was deposed in connection with that matter on April 8, 2010, and testified that Mr. Balch had instructed her to violate the Registry's rules and procedures in connection with the Mother Mary Incident.
21. Two months after giving her deposition testimony, Plaintiff was informed that Defendants Werner and Molland, on behalf of ASHA and the Registry, had directed that Plaintiff's employment be terminated, purportedly due to a reorganization of the Defendants' office staff.
22. Plaintiff was given no explanation as to why she was the sole employee being terminated as part of the purported reorganization, despite the fact that several less junior employees were being retained, Plaintiff's performance had been exemplary and Plaintiff's functions were still critical to the effective operation of the Registry.
23. On information and belief, the Registry subsequently hired a new employee to fill substantially the same function performed by Plaintiff.
24. On information and belief, Defendants' decision to terminate Plaintiff was based on Plaintiff's reporting of the Mother Mary Incident consistent with the Whistleblower

Policies and her truthful testimony in her deposition, and the reorganization was a pretext created to conceal the Defendants' true motives.

CAUSES OF ACTION

COUNT I: WRONGFUL DISCHARGE

25. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 24 above.
26. The conduct of Defendants ASHA and the Registry in discharging Plaintiff violated clearly established public policy in favor of honesty, fair dealing and prevention of corporate misconduct, in that the Defendants acted in retaliation for Plaintiff's good faith reporting of and deposition testimony regarding the Mother Mary Incident.
27. As a direct and proximate result of the Defendants' wrongful termination of her employment, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT II: BREACH OF CONTRACT

28. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 27 above.
29. The Whistleblower Policies constituted a contractual undertaking by the Defendants to refrain from terminating Plaintiff's employment in retaliation for reporting misconduct and to protect Plaintiff's confidentiality in connection with such report.
30. Plaintiff reasonably relied on the Whistleblower Policies' prohibition on retaliation when she reported the Mother Mary Incident, and when she provided deposition testimony in connection therewith.
31. Defendants ASHA and the Registry breached their contractual obligations to Plaintiff by

divulging Plaintiff's identity and the nature of her report to certain persons who were not part of the investigation, and by terminating her in retaliation for Plaintiff's good faith reporting of and deposition testimony regarding the Mother Mary Incident.

32. As a direct and proximate result of the Defendants' breach of contract, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

33. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 32 above.

34. The Defendants' conduct described herein was intentional and outrageous, in that they knowingly terminated Plaintiff's employment based on her good faith reporting of misconduct in reliance on the Whistleblower Policies and flagrantly disregarded the confidentiality and non-retaliation protections afforded to the Plaintiff thereunder.

35. Defendants' conduct proximately caused Plaintiff to suffer severe emotional distress.

36. As a direct and proximate result of the Defendants' intentional infliction of emotional distress, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT IV: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

37. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 36 above.

38. Plaintiff had a valid contractual right to, among other things, be protected against retaliation and for reporting misconduct in accordance with the Whistleblower Policies, and to be protected against disclosure of her identity in connection with such report.

39. Defendants Werner and Molland intentionally and maliciously caused Defendants ASHA and/or the Registry to breach their contract with Plaintiff.

40. Pleading in the alternative, to the extent ASHA was not Plaintiff's employer and therefore not a party to the employment contract, ASHA intentionally and maliciously caused the Registry to breach its contract with Plaintiff.
41. Pleading in the alternative, to the extent either the Registry was not Plaintiff's employer and therefore not a party to the employment contract, the Registry intentionally and maliciously caused the ASHA to breach its contract with Plaintiff.
42. As a direct and proximate result of the Defendants' tortious interference with Plaintiff's contractual rights, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT V: VIOLATION OF KRS §§ 273.215 and 273.229

43. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 42 above.
44. As Directors and Officers of ASHA and the Registry, both non-profit Kentucky corporations, Defendants Werner and Molland had a duty under KRS §§ 273.215 and 273.229, respectively, to discharge their duties in good faith.
45. By terminating Plaintiff and disclosing her identify in direct violation of the Whistleblower Policies, Defendants Werner and Molland violated their duty of good faith under KRS §§ 273.215 and 273.229.
46. As a direct and proximate result of the Defendants Werner and Molland's violation of their duty of good faith under KRS §§ 273.215 and 273.229, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

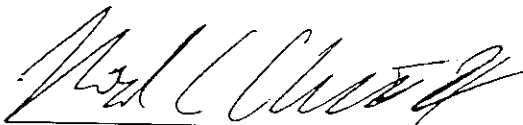
RELIEF

WHEREFORE, Plaintiff Jennifer Wasserzug, respectfully demands as follows:

1. Judgment against the Defendants for general and compensatory damages, with interest thereon;
2. An award of punitive damages;
3. An award of her costs and reasonable attorneys' fees herein;
4. Trial by jury; and
5. Any and all other relief to which Plaintiff may appear to be entitled.

Respectfully submitted,

By:



LLOYD C. CHATFIELD II
201 West Short Street, Suite 601
Lexington, KY 40509
(859) 288-0080
(224) 688-9942
ATTORNEY FOR PLAINTIFF



BYLAWS OF AMERICAN SADDLEBRED REGISTRY, INC.

(Effective March 22, 2010)

ARTICLE I. OFFICES

The principal office of the American Saddlebred Registry, Inc. (herein called the Registry), shall be located in Lexington, Kentucky. The Registry may have such other offices, either within or without the State of Kentucky, as the Board of Directors may designate or as the business of the Registry may require from time to time.

ARTICLE II. MEMBERSHIP

The Registry shall have no members.

ARTICLE III. DIRECTORS

Part I. Directors

Section 1. The Board of Directors shall consist of eleven (11) members and shall exercise all of the powers of the Registry subject only to the restrictions imposed by law, by the Registry's Articles of Incorporation, as amended, or by these Bylaws. Directors must be Senior Members of the American Saddlebred Horse Association in good standing. At least six (6) members, including the President, Secretary and Treasurer must also be members of the Board of Directors of the American Saddlebred Horse Association.

Section 2. Seven (7) Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors; but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 3. An annual meeting of the Board of Directors shall be held at such time and place within or outside Kentucky as determined by resolution of the Board of Directors. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Kentucky, for the holding of additional meetings without other notice than such resolution. Meetings of the Board of Directors shall be conducted according to Sturgis' Standard Code of Parliamentary Procedure.

Section 4. Special meetings of the Board of Directors may be called at the request of the President or any three (3) Directors. The person or persons authorized to call such special meetings of the Board of Directors may fix any place, within or without the State of Kentucky, as the place for holding any special meeting of the Board of Directors called by them.

Section 5. Notice of any special meeting, stating the time, place and purposes thereof, shall be given at least ten (10) days previously thereto in person or by telephone or by written notice delivered personally or electronically, or telefaxed, telegraphed, mailed, or delivered by other reasonable means to each Director at his or her address as listed in the records of the Registry.

Section 6. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting if such Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 7. A Director who is absent from two consecutive meetings without approval of the Board of Directors will be considered to have resigned.

Section 8. Directors shall serve without compensation.

Section 9. Any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if consent in writing setting forth the action taken is signed by all Directors.

Section 10. Meetings of the Board of Directors may be held by telephone conference or other means of communication whereby all Directors participating in the meeting can hear each other. Participation in a meeting by telephone or other similar means shall constitute presence in person at the special meeting.

Section 11. Minutes shall be kept of any and all meetings (regular or special) of the Board of Directors, and the minutes shall be transcribed within forty-five (45) days after any meeting. Minutes may be approved by the written consent of a majority of directors. Such written consent may be delivered by hand, mail, delivery service, fax or electronically.

Part II. Election of Directors

Section 1. Directors shall be elected annually by the Board of Directors of the American Saddlebred Horse Association in the manner prescribed in the Bylaws of

American Saddlebred Horse Association at the meeting in which that Board of Directors elects its officers.

Section 2. In the event a Director dies, resigns, is removed, or otherwise leaves office prior to the termination of such Director's one-year term, then the remaining Directors shall elect a replacement Director to serve out the remainder of the term. If the vacancy shall cause the number of Directors who are members of the Board of Directors of the American Saddlebred Horse Association to be less than the required minimum set forth in Article III, Part I, Section 1 above, then the remaining Directors shall elect a replacement Director who is also a member of the Board of Directors of the American Saddlebred Horse Association.

ARTICLE IV. OFFICERS

Section 1. The officers of the Registry shall be a President, Vice President, Secretary, Registrar, and Treasurer, each of whom, except the Registrar, shall be elected by the Board of Directors. Any two or more offices may be held by the same person except the offices of President and Secretary. Each officer, except the Registrar, must be a member of the Board of Directors. The President, Secretary and Treasurer must also be members of the Board of Directors of the American Saddlebred Horse Association. The Executive Director of the American Saddlebred Horse Association or his or her designee shall serve as Registrar.

Section 2. The officers of the Registry shall be elected annually by the Board of Directors at its annual meeting. Each officer shall hold office for a term of one year and until his or her successor shall have been duly elected and shall have accepted his or her election, unless such officer shall die, resign or be removed from office prior thereto.

Section 3. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Registry will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Removal of the Registrar, however, must be confirmed by the Board of Directors of the American Saddlebred Horse Association. The election of an officer shall not itself create contract rights.

Section 4. A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the term; provided, however, appointment to the office of Registrar shall be subject to approval of the Board of Directors of the American Saddlebred Horse Association.

Section 5. The President shall be the principal executive officer of the Registry and, subject to the control of the Board of Directors, shall in general be responsible for enforcing observance of policies formulated by the Board of Directors. He or she shall, when present, preside at all meetings of the Board of Directors. He or she may sign, with the Secretary or any other proper officer of the Registry thereunto authorized by the Board of Directors, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Registry, or shall be required by law to be otherwise signed or executed; and in general shall perform such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. In the absence of the President or in the event of his or her death, inability, or refusal to act, the Vice President shall perform the duties of the President and when so acting shall have all the powers and be subject to all of the restrictions imposed upon the President. The Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

Section 7. The Registrar shall be the principal manager of the Registry and shall have general supervision of its affairs; oversee the operation of the Registry and be responsible for enforcing the rules of registration and transfer of ownership of horses and collecting fees therefor. In addition, he or she shall perform such other duties as may from time to time be assigned to him or her by the President or by the Board of Directors.

Section 8. The Secretary or his or her designee shall keep the minutes of the proceedings of the members and the Board of Directors in one or more books provided for that purpose. The Secretary shall perform such other duties as from time to time may be assigned to him or her by the President or the Board of Directors.

Section 9. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Registry; (b) receive and give receipts for monies due and payable to the Registry from any source whatsoever, and deposit all such

monies in the name of the Registry in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws; and (c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 10. Officers shall not be compensated, except the Registrar, whose compensation shall be fixed by the Board of Directors. The compensation of other employees if any shall be fixed by the officer or officers so authorized by the Board of Directors.

ARTICLE V.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Indemnification by the Registry. To the fullest extent permitted by law, and in accordance with the provisions of the Kentucky Nonprofit Corporation Acts and this Article V, the Registry shall indemnify any person against reasonable expenses (as defined herein) incurred by him or her in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative ("Proceeding"), to which he or she is or is threatened to be made a party, because he or she is or was a director or officer of the Registry, or is or was serving at the request of the Registry as a Director, officer, partner, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, other enterprise or employee benefit plan if such person ("Person") was determined, in the manner prescribed by Section 4 of this Article V, to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registry, and regarding any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful ("Standard of Conduct"), except in relation to matters as to which he or she has been adjudged in the Proceeding to be liable for negligence or misconduct in the performance of duty to the Registry.

Section 2. Expenses Defined. For the purposes of this Article V, the term "expenses" shall mean all costs actually incurred and disbursements made by a Person in connection with a Proceeding, including, without limitation, amounts paid as a result of a judgment, fine, tax or penalty, or in settlement of any Proceeding, and attorneys' fees and court costs incurred in connection therewith.

Section 3. Reimbursement of Expenses.

(a) The Registry shall pay or reimburse reasonable attorneys' fees and reasonable costs actually incurred by a Person in connection with the defense of a Proceeding in advance of the final disposition of such Proceeding if both of the following conditions have been satisfied:

(i) There has been a determination in the manner prescribed by Section 4

(a) that the facts then known to those making the determination would not preclude indemnification under Section 1 of this Article V, and the Kentucky Nonprofit Corporation Acts; and

(ii) The Board of Directors has received from the Person who is a party to the Proceeding a written agreement to repay all amounts paid or reimbursed by the Registry if he or she is ultimately adjudged liable for negligence or misconduct in the performance of duty to the Registry.

(b) The undertaking required by the Person under Section 3 (a) (ii) of this Article V shall be an unlimited general obligation of that Person, with such security, if any, as the Board of Directors may reasonably require.

Section 4. Determination of Standard of Conduct and Reasonableness of Expenses. Determinations of whether the Standard of Conduct has been met and whether expenses are reasonable shall be made as follows:

(a) By the Board of Directors by a majority vote of a quorum consisting of Directors not at the time parties to the Proceeding;

(b) If such a quorum cannot be obtained, then by a majority vote of a committee of the Board of Directors, duly designated to act in the matter by a majority of the full Board of Directors (in which the Directors who are parties to the Proceeding may participate), consisting solely of two or more Directors not at the time parties to the Proceeding; or

(c) By special legal counsel selected either by the Board of Directors or a committee thereof by a vote in accordance with Subsections (a) or (b) of this Section 4, or if the requisite quorum of the full Board of Directors cannot be established, by a majority vote of the full Board of Directors (in which the Directors who are parties to a Proceeding may participate).

Section 5. Purchase of Insurance. The Registry may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Registry or is or was serving at the request of the Registry as a Director, officer, partner, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, against any liability asserted against him or her and incurred by him or her in any such capacity or arising

out of his or her status as such, regardless of whether the Registry would have had the power or be obligated to indemnify him or her against such liability under the provisions of this Article V, or the Kentucky Nonprofit Corporation Acts.

Section 6. Scope of Indemnification. The indemnification for which this Article V provides shall not be deemed exclusive or a waiver of any other rights to which the Person may be entitled under any statute, provision of the Registry's Articles of Incorporation, any other provision of these Bylaws or resolution of the Board of Directors and shall inure to the benefit of the heirs and personal representatives of a Person.

ARTICLE VI.

CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 1. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Registry, and such authority may be general or confined to specific instances.

Section 2. No loans shall be contracted on behalf of the Registry and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Registry shall be signed by such officer or officers, agent or agents of the Registry and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. All funds of the Registry not otherwise employed shall be deposited from time to time to the credit of the Registry in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE VII. FISCAL YEAR

The fiscal year of the Registry shall begin on the first day of January and end on the last day of December of each year.

ARTICLE VIII. CORPORATE SEAL

The Board of Directors may provide a corporate seal, which shall be circular in form and shall have inscribed thereon the name of the Registry and the state of incorporation and the words "Corporate Seal."

ARTICLE IX. RULES AND REGULATIONS

The Board of Directors shall prescribe fees and rules and regulations for the registration and transfer of ownership of horses and the operation and activities of the Registry. The Board of Directors may amend the Rules and Regulations for the Registration and Transfer of the American Saddlebred Horse and Hearings, Violations & Penalties.

Application for registration and registration certificates shall be in the form prescribed from time to time in the Rules and Regulations. Only purebred American Saddlebred Horses shall be registered with the Registry, except the Registry may maintain such other registries as the Board shall approve for horses other than purebred American Saddlebreds. For further information on registry policies and procedures, see "Rules and Regulations for the Registration and Transfer of the American Saddlebred Horse and Hearings, Violations and Penalties."

ARTICLE X. REGISTER

The Secretary, under the supervision of the Board of Directors, shall cause to be edited and published annually a Register, to be known as the American Saddle Horse Register in which shall be recorded in a manner prescribed by the Board of Directors the pedigree of each horse registered during the preceding year. The Secretary shall collect such charges for volumes of the Register as may be prescribed by the Board of Directors.

ARTICLE XI. COMMITTEES

The President may appoint such committees and the chairpersons thereof for such terms as the President deems necessary or appropriate to further the purposes of the Registry, which committees will report to the Board of Directors. The President will report the name of each committee and the members thereof to the Board of Directors within fifteen (15) days of appointment.

ARTICLE XII. STOCK NONEXISTENT

All shares of stock of the Registry issued by it at any time in the past are deemed nonexistent, and no holder of any such shares shall have any rights with respect thereto.

ARTICLE XIII. AMENDMENTS

The Board of Directors shall have the power to make Bylaws not inconsistent with law or the Articles of Incorporation of the Registry and shall have the power to alter, amend or repeal the same.

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION FOUR
CIVIL ACTION NO. 11-CI-2982

JENNIFER WASSERZUG

PLAINTIFF

v.

PLAINTIFF'S MOTION TO FILE
AMENDED COMPLAINT

AMERICAN SADDLEBRED REGISTRY, INC.;
AMERICAN SADDLEBRED HORSE ASSOCIATION, INC.;
JUDY WERNER; and BARBARA MOLLAND

DEFENDANTS

* * * * *

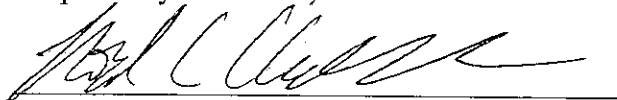
Comes the Plaintiff, Jennifer Wasserzug, by counsel, and pursuant to CR 15.01, moves the Court to allow Plaintiff to file an Amended Complaint, a copy of which is attached hereto. A memorandum of law in support of this Motion is submitted herewith.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the foregoing Motion to File Amended Complaint will be brought on for hearing before the Fayette Circuit Court on the 16th day of September, 2011, at 11:30 a.m., or as soon thereafter as counsel may be heard.

Respectfully submitted,

By:



LLOYD C. CHATFIELD II
201 West Short Street, Suite 601
Lexington, KY 40509
(859) 288-0080
(224) 688-9942
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff's Motion to File Amended Complaint was served by United States First Class Mail, postage prepaid, on the 6th day of September, 2011, upon:

Carol Dan Browning, Esq.
Karen M. Paulin, Esq.
Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352
COUNSEL FOR DEFENDANT BARBARA MOLLAND

Richard A. Getty, Esq.
Jessica K. Case, Esq.
Sara Jean Waggoner, Esq.
Getty & Childers, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507
COUNSEL FOR DEFENDANT JUDY WERNER

Edward H. Stopher, Esq.
Jeffrey K. Streepey, Esq.
Jeff W. Adamson, Esq.
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400 West Market Street, Suite 2300
Louisville, KY 40202
COUNSEL FOR DEFENDANTS AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC. and AMERICAN SADDLEBRED
REGISTRY, INC.

By: _____


LLOYD C. CHATFIELD II
COUNSEL FOR PLAINTIFF

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION FOUR
CIVIL ACTION NO. 11-CI-2982

JENNIFER WASSERZUG

PLAINTIFF

v.

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO FILE
AMENDED COMPLAINT

AMERICAN SADDLEBRED REGISTRY, INC.;
AMERICAN SADDLEBRED HORSE ASSOCIATION, INC.;
JUDY WERNER; and BARBARA MOLLAND

DEFENDANTS

* * * * *

Plaintiff, Jennifer Wasserzug, by counsel, and pursuant to CR 15.01, submits this memorandum of law in support of her Motion to File an Amended Complaint.

INTRODUCTION

Plaintiff, Jennifer Wasserzug, filed this action in connection with events surrounding the termination of her employment. Plaintiff contends that she was terminated in retaliation for her good faith reporting of alleged misconduct by the Defendants' former Executive Secretary and Registrar, Alan F. Balch, who was subsequently terminated. Plaintiff named as Defendants American Saddlebred Horse Association, Inc. ("ASHA"); American Saddlebred Registry, Inc. (the "Registry"); Judy Werner, a director and president of ASHA, and also a director of the Registry, who ordered her termination; and Barbara Molland, a director and first vice president of ASHA, and also a director and President of the Registry, who also ordered her termination.

Plaintiff's original Complaint asserted counts alleging wrongful termination, breach of contract and intentional infliction of emotional distress.

Plaintiff's Amended Complaint, if allowed, will clarify that Plaintiff's breach of contract and wrongful termination claims are asserted against ASHA and the Registry only, and not against Defendants Werner and Molland. The Amended Complaint, like the original Complaint, asserts claims for intentional infliction of emotional distress against all defendants. In addition, the Amended Complaint adds the additional count of intentional interference with contract against Defendants Werner and Molland and, pleading in the alternative, ASHA and the Registry. The Amended Complaint also adds a count asserting that Defendants Werner and Molland violated their duty of good faith as directors and officers of a non-profit corporation as required under KRS §§ 273.215 and 273.229.

The underlying facts alleged in the Amended Complaint are substantially identical to those set forth in the original Complaint. The substantive changes in the Amended Complaint are limited to those necessary to conform the counts to the correct defendants, and to add two counts based on the same underlying facts originally alleged.

ARGUMENT

JUSTICE REQUIRES THAT PLAINTIFF BE ALLOWED TO AMEND HER COMPLAINT

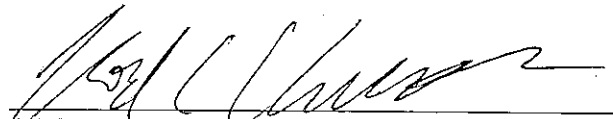
CR 15.01 provides that leave to amend a pleading "shall be freely given when justice so requires." In the present case, Plaintiff's original Complaint provided the Defendants with due notice of the nature of Plaintiff's claims herein. The same operative facts give rise to the additional claims set forth in the Amended Complaint, and Defendants will not be unduly prejudiced by litigating the same matters under the legal theories set forth in the Amended Complaint.

Plaintiff asserts that she was terminated in violation of Defendant ASHA and the Registry's duly adopted Whistleblower Policies. Plaintiff believes that her claims raise

significant questions regarding the rights and protections of whistleblowers, particularly those who act in reliance on, and are terminated in violation of, written policies designed to protect them. Accordingly, Plaintiff respectfully submits that allowing her to amend her Complaint is necessary in the interests of justice.

Respectfully submitted,

By:



LLOYD C. CHATFIELD II
201 West Short Street, Suite 601
Lexington, KY 40509
(859) 288-0080
(224) 688-9942
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE


I hereby certify that a copy of Plaintiff's Memorandum in Support of Motion to File Amended Complaint was served by United States First Class Mail, postage prepaid, on the 8/27 day of September, 2011, upon:

Carol Dan Browning, Esq.
Karen M. Paulin, Esq.
Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352
COUNSEL FOR DEFENDANT
BARBARA MOLLAND

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Sara Jean Waggoner, Esq.
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COUNSEL FOR DEFENDANT JUDY WERNER

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400 West Market Street, Suite 2300
Louisville, KY 40202
COUNSEL FOR DEFENDANTS AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC. and AMERICAN SADDLEBRED
REGISTRY, INC.

By:



LLOYD C. CHATFIELD II
COUNSEL FOR PLAINTIFF

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION FOUR
CIVIL ACTION NO. 11-CI-2982

JENNIFER WASSERZUG

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V.

AMENDED COMPLAINT

AMERICAN SADDLEBRED REGISTRY, INC.;
AMERICAN SADDLEBRED HORSE ASSOCIATION, INC.;
JUDY WERNER; and BARBARA MOLLAND

DEFENDANTS

* * * * *

Comes the Plaintiff, Jennifer Wasserzug, by counsel, and for her Amended Complaint against the Defendants, American Saddlebred Registry, Inc., American Saddlebred Horse Association, Inc., Judy Werner and Barbara Molland, submits as follows:

PARTIES, VENUE AND JURISDICTION

1. Plaintiff, Jennifer Wasserzug, is a resident of Georgetown, Scott County, Kentucky.
2. Defendant, American Saddlebred Registry, Inc. (the "Registry"), is and at all times relevant hereto has been a Kentucky Corporation with its principal place of business located in Lexington, Fayette County, Kentucky.
3. Defendant, American Saddlebred Horse Association, Inc. ("ASHA"), is and at all times relevant hereto has been a Kentucky Corporation with its principal place of business located in Lexington, Fayette County, Kentucky.
4. Defendant, Judy Werner, is President of ASHA and member of the Board of Directors of both ASHA and the Registry.

5. Defendant, Barbara Molland, is former President of the Registry and member of the Board of Directors of both ASHA and the Registry.
6. All of the events alleged herein occurred in Lexington, Fayette County, Kentucky.
7. Venue and jurisdiction over the parties and the subject matter of this dispute are proper in this Court.

FACTS COMMON TO ALL COUNTS

8. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 7 above.
9. The Registry and ASHA are affiliated organizations under common management, which, respectively, act as the official registrar for registered American Saddlebred horses and as a non-profit organization representing the American Saddlebred horse industry.
10. Plaintiff was employed by the Defendants from November 7, 2000, until June 11, 2010, when she was informed that she was being terminated, purportedly due to a reorganization of the Defendants' office staff.
11. During her tenure working for the Defendants, where she last worked as Senior Registry Associate for Transfers, Plaintiff was an exemplary employee, received favorable evaluations throughout the term of her employment and made substantial contributions to the Defendants' business activities.
12. Among Plaintiff's primary employment responsibilities was the oversight of the registration transfer of ownership process for registered American Saddlebred horses, which is among the core functions of the Registry.
13. Consistent with her job function, Plaintiff was diligent in ensuring proper procedures were followed at all times in connection with the transfer of registered American

Saddlebred horses to ensure the integrity of the transfer process and that the ASHA/Registry rules were followed.

14. On July 6, 2009, both the Registry and ASHA adopted substantially identical Employee Protection (“Whistleblower”) Policies (“Whistleblower Policies”) which, *inter alia*, purport to protect employees from retaliation in the event an employee reports misconduct on the part of the organization or any individual, and to ensure confidential treatment of any report made by an employee pursuant to the Whistleblower Policies. The ASHA and Registry Whistleblower Policies are attached hereto and made a part hereof as Exhibits 1 and 2, respectively.
15. Following the adoption of the Whistleblower Policies, and in reliance thereon, on or about November 17, 2009, Plaintiff duly reported an incident in which Alan F. Balch, then the Executive Secretary/Registrar of AHSA and the Registry, had ordered Plaintiff and others to violate Registry policy in order to facilitate the transfer of a registered American Saddlebred mare, “Mother Mary,” when the Registry lacked the necessary documentation to validly process such transfer (the “Mother Mary Incident”).
16. Plaintiff reasonably believed that the Mother Mary Incident constituted a material violation of Registry policies and, because the purported transfer was communicated to certain third parties whom she expected would rely on such representations, potentially constituted fraud, Plaintiff followed the procedures outlined in the Whistleblower Policies and reported the Mother Mary Incident.
17. Following her reporting of the Mother Mary Incident pursuant to the Whistleblower Policies, Plaintiff met with members of the ASHA Board of Directors on or about December 20, 2009, in support of their investigation of the incident, but was never

informed of the results of the investigation.

18. Following Plaintiff's report, on or about January 12, 2010, ASHA announced that Mr. Balch was leaving his position.
19. During the course of the investigation of the Mother Mary Incident, Defendants divulged Plaintiff's identity and the nature of her report to certain persons who were not part of the investigation, notwithstanding the confidentiality provisions of the Whistleblower Policies.
20. The Mother Mary Incident later became a subject of contention in connection with litigation between ASHA and certain of its members; Plaintiff was deposed in connection with that matter on April 8, 2010, and testified that Mr. Balch had instructed her to violate the Registry's rules and procedures in connection with the Mother Mary Incident.
21. Two months after giving her deposition testimony, Plaintiff was informed that Defendants Werner and Molland, on behalf of ASHA and the Registry, had directed that Plaintiff's employment be terminated, purportedly due to a reorganization of the Defendants' office staff.
22. Plaintiff was given no explanation as to why she was the sole employee being terminated as part of the purported reorganization, despite the fact that several less junior employees were being retained, Plaintiff's performance had been exemplary and Plaintiff's functions were still critical to the effective operation of the Registry.
23. On information and belief, the Registry subsequently hired a new employee to fill substantially the same function performed by Plaintiff.
24. On information and belief, Defendants' decision to terminate Plaintiff was based on Plaintiff's reporting of the Mother Mary Incident consistent with the Whistleblower

Policies and her truthful testimony in her deposition, and the reorganization was a pretext created to conceal the Defendants' true motives.

CAUSES OF ACTION

COUNT I: WRONGFUL DISCHARGE

25. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 24 above.
26. The conduct of Defendants ASHA and the Registry in discharging Plaintiff violated clearly established public policy in favor of honesty, fair dealing and prevention of corporate misconduct, in that the Defendants acted in retaliation for Plaintiff's good faith reporting of and deposition testimony regarding the Mother Mary Incident.
27. As a direct and proximate result of the Defendants' wrongful termination of her employment, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT II: BREACH OF CONTRACT

28. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 27 above.
29. The Whistleblower Policies constituted a contractual undertaking by the Defendants to refrain from terminating Plaintiff's employment in retaliation for reporting misconduct and to protect Plaintiff's confidentiality in connection with such report.
30. Plaintiff reasonably relied on the Whistleblower Policies' prohibition on retaliation when she reported the Mother Mary Incident, and when she provided deposition testimony in connection therewith.
31. Defendants ASHA and the Registry breached their contractual obligations to Plaintiff by

divulging Plaintiff's identity and the nature of her report to certain persons who were not part of the investigation, and by terminating her in retaliation for Plaintiff's good faith reporting of and deposition testimony regarding the Mother Mary Incident.

32. As a direct and proximate result of the Defendants' breach of contract, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

33. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 32 above.

34. The Defendants' conduct described herein was intentional and outrageous, in that they knowingly terminated Plaintiff's employment based on her good faith reporting of misconduct in reliance on the Whistleblower Policies and flagrantly disregarded the confidentiality and non-retaliation protections afforded to the Plaintiff thereunder.

35. Defendants' conduct proximately caused Plaintiff to suffer severe emotional distress.

36. As a direct and proximate result of the Defendants' intentional infliction of emotional distress, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT IV: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

37. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 36 above.

38. Plaintiff had a valid contractual right to, among other things, be protected against retaliation and for reporting misconduct in accordance with the Whistleblower Policies, and to be protected against disclosure of her identity in connection with such report.

39. Defendants Werner and Molland intentionally and maliciously caused Defendants ASHA and/or the Registry to breach their contract with Plaintiff.

40. Pleading in the alternative, to the extent ASHA was not Plaintiff's employer and therefore not a party to the employment contract, ASHA intentionally and maliciously caused the Registry to breach its contract with Plaintiff.
41. Pleading in the alternative, to the extent either the Registry was not Plaintiff's employer and therefore not a party to the employment contract, the Registry intentionally and maliciously caused the ASHA to breach its contract with Plaintiff.
42. As a direct and proximate result of the Defendants' tortious interference with Plaintiff's contractual rights, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

COUNT V: VIOLATION OF KRS §§ 273.215 and 273.229

43. Plaintiff reiterates and incorporates the allegations as set forth in paragraphs 1 through 42 above.
44. As Directors and Officers of ASHA and the Registry, both non-profit Kentucky corporations, Defendants Werner and Molland had a duty under KRS §§ 273.215 and 273.229, respectively, to discharge their duties in good faith.
45. By terminating Plaintiff and disclosing her identify in direct violation of the Whistleblower Policies, Defendants Werner and Molland violated their duty of good faith under KRS §§ 273.215 and 273.229.
46. As a direct and proximate result of the Defendants Werner and Molland's violation of their duty of good faith under KRS §§ 273.215 and 273.229, Plaintiff has suffered damages in excess of the jurisdictional limits of this Court.

RELIEF

WHEREFORE, Plaintiff Jennifer Wasserzug, respectfully demands as follows:

1. Judgment against the Defendants for general and compensatory damages, with interest thereon;
2. An award of punitive damages;
3. An award of her costs and reasonable attorneys' fees herein;
4. Trial by jury; and
5. Any and all other relief to which Plaintiff may appear to be entitled.

Respectfully submitted,

By:



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(859) 288-0080
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ATTORNEY FOR PLAINTIFF

EXHIBIT 1

AMERICAN SADDLEBRED HORSE ASSOCIATION

Employee Protection ("Whistleblower") Policy
Adopted July 6, 2009

It is the intent of the American Saddlebred Horse Association to adhere to all laws and regulations that apply to the organization and the underlying purpose of this policy is to support the organization's goals of legal compliance. The support of all employees is necessary to achieving compliance with various laws and regulations.

Procedure: Any employee who believes the American Saddlebred Horse Association, or another individual or entity with whom the Association has a business relationship, is violating any federal or state laws, is violating its conflict of interest statement or policy, is engaging in self-dealing, is falsifying the Association's financial audit and/or federal tax return, or is engaging in discrimination or harassment, is encouraged to report the alleged illegal or improper activities to the Executive Secretary or President of the Board of Directors.

The Executive Secretary or President of the Board of Directors will immediately notify such members of the Board of Directors as are not alleged to be involved in the reported misconduct, and an investigation shall immediately be conducted.

After conducting the internal investigation, a determination will be made whether the allegations have merit and whether the allegations should be referred to law enforcement officers or other appropriate officials.

Confidentiality: The employee reporting the allegations of wrongdoing has a right to confidentiality, and his or her name will not be disclosed during the internal investigation. Persons reporting allegations of wrongdoing must understand that protecting the identity of the reporting employee cannot be guaranteed if the allegation of wrongdoing results in a public investigation.

Retaliation: Retaliation by the Association against any employee who brings an allegation of wrongdoing, as long as that employee believes the allegation is true and accurate, is specifically prohibited, and will result in immediate termination of employment if engaged in by an employee, and dismissal from the Board of Directors if engaged in by a Director.

My signature below indicates my receipt and understanding of this policy. By signing, the employee also verifies that he or she has been provided with an opportunity to ask questions about the policy.

Employee Signature

Date

Source: Nonprofitrisk.org, as customized and revised.

EXHIBIT 2

AMERICAN SADDLEBRED REGISTRY

Employee Protection ("Whistleblower") Policy
Adopted July 5, 2009

It is the intent of the American Saddlebred Registry to adhere to all laws and regulations that apply to the organization and the underlying purpose of this policy is to support the organization's goals of legal compliance. The support of all employees is necessary to achieving compliance with various laws and regulations.

Procedure: Any employee who believes the American Saddlebred Registry, or another individual or entity with whom the Association has a business relationship, is violating any federal or state laws, is violating its conflict of interest statement or policy, is engaging in self-dealing, is falsifying the Association's financial audit and/or federal tax return, or is engaging in discrimination or harassment, is encouraged to report the alleged illegal or improper activities to the Executive Secretary or President of the Board of Directors.

The Executive Secretary or President of the Board of Directors will immediately notify such members of the Board of Directors as are not alleged to be involved in the reported misconduct, and an investigation shall immediately be conducted.

After conducting the internal investigation, a determination will be made whether the allegations have merit and whether the allegations should be referred to law enforcement officers or other appropriate officials.

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Retaliation: Retaliation by the Association against any employee who brings an allegation of wrongdoing, as long as that employee believes the allegation is true and accurate, is specifically prohibited, and will result in immediate termination of employment if engaged in by an employee, and dismissal from the Board of Directors if engaged in by a Director.

My signature below indicates my receipt and understanding of this policy. By signing, the employee also verifies that he or she has been provided with an opportunity to ask questions about the policy.

Employee Signature

Date

Source: Nonprofitrisk.org, as customized and revised.