United States Court of Appeals
For the First Circuit

Nos. 19-2201
20-2172

CONFEDERACIÓN HÍPICA DE PUERTO RICO, INC.; CAMARERO RACETRACK CORP.,

Plaintiffs, Appellees,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC.; ABNER ADORNO; CARLOS QUIÑONES; CINDY SOTO; DAVID ROSARIO; EDWIN CASTRO; HÉCTOR BERRÍOS; HÉCTOR RIVERA; JOMAR GARCÍA; KENNEL PELLOT; LUIS NEGRÓN; MARIO M. SÁNCHEZ; PEDRO GONZÁLEZ; SASHA ORTIZ; STEVEN FRET; MIGUEL A. SÁNCHEZ,

Defendants, Appellants,

ALEXIS VALDÉS; ANARDIS RODRÍGUEZ; DAVID ORTIZ; ERIK RAMÍREZ; ISMAEL PERÉZ; ISRAEL O. RODRÍGUEZ; JOSÉ A. HERNANDEZ; JUAN CARLOS DÍAZ; JORGE G. ROBLES; JAVIER SANTIAGO; MISAEL MOLINA; KEVIN NAVARRO; PABLO RODRÍGUEZ; ALFONSO CLAUDIO; JONATHAN AGOSTO; YASHIRA TOLENTINO; JOSÉ M. RIVERA; ALVIN COLÓN; JESÚS GUADALUPE; JAN CARLOS SUÁREZ; ASOCIACION DE JINETES DE PUERTO RICO, INC.; RAMÓN SÁNCHEZ; CONJUGAL PARTNERSHIP ADORNO-DOE; CONJUGAL PARTNERSHIP DOE-SOTO; CONJUGAL PARTNERSHIP ORTIZ-DOE; CONJUGAL PARTNERSHIP H. DOE-TOLENTINO; CONJUGAL PARTNERSHIP ADORNO-DOE; CONJUGAL PARTNERSHIP VALDÉS-DOE; CONJUGAL PARTNERSHIP CLAUDIO-DOE; CONJUGAL PARTNERSHIP COLÓN-DOE; CONJUGAL PARTNERSHIP QUINONES-DOE; CONJUGAL PARTNERSHIP DOE-SOTO; CONJUGAL PARTNERSHIP ORTIZ-DOE; CONJUGAL PARTNERSHIP ALEMAN-DOE; CONJUGAL PARTNERSHIP CASTRO-DOE; CONJUGAL PARTNERSHIP DELPINO-DOE; CONJUGAL PARTNERSHIP BERRÍOS-DOE; CONJUGAL PARTNERSHIP RIVERA-DOE; CONJUGAL PARTNERSHIP CEPEDA-DOE; CONJUGAL PARTNERSHIP PERÉZ-DOE; CONJUGAL PARTNERSHIP RODRÍGUEZ-DOE; CONJUGAL PARTNERSHIP SUÁREZ-DOE; CONJUGAL PARTNERSHIP SANTIAGO-DOE; CONJUGAL PARTNERSHIP GUADULUPE; CONJUGAL PARTNERSHIP GARCÍA-DOE; CONJUGAL PARTNERSHIP DAVILA-DOE; CONJUGAL PARTNERSHIP ROBLES-DOE; CONJUGAL PARTNERSHIP HERNANDEZ-DOE; CONJUGAL PARTNERSHIP CABRERADOE; CONJUGAL PARTNERSHIP DÍAZ-DOE; CONJUGAL PARTNERSHIP PELLOT-DOE; CONJUGAL

PARTNERSHIP NAVARRO-DOE; CONJUGAL PARTNERSHIP NEGRÓN-DOE; CONJUGAL PARTNERSHIP SÁNCHEZ-DOE; CONJUGAL PARTNERSHIP SÁNCHEZ-DOE 30; CONJUGAL PARTNERSHIP MOLINA-DOE; CONJUGAL PARTNERSHIP RODRÍGUEZ-DOE 24; CONJUGAL PARTNERSHIP GONZÁLEZ-DOE; CONJUGAL PARTNERSHIP SÁNCHEZ-DOE 29; CONJUGAL PARTNERSHIP ORTIZ-DOE 26; CONJUGAL PARTNERSHIP FRET-DOE; CONJUGAL PARTNERSHIP DOE-TOLENTINO; JANE DOES; JANE DOES 2-4; 6-35 JOHN DOES 1-2,

Defendants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Daniel R. Domínguez, U.S. District Judge]

Before

Lynch and Kayatta, Circuit Judges,
and Woodlock,* District Judge.

Axel A. Vizcarra-Pellot and Peter J. Porrata, with whom the Law Offices of Peter John Poratta was on brief, for appellants.

Manuel Porro-Vizcarra and Roberto Lefranc Morales, with whom Luz Yanix Vargas-Perez and Martínez-Álvarez Menéndez Cortada & Lefranc Romero, PSC were on brief, for appellees.

April 4, 2022

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* Of the District of Massachusetts, sitting by designation.

LYNCH, Circuit Judge. The Sherman Antitrust Act usually forbids would-be competitors from staging a group boycott. 15 U.S.C. § 1; see Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co., 472 U.S. 284, 290 (1985). Federal statutes and controlling Supreme Court case law create an exemption for certain conduct, commonly called the labor-dispute exemption. See 15 U.S.C. § 17; 29 U.S.C. §§ 52, 101, 104, 105, 113.

In this action, brought by an association of horse owners ("Hípica") and the owner of a racetrack ("Camerero") against a group of jockeys who demanded higher wages and refused to race, the district court erroneously determined that the labor-dispute exemption does not apply. The district court preliminarily and permanently enjoined the work stoppage, awarded summary judgment against the jockeys, their spouses and conjugal partnerships, and an association representing them ("Jinetes"), and imposed $1,190,685 in damages. Confederación Hípica de Puerto Rico v. Confederación de Jinetes Puertorriqueños, Inc., 419 F. Supp. 3d 305, 311, 313 (D.P.R. 2019); Confederación Hípica De Puerto Rico, Inc. v. Confederación De Jinetes Puertorriqueños, Inc., 296 F. Supp. 3d 416, 421, 423-26 (D.P.R. 2017).

We reverse the district court's entry of summary judgment against the jockeys and direct, on remand, dismissal of the case. We also vacate sanctions that the district court imposed against the defendants.

I.

We briefly recount the background to this dispute.

Puerto Rico is home to one horse-racing track, the Hipódromo Camarero in Canóvanas, which is operated by plaintiff Camarero. Horse owners hire jockeys on a race-by-race basis. Since 1989, the jockeys have been paid a $20 mount fee for each race they participate in. The fortunate jockeys who finish in the top five positions in each race share in the "purse" -- the prize money for the top five horses. A Puerto Rico government agency, established in its current form in 1987, regulates the sport. See P.R. Laws Ann. tit. 15, § 198e. It embodied the compensation structure we have described in regulations in 1989. See Confederación Hípica de Puerto Rico, No. JH-88-12 (P.R. Admin. of the Racing Sport & Indus. Racing Bd. Mar. 28, 1989).

The jockeys have long chafed at their employment conditions. They object to the mount fee, which is about one-fifth what jockeys receive in the mainland United States. They also complain about pre-race weigh-in procedures and about the conduct of racing officials.

In early June 2016, those long-simmering grievances boiled over. On June 10, several jockeys delayed the start of a race to demand that racing officials discuss the weigh-in procedures. As a result of that delay, the officials fined those jockeys. The jockeys responded through a pair of associations:

defendant Jinetes and a second smaller group ("AJP"). On behalf of dozens of jockeys, the associations disputed the fines and objected to jockey compensation. The associations then attempted to negotiate employment conditions with plaintiff Hípica, the representative of the horse owners. Those negotiations resolved none of the issues, and the racing regulators declined the jockeys' request to mediate.

After negotiations failed, in pursuit of their demands for increased compensation, thirty-seven jockeys refused to race for three days. Jinetes claimed credit for organizing the work stoppage. As no jockeys had registered to ride on June 30, July 1, and July 2, 2016, Camerero canceled the races scheduled for those days.

Hípica and Camerero sued the jockeys, their spouses and conjugal partnerships, and Jinetes, alleging that the defendants engaged in a group boycott in violation of federal antitrust law.[1] See 15 U.S.C. § 1. The defendants counterclaimed, alleging that the plaintiffs violated federal civil rights and antitrust law. See id.; 42 U.S.C. §§ 1981, 1983.

The plaintiffs sought and the district court granted a temporary restraining order on July 1 to direct the jockeys back

[1] The plaintiffs also sued AJP, which represented a handful of jockeys. AJP settled and is not a party to this appeal.

to work.[2] Although the order came too late to restore the July 2 racing calendar, the jockeys otherwise complied. The district court then held an extended preliminary and permanent injunction hearing. On the first day of the hearing, the district court sanctioned Jinetes, requiring the association to pay some of the plaintiffs' attorney's fees because it concluded sua sponte that defense counsel failed to meet and confer with plaintiffs' counsel as ordered. After the hearing, the district court granted a preliminary and permanent injunction, holding that the jockeys are independent contractors, that they had acted in concert to restrain trade, and that they could not benefit from the labor-dispute exemption because of their independent-contractor status. The district court reasoned that a 1979 decision of this court, San Juan Racing Ass'n, Inc. v. Asociacion de Jinetes de Puerto Rico, 590 F.2d 31 (1st Cir. 1979), controlled its determination.

Proceeding to the damages stage, the district court granted summary judgment to the plaintiffs. After trebling the plaintiffs' losses, it awarded $602,466 in damages to Camarero and $588,219 in damages to Hípica. The defendants appealed.

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[2] This appeal does not concern the propriety of the scope of the injunctions. But see Authenticom, Inc. v. CDK Glob., LLC, 874 F.3d 1019, 1026 (7th Cir. 2017) ("The proper remedy for a section 1 violation based on an agreement to restrain trade is to set the offending agreement aside."). Our opinion should not be read to endorse the scope of the relief the district court ordered.

The defendants also moved to reconsider the judgment. They contended that the plaintiffs failed to join indispensable parties because they had never actually served the jockeys' wives and conjugal partnerships. The district court denied the motion, and the plaintiffs separately appealed from that denial.

II.

We start our analysis with the antitrust issues.

As this dispute turns on a question of law, we review de novo both the district court's grant of summary judgment and its issuance of the injunction. Spectrum Ne., LLC v. Frey, 22 F.4th 287, 291 (1st Cir. 2022) (citing Lawless v. Steward Health Care Sys., LLC, 894 F.3d 9, 21 (1st Cir. 2018)).

"[T]here is an inherent tension between national antitrust policy, which seeks to maximize competition, and national labor policy, which encourages cooperation among workers to improve the conditions of employment." H. A. Artists & Assocs., Inc. v. Actors' Equity Ass'n, 451 U.S. 704, 713 (1981). Most of the time, antitrust law forbids would-be competitors from colluding to increase prices. When the price is a laborer's wage, however, a different set of rules apply. That must be so, lest antitrust law waylay ordinary collective bargaining. See Brown v. Pro Football, Inc., 518 U.S. 231, 236-37 (1996). Thus a pair of exemptions -- one statutory and one nonstatutory -- shield

legitimate labor conduct from antitrust scrutiny. We deal here with the statutory exemption.

The statutory labor-dispute exemption flows from both the Clayton Act and the Norris-LaGuardia Act. H.A. Artists & Assocs., 451 U.S. at 706 n.2 (citing 15 U.S.C. § 17 and 29 U.S.C. §§ 52, 104, 105, 113). Through those two statutes, Congress exempted labor disputes from antitrust law. See Milk Wagon Drivers' Union, Loc. No. 753 v. Lake Valley Farm Prods., 311 U.S. 91, 101-03 (1940); Apex Hosiery Co. v. Leader, 310 U.S. 469, 503 (1940).

The Clayton Act declares that "[t]he labor of a human being is not a commodity or article of commerce," subject to antitrust law. 15 U.S.C. § 17. To implement that policy, the Norris-LaGuardia Act provides that "persons participating or interested in [a labor dispute]" may engage in an enumerated set of acts -- including entering agreement to "refus[e] to perform work" -- without falling afoul of the Sherman Act's prohibition on "engag[ing] in an unlawful combination or conspiracy." 29 U.S.C. §§ 104, 105; see Apex Hosiery Co., 310 U.S. at 503. The Norris-LaGuardia Act defines a "labor dispute" by specifically providing that:

> (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein . . . when the case

> involves any conflicting or competing interests in a "labor dispute" . . . of "persons participating or interested" therein . . . .
>
> (b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry . . . in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry . . . .
>
> (c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

29 U.S.C. § 113.

The Supreme Court has explained that the statutory exemption applies when four conditions are met. See J. Bauer, et al., Kintner's Federal Antitrust Law § 72.3 (2021 update). First, the conduct must be undertaken by a "bona fide labor organization." H.A. Artists & Assocs., 451 U.S. at 717 n.20. Second, the conduct must actually arise from a labor dispute, as defined under the Norris-LaGuardia Act. 29 U.S.C. § 113. Once those two prerequisites are satisfied, we apply a further "two-prong test": the organization must "act[] in its self-interest and . . . not combine with non-labor groups." See Am. Steel Erectors, Inc. v.

Loc. Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers, 536 F.3d 68, 76 (1st Cir. 2008) (quoting United States v. Hutcheson, 312 U.S. 291, 232 (1941)). To summarize, then, the statutory labor-dispute exemption applies to conduct arising (1) out of the actions of a labor organization and undertaken (2) during a labor dispute, (3) unilaterally, and (4) out of the self-interest of the labor organization. See H.A. Artists & Assocs., 451 U.S. at 714-15; see also Bauer, supra § 72.3.

We discuss the elements of the exemption in turn. First, a labor organization is a "bona fide" group representing laborers. H.A. Artists & Assocs., 451 U.S. at 717 n.20. It need not be formally recognized as a union. See NLRB v. Wash. Aluminum Co., 370 U.S. 9, 14-15 (1962). Second, a labor dispute broadly encompasses "any controversy concerning terms or conditions of employment." See Jacksonville Bulk Terminals, Inc. v. Int'l Longshoremen's Ass'n, 457 U.S. 702, 709-12 (1982) (quoting 29 U.S.C. § 113(c)). Third, a labor group acts unilaterally unless it coordinates with a nonlabor group. Hutcheson, 312 U.S. at 232; see also Bauer, supra § 72.6. And fourth, a labor organization acts in its self-interest when its activities "bear a reasonable relationship to a legitimate union interest." Am. Steel Erectors, 533 F.3d at 76 (quoting Allied Int'l, Inc. v. Int'l Longshoremen's Ass'n, 640 F.2d 1368, 1379 (1st Cir. 1981)); see Am. Fed'n of

Musicians v. Carroll, 391 U.S. 99, 110–13 (1968); see also Bauer, supra § 72.5.

We apply the statutory framework, emphasizing the first two elements, as the second pair are not seriously disputed here. We conclude that the jockeys' action fell within the labor-dispute exemption. Jinetes, which advocates for the jockeys' terms of employment, is a labor organization. The defendants sought higher wages and safer working conditions, making this a core labor dispute. See Loc. Union No. 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 689 (1965). The plaintiffs make no assertion that the defendants coordinated with any nonlabor group. And the defendants acted to serve their own economic interests. Because the dispute meets the statutory criteria, the labor-dispute exemption applies.

The district court erred when it concluded that the jockeys' alleged independent-contractor status categorically meant they were ineligible for the exemption. We express no opinion on whether the jockeys are independent contractors, because, by the express text of the Norris-LaGuardia Act, a labor dispute may exist "regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 113(c). The Court interpreted that provision in New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938). There, a community association encouraged a boycott of a grocery store in protest of the store's

refusal to hire black employees. Id. at 559. The Supreme Court held that the association's conduct fell within the labor-dispute exemption because the association sought to influence the store's terms of employment. Id. at 559-60; see also Columbia River Packers Ass'n v. Hinton, 315 U.S. 143, 146 (1942). It explained that the text of the Norris-LaGuardia Act was "intended to embrace controversies other than those between employers and employees; between labor unions seeking to represent employees and employers; and between persons seeking employment and employers." New Negro All., 303 U.S. at 560-61. New Negro Alliance thus precludes an interpretation of the exemption limited to employees alone. See also Am. Fed'n of Musicians, 391 U.S. at 111-14; H.A. Artists & Assocs., 451 U.S. at 718, 721-22.

The key question is not whether the jockeys are independent contractors or laborers but whether what is at issue is compensation for their labor. We draw that principle from Columbia River Packers Ass'n v. Hinton, 315 U.S. 143 (1942). In that case, a group of fishermen tried to force exclusive contracts on the canneries to which they sold fish. Id. at 145. Relying on the fact that the fishermen were "independent entrepreneurs," the Supreme Court held that the labor-dispute exemption did not apply. Id. at 144-45, 147. Instead, it explained that the dispute "is altogether between fish sellers and fish buyers" and "relat[es] solely to the sale of fish," without implicating "wages

or hours or other terms and conditions of employment." Id. at 147. From Columbia River Packers, thus, comes a critical distinction in applying the labor-dispute exemption: disputes about wages for labor fall within the exemption but those over prices for goods do not. See Allen Bradley Co. v. Loc. Union No. 3, Int'l Bhd. of Elec. Workers, 325 U.S. 797, 807 n.12 (1945) ("We do not have here, as we did in [Columbia River Packers], a dispute between groups of business men revolving solely around the price at which one group would sell commodities to another group. On the contrary, Local No. 3 is a labor union and its spur to action related to wages and working conditions."). Whether or not the jockeys are independent contractors does not by itself determine whether this dispute is within the labor-dispute exemption.

Nor, contrary to the district court's reasoning, does this court's decision in San Juan Racing mandate a different outcome. In that case, a previous generation of jockeys went on strike to seek higher wages from a previous owner of the Hipódromo. 590 F.2d at 32. The district court entered a preliminary injunction, and we found no abuse of discretion in its conclusion that the plaintiffs were likely to succeed on the merits. Id. at 33; see Am. Eutectic Welding Alloys Sales Co. v. Rodriguez, 480 F.2d 223, 226 (1st Cir. 1973) (orders granting preliminary injunctions are reviewed for abuse of discretion). We held that the "sparse" record supported the district court's preliminary

conclusion that the jockeys' "collective refusal to deal with plaintiff until their fees were increased constituted an illegal effort to control prices through concerted action." San Juan Racing, 590 F.2d at 32. The issue of concern in this case -- the labor-dispute exemption -- was expressly not considered by the San Juan Racing court.[3] Id. A decision cannot create a precedent on an issue unless the issue was actually decided. Gately v. Massachusetts, 2 F.3d 1221, 1228 (1st Cir. 1993). Thus, San Juan Racing does not preclude the jockeys from availing themselves of the labor-dispute exemption.

We also reject the plaintiffs' contention that the labor-dispute exemption does not apply because, in their view, it is the Puerto Rico government that controls the jockeys' wages. The argument fails both factually and legally.

The record shows that the plaintiffs have considerable influence with regulators and have direct ability to affect the

[3] In dicta, San Juan Racing referred to Taylor v. Loc. No. 7, Int'l Union of Journeymen Horseshoers, 353 F.2d 593 (4th Cir. 1965) (en banc). Assuming, for present purposes, that Taylor was decided correctly, the circumstances were materially different from this case. In Taylor, the Fourth Circuit, noting the defendants were independent contractors, held that a group of farriers was not entitled to use the labor dispute exemption to protect their strike in favor of higher rates. Id. at 602-06. Unlike the jockeys, however, and like the fishermen in Columbia River Packers, the farriers provided not just labor but also a product -- horseshoes -- to their customers. Id. at 607 (Sobeloff, J., dissenting). We do not interpret Taylor to apply to a labor-only case, such as we have here.

jockeys' earnings. The plaintiffs admit that the horse owners could have paid the jockeys at least some of the money they sought, e.g., payment for exercising horses, without permission from racing regulators. The record also shows that, in 1989, the regulators set the jockeys' payment under the influence of both the jockeys and the owners. As the plaintiffs conceded at oral argument, the owners still can influence the jockeys' pay, but they never offered to ask the regulators to raise rates. Further, the plaintiffs agreed in 2007 to increase the jockeys' compensation by giving the jockeys a share of the revenue from simulcast races. Taken together, the evidence establishes that the plaintiffs have power to influence -- and in some cases to adjust unilaterally -- the jockeys' compensation.

The law also provides the plaintiffs with no support. Contrary to the plaintiffs' arguments, their dispute with the defendants is a labor dispute because it centers on the compensation they pay the jockeys for their labor. The labor-dispute exemption applies in regulated industries. See, e.g., Pittsburgh & Lake Erie R.R. Co. v. Ry. Lab Executives' Ass'n, 491 U.S. 490, 514 (1989). At oral argument, the plaintiffs also suggested that the defendants' work stoppage was an illegal secondary boycott. They did not plead that claim in their complaint, raise it before the district court, or argue it in their briefs. It is thus triply waived. See Sparkle Hill, Inc. v.

Interstate Mat Corp., 788 F.3d 25, 29-30 (1st Cir. 2015). Nor, even had the plaintiffs preserved it, would that argument have merit. The National Labor Relations Act prohibits "secondary boycotts" -- using a strike to influence the labor policies of a person other than the laborers' direct employer -- as an unfair trade practice. 29 U.S.C. § 158(b)(4)(i)(B); see Loc. Union No. 25, A/W Int'l Bhd. of Teamsters v. NLRB, 831 F.2d 1149, 1152 (1st Cir. 1987) (citing Nat'l Woodwork Mfrs.' Ass'n v. NLRB, 386 U.S. 612, 632 (1976)). If a labor group boycotts to obtain a concession that its "immediate employer is not in a position to award," it violates that prohibition. Id. at 1153 (quoting NLRB v. Enter. Ass'n of Steam, Hot Water, etc. Pipefitters, 429 U.S. 507, 525-26 (1977)). But that is not the case here. The defendants here sought to change the rates the plaintiffs paid them. The owners could have approved some increases themselves and could have influenced regulators to approve other fee increases across the industry. So the secondary boycott argument fails as well.

The plaintiffs also appear to advert to a line of cases holding unlawful private restraints of trade intended to influence government action. Yet they fare no better with that argument. Even if the jockeys ultimately sought to influence a political body through their work stoppage, their political activism would make no difference. As long as an employee-employer relationship -- broadly understood -- is at the core of the controversy, as

here, then any political motivations for a work stoppage would not take a dispute out of the labor exemption. See Jacksonville Bulk Terminals, 457 U.S. at 711-19.[4]

As the labor-dispute exemption applies, the district court erred in granting the plaintiffs an injunction and summary judgment. The plaintiffs are legally precluded from prevailing on their antitrust claims. See Apex Hosiery, 310 U.S. at 503. On remand, the district court must dismiss the complaint. See Bruns v. Mayhew, 750 F.3d 61, 71–73 (1st Cir. 2014) (explaining that when we hold that the plaintiff has failed to state a claim on which relief can be granted as a matter of law, the appropriate disposition is to remand the case with instructions to dismiss the complaint).

III.

We next turn to the sanctions the district court imposed regarding the conduct of Jinetes's attorneys.

We review an order imposing sanctions for abuse of discretion. In re Ames, 993 F.3d 27, 34 (1st Cir. 2021). A district court abuses its discretion to sanction misconduct when

[4] None of the Supreme Court's subsequent cases about politically motivated anticompetitive actions alter that rule. See Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 499-501 (1988) (curtailing politically motivated boycott rule for sale of goods); FTC v. Superior Ct. Trial Laws. Ass'n, 493 U.S. 411, 425 (1990) (labor exemption not argued); see also Superior Ct. Trial Laws. Ass'n v. FTC, 856 F.2d 226, 230 n.6 (D.C. Cir. 1988).

it ignores a material factor, relies on an improper factor, or "makes a serious mistake in weighing" the proper factors. Id. (quoting Anderson v. Beatrice Foods Co., 900 F.2d 388, 394 (1st Cir. 1990)).

At 2:44 p.m. on the afternoon before the first day of the preliminary injunction hearing, the district court ordered counsel to meet and attempt to agree on a joint stipulation of facts. It also ordered plaintiffs' counsel to provide notice of the order to defense counsel by phone or email. Opting for email, at 3:15 p.m., plaintiffs' counsel invited defense counsel to a meeting scheduled at 6:00 p.m. at the offices of plaintiffs' counsel. Defense counsel did not attend that meeting.

At the hearing the next morning, the district court sua sponte raised concerns regarding defense counsel's failure to attend the previous evening's meeting. Defense counsel explained that they received insufficient notice, having not checked their email before 7:00 p.m. The district court sanctioned Jinetes's attorneys, requiring payment for one-half hour of plaintiffs' fees for their three attorneys (i.e., $600). The district court later raised that award to $2,848.75 without explanation.[5]

[5] The district court, through its oral order at the hearing, appeared to sanction defense counsel and not Jinetes. Its written orders required the Jinetes to pay the attorneys' fees through its attorneys until Jinetes communicated to the court that the association "would be taking care of payment of the sanctions

The district court failed to explain on what basis it rested its authority to sanction Jinetes or its attorneys. Since there was no relevant filing to bring sanctions under Rule 11(b) into play, see Balerna v. Gilberti, 708 F.3d 319, 323 (1st Cir. 2013), there are only three[6] potential sources of authority to consider: 28 U.S.C. § 1927; the district court's inherent authority to sanction litigation misconduct; and the district court's contempt power. See generally G. Joseph, Sanctions: The Federal Law of Litigation Abuse § 1 (6th ed., Dec. 2021 update). The district court could not, without a bad faith finding in this context, impose a sanction under either § 192, see Jensen v. Phillips Screw Co., 546 F.3d 59, 64 (1st Cir. 2008), or under its inherent power, see In re Charbono, 790 F.3d 80, 87-88 (1st Cir. 2015). Nor could the district have sanctioned Jinetes as a punishment for contempt because it never held contempt proceedings. See Int'l Union, United Mine Workers v. Bagwell, 512

imposed by the Court." Thereafter the district court specifically directed its sanction order be paid by Jinetes.

[6] We note that the district court, some nine months after orally imposing the sanctions, issued a written order stating that it had done so under Fed. R. Civ. P. 37(b). We can find no authority under Rule 37(b) to impose a sanction for the failure by Jinetes's counsel to attend the meeting to discuss stipulations. Our case law is clear that "[s]anctions under Rule 37(b)(2) may not be levied without the issuance, and subsequent violation, of a formal order under Rule 37(a)." In re Williams, 156 F.3d 86, 89 n.1 (1st Cir. 1998) (citing R.W. Int'l Corp. v. Welch Foods, Inc., 937 F.2d 11, 18 (1st Cir. 1991)). No violation of any of the specified orders under Rule 37(a) was implicated by defense counsel's failure to attend the meeting.

U.S. 821, 833 (1994) (citing Cooke v. United States, 267 U.S. 517, 534 (1925)) (describing procedural requirements for civil contempt committed outside the presence of the court).

The record is barren of any findings to support the sanctions other than that defense counsel failed to meet and confer. Without a finding of bad faith or the deployment of contempt proceedings, we cannot sustain the district court's award of attorneys' fees. We thus vacate that sanction.

IV.

We need not reach any of the other issues the defendants raise on appeal.

The defendants contend that the district court erred when it effectively ignored their counterclaims in entering judgment. Defense counsel, however, informed us at oral argument that if the defendants prevailed on the labor-dispute exemption issue, they would drop their counterclaims on remand.

Finally, the defendants' challenge to the district court's denial of their motion to reconsider the judgment is moot. The challenge was rooted in the plaintiffs' alleged failure to join indispensable parties: the jockeys' spouses and conjugal partnerships. As no claims against any of those parties survive this appeal, we do not reach the reconsideration issue.

V.

We reverse the district court's judgment, vacate the injunction and sanctions orders, and remand the case with instructions to dismiss the complaint and counterclaims.