



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF NEW JERSEY RACING COMMISSION

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JUDITH A. NASON  
Executive Director

**FINAL DETERMINATION AND ORDER**

**IN THE MATTER OF THE CONSOLIDATION OF JEFFREY CULLIPHER v. NEW JERSEY RACING COMMISSION (“NJRC”), OAL DOCKET NO. RAC-7204-20N; JEFFREY CULLIPHER v. NJRC, OAL DOCKET NO. RAC-7849-20N; KELVIN HARRISON v. NJRC, OAL DOCKET NO. RAC-7202-20N; KELVIN HARRISON v. NJRC, OAL DOCKET NO. RAC-9996-20N; RICHARD D. JOHNSON v. NJRC, OAL DOCKET NO. RAC-7854-20N; KEVIN C. MCDERMOTT v. NJRC, OAL DOCKET NO. RAC-7841-20N; MARCUS MELANDER v. NJRC, OAL DOCKET NO. RAC-7843-20N; MARCUS MELANDER v. NJRC, OAL DOCKET NO. RAC-3580-21N; RICHARD J. NORMAN v. NJRC, OAL DOCKET NO. RAC-7861-20N; BRETT PELLING v. NJRC, OAL DOCKET NO. RAC-7203-20N; AND KEITH D. TORRO v. NJRC, OAL DOCKET NO. RAC-7845-20N.**

**WHEREAS**, the New Jersey Racing Commission (“Commission” or “NJRC”) has transmitted the above-referenced contested cases to the Office of Administrative Law;

**WHEREAS**, on August 18, 2021, Administrative Law Judge William J. Courtney issued an Order, which consolidated the eleven contested cases under Docket No. RAC 7202-20N for trial (“Order of Consolidation”);

**WHEREAS**, on August 25, 2021, Deputy Attorney General Beau C. Wilson filed a request on behalf of Respondent for interlocutory review of the Order of Consolidation with the Commission;

**WHEREAS**, on August 27, 2021, Joseph A. Deer, Esq. filed a letter brief on behalf of Petitioners in opposition to Respondent’s request for interlocutory review;



**WHEREAS**, on August 30, 2021, the Commission issued a letter notifying the parties that the NJRC will review the Order of Consolidation at the September 22, 2021 public meeting and the NJRC sought and obtained a 20-day extension from the Office of Administrative Law pursuant to N.J.A.C. 1:1-14.1 to consider the interlocutory review;

**WHEREAS**, when reviewing an ALJ's consolidation order, an agency must evaluate the ALJ's analysis of the factors enumerated in N.J.A.C. 1:1-17.3(a);

**AND THE COMMISSION FINDING THAT** factor one weighs against consolidation as the identity of the parties are different in each case, with the only commonality being that two cases involve Petitioner Jeffrey Cullipher, two cases involve Petitioner Kelvin Harrison, and two cases involve Petitioner Marcus Melander;

**AND THE COMMISSION FINDING THAT** factor two weighs against consolidation because the cases involve eleven different post-race samples taken from different horses after different races with different chains of custody, different tests, different test results and different test reports;

**AND THE COMMISSION FINDING THAT** factor three weighs against consolidation because although consolidation may save the Petitioners time in presenting common defenses, consolidation would place an unnecessary burden on Respondent and unfairly prejudice its ability to thoroughly, competently, and fully adjudicate all eleven cases together;

**AND THE COMMISSION FINDING THAT** any danger of inconsistent results among the cases is mitigated by the fact that all eleven contested cases are assigned to the same ALJ;

**AND THE COMMISSION FINDING THAT** factor four weighs against consolidation because the dissimilar facts related to the collection of the horses' samples, documentation of the chains of custody for the collection and shipping of the samples, documentation of the chains of custody at the laboratory, testing the samples, analysis of the test results, and the reporting of the test results in the data packets create a distinct danger of confusion and undue prejudice to Respondent if all eleven contested cases are consolidated;

**AND THE COMMISSION FINDING THAT** factor five, the advisability generally of disposing of all aspects of the controversy in a single proceeding, weighs against consolidation given the danger of confusion and undue prejudice to Respondent;

**AND THE COMMISSION FINDING THAT** factor six neither weighs against nor for consolidation;


**AND THE COMMISSION FINDING THAT** the totality of the factors weigh against consolidation of the eleven contested cases:

**IT IS THEREFORE ORDERED THAT** the Order of Consolidation, dated August 18, 2021, which consolidates these eleven contested cases for trial is hereby reversed.

**IT IS FURTHER ORDERED THAT** the Office of Administrative Law shall hear the contested cases separately at trial except that Jeffrey Cullipher v. NJRC, OAL Docket No. RAC-7204-20N may be consolidated with Jeffrey Cullipher v. NJRC, OAL Docket No. RAC-7849-20N; Kelvin Harrison v. NJRC, OAL Docket No. RAC-7202-20N may be consolidated with Kelvin Harrison v. NJRC, OAL Docket No. RAC-9996-20N; and Marcus Melander v. NJRC, OAL Docket No. RAC-7843-20N may be consolidated with Marcus Melander v. NJRC, OAL Docket No. RAC-3580-21N if the Petitioner and Respondent consent to the consolidation.

This Final Determination and Order memorializes the actions taken by the Commission at its public meeting on September 22, 2021.

**NEW JERSEY RACING COMMISSION**

By:   
Judith A. Nason, Executive Director

Dated: September 27, 2021