UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION

ABRAHAM & VENEKLASEN JOINT	§	
VENTURE, ABRAHAM EQUINE, INC.,	§	
and JASON ABRAHAM,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	No. 02:12-cv-00103-J
	§	
AMERICAN QUARTER HORSE	§	
ASSOCIATION,	§	
	§	
Defendant.	§	

DEFENDANT'S RESPONSE TO PLAINTIFFS' REQUEST FOR ATTORNEY FEES

TO THE HONORABLE COURT:

Defendant, AMERICAN QUARTER HORSE ASSOCIATION, respectfully files this Response Brief pursuant to the Court's Order dated August 12, 2013 and responds to the Plaintiffs' request for attorney fees as follows:

INTRODUCTION

Pursuant to this Court's Order, Plaintiffs and their counsel have produced their billing statements, which Defendant has had an opportunity to review. Defendant has no objections to the hourly billing rates charged by the Plaintiffs' attorneys. Further, Defendant has no objection to the number of hours billed by those attorneys during the course of this litigation. However, as explained below, Defendant objects to the reasonableness of Plaintiffs' attorney fees based on Plaintiffs' failure to recover any damages.

ARGUMENT

Defendant respectfully requests that the Court deny Plaintiffs' request for attorney's fees

or, in the alternative, reduce the fees awarded to Plaintiffs. First, as explained in Defendant's Brief on Equitable Relief and Attorney's Fees and in Defendant's Motion for Judgment as a Matter of Law, Plaintiffs have not succeeded in demonstrating that AQHA violated the antitrust laws and establishing the fact of damage. *See Sciambra v. Graham News (Sciambra II)*, 892 F.2d 411, 415 (5th Cir. 1990). Defendant will reserve further argument on these issues for its Renewed Motion for Judgment as a Matter of Law that will be filed following entry of any final judgment in favor of Plaintiffs.

Second, Plaintiffs' failure to recover any damages should defeat or greatly reduce the Plaintiffs' claim for attorney's fees. In setting attorney fees, courts should consider "the results obtained." *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-720 (5th Cir. 1974). If a plaintiff achieves only partial success at trial, full recovery of that plaintiff's attorney fees may be excessive. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). The degree of a plaintiff's overall success goes to the reasonableness of a fee award. *Id.* In fact, "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 114 (1992).

The United States Supreme Court has expressly stated that when a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, the only reasonable fee is usually no fee at all. *Farrar*, 506 U.S. at 104, 115. In *Farrar*, the Supreme Court noted that the plaintiff was a prevailing party because the Plaintiff established an actual violation of his civil rights. *Id.* at 113. However, the Plaintiff had requested \$17 million in damages but was awarded only nominal damages. *Id.* at 114. The Court noted that in some circumstances, even a plaintiff who formally prevails should receive no attorney's fees at all, and a plaintiff who seeks compensatory damages but receives nothing more than nominal

damages is often such a prevailing party. *Id.* at 115. The awarding of nominal damages highlights a plaintiff's failure to prove actual, compensable injury. *Id.*

While the *Farrar* case concerned a civil rights issue, the limited success doctrine for reducing attorney's fees has been applied equally in antitrust actions. In the Fifth Circuit specifically, the courts have clarified that an award of zero damages to a prevailing plaintiff in an antitrust action does not affect entitlement to reasonable attorney's fees, which concords with the dictate of the antitrust laws mandating recovery of attorney's fees for prevailing plaintiffs. *Sciambra v. Graham News*, 892 F.2d 411, 416-17 (5th Cir. 1990). However, the limited success doctrine dictates that an analysis of the reasonableness of those attorney's fees take into account a plaintiffs' failure to recover any damages. *See Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 330 n. 23 (5th Cir. 1995); *United States Football League v. National Football League*, 887 F.2d 408 (2d Cir.1989).

In this case, the Plaintiffs sought damages of \$5.7 million, and Plaintiffs sought to treble those damages under the antitrust laws for a total of \$17.1 million. Yet the jury determined that Plaintiffs were entitled to no damages at all. Thus, the Plaintiffs failed to prove actual, compensable injury for which damages could be awarded. While the jury determined that AQHA violated the antitrust laws, the Plaintiffs' failure to establish actual, compensable injury resulted in a verdict in which Plaintiffs only partially prevailed. Because the most critical reasonableness factor is the degree of success obtained, and because Plaintiffs failed to achieve success in their claim for trebled damages, full recovery of their claimed attorney's fees would be unreasonable and excessive. See Hensley, 461 U.S. 436 (1983).

At the end of trial, Plaintiffs recognized that they had failed to establish the fact of damages and that the jury would not be swayed by their expert's attempt to correct a \$3 million

"mistake" in projected damages. So in the last testimony heard by the jury, Plaintiff Jason Abraham told them that this case is not about money, but rather is about getting his horses registered. The jury agreed that Plaintiffs failed to prove recoverable damages and, taking Mr. Abraham at his word, awarded no damages to the Plaintiffs but allowed them to get the rule changed. This Court should likewise take Mr. Abraham at his word and follow the jury's lead in awarding zero or reduced attorney fees in accordance with the limited success doctrine.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court deny or significantly reduce Plaintiffs' claims for attorney's fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2013, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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