

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

NATIONAL HORSEMEN’S BENEVOLENT AND
PROTECTIVE ASSOCIATION et al.,

Plaintiffs,

and

THE STATE OF TEXAS and THE TEXAS RACING
COMMISSION,

Intervenor-Plaintiffs,

v.

JERRY BLACK et al.,

Defendants.

No. 5:21-cv-00071-H

**PARTIES’ JOINT
EMERGENCY MOTION
TO AMEND JUDGMENT
PURSUANT TO
FED. R. CIV. P. 59(e)**

Intervenor-Plaintiffs the State of Texas and Texas Racing Commission (collectively “Texas”) along with Plaintiffs submit this emergency motion to amend judgment, pursuant to Federal Rule of Civil Procedure 59(e) and respectfully request that the attached Amended Judgment be entered today, Friday, April 22, 2022, because responses are due Monday, April 25, 2022, to the Plaintiffs’ Emergency Motion to Expedite Appeal in the U.S. Court of Appeals for the Fifth Circuit, and the parties do not wish this motion to interfere with that deadline. Counsel for Texas has emailed and called counsel for the Authority Defendants and counsel for the Government Defendants. Defendants responded that they cannot consent to or otherwise provide a position on this Motion at the time of its filing and have requested an additional business day to review.

On April 14, 2022, Texas filed their Notice of Dismissal without prejudice of their Anti-Commandeering claim, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and requested this Court to enter an order dismissing the claim and a final judgment. [Dkt. 95]. On April 19, 2022, this Court entered the proposed Order dismissing the Anti-Commandeering claim without

prejudice, pursuant to Rule 41(a)(1)(A)(i). [Dkt. 96]. Because all claims against all parties had been disposed of, on April 19, 2022, the Court entered its Final Judgment dismissing the case and referencing its earlier Order that day dismissing the Anti-Commandeering claim without prejudice. [Dkt. 97]. However, the appropriate procedure in the Fifth Circuit to withdraw or dismiss an individual claim is by amending the complaint, not a Rule 41(a) dismissal. *See Williams v. Taylor Seidenbach, Inc.*, 958 F.3d 341, 345 (5th Cir. 2020) (“An invalid Rule 41(a) dismissal is a nullity. So the claims against the purportedly dismissed defendants would still be pending in district court.”) (cleaned up); *Exxon Corp. v. Maryland Cas. Co.*, 599 F.2d 659, 662–63 (5th Cir. 1979) (“Exxon had no power unilaterally to withdraw the second claim from its complaint, and the second claim is still pending in district court.”); *see also Perry v. Schumacher Grp. of La.*, 891 F.3d 954, 958–59 (11th Cir. 2018) (“[T]he [Rule 41(a)(1)(A)] Stipulation, which purported to dismiss ‘Count III of the Fourth Amended Complaint ... without prejudice,’ was invalid. By stroke of sheer good fortune for Dr. Perry, the Stipulation did not divest the District Court of its jurisdiction.”). Because Texas’s Rule 41(a) notice of dismissal was improper, this Court still has jurisdiction over the remaining anti-commandeering claim. *See id.*

In order to present the Fifth Circuit with the cleanest record possible, the parties request this Court to grant this motion. The parties move that Texas’s Rule 41(a) Notice of Dismissal be replaced with the attached First Amended Complaint, which does not require a motion under Federal Rule of Civil Procedure 15(a)(1)(B), and which withdraws the Anti-Commandeering claim from the case. The parties further move that the Court enter the attached Amended Judgment, which clarifies that it is based, not in part on Rule 41(a), but on the fact that all claims against all parties have been disposed given Texas’ First Amended Complaint.

Respectfully Submitted,

Dated: April 22, 2022

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